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February 6, 2013

VIA ELECTRONIC FILING

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Core Communications, Inc. v. Verizon of Pennsylvania, Inc. and Verizon
North, LLC
Docket Nos. C-2011-2253750 and C-2011-2253787**

Dear Secretary Chiavetta:

Enclosed for filing please find Core Communications, Inc.'s Consolidated Expedited Motion to Compel Supplemental Discovery Responses, Petition to Reopen the Record, and Motion for Sanctions. Copies of this filing have been served upon the parties of record in accordance with the attached Certificate of Service.

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

Sincerely,

STEVENS & LEE



Michael A. Grtin

Enclosures

cc: Certificate of Service
Honorable Susan Colwell, Administrative Law Judge (via email and Federal Express)

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

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC. :
Complainant :

v. :

Docket No. C-2011-2253750
Docket No. C-2011-2253787

VERIZON PENNSYLVANIA INC. :
and :

VERIZON NORTH, LLC :
Respondents :

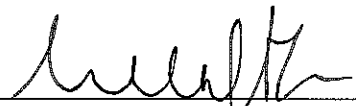
NOTICE TO PLEAD

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

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

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

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COUNSEL FOR CORE
COMMUNICATIONS, INC.

DATE: February 6, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC. Complainant	:	
v.	:	Docket No. C-2011-2253750
VERIZON PENNSYLVANIA INC. and	:	Docket No. C-2011-2253787
VERIZON NORTH, LLC. Respondents	:	

**CORE COMMUNICATIONS, INC.’S CONSOLIDATED EXPEDITED
MOTION TO COMPEL SUPPLEMENTAL DISCOVERY RESPONSES, PETITION TO
REOPEN THE RECORD, AND MOTION FOR SANCTIONS**

Core Communications, Inc. (“Core”), pursuant to 52 Pa. Code §§5.103, 5.342, 5.571, 5.371, and 5.372, hereby moves for an Order:

- Directing Verizon to supplement its discovery responses to include a telecommunications traffic analysis report (“Traffic Report”), which was in Verizon’s possession since July 2011 and which Verizon did not provide to Core in discovery, even though such report was directly responsive to multiple discovery requests propounded by Core, and directly relevant to Verizon’s counterclaims in this case;
- Reopening the record in this proceeding to allow for the admission of the Traffic Report via Supplemental Testimony; and
- Imposing sanctions on Verizon for its conduct in failing to disclose the existence of the Traffic Report and failing to provide it in discovery.

In light of the upcoming deadline for the filing of Reply Briefs in this matter, Core respectfully requests that the Consolidated Motion and Petition be considered on an expedited basis. In support of this Consolidated Motion and Petition, Core states as follows:

1. As set forth at length in Core's Amended Complaint and Direct Testimony in this proceeding, Verizon began asserting that Core's bills to Verizon for intercarrier compensation were invalid in July of 2011.

2. On June 14, 2011, Verizon requested that Core produce CDRs for the traffic Verizon sends to Core. On June 24, 2011, Verizon followed up on its request.

3. On June 25, 2011, Core responded that it believed Verizon already had the data it was requesting.

4. On June 27, 2011, Verizon stated that it needed the data to verify that Core was billing Verizon correctly. Verizon claimed that its own data showed volumes that are much less than Core was billing.

5. On June 30, 2011, Core offered to exchange records with Verizon, so that the parties could mutually identify any discrepancies, but Verizon reiterated its unilateral demand that Core produce CDRs for the traffic Verizon sends Core, and did not agree to produce its own records.

6. Verizon claimed that it does not maintain data relating to its outbound traffic, and was entirely dependent on Core to maintain records for such traffic. Core responded by asking how Verizon had determined there was a discrepancy if it did not have records.

7. On July 1, 2011, Verizon, ignoring Core's concerns, simply reiterated its unilateral demand for CDRs.

8. On July 5, 2011, without warning, Verizon notified Core and its affiliates that it was “withholding payment” on Core’s May 31, 2011 intercarrier compensation invoices. Verizon’s notices declared that the entire amount of reciprocal compensation billed by Core to be “invalid,” stating that “the traffic billed... is not in fact compensable to Core as reciprocal compensation traffic.” Verizon’s notices provide no explanation for its never-before-raised conclusion that Core’s intercarrier compensation bills were invalid. Copies of Verizon’s notices are attached to the Affidavit of Bret Mingo as Tab B, attached to Core’s Amended Complaint in this proceeding.

9. On July 8, 2011, Core sent letters to Verizon, noting that Verizon failed to provide any documentation to support its non-payment and failed to provide any citation to any ICA provision or applicable law to support its non-payment.

10. Verizon provided no basis for its non-payment. Instead Verizon sent Core a letter dated July 12, 2011, asking that Core “thoroughly investigate these disputes” even though Core had already indicated that Verizon’s “disputes” were vague and nonsensical.¹ Then, Verizon sent a new round of letters dated July 18, 2011, essentially re-stating the same allegations contained in its letters dated July 1.²

11. In its Answer to Petition for Emergency Relief filed on August 1, 2011, Verizon stated that it “remains unable to substantiate that Core's bills actually reflect any services for any traffic compensable under the parties' ICAs.” Answer, at 3. Verizon also stated that it “simply does not believe that the traffic billed by Core is compensable under the ICAs.” *Id.*, at 7.

12. In its New Matter, filed August 16, 2011 and verified by Verizon witness William Munsell, Verizon stated that “[w]ithout [Core's] records, Verizon remains unable to substantiate

¹ Verizon’s July 12, 2011 letter is attached to the Affidavit of Bret Mingo as Tab D.

² Verizon’s July 18, 2011 letters are attached to the Affidavit of Bret Mingo as Tab E.

that Core's bills reflect any services for any traffic compensable under the ICAs," New Matter, ¶ 49, and that "Verizon's limited visibility into the nature of the traffic being terminated by Core has raised suspicions as to the legitimacy of the traffic. For example, in one review, 92 percent of all calls, which routed over SS7 capable trunks, terminated to Core were directed to less than 10 numbers." *Id.*, at ¶ 115.

13. In discovery, Core submitted multiple requests for information about analyses related to the assertions made in Verizon's August 16, 2011 pleading. For example, Core Interrogatory Set II, Nos. 21 and 22 asked:

II-21 "Reference Verizon's August 16, 2011 Answer, New Matter and Counterclaims Seeking Affirmative Relief, ¶ 113 and Verizon's Response to Core Set I Interrogatory No. 9. Identify and describe any and all analyses, data, materials or studies conducted by or on behalf of Verizon, as of August 16, 2011, which support the statements set forth in this paragraph. In addition:

(a) identify who conducted the analyses, data, materials or studies conducted by or on behalf of Verizon which support the statements set forth in this paragraph

(b) specify when the analyses, data, materials or studies conducted by or on behalf of Verizon which support the statements set forth in this paragraph were conducted

If your answer to all or any part of this interrogatory is "not applicable," please explain in detail why Verizon's statements in a pleading submitted to the Pennsylvania Public Utility Commission is "not applicable" in the same proceedings in which it was submitted.

In addition, identify and produce all documents which support your answer in material part."

II-22 "Reference Verizon's August 16, 2011 Answer, New Matter and Counterclaims Seeking Affirmative Relief, ¶ 115 and Verizon's Response to Core Set I Interrogatory No. 10. Identify and describe any and all analyses, data,

materials or studies conducted by or on behalf of Verizon, as of August 16, 2011, which support the statements set forth in this paragraph.

In addition:

(a) identify who conducted the analyses, data, materials or studies conducted by or on behalf of Verizon which support the statements set forth in this paragraph

(b) specify when the analyses, data, materials or studies conducted by or on behalf of Verizon which support the statements set forth in this paragraph were conducted

If your answer to all or any part of this interrogatory is "not applicable," please explain in detail why Verizon's statements in a pleading submitted to the Pennsylvania Public Utility Commission is "not applicable" in the same proceedings in which it was submitted.

In addition, identify and produce all documents which support your answer in material part."

14. Verizon responded to the above-referenced discovery requests by providing descriptions of three separate analyses performed by Verizon: The first analysis was conducted in January 2011; the second analysis was conducted in June, 2011; the third analysis was conducted in May, 2012.

15. Core's affiliate CoreTel Virginia, LLC ("CoreTel") is involved in litigation before the U.S. District Court for the Eastern District of Virginia with Verizon's Virginia affiliates (which litigation commenced in July 2012). In the course of that litigation, Verizon has claimed that the files of the Pennsylvania litigation are relevant and have demanded production of these files in the Virginia litigation. As a result, undersigned has been engaged as co-counsel for CoreTel to assist in the litigation in the Eastern District of Virginia, as needed.

16. In the litigation in Virginia, Verizon produced a "Traffic Report" on or about January 28, 2013 as a confidential document. The Traffic Report is an Excel spreadsheet

comprised of 11 tabs. This Traffic Report analyzes traffic between Core and Verizon in Pennsylvania as well as traffic involving other carriers. As undersigned counsel is also counsel to CoreTel, this document was shared with undersigned counsel to assist CoreTel in understanding the document for the purposes of the Virginia litigation.³

17. It has become evident to Core that upon review of the Traffic Report, there is no denying that the Traffic Report is directly relevant to the issues in this case, that it was available to Verizon prior to the commencement of the Pennsylvania litigation, and that it should have been produced by Verizon prior to the close of the record in this case. Without elaborating upon or revealing the actual contents of the Report, Core represents that it is relevant to the time frame and traffic at issue in this case, as well as Verizon's analysis of the traffic between the parties and Verizon's representations concerning its ability to analyze Core's bills, the legitimacy of Core's bills, and the alleged lack of transparency with respect to the traffic that Verizon sent to Core. The Report is also directly responsive to Core Interrogatories II-21 and II-22, yet it was not disclosed or provided in response to those Interrogatories.

18. To be clear, the Traffic Report is not one of the three analyses referenced by Verizon in response to Core's Interrogatories. Had Verizon informed Core about this additional analysis, Core could have and would have certainly specifically demanded that the Traffic Report be produced immediately in this case.

19. Before filing the present Motion, Core contacted counsel for Verizon and requested that the Traffic Report be provided as a supplemental discovery response, and that it be stipulated into the record in this case. Verizon has refused Core's request.

³ Mr. Gruin has served as Core's counsel on state and federal regulatory matters since 2005 and regularly provides advice and counsel to Core Communications Inc. and its affiliates in connection with disputes with ILECs under the Telecommunications Act of 1996.

Motion to Compel

20. The Commission's regulations at 52 Pa. Code § 5.342(f) state that parties remain under a continuing obligation to timely provide answers to interrogatories or subparts of interrogatories that were not objected to.

21. The instructions to Core's discovery requests to Verizon stated that "These interrogatories and requests for documents are propounded on a continuing basis so as to require you to submit supplemental answers and/or documents should additional information become known that would have been includable in your answers and document production had they been known or available, or should information and/or documents supplied in the answers or production prove to be incorrect or incomplete."

22. The Commission's regulations at § 5.342(f) permit a presiding office to compel a party to provide an answer to an Interrogatory, upon the Motion of the propounding party. While this rule requires the filing of a Motion to Compel within 10 days of service of an Objection, Core submits that it is also applicable to a scenario in which a party fails to provide full and complete answers to a discovery request and refuses to supplement its answers after being requested to do so by the propounding party.

23. Core's failure to compel the release of the Traffic Report earlier is excused by the fact that Core was unaware of the Report's existence until January 28, 2013. Core contacted Verizon's counsel on February 4, 2013 to confirm that the report had not be provided in the Pennsylvania proceeding, and subsequently requested that the Report be provided as a Supplemental Discovery Response.

24. Verizon has refused Core's request.
25. The Traffic Report at issue analyzes traffic between Core and Verizon in Pennsylvania for the time periods that are at issue in this proceeding.
26. The Traffic Report is directly relevant to the issues in this case, and should have been produced by Verizon prior to the close of the record. The Report was in Verizon's possession prior to its August 16, 2011 pleading, it is clearly relevant to the time frame and traffic at issues in this case, as well as Verizon's analysis of the traffic between the parties and Verizon's representations concerning its ability to analyze Core's bills, the legitimacy of Core's bills, and the alleged lack of transparency with respect to the traffic that Verizon sent to Core.
27. More importantly, the Traffic Report is directly responsive to Core Interrogatories II-21 and II-22, yet was not provided to or disclosed to Core.
28. Accordingly, for the reasons set forth above, Core respectfully requests that Verizon be ordered to provide a full copy of the Traffic Report as a supplemental discovery response no later than February 8, 2013.

Petition to Reopen Record

29. At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence. The record may be reopened for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding. See 52 Pa. Code § 5.571.
30. The Verizon Traffic Report is probative on many of the central issues in this case, including Verizon's assertions that it required records from Core in order to substantiate Core's

bills and Verizon's claims regarding the nature and compensability of the traffic that Verizon sent to Core.

31. The Traffic Report directly contradicts numerous assertions made by Verizon in its sworn testimony and verified pleadings.

32. The existence of the Traffic Report also demonstrates that Verizon acted in bad faith in disputing Core's bills and claiming that all of the traffic that Verizon sent to Core was non-compensable.

33. The Traffic Report supports many of the assertions made by Core in its verified pleadings and testimony.

34. The existence of the Traffic Report casts doubt on the credibility of Verizon's witnesses in this proceeding, as well as the methodologies they employed in their written testimony.

35. Exclusion of the Traffic Report from the record would reward Verizon's negligent or intentional failure to provide the report to Core in discovery, and would unfairly prejudice Core.

36. For all of the reasons set forth above, the record in this case should be re-opened for the limited purpose of accepting supplemental testimony from Core, include the presentation of the Traffic Report as a supplemental exhibit and a discussion of Core's observations regarding the Report.

37. Core also respectfully requests that the briefing schedule be modified to allow for the submission of the aforementioned supplemental testimony and supplemental exhibit into the record so that it can be addressed in Reply Briefs.

38. Reply Briefs are currently due on February 13, 2013. In light of that pressing deadline, Core respectfully requests an extension of the deadline for Reply Briefs until ten days after submission of the Supplemental Testimony.

Motion for Sanctions

39. The Commission's regulations at 52 Pa. Code 5.371 and 5.372 permit a presiding officer to issue sanctions against a party for failure to file sufficient answers or otherwise respond to discovery requests.

40. Permissible sanctions include entering a judgment against the disobedient party or individual advising the disobedience, and any order with regard to the failure to make discovery as is just.

41. Verizon's failure to disclose the Traffic Report and provide it in response to Core's discovery requests warrants the imposition of sanctions against Verizon.

42. Verizon's failure to disclose the Report that is clearly within the scope of multiple Core discovery requests and which directly contradicts the assertions of its own witness is an egregious violation of the Commission's discovery regulations.

43. Verizon's failure to disclose the Report in a timely manner has wasted the resources of the parties and the Commission, and undermines the integrity of this proceeding.

44. Verizon's refusal to produce evidence gives rise to an inference that the evidence withheld is unfavorable to Verizon's position in the case. See, International Union (UAW) v. NLRB, 459 F.2d 1329, 1336, 1338 (D.C. Cir. 1972); see also Alabama Power Co. v. FPC, 511 F.2d 383, 391 n.14 (D.C. Cir. 1974) (in regulatory proceedings, "a party having control of

information bearing upon a disputed issue may be given the burden of bringing it forward and suffering an adverse inference from failure to do so”).

45. It is appropriate to impose sanctions under 52 Pa. Code §§ 5.371 and 5.372 to ensure that Core will not suffer unfair prejudice.

46. For the reasons set forth above, the appropriate sanction for Verizon’s behavior is the dismissal of Verizon’s counterclaims, with prejudice.

47. At the very least, the Commission should dismiss Verizon’s Counterclaims III-VI, which involve Core’s reciprocal compensation billings to Verizon and the parties’ discussions thereof. The Traffic Report has profound implications for each of these claims, as it documents not only what Verizon knew and when it knew it, but it also undermines the very traffic sorting methodologies which support Verizon’s claim for a reciprocal compensation.

48. There are numerous Commission cases which authorize the striking of complaints for the contemptuous failure to respond to discovery. See Merchant v. The Bell Telephone Company of Pennsylvania, Docket No. C-00935253, Commission Order entered June 20, 1994; Application of Tyrone E. Hartley, t/d/b/a T's Automotive Service, Docket No. A-00112575, Commission Final Order entered August 6, 1996; Application of Karen Lee Miller, Docket No. A-00116067, Commission Final Order entered March 27, 2000; Application of Patrick M. Kelsey, Docket No. A-00116366, Commission Final Order entered May 18, 2000; Application of Besteastern Limousine, Inc., Docket No. A-00118593, Commission Final Order entered November 14, 2002. See also, Samick et al. v. Pennsylvania Electric Company, Docket Nos. C-20043921, C-20043923 and C-20043925, Commission Final Order entered October 25, 2005. See also Application of Choice Cab Co., 2004 WL 3120098 (affirming ALJ’s dismissal of application for failure to answer interrogatories); Application of Majesty Co., Dkt. No. A-

00115254F0001 Am-B, 2004 WL 1331320, Pa. P.U.C. Mar. 11, 2004, (Opinion & Order) ;
Majkowski v. Columbia Gas of Pa., Inc., Dkt. No. F-01087321, (Jan. 15, 2003 Initial Decision
dismissing complaint with prejudice for failure to respond to discovery requests as directed by
the ALJ, Final Order entered March 28, 2003).

49. Verizon's behavior in this case is egregious and contemptuous, and as such the
appropriate sanction is dismissal of some or all of Verizon's counterclaims, with prejudice.

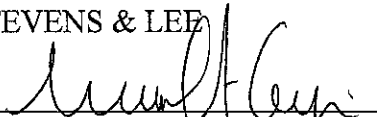
Conclusion

For all of the foregoing reasons, Core respectfully requests that the presiding ALJ
issue an Order:

- Directing Verizon to supplement its discovery responses to include the Traffic
Report which was in Verizon's possession since July 2011 and which Verizon did
not provide to Core in discovery, even though such report was directly responsive
to multiple discovery requests propounded by Core;
- Reopening the record in this proceeding to allow for the admission of the Traffic
Report via Supplemental Testimony; and
- Imposing sanctions in the form of dismissal of some or all of Verizon's
counterclaims, with prejudice, for Verizon's failure to disclose the existence of
the Traffic Report and failing to provide it in discovery.

Respectfully Submitted,

STEVENS & LEE


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COMMUNICATIONS, INC.

DATE: February 6, 2013

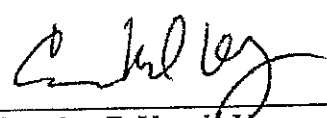
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v.	:	Docket No. C-2011-2253750
VERIZON PENNSYLVANIA INC. and	:	Docket No. C-2011-2253787
VERIZON NORTH, LLC Respondents	:	

VERIFICATION

I, Christopher F. Van de Verg, General Counsel of Core Communications, Inc., verify that the statements and the factual allegations contained in the foregoing Motion are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

2/5/2013
Date



Christopher F. Van de Verg

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.
Complainant

v.

VERIZON PENNSYLVANIA INC.
and

VERIZON NORTH, LLC
Respondents

Docket No. C-2011-2253750
Docket No. C-2011-2253787

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the enclosed Consolidated and Expedited Motion and Petition upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

VIA EMAIL ONLY


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February 6, 2013



Michael A. Gruin, Esq.