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January 23, 2013

Via Federal Express
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 the Initial Brief, with Proposed Findings of Fact and Conclusions of Law, of the Verizon Companies, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter. Because both the Initial Brief and the Proposed Findings of Fact include certain Proprietary information, a Public Version of the Initial Brief, with Proposed Findings of Fact and Conclusions of Law, is being provided for the public record.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

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

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 INITIAL POST-HEARING BRIEF

(PUBLIC VERSION)

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Dated: January 23, 2013

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I. INTRODUCTION

Core Communications, Inc. ("Core") generates most of its revenue from traffic termination charges imposed on other carriers, rather than from its own customers. Core does not offer local telephone service in the traditional sense, but instead markets services that allow Internet service providers ("ISPs") and other generators of high-volume traffic incoming to Core (such as free conference calling services) to receive calls. Those traffic-generating "customers" pay little or nothing to Core, but Core generates revenue by charging Verizon[1] (and other carriers) to terminate this high volume of incoming traffic. Historically, over half of Core's operating revenue has come from intercarrier compensation payments from Verizon.[2] This business model led the FCC to describe Core as the "poster boy of reciprocal compensation gamesmanship."[3]

Indeed, Core seems to view its entire relationship with Verizon as a "game." For years, Core systematically billed and collected from Verizon unsubstantiated charges for termination of traffic while at the same time refusing to pay Verizon for any of the services and facilities it was receiving from Verizon. When Verizon realized in the spring of 2011 that it had been paying billed charges to Core for years in good faith that appeared to be improper and Core refused to cooperate by providing records to validate the bills, Verizon withheld payment on a month of disputed reciprocal compensation invoices that totaled approximately $75,000. Core ran to the Commission and obtained an order stopping Verizon from engaging in "self-help." At the same time, Core had for years been taking "self help" to a new level by not only refusing to pay those portions of bills from Verizon that it claims to dispute, but rather, paying Verizon *nothing at all* for the services and facilities Core received. And when confronted with that fact in this litigation, Core simply invented

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1 "Verizon" refers to Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North").

2 April 16, 2012 Amended Complaint ("Amended Cpt."), ¶ 45.

3 Response of the Federal Communications Commission to Emergency Motion for a Stay and Motion for Expedited Consideration, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001).

new and non-credible compensation claims on traffic delivered to it (including claims logically inconsistent with Core's original reciprocal compensation claims) to inflate the numbers in its favor.

To put Core's latest gamesmanship in the proper context, one must first consider the facilities and services Core obtained from Verizon to be able to exchange and route traffic. Some of the facilities (those used to carry "local" traffic terminating to Core) were provided by Verizon at its expense; others (through which Core exchanged "toll" traffic with interexchange carriers or sent local traffic to Verizon and third parties) were chargeable to Core. Core claims that Verizon should have billed for all of these facilities at lower Total Element Long Run Incremental Cost ("TELRIC") rates, rather than special access rates. Yet, while conceding that it received value from its use of Verizon's facilities and services, Core refuses to pay Verizon *anything at all*.[4]

Specifically, on bills totaling *over $4.5 million*, Core has paid Verizon just *thirty dollars and sixty six cents* ($30.66).[5] Confronted with its failure to pay, Core has advanced a series of untenable arguments that boil down to a claim that the facilities that Core ordered, and that Verizon provided, did not work properly. Core's claims are factually wrong, without legal basis, and proffered merely as an excuse for its refusal to pay. Core's self-help is of particular concern given that there is good reason to believe (based on sworn statements Core made throughout this proceeding) that it will not be capable of paying Verizon's past due bills or refunding past overpayments if the Commission orders it to do so, and given that the Commission nonetheless continues to require Verizon to make payments to Core every month.

With regard to Core's receivables, Core defends its practices by contending that it "is entitled to pursue a business plan which hews to the FCC's rules and policies as embodied in FCC

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[4] Core Statement ("Core Stmt.") 3.0 at 39.

[5] Verizon Statement ("VZ Stmt.") 1.0 at 4.

orders,"[6] even if that plan is centered on profiting at the expense of other carriers. But the evidence shows that Core's intercarrier compensation billings have not "hewed" to the FCC's (or this Commission's) rules or policies. Core has practiced systematic overbilling by charging Verizon rates far in excess of the lawful FCC rate for ISP-bound traffic and by invoicing Verizon for non-Verizon traffic – that is, traffic that was billable (if at all) to the third-party carriers that originated it. Core has billed Verizon "local" traffic termination rates in Pennsylvania for traffic that did not terminate locally, or even in Pennsylvania. Core has billed Verizon for traffic for which Core had no call records, but instead merely "guesstimated" might exist.

These and the other sources of Core's gross overbillings were not isolated errors, but were systematic (and in each case, worked to Core's financial benefit at the expense of Verizon). In some cases, Verizon was able to detect and dispute the overbillings, but in others, Verizon paid Core's erroneous invoices and only later came to understand the overpayment. Further, Core's initial lack of cooperation with regard to providing billing records has compounded this problem. Ultimately, though, the record developed since then only confirms Verizon's disputes and demonstrates that Core owes Verizon a refund of over *$2.7 million and counting*.

It is time for the Commission to put a stop to Core's continuing attempts to use the Commission's resources to play games at Verizon's expense. The Commission should deny Core's Amended Complaint against Verizon in its entirety, and grant the relief sought in Verizon's New Matter by ordering Core to: (i) pay Verizon for the facilities and services Core has used and continues to use to carry its traffic and serve its customers; (ii) refund all overpayments associated with its erroneous billings to Verizon and cease grossly overcharging Verizon for the termination of traffic that does not originate with Verizon's customers; (iii) deny Core's attempt to collect tens of millions of dollars from Verizon for reciprocal compensation payments through a contorted

[6] Core Stmt. 3.0 at 12.

misconstruction of the FCC's *ISP Remand Order*; (iv) reject Core's efforts to collect on erroneous switched access bills issued to Verizon during the pendency of this case; and (v) deny Core's claim for "lost revenue" damages associated with switched access amounts Core has never billed to Verizon and admits that it never can.

II. STATEMENT OF THE CASE

Core is certified as a competitive local exchange carrier ("CLEC") authorized to operate in Pennsylvania. Core Stmt. 1.0 at 1. The parties' Commission-approved interconnection agreements ("ICAs") govern their business relationship and the bulk of the disputes at issue here.[7] For years, Core has obtained high capacity circuits and traffic termination and directory listing services from Verizon to operate its traffic stimulation schemes, but has not paid for them. Core has also billed, and Verizon has paid, intercarrier compensation charges for terminating the large volume of traffic destined for Core's largely ISP customer base.

In the course of investigating an inquiry from Core, Verizon discovered in the spring of 2011 that Core had been significantly overcharging Verizon (and Verizon thus had been significantly overpaying Core) for traffic termination services. When Verizon asked Core to provide information to substantiate its bills, Core refused. When Verizon withheld payment on Core's May 2011 invoices and initiated dispute resolution to address the suspected overbilling, Core refused to engage in the dispute resolution process required by the ICAs. Core instead filed a complaint and sought an emergency order to force Verizon to continue to pay Core's bills.

Core's initial complaint argued only that Verizon had breached the ICAs by withholding payment while it disputed Core's invoices and that Verizon should be forced to pay. Verizon

[7] Verizon PA and Core interconnect pursuant to an ICA dated March 31, 2000 ("Verizon PA ICA"), approved by the Commission in Docket No. A-310922F0002. Verizon Answer to Amended Cpt. ("VZ Answ.") at ¶ 131 and FN 9. Verizon North and Core interconnect pursuant to an ICA dated August 24, 2005 ("Verizon North ICA"), approved by the Commission in Docket No. A-31092F7001. *Id.* The Commission may take administrative notice of the ICAs on file with it, and electronic copies have been provided to the ALJ for convenience. The ICAs, in turn, incorporate various tariffs, of which the Commission may also take administrative notice.

opposed the request for emergency relief and also brought counterclaims seeking refunds of past overpayments made by Verizon on the basis of Core's erroneous bills, as well as a claim for payment of the millions of dollars past due from Core on invoices from Verizon.

On September 23, 2011, the Commission issued an emergency order requiring Verizon to continue to pay Core's invoices, subject to refund, at the same ratio previously paid (in other words, at the FCC's $0.0007 per minute of use ("MOU") rate for ISP-bound traffic). The Commission also ordered Core immediately to provide Verizon the information it sought to evaluate Core's bills and directed the parties to mediate the disputes before the Commission's mediation unit. Verizon participated in good faith, but the mediation was terminated on March 22, 2012.

Shortly thereafter, Core amended its complaint on April 16, 2012, inventing two new disingenuous claims that seek retroactively to collect *over $28 million in additional payments from Verizon* for the same traffic for which Verizon has already paid Core. Verizon opposed all of Core's claims and renewed its own counterclaims seeking payment for facilities, traffic termination and other services, as well as a refund of past overpayments. The issues before the Commission thus fall into two broad categories – Verizon's billings to Core and Core's billings to Verizon.

Verizon's Billings to Core

Counts I and II of Verizon's Counterclaims explain that Core has breached its obligations (under both the parties' Commission-approved ICAs and Pennsylvania law) to pay Verizon for Core's use of Verizon's facilities. Core is incorrect as a matter of law that lower TELRIC rates apply (and Core has never even paid those rates). Core's claims that the facilities did not function properly are baseless, and Core must pay its bills. Core has never raised a *bona fide* dispute as to Verizon's charges for traffic termination and directory listing services, and must likewise pay for those services.

Counts V and VI of Verizon's Counterclaims detail how Core breached the ICAs by refusing to follow their dispute resolution processes or provide call detail records that Verizon

needed to evaluate the accuracy of Core's invoices, as well as by improperly initiating the instant litigation immediately, rather than engaging in the good faith negotiations and dispute resolution process mandated by the ICAs. These breaches prohibit granting Core the relief it now seeks.

Core's Billings to Verizon

Count I of Core's Amended Complaint asserts that Verizon breached various provisions of the ICAs by withholding payment on Core's disputed May 2011 invoices. However, as outlined in Counts III and IV of Verizon's Counterclaims, Core's invoices were rife with error, and Core actually owes Verizon a refund of at least $2.7 million for past overpayments made on Core's reciprocal compensation bills, many of which were billed based on estimated traffic volumes rather than actual traffic data, and all of which included charges for significant amounts of third party traffic for which Verizon is not liable to Core. Core continues to overbill Verizon because it has failed to correct these serious errors in its billing methodology.

Count II of Core's Amended Complaint seeks to collect approximately $2.5 million in switched access charges on traffic dating back to 2009 that was carried over the Signaling System 7 ("SS7") trunks obtained from Verizon. Core did not render bills for these access charges until several months into these proceedings, and issued them for traffic for which Verizon had already paid Core in full. Count II also appears to seek "lost revenue" damages for another $2.7 million in switched access charges for traffic carried over the Multi-Frequency ("MF") trunks, for which Verizon also previously paid in full. Core admits that it did not and cannot bill Verizon for this amount, but asserts that it is nonetheless entitled to collect it. Core's switched access bills are even more flawed than its reciprocal compensation bills, and Core is legally barred from attempting to collect either switched access charges or unbilled "lost revenue damages" for switched access on the traffic at issue for a number of reasons detailed herein.

Count III of Core's Amended Complaint represents Core's latest attempt to evade longstanding state and federal precedent by seeking retroactively to collect $23 million in reciprocal compensation on ISP-bound traffic for which Verizon has already paid Core at the FCC-established $0.0007/MOU ISP-bound traffic rate, which this Commission has repeatedly confirmed – most recently just last month – is the proper rate. Core's claim for additional payments on this traffic on the grounds that Verizon has failed properly to implement the FCC's "mirroring rule" is contrary to law and fact.

Verizon expands upon all of these issues below.

III. ARGUMENT

A. Core's Non-Payment and Overbilling Is Consistent With Its Traffic Stimulation Business Plan

The Commission must assess both Core's inflated intercarrier compensation billings to Verizon and its refusal to pay Verizon's bills in the proper context – namely, that Core's business plan depends on traffic stimulation practices that the FCC has long sought to curtail. As noted above, Core relies almost exclusively on revenues collected from other carriers that are forced to pay Core for the termination of traffic to its customers. VZ Stmt. 1.0 at 4.

A provider engaged in such conduct typically does not charge the ISPs and conference call providers much, if anything, to use its services; in fact it frequently *pays them* to participate in the scheme – either directly, by sharing a portion of the excess intercarrier compensation revenue it collects, or indirectly, by providing services for free. VZ Stmt. 1.0 at 5. The detailed record developed on the subject of Core's traffic stimulation activities demonstrates that Core follows this standard arbitrage model and has endeavored to increase its incoming traffic in Pennsylvania.[8] *Id.* at 9-27 and Exs. 2-8; *see also* VZ Stmt. 3.0 at 8-13 and Ex. SR-1. While Core quibbles with the FCC's strong denunciation of traffic stimulation practices, it does not deny that its business model

[8] This is so despite Core's attempts to downplay its traffic stimulation efforts as more ambitious than they actually turned out to be in practice. Core Stmt. 3.0 at 7.

is rooted in traffic stimulation schemes designed to maximize intercarrier compensation payments from other carriers. Core Stmt. 3.0 at 2-9; VZ Stmt. 1.0 at 10. The Commission must assess the issues through this lens.

B. Core Has Engaged in "Self-Help" for Years

Although Core raced to the Commission seeking emergency relief when Verizon withheld payment on a single month's disputed invoices (bypassing the dispute resolution process required by the parties' ICAs), Core has for years engaged in a much more egregious form of "self-help" by refusing to pay anything for services and facilities it has received from Verizon. VZ Stmt. 1.0 at 27-28. Core has failed to pay invoices totaling $4,548,753.49 as of August 6, 2012 (which amount has only increased since then). *Id.* at 4, 31 and Exhibit 13.[9]

Core attempts to justify its own "self-help" by asserting that Verizon's billing disputes were not "*bona fide*," whereas Core's are,[10] but its position is not credible. Not only does the record show that Verizon was correct when it suspected that Core was seriously overbilling, but also the Commission's September 23, 2011 Order discussing its policy disfavoring self-help did not turn on the merits of the underlying dispute.[11] Verizon is required to pay Core during this litigation without regard to the merits of its disputes, even though the record establishes that Core is overcharging Verizon and Core's financial position is so precarious that it is not likely to be able to refund those overcharges when the case concludes. Verizon witness Paul Vasington, the former chairman of the Massachusetts Department of Telecommunications and Energy, testified that he would find it "exceedingly difficult to accept the position of any carrier that petitioned for an emergency order

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[9] Exhibit 13 to VZ Stmt. 1.0 reflects a summary of each monthly invoice that Verizon has rendered to Core and any payments made by Core on those invoices. At hearing, Verizon confirmed that the amounts listed in the summary were billed to Core, and Core's counsel confirmed that Core does not dispute that Verizon has issued the referenced invoices. Hearing Transcript ("Tr.") at 467; 471-72.

[10] Core Stmt. 3.0 at 71; Core Stmt. 4.0 at 19.

[11] *See* "Opinion and Order" (September 23, 2011) at 18.

seeking to compel another carrier to pay disputed invoices on the grounds that non-payment of disputed invoices was improper self-help, and yet engaged in the same conduct itself as to the same carrier against which it sought that injunctive relief." VZ Stmt. 1.0 at 27-28.

Core's president confirmed at the December 2012 evidentiary hearing in this case that Core has not escrowed *any* funds – much less *sufficient* funds – to pay whatever amounts the Commission may eventually determine are due from Core to Verizon. Tr. 258. This is so despite the administrative law judge's ("ALJ") admonition in July of 2012 that:

> [T]his scenario [Core's refusal to pay any portion of Verizon's invoices] sounds suspiciously like "self-help" and will not be tolerated, as the Commission indicated in its order granting Core's petition for interim emergency relief. Core is warned that it may be facing civil penalties if the ultimate holding in the case confirms these suspicions and if Core has not established an escrow account to insure that some payment may be made on these outstanding bills, should they be found to be accurate."[12]

At that hearing, Core's president stated that, if the Commission ruled in Verizon's favor today, Core could not afford to pay even a fraction of the amounts sought. Tr. 259-60; 267. He also stated that, even if Core evades paying Verizon anything, it is "unlikely" that Core can survive if it loses on its affirmative claims against Verizon. Tr. 416. Thus, not only does the record show that Core has not paid Verizon for the facilities and services at issue here, and has overbilled Verizon for years without refunding amounts collected in error, but Verizon's damages increase with each passing month and it is highly questionable that Verizon will recover anything near the full amounts due to it from Core if Verizon prevails in this proceeding.

[12] *See* "Order Denying the Preliminary Objections of Verizon Pennsylvania Inc. and Verizon North LLC and the Preliminary Objections of Core Communications, Inc." (July 2, 2012) at 6 ("*PO Order*"). The ALJ rejected as "meritless" Core's argument that its "severely restricted cash flow" excused it from paying Verizon's bills or establishing an escrow fund during the pendency of this proceeding. *Id.* at 6.

C. The Commission Should Require Core to Pay Verizon the Millions of Dollars Core Owes but Has Steadfastly Refused to Pay

Almost all of $4,548,753.49 due from Core is for facilities that Core used to transport traffic to and from its network. Verizon also seeks to collect a small amount for intercarrier compensation and directory listing services. As described below, the Commission should require Core to pay the amounts due.

1. The Commission Should Require Core to Pay Verizon's Bills for Facilities Provided to Core

The vast majority of Core's unpaid bills from Verizon are for the high capacity circuits provided by Verizon to Core,[13] which Core uses to transport traffic between Core's network and the networks of Verizon and of third parties. VZ Stmt. 1.0 at 30. Under the parties' ICAs, Core may self-provision such facilities or lease them from another provider,[14] but Core has chosen to obtain them from Verizon. VZ Stmt. 1.0 at 31-34. While Verizon was required to honor Core's requests and provide the facilities, Core has steadfastly refused to pay for them even while conceding their value. Core Stmt. 3.0 at 39.

Core has ordered two types of trunks from Verizon:[15] (i) *one-way* trunks that carry local and non-Feature Group D intraLATA toll traffic from Core's network to Verizon's, and through Verizon's tandem to the networks of third party carriers whose networks are connected to a Verizon tandem, which trunks are known as Local Interconnection Trunk Groups ("LITGs"); and (2) *two-*

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[13] Of the approximately $4.5 million in unpaid invoices from Verizon to Core as of August 6, 2012, roughly $93,000 was for traffic termination services, and approximately $33,000 was for directory listings services. VZ Stmt. 1.0 at 63, 65. The remainder (approximately 97.2%) was for facilities charges associated with the circuits Core obtained from Verizon.

[14] *See* Verizon PA ICA at Attachment IV, Section 2.4, and Verizon North ICA at Part V, Section 1.2.

[15] Attachment IV of the Verizon PA ICA and Part V of the Verizon North ICA describe the trunk groups that Core may establish to carry traffic between the networks. In relevant part, Section 1.1.1 of Attachment IV to the Verizon PA ICA refers to trunks "to be used one-way, for the reciprocal exchange of combined Local Traffic, non-equal access intraLATA toll traffic, and local transit traffic to other ILECs," while Section 1.1.2 refers to trunks "to [Verizon's] appropriate access tandem(s), to be used two-way, for the exchange of equal access traffic between [Core] and purchasers of [Verizon's] switched Exchange Access Services [i.e., IXCs]." Section 1.2.1 of Part V of the Verizon North agreement refers to "Traffic Exchange Trunks" and "Access Toll Connecting Trunks."

way trunks that carry traffic exchanged between Core and interexchange carriers ("IXCs") that connect to the Verizon access tandems in order to carry interexchange calls, which trunks are commonly known as Access Toll Connecting trunks ("ATCs" or "ATCTs").[16] VZ Stmt. 1.0 at 31-36. Core initially ordered both sets of trunks as MF trunks, an older signaling technology that is the source of much of Core's confusion about the functionality of the trunks. Core Stmt. 3.0 at 39. Core recently transitioned its trunks to "Signaling System 7" or "SS7" technology, which has been the industry standard since before Core ordered MF trunking. *Id.*; *see also* VZ Stmt. 1.0 at 46. The majority of the facilities for which Verizon billed Core from the beginning of 2008 to mid-2012 – approximately 65% – were ATCTs, with the remainder being LITGs. VZ Stmt. 1.0 at 37. During this proceeding, Core transferred all of its ATCTs to an alternative provider and no longer purchases them from Verizon, but continues to use LITGs obtained from Verizon. Core Stmt. 3.0 at 39.

Core's various arguments attempting to justify its refusal to pay for these facilities are baseless. The Commission should require Core to pay the past due bills, with applicable interest calculated from the initial time of non-payment.[17] The Commission should also order Core to pay its bills on a current basis for any facilities that it continues to obtain from Verizon.

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[16] In addition, Verizon provisions one-way LITGs for the carriage of traffic to Core, but it does not bill Core for those facilities. VZ Stmt. 1.0 at 32. While Core thus does not owe Verizon for this subset of facilities, as discussed below, Core does owe Verizon a refund for traffic termination charges that Core has billed Verizon, and Verizon has paid, for traffic carried over these LITGs.

[17] Late payment charges, including for amounts disputed and withheld but subsequently determined to have been due, accrue at the rate of 18% per year for amounts due to Verizon North (*see* Verizon North ICA at General Terms and Conditions ("GT&C"), Section 11.3(e)) and 9% per year for amounts due to Verizon PA (*see* Verizon PA ICA at Part A, Section 21.3.3, incorporating the interest rate set forth in Section 2.4.1(B)(iii)(b)(II) of Verizon PA's FCC Tariff No. 1). Verizon's FCC Tariff No. 1 is a publicly available document of which the Commission may take administrative notice, and is available on line at http://www22.verizon.com/tariffs/PDFViewer.aspx?doc=162179. For the Commission's convenience, a copy of the relevant page (Verizon Tariff FCC No. 1, 3rd Revised Page 2-29) is attached hereto as **Attachment A**.

a. Core's Contention That Verizon Has Charged the Wrong Rate Does Not Justify Core's Failure to Pay Anything

Core's primary contention is that, rather than the special access rates Verizon has billed, all of the trunks should have been billed at TELRIC rates.[18] Core Stmt. 1.0 at 10; Core Stmt. 3.0 at 20-27. However, Core withholds *all* payment rather than paying the lower TELRIC rates that it argues apply. VZ Stmt. 2.0 at 5. Core's failure to pay at least the undisputed rate violates the ICAs.[19] At the hearing, Core attempted to suggest that paying at TELRIC was infeasible because it had no way to determine how much would be due (Tr. 493), but the record shows that, more than a year ago, Verizon provided Core with a TELRIC re-rate showing exactly how much would be due if all of the past-due facilities charges were re-rated at TELRIC. Tr. 582. Core still has not paid even that amount.

As demonstrated below, Core's arguments are incorrect, but at best, those arguments would only excuse Core from paying the amount it contends was overbilled. There is no excuse for Core's failure to pay at least TELRIC rates for its use of these trunks.

b. Core's Contention That Verizon Has Charged the Wrong Rate Is Incorrect.

Core has steadfastly maintained that unless and until Verizon bills Core at TELRIC rates, Core will not pay *anything* for its use of Verizon's facilities, even as it continues to send traffic over them and admittedly obtains value from this use. Core Stmt. 3.0 at 39. But TELRIC is not the applicable rate for these facilities. It is a fundamental principle of law that the parties' ICAs control their contractual relationship and are the first place the Commission must look to determine

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[18] TELRIC is the pricing methodology established by the FCC to set the rates applicable to CLECs' use of unbundled network elements that the incumbent LEC is required to provide under the terms of ICAs that implement the unbundling duty in 47 USC § 251(c)(3) and FCC regulations. State commissions, including this one, use the FCC's methodology to set the actual TELRIC rates for a particular state. Core Stmt. 3.0 at 23-27.

[19] Core is obligated under the ICAs to pay at least the portion of the bills that it does not dispute. VZ St. 1.0 at 38-39 (citing Verizon PA ICA at Attachment VIII, Section 3.1.8 and Verizon North ICA at GT&C, Section 11).

applicable rates.[20] Core's argument ignores the plain language of its ICAs with Verizon, which do not entitle Core to TELRIC-rated "entrance facilities" to connect its network to Verizon's. And even if the ICAs did provide for TELRIC-rated interconnection facilities, which they do not, the vast majority of the trunks at issue, including all of the ATCTs, are not "interconnection facilities" under 47 U.S.C. § 251(c)(2), as Core incorrectly asserts.

The history of the regulatory treatment of "entrance facilities," which are dedicated transport facilities connecting another carrier's network to an ILEC's switch or tandem,[21] is important to understanding the dispute over the proper rates for the facilities Core obtained from Verizon. Core's LITGs and ATCTs are types of entrance facilities. Entrance facilities have always been available as special access facilities under Verizon's switched access tariffs. With the FCC's initial orders implementing the Telecommunications Act of 1996, entrance facilities also became available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3), at TELRIC rates. But, as discussed below, the FCC later "delisted" entrance facilities as UNEs (meaning it removed them from the list of UNEs available to competitive providers at TELRIC rates) in 2003.

Therefore, when Core ordered such facilities (prior to 2003) it could have ordered them as UNEs under its ICAs and 47 U.S.C. § 251(c)(3), at TELRIC rates. However, it did not do so. The record shows that the facilities Core actually ordered and used were not UNE entrance facilities, but special access entrance facilities. The difference between the two is akin to the difference between a finished product and a "do-it-yourself" kit. With the special access facilities that Core ordered, Verizon provides the finished product. Core's trunks are powered with "Verizon equipment at both ends," a hallmark of special access, in contrast to UNE trunks that "are powered and controlled by

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[20] Memorandum Opinion and Order, *CoreComm Communications, Inc. v. SBC Communications, Inc.*, 18 FCC Rcd 7568, ¶ 32 (2003) ("*CoreComm Order*"), *recon. denied*, 19 FCC Rcd 8447 (2004) ("*CoreComm Reconsideration Order*"), *vacated on other grounds, SBC Communications Inc. v. FCC*, 407 F.3d 1223 (D.C. Cir. 2005).

[21] VZ Stmt. 1.0 at 39-40.

the CLEC, with CLEC equipment at both ends." VZ Stmt. 3.0 at 24. Had Core ordered less expensive UNE facilities, which are priced at TELRIC, Core would have had to do more work and to deploy more of its own equipment to do so (and it chose not to). *Id.* at 23-25. Purchasing special access eliminated the need for Core to maintain a collocation space and to acquire and maintain its own terminal equipment, thus saving on collocation, equipment, and labor costs. *Id.* at 25. Core has all along ordered and maintained special access facilities and, therefore, was correctly billed tariffed special access rates. In short, even when the law and the ICAs gave Core the option to order UNE entrance facilities, it never did so.

The law changed with the FCC's *Triennial Review Order* in 2003,[22] followed by its *Triennial Review Remand Order* in 2005,[23] in which the agency held that entrance facilities are not required to be provided as UNEs under 47 USC § 251(c)(3), and therefore are not subject to TELRIC pricing as UNEs. From then on, under applicable law, entrance facilities were not available at TELRIC rates as UNEs. This Commission recognized the change in law and approved Verizon PA's amendment to its UNE Tariff 216 to reflect that entrance facilities were no longer available as UNEs and instead would be available at "special access rates . . . under Verizon's tariffs."[24]

There is no question that, under Core's ICAs, once entrance facilities were delisted as UNEs, Core no longer had an option to purchase them as UNEs, at TELRIC rates (which it had

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[22] *See* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (*"TRO"*), *vacated in part and remanded, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[23] Order on Remand, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (February 5, 2005), *review dismissed by, in part, motion granted by* Covad Communs. Co. v. FCC, 2005 U.S. App. LEXIS 7454 (D.C. Cir., Apr. 28, 2005); *review denied by Covad Communs. Co. v. FCC*, 450 F.3d 528 (2006).

[24] *Verizon Pennsylvania Inc. Tariff for Other Telephone Companies (Tariff No. 216) Discontinue CLEC Access to Unbundled Entrance Facilities*, Docket No. R-00050800 (Opinion and Order entered February 10, 2006).

never done previously, in any event). Section 2.2 of the adoption agreement to Core's ICA with Verizon PA makes this plain:

> 2.2 The Parties agree that if any judicial or regulatory authority of competent jurisdiction determines (or has determined) that [VERIZON PA] is not required to furnish any service or item or provide any benefit to Telecommunications Carriers otherwise required to be furnished or provided to Core hereunder, then [VERIZON PA] may, at its sole option, avail itself of any such determination by providing written notice thereof to Core.[25]

Section 2.2 is a change of law provision that allowed Verizon PA to cease providing UNEs that had been delisted upon written notice, which was provided.[26] The result was the same under the Verizon North agreement.[27]

Core argues that it was nonetheless entitled to obtain all of these facilities at TELRIC rates because they are "interconnection facilities" required to be provided at cost-based rates under 47 U.S.C. § 251(c)(2). Core Stmt. 3.0 at 38. Once it became clear that TELRIC-rated entrance facilities were not available as UNEs, a number of CLECs began to make this argument, but this Commission rejected it.[28]

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[25] The terms of the Adoption Agreement supersede any contrary terms in the underlying ICA. As this Commission explained, "Core and Verizon PA entered into an interconnection agreement using a method by which Core 'opted-in,' or adopted, the terms of another interconnection agreement. The vehicle for opting into the other agreement was an adoption agreement between Core and Verizon PA. That adoption agreement also modified certain terms of the other interconnection agreement to reflect the intentions of Core and Verizon PA." *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 on Reconsideration entered January 22, 2004) at 4.

[26] This Commission recognized that "Verizon provided notice to CLECs on June 20, 2005, notifying that it would discontinue Entrance Facilities within ninety (90) days and that thereafter CLECs may not obtain Entrance Facilities as an unbundled element." *See PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00050800 (Opinion and Order entered September 29, 2005); *see also* Core Stmt. 3.0 at 37 and Ex. R-22 thereto (discussing and attaching Verizon letter delisting entrance facilities).

[27] Verizon North ICA, Par. I.B. of Adoption Agreement and FN 1 to App. A thereto; Amendment No. 1 to Adoption Agreement at Sections 2.4 and 2.5 thereto.

[28] *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Pennsylvania Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order, Docket No.* P-00042092 (Opinion and Order on Reconsideration entered July 21, 2006) at 10.

Core also claims that the U.S. Supreme Court decision in *Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011) requires Verizon retroactively to re-price all the LITGs and ATCTs at TELRIC rates. Core Stmt. 3.0 at 38. Core is wrong. At best, *Talk America* allows Core to negotiate an amendment to its ICAs to provide for TELRIC-rated interconnection facilities under § 251(c)(2), but only prospectively, and only to the extent that they are truly being used to exchange traffic between Verizon and Core, as discussed below.

It is true that *Talk America* holds that some (but not all) entrance facilities qualify as interconnection facilities under § 251(c)(2), which a CLEC such as Core can buy at TELRIC rates, provided its ICA so allows. But Core's ICAs do not grant Core that right. Indeed, no provision of the ICAs either authorizes Core to purchase § 251(c)(2) entrance facilities or establishes TELRIC rates for such facilities. Therefore, following the "delisting" of entrance facilities as UNEs in 2003, the ICAs required Core to obtain the ATCTs and LITGs, to the extent Core chose to obtain them from Verizon, at tariffed rates, not TELRIC rates.[29]

The provisions of 47 U.S.C. § 251 are not self-executing, and a carrier cannot complain if it adopted an ICA that gives it fewer rights than are available under § 251. The FCC has held that when a CLEC has voluntarily opted into an agreement that "does not provide" a service that federal law requires, it has "effectively waived any right to insist" that it receive that service.[30] Section 2.2 of the Verizon PA ICA Adoption Agreement allows *Verizon* to implement certain types of changes

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[29] The ICAs therefore correctly require the ATCTs to be priced at access rates. Part V, Section 3.2.2 of the Verizon North agreement provides that Core "shall establish Access Toll Connecting Trunks pursuant to applicable Verizon Tariffs (including, but not limited to, to the extent applicable, Verizon Tariffs Pa. P.U.C.-No. 302 and F.C.C. No. 1), by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from [Core's] Customers." Sections 2.4 and 2.5 of Amendment No. 1 to the Verizon North ICA Adoption Agreement are consistent with this. Similarly, footnote 1 to the Pricing Attachment (Appendix 2 to the Adoption Agreement) of the Verizon PA ICA states that "[Verizon PA] rates and services for use by [Core] in the carriage of Toll Traffic shall be subject to [Verizon PA]'s tariffs for Exchange Access service."]

[30] *CoreComm Order*, ¶ 32; *see also* 47 U.S.C. § 252(a)(1) (authorizing negotiation of "binding" agreements "without regard" to the substantive requirements in 47 U.S.C. § 251(b) and (c)).

in law without an amendment, upon notice, but by its express terms does not allow Core to do so. Core cannot unilaterally refuse to pay based on the *Talk America* decision.[31] Core must follow the change of law provisions of the underlying agreements.

Part A, Sections 2.2 and 2.4 of the underlying ICA between Core and Verizon PA provide that:

> 2.2 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders.
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> ...
>
> 2.4 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [CORE] or [VERIZON] to perform any material terms of this Agreement, [CORE] or [VERIZON] may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

The Verizon North ICA contains similar change of law provisions.[32] To date, Core has not sought to invoke the change of law provisions to amend the ICAs to implement the *Talk America* decision. Therefore, under the ICAs, the only way Core could have bought entrance facilities from Verizon is from Verizon's special access tariffs, at the tariffed rates.

Even if *Talk America* could somehow override the clear language of the ICAs (which it cannot, as a matter of law, as set forth in the FCC's *CoreComm* decision), Core's interpretation of that decision is faulty. Most of the past due charges are for ATCTs used to exchange traffic between Core and IXCs. VZ Stmt. 1.0 at 37. ATCTs are not interconnection facilities subject to § 251(c)(2) under the *Talk America* decision. As Verizon's witnesses explained, the ATCTs carry

[31] The *Talk America* decision was issued in 2011, so it certainly did not justify Core's unilateral refusal to pay before that time, in violation of the ICAs.

[32] Verizon North ICA at GT&C, §§ 8.3 and 8.4.

only IXC traffic, rather than local traffic exchanged between Verizon and Core. *Id.* As explained in the FCC amicus brief to which the Court deferred,[33] only facilities that are used to link the incumbent provider's telephone network with the competitor's network for the mutual exchange of traffic are interconnection facilities under 47 USC § 251(c)(2) – only those facilities that "enable[] customers of a competitive LEC to call the incumbent's customers, and vice versa," without which the CLEC's "customers would be unable to call (or receive calls from) the incumbent's much larger customer base," are interconnection facilities subject to TELRIC pricing under § 251(c)(2), because these trunks are used for the "mutual exchange of traffic" between the CLEC and ILEC end user customers. VZ Stmt. 1.0, Exhibit 14 ("*FCC Amicus*") at 2-3; *id.*

All other types of dedicated transport that carry traffic between CLEC networks and ILEC switches – even though they may also be called "entrance facilities" – are not "interconnection facilities" and are thus not required to be provided at TELRIC rates. "[A] single facility can be used for different functions, and . . . its regulatory treatment can vary depending on the use to which it is put." *FCC Amicus* at 18. Therefore, a facility is not an interconnection facility subject to TELRIC pricing if it is used "'solely for the purpose of originating or terminating . . . interexchange traffic [i.e., long distance traffic]'" and not for the mutual exchange of traffic between the CLEC and the ILEC, even though "'the same exact wire' could be used for both purposes." *Id.* at 19.[34]

Under the above analysis, the ATCTs that Core leased from Verizon and failed to pay for were not "interconnection facilities" under *Talk America*. They were instead used exclusively to

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[33] VZ Stmt. 1.0 at Exhibit 14 (Brief of the United States as Amicus Curiae Supporting Petitioners in the *Talk America* case (U.S. S.Ct. Nos. 10-313 and 10-329) (February 2011)); *Talk America*, 131 S.Ct. at 2257, 2265 (deferring to *FCC Amicus*).

[34] This is consistent with the statutory mandate of Section 251(g), which explicitly retained the pre-1996 regime for access to interexchange carriers, providing that LECs shall continue to provide exchange access services "to interexchange carriers . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)" that applied prior to enactment of the 1996 Act. 47 U.S.C. § 251(g).

exchange long distance traffic with IXCs, because Core chose to subtend Verizon's access tandems in lieu of directly connecting with these IXCs (or subtending another tandem provider).[35] VZ Stmt. 1.0 at 42.

The fact that Core has now disconnected its Verizon ATCTs and instead uses an alternative tandem provider to transit its IXC traffic does not absolve it from responsibility for paying Verizon for its past use of ATCTs. Before leaving Verizon, Core ran up $1,137,943.57 in unpaid bills for its use of ATCTs leased from Verizon from January 2008 through June 2012. VZ Stmt. 2.0 at 15. With no fear that active facilities will be disconnected for nonpayment, Core has even less incentive to pay Verizon these overdue amounts. Accordingly, the Commission should direct Core to pay the entire outstanding amount, with late payment charges.

Nor does the *Talk America* decision absolve Core from paying for the LITGs – the facilities that Core uses to deliver local and certain toll traffic to Verizon and to third party carriers. As discussed above, Core's ICAs did not allow it to purchase TELRIC-rated interconnection facilities and Core never sought to amend the ICA, so it is not entitled to have the past-due bills for the LITGs re-rated at TELRIC.

c. Core's Contention That the Trunks Failed to Function Properly is Baseless and Does Not Justify Core's Failure to Pay

In addition to challenging the rates that Verizon billed for the trunking facilities at issue, Core also asserts that it should not have to pay for the facilities because it claims that they did not function properly. *See, e.g.*, Core Stmt. 3.0 at 42-55. Core's claims of functionality issues are factually incorrect and Core's assertion that such issues would in any event absolve it from payment are legally without merit.

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[35] Because the ATCTs were access facilities, rather than local interconnection facilities, the "transport" portion of the rate Core charged IXCs that sent it traffic over the ATCTs would be based on the use of the ATCTs connecting the Verizon tandem to the CLEC switch. VZ Stmt. 3.0 at 27. Thus, even though Core never paid Verizon for the underlying facilities, Core has been able to charge IXCs switched access for using them.

(1) Even If Core's "Facility Quality" Claims Were True, That Would Not Absolve Core From the Need to Pay

Regardless of the technical merit of Core's "functionality" claims, there is no legal merit to Core's argument that the facility quality claims it has raised – even if true – would absolve Core from the need to pay for the subject facilities. Core does not allege that Verizon failed to provide the facilities. Indeed, Core admits that it obtained the facilities and they were of value to Core. Core Stmt. 3.0 at 39. Rather, Core claims that the quality of the facilities fell short of Core's (erroneous) expectations.

Core has cited no legal basis for its argument that the claimed shortcomings in facility quality entitle Core to refuse to pay for the service. To be sure, Verizon sometimes agrees to include performance requirements in its contracts and tariffs; requirements that typically entail partial payouts and credits if certain objectives are not reached. But Core has cited no such provision here, for none exists. It is undisputed that the subject facilities were in fact provided by Verizon; there is no merit to Core's claim that any alleged failures in quality would entitle Core to refuse to pay.

(2) Verizon Did Not Improperly "Mix" the Traffic Carried over the LITGs and ATCTs

Core claims that Verizon improperly – and even "surreptitiously" – routed traffic to Core over the LITGs that should have been routed over the ATCTs, and vice versa, making it difficult for Core to bill intercarrier compensation. *See, e.g.*, Core Stmt. 1.0 at 13. Core's erroneous claim apparently stems from its fundamental misunderstanding of the ICA provisions that govern the transmission of traffic over the LITGs and ATCTs, including a misbelief that the LITGs were established to carry *only* locally-dialed traffic.

The Verizon PA ICA defines the traffic that can be routed over the LITGs as "Local Traffic, *non-equal access intraLATA toll* traffic, and local transit traffic to other ILECs" (Attachment IV,

Section 1.1.1). VZ Stmt. 1.0 at 50. The Verizon North ICA has a similar definition of the traffic types allowed over the Local Interconnection trunks (*see* Part V, Section 1.2.1). *Id.* In other words, pursuant to the ICAs, it is wholly appropriate for certain toll traffic to travel over the LITGs, and Core was incorrect to expect them to be used exclusively for the exchange of locally-dialed traffic (a point Core has since conceded[36]). VZ Stmt. 2.0 at 21; VZ Stmt. 3.0 at 38-39.

Verizon does not alter the routing of calls: if a call comes into the Verizon tandem from an IXC, the tandem routes the call over an ATCT; *all* other calls are routed over an LITG, including intraLATA toll calls originated by CLECs, and intraMTA calls originated by wireless carriers. VZ Stmt. 1.0 at 51-52; *see also* VZ Stmt. 2.0 at 21. Verizon's tandem switches route calls to end office switches based solely on the type of trunk group over which the call entered the tandem. VZ Stmt. 1.0 at 51-52.

Verizon did not improperly mix traffic on the ATCTs and LITGs, and the Commission should reject Core's claim that it need not pay Verizon for the facilities Core obtained on this basis.

(3) It Was Not Technically Feasible for Verizon to Transmit ANI/CPN over the MF Trunks

Core asserts incorrectly that the MF trunks it purchased from Verizon never worked properly because "Verizon never enabled these trunks to pass the CPN of Core's end users (even though it [sic] technically feasible and quite easy to do so), rendering these trunks useless for commercial applications."[37] Core Stmt. 1.0 at 10. "CPN" refers to Calling Party Number, which is generally referred to as Automatic Number Identification, or "ANI," in the MF signaling context. VZ Stmt. 1.0 at 58.

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[36] Core Stmt. 3.0 at 51.

[37] Although Core characterizes the MF trunks as useless, it acknowledges that they carried calls successfully (Core Stmt. 3.0 at 54), and protests only the billing information transmitted over them. Core eventually decommissioned the MF trunks and replaced them with SS7 trunks, which are capable of transmitting ANI/CPN. Core Stmt. 3.0 at 46.

Core chose to use MF trunking, even though SS7 was the industry standard protocol at the time, and despite the fact that the key attribute of the older MF signaling protocol is that it does not transmit calling party detail in the terminating direction. VZ Stmt. 1.0 at 54-55. In effect, Core now complains about a self-created lack of information that is a direct result of its decision to purchase an older technology rather than a newer, superior one that would provide that information. *Id.* The record reflects that it is not technically feasible to transmit ANI/CPN over the MF trunks ordered by Core except on originating Feature Group D calls (long distance calls routed from Core to an IXC).[38] VZ Stmt. 1.0 at 47, 58-59; VZ Stmt. 2.0 at 9-10. Indeed, Verizon indicated that "on a practical level, "if it were possible to pass ANI on MF trunks," Verizon would have done so, because Verizon's customers would benefit. VZ Stmt. 3.0 at 21. The MF trunks Core ordered were simply not capable of passing such information.

In response to discovery, Core offered no support for its claim that ANI transmission was feasible over the MF trunks beyond the bald assertion of Core President Mr. Mingo. VZ Stmt. 3.0 at 20-21; VZ Stmt. 2.0 at Exhibit 3-R; *see also* Tr. 286. Core later asserted in its surrebuttal testimony that the parties' ICAs and FCC orders established this. However, the Verizon North ICA does not speak to the issue, and the Verizon PA ICA (Att. 3, § 11.1.6) requires transmission of ANI only "*where available*" (emphasis added). It is not available in the terminating direction. VZ Stmt. 1.0 at 47, 58-59; VZ Stmt. 2.0 at 9-10. Likewise, as Core admitted, the FCC has acknowledged such technical limitations, including in its recent *ICC Reform Order* (citing a Verizon filing explaining that "MF trunks are configured to signal ANI only on the originating end of a Feature

[38] Verizon's witnesses explained the historical and technical bases for this limitation on MF signaling capability, and confirmed that Verizon had not "refused" to pass ANI/CPN over the MF trunks. VZ Stmt. 1.0 at 47, 58-59; VZ Stmt. 2.0 at 9-10.

Group D access call" and "do not signal ANI on non-access calls or on the terminating leg of an access call").[39] Tr. 285-288; 290-91; *see also* Core Exhibit SR-2 at ¶ 716.

There is no evidence that Verizon could have, or should have, transmitted ANI over the MF trunks that Core ordered. The Commission should reject Core's attempt to evade payment for the MF trunks on this specious basis.

(4) Verizon Transmits the Information Required by the ICAs, Allowing Core to Bill Properly

Core raises various complaints about the billing information Verizon provides for traffic terminated to Core over the SS7 trunks, including that the SS7 trunks do not pass the Carrier Identification Code ("CIC") or Operating Carrier Number ("OCN") of the party originating the traffic in the call signaling stream, and that Verizon does not provide Exchange Message Interface ("EMI") records for 100% of interexchange calls terminated to Core. *See, e.g.*, Core Stmt. 1.0 at 14-15. Core even seems to complain that Verizon does not provide EMI records for *every call* terminated to Core (*id.*), although it concedes (as discussed below) that the ICAs do not require this. Core asserts that these conditions excuse Core from paying Verizon anything for the SS7 trunks, but its grievances are invalid.

While it is true that Verizon does not provide CIC/OCN *in the call signaling stream*, it does provide CIC/OCN *in the EMI records* provided to Core, consistent with the parties' ICAs and the industry standard guidelines incorporated therein. VZ Stmt. 1.0 at 52-54, 57, 59-60; VZ Stmt. 2.0 at 18-19 and Exhibit 4-R. This is because there is no CIC, OCN, or other indicator present in the call signaling stream that could be used to identify the carrier that sent the call to the Verizon tandem.

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[39] *See Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 716, FN 1228 (Nov. 18, 2011) ("*ICC Reform Order*"). In particular, the FCC recognized the need for waivers of certain of its rules based on "part[ies] unable to comply with our rule as a result of technical limitations related to MF signaling in its network...." *Id.* at ¶ 716.

VZ Stmt. 1.0 at 52. Consistent with industry standards, Verizon instead uses the terminating call records generated at its tandem switch to populate the CIC or OCN of the carrier that delivered the call to the tandem switch on the EMI that Verizon generates and provides to Core. *Id.* at 53. This allows Core to identify the carrier responsible for compensating Core for the termination of the traffic.

Core complains that Verizon does not send EMI records for all of the calls Verizon delivers to Core. Core Stmt. 3.0 at 14. But the ICAs require Verizon to provide EMI records only for certain interexchange calls – those that IXCs route to Core via Verizon's tandem switches. VZ Stmt. 2.0 at 21-22; Verizon PA ICA at Att. VIII, Section 3.1.3; Verizon North ICA at Part V, Section 3.3. The ICAs do not require Verizon to provide EMI records for interexchange calls that a CLEC or wireless provider may route to Core via the Verizon network. *Id.* Thus, the ICAs do not require Verizon to provide EMI for 100% of interexchange calls. The ICAs also do not require EMI for calls from Verizon's end users (for which there is no business reason to generate EMI), nor from any other non-IXC. *Id.* In practice (as Core admits), Verizon provides EMI for calls from IXCs, CLECs, wireless carriers, and more recently, from a number of rural ILECs – far more EMI than the ICAs require. Core Stmt. 1.0 at 13-14; *see also* VZ Stmt. 1.0 at 48; VZ Stmt. 3.0 at 40-41, 52-53; Core Stmt. 4.0 at 6-7.

Core has repeatedly testified in other Commission proceedings that using the Verizon EMI, it can distinguish other carriers' traffic from Verizon's and bill those other carriers accurately for traffic they originate and terminate to Core by transiting it through Verizon's tandems. For example, in Core's complaint case against AT&T, Core testified that it does not need EMI records to identify Verizon-originated traffic, and that the EMI records provided by Verizon were sufficient to allow Core to bill AT&T (and others) for traffic they sent to Core. VZ Stmt. 1.0 at 48-49 and Ex. 15 thereto at 68-72, 78; VZ Stmt. 2.0 at 17-18; VZ Stmt. 3.0 at 48-49 and Exs. 11-SR and 12-SR;

Tr. 250, 299-300, 304. Core has made similar arguments in proceedings against XO. VZ Stmt. 2.0 at 17. Having admitted, when expedient, that Verizon provides the records necessary for Core to bill third parties, Core cannot claim to the contrary here.

(5) It Is Appropriate to Include Core's CIC in the EMI Records Verizon Generates for Traffic Carried on the SS7 Trunks

Core complains that Verizon inappropriately inserts Core's CIC into the EMI records that Verizon generates and provides to other carriers for traffic that Core sends through Verizon's tandems, asserting that this makes Core's outbound, locally-dialed traffic appear to be toll traffic to the carriers who receive the Verizon EMI. *See, e.g.*, Core Stmt. 1.0 at 11.

Core ordered the facilities using its CIC, and the inclusion of that code in the EMI records permits third parties to identify Core as the carrier responsible for compensating them for the traffic at issue. VZ Stmt. 2.0 at 11-12; Core Stmt. 4.0 at 4. The record reflects that CICs are assigned to both IXCs and LECs, that some carriers (like Core) have both OCNs and CICs,[40] and that "CIC codes and OCNs exist to denote the ***identity*** of the carrier responsible for the traffic at issue, not to denote the ***jurisdiction*** of that traffic for purposes of intercarrier compensation." VZ Stmt. 2.0 at 12 (emphasis in original); *see also* VZ Stmt. 3.0 at 22-23. This is in accord with the Multiple Exchange Carrier Access Billing ("MECAB") industry standards for the billing of intercarrier usage charges. *Id.* When Verizon asked Core to produce any documentation substantiating its assertion to the contrary, Core produced nothing. VZ Stmt. 3.0 at 23 and Ex. 5-SR.

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[40] With the advent of toll competition and the need to implement a system to identify carriers responsible for paying for the origination and termination of toll traffic, CIC codes were originally developed and issued to carriers offering Feature Group B and/or Feature Group D services. OCNs were subsequently developed, originally for identification of embedded Regional Bell Operating Companies, and later expanding to other carrier types. Now, many carriers wear multiple hats, and it is not appropriate to assign any particular weight or meaning to the presence of a CIC code versus an OCN for purposes of billing intercarrier compensation charges, since CICs are assigned both to IXCs and local exchange carriers and any assumption that a CIC code indicates that the carrier is an IXC, or that the traffic at issue is interexchange traffic, would be completely incorrect. VZ Stmt. 2.0 at 12, FN 2; VZ Redirect Ex. 2.

It is not an accepted industry practice to assume that the presence of a CIC means that a call is subject to switched access charges, and, in any event, Core admitted in discovery that it has never been misbilled by a third party carrier on the basis of its CIC appearing on an EMI record. VZ Stmt. 2.0 at 12-13 and Exhibit 3-R.

In sum, Core's various claims regarding the quality of Verizon's facilities are factually inaccurate, and in any event those service quality claims would provide no basis for Core's refusal to pay for the service.

2. The Commission Should Require Core to Pay Verizon's Bills for Intercarrier Compensation and Directory Listings

a. Core Has Never Paid Verizon for Terminating the Traffic It Concedes It Sends

Core has used Verizon's traffic termination services without ever paying for them. VZ Stmt. 1.0 at 61-64. Core concedes that it began sending outbound traffic to Verizon in August of 2010. *Id.* at 62 and Ex. 1 thereto. The combined unpaid invoices to Core for reciprocal compensation and switched access services rendered by Verizon in terminating that outbound traffic pursuant to Attachment I, Section 4 of the Verizon PA ICA and Part V, Section 2.6 of the Verizon North ICA total approximately $93,000. *Id.* at 63-64 and Exhibit 1. Core has offered no substantive basis for its failure to pay these invoices other than its baseless claim that the FCC's mirroring rule requires Verizon to charge $0.0007/MOU on all traffic, including switched access traffic (discussed below), even though Core has neither requested nor entered into an agreement providing that rate. *Id.*; Core Stmt. 3.0 at 56-57. Core has not even made payment of the approximately $17,000 that it asserts would be due under this baseless argument. Core Stmt. 3.0 at

57, as corrected at hearing (Tr. 245); *see also* VZ Stmt. 3.0 at 28-29. Core's failure to pay even this much violates the ICAs and 66 Pa. C.S. § 3017(b).[41]

Core has offered no valid reason for its refusal to pay Verizon for the traffic termination services rendered to Core, and the Commission should order Core to pay Verizon for them.

b. Core Proffers No Substantive Excuse for Failing to Pay Verizon's Directory Listing Charges

Verizon has rendered $32,685.91 in directory listing services to Core, for which Core has not paid Verizon. VZ Stmt. 1.0 at 64-65. Verizon bills Core for these services pursuant to *MCI v. Bell Atlantic*, 271 F.3d 491 (3rd Cir. 2001), *cert. denied*, 537 U.S. 941 (2002), which permits Verizon to bill Core for these services at tariffed rates. Verizon has billed Core for directory listing services in accordance with its tariff, Pa. P.U.C. No. 1, Sec. 5.b.

Core has not alleged any problems or disputes with the directory listing services Verizon provided, nor offered any reason for its non-payment of the invoiced amounts. VZ Stmt. 1.0 at 64-65; *see also* VZ Stmt. 2.0 at 15; VZ Stmt. 3.0 at 29. The Commission should order Core to pay for the directory listing services it obtained from Verizon.

D. Core Has Systematically Overcharged Verizon for Traffic Termination

For many years, Core has systematically overbilled Verizon for intercarrier compensation. Verizon was able to detect and dispute some of Core's overbillings – such as Core's steadfast refusal to apply the proper rate for ISP-bound traffic – contemporaneously. Other errors in Core's billings were not evident until more recently (in part due to lack of access to essential data from

[41] As with Core's other baseless refusals to pay, its failure to pay even this undisputed amount violates the interconnection agreements *(see* Verizon PA ICA at Attachment VIII, Section 3.1.8 (requiring payment of undisputed amounts by due date on invoice) and Verizon North ICA at GT&C, Section 11.3 (non-paying party must give notice of disputed amounts and specific details and reasons for dispute within 60 days)) and Pennsylvania law, *see* 66 Pa. C.S. § 3017(b) ("[n]o person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company").

Core), and as a result, Verizon paid bills inflated by Core's chronic overstatement of the number of minutes that were billable to Verizon.

1. Core Inflated the Number of Reciprocal Compensation Minutes Billed to Verizon, and Verizon Overpaid as a Result

a. Core Knowingly Over-Charged Verizon for Terminating Other Carriers' Traffic

From January 2008 through the end of June 2012, Verizon paid Core $7,786,114.95 for local traffic termination services (*i.e.*, either reciprocal compensation or the FCC's $0.0007/MOU rate for ISP-bound traffic) in Pennsylvania. VZ Stmt. 1.0 at 21 and Ex. 9. More than a third of that amount constituted overpayment for which Core owes Verizon a refund: because 35% of the traffic Core improperly billed to Verizon was instead originated by third parties, *Core has overbilled Verizon, and Verizon has overpaid Core, by approximately $2,725,140.* VZ Stmt. 3.0 at 67-69; *see also* VZ Stmt. 1.0 at 71-74; VZ Stmt. 2.0 at 31-32. And Core admits that it continues to bill Verizon for other carriers' traffic, even while it bills the other carriers for terminating the same traffic. Tr. 321-22.

To verify that Core has charged Verizon for traffic originated by other carriers, Verizon reviewed approximately 18 months of call detail records provided by Core for calls terminated over the SS7 trunks[42] and enriched them to identify which carrier had actually acted as the local service provider at the time of each call.[43] VZ Stmt. 3.0 at 67-69. *Verizon found that 35% of the MOUs for which Core billed Verizon actually originated from telephone numbers for which Verizon was not the local service provider at the time of the call* (meaning that another carrier, not Verizon, was

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[42] Verizon could not undertake such an analysis for calls terminated over the MF trunks because (as discussed below) Core violated the ICAs by failing to generate Automated Message Accounting ("AMA") call records for such calls.

[43] Core mistakenly concluded that Verizon was offering the enrichment process as a way of billing these third parties for the traffic they transit through Verizon's tandem switches (Core Stmt. 1.0 at 32), but as Verizon witness Mr. Munsell explained at hearing, the point of the exercise was not to determine what Core should bill to specific third parties, but rather, *to determine what Core should not bill to Verizon.* Tr. 590-91.

responsible for compensating Core for the termination of the traffic). VZ Stmt. 3.0 at 68-69. Multiplying the $7,786,114.95 that Verizon has paid to Core from January 2008 through June 2012 for local traffic termination services by this 35% factor results in the $2,725,140 overpayment referenced above. This figure quantifies only the erroneous billing of third party traffic, and not the impact of the other errors, discussed below, through which Core inflated the minutes billed to Verizon.

Verizon's analysis demonstrates conclusively that Core has been billing Verizon for third party traffic, but Core's testimony independently corroborates Verizon's finding. Core repeatedly confirmed that it has billed and continues to bill Verizon for 100% of the minutes terminated to Core over the LITGs,[44] of which a substantial portion is third party traffic.[45] Tr. 322; *see also* VZ Stmt. 2.0 at 29 and Exs. 9-R and 10-R; Core Stmt. 3.0 at 56, 68; Core Stmt. 4.0 at 9. In other words, Core itself has admitted what Verizon's analysis demonstrates: that Core bills Verizon for third-party traffic.

It is a fundamental principle of law that Core may not charge Verizon for terminating third-party traffic simply because that traffic transits Verizon's network. The Federal Communications Act obligates local exchange carriers to establish "reciprocal" (*i.e.* bilateral) compensation

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[44] Core originally defended this practice because it believed only Verizon-originated local traffic should be coming to it over the LITGs. Core Stmt. 1.0 at 13. When Verizon pointed out that the ICAs allow not only calls originated by Verizon end users, but also local and intraLATA toll calls originated by CLECs and independent ILECs and intraMTA calls originated by wireless carriers to be routed over the LITGs (VZ Stmt 1.0 at 51), Core conceded the point (Core Stmt. 3.0 at 51), but yet, has not ceased its practice of billing Verizon for 100% of these minutes. Tr. 321-22.

[45] Core has received other carriers' traffic over these trunks because Verizon operates tandem switches through which it offers "transit" service to Core and other carriers. Both local traffic and interexchange traffic may be transited. Local transit service is where the tandem provider (Verizon) 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 providers. This traffic is routed to Core over the LITGs. Similarly, Verizon transits interexchange traffic over its access tandems so that rather than every IXC connecting with every LEC or CMRS provider, these parties may connect to Verizon's access tandems with ATCTs and exchange long distance traffic through the transit service provided in Verizon's access tariffs. Transit traffic from IXCs was previously routed to Core over the ATCTs, but Core now uses a competitive transit provider for this function and no longer maintains ATCTs with Verizon. VZ Stmt. 1.0 at 45-46; Tr. 275-76; Core Stmt. 3.0 at 39.

arrangements with one another (*see* 47 U.S.C. § 251(b)(5)), and makes plain that such "reciprocal compensation" is for the "termination on each carrier's network facilities of calls that *originate on the network facilities of the other carrier....*" 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added). Since 1996, the FCC has confirmed that carriers' reciprocal compensation obligations dictate that "the *originating* carrier must compensate the terminating carrier for completing the call," not the party merely transiting a third-party call.[46] Likewise, the FCC's new rules acknowledge that the current intercarrier compensation regime is based on a "calling-party's-network pays system." 47 C.F.R. § 51.700.

Given this unambiguous authority, it is unsurprising that the parties' ICAs do not allow Core to bill Verizon reciprocal compensation for termination of this third party traffic. The Verizon PA ICA provides that each party may bill the other "Reciprocal Compensation for the Exchange of Local Traffic." Verizon PA ICA at Att. 1, § 4.2. Thus, under the Verizon PA ICA, reciprocal compensation is due only for "Local Traffic." The term "Local Traffic" is in turn defined as "... *traffic that is originated by an end user subscriber of one Party on that Party's network* and terminates to an end user subscriber of the other Party on that other Party's network within a given local calling area ..." (emphasis added). *Id.* at Part B, definition of "Local Traffic." This definition expressly excludes traffic *originated by end users of third parties*, since such traffic is not originated by "an end user subscriber of one Party" to the ICA. The Verizon PA ICA similarly limits the definition of "Reciprocal Compensation" to " ... compensation from the other carrier for the transport and termination on each carrier's network facilities *of Local Traffic that originates on the network facilities of the other carrier.*" *Id.* at definition of "Reciprocal Compensation" (emphasis added). Thus, under the Verizon PA ICA, traffic that originates on a third party's

[46] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (Aug. 8, 1996) at ¶ 1034.

network is excluded from the definition of "Local Traffic," and therefore is excluded from that to which reciprocal compensation applies.

In the same way, the Verizon North ICA provides that the parties will compensate each other for "Reciprocal Compensation Traffic" (Verizon North ICA, Part V, § 2.7), which is defined as traffic that is "originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network." *Id.* at Attachment 1 – Definitions.

In other Commission proceedings, Core has argued that the *originating* party is liable to compensate Core for the termination of traffic. *See, e.g.*, VZ Stmt. 3.0 at 42, 49-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR). Yet, the record in this proceeding makes clear that Core has been billing Verizon – the *transit provider, not the originating party* – for that third party traffic. The Commission should not give credence to Core's fundamentally inconsistent positions, which are designed to ensure that Core collects intercarrier compensation from multiple carriers for the same traffic. As a matter of statute, regulation, contract and Core's own admission in other Commission proceedings, there is no support for Core's billings to Verizon for third party traffic.

Core has known for years that third party carriers route traffic to Core through Verizon's tandems,[47] and for years, Core has used Verizon-provided EMI records[48] to identify and bill many of these third party carriers. Yet, even as Core bills third parties for some of the traffic carried over the LITGs, Core has stated that it has billed, and continues to bill, Verizon for *all* minutes coming to

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[47] Core addressed this issue in arbitrations initiated in 2006 with various rural ILECs, and has known since at least 2007 that it has been receiving this transit traffic from CLECs such as AT&T and XO. VZ Stmt. 3.0 at 45, 48; Tr. 250.

[48] Verizon's witnesses explained these industry standard EMI records and how they are used to bill other carriers. VZ Stmt 1.0 at 56-57. Verizon provides Core with EMI records for all calls originated by CLECs and CMRS providers that transit Verizon's network, which calls are delivered to Core over the LITGs. VZ Stmt. 2.0 at 22. It also has increasingly been providing records for traffic originated by independent ILECs (also delivered over the LITGs) as part of its efforts to require these carriers to modernize their outdated interconnection arrangements, an initiative facilitated by the Commission's actions in another docket. *Id.* at 22-23.

it over the LITGs as well.[49] In suing other carriers – including AT&T, XO Communications and Choice One – for intercarrier compensation on traffic originated by those carriers and transited through Verizon's tandems, Core has alleged under oath that the Verizon-provided EMI records are sufficient to demonstrate these third parties' liability to pay Core for the termination of their traffic. VZ Stmt. 1.0 at Ex. 15; VZ Stmt. 2.0 at 17-18, 22, 24 and Ex. 5-R; VZ Stmt. 3.0 at 48-49 and Exs. 11-SR and 12-SR. Indeed, the Commission recently issued an Opinion and Order requiring AT&T to compensate Core for a combined 406,194,298[50] MOUs of locally-dialed traffic originated by the AT&T CLECs, transited by Verizon and terminated to Core on the basis of these records.[51] Because those AT&T minutes were among the minutes that Verizon delivered to Core, and because Core bills Verizon for 100% of the locally-dialed minutes that Verizon delivers to Core, it follows that Core billed Verizon for the same minutes for which it billed AT&T.[52] Similarly, Core admitted

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[49] Yet, when asked if Core was entitled to bill Verizon for traffic from third party carriers that was transited to Core and for which Core had received an EMI record, Core said no. Tr. 300-301; VZ Cross Ex. 6.

[50] This figure represents the 406,102,334 MOUs referenced at p. 66 of the *AT&T Order*, plus the additional 91,964 MOUs referenced in Finding of Fact 20 of the ALJ's May 11, 2011 Initial Decision, adopted in relevant part in the *AT&T Order*.

[51] *See* Opinion and Order, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Dec. 5, 2012) ("*AT&T Order*").

[52] On cross examination, Mr. Mingo attempted to avoid a flat out admission that Core had double billed AT&T and Verizon for the same traffic by claiming that the traffic at issue in the AT&T proceeding must have been interexchange traffic carried over the ATCTs, rather than local traffic carried over the LITGs, due to the presence of an AT&T CIC code on the associated EMI records. Tr. 304-316; *see also* Core Stmt. 4.0 at 6. Mr. Mingo was evasive because if the traffic came over the LITGs, it was unquestionably double-billed. Core's premise that CIC codes are the exclusive province of IXCs is contradicted by the record, which shows that CIC codes are assigned to *both* IXCs *and* local exchange carriers (VZ Redirect Ex. 2) – indeed, Core itself has a CIC code. The record also shows that the AT&T entities were assigned CIC codes at a time when CLECs (and OCNs) did not yet exist, and therefore already had CIC codes when they began providing competitive local exchange service. Tr. 432. Mr. Mingo's untenable position also ignores that the traffic at issue in the AT&T proceeding was unquestionably *locally-dialed ISP-bound traffic* from the AT&T *CLECs* to Core, and *not interexchange* traffic from AT&T *IXCs*, a point repeatedly reaffirmed in the *AT&T Order*. *See, e.g., AT&T Order* at 5 ("[i]n this case, the exchange of traffic is between two CLECs); 10 ("Both AT&T and Core are CLECs. Therefore, in simplest terms, this is an intercarrier compensation dispute *between two certificated CLECs* operating in the Commonwealth of Pennsylvania."); 15 ("...the FCC's rate cap of $0.0007 per MOU is the appropriate reciprocal compensation rate that should apply to the *locally-dialed ISP-bound traffic at issue* that AT&T sends to Core for termination on Core's network."); 33 ("*the subject matter in this proceeding [is] ISP-bound local CLEC-CLEC traffic*") (emphasis added). Notwithstanding Core's dissembling, the release of the *AT&T Order* makes patently clear that Core double-billed both Verizon and AT&T (using the EMI obtained from Verizon) for the same traffic. Verizon has thus already paid Core $0.0007 per

at the hearing that it has begun issuing bills to the independent ILECs based on the EMI records from Verizon, but continues to bill Verizon for this traffic too. Tr. 311.

Core made a feeble attempt to suggest that it tries to use the EMI records to avoid double billing, but a closer examination of Core's testimony demonstrates that it does not really do so. First, Core admits that it only attempted such a matching process for calls for which it billed *switched access* – not locally-dialed calls for which it billed *reciprocal compensation*. Tr. 335; VZ Cross Ex. 8; Core Stmt. 1.0 at 15; *see also* VZ Stmt. 2.0 at 27-29; VZ Stmt. 3.0 at 56-57. Core also admits that it never attempted any matching at all for calls carried over the *MF* trunks (because it failed to generate the ICA-required per-call AMA records for such traffic and thus would have nothing to "match" to Verizon's EMI). VZ Stmt. 2.0 at 27, 32 and Ex. 12-R.

Moreover, Core's claimed "matching" process is inherently flawed. For example, Mr. Mingo stated that the criteria used were limited to matches on calling party and called party numbers for calls placed on the same day (Core Stmt. 1.0 at 16), but this approach cannot find matches on wireless calls (for which calling numbers are normally populated with zeroes), and does not account for the fact that many AMA records use the charge number, rather than the calling party number, so that Core will find no matches for calls from multi-line accounts. VZ Stmt. 2.0 at 28; VZ Stmt. 3.0 at 58-60. Core's SS7 "matching" process is not generally accepted in the industry, and is highly flawed. VZ Stmt. 2.0 at 28-29.

In short:

- There is no question that that Core billed Verizon for *all* local and non-Feature Group D toll traffic originated by third parties and merely transited by Verizon over the LITGs.

MOU for the 406,194,298 locally-dialed MOUs at issue in the AT&T case, which works out to $284,336. Under the *AT&T Order*, Core will now collect that sum – for the same 406,194,298 MOUs – from AT&T as well.

- There is no question that Core billed Verizon for a massive amount of third-party traffic (at least $2.7M as of the end of June 2012, based on Verizon's analysis of the call detail records).

- There is no question that Core also billed the originating third parties for much of that traffic (for example, the $284,336 of local AT&T traffic that Core double-billed to Verizon and AT&T).

- Core also double-billed for a substantial amount of switched access traffic, despite its professed "matching" process for toll traffic.

- Regardless of how much (or how little) Core also billed to the appropriate third-parties, it was not entitled to bill Verizon for that third-party traffic.

- While Core disagrees with Verizon about the *extent* of its double billing, Core concedes that it occurs. *See, e.g.*, Tr. 301-03, 326-28, 378-79; Core Stmt. 3.0 at 50, 66-67; VZ Stmt. 1.0 at 75-76 and Ex. 22; VZ Stmt. 2.0 at 34; VZ Stmt. 3.0 at 55-56 and Ex. 16-SR.

For all of these reasons, the Commission should conclude that Core has improperly billed Verizon reciprocal compensation for third party-originated traffic merely transited by Verizon, and order Core to refund with interest at least the $2,725,140 that Verizon has overpaid Core from January 2008 through June 2012, as well as 35% of the amounts paid by Verizon since June 2012, together with interest at the legal rate of 6% per annum, and immediately cease billing Verizon for traffic originated by other carriers.[53]

b. Core's Method of Estimating the Billable Minutes on the MF Trunks Was Unreliable and Likely Resulted in Overcharging

For much of the traffic at issue here, Core did not use actual switch records to render its bills. Instead, Core used an unreliable estimate of the billable minutes as the basis for its invoices.

[53] Under 66 Pa. C.S. § 1312(a), this Commission has "the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron" when the Commission "determine[s] that any rate received by a public utility was unjust or unreasonable." 66 Pa. C.S. § 1312(a). Such refund shall include "interest at the legal rate from the date of each such excessive payment." *Id.* The "legal rate" of interest is 6 percent per annum. 41 P.S. § 202. *See Duquesne Light Co. v. PUC.*, 117 Pa. Commw. 28, 36, 543 A.2d 196, 200 (Pa. Commw. 1988).

This certainly resulted in overcharging, although Core's faulty recording practices leave Verizon unable to quantify the extent of this aspect of the overbilling.

Until 2012, Core used MF trunks to carry traffic from Verizon to Core.[54] But Core failed to abide by the ICAs' requirement to create per-call AMA records for all calls, including those terminated over the MF trunks,[55] and instead devised a wholly unreliable *ad hoc* method of estimating the minutes billable to Verizon. Core used a self-created "sampling technique" – one that it admitted was not authorized by the ICAs (Tr. 330) – to bill Verizon reciprocal compensation by "guesstimating" the number of MOUs carried over the MF trunks by "sampling the number of trunk ports in use at five minute intervals to calculate total MOUs each month per local trunk group." VZ Stmt. 1.0 at 67-70 and Ex. 22; VZ Stmt. 2.0 at 30-34 and Ex. 11-R; VZ Stmt. 3.0 at 64-66. Core's "sampling technique" is rife with error.

First, although Core claimed to have collected its MF trunk "sampling" data at regular five-minute intervals, the data produced in discovery showed that Core actually collected that data erratically, at significantly longer ten to thirteen-minute intervals. VZ Stmt. 1.0 at 68; VZ Stmt. 2.0 at 30-31.

Second, when Core then "adjusted" (increased) the MF MOU totals for "modem training time," it used an arbitrary 1.19 factor developed without the aid of studies or documentation. Tr. 332; VZ Cross Ex. 7; *see also* Core Stmt. 3.0 at 59-60; VZ Stmt. 2.0 at 33. The best that Core could offer by way of explanation of the algorithm that produced the factor was that it relied "on simple math" (Tr. 333) that Verizon could not check because Core did not produce its calculations in

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[54] Although Verizon did not bill Core for these trunks, Core still got to choose for them to be MF rather than SS7. VZ Stmt. 1.0 at 57.

[55] VZ Stmt. 1.0 at 69-70 and Ex. 23; VZ Stmt. 2.0 at 32-33 and Ex. 12-R; VZ Stmt. 3.0 at 58; Verizon PA ICA at Attachment IV, Section 7.1 and Verizon North ICA at Part V, Section 2.6.3. Verizon testified that creating per call AMA records on MF trunks is "certainly technically feasible." VZ Stmt. 2.0 at 32.

discovery (even though they were plainly responsive to Verizon's request for supporting data). VZ Cross Ex. 7.

Third, Core appears to have created its intermittent time stamp data on more than simply the LITGs that carried local traffic, meaning that it recorded (and billed Verizon reciprocal compensation for) MOU that were not local traffic, but interexchange traffic carried over the ATCTs, for which Core should have billed the IXCs terminating the traffic (and based on the Verizon EMI records, likely did), not Verizon.[56] VZ Stmt. 3.0 at 64-66.

Fourth, and most importantly, Core's "sampling technique" provided no way to exclude MOUs associated with third party-originated traffic (because Core generated no AMA records to compare to the Verizon EMI records in order to exclude third party transit traffic), guaranteeing that Core billed Verizon for MOUs for which other carriers were financially responsible. VZ Stmt. 2.0 at 31, 34.

Verizon witness Mr. Munsell testified that in his over 30 years of experience, he had never come across an approach like Core's MF "sampling technique," nor was he familiar with an industry standard that would allow for Core's process of billing on the basis of "appl[ying] a guesstimate on top of an estimate on top of an erratic and inconsistent sample (which itself may or may not have been accurately gathered)." VZ Stmt. 3.0 at 31, 34. Core's reciprocal compensation billing for traffic carried over the MF trunks are completely unreliable and certainly resulted in overcharges to Verizon, although Core's faulty methodology and failure to create call records leaves Verizon unable to quantify the overcharges. The Commission should require Core to calculate and refund all amounts billed to and paid by Verizon under this approach.

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[56] On cross-examination, Core attempted to quibble with Verizon's analysis in this regard, insinuating that Verizon should not have relied on the data Core provided in discovery because Core provided non-responsive information combined with responsive information. Tr. 549-555. This problem was rampant throughout the case. VZ Stmt. 1.0 at 71-72; VZ Stmt. 3.0 at 73). The Commission should not countenance Core commingling responsive and non-responsive information in response to discovery and then attempting to play "gotcha" when Verizon relies on the data provided.

c. Core Improperly Billed Verizon Reciprocal Compensation on VNXX Traffic

Core's reciprocal compensation billings to Verizon were also inflated because Core billed Verizon (and Verizon paid) reciprocal compensation on significant amounts of "virtual NXX" or "VNXX" traffic. Even if Verizon end users originated this traffic, pursuant to the parties' ICAs, no reciprocal compensation was due on this VNXX traffic. Accordingly, VNXX minutes should have been excluded from Core's billings.

The Commission has described "VNXX service" as an arrangement whereby "a customer can obtain a telephone number from a NXX code that is associated with a rate center or local calling area in which they are not physically located." *See* Verizon Cross Ex. 13[57] at 3. The Commission explained that this type of arrangement is known as VNXX "because the customer has only a virtual presence, as opposed to a physical presence, in the local calling area based solely on the use of the assigned NXX code for that local calling area." *Id.* The Commission has previously rejected attempts to collect reciprocal compensation on VNXX traffic.[58]

Although Core repeatedly denied in discovery that it provides VNXX services (*see* Verizon Cross Ex. 15), Core's certification order (Verizon Cross Ex. 14 at 8) and Core's sworn testimony in other proceedings before the Commission – in which Core testified that it is both the "standard operating arrangement in the industry" and Core's own practice to serve ISPs through VNXX services – contradict its unfounded denials. *See, e.g.*, Verizon Cross Ex. 16 at 33, 40; Tr. 366-67. Core's general counsel explained that in its discovery responses, Core denied providing VNXX

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[57] Verizon Cross Ex. 13 is a copy of the Commission's October 14, 2005 "Statement of Policy" in Docket No. I-00020093, Generic Investigation Regarding Virtual NXX Codes.

[58] *See* Opinion and Order, *Petition of Global NAPS South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, PA PUC Docket No. A-310771F7000 (April 17, 2003) ("*Global NAPS*") at 45 ("Based on our review of the record and applicable FCC orders, we conclude that calls to VNXX telephone numbers that are not in the same local calling area as the caller should not be subject to reciprocal compensation.").

services because "we don't offer a service that's called VNXX," but admitted the truth of prior sworn statements regarding its VNXX offerings and confirmed that the service Core offers to its ISP customers results in VNXX traffic. Tr. 362-68. Similarly, Core's president explained that Core only accepts traffic from Verizon in one location per LATA. Tr. 394. Also, in order to obtain service from Core, its ISP and conference calling customers must collocate equipment in a Core wire center. Tr. 407-08; *see also* Verizon Ex. 1.0 at Exhibit 8. These two facts are the key components of VNXX service. First, Core assigns its ISP and conference calling customers telephone numbers that are assigned to multiple rate centers in a LATA, and second, the locally dialed calls made to these customers are not delivered within the geographic boundaries of the rate center to which the called numbers are assigned.

Core's ISP-bound VNXX traffic does not originate and terminate in the same local calling area, and therefore is not local traffic subject to reciprocal compensation charges under the ICAs.[59] Since Core provided inaccurate discovery responses, it is not possible to quantify the amount of VNXX traffic for which Core has billed Verizon and Verizon has paid. However, this additional means by which Core inflated the billable minutes to Verizon underscores that Verizon's claim for at least $2,725,140 in refunds of reciprocal compensation overpayments made to Core is extremely conservative, as it includes no refunds for reciprocal compensation paid on VNXX calls initiated by Verizon end users to Core's ISP customers, which are its main customer base. The Commission should find that the parties' ICAs bar Core from billing reciprocal compensation for traffic that does not originate and terminate with end users physically located within the same local calling area, as defined by the relevant ILEC's tariff (including mandatory extended area service).

[59] Verizon PA ICA at Att. 1, § 4.2 and Part B (definitions of "Local Traffic" and "Reciprocal Compensation"); Verizon North ICA at Part V, § 2.7 and Attachment 1 – Definitions (definition of "Reciprocal Compensation Traffic").

2. Core Has Overcharged Verizon by Billing the Wrong Rate

a. Under the *ISP Remand Order*, Verizon Is Only Required to Pay $0.0007/MOU to Terminate Core's ISP-Bound Traffic

In 2001, the FCC found "convincing evidence" that carriers like Core had "targeted ISPs as customers merely to take advantage of . . . intercarrier payments" and issued its *ISP Remand Order*[60] to "limit, if not end, the opportunity for regulatory arbitrage." To remedy the market-distorting effects caused by carriers taking "advantage of the traditional reciprocal compensation scheme" to target ISPs that "receive[] a high number of telephone calls but originate[] very few" to "collect huge sums in 'reciprocal' compensation without ever having actually to reciprocate,"[61] the FCC lowered the rate for terminating ISP-bound traffic from reciprocal compensation ($0.002814 per minute for Verizon PA) to a uniform rate that today is $0.0007 per minute.

Dubbed by the FCC as the "poster boy of reciprocal compensation gamesmanship,"[62] Core has been in the thick of the dispute over ISP-bound traffic from the beginning. Core's attempts to overturn the *ISP Remand Order* have failed repeatedly.[63] Core lost its last direct challenge in federal court, where the D.C. Circuit observed that "[t]he sort of argument made by Core here gives pettifoggery a bad name."[64] Almost a decade ago, this Commission rejected Core's attempt to prevent Verizon PA from implementing the *ISP Remand Order*, finding that specific language in

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[60] *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, ¶¶ 2, 77 (2001) ("*ISP Remand Order*").

[61] *AT&T Communications of California, Inc. v. Pac-West Telecomm, Inc.*, 651 F.3d 980, 984-85 (9th Cir. 2011).

[62] Response of the Federal Communications Commission to Emergency Motion for a Stay and Motion for Expedited Consideration, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001).

[63] 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. *See* VZ Stmt. 1.0 at 19-21 (detailing this long history of litigation).

[64] *Core Communications, Inc. v. FCC*, 592 F.3d 139, 145 (D.C. Cir. 2010), *cert. denied*, 131 S.Ct. 597 (2010).

Core's ICA adoption agreement permitted Verizon PA to implement the *ISP Remand Order* as applicable law and to stop paying reciprocal compensation for ISP-bound traffic.[65]

Since 2003, when this Commission ruled that Verizon PA was permitted to invoke the *ISP Remand Order* based on the change of law provision in its ICA with Core,[66] Verizon PA has paid Core the FCC rate for traffic that exceeds the 3:1 ratio (presumed to be ISP-bound traffic).[67] Yet, Core has refused actually to bill the ISP rate to Verizon, and instead continues to bill every "local" minute of use at the reciprocal compensation rate. Core thus continues to try to collect the higher reciprocal compensation rate on ISP-bound traffic – first, by manipulating the 3:1 ratio to inflate the minutes that Verizon pays at reciprocal compensation rates, and second, by concocting a baseless legal argument in this case by which it seeks to rerate all of the traffic that Verizon PA historically paid at the FCC's lower rate for ISP-bound traffic up to the higher reciprocal compensation rate – a claim Core says would require Verizon PA to pay it $23 million. The Commission should reject both of these attempts to inflate the rate Verizon pays Core on ISP-bound traffic, as discussed below.

b. Core Manipulated the 3:1 Ratio by Giving Itself Credit for Traffic Terminated to Verizon That Was Not Local Traffic

Because Core declined to adopt a Rate Plan B amendment with Verizon PA – that is, one that applies the $0.0007/MOU rate to all "local" minutes originated by either Core or Verizon and terminated by the other – it stands to profit financially from appearing to send Core-originated

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[65] *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).

[66] Core has never accepted an amendment to its ICA with Verizon PA that would apply the FCC's $0.0007/MOU rate for ISP-bound traffic to all reciprocal compensation traffic exchanged by the parties. Core accepted that arrangement for Verizon North by adopting an ICA that had such an amendment, which Verizon refers to as the "Rate Plan B" amendment. Core Stmt. 3.0 at 69-70; *see also* Verizon North ICA at Amendment No. 2.

[67] In contravention of the Commission's order, Core continues to bill all traffic at the higher reciprocal compensation rate, forcing Verizon to dispute the billings for traffic over the 3:1 ratio and instead pay at the FCC's $0.0007/MOU rate. Amended Cpt, ¶ 13.

locally dialed traffic to Verizon. For every minute of reciprocal compensation traffic Core sends to Verizon PA, it would be entitled to bill the higher reciprocal compensation rate of $0.002814/MOU for three of the minutes that Verizon delivers to Core (which would otherwise be paid at the FCC rate of $0.0007/MOU). VZ Stmt. 1.0 at 22. In other words, each minute of reciprocal compensation traffic that Core claims to have sent to Verizon nets Core twice the difference between $0.002814 and $0.0007 – or $0.004228 per minute. Core therefore has a financial incentive to maximize the qualifying traffic it appears to send to Verizon.

It was this very issue that sparked the dispute that ultimately resulted in this litigation. Core had expressed concern that Verizon was not "crediting" Core, for purposes of the 3:1 ratio, with all of the traffic that Core had delivered to Verizon. In January of 2011, Core provided a sampling of records that it claimed constituted Core-originated local calls for which Verizon should have credited Core for purposes of the 3:1 ratio calculation. When Verizon analyzed those call records, Verizon saw that they included large amounts of non-Core and non-local traffic. VZ Stmt. 1.0 at 22; VZ Stmt. 2.0 at 46-47; VZ Stmt. 3.0 at 61. Verizon determined the jurisdiction of each call (interstate, intrastate, local, unknown) based on the calling and called NPA/NXX codes of the calling and called telephone numbers and looked up thousands of the valid (10 digit) calling telephone numbers to determine whether Core was the local service provider for the call date. VZ Stmt. 2.0 at 49. For the calls Verizon reviewed that had a valid originating number that could be associated with an originating carrier, Verizon was unable to associate more than a miniscule fraction to Core as the local service provider. *Id.* Further, although Core had claimed that the calls were local, many (perhaps most) were interexchange. *Id.* Verizon concluded that Core was attempting to circumvent the FCC's *ISP Remand Order* by sending Verizon traffic that was not originated by Core customers in Pennsylvania and that would not have been subject to the

reciprocal compensation provisions of the ICAs, in order to inflate the "1" in the 3:1 ratio and to increase its own compensation improperly. *Id.* at 49-50.

The record developed in this case confirms that Core has done precisely what Verizon suspected, and that it is not entitled to credit under the 3:1 ratio for the traffic it has been sending to Verizon. Mr. Mingo explained that, for its outbound (*i.e.*, to Verizon) services, Core is acting as a least-cost router, taking traffic from other wholesale traffic aggregators and terminating it in Pennsylvania. The traffic is all VoIP-originated, is not from numbers assigned to Core, and is not even necessarily originated in Pennsylvania. Tr. 385-391. The Commission should declare as a matter of law that Core is barred from including non-local and non-Core-originated traffic in its calculations under the 3:1 ratio.[68]

c. Core's Attempt to Undo the *ISP Remand Order* and Retroactively Collect Reciprocal Compensation on ISP-Bound Traffic Is Baseless

Not content with the amount of reciprocal compensation it has been able to collect by manipulating the 3:1 ratio, Core argues that the Commission should go back and require Verizon to pay the higher reciprocal compensation rate on every single minute of ISP-bound traffic for which Verizon PA already paid $0.0007. This Commission should reject Core's latest "pettifoggery" out of hand.

To put Core's purported $23 million claim in perspective, it is important to recognize that, if not for the *ISP Remand Order* and this Commission's 2003 decision rejecting Core's attempt to evade it, Verizon PA might otherwise have been forced to pay Core millions of dollars in reciprocal compensation charges for terminating ISP-bound traffic over the years, while Core paid Verizon nothing, a state of affairs that the FCC found "troubling," "uneconomical" and market distorting – and

[68] Verizon does not waive its rights to pursue refunds of amounts wrongly paid to Core on this basis, nor to pursue further Commission relief on this issue at a later date.

therefore specifically prevented by issuing its *ISP Remand Order*. *ISP Remand Order*, ¶ 21. Yet, Core now seeks to nullify the *ISP Remand Order* by attempting retroactively to collect the very same millions of dollars that the FCC and this Commission ruled it was not entitled to collect. Just like Core's numerous other attempts to evade the *ISP Remand Order*, Core's position here is legally unsupportable and the Commission should reject it.

Core's sole argument is that Verizon PA somehow failed to comply with the "mirroring rule" aspect of the *ISP Remand Order*, under which the lower ISP-bound rate applies "only if an incumbent LEC *offers* to exchange all traffic subject to section 251(b)(5) at the same rate," an offer that it could make "on a state-by-state basis." *ISP Remand Order* ¶ 89 (emphasis added). Thus, as a condition of paying the lower rate for ISP-bound traffic, Verizon must *offer* all carriers in the state (not just Core) the opportunity for a reciprocal arrangement where Verizon would exchange all local traffic at the same $0.0007 rate that it pays to terminate ISP-bound traffic. Core claims that Verizon failed to "comply with its mirroring rule obligation" under the *ISP Remand Order*, (Core Stmt. 3.0 at 68-68), and that Verizon therefore should be required to pay full reciprocal compensation on ISP-bound traffic retroactively, to the tune of an additional $23 million.

Core's claim verges on the absurd. More than a decade ago, to avail itself of the lower rate on ISP-bound traffic, Verizon sent an industry letter dated May 14, 2001 notifying all carriers (including specifically Core) of the availability of the "mirroring rule" rate and making available a "Rate Plan B" amendment to the ICAs that many carriers have accepted. VZ Stmt. 1.0 at 79 and Exhibit 24. In reviewing this same offer in the context of another state, the FCC's Wireline Competition Bureau specifically "agree[d] with Verizon" that this May 14, 2001 offer "satisfied the mirroring rule."[69] Many carriers accepted that offer, and the Commission has approved dozens

[69] *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection*

of "Rate Plan B" amendments in the almost twelve years since then, acknowledging that they fulfill the mirroring offer required by the *ISP Remand Order*. VZ Stmt. 1.0 at 79-80. Core itself freely adopted an ICA with Verizon North that contains a Rate Plan B amendment, a contract in which Core acknowledges (contrary to the position it takes here) that "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." VZ Stmt. 1.0 at 80; Verizon North ICA at Amendment 2.

Core concocted its eleventh hour challenge to Verizon's compliance with the mirroring rule (and its $23 million claim) in its Amended Complaint, following the unsuccessful mediation. But when Core first initiated this case, it conceded that the *ISP Remand Order* applies and accepted that $0.0007/MOU was the applicable rate for the traffic it now seeks to re-rate. During the early stages of this proceeding, Core repeatedly stated to the Commission that the "rate was lowered," that the parties had "agreed" to apply the lower rate, and that Core was left with "the rate of .0007 now," and should at least be paid at that rate pending litigation.[70] Having obtained an emergency Commission order requiring Verizon to pay it at the $0.0007/MOU rate for the duration of this case, based in part on those

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Disputes with Verizon Virginia Inc., and for Expedited Arbitration, 17 FCC Rcd 27039, 27161, ¶¶ 248-249 (FCC 2002) ("*WorldCom Order*").

[70] In its original verified complaint in this proceeding, Core conceded that "[p]ursuant to the FCC's 2001 *ISP Remand Order*, and Commission Orders implementing that Order, the termination rate was lowered from the original contract rates . . . to a low, uniform rate of $0.0007 per MOU," (Original Complaint, ¶ 12), and claimed that "Core and Verizon agreed upon" a "procedure" through which they implemented the required rate – a "procedure" under which Core initially billed its patently erroneous and inflated reciprocal compensation rates, but "Verizon pays the amounts due pursuant to the Ratio Rule and Core credits the remainder of the invoiced amount." Original Complaint, ¶ 13. At the hearing on Core's petition for emergency relief, Core's President, Bret Mingo, testified that "[t]he FCC decided to preempt certain kinds of local calls from states – restrict state jurisdiction – and applied a scheme that leaves us with the rate of .0007 now." July 29, 2011 Hearing Transcript at 14

arguments, Core is judicially estopped from now claiming that the higher rate is due.[71] Similarly, the doctrine of accord and satisfaction bars Core's attempt to collect more than this rate after accepting that rate in settlement of its disputed reciprocal compensation invoices.[72]

In disavowing its earlier position and claiming that Verizon PA never effectively invoked the *ISP Remand Order*, and therefore should have been paying the higher reciprocal compensation rates all along, Core raises two arguments, both of which are baseless.

First, Core contends that Verizon PA's mirroring offer did not comport with the *ISP Remand Order* because "Verizon requires the CLEC to opt-in to the same mirroring rate as Verizon." Core Stmt. 2.0 at 12. According to Core, Verizon must offer to *accept* the lower $0.0007/MOU rate for terminating voice traffic, but still be willing to *pay* the CLEC the higher reciprocal compensation rate for the same traffic. *Id.* at 14. Core cites no precedent to support this novel claim, which is both unprecedented and belied by the plain language of the *ISP Remand Order*, which says that an ILEC must "offer[ ] to *exchange all traffic*" at the same rate. *ISP Remand Order* ¶ 89 (emphasis added). "Exchange" means a reciprocal giving and receiving, not a one-sided arrangement where the ILEC is subject to the lower rate but the CLEC is not. And "all traffic" cannot reasonably be interpreted to mean only traffic flowing to the ILEC, but must include traffic flowing both ways. Indeed, the FCC's requirement for an "offer" that the carriers may accept or refuse implies a mutual and reciprocal arrangement for both parties to pay the lower rates. If the FCC intended only to require Verizon to charge the lower rates, but not to alter the rate Verizon pays, there would have been no

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[71] Under the doctrine of "judicial estoppel," a party to an action is estopped from assuming a position inconsistent with a previous action's successfully maintained assertion. *See, e.g., Trowbridge v. Scranton Artificial Limb Company*, 560 Pa. 640, 747 A.2d 862, 864 (Pa. 2000), *app. denied*, 573 Pa. 699 (2003) (*citing Associated Hospital Service of Philadelphia v. Pustilnik*, 497 Pa. 221, 439 A.2d 1149, 1151 (1981)). The courts "have long applied this principle of estoppel where litigants 'play fast and loose' with the courts by switching legal positions to suit their own ends." *Ligon v. Middletown Area Sch. Dist.*, 136 Pa. Commw. 566, 584 A.2d 376, 380 (Pa.Cmwlth. 1990).

[72] *See Brunswick Corp. v. Levin*, 442 Pa. 488, 491, 276 A.2d 532 (1971).

need for an "offer"; the FCC would have simply instructed ILECs to charge the lower rate on all local voice traffic.

Likewise, Core's notion that different rates should to apply to CLEC traffic than to ILEC traffic (Core Stmt. 2.0 at 14) is belied by the FCC's express intent not to "impose different rates ...." *ISP Remand Order* ¶ 90. The FCC's Wireline Competition Bureau reviewed Verizon's offer in 2002 and concluded that its offer to mutually charge the lower rate for all local traffic "satisfied the mirroring rule."[73] There is no basis for Core now attempting to rewrite over a decade of history by claiming that Verizon was required to propose an ICA amendment that would accept a lower rate but pay a higher rate on voice traffic.[74]

Second, Core argues that "Verizon restricts the scope of 'section 251(b)(5) Traffic' by creating a proxy concept of 'reciprocal compensation traffic' in order to preserve whole swathes of section 251(b)(5) traffic for which it can continue to charge switched access." Core Stmt. 2.0 at 12. In other words, in Core's view, Verizon's mirroring offer was deficient because Verizon should have proposed to charge $0.0007/MOU not only for local voice traffic (traffic traditionally subject to reciprocal compensation rates), but also for interstate and intrastate switched access traffic and other traffic not included in Verizon's definition. But again, this argument is directly contrary to the *ISP Remand Order*. In explaining the mirroring rule, the FCC made clear that when it stated that an ILEC must "offer[] to exchange all traffic subject to section 251(b)(5) at the same rate," it was using the term "section 251(b)(5)" to refer to "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is *not interstate or intrastate access*

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[73] *WorldCom Order*, ¶¶ 248-249.

[74] If Core actually thought that the law required such a one-sided arrangement, it could have sought negotiation and arbitration of amendment implementing this imbalanced compensation arrangement, but it never did so and, for Verizon North, it agreed to the offer as Verizon proposed it.

traffic."[75] It repeatedly stated that the mirroring rule applies to "local voice" traffic, not to switched access traffic. *ISP Remand Order* ¶¶ 90-91. And in subsequent proceedings relating to the *ISP Remand Order,* both the FCC and the courts recognized that the offer required by the mirroring rule applies to "local" traffic.[76]

Core's argument is founded on the FCC's *ICC Reform Order*, in which the FCC began to refer to access traffic as a species of section 251(b)(5) traffic. Core Stmt. 2.0 at 13. But in that same order, the FCC acknowledged "that the Commission has not previously regulated access traffic under section 251(b)(5)."[77] *ICC Reform Order,* ¶ 763. The *ISP Remand Order* made clear that the "mirroring rule" required only that "local" traffic was subject to its terms.

To accept Core's argument that Verizon's mirroring offer was invalid from the outset because it failed to include switched access and other non-reciprocal compensation traffic, this Commission would have to find that the FCC intended, with its 2011 *ICC Reform Order* – a key purpose of which was to reduce arbitrage opportunities in the intercarrier compensation realm – to undo everything it accomplished with the *ISP Remand Order* and allow Core and others retroactively to collect over a decade's worth of uneconomic and market-distorting reciprocal compensation payments for terminating ISP-bound traffic (the exact result the *ISP Remand Order*

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[75] *ISP Remand Order*, ¶ 89, FN 177. The FCC explained that the applicable law at the time it issued the *ISP Remand Order* was "that section 251(b)(5) reciprocal compensation obligations 'apply only to traffic that originates and terminates within a local area,' as defined by state commissions." *Id.*, ¶ 12.

[76] *In re Core Communs., Inc.*, 531 F.3d 849, 853 (D.C. Cir. 2008) (the "mirroring rule" applies "only if the ILEC also offers to charge the CLEC the same capped rate to terminate *local* traffic that originates on the CLEC's network") (emphasis added); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179 (Rel. October 18, 2004), *review denied*, 455 F.3d 267 (D.C. Cir. 2006) at ¶ 23 ("The mirroring rule was adopted based on our finding that the record lacked evidence of any material differences between the costs of delivering ISP-bound traffic and *local voice traffic.*) (emphasis added).

[77] In the *ISP Remand Order*, the FCC explained that it used the term "section 251(b)(5) traffic" to refer to traffic subject to reciprocal compensation obligations and that term did not include switched access. *See, e.g., ISP Remand Order* ¶¶ 32, 34.

sought to prevent).[78] The *ISP Remand Order* was intended to be "an interim intercarrier compensation rule to govern the exchange of ISP-bound traffic" while the FCC considered whether to move to a "bill and keep" structure (eliminating intercarrier compensation charges altogether).[79] In the *ICC Reform Order,* the FCC decided to transition to bill and keep over a period of time.[80] It did not alter the interim rules for ISP-bound traffic set forth in the *ISP Remand Order*, and certainly did not direct that they be retroactively nullified and millions of dollars now paid to the ISP arbitrageurs, as Core argues here.

E. The Commission Should Reject Core's Attempt to Rebill Traffic as Switched Access

1. Core Improperly Seeks to Collect Higher Switched Access Rates on Traffic It Already Billed as Reciprocal Compensation

Core seeks to collect $2,532,143.22 on disputed intrastate and interstate switched access billings to Verizon – invoices generated only after this case was underway. Core Stmt. 1.0 at 35 and Ex. BLM-5. As Core explained, it created these bills for minutes of traffic delivered over the SS7 trunks. According to Core, it did not attempt to issue switched access back bills for traffic carried over the "now-defunct MF trunks," but in its testimony it concocts a calculation of approximately $2.7 million in "lost revenue damages" it claims are due because it failed to bill switched access on traffic carried over those trunks, instead billing lower reciprocal compensation

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[78] The *ICC Reform Order* did not disavow the *ISP Remand Order* in adopting its prospective intercarrier compensation reform. To the contrary, the FCC cited the *ISP Remand Order* approvingly as an example of a decision that successfully reduced an "arbitrage scheme based on artificially increasing reciprocal compensation minutes." *ICC Reform Order,* ¶ 676.

[79] *See In re Core Communs., Inc.*, 455 F.3d 267, 272-273 (D.C. Cir. 2006).

[80] According to the *ICC Reform Order*, the FCC will "regulate terminating access traffic in accordance with the section 251(b)(5) framework" subject to a continued "transition mechanism" adopted in that order which gradually reduces those rates to "bill and keep." *ICC Reform Order* ¶ 764. Thus, by the time these rates complete their transition and are regulated like other Section 251(b)(5) traffic, the rates for all traffic (local, access and ISP-bound) will be $0 and Core's argument will be moot.

rates instead. Core Stmt. 1.0 at 36. Core's attempt at a "do over" to collect switched access charges on traffic for which it has already been paid is baseless for a number of reasons detailed below.

a. Core Is Not Entitled to Bill Switched Access Charges on ISP-Bound or Conference Calling Traffic

As discussed above, the FCC-ordered rate for the termination of ISP-bound traffic is $0.0007/MOU (which Verizon has already paid Core), not switched access charges or reciprocal compensation. The Commission reconfirmed this just last month in the *AT&T Order*. *See AT&T Order* at 15. Core stated on cross examination that it was able to discern which of the traffic at issue here was ISP-bound versus voice traffic, but it offered no such information in the record. Tr. 317-18. However, Core did confirm that the earlier the time period involved, the more traffic at issue was ISP-bound. *Id.* at 341. In the AT&T proceeding, the Commission held that Core's failure to identify how much of traffic was ISP-bound versus VoIP made it appropriate to assume that the traffic at issue was ISP-bound.[81] Since Core failed to present evidence to rebut the *ISP Remand Order*'s "rebuttable presumption" that all traffic above the (properly applied) 3:1 ratio is ISP-bound, the Commission must conclude that all of its traffic is ISP-bound. *ISP Remand Order* ¶ 89. This is another basis to reject Core's attempt to collect switched access charges from Verizon.

Nor do the terms of Core's intrastate access tariff entitle it to bill Verizon switched access charges on ISP-bound traffic. ISP-bound traffic is jurisdictionally interstate, and therefore not subject to intrastate access charges. *ISP Remand Order*, ¶ 52. Moreover, Section 4.1 of that tariff describes "Switched Access Service" as providing the ability to originate or terminate calls from an "End User's Premises." Core Stmt. 2.0, Ex. CFV-3. Section 1 of that tariff defines "End User" as "[a]ny ... entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier," and "Interexchange Carrier" as "[a]ny [entity] engaged in state or foreign

[81] *AT&T Order* at 55 ("Having failed to meet its burden of proof, Core cannot be heard to complain that, in the absence of record evidence, the ALJ treated all of the traffic in question as ISP-bound.").

communications for hire by wire or radio, between two or more exchanges."[82] Under Core's intrastate access tariff, ISPs, conference calling providers, and other such entities are "Interexchange Carriers" rather than "End Users," and transmissions to their premises would not constitute Switched Access Service for which Core is entitled to bill Verizon. Just last month, the Commission confirmed that the terms of Core's intrastate access tariff did not allow it to bill intrastate switched access charges on locally-dialed ISP-bound traffic. *AT&T Order* at 59-60. Finally, the Commission's earlier *Global NAPS* decision similarly prohibits billing switched access charges on VNXX traffic (such as Core's ISP traffic). *See Global NAPS* at 49.

b. Core's Switched Access Claims Are Barred by the Doctrine of Accord and Satisfaction

Core attempts to collect switched access charges for traffic for which Verizon has already disputed Core's reciprocal compensation bills and instead paid Core at the $0.0007/MOU rate (although Core failed to credit Verizon for this amount on the switched access invoices). Core Stmt. 1.0 at 32-36 and Ex. BLM-5; Core Stmt. 4.0 at 16. The doctrine of accord and satisfaction prohibits Core's attempt to bill additional amounts for the same traffic after accepting Verizon's prior payments as payment in full on Core's disputed reciprocal compensation invoices. *See Brunswick, supra,* 442 Pa. at 491. Moreover, Core's position is fundamentally inconsistent with its position in prior commission dockets, in which it vociferously argued that there was "never" a situation in which access charges would apply to ISP-bound traffic (which represents a significant, but unspecified, portion of the traffic at issue). Tr. 342-343; Verizon Cross Ex. 9 at 6.

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[82] Core omitted these pages of its PA PUC Tariff No. 4 from Ex. CFV-3 to Core Stmt. 2.0, but that tariff is a publicly available document of which the Commission may take administrative notice, and is available on line at http://www.tariffs.net/tariffs/100139lpqa/tempPA_TRF_ACCESS_VoIP_07-01-12_CUR04.pdf. For the Commission's convenience, a copy of the relevant pages (Core Communications, Inc. PA PUC Tariff No. 4, Original Sheet Nos. 7 & 8) is attached hereto as **Attachment B**.

c. Core's Intrastate Tariff Prohibits Core's Backbilling and the Commission Lacks Jurisdiction to Enforce Backbilling of Interstate Charges

The majority of Core's switched access invoices constitute unauthorized backbilling dating back several years.[83] Unlike Core's interstate access tariff, Section 2.5.2 of Core's intrastate switched access tariff, PA P.U.C. No. 4, does not authorize backbilling, and requires Core to credit amounts already paid, which Core has not done: "*[Core] shall bill on a current basis all charges incurred by, and credits due to, the Customer under this rate sheet attributable to services established, provided, or discontinued during the preceding billing period.*" Core Stmt. 2.0 at Ex. CFV-3 (emphasis added). As a result, Core is not entitled to backbill any of the $1,355,006.07 in intrastate switched access charges reflected in the switched access invoices included in Core Stmt. 1.0, Ex. BLM-5.[84]

Core's attempt to collect *inter*state switched access charges in this proceeding is similarly impermissible. As a threshold matter, this Commission lacks jurisdiction over Core's claims under its interstate access tariff. It is well-settled that "this Commission has no jurisdiction over services provided pursuant to an FCC-approved tariff."[85] As the Commonwealth Court observed in affirming the Commission's MilleniaNet decision:

> the Pennsylvania General Assembly set forth in Section 104 of the Code, 66 Pa. C.S. § 104, that the Code's provisions "shall not apply, or be construed to apply, to commerce . . . among the several states, except insofar as the same may be permitted under the provision of the Constitution of the United States and the acts of Congress." Further, Congress set forth in Section 151 of the Act, n1 47 U.S.C. § 151 (b), that the FCC was created "[f]or the purpose of

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[83] Exhibit BLM-5 to Core Stmt. 1.0 shows that only $665,246.47 of the total billed was timely invoiced the month after the alleged charges accrued.

[84] All of the bills included in Core Stmt. 1.0, Ex. BLM-5 are backbills save the last seven (2195-OCN, 2277-OCN, 2278-OCN, 2424-OCN, 2503-OCN, 2588-OCN and 2664-OCN).

[85] *MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173, 2008 Pa. PUC LEXIS 75 (Opinion and Order entered May 2, 2008).

regulating interstate and foreign commerce in communication by wire and radio. . . .[86]

Finally, any switched access amounts that the Commission might otherwise find are due from Verizon to Core must be set off against the amounts due from Core to Verizon, which exceed any sums that Core would attempt to collect from Verizon.

d. Core is Not Permitted to Charge for Switched Access Functions That It Does Not Provide

Core's switched access backbills are also invalid because they purport to charge Verizon for access rate elements that Core does not and cannot provide. It is well-settled that a carrier (including a CLEC) is not permitted to charge for switched access functions that the carrier did not provide.[87] The FCC's "long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide" and "[w]e believe that a similar policy should apply to competitive LECs."[88] The FCC's *ICC Reform Order* also made clear that "to the extent that these charges are imposed via tariff, a carrier may not impose charges other than those provided for under the terms of its tariff."[89]

The functions that Core performs for a call flowing from Verizon to Core are not the traditional functions that would be provided by a local exchange carrier carrying a long distance call

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[86] *MilleniaNet Corporation v. PUC*, 2009 Pa. Commw. Unpub. LEXIS 786 (2009). *See also Daskalakis v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered April 4, 2011) (granting preliminary objections because the complaint relating to interstate DSL service "was legally insufficient in that it fails to state a claim upon which the Commission can grant relief").

[87] *See, e.g., ICC Reform Order*, ¶ 970. The FCC announced a new rule beginning January 1, 2012 so that CLECs acting as wholesale intermediaries for cable VoIP providers will be able to charge for access functions provided by the retail cable partner, but this rule does not apply to Core because it does not provide that function. As the FCC explained, "our rules do not permit a LEC to charge for functions performed neither by itself or its retail services provider partner." *Id.*

[88] *Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers: Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) To Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9118-19, ¶ 21 (2004) (*Eighth Report and Order*).

[89] *ICC Reform Order*, ¶.970, n. 2026 (citing *AT&T v. YMax*, 26 FCC Rcd 5742 (2011)).

to one of its local exchange customers. As Mr. Mingo explained, [**BEGIN PROPRIETARY**]

[**END PROPRIETARY**] Tr. 395-407.

Core thus provides no tandem switching, no end office switching and no local loop. Core's only function is to receive the traffic from Verizon, convert it to Internet Protocol, and point it in the direction of the appropriate ISP or conference calling services provider. Yet, Core's switched access bills charge Verizon for the same switched access rate elements that a traditional ILEC serving retail end users would charge, including tandem charges (if the ILEC was providing tandem switching), end-office switching and the carrier common line. *See* Core Stmt. 4.0 at Ex. Core SR-5. Core does not provide most or all of these switched access functions, and thus cannot charge for them. *See AT&T v. YMax*, 26 FCC Rcd 5742 (2011).

e. Core's Switched Access Billings to Verizon Suffer from Many Additional Flaws, Including Rate and Rate Application Errors

Core's switched access billings to Verizon are flawed for many of the same reasons its reciprocal compensation billings are flawed – Core billed Verizon for traffic that was billable to third parties rather than Verizon; Core double-billed Verizon and third parties for the same traffic, and so on. VZ Stmt. 3.0 at 70-71. However, Core's switched access billings to Verizon are flawed for additional reasons.

First, Core's switched access backbilling for traffic carried over the SS7 trunks relies solely upon Core's re-creation of several years' worth of traffic by purporting to re-determine which calls were local versus non-local and rerating them based on which non-local calls it considered intrastate

versus interstate. VZ Stmt. 3.0 at 70. Core has offered no data to support the process it used to conduct this re-jurisdictionalization/rerating exercise. Core provided call detail records (mixed with records for calls in all the other states in which it operates), but such records were useless because Core offered no insight into which records it considered local versus non-local, or intrastate versus interstate, for purposes of its "backbilling" exercise. VZ Stmt. 2.0 at 54-55.

Second, the information tendered by Core reveals that the switched access traffic for which Core has billed Verizon was originated by IXCs and merely transited by Verizon – traffic for which Verizon is not responsible for compensating Core. As Mr. Mingo stated in response to Verizon's dispute of Core's switched access invoices, "[t]hese CDRs will conclusively demonstrate what you already know (since you already have the call data from your own tandem records), which is that *this is all IXC traffic* delivered by Verizon to CoreTel over the interconnection arrangements." Core Stmt. 1.0 at Ex. BLM-6 (emphasis added). By Core's own admission, the traffic for which it has billed Verizon is traffic from interexchange carriers, not from Verizon. Those IXCs are responsible for compensating Core for the traffic, not Verizon.

Third, Core's switched access billings to Verizon include amounts billed for interstate traffic, originated in Pennsylvania and terminated in Delaware, despite the fact that the parties' ICAs do not authorize Core to bill Verizon for such traffic. VZ Stmt. 2.0 at 41-42. Nor, as discussed above, does the Commission have jurisdiction to order payment of these interstate switched access charges. The billing information included in Ex. BLM-5 to Core Ex. 1.0 does not reveal what amount of traffic is affected by this issue, but the ICAs do not authorize Core to bill Verizon for it.

Finally, Core's switched access backbills to Verizon are rife with rate and rate application errors. For example, Mr. Mingo testified that he had "personally supervised the calculation and preparation of these invoices," and was "very much on top of" the carrier common line ("CCL")

charges billed to Verizon,[90] the majority of the amounts billed.[91] But he admitted on cross examination that: (1) he could not himself walk through the calculations performed to derive the *per MOU* CCL rates that Core had billed Verizon from the *per access line* CCL rates charged by rural ILECs whose rates Core was attempting to mirror (Tr. 357-58); (2) he had no knowledge of the basis of the information that Core's consultant had used to calculate Core's per MOU CCL rates (*id.* 356); (3) he could not confirm that Core's consultant had worked with Commission staff on the CCL calculations in effect at the time of the billings at issue (*id.* 356-57); and (4) he would not be surprised to learn that the per MOU rate charged by Core was inconsistent with the per MOU rate that the carrier whose territory was involved was billing (*id.*). This is insufficient support for amounts that totaled *over half* of the switched access charges billed to Verizon for the month in which Core offered supporting detail. Core Stmt. 4.0 at Ex. SR-5.

Core admitted other flaws in its access billings to Verizon. Although Core is not a tandem provider, it repeatedly billed Verizon tandem-related charges that only the tandem provider may bill (including both intrastate and interstate tandem facility charges, *double* tandem trunk termination charges and tandem switching charges). Core Stmt. 4.0 at Ex. SR-5; Tr. 345-46. The tandems involved here were Verizon's (Tr. 346), so the only entity entitled to bill charges related to such tandems is Verizon. Similarly, Core consistently billed Verizon for 800 database queries that Core admitted it had not performed and should not have billed (because the traffic at issue was not 800 number toll-free traffic). Tr. 350-352. Core compounded this error by billing Verizon for these 800 database queries at a *per MOU* rate, rather than the *per query* rate listed in Section 5.2.2. of its Pennsylvania PUC Tariff No. 4. Tr. 350-351; Verizon Cross Ex. 11. In other words, if a caller made a two-hour call to its ISP, not only did Core improperly bill Verizon the 800 database charge

[90] Core Stmt. 1.0 at 32; Tr. 354.

[91] This is evident from even a cursory review of the switched access billing detail attached as Proprietary Ex. SR-5 to Core Stmt. 4.0.

in the first place, Core billed Verizon for *120* such erroneous charges, rather than *one*, because Core applied the rate per MOU, rather than per query. Core also admitted to overbilling Verizon for information surcharges at a rate *one hundred times higher* than the rate established in Core's Pennsylvania PUC Tariff No. 4, as Core erroneously billed the surcharge *per MOU*, whereas the tariff states that the information surcharge applies only *per 100 access minutes*. Tr. 353-54; Verizon Cross Ex. 12.

Taken together, the legal and evidentiary flaws in Core's effort to bill Verizon, after the fact, for over $2.5 million in switched access charges demonstrate that Core has not met its burden of proof to collect on these bills.[92] The Commission should deny Core's claim against Verizon for $2,532,143.22 in intrastate and interstate switched access charges.

2. Core Cannot Collect "Damages" for "Lost Switched Access Revenues" on Historical MF Traffic

Core's direct testimony asserted that "Verizon owe[s] Core additional terminating switched access charges" for terminating switched access traffic carried over the "now-defunct MF trunks." Core Stmt. 1.0 at 35 (emphasis in original). Core explained that due to its decision to use MF trunking, it was "impossible to rate the traffic in the ordinary industry standard way," so Core instead applied the ratio of switched access traffic to total traffic carried on the *SS7* trunks to the MOU for which it previously billed Verizon reciprocal compensation over the *MF* trunks, extrapolating a figure of $2,661,655.78 that it asserts would have been due for switched access charges over the MF trunks. *Id.* at 35-36. Core refers to this as a "net total switched access revenue loss." *Id.*

Verizon's testimony observed that it was unclear whether Core was actually seeking to collect this amount in this proceeding. VZ Stmt. 2.0 at 44-45. Core did not address this uncertainty

[92] As the "proponent of a rule or order" Core bears the burden of proving its entitlement to collect on its switched access claims. 66 Pa. C.S. § 332(a).

directly, but confirmed that "[Core] had no way to determine the jurisdiction of any call" carried over the MF trunks, and that [w]ithout any jurisdictional information, there was no basis to issue a switched access bill," which is why it described its "damages" as a "reasonable estimate of lost revenues." Core Stmt. 4.0 at 17. Core confirmed on cross-examination that it has never billed Verizon for this amount, and remains unable to identify or rate the calls at issue, but is nonetheless seeking to collect it. Tr. 337-38.

The Commission should deny Core's claim for "damages" for historical traffic carried over the MF trunks. The parties' ICAs squarely preclude Core's attempt to collect what amount to consequential damages.[93] The ICAs also only require payment of amounts *actually billed.*[94] Core has admittedly rendered no invoices to Verizon (nor could it, because it admittedly cannot identify the jurisdiction of a single call carried over those trunks). In a similar case, the ALJ rejected an attempt to collect unbilled amounts.[95]

Moreover, Core's MF "damages" claim suffers from the same issues identified above with respect to Core's switched access billing for traffic carried over the SS7 trunks. In addition, since Core relied on the total MF MOUs for which it previously billed Verizon reciprocal compensation in order to arrive at the number of MF MOUs for which it now believes it is entitled to switched access "damages," it relied on an MOU count that included vast amounts of third party-originated traffic, for which it could conduct no "matching" process to exclude because it did not generate AMA records on the MF trunks.

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[93] *See* Verizon PA ICA at Part A, Section 12.1; Verizon North ICA at GT&C, Section 10.2.2.

[94] *See* Verizon PA ICA at Att. VIII, Section 3.1.8.1; Verizon North ICA at GT&C, Section 11.1.

[95] *See* "Order Granting in Part and Denying in Part the Preliminary Objections Filed by Verizon Pennsylvania, Inc. and Verizon North, Inc.," *Buffalo-Lake Erie Wireless Systems Co., LLC v. Verizon Pennsylvania, Inc. and Verizon North Inc.*, PA PUC Dockets C-2010-2158408 and C-2010-2158409 (May 1, 2010) at 6.

Finally, as a purely legal matter, long-standing precedent prohibits the Commission from awarding such damages,[96] as Core's general counsel acknowledged on cross-examination. Tr. 338. The Commission should deny Core's claim for $2,661,655.78 in "lost revenues damages" representing switched access charges Core believes it could have collected for past traffic terminated over the MF trunks.

F. Having Committed Various Breaches of the ICAs, Core Comes to the Commission with Unclean Hands

As noted in Verizon's Counterclaims, in addition to the above-referenced violations of the parties' ICAs (Core's failure to pay Verizon's invoices and Core's massive overbilling of Verizon), Core has also violated those agreements by bringing the original complaint and amended complaint without first engaging in appropriate dispute resolution efforts, failing to provide requested records, and failing to act in good faith with respect to the parties' disputes.

Core breached the dispute resolution provisions of the ICAs by immediately filing the instant complaint on July 22, 2011, rather than engaging in the formal dispute resolutions processes outlined in Attachment VIII, Section 3.1.9.1 and Part A, Section 24 of the Verizon PA ICA (which outline a mandatory 120-day dispute resolution process tied to the date of the disputed invoice prior to seeking resolution from the Commission) and GT&C, Sections 11.3 and 17 of the Verizon North ICA (which sets out a detailed dispute resolution process with several levels of escalation over 105 days). VZ Stmt. 1.0 at 84-86; VZ Stmt. 2.0 at 53-54; VZ Stmt. 3.0 at 71-73. These provisions prevented Core from bringing any formal action under the Verizon PA ICA until September 28, 2011 (120 days after Core issued the disputed May 31, 2011 invoices), and until October 14, 2011

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[96] *See, e.g. DeFrancesco v. Western Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595, 596 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371, 375 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791, 795-96 (1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744,748 (Pa. Cmwlth. 1995), *app. denied*, 548 Pa. 662, 678 A.2d 69 (1997); *Rabinowitz Glass Co., Inc. v. Verizon Pennsylvania, Inc.*, PUC Docket No. C-2009-2094531, Initial Decision (August 20, 2009) at 5, adopted by Commission Order entered November 20, 2009.

under the Verizon North ICA (105 days after Verizon's July 1, 2011 dispute letter). Core committed similar violations of the dispute resolution provisions with Count II of its May 16, 2012 Amended Complaint, which incorporated new claims regarding Verizon's disputes of Core's switched access billings even though Core never initiated dispute resolution as to those claims. VZ Stmt. 1.0 at 85-86.

Core also refused – both prior to and after filing the complaint – to provide call detail records relating to the matters on which it refused to engage in dispute resolution, doing so only after being ordered by the ALJ, thereby violating Part A, Sections 23.1 and 25.5, and Attachment IV, Section 8.2 of the Verizon PA ICA, and GT&C, Section 11.3(b) and Part V, Sections 2.7.4 and 2.7.5 of the Verizon North ICA. VZ Stmt. 1.0 at 84; VZ Stmt. 2.0 at 46-52 and 54-55; VZ Stmt. 3.0 at 57-58 and 71.

Core's actions in these regards, as well as in refusing to pay Verizon's invoices and failing to mitigate its damages by executing a Rate Plan B amendment with Verizon PA, violated the good faith dealing requirements of the ICAs (*see* Section 42.1 of the Verizon PA ICA and Section 5.0 of the Verizon North ICA). VZ Stmt. 1.0 at 86; VZ Stmt. 3.0 at 73. The Commission should find that Core breached the parties' ICAs in a wide variety of ways, and hold Core accountable. The doctrine of unclean hands bars Core's attempts to benefit from its own bad faith conduct.[97]

[97] *See Terracino v. Pa.*, 562 Pa. 60, 69 (2000); *Shapiro v. Shapiro*, 415 Pa. 503, 506, 204 A.2d 266 (1964) (doctrine of unclean hands "is a self-imposed ordinance that closes the doors of a court of equity to one tainted with the inequitableness or bad faith relative to the matter in which he seeks relief").

V. CONCLUSION

For the reasons stated above, the Commission should deny Core's Amended Complaint it its entirety and grant the relief sought in Verizon's New Matter by adopting the proposed findings of fact, conclusions of law and ordering paragraphs provided in the accompanying Appendix.

Respectfully submitted,

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Counsel for Verizon Pennsylvania LLC and Verizon North LLC

Dated: January 23, 2013

ATTACHMENT A

2. General Regulations (Cont'd)

2.4 Payment Arrangements (Cont'd) (T)

2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(b) (Cont'd)

(I) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, for the number of days from the payment date to and including the date that the customer actually makes the payment to the Telephone Company, or

(II) 0.00024657 per day, for the number of days from the payment date to and including the date that the customer actually makes the payment to the Telephone Company.

(c) Billing Disputes

(1) A good faith dispute requires the customer to provide a written claim to the Telephone Company. Instructions for submitting a dispute can be obtained by calling the billing inquiry number shown on the customer's bill, or, by accessing the Telephone Company website also shown on the customer's bill. Such claim must identify in detail the basis for the dispute, and if the customer withholds disputed amounts, it must identify the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed to permit the Telephone Company to investigate the merits of the dispute.

(2) The date of the dispute shall be the date on which the customer furnishes the Telephone Company the account information required by Section 2.4.1(B)(3)(c)(1) above.

ATTACHMENT B

SECTION 1 - DEFINITIONS, (Cont'd.)

Company: Core Communications, Inc., issuer of this rate sheet

Constructive Order: Delivery of calls to or acceptance of calls from the Company's End User locations over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

Customer: The person, firm, corporation or other entity which orders Service and is responsible for the payment of charges and for compliance with the Company's rate sheet regulations. The Customer could be an interexchange carrier, a wireless provider, or any other service provider.

8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used.

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

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SECTION 1 - DEFINITIONS, (Cont'd.)

Interexchange Carrier (IXC) or Interexchange Common Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in state or foreign communication for hire by wire or radio, between two or more exchanges.

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains base information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Local Traffic: Traffic is "Local Traffic" under this rate sheet is: (i) the call originates and terminates in the same exchange area; or (ii) the call originates and terminates within different Core Exchanges that share a common mandatory local calling area, e.g., a mandatory Extended Local Calling Service (ELCS) or Extended Area Service areas (EAS) or other like types of mandatory local calling scopes.

Meet Point: A point of interconnection that is not an end office or tandem.

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective rate sheet.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

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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 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

(PUBLIC VERSION)

Pursuant to 52 Pa Code § 5.501 and as directed by the presiding officer, Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North") (together, "Verizon") hereby submit their proposed findings of fact, conclusions of law and ordering paragraphs.

I. PROPOSED FINDINGS OF FACT

A. Background

1. Core Communications, Inc. ("Core") is certified by this Commission to provide competitive local exchange services throughout Pennsylvania. Core Statement ("Core Stmt.") 1.0 at 1.

2. Verizon PA and Verizon North are certified incumbent local exchange carriers in certain portions of Pennsylvania and provide (among other services) local telephone service to Pennsylvania residents and businesses in those areas. Core Stmt. 1.0 at 4. Verizon also provides wholesale services to other carriers. Verizon Statement ("VZ Stmt.") 1.0 at 30.

3. Verizon PA and Core are parties to an interconnection agreement ("ICA") ("Verizon PA ICA") approved by the Commission, which agreement is an adoption of a preexisting agreement between Verizon PA and MCImetro Access Transmission Services, Inc. *Joint Petition of Verizon Pennsylvania Inc. and Core Communications, Inc. for Approval of an Interconnection Agreement Under Section 252 of the Telecommunications Act*, Docket No. A-310922F0002 (Opinion and Order entered February 9, 2001).

4. Verizon North and Core are parties to an ICA ("Verizon North ICA"), approved by the Commission, which agreement is an adoption of a preexisting agreement between Verizon PA and Sprint Communications Company L.P. *Joint Petition of Verizon North Inc. and Core Communications, Inc. for approval of the Adoption of an Interconnection Agreement Under Section 252(i) of the Telecommunications Act of 1996,* Docket No. A-31092F7001 (Opinion and Order entered Nov. 1, 2005).

5. The ICAs, together with applicable tariffs incorporated therein, govern the relationship between Core and Verizon with regard to the facilities and services that are at issue in this case.

6. Core does not offer local telephone service in the traditional sense. Core's customers primarily consist of Internet Service Providers ("ISPs") and other generators of high-volume traffic incoming to Core, such as free conference calling services ("CSCs"). Core's business plan is almost exclusively directed at generating revenues from other carriers by charging them for traffic termination rather than generating revenue from its own customers. This type of business plan is generally referred to as "access stimulation," "traffic pumping" or "regulatory arbitrage." VZ Stmt. 1.0 at 4-5.

7. A provider engaged in such arbitrage typically does not charge the ISPs and CSCs much, if anything, to use its services; in fact it frequently *pays them* to participate in the scheme – either directly, by sharing a portion of the excess intercarrier compensation revenue it collects, or indirectly, by providing services for free. VZ Stmt. 1.0 at 5. The detailed record developed on the subject of Core's traffic stimulation activities demonstrates that Core follows this standard arbitrage model and has endeavored to increase its incoming traffic in Pennsylvania. *Id.* at 9-27 and Exs. 2-8; *see also* VZ Stmt. 3.0 at 8-13 and Ex. SR-1.

8. Core relies on the receipt of intercarrier compensation for a significant portion of its operating revenue. Core admits that over 50% of its revenue in Pennsylvania comes from terminating charges paid by Verizon alone. VZ Stmt. 1.0 at 5, 21; Amended Complaint at ¶ 45.

9. For many years, Core only received inbound traffic and did not send outbound traffic to other carriers. In the third quarter of 2010, Core began sending a small amount of outbound traffic to Verizon, but the volume of that outbound traffic is very small in comparison to the volume of inbound traffic from Verizon and other carriers to Core, which is destined to Core's ISP and CSC customers. VZ Stmt. 1.0 at 62 and Ex. 1; Core Stmt. 3.0 at 14 (inbound minutes "vastly exceed" outbound minutes).

B. Core's Failure to Pay Verizon's Bills

(i) The Services Provided to Core by Verizon

10. Verizon has provided three general types of services to Core for which Core has not paid: (1) facilities that Core uses to carry traffic between its network and Verizon's end office or tandem switches; (2) termination of the outbound traffic Core sends to Verizon; and (3) directory listing charges. VZ Stmt. 3.0 at 30.

11. As of August 6, 2012, Verizon has billed Core $4,548,753.49 for these facilities and services provided by Verizon, but Core has paid virtually nothing (just $30.66). VZ Stmt. 1.0 at 4, 31 and Exhibit 13.

12. Verizon has continued to provide some of these facilities and services to Core after August 6, 2012, and Core has continued its non-payment. The amount that Core owes Verizon grows with each passing month because Core continues to withhold all payments to Verizon during this litigation. VZ Stmt. 1.0 at 7.

(ii) Core's Unpaid Bills for Facilities

13. The vast majority of Core's unpaid bills from Verizon are for the high capacity circuits provided by Verizon to Core, which Core uses or has used to transport traffic between Core's network and the networks of Verizon and of third parties. VZ Stmt. 1.0 at 30-34.

14. Core owes Verizon approximately $4,422,753 for facilities as of August 6, 2012. VZ Stmt. 1.0 at 63, 65.[1]

15. Core has ordered and used two types of trunk facilities from Verizon: (i) one-way trunks that carry local and non-Feature Group D intraLATA toll traffic purportedly originated on Core's network to customers of Verizon, or to customers of third party carriers whose networks are connected to a Verizon tandem, which trunks are known as Local Interconnection Trunk Groups ("LITGs"); and (2) two-way trunks that carry traffic exchanged between Core and interexchange carriers ("IXCs") that have established switched access facilities at the Verizon access tandems in order to carry interexchange calls; which trunks are commonly known as Access Toll Connecting trunks ("ATCs" or "ATCTs"). VZ Stmt. 1.0 at 31-36.

[1] This figure is derived by subtracting the $93,000 due for traffic termination services and $33,000 due for directory listing services from the total $4,548,753.49 due as of that date.

16. In addition, Verizon provisions one-way trunks for the carriage of local non-Feature Group D intraLATA toll traffic from Verizon's switches to Core, but it does not bill Core for those facilities. VZ Stmt. 1.0 at 32. Those trunks are also LITGs, and although they are not the subject of the unpaid bills, they are relevant to Verizon's claim that Core has overcharged it for traffic termination services. *Id.*

17. The ICAs do not require Core to purchase these trunks from Verizon. Core is permitted to self-provision them, lease them from another provider, or obtain them from Verizon, but chose to obtain them from Verizon. VZ Stmt. 1.0 at 31-34; Verizon PA ICA at Attachment IV, Section 2.4, and Verizon North ICA at Part V, Section 1.2. Since Core chose to order those facilities from Verizon, Verizon was required to honor Core's requests and provide them. VZ Stmt. 1.0 at 31.

18. Initially, Core chose to order both sets of trunks as "multi-frequency" or "MF" trunks, an older technology that was the source of much of Core's confusion about the functionality of the trunks. VZ Stmt. 1.0 at 46; 54-55. Core then transitioned its trunks to "Signaling System 7" or "SS7," which is the industry standard protocol for this type of trunking. Core Stmt. 3.0 at 39; *see also* VZ Stmt. 1.0 at 46. As of 2011, all of the trunks were SS7. Core Stmt. 3.0 at 39.

19. Core concedes that it has obtained value from using Verizon's trunks. Core Stmt. 3.0 at 39.

20. Verizon operates tandem switches that connect telephone carrier networks for the mutual exchange of traffic among IXCs, local exchange carriers ("LECs") and wireless carriers. VZ Stmt. 1.0 at 45-46. Through these tandem switches Verizon provides local transit service, which allows other local exchange carriers and wireless providers to connect with one another

indirectly through the tandems for the exchange of local traffic and non-Feature Group D intraLATA toll traffic, as well as intra-MTA wireless traffic. *Id.*

21. All local transit traffic is delivered to Core over the LITGs established between Verizon's tandem switches and Core's end office switches. VZ Stmt. 1.0 at 32-33, 51.

22. Verizon's access tandems also transit interexchange traffic, so that IXCs may exchange long distance traffic indirectly with local exchange carriers and wireless providers through the transit service provided in Verizon's access tariffs. VZ Stmt. 1.0 at 45-46. For the time period during which Core obtained ATCTs from Verizon, all IXC traffic was exchanged with Core over the ATCTs, and the ATCTs carried only IXC traffic – no Verizon traffic was exchanged over them. VZ Stmt. 1.0 at 42.

23. As of January 2012, Core transferred all of its ATCTs to an alternative provider and no longer obtains them from Verizon, although it continues to use LITGs obtained from Verizon. Core Stmt. 3.0 at 39; Tr. 275-76. Thus, any IXC that wishes to send a call to Core now must send it to the alternative tandem provider. Core Stmt. 3.0 at 39 and 65.

24. Before leaving Verizon, Core ran up $1,137,943.57 in unpaid bills for its use of ATCTs leased from Verizon from January 2008 through June 2012. VZ Stmt. 2.0 at 15.

25. Core does not offer transit service because all of its switches are end office switches, not tandem switches. VZ Stmt. 2.0 at 24 and Ex. 6-R; VZ Stmt. 3.0 at 42-43 and Ex. 7-SR.

26. The majority of the facilities for which Verizon billed Core from the beginning of 2008 to mid-2012 – approximately 65% – were ATCTs. VZ Stmt. 1.0 at 37.

27. Verizon has billed and continues to bill Core tariffed special access rates for its use of trunks provided by Verizon. VZ Stmt. 3.0 at 25.

28. Core contends that all the trunks were "entrance facilities" that should have been billed at Total Element Long Run Incremental Cost ("TELRIC") rates. Core Stmt. 3.0 at 20-27.

29. TELRIC is the pricing methodology established by the FCC to set the rates applicable to CLECs' use of unbundled network elements that the incumbent LEC ("ILEC") is required to provide under the terms of its interconnection agreements with a competitive LEC ("CLEC") that implement the unbundling duty in 47 USC § 251(c)(3) and FCC regulations. State commissions, including this Commission, use the FCC's methodology to set the actual TELRIC rates for a particular state. Verizon Stmt. 1.0 at 38; Core Stmt. 3.0 at 26-27.

30. Core has withheld payment for the trunks and has not paid Verizon even the lower TELRIC rates that it argues apply. VZ Stmt. 2.0 at 5.

31. In early 2012, Verizon provided Core with a TELRIC re-rate showing exactly how much would be due if all of the past-due facilities charges were re-rated at TELRIC. Although Core had the information to determine what would be due at TELRIC rates (Tr. 582), it has not paid even that amount.

32. The ICAs require Core to pay at least the portion of the bills that it does not dispute. VZ St. 1.0 at 38-39 (citing Verizon PA ICA at Attachment VIII, Section 3.1.8 and Verizon North ICA at General Terms and Conditions ("GT&C"), Section 11).

33. Core's contention that Verizon "reinterpreted" its orders for UNE facilities as special access facilities is not supported by the record. Core Stmt. 3.0 at 28. While the ICAs may have entitled Core to order those facilities as UNEs before the FCC's 2003 *Triennial Review Order* (and to receive TELRIC pricing as a result), it did not order UNEs. The service Core ordered and used is instead special access. Had Core ordered less expensive UNE

facilities, which are priced at TELRIC, Core would have had to do more work and deploy more of its own equipment to do so, and chose not to. VZ Stmt. 3.0 at 23-25.

34. The difference between special access facilities and UNEs is akin to the difference between a finished product and a "do-it-yourself" kit. With the special access facilities that Core ordered, Verizon provides the finished product. Core's trunks are powered with "Verizon equipment at both ends," a hallmark of special access, in contrast to UNE trunks that "are powered and controlled by the CLEC, with CLEC equipment at both ends." VZ Stmt. 3.0 at 24. Purchasing special access eliminates the need for Core to maintain a collocation space and acquire and maintain its own terminal equipment. *Id.* at 23-25. Core ordered special access facilities, thus saving on collocation, equipment, and labor costs. *Id.* at 25.

35. Verizon provided written notice of its discontinuance of the offering of entrance facilities as UNEs as a result of the FCC's *Triennial Review Order* and *Triennial Review Remand Order* in 2005. *PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00050800 (Opinion and Order entered September 29, 2005); Core Stmt. 3.0 at 37 and Ex. R-22 (discussing and attaching Verizon letter delisting entrance facilities).

36. Both of the ICAs contain provisions relating to discontinued UNEs. Verizon PA ICA Adoption Agreement, Section 2.2; Verizon North ICA Adoption Agreement at Par. B and FN to App. 1 thereto, and Amendment No. 1 to Verizon North ICA Adoption Agreement at Sections 2.4 and 2.5.

37. Both of the ICAs contain change of law clauses, but Core did not invoke them after the U.S. Supreme Court's 2011 *Talk America* decision. Verizon PA ICA Part A, Sections 2.2 and 2.4; Verizon North ICA at Sections 8.3 and 8.4.

38. The LITGs and ATCTs Verizon provided to Core functioned properly and as they were intended to function.[2]

39. Verizon routed traffic as required by the ICAs, with IXC traffic on the ATCTs and all other traffic on the LITGs. Verizon did not improperly mix traffic on the ATCTs and LITGs. VZ Stmt. 1.0 at 51-52.

40. The Verizon PA ICA defines the traffic that can be routed over the LITGs as "Local Traffic, *non-equal access intraLATA toll* traffic, and local transit traffic to other ILECs" (Attachment IV, Section 1.1.1). VZ Stmt. 1.0 at 50. The Verizon North ICA has a similar definition of the traffic types allowed over the Local Interconnection trunks (*see* Part V, Section 1.2.1). *Id.* Thus, pursuant to the ICAs, it is wholly appropriate for certain toll traffic to travel over the LITGs, and Core was incorrect to expect them to be used exclusively for the exchange of locally-dialed traffic (a point Core has since conceded). VZ Stmt. 2.0 at 21; VZ Stmt. 3.0 at 38-39; Core Stmt. 3.0 at 51.

41. It is not technically feasible for MF trunks to transmit calling party detail in the terminating direction. If Core wanted that information, it needed to order SS7 trunks, which it eventually did. VZ Stmt. 1.0 at 47, 54-59; VZ Stmt. 2.0 at 9-10 and Ex. 3-R; VZ Stmt. 3.0 at 20-21; Tr. 285-88, 290-91; Core Stmt. 4.0 at Ex. SR-2.

42. If it were possible to pass calling party detail in the terminating direction over MF trunks, Verizon would have done so, because its customers would benefit. VZ Stmt. 3.0 at 21.

43. Verizon did not refuse to pass calling party information over the MF trunks. VZ Stmt. 1.0 at 47, 58-59; VZ Stmt. 2.0 at 9-10.

[2] *See* extensive record citations at pages 20-26 of Verizon's Initial Post-Hearing Brief. Individual findings of fact supporting this overarching statement follow.

44. Core chose to use MF trunking, even though SS7 was the industry standard protocol at the time, and despite the fact that the key attribute of the older MF signaling protocol is that it does not transmit calling party detail in the terminating direction. VZ Stmt. 1.0 at 54-55.

45. For traffic terminated to Core over the SS7 trunks, Verizon provides Core with information that allows Core to identify the carrier originating the traffic. Verizon provides carrier-identifying codes known as Carrier Identification Codes ("CIC") or Operating Company Number ("OCN") in the EMI records provided to Core, consistent with the parties' ICAs and the industry standard guidelines incorporated therein. VZ Stmt. 1.0 at 52-54, 57, 59-60; VZ Stmt. 2.0 at 18-19 and Exhibit 4-R.

46. It is not possible to provide CIC or OCN in the call signaling stream. VZ Stmt. 1.0 at 52.

47. The ICAs require Verizon to provide EMI records only for calls that IXCs route to Core via Verizon's tandem switches. VZ Stmt. 2.0 at 21-22; Verizon PA ICA at Att. VIII, Section 3.1.3 and Verizon North ICA at Part V, Section 3.3. As required, Verizon provides Core with EMI for such calls. *Id.*

48. Verizon provides Core with EMI for calls from all CLECs and wireless carriers. More recently Verizon has also begun sending EMI for calls from independent ILECs. Verizon therefore provides Core more EMI records than the ICAs require. VZ Stmt. 1.0 at 47-48; VZ Stmt. 3.0 at 40, 52-53; Core Stmt. 4.0 at 6-7.

49. Verizon does not provide EMI records for calls from Verizon's end users because it is not required by the ICAs and there is no business reason to generate EMI for such calls. VZ

Stmt. 2.0 at 21-22; VZ Stmt. 3.0 at 40; Verizon PA ICA at Att. VIII, Section 3.1.3 and Verizon North ICA at Part V, Section 3.3.

50. Core has admitted under oath in other Commission proceedings that the information Verizon provides is sufficient to allow it to distinguish Verizon's traffic from that of other carriers, and to bill those other carriers accurately for traffic they originated and terminate to Core by transiting it through Verizon's tandems. VZ Stmt. 1.0 at 48-49 and Ex. 15 at 68-72, 78; VZ Stmt. 2.0 at 17-18; VZ Stmt. 3.0 at 48-49 and Exs. 11-SR and 12-SR; Tr. 250, 299-300, 304.

51. It is appropriate and consistent with industry standards for Verizon to include Core's CIC code in the EMI records generated by Verizon for traffic sent by Core to other carriers through Verizon's tandems, so the receiving carriers can identify Core as the originating carrier. VZ Stmt. 2.0 at 11-12. The presence of a CIC code is not a designator of the jurisdiction of such traffic as local or interexchange. VZ Stmt. 2.0 at 12; VZ Stmt. 3.0 at 22-23.

52. CICs are assigned to both IXCs and LECs, and some carriers (like Core) have both OCNs and CICs. VZ Redirect Ex. 2; VZ Stmt. 2.0 at 12.

53. It is not an accepted industry practice to assume that the presence of a CIC means that a call is subject to switched access charges, and Core admitted in discovery that it has never been misbilled by a third party carrier on the basis of its CIC appearing on an EMI record. VZ Stmt. 2.0 at 12-13 and Exhibit 3-R.

54. Late payment charges, including for amounts disputed and withheld but subsequently determined to have been due, accrue at the rate of 18% per year for amounts due to Verizon North (*see* Verizon North ICA at GT&C, Section 11.3(e)) and 9% per year for amounts

due to Verizon PA (*see* Verizon PA ICA at Part A, Section 21.3.3, incorporating the interest rate set forth in Section 2.4.1(B)(iii)(b)(II) of Verizon PA's FCC Tariff No. 1).

55. Core must pay Verizon all past-due amounts billed for facilities through the date of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA.

(iii) Core's Unpaid Bills for Traffic Termination

56. Core sends outbound traffic to Verizon, for which Verizon bills Core the industry standard terminating charges (reciprocal compensation and switched access). Core began sending outbound traffic to Verizon in August of 2010. VZ Stmt. 1.0 at 62.

57. Core concedes that "[t]o date, Core has not made payment with respect to its outbound traffic to Verizon." VZ Stmt. 1.0 at 7 and Exhibit 1; VZ Stmt. 1.0 at 61-64.

58. The combined unpaid invoices to Core for reciprocal compensation and switched access services rendered by Verizon in terminating that outbound traffic total approximately $93,000. *Id.* at 63-64 and Exhibit 1.

59. Core has offered no valid reason for its refusal to pay Verizon for the traffic termination services rendered to Core.

60. Core must pay Verizon all past-due amounts billed for traffic termination through the date of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA.

(iv) Core's Unpaid Bills for Directory Listings

61. Verizon has rendered $32,685.91 in directory listing services to Core, for which Core has not paid Verizon. VZ Stmt. 1.0 at 64-65.

69. While the ATCTs were in place, Verizon delivered interexchange traffic from IXCs destined to Core over ATCTs. VZ Stmt. 1.0 at 42, 45-46, 51-52.

70. Core has billed and continues to bill Verizon for 100% of the minutes terminated to Core over the LITGs. Tr. 322; VZ Stmt. 2.0 at 29 and Exs. 9-R and 10-R; Core Stmt. 3.0 at 56, 68; Core Stmt. 4.0 at 9.

71. Since Core has billed Verizon for 100% of the LITG minutes, Core necessarily has billed Verizon for all minutes of locally dialed and non-Feature Group D toll traffic transited to Core from other local exchange carriers via Verizon's tandem switches, and all intra-MTA traffic from wireless carriers that transits Verizon's tandems. VZ Stmt. 3.0 at 55.

72. Core has known for years that third party carriers are transiting locally dialed traffic to Core through Verizon's tandems. Core addressed this issue in arbitrations initiated in 2006 with various rural ILECs, and has known since at least 2007 that it has been receiving this transit traffic from CLECs such as AT&T, XO and others. VZ Stmt. 3.0 at 45, 48; Tr. 250.

73. Core has conceded in other Commission proceedings that the *originating* party is liable to compensate Core for the termination of traffic transited through Verizon's tandem switches, not the transit provider (Verizon). VZ Stmt. 3.0 at 42, 49-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR.

74. Core has used the EMI records provided by Verizon to bill AT&T, XO, Choice One and others for locally dialed traffic they transited to Core through Verizon's tandems. VZ Stmt. 1.0 at 48-49 and Ex. 15 at 68-72, 78; VZ Stmt. 2.0 at 17-18; VZ Stmt. 3.0 at 48-49 and Exs. 11-SR and 12-SR; Tr. 250, 299-300, 304. Core also recently began billing some of the independent ILECs for transited traffic based on EMI provided by Verizon. Tr. 311. As a result, Core has double billed Verizon and other carriers for terminating the same minutes of use.

62. Core has offered no valid reason for its refusal to pay Verizon for the directory listing services rendered to Core.

63. Core must pay Verizon all past-due amounts billed for directory listings through the date of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA.

C. Core's Overbillings to Verizon

64. The disputes regarding Core's overbilling of Verizon relate to the charges Core imposes for terminating the high volume of traffic generated by calls from Verizon's retail customers to numbers assigned to Core's ISP and CSC customers.

65. From January 2008 through June 2012, Verizon paid Core $7,786,114.95 for local traffic termination services (*i.e.*, reciprocal compensation and the FCC's $0.0007 per minute of use rate for ISP-bound traffic) in Pennsylvania. VZ Stmt. 1.0 at 21 and Ex. 9.

66. Verizon has continued to pay Core since June 2012 pursuant to the terms of the Commission's September 23, 2011 order. VZ Stmt. 1.0 at 29.

67. Core has overbilled Verizon for traffic termination and Verizon has overpaid in several respects, detailed below.

(i) Core has Overbilled Verizon by Charging Verizon for Terminating Traffic Originated by Third-Party Carriers

68. In its capacity as transit provider, Verizon delivers to Core not only Verizon-originated traffic, but also traffic originated from other carriers and destined to Core's ISP and CSC customers. Verizon delivers local and non-Feature Group D toll traffic from other local exchange carriers and intra-MTA traffic from wireless carriers over the LITGs from Verizon to Core (the trunks that Verizon does not charge Core for using). VZ Stmt 1.0 at 51-52. All such local transit traffic is delivered over the LITGs. VZ Stmt. 1.0 at 32-33, 51.

75. Core's process of purportedly matching Verizon-supplied EMI records to Core's terminating call records to avoid billing Verizon for third party traffic was faulty and did not serve to eliminate improper billing of Verizon. Core only attempted such a matching process for calls for which it billed *switched access* – not for locally-dialed calls for which it billed *reciprocal compensation*. Tr. 335; VZ Cross Ex. 8; Core Stmt. 1.0 at 15; VZ Stmt. 2.0 at 27-29; VZ Stmt. 3.0 at 56-57. Core thus improperly billed Verizon reciprocal compensation for all locally dialed calls originated by other carriers and merely transited by Verizon, because Core made no attempt to exclude such traffic from its billings to Verizon.

76. Core never attempted any "matching" at all for calls carried over the MF trunks (because it failed to generate the ICA-required per-call AMA records for such traffic and thus would have nothing to "match" to Verizon's EMI). VZ Stmt. 2.0 at 27, 32 and Ex. 12-R. Therefore, by its own admission, Core billed Verizon for all traffic originated by other carriers that was transmitted over the MF trunks.

77. Core's claimed "matching" process used for the SS7 trunks was also inherently flawed because the criteria used made it impossible to find matches on wireless calls and calls from multi-line accounts (meaning that Verizon was billed for all minutes originated by wireless carriers or from other carriers' multi-line accounts), resulting in Core billing Verizon for a substantial amount of switched access traffic, despite Core's professed "matching" process for toll traffic. VZ Stmt. 2.0 at 28; VZ Stmt. 3.0 at 58-60.

78. Core's SS7 "matching" process is not generally accepted in the industry, and is highly flawed. VZ Stmt. 2.0 at 28-29.

79. Core also billed Verizon for IXC traffic because Core mistakenly categorized some ATCTs as LITGs, meaning that 100% of the minutes were billed to Verizon as local traffic even though it was IXC traffic. VZ Stmt. 3.0 at 64-66.

80. Verizon's review of 18 months of call detail records provided by Core in discovery for calls terminated over the SS7 trunks independently confirmed that Core is improperly billing Verizon for third party-originated traffic. Verizon's review demonstrated that 35% of the minutes of use ("MOUs") for which Core billed Verizon during that period actually originated from telephone numbers for which Verizon was not the local service provider at the time of the call. VZ Stmt. 3.0 at 67-69.

81. Applying this 35% overcharge factor to the amount Verizon has paid Core for traffic termination from January 2008 through June 2012 shows that Core has overcharged Verizon by at least $2,725,140 for local traffic termination services by billing Verizon for traffic originated by other carriers. VZ Stmt. 3.0 at 69. This is a conservative figure because during the historical time periods when it used MF trunks, Core attempted no matching at all and billed all minutes to Verizon regardless of the party originating the traffic.

(ii) Core Overbilled Verizon by Overestimating the Billable Minutes for Traffic on the MF Trunks and Failing to Create ICA-Required Billing Records

82. Until 2012, Core used MF trunks to carry traffic from Verizon to Core, but failed to abide by the ICAs' requirement to create valid billing records. Core instead devised an *ad hoc* "sampling" method of estimating the minutes billable to Verizon that was wholly unreliable and certain to result in overcharging Verizon. VZ Stmt. 1.0 at 69-70 and Exs. 22-23; VZ Stmt. 2.0 at 30-34 and Exs. 11-R and12-R; VZ Stmt 3.0 at 58, 64-66; Tr. 330, 332; Verizon Cross Ex. 7.

83. Among other things, Core's process of estimating the billable minutes to Verizon failed to exclude third party traffic, included interexchange minutes that should have been billed to IXCs, relied on erratic "sampling" intervals, and was otherwise flawed and unsupported. Tr. 549-55; VZ Stmt. 1.0 at 68; VZ Stmt. 2.0 at 30-34. All of these flaws resulted in overstating the minutes billable to Verizon.

84. Creating per call AMA records on MF trunks is technically feasible. VZ Stmt. 2.0 at 32.

85. The parties' ICAs required Core to generate per-call AMA records for all calls, including those terminated over the MF trunks, but Core did not do so. VZ Stmt. 1.0 at 69-70 and Ex. 23; VZ Stmt. 2.0 at 32-33 and Ex. 12-R; VZ Stmt 3.0 at 58; Verizon PA ICA at Attachment IV, Section 7.1 and Verizon North ICA at Part V, Section 2.6.3.

(iii) Core Overbilled Verizon by Charging Reciprocal Compensation on VNXX Traffic.

86. "Virtual NXX" or "VNXX service" is an arrangement whereby "a customer can obtain a telephone number from a NXX code that is associated with a rate center or local calling area in which they are not physically located." *See* October 14, 2005 "Statement of Policy" in Docket No. I-00020093, Generic Investigation Regarding Virtual NXX Codes at 3 (VZ Cross Ex. 13).

87. Core only accepts traffic from Verizon in one location per LATA. Tr. 394. Also, in order to obtain service from Core, its ISP and CSC customers must collocate equipment in a Core wire center. Tr. 407-08; *see also* Verizon Ex. 1.0 at Ex. 8. These two facts are the key components of VNXX service. First, Core assigns its ISP and CSC customers telephone numbers that are assigned to multiple rate centers in a LATA, and second, the locally dialed calls made to these customers are not delivered within the geographic boundaries of the rate center to

which the called numbers are assigned. Because Core only accepts traffic from Verizon in one location per LATA, for the vast majority of rate centers, the calls cannot originate and terminate within the same rate center.

88. Most of the traffic terminated by Core is VNXX traffic. Core Stmt. 1.0 at 2-4; Tr. 317-18, 341, 366-68; Verizon Cross Ex. 16 at 33. As a result, Core billed Verizon (and Verizon paid Core) reciprocal compensation on significant amounts of VNXX traffic.

(iv) Core Overbilled Verizon by Manipulating the 3:1 Ratio by Giving Itself Credit for Traffic Terminated to Verizon That Was Not Local Traffic

89. Verizon pays Core at the FCC's rate for ISP-bound traffic (currently $0.0007 per MOU) for all reciprocal compensation minutes above the 3:1 ratio of terminating to originating Core traffic as set forth in the FCC's *ISP Remand Order*. *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*"); Amended Cpt. ¶ 13-15; VZ Stmt. 1.0 at 22.

90. Core has not amended its ICA with Verizon PA to provide for the mutual exchange of all reciprocal compensation traffic at the $0.0007/MOU rate, the "mirroring" arrangement referred to in the *ISP Remand Order*. VZ Stmt. 1.0 at 81 and Ex. 25. Therefore, only the traffic that is presumed to be ISP-bound under the *ISP Remand Order* is paid at $0.0007/MOU. The remainder of the reciprocal compensation traffic exchanged between the parties is subject to the TELRIC reciprocal compensation rate of $0.002814. VZ Stmt. 1.0 at 22, 81.

91. For Verizon North, Core has a "Rate Plan B" amendment providing for the mutual exchange of local traffic at $0.0007/MOU, so the 3:1 ratio is not relevant and this issue does not

arise for Verizon North. VZ Stmt. 1.0 at 80; VZ North ICA at Amendment No. 2. But the traffic Core sends to Verizon North is minimal. Core Stmt. 2.0 at 14.

92. Core stands to profit financially from every minute of reciprocal compensation traffic it delivers to Verizon PA, because for every one minute of reciprocal compensation traffic Core delivers to Verizon PA, it would be entitled to bill the higher reciprocal compensation rate of $0.002814/MOU for three of the minutes that Verizon delivered to Core that otherwise would be paid at the FCC rate of $0.0007/MOU. VZ Stmt. 1.0 at 22. Therefore, each minute of reciprocal compensation traffic sent to Verizon nets Core twice the difference between $0.002814 and $0.0007 – or $0.004228 per minute.

93. Core has a financial incentive to maximize the qualifying traffic it appears to send to Verizon. VZ Stmt. 1.0 at 22; VZ Stmt. 3.0 at 13.

94. For all of the outbound traffic it sends to Verizon for termination, Core is acting as a least-cost router, taking traffic from other wholesale traffic aggregators and terminating it in Pennsylvania. The traffic is all Voice over Internet Protocol ("VoIP"), is not from numbers assigned to Core, and is not even necessarily originated in Pennsylvania. Tr. 385-391.

95. When Core provided Verizon with a sampling of records that Core claimed constituted Core-originated local calls for which Verizon should have credited Core for purposes of the 3:1 ratio calculation, for the calls Verizon reviewed that had a valid originating number that could be associated with an originating carrier, Verizon was unable to associate more than a miniscule fraction to Core as the local service provider. VZ Stmt. 3.0 at 61. The analysis showed that most of the calls were not originated by Core and many were interexchange or interstate. *Id.*

96. All of the inbound voice traffic to Core is also VoIP traffic because it is terminated in Internet Protocol ("IP"). Tr. 401 (discussing Core equipment that converts all incoming traffic to IP).

D. Core's Switched Access Back-Bills

97. During the pendency of this case, Core billed Verizon $2,532,143.22 (the majority of which was back-billed) for intrastate and interstate switched access on minutes carried over the SS7 trunks for which Core had already billed and Verizon had already paid Core at a lower rate. Core Stmt. 1.0 at 32 and Ex. BLM-5; Core Stmt. 4.0 at 16. Verizon disputed and has not paid those switched access bills.

98. Core's switched access back-billing is based on re-determining, for several years' of traffic, which calls were local versus non-local and rerating them based on which non-local calls it considered intrastate versus interstate. VZ Stmt. 3.0 at 70.

99. Core has offered no data to support the process it used to re-jurisdictionalize the calls to issue these back-bills. It only provided the pertinent call detail records mixed with other call records, which did not disclose which calls it considered local versus non-local, or intrastate versus interstate, for purposes of its backbilling. Core's switched access back-bills are unsupported and invalid. VZ Stmt. 2.0 at 54-55.Core has billed Verizon switched access for traffic originated by IXCs, which is billable to the IXCs, not Verizon. Core Stmt. 1.0 at Ex. BLM-6 (stating that "[t]hese CDRs will conclusively demonstrate what you already know (since you already have the call data from your own tandem records), which is that this is all IXC traffic delivered by Verizon to CoreTel over the interconnection arrangements.").

100. Core has billed Verizon switched access for ISP-bound traffic. Core Stmt. 1.0 at 2-4; 32; Tr. 317-18, 341, 366-67.

101. In other cases before the Commission, Core has argued that there is "never" a situation in which access charges would apply to ISP-bound traffic. Tr. 342-43; VZ Cross Ex. 9 at 6.

102. Core's switched access billings to Verizon include amounts billed for traffic originated in Pennsylvania and terminated in Delaware. The ICAs do not authorize Core to bill Verizon for such traffic. VZ Stmt. 3.0 at 41-42.

103. Core's switched access billings to Verizon bill Verizon for traditional ILEC access rate elements, such as tandem related charges and the carrier common line, but Core does not provide these functions. Core Stmt. 4.0 at Ex. SR-5; Tr. 345-46, 395-407.

104. The network functions that Core performs for a call flowing from Verizon to Core are not the traditional functions that would be provided by a local exchange carrier terminating a long distance call to one of its local exchange customers. **[BEGIN PROPRIETARY]**

[END PROPRIETARY] Tr. 395-407.

105. Core operates no tandem switches and does not provide tandem switching or tandem transport to Verizon. Tr. 345-46. Yet, Core billed Verizon both intrastate and interstate tandem facility charges, *double* tandem termination charges and tandem switching charges. Core Stmt. 4.0 at Ex. SR-5; Tr. 345-46.

106. Core provides no local loops or carrier common lines. Tr. 395-407. Yet, Core billed Verizon intrastate carrier common line ("CCL") charges. Core Stmt. 4.0 at Ex. SR-5.

107. Core's switched access backbills to Verizon are unreliable because they contain rate and rate application errors. Core's witness could not verify the calculation of the CCL charges billed to Verizon, which constitute the majority of the amounts billed. Tr. 352-58; Core Stmt. 4.0 at Ex. SR-5.

108. Core billed Verizon for 800 database queries that Core admitted it had not performed and should not have billed (because the traffic at issue was not 800 number toll-free traffic). Tr. 350-352. Core also erroneously billed for these 800 database queries *per minute*, when the tariffed rate is *per query*. Tr. 350-51; VZ Cross Ex. 11.

109. Core overbilled Verizon for information surcharges at a rate *one hundred times higher* than the rate established in its tariff. Tr. 353-54; VZ Cross Ex. 12.

110. Core claims $2,661,655.78 in "lost revenues damages" representing switched access charges Core believes it could have collected for past traffic terminated over the MF trunks. Core St. 1.0 at 35-36. Core never billed Verizon for these charges and cannot bill for them because it lacks the information upon which such bills could be based. Core St. 4.0 at 17; Tr. 337-38.

E. Core's Bad Faith Dealing and Breaches of the ICAs

111. Core has not escrowed *any* funds to pay whatever amounts the Commission may eventually determine are due from Core to Verizon. Tr. 258.

112. Core has failed to make reasonable provisions to ensure that it can pay amounts determined to be due to Verizon, even though its president has testified that it likely will not be financially able to pay Verizon at the conclusion of this case, should it be ordered to do so. Tr. 259-60, 267.

113. Core refuses to pay anything to Verizon pending litigation, even the lower amounts that it claims are due to Verizon. VZ Stmt. 3.0 at 6; Core Stmt. 3.0 at 39.

114. Core's president testified that if the Commission ruled in Verizon's favor today, Core could not afford to pay the amounts sought, or even a smaller fraction of those amounts. Tr. 259-60; 267. He also testified that even if Core is not required to pay anything to Verizon, it is "unlikely" that Core can survive if it loses on its affirmative claims against Verizon. Tr. 416.

115. Core continues to overcharge Verizon for traffic termination each month, and Verizon is required to pay those bills by the Commission's September 23, 2011 emergency order with little prospect of recovering those overpayments, if Core's president's assessment of its financial condition is accurate.

116. The ICAs require Core to pay undisputed amounts. *See* Verizon PA ICA at Attachment VIII, Section 3.1.8 (requiring payment of undisputed amounts by due date on invoice) and Verizon North ICA at GT&C, Section 11.3 (non-paying party must give notice of disputed amounts and specific details and reasons for dispute within 60 days),

117. The ICAs require the parties to engage in mandatory dispute resolution before instituting litigation. Attachment VIII, Section 3.1.9.1 and Part A, Section 24 of the Verizon PA ICA (which outline a mandatory 120-day dispute resolution process tied to the date of the disputed invoice prior to seeking resolution from the Commission) and GT&C, Sections 11.3 and 17 of the Verizon North ICA (which sets out a detailed dispute resolution process with several levels of escalation over 105 days). VZ Stmt. 1.0 at 84-86; VZ Stmt. 2.0 at 53-54; VZ Stmt. 3.0 at 72-73.

118. These provisions prevented Core from bringing any formal action under the Verizon PA ICA until September 28, 2011 (120 days after Core issued the disputed May 31,

2011 invoices), and until October 14, 2011 under the Verizon North ICA (105 days after Verizon's July 1, 2011 dispute letter.

119. Core filed the instant complaint on July 22, 2011, rather than engaging in the formal dispute resolutions processes outlined in the ICAs. Original Complaint (July 22, 2011).

120. Core also never initiated dispute resolution with regard to its switched access back-billing before filing its Amended Complaint on May 16, 2012 VZ Stmt. 1.0 at 85-86.

121. Part A, Sections 23.1 and 25.5, and Attachment IV, Section 8.2 of the Verizon PA ICA and GT&C, Section 11.3(b) and Part V, Sections 2.7.4 and 2.7.5 of the Verizon North ICA required Core to produce data to validate its bills when so requested by Verizon.

122. Core refused to provide call detail records relating to the matters on which it refused to engage in dispute resolution, and did so only after being ordered by the ALJ. VZ Stmt. 1.0 at 84; VZ Stmt. 2.0 at 46-52 and 54-55; VZ Stmt. 3.0 at 57-58 and 71.

II. PROPOSED CONCLUSIONS OF LAW

A. Core Must Pay Verizon's Bills in Full, With Late Payment Charges

123. Core breached the ICAs by failing to pay Verizon's bills for facilities, traffic termination and directory listings.

124. Core must pay the past due bills in full, together with late payment charges as provided in the respective ICAs.

125. Core must pay Verizon the amount of $4,548,753.49 through August 6, 2012, as well as all additional charges for facilities, call termination or directory listings billed and past due from that date through the date of this Order.

126. Core must pay late payment charges at the rate of 18% per year for amounts due to Verizon North and 9% per year for amounts due to Verizon PA.

(i) Core's Arguments Against Verizon's Facility Bills are Without Merit

127. There is no legal basis to support Core's argument that the facility quality claims it has raised – even if true – would absolve Core from the need to pay for the subject facilities.

128. The ICAs do not support Core's argument that all facilities charges should be re-rated retroactively to TELRIC rates, because they do not entitle Core to TELRIC-rated "entrance facilities" to connect its network to Verizon's.

129. It is a fundamental principle of law that the parties' ICAs control their contractual relationship and are the first place the Commission must look to determine applicable rates. Memorandum Opinion and Order, *CoreComm Communications, Inc. v. SBC Communications, Inc.*, 18 FCC Rcd 7568, ¶ 32 (2003) ("*CoreComm Order*"), *recon. denied*, 19 FCC Rcd 8447 (2004) ("*CoreComm Reconsideration Order*"), *vacated on other grounds*, *SBC Communications Inc. v. FCC*, 407 F.3d 1223 (D.C. Cir. 2005).

130. Because Core ordered tariffed special access facilities, rather than UNEs, pursuant to the parties' ICAs, Verizon correctly charged tariffed special access rates for the facilities at issue.

131. The FCC delisted entrance facilities as UNEs with its *Triennial Review Order* in 2003,[3] followed by its *Triennial Review Remand Order* in 2005.[4]

132. Pursuant to the change of law provision at Section 2.2 of the Adoption Agreement to Core's ICA with Verizon PA, Verizon PA was entitled to cease providing UNEs that had been

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[3] *See* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*TRO*"), *vacated in part and remanded, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[4] Order on Remand, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (February 5, 2005), *review dismissed by, in part, motion granted by* Covad Communs. Co. v. FCC, 2005 U.S. App. LEXIS 7454 (D.C. Cir., Apr. 28, 2005); *review denied by Covad Communs. Co. v. FCC*, 450 F.3d 528 (2006).

delisted upon written notice, which was provided. The result was the same under the Verizon North agreement. Verizon North ICA, Par. I.B. of Adoption Agreement and FN 1 to App. A thereto and Amendment No. 1 to the Adoption Agreement at Sections 2.4 and 2.5 (regarding "discontinued elements"). At that point, Core was no longer entitled to purchase UNE entrance facilities under 47 U.S.C. § 251(c)(3) at TELRIC rates under its ICAs.

133. This Commission recognized the change in law clause in the Verizon PA ICA and approved Verizon PA's amendment to its UNE Tariff 216 to reflect that entrance facilities were no longer available as UNEs and instead would be available at "special access rates . . . under Verizon's tariffs." *Verizon Pennsylvania Inc. Tariff for Other Telephone Companies (Tariff No. 216) Discontinue CLEC Access to Unbundled Entrance Facilities*, Docket No. R-00050800 (Opinion and Order entered February 10, 2006).

134. Core's ICAs do not grant Core the right to TELRIC-rated interconnection facilities, as no provision thereof either authorizes Core to purchase § 251(c)(2) entrance facilities or establishes TELRIC rates for such facilities. Consequently, following the "delisting" of entrance facilities as UNEs in 2003, the ICAs required Core to obtain the ATCTs and LITGs, to the extent Core chose to obtain them from Verizon, at tariffed rates, not TELRIC rates. Verizon North ICA at Part V, Section 3.2.2; Verizon PA ICA at Appendix 2 to the Adoption Agreement, FN 1.[5]

135. The provisions of 47 U.S.C. § 251 are not self-executing, and a carrier cannot complain if it adopted an ICA that gives it fewer rights than are available under § 251. The FCC

[5] Part V, Section 3.2.2 of the Verizon North agreement provides that Core "shall establish Access Toll Connecting Trunks pursuant to applicable Verizon Tariffs (including, but not limited to, to the extent applicable, Verizon Tariffs Pa. P.U.C.-No. 302 and F.C.C. No. 1), by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from [Core's] Customers." Similarly, footnote 1 to the Pricing Attachment (Appendix 2 to the Adoption Agreement) of the Verizon PA ICA states that "[Verizon PA] rates and services for use by [Core] in the carriage of Toll Traffic shall be subject to [Verizon PA]'s tariffs for Exchange Access service."

has held that when a CLEC has voluntarily opted into an agreement that "does not provide" a service that federal law requires, it has "effectively waived any right to insist" that it receive that service. *CoreComm Order,* ¶ 32.

136. In 2011, the United States Supreme Court ruled in *Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011) that some (but not all) entrance facilities qualify as interconnection facilities under § 251(c)(2), which a CLEC such as Core can buy at TELRIC rates, provided its ICA so allows.

137. Because the *Talk America* decision was issued in 2011, as a matter of law, it cannot justify Core's unilateral refusal to pay before that time, in violation of the ICAs.

138. The express terms of Section 2.2 of the Verizon PA ICA Adoption Agreement allow *Verizon* to implement certain types of changes in law without an amendment to the ICA, upon notice, but do not allow Core to do so. The Verizon North ICA contains similar provisions. Verizon North ICA at General Terms & Conditions, Sections 8.3 and 8.4. Therefore, Core cannot unilaterally refuse to pay based on the *Talk America* decision and must instead follow the change of law provisions of the ICAs.

139. The vast majority of the trunks at issue, including all of the ATCTs, are not "interconnection facilities" under 47 U.S.C. § 251(c)(2), as Core incorrectly asserts, because only facilities that are used to link the incumbent provider's telephone network with the competitor's network for the mutual exchange of traffic are interconnection facilities under 47 USC § 251(c)(2). Brief of the United States as Amicus Curiae Supporting Petitioners in the *Talk America* case (U.S. S.Ct. Nos. 10-313 and 10-329) (February 2011) at 2-3 ("*FCC Amicus*"). In its *Talk America* decision, the U.S. Supreme Court deferred to the FCC's interpretation as set forth in the *FCC Amicus*. *Talk America*, 131 S.Ct. at 2257, 2265. Thus, ATCTs are not local

interconnection facilities under 47 U.S.C. § 252(c)(2) and are not required to be priced at TELRIC rates.

140. The LITGs are local interconnection facilities only to the extent they are used to carry traffic directly exchanged between Core and Verizon, not to the extent they are used to carry traffic destined for third party carriers. "[A] single facility can be used for different functions, and . . . its regulatory treatment can vary depending on the use to which it is put." *FCC Amicus* at 18. Therefore, a facility is not an interconnection facility subject to TELRIC pricing if it is used "'solely for the purpose of originating or terminating . . . interexchange traffic [i.e., long distance traffic]'" and not for the mutual exchange of traffic between the CLEC and the ILEC, even though "'the same exact wire' could be used for both purposes." *Id.* at 19; *see also Talk America*, 131 S.Ct. at 2257, 2265 (deferring to *FCC Amicus*).

141. Core must pay Verizon all past-due amounts billed for facilities through the date of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA.

(ii) Core Raises No Colorable Dispute to Verizon's Traffic Termination and Directory Listing Service Charges

142. Core's failure to pay Verizon's switched access invoices violates 66 Pa. C.S. § 3017(b), which provides that "[n]o person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company." Both Verizon PA and Verizon North are "local exchange telecommunications companies" as defined in 66 Pa. C.S. § 3012.

143. Core raises no colorable dispute to Verizon's traffic termination or directory listing bills and must pay Verizon all past-due amounts billed for these services through the date

of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA.

B. Core Has Overbilled Verizon Reciprocal Compensation Charges and Collected Overpayments That Must Be Refunded With Interest

(i) Core Is Not Entitled to Bill Verizon for Terminating Traffic Originated by Third-Party Carriers and Must Refund Such Overpayments with Interest

144. Core is not entitled to charge Verizon for terminating third-party traffic that transits Verizon's network. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (Aug. 8, 1996) at ¶ 1034; 47 U.S.C. § 252(d)(2)(A)(i); 47 C.F.R. § 51.700. The parties' ICAs do not allow Core to bill Verizon reciprocal compensation for termination of third party traffic. Verizon PA ICA at Att. 1, § 4.2 and Part B, definitions of "Local Traffic" and "Reciprocal Compensation; Verizon North ICA at Part V, § 2.7 *and* at Attachment 1 – Definitions (definition of "Reciprocal Compensation Traffic").

145. Under 66 Pa. C.S. § 1312(a), this Commission has "the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron" when the Commission "determine[s] that any rate received by a public utility was unjust or unreasonable." 66 Pa. C.S. § 1312(a). Such refund shall include "interest at the legal rate from the date of each such excessive payment." *Id.* The "legal rate" of interest is 6 percent per annum. 41 P.S. § 202. *See Duquesne Light Co. v. PUC*, 117 Pa. Commw. at 36, 543 A.2d 196, 200 (Pa. Commw. 1988).

146. Core has overbilled Verizon by charging for terminating traffic originated by third parties. These charges were unlawful, unjust and unreasonable. Core must refund all overcharges with interest at the legal rate of 6% per annum.

(ii) Core Breached the ICAs by Failing to Create AMA Records for Calls Terminated Over the MF Trunks and Overestimating Billable Minutes

147. Core's failure to generate per-call AMA records for calls terminated over the MF trunks was a breach of the ICAs. VZ Stmt. 1.0 at 69-70 and Ex. 23; VZ Stmt. 2.0 at 32-33 and Ex. 12-R; VZ Stmt 3.0 at 58; Verizon PA ICA at Attachment IV, Section 7.1 and Verizon North ICA at Part V, Section 2.6.3.

148. Core's *ad hoc* method of estimating billable minutes to Verizon for traffic terminated over the MF trunks was contrary to the ICAs and was flawed and unreliable, and calculated to result in overbillings to Verizon that cannot now be quantified due to Core's breach of the ICAs in failing to create AMA records.

149. Core must calculate and refund to Verizon all amounts billed and collected for terminating traffic over the MF trunks, with interest at the legal rate of 6% per annum.

(iii) Core Is Not Entitled to Bill Verizon Reciprocal Compensation on VNXX Traffic

150. The Commission has previously rejected attempts to collect reciprocal compensation on VNXX traffic. *See* Opinion and Order, *Petition of Global NAPS South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, PA PUC Docket No. A-310771F7000 (April 17, 2003) ("*Global NAPS*") at 45 ("Based on our review of the record and applicable FCC orders, we conclude that calls to VNXX telephone numbers that are not in the same local calling area as the caller should not be subject to reciprocal compensation.").

151. The parties' ICAs bar Core from billing reciprocal compensation for traffic that does not originate and terminate with end users physically located within the same local calling area. Verizon PA ICA at Att. 1, § 4.2 and Part B, definitions of "Local Traffic" and "Reciprocal

Compensation; Verizon North ICA at Part V, § 2.7 *and* at Attachment 1 – Definitions (definition of "Reciprocal Compensation Traffic"). The local calling area should be defined by the relevant ILEC's tariff (including mandatory extended area service).

152. Core improperly charged Verizon to terminate substantial amounts of VNXX traffic.

(iv) Core Manipulated the 3:1 Ratio by Giving Itself Credit for Traffic Terminated to Verizon That Was Not Local Traffic

153. In 2001, the FCC lowered the rate for terminating ISP-bound traffic from reciprocal compensation ($0.002814/MOU for Verizon PA) to a uniform rate that today is $0.0007/MOU. *ISP Remand Order*, ¶¶ 2, 77.

154. Verizon PA is entitled to pay Core the FCC-ordered rate for ISP-bound traffic. *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).

155. The *ISP Remand Order* adopted a rebuttable presumption that traffic above a 3:1 ratio of terminating to originating traffic is ISP-bound. *ISP Remand Order*, ¶ 79. Although Core claims that it receives some voice traffic destined to CSCs and the like, it has failed to submit any evidence to quantify the amount of that traffic or to show that it is more than three times the traffic it terminates to Verizon. Accordingly Core has not rebutted the presumption and all traffic above the 3:1 ratio is presumed to be ISP-bound traffic.

156. Core is not entitled to credit pursuant to the 3:1 ratio for the traffic that is not originated by Core or that is not local, because such traffic does not constitute locally-dialed

traffic from Core to Verizon that the *ISP Remand Order* directs be counted for purposes of the application of the ratio. *ISP Remand Order*, ¶ 79 and FN 150.

(v) Core Is Not Entitled To Collect Reciprocal Compensation Retroactively on ISP-Bound Traffic Already Paid For at the $0.0007 Rate

157. Verizon PA complies with the "mirroring rule" aspect of the *ISP Remand Order*, under which the lower ISP-bound rate applies "only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate," an offer that it could make "on a state-by-state basis." *ISP Remand Order*, ¶ 89.

158. Verizon sent an industry letter dated May 14, 2001 notifying all carriers (including specifically Core) of the availability of the "mirroring rule" rate and making available a "Rate Plan B" amendment to the ICAs that many carriers have accepted. VZ Stmt. 1.0 at 79 and Exhibit 24. Both the FCC and this Commission have held that this offer satisfies the mirroring rule. The FCC did so in *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, 27161, ¶¶ 248-249 (FCC 2002) ("*WorldCom Order*"). The Commission has approved dozens of "Rate Plan B" amendments in the eleven years since then, acknowledging that they fulfill the mirroring offer required by the *ISP Remand Order*. VZ Stmt. 1.0 at 79-80.

159. Core has contractually admitted that the Rate Plan B amendment makes the mirroring offer required by the *ISP Remand Order*. VZ Stmt. 1.0 at 80; Verizon North ICA at Amendment 2.

160. Core is judicially estopped from now claiming that a higher rate is due because this position is inconsistent with its prior admission that Verizon has made the mirroring offer required by the *ISP Remand Order*, and its prior arguments that $0.0007/MOU was the rate for terminating ISP-bound traffic, which it successfully maintained by obtaining an emergency order from this Commission requiring Verizon to pay at the rate of $0.0007/MOU during this litigation. *Trowbridge v. Scranton Artificial Limb Company*, 560 Pa. 640, 747 A.2d 862, 864 (Pa. 2000), *app. denied*, 573 Pa. 699 (2003) (*citing Associated Hospital Service of Philadelphia v. Pustilnik*, 497 Pa. 221, 439 A.2d 1149, 1151 (Pa. 1981)). The courts "have long applied this principle of estoppel where litigants 'play fast and loose' with the courts by switching legal positions to suit their own ends." *Ligon v. Middletown Area Sch. Dist.*, 136 Pa. Commw. 566, 584 A.2d 376, 380 (Pa.Cmwlth. 1990).

161. The FCC's mirroring rule does not, as Core asserts, require Verizon to offer to *accept* the lower $0.0007/MOU rate for terminating voice traffic, but still be willing to *pay* the CLEC the higher reciprocal compensation rates for the same traffic. Core's argument in this regard is contrary to the plain language of the *ISP Remand Order*, which says that an ILEC must "offer[] to *exchange all traffic*" at the same rate. *ISP Remand Order*, ¶ 89 (emphasis added).

162. Core's argument that the FCC's mirroring rule requires Verizon to offer to charge $0.0007/MOU not only for local voice traffic (traffic traditionally subject to reciprocal compensation rates), but also for interstate and intrastate switched access traffic and other traffic not included in Verizon's definition, is directly contrary to the *ISP Remand Order*. In that order, the FCC made clear that when it stated that an ILEC must "offer[] to exchange all traffic subject to section 251(b)(5) at the same rate," it was using the term "section 251(b)(5)" to refer to "telecommunications traffic between a LEC and a telecommunications carrier other than a

CMRS provider that is *not interstate or intrastate access traffic,*" and repeatedly stated that the mirroring rule applies to "local voice" traffic, not to switched access traffic. *ISP Remand Order,* ¶ 89, FN 177 and ¶¶ 90-91.

163. In subsequent proceedings relating to the *ISP Remand Order,* both the FCC and the courts recognized that the offer required by the mirroring rule applies to "local" traffic.[6]

164. Nothing in the FCC's 2011 *ICC Reform Order*[7] allows Core to override the *ISP Remand Order* by retroactively collecting over a decade's worth of uneconomic and market-distorting reciprocal compensation payments for terminating ISP-bound traffic for which Verizon already paid at the FCC's $0.0007/MOU rate for ISP-bound traffic. This result would promote regulatory arbitrage, whereas a key purpose of the *ICC Reform Order* was to reduce arbitrage opportunities in the intercarrier compensation realm.

165. Core's argument that Verizon must retroactively pay it at reciprocal compensation rates for ISP-bound traffic that Verizon has already paid for at $0.0007/MOU is without legal merit.

166. Verizon is entitled to continue to pay Core $0.0007/MOU for ISP-bound traffic.

C. Core is Not Entitled to Bill Verizon Switched Access Either Retroactively or Prospectively on the Traffic at Issue

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[6] *In re Core Communs., Inc.*, 531 F.3d 849, 853 (D.C. Cir. 2008) (the "mirroring rule" applies "only if the ILEC also offers to charge the CLEC the same capped rate to terminate *local* traffic that originates on the CLEC's network") (emphasis added); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179 (Rel. October 18, 2004), *review denied*, 455 F.3d 267 (D.C. Cir. 2006) at ¶ 23 ("The mirroring rule was adopted based on our finding that the record lacked evidence of any material differences between the costs of delivering ISP-bound traffic and *local voice traffic.*) (emphasis added).

[7] *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 716, FN 1228 (Nov. 18, 2011) ("*ICC Reform Order*").

167. As the "proponent of a rule or order," Core bears the burden of proving its entitlement to collect on its switched access claims. 66 Pa. C.S. § 332(a).

168. Pursuant to the *ISP Remand Order*'s $0.0007/MOU rate for ISP-bound traffic, switched access charges do not apply to ISP-bound traffic.

169. Core is not entitled to bill switched access charges on VNXX traffic. *See Global NAPS* at 49.

170. The doctrine of accord and satisfaction prohibits Core's attempt to bill additional amounts for switched access after accepting Verizon's prior payments as payment in full on Core's disputed reciprocal compensation invoices for the same traffic. *See Brunswick Corp. v. Levin*, 442 Pa. 488, 491 (1971).

171. ISP-bound traffic is jurisdictionally interstate, and therefore not subject to intrastate access charges or Core's intrastate switched access tariff. *ISP Remand Order*, ¶ 52.

172. Section 2.5.2 of Core's intrastate switched access tariff, PA P.U.C. No. 4, does not authorize backbilling.

173. Core's failure to credit Verizon for amounts already paid at the $0.0007/MOU rate violates Section 2.5.2 of Core's intrastate switched access tariff, PA P.U.C. No. 4.

174. The Commission lacks jurisdiction to enforce Core's back-bills for interstate switched access. *MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173, 2008 Pa. PUC LEXIS 75 (Opinion and Order entered May 2, 2008); *MilleniaNet Corporation v. PUC*, 2009 Pa. Commw. Unpub. LEXIS 786 (2009); *Daskalakis v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered April 4, 2011) (granting preliminary objections because the complaint relating to

interstate DSL service "was legally insufficient in that it fails to state a claim upon which the Commission can grant relief").

175. Core is not permitted to charge for switched access functions that it does not provide. *ICC Reform Order*, ¶ 970; *AT&T v. YMax*, 26 FCC Rcd 5742 (2011).

176. The Commission does not have authority to award Core "lost revenue" damages to collect amounts that it failed to bill as switched access charges on the MF trunks. (Tr. 338). *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595, 596 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 795-96 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744,748 (Pa. Cmwlth. 1995), *app. denied*, 548 Pa. 662 (1997); *Rabinowitz Glass Co., Inc. v. Verizon Pennsylvania, Inc.*, PUC Docket No. C-2009-2094531, Initial Decision (August 20, 2009) at 5, adopted by Commission Order entered November 20, 2009.

D. Core Has Breached the ICAs in Numerous Respects by its Conduct Relating to Verizon Billings

177. Core breached the dispute resolution and good faith dealing requirements of the ICAs by failing to engage in the required dispute resolutions process before filing its original and amended complaints, by refusing to provide call detail records to support its billings, by refusing to pay at least the undisputed amounts of Verizon's invoices and by failing to escrow or otherwise provide for sufficient funds to pay Verizon if the Commission rules in Verizon's favor.

178. The doctrine of unclean hands bars Core's attempts to benefit from its own bad faith conduct. *See Terracino v. Pa.*, 562 Pa. 60, 69 (2000); *Shapiro v. Shapiro*, 415 Pa. 503, 506 (1964).

III. PROPOSED ORDERING PARAGRAPHS

1. The Formal Complaint and Amended Complaint filed by Core Communications, Inc. against Verizon Pennsylvania LLC and Verizon North LLC at Dockets No. C-2011-2253750 and C-2011-2253787 are denied.

2. The New Matters and Counterclaims to the Formal Complaint and Amended Complaint filed by Verizon Pennsylvania LLC and Verizon North LLC against Core Communications, Inc. at Docket No. C-2011-2253750 and C-2011-2253787 are sustained, consistent with this Opinion and Order.

3. Within thirty (30) days of the effective date of the Commission's Order, Core shall pay Verizon for all unpaid bills for facilities, call termination and directory listings, including the $4,548,753.49 billed through August 6, 2012, plus any additional amounts billed and past due since that date, together with late payment charges as required by the respective ICAs.

4. Core is directed to pay Verizon's undisputed bills for facilities, call termination and directory listings services going forward, and to comply with the dispute resolution provisions of the parties ICAs with regard to any *bona fide* disputes of Verizon's bills.

5. Going forward, Core is ordered to escrow all payments it withholds from Verizon as a result of any *bona fide* disputes of Verizon's bills. Violation of this requirement will subject Core to the possibility of civil penalties.

6. Core is directed to seek negotiation of an amendment to its ICAs if it wishes to be billed at TELRIC rates to the extent the LITGs are being used as local interconnection facilities pursuant to 47 USC § 251(c)(2).

7. Within thirty (30) days of the effective date of the Commission's Order, Core shall issue a refund to Verizon in accordance with the Commission's order, including $2,725,140 for amounts previously overpaid to Core for traffic originated by third parties and merely transited by Verizon from January 2008 through June 2012, plus 35% of all bills paid after June 2012, plus all amounts collected for "estimated" billings over the MF trunks, together with interest at the legal rate of 6% per annum.

8. Core is directed to cease billing Verizon for terminating traffic originated by third-party local exchange carriers, wireless carriers or interexchange carriers, and to limit its billing to traffic originated by Verizon.

9. Core is directed to cease billing Verizon reciprocal compensation or switched access on ISP-bound and VNXX traffic.

10. Core is directed to cease claiming credit under the 3:1 ratio set forth in the FCC's *ISP Remand Order* for any traffic that is not Core-originated and also locally-dialed.

11. This case shall be marked closed, but the Commission retains jurisdiction to monitor and enforce compliance with the terms of this Order.

Respectfully submitted,

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Dated: January 23, 2013

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