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March 18, 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 the Public Version of the Reply Brief of Core Communications, Inc. in the above-referenced matter. The Proprietary Version of the Brief is being submitted via Federal Express Overnight delivery. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service.

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

Sincerely,

STEVENS & LEE



Michael A. Gruin

Enclosures

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

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**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

**REPLY BRIEF
OF
CORE COMMUNICATIONS, INC.
PUBLIC VERSION**

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Dated: March 18, 2013

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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	:	
	:	

REPLY BRIEF OF CORE COMMUNICATIONS, INC.

I. INTRODUCTION AND COUNTER-STATEMENT OF THE CASE

Verizon's Main Brief is replete with the type of irrelevant derogatory statements about Core and its business plan that have permeated this record since the outset of this proceeding. Perhaps Verizon believes that these attacks will tempt the Presiding Officer and the Commission to avoid wading into the admittedly complex factual and legal issues that are involved in this dispute. But regardless of the amount of vitriol that Verizon aims at Core, Verizon cannot avoid several key facts that are devastating to its positions on the two major categories of disputes involved in this case. The fact is that the evidence submitted in this case casts serious doubt on the credibility of Verizon and its witnesses, and Verizon was unable to come close to meeting the burden of proving any of the wild allegations that appeared in its pleadings in this case.

With respect to the Core's intercarrier compensation billings to Verizon for telecommunications traffic delivered from Verizon to Core, the record is clear that:

- Core has fully substantiated its billings to Verizon, and those billings are made in exact accordance with the terms of the ICAs.
- Verizon had no legitimate basis in July, 2011 to claim that 100% of the traffic that it sent to Core was non-compensable.
- More importantly, Verizon *knew* that its claim of non-compensability was bogus, based on information Verizon had in its possession on July 19, 2011. Yet Verizon continued to submit verified pleadings and sworn testimony throughout the case which maintained the clearly erroneous position that all of the traffic was non-compensable.
- Verizon's justification for withholding payment to Core changed multiple times throughout this proceeding, demonstrating that Verizon had no valid basis for disputing Core's bills in July, 2011.
- Verizon's conclusions about Core's bills were based on grossly erroneous assumptions that were unequivocally disproven at the hearing. By contrast, Core's positions on its billings to Verizon have remained steadfastly consistent since day one, and have been bolstered by multiple analyses provided throughout the proceeding.

With respect to Verizon's billings to Core for facilities that Verizon claims it provisioned to Core, the record is clear that:

- Verizon's counterclaim for payment of its facilities bills was grossly overstated from the outset, yet Verizon refuses to acknowledge this fact and persists in touting a hugely inflated demand in the face of fatal jurisdictional and statute of limitations problems.

- The large majority of Verizon's claim relates to charges that fell out of the period of limitations years ago, and Verizon never sought any legal recourse for its unpaid bills until it filed its Counterclaim in this case, by which time some of the amounts claimed were originally billed over nine years prior.
- Verizon's designated witness was unable to authenticate Verizon's own bills to Core.
- Verizon admitted that much of its claim is premised on amounts billed as far back as 2002, and that it no longer maintains any billing detail at all for charges prior to January 1, 2008.
- Less than 10% of Verizon's facilities' claim relates to intrastate access charges that arose within the Statute of Limitations.
- Verizon never billed Core the proper rate for its facilities, and never issued Core a bill at the appropriate TELRIC rates.
- Core demonstrated that it disputed Verizon's bills immediately upon issuance, and consistently did so for nine years for valid legal and technical reasons.

II. PROCEDURAL HISTORY

Core restates and incorporates the Procedural History from its Main Brief as if set forth at length.

BEGIN PROPRIETARY Following the filing of Main Briefs in this matter, the parties were simplified and by agreement of the parties to involve a proprietary data set known as the Traffic Track Report (hereinafter referred to as the "Traffic Track Report") being withheld by Verizon from both parties which address the Traffic Track Report. The Traffic Track Report was not to be exchanged between Core and Verizon on certain SS7 trunks in the month of May 2011. The Traffic Track Report was generated on July 18, 2011. The Traffic Track Report indicates that

the following MIIUs were sent from Verizon switches to Core switches in Philadelphia in May, 2011 over the 957 trunks:

Teter	8,479,509.00
Harrington	16,552,376.00
Philadelphia	71,753,288.00

The Traffic Track Report fills a critical gap in the timeline of events. Its issuance on July 19, 2011 clearly exposes the deficiencies of Verizon's position, and highlights Verizon's bad faith in withholding payment on Core's May 31, 2011 invoice to Verizon. The existence of the Traffic Track Report, the timing of the Report, and the information reflected on the Report all corroborate Core's claims in this proceeding, and directly undermine most, if not all, of Verizon's claims related to the traffic exchanged between the parties prior to the resolution of this dispute. **END PROPRIETARY** With the record now complete, a summary timeline of the dispute between the parties reads as follows¹:

- **May 31, 2011:** Core issues its reciprocal compensation invoices to Verizon for locally-dialed telephone traffic, for the period May 1-31, 2011.
- **June 3, 2011:** Verizon receives Core's invoices on June 3, 2011
- **June 14, 2011:** Verizon asks Core to produce CDRs for traffic sent from Verizon to Core.
- **June 25, 2011:** Core responds to Verizon's request, stating that Verizon already had the data it was requesting.
- **June 27, 2011:** Verizon reiterates its request for Core's records. Verizon claims that its own data showed volumes that are much less than Core is billing.
- **June 30, 2011:** Core offers to exchange records with Verizon. Verizon reiterates its unilateral demand that Core produce CDRs for the traffic Verizon sends Core, but did not agree to produce its own records. Verizon claims that it does not maintain data relating to its outbound traffic, and was entirely dependent on Core to maintain records for such traffic.

¹ All references are from Core Statement 1.0, Direct Testimony of Bret Mingo, pp. 19-24, unless otherwise indicated.

- July 1, 2011: Verizon reiterates its unilateral demand for CDRs.
- July 2, 2011: Payment is due on Core's May 31, 2011 invoices
- July 5, 2011: Verizon notifies Core and its affiliates that it was "withholding payment" on Core's May 31, 2011 reciprocal compensation invoices. Verizon's notices declare 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, and the notices made no reference to any provision in the ICA or any other authority which would provide Core with the basis for the non-payment.
- July 8, 2011: Core sends 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.
- July 12, 2011: Verizon sends a letter asking Core to "thoroughly investigate these disputes" even though Core had already indicated that Verizon's "disputes" were vague and nonsensical.
- July 18, 2011: Verizon sends a new round of letters essentially re-stating its letters dated July 1.
- **BEGIN PROPRIETARY** July 19, 2011: Verizon prepares the Traffic Track Report. The Traffic Track Report clearly reflect significant amounts of SS7 traffic being sent to the SS7 trunks from Verizon to Core in the Harrisburg and Philadelphia areas. This equal to or exceeding the amounts of SS7 traffic that Core billed Verizon. **END PROPRIETARY**²
- July 22, 2011: Core files its formal Complaint along with a Petition for Interim Emergency Relief.
- August 1, 2011: Verizon files its Answer to Core's Petition for Emergency Relief. Verizon's Answer states that "Verizon remains unable to substantiate that Core's bills actually reflect any services for any traffic compensable under the parties' ICAs." (p.3) and "Verizon simply does not believe that the traffic billed by Core is compensable under the ICAs". (p. 7);
- August 16, 2011: Verizon files its verified Answer, New Matter and Counterclaims, and Preliminary Objections to Core's Complaint. Verizon's Answer and New Matter includes the following statements:
 - Paragraph 49 : " Without [Core's] records, Verizon remains unable to substantiate that Core's bills reflect any services for any traffic compensable under the ICAs."
 - Paragraph 115: "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 of SS7 capable trunks, terminated to Core were directed to less than 10 numbers."
- August 23, 2012: Verizon prepares Direct Testimony stating that 28% of calls from Verizon to Core on the SS7 network were not compensable.³

² Joint Proprietary late-filed Exhibits 1, 2, and 3.

³ Verizon Statement 1.0, *passim*.

- October 4, 2012: Verizon prepares Rebuttal Testimony stating that 35% of the calls from Verizon to Core on the SS7 network were not compensable.⁴
- October 24, 2012: Core submits Surrebuttal Testimony reflecting that it billed Verizon for the following amounts of MOUs for the Erie, Harrisburg, and Philadelphia LATAs for the May 2011 time period, which in all cases are equal to or less than the amounts reflected on the **BEGIN PROPRIETARY** Traffic Usage Report **END PROPRIETARY** for the identical time frame:
 - Erie: 8,466,142.98
 - Harrisburg: 16,477,752.60
 - Philadelphia: 17,704,341.95

III. ARGUMENT

A. Reply to Verizon Introduction

Styled as introductory matter, the opening passage of Verizon’s main brief (“VZ M. Br.”), at 1-10, simply highlights its passionate animus against Core. Largely devoid of specific legal argument, Verizon essentially argues that the Commission should not bother with Core’s claims because Core’s business plan is reprehensible. Verizon complains that Core “generates most its revenue from traffic termination charges imposed on other carriers.” VZ M. Br., at 1. However, there is no legal consequence to these remarks. They simply reflect Verizon’s motive, which is to impugn and marginalize Core. But, of course, the Commission has reviewed similar assertions in the context of Core’s rural certification case, and rejected them.⁵

Verizon accuses Core of treating “its entire relationship with Verizon as a ‘game.’” VZ M. Br., at 1. But with the record in this case now complete, it has to be recognized that Verizon was the party playing games all along here, not Core. Verizon has repeatedly changed the basis for its putative disputes of Core’s bills, and ultimately its witnesses admitted that Verizon never had a valid basis for claiming that all of the Verizon traffic sent to Core was non-compensable.

⁴ Verizon Statement 2.0, at pp. 68-69.

⁵ See generally, Opinion & Order, *In the Matter of the Application of Core Communications, Inc.*, PA PUC Docket No. A-310922F002, AmA., (entered December 4, 2006)(“*Core Certification Order*”).

First, Verizon disputed 100% of Core's bills, apparently without any basis whatsoever. Second, Verizon disputed 92% of Core's bills, based on the false and unsupported premise that Core was self-generating traffic to itself. Third, Verizon raised more nuanced concerns about the presence of alleged third-party carrier and toll traffic in the traffic it sends Core and for which Core bills Verizon. When Core addressed Verizon's concerns and rebilled the traffic, Verizon refused to pay the new invoices, claiming that its previous payments barred Core from correcting its invoices—even as Verizon itself sought to recoup those previous payments.

The record in this case now includes a **BEGIN PROPRIETARY** *[REDACTED]* **END PROPRIETARY** that Verizon generated shortly after it began to dispute and withhold payment on 100% of Core's bills, even as it claimed, in its correspondence with Core, that it had no data to substantiate Core's bills, and was entirely dependent on Core to analyze the traffic Core was billing. **BEGIN PROPRIETARY** *[REDACTED]* **END PROPRIETARY** *[REDACTED]* fact, had been monitoring the traffic using a sophisticated, SS7-based system which was designed to identify potential billing issues including third-party carrier issues. **END PROPRIETARY**. Yet, even as discussions continued, even as Core demanded an explanation for the disputes, even as Core filed an Emergency Petition with the Commission, and on through the hearing on that petition, *Verizon never shared its findings with Core or the Commission*. Therefore, Core had no way to respond to Verizon's concerns, and the entire dispute resolution process outlined in the ICA never had a chance. Verizon's claims of unclean hands clearly apply to itself—not Core.

Verizon claims Core “systematically billed and collected from Verizon unsubstantiated charges,” VZ M. Br., at 1., and that Core “had for years been taking ‘self-help’ to a new level” by refusing to pay Verizon's bills. *Id.* But Core's bills are supported by mountains of call record

data, and Verizon paid them without complaint for seven years before abruptly stopping payment in July, 2011. Verizon's bills, on the other hand, are for services Core never ordered and cannot effectively use. Indeed, many of the third-party traffic issues Verizon has put forward in this case trace back to defects in the trunking arrangements Verizon has implemented over Core's objections. At bottom, Core has steadily disputed Verizon's bills—in their entirety—since 2002. For self-help to work, the carrier must actually receive services it values. If Verizon truly believed Core was withholding validly billed amounts, surely Verizon would have filed a claim. Instead, Verizon waited until the moment Core was compelled to seek injunction relief to pursue its multi-million dollar, nine-year old facilities claims.

Verizon Main Brief continues to harp on Core's "initial lack of cooperation with regard to providing billing records." VZ M. Br., at 3. This is pure hypocrisy. Having been stonewalled time and again by Verizon, Core simply asked that the parties exchange records, rather than Core unilaterally providing, as it had in the past. In particular, Core produced CDRs relating to its outbound traffic to Verizon in January, 2011. When Verizon identified issues with those records, Core asked Verizon to share its own call records. Then Verizon simply stopped all further communication with Core—short-circuiting the very dispute resolution procedures it pretends now to uphold. Core has provided records; Verizon never has. The record in this case reflects contains no mention of Verizon sharing the results of its **BEGIN PROPRIETARY** Traffic Track Report **END PROPRIETARY** with Core during the dispute process or thereafter, even though we now know that **BEGIN PROPRIETARY** Verizon had this Report in its possession on July 19, 2011 and even though that report was directly relevant to the dispute. **END PROPRIETARY** In a related vein, Verizon claims that it "discovered in the spring of 2011 that Core had been significantly overcharging Verizon..." *Id.*, at 4. If that is the case,

Verizon has provided no factual evidence about what it discovered “in the spring of 2011,” or that it shared its concerns with Core as part of the dispute resolution process Verizon claims it followed.

Verizon takes issue with Core amending its complaint after mediation ended and litigation resumed. VZ M. Br., at 5. But as Verizon surely knows, Core amended its Complaint in response to Verizon’s own pre-mediation claim that Core should have billed some of its reciprocal compensation minutes as switched access minutes. Core rebilled the minutes Verizon claimed should have been billed as switched access instead of reciprocal compensation, and Verizon refused to pay those bills. So, Core amended its complaint accordingly.

Verizon complains about “traffic stimulation practices that the FCC has long sought to curtail” and “carriers that are forced to pay Core for the termination of traffic to its customers” VZ M. Br., at 7. Verizon claims that “[a] provider engaged in [traffic stimulation] typically does not charge the ISPs and conference call providers much, if anything, to use its services.” *Id.* But the record in this case reflects that Core bills all of its customers pursuant to its local exchange tariffs and contracts. Core Stmt. 1.0, at 2; Core Stmt. 3.0, at 8. Verizon claims that Core “has endeavored to increase its incoming traffic in Pennsylvania.” *Id.* But Core has every right to increase traffic on its network; that is what businesses do. Again, these complaints, which are not founded in any legal basis, simply illustrate Verizon’s deep and abiding dislike for being required to exchange traffic with Core.

Verizon complains that it is required to pay Core’s bills during the pendency of this case; whereas Core is not required to pay Verizon’s bills. VZ M. Br., at 8. This is a superficial comparison. Verizon always paid Core’s bills for seven years, until it came up with a bogus pretext to stop, upon which Core immediately pursued legal action to obtain payment. By

contrast, although Core has repeatedly sought to work with Verizon to fix both the bills and the underlying facilities, Core has always disputed and never paid Verizon's bills since they began being issued nine years ago, and Verizon never pursued collection of its bills until its Counterclaim in this matter. Verizon complains that Core has insufficient funds to pay Verizon's access bills. *Id.*, at 9. Verizon fails to mention its own part in Core's financial difficulties. Other than the reciprocal compensation invoices the Commission specifically required Verizon to pay, Verizon pays none of Core's bills, and has not done so since 2011.

B. Verizon's Facilities Claims are Rife with Deficiencies

The trunking arrangements which comprise the bulk of Verizon's facilities claims in this case are defective on multiple levels, so defective, in fact, that they are at the root of Verizon's own claims with respect to alleged overbilling for third-party traffic and intraLATA toll traffic. As Core demonstrated in its main brief, Core had consistently requested local interconnection trunks pursuant to the Act, the FCC's rules, the ICA, and now, *Talk America*. But Verizon has only ever provisioned special access trunks designed for IXCs. As a result, the trunks have been billed incorrectly, and they don't function properly. *See generally*, Core Main Brief ("Core M. Br."), at 17-25.

Verizon laughably still claims "\$4,548,753.49 due from Core" primarily for "facilities Core used to transport traffic." VZ M. Br., at 10. Verizon somehow still has the gall to make this assertion in its Brief, even though Verizon's designated witness was unable to authenticate Verizon's own bills to Core, and admitted on the record that "I don't think I've actually looked at [Core's] bill."⁶ Verizon further admitted that it does not store any records relating to its intercarrier compensation bills to Core for more than five (5) days, and refused on numerous

⁶ Tr., 495 (Verizon witness Peter D'Amico), and Tr., 497 (Verizon witness Peter D'Amico).

occasions to provide call detail records (CDRs) to support even one month's worth of billings.⁷

This fundamental evidentiary gap is, by itself, fatal to Verizon's claims.

Furthermore, as Core demonstrated in its main brief, Verizon's claim for its facilities bills is almost entirely outside the applicable statutes of limitation and/or outside the Commission's jurisdiction. See Core M. Br., at 22-23. Further, Core "used" only a very small segment of the facilities for which Verizon billed. Verizon "used" the ATCs to transport a variety of traffic—including locally-dialed traffic it *should have sent over the LITGs from Verizon to Core*, for which it cannot bill Core. This category includes the locally-dialed traffic from AT&T, One Communications, and XO Communications which were at issue in the cases Verizon references elsewhere in its brief. See, VZ M. Br., at 31-32. Core only ever used the SS7 ATCs and outbound LITGs, but even these are of limited value and so Core makes limited use of them.

It is interesting to contemplate what Verizon itself claims that it provided:

(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"), VZ M. Br., at 10; and

(2) *two-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"). *Id.*, at 10-11.

⁷ Tr., at 474 (Verizon witness Peter D'Amico), Exhibit CORE R-12 (Verizon Response to Core Interrogatory IV-1), subparts (c) and (d).

LITGs

Notably, Verizon itself refers to these trunks as “Local,” yet provisions and bills them pursuant to interstate and (to a lesser degree) intrastate special access tariffs. As for pricing, and putting aside the *Talk America* issue momentarily, Verizon never explains, in the first instance, why a “local” facility should be billed at *access* or *interstate* rates. Verizon claims Core could have ordered interconnection as UNEs, but Core wanted *local interconnection facilities* under section 251(c)(2) of the Act, not UNEs under section 251(c)(3) of the Act. The Supreme Court has fully recognized the distinction: that the FCC has discontinued entrance facilities as a UNE, but Verizon’s obligation to provide entrance facilities as an interconnection service remains intact.

As for functionality, the multi-frequency (“MF”) LITGs never worked and were never used. Core M. Br., at 23. The SS7 LITGs work somewhat, but still have the CIC insertion problem, so Core cannot fully use them for the purposes set forth in the ICA. *Id.*, at 24. Core never sends traffic to Verizon over LITGs to third-party carriers, because of the CIC insertion problem. *Id.* This clearly limits the range of services Core can provide to its wholesale customers.

ATCs

Verizon subtly confuses the issue by referring to the ATCs as carrying Core’s “interexchange calls,” which would imply that Core is responsible to pay switched or special access tariff rates for these facilities. But Core does not offer IXC service; Core offers *exchange access* to IXCs. That is, IXCs deliver their end users’ traffic to Verizon’s tandems, and Verizon switches that traffic to Core over the ATCs, and Core terminates that traffic. Core Statement 3.0 (Panel Rebuttal Testimony), at 29 and Figure R-1. Under the Act, this is a local interconnection

facility. Section 251(c)(2) of the Act refers to interconnection “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A). Verizon’s argument reads “exchange access” out of the statute. Indeed, the FCC specifically recognized the distinction. It found that IXCs must pay special access for trunks to deliver their end users’ toll traffic to LECs. LECs in turn provide “exchange access” to IXCs. And when a CLEC uses an ATC to connect with an IXC, the exchange access facilities it orders from the ILEC is a type of local interconnection subject to TELRIC pricing.

So that there can be no mistake about the status of ATCs as a local interconnection product, following are the relevant findings from the FCC’s 1996 *Local Competition Order* on the matter:

186. Sections 251(c)(2) and 251(c)(3) impose duties upon incumbent LECs to provide interconnection and nondiscriminatory access to unbundled network elements to “any requesting telecommunications carrier.” In the NPRM, we tentatively concluded that carriers providing interexchange services are “telecommunications carriers” and thus may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3). We also tentatively concluded, however, that with respect to section 251(c)(2), the statute imposes limits on the purposes for which any telecommunications carrier, including IXCs, may request interconnection pursuant to that section. Section 251(c)(2) imposes an obligation upon incumbent LECs to provide requesting carriers with interconnection if the purpose of the interconnection is for the “transmission and routing of telephone exchange service and exchange access.” We tentatively concluded in the NPRM that interexchange service does not appear to constitute either “telephone exchange service” or “exchange access.” “Exchange access” is defined in section 3(16) as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” We stated that an IXC that requests interconnection to originate or terminate an interexchange toll call is not “offering” access services, but rather is “receiving” access services.

* * *

190. We conclude that IXCs are telecommunications carriers under the 1996 Act, because they provide telecommunications services. (*i.e.*, “offer telecommunications for a fee directly to the public”) by originating or terminating interexchange traffic. IXCs are permitted under the statute to obtain

interconnection pursuant to section 251(c)(2) for the “ transmission and routing of telephone exchange service and exchange access.” Moreover, traditional IXCs are a significant potential new local competitor and we conclude that denying them the right to obtain section 251(c)(2) interconnection lacks any legal or policy justification. Thus, all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (*i.e.*, non-interexchange calls).

191. We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2). Section 251(c)(2) states that incumbent LECs have a duty to interconnect with telecommunications providers “for the transmission and routing of telephone exchange service and exchange access.” A telecommunications carrier seeking interconnection only for interexchange services is not within the scope of this statutory language because it is not seeking interconnection for the purpose of providing telephone exchange service. Nor does a carrier seeking interconnection of interstate traffic only -- for the purpose of providing interstate services only -- fall within the scope of the phrase “exchange access.” Such a would-be interconnector is not “offering” access to telephone exchange services. As we stated in the NPRM, an IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic. Thus, we disagree with CompTel's position that IXCs are offering exchange access when they offer and provide exchange access as a part of long distance service. We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. As we stated above, however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (*i.e.*, IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs' transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

The Commission, too, recognizes ATCs as a local interconnection product:

“In the Initial Decision, the ALJ concluded the following: Under Section 251(c)(2) of the Act, ILECs have an obligation to provide “interconnection with the local exchange carrier's network for the transmission and routing of telephone

exchange service and exchange access” at cost-based rates in accordance with Section 252. 47 USC § 251(c) (2) (emphasis added). The provision of dedicated facilities to CLECs for use as ATC trunks is an interconnection service, not an access service; ILECs cannot unilaterally apply access charges to interconnection arrangements without violating this provision of the Act”. *Choice One Communications of Pennsylvania Inc. and CTC Communications Corporation v. Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket Nos. C-2008-2029477 and C-2008-2029479 (Order Entered January 29, 2010(“*Choice One*”) at pg. 10.

* * *

In light of our earlier conclusion that One Communication is not purchasing switched access services from Verizon we reject Verizon's contention that One Communications must pay the ATC tandem ports charge in Verizon's switched access charge tariffs. *Choice One* at p. 14 and Ordering Paragraph 2.

As for functionality, the MF ATCs never worked at all, because Verizon refused to send or receive ANI/CPN. Core M. Br., at 23. To the extent Core received traffic over the MF ATCs, it was largely locally-dialed modem traffic which did not belong on ATCs and for which Core should not have been billed. The SS7 ATCs never worked properly, because Verizon neither transmitted CIC or OCN in the signaling stream, nor provided EMI for each call. This made it difficult for Core to properly bill IXCs and other carriers that used Verizon’s tandems to access Core’s local exchange network. For this reason, Core only made active use of Verizon’s SS7 ATCs in part of 2010 and most of 2011, before switching to a competitive tandem provider that transmits CIC and OCN in the signaling stream, and provides EMI for each call. Core Stmt. 3.0, at 39. With respect to usage, Core never used the ATCs to originate traffic to IXCs. In reality, Verizon used the ATCs to deliver a mix of traffic to Core—not only IXC traffic but CLEC and other traffic as well.

Verizon condemns “Core’s failure to pay at least the undisputed rate” for facilities. VZ M. Br., at 12. This charge ignores Core’s technical issues, which are grounds for dispute in and of themselves. But it also assumes that Core could somehow rerate Verizon’s access bills into

TELRIC bills, in the way one can rerate traffic by simply multiplying billed MOUs by the applicable rate. But Verizon's facilities bills are considerably more difficult to rerate.

In another complaint case involving Verizon and a CLEC, the Commission found that:

For a competitive market to operate, a CLEC must be able to obtain information on the prices that an ILEC will charge it for services rendered – before placing an order. Verizon refused to provide such information to MilleniaNet. As a result, the record shows MilleniaNet could not price its own product to potential customers. Not surprisingly, MilleniaNet could not obtain any customers.⁸

Further, the Commission found that:

Verizon is not required to put together orders for customers (and competitors) such as MilleniaNet; it is, however, required to provide accurate and timely information to its customers so they can navigate the Verizon system.⁹

In this case, Verizon did neither, and it was not Core's responsibility to generate TELRIC bills to itself. Verizon argues 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 rerated at TELRIC." VZ M. Br., at 9. Such a "re-rate" would be subject to the mediation privilege, and Verizon cannot use it to bolster its case in litigation. Further, assuming Verizon rerated the facilities for purposes of mediation, this only begs the question: why did it not present a TELRIC rerate in the litigation context, i.e., why did it not make an affirmative case that the Commission could consider? For whatever reason, it did not, and there is no TELRIC amount alleged in this case.

1. Verizon's Pricing Arguments Defy Supreme Court and Commission Precedent

Verizon asserts that "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 §

⁸ Opinion & Order, *MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173, at 12 (entered May 2, 2008).

⁹ *Id.*, at 9.

251(c)(3) and FCC regulation,” VZ M. Br., at 12 and note 18. While this is true, it is also incomplete and therefore misleading. TELRIC also applies to section 251(c)(2) local interconnection, which is very different from UNEs, as discussed in *Talk America*. Verizon states that “the parties’ ICAs control their contractual relationship,” VZ M. Br., at 12, and Core agrees. The ICA provides that Core may order local interconnection services using ASRs, that such services include LITGs and ATCs, and applicable TELRIC rates are set forth in the pricing schedule. *See*, Core M. Br., at 18 and 20. Verizon’s analysis completely *ignores* the ICAs.

Local interconnection is not a UNE, and Verizon’s vignette about UNEs being a “do-it-yourself kit,” VZ M. Br., at 13, is an enormous red herring. Core never ordered a UNE from Verizon, and the choice between UNE and special access is a false one. Core ordered section 251(c)(2) local interconnection—services which, it is now abundantly clear, Verizon never offered and never provided, despite its contractual commitment to Core and its section 271 commitment to the Commission. *See*, Core M. Br., at 20. As Core stated back in 2008, in a letter to Verizon on this very subject:

[Verizon] refused to provide Core with the cost-based interconnection trunks that Core is entitled [to] under the Communications Act (47 U.S.C. § 251(c)(2)), binding Federal Communications Commission (“FCC”) precedent, and the parties’ interconnection agreements. Core has explained this repeatedly to your organization and the myriad of Verizon predecessor organization units that have come and gone over the last several years.” Exhibit CORE R-22 (Letter dated March 6, 2008 from Bret Mingo to Timothy Kineen), at 1.

Verizon points to the FCC’s 2003 *TRO* and 2005 *TRRO* for the proposition that the FCC has delisted entrance facilities as a UNE. VZ M. Br., at 14-15. Core agrees, but this is the same red herring. *Talk America* resolved the issue, by recognizing the long-standing distinction between section 251(c)(3) UNEs and section 251(c)(2) interconnection. In *Talk America, Inc. v.*

Michigan Bell Tel. Co., 131 U.S. 2254 (2011), the Court rejected Verizon's position relative to the *TRO*, *TRRO* and entrance facilities:

The Triennial Review orders eliminated incumbent LECs' obligation under § 251(c)(3) to provide unbundled access to entrance facilities. But the FCC emphasized in both orders that it “d[id] not alter” the obligation on incumbent LECs under § 251(c)(2) to provide facilities for interconnection purposes. Because entrance facilities are used for backhauling and interconnection purposes, the FCC effectively eliminated only unbundled access to entrance facilities for backhauling purposes—a nuance it expressly noted in the first Triennial Review order. That distinction is neither unusual nor ambiguous. In these cases, the Commission is simply explaining the interconnection obligation that it left undisturbed in the Triennial Review orders.” (Citations omitted). Exhibit CORE R-25 (*Talk America*), at 8.

Pursuant to the Supreme Court's directive, section 251(c)(2) interconnection remains available to CLECs at the Commission-approved TELRIC rates set forth in the ICAs, rather than unregulated special access rates that Verizon seeks to charge.

Verizon's various arguments concerning the ICAs' change of law provisions, VZ M. Br., at 14-17, are irrelevant. *Talk America* shows that, with respect to section 251(c)(2) interconnection, there was no change of law in 2003 or 2005. Entrance facilities have been and remain available at TELRIC for interconnection purposes since 1996. Nor is *Talk America* itself a change-of-law. Rather, *Talk America* says what the law has been all along.

The Commission never found to the contrary. The Commission did not “reject[]” the CLECs' position on section 251(c)(2) interconnection, VZ M. Br., at 15, it *upheld* that position.

In its order implementing the *TRRO*, the Commission found:

In its *Triennial Review Order* and the *Triennial Review Remand Order* (“*TRRO*”) the FCC found that an incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers. See 47 C.F.R. §53.319(e)(2). However, the FCC noted that its finding of “non-impairment” with respect to Entrance Facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to 47 U.S.C. §251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. *TRRO* ¶140. The FCC also requires incumbent LECs to provide requesting competitive carriers with access to these facilities at cost-based rates. Thus, *competitive*

LECs will have access to these interconnection facilities at Section 251(c)(2) cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network. TRRO ¶140. Consistent with our determination in the companion proceeding at Docket No. P-00042092, we find that Verizon is relieved of its obligation to offer entrance facilities as an unbundled element. **Exhibit CORE R-24** (Order, *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, Docket No. R-00050800 (entered February 10, 2006)), at 2.

Verizon cites to an *amicus* brief filed by the FCC with the *Talk America* court for the proposition that section 251(c)(2) only covers trunks which “enable customers of a competitive LEC to call the incumbent’s customers, and vice versa.” VZ M. Br., at 18. But the language Verizon quotes, VZ St. 1, Exhibit 14, at 2-3 (“Such linking enables customers of a competitive LEC to call the incumbent’s customers, and vice versa”), is simply background *dicta* describing what amount to LITGs. There is nothing in the brief to suggest that ATCs are not also local interconnection facilities. Even if it did, the brief would then be contrary to the plain language of section 251(c)(2), the FCC’s standing interpretation of that statute in the *Local Competition Order* and this Commission in *Choice One*. Applicable law dictates that ATCs are local interconnection facilities, and *dicta* in an FCC brief cannot change that fact.

Similarly, Verizon cites the *amicus* brief for the proposition that “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.’” VZ M. Br., at 18-19. But again, the quoted language does not support Verizon’s overblown claim. The *amicus* brief simply repeats the same analysis the FCC used in the *Local Competition Order*: an IXC/CLEC may not use section 251(c)(2) ATCs to deliver its own customers’ toll traffic to an ILEC (i.e., access bypass), however, a CLEC may use section 251(c)(2) ATCs to provide exchange access service to IXCs.¹⁰ Further, Verizon’s factual claim, that the ATCs were “used exclusively to exchange

¹⁰ VZ Stmt. 1.0, Exhibit 14, at 19 (“Similarly, 47 C.F.R. 51.305(b) prohibits a competitive LEC from requesting interconnection under Section 251(c)(2) “solely for the purpose of originating or terminating its

long distance traffic with IXCs...” VZ M. Br., at 19, is not even true as a matter of fact. Verizon can and did send large volumes of locally-dialed traffic down the ATCs to Core, including the AT&T, Choice One and XO indirect traffic.

In closing, it is notable that Verizon stated that it provisioned “switched access” trunks throughout its testimony. *See, e.g.*, VZ Stmt. 1.0, at 36 (“The ICAs make clear that to the extent Core orders ATC trunks from Verizon, these are switched access services provided subject to Verizon’s access tariffs.”). Now it claims that Core “actually ordered and used... special access entrance facilities.” VZ M. Br., at 13. Although subtle, this discrepancy highlights the confusion on Verizon’s side about very basic aspects of its claim. Switched and special access are two different regimes subject to different tariffs and different rates. At this late stage in the case, Verizon has offered no evidence or argument concerning *which tariff it relies upon* or *how that tariff applies* to its facilities bills. Verizon offers nothing more than a list of invoices which it cannot explain.

2. Verizon Cannot Defend its Defective Trunks

Verizon’s position on technical issues rests on two faulty premises: (1) “Core admits that it obtained the facilities and they were of value to Core.” VZ M. Br., at 20; and (2) “Core has cited no legal basis for its argument that the claimed shortcomings in facility entitle Core to refuse to pay for the service.” *Id.* But the record reflects that the only facilities that were of *any* value to Core were the SS7 ATCs, which Core used “for part of 2010 and most of 2011,” Core Stmt. 3.0, at 39, subject to technical issues which necessitated a move to a competitive tandem provider; and the SS7 LITGs, which Core began to use in 2010 and continues to use today,

interexchange traffic [*i.e.*, long distance traffic] on an incumbent LEC’s network and not for the purpose of providing to others telephone exchange service [*i.e.*, local telephone service], exchange access service [*i.e.*, network access], or both.” Although “the same exact wire” could be used for both purposes, Pet. App. 29a, the FCC’s rule prohibits the use of the interconnection arrangement for terminating long distance traffic, but permits its use to offer local telephone service.”).

subject to severe technical limitations, because there is no competitive alternative. *Id.* As for a legal basis, Verizon can only claim amounts that are due pursuant to its ICA. If it did not provide a service that conforms to the ICA in material part, then it may not claim a breach or collect damages. To the extent Verizon is now stating a claim for *quantum meruit*, the Commission has no authority to adjudicate such a claim.

Call Routing Defects

Verizon complains that Core has argued that “Verizon improperly – and even “surreptitiously – routed traffic to Core over the LITGs that should have been routed over the ATCTs, and vice versa.” VZ M. Br., at 20. Core has argued this because it is true. The ICAs support Core, not Verizon. Att. IV, § 1.1.1 of the Verizon ICA and Pt. V, § 1.2.1 of the Verizon North ICA set up two types of trunk groups: LITGs and ATCs. The LITGs are for local, intraLATA toll, and transit traffic *to* other ILECs.¹¹ The ATCs are for Core to connect with IXCs at Verizon’s tandems for switched access traffic. Verizon actual provisioning of the trunks bears no resemblance to this structure. It uses both the LITGs and the ATCs to deliver local, long distance, third-party transited calls to Core, and the EMI it separately transmits to Core does not permit Core to tell which trunk group each EMI call came in on. Core Stmt. 1.0, at 13-16. Verizon claims that it “does not alter the routing of calls: if a call comes into the Verizon tandem from an IXC, the tandem routed the call over an ATCT; all other calls are routed over an LITG, including intraLATA toll calls.” VZ M. Br., at 21. Whether or not Verizon “alter[s] the routing of calls,” (which is solely within its own control), the trunking arrangements it has put in place simply do not conform to the ICAs’ requirements. Moreover, Verizon’s inability to sort traffic

¹¹ An optional side agreement, which was never executed, addresses special provisions for transited traffic *from* other LECs and local carriers. *See*, Verizon ICA, Att. III, Exh. H (“INTRALATA TELECOMMUNICATIONS SERVICES SETTLEMENT”).

on the proper trunks actually is the genesis of its own complaints about being billed for transited traffic on the LITGs.

ANI/CPN over MF

Verizon claims Core “acknowledges that [the MF trunks] carried calls successfully.” VZ M. Br., at 21. But in the passage Verizon cites, Core says something very different:

We have *received* millions of minutes of traffic over the MF trunks. We sent no more than a handful, because of the technical limitations Verizon imposed with respect to passage of ANI/CPN.” Core Stmt. 3.0, at 54.

Here, Core is speaking to traffic received on the MF LITGs *from Verizon to Core*—trunks for which Verizon never billed Core and for which it states no claim. Core was able to receive locally-dialed traffic on these trunks because the MF network was dedicated to ISP traffic, and modems do not care about caller ID. As the passage notes, the lack of ANI/CPN curtailed Core’s use of the MF LITGs to send outbound calls from Core to Verizon.

Verizon stubbornly continues to claim that “it is not technically feasible to transmit ANI/CPN over the MF trunks... except on originating Feature Group D calls...” VZ M. Br., at 22. But “technically feasible” as defined in the ICA and the FCC’s rules, is extremely broad. The ICA defines the term as follows:

“Technically Feasible” is as defined in the FCC Interconnection Order. Interconnection, access to unbundled Network Elements, Collocation, and other methods of achieving interconnection or access to unbundled Network Elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an ILEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An ILEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods

would result in specific and significant adverse network reliability impacts.
VERIZON ICA, Pt. B (Definitions).

At best, Verizon can only argue that it generally does not like to provide ANI/CPN over MF trunks, except in the originating direction on ATC trunks. But this is simply Verizon's standard practice, one which must be modified in light of Core's repeated requests for ANI/CPN on all trunks. Indeed, the very fact that Verizon can provide ANI/CPN on some trunks simply demonstrates that it could provide it on all trunks. And of course, providing ANI/CPN is not only technically feasible, the ICA specifically requires it. Verizon ICA, Att. IV, § 7.3 (CPN); and Att. III, § 11.1.6 and Att. IV, § 3.3 (ANI).

With respect to the Verizon ICA, Att. 3, § 11.1.6, Verizon admits that this provision requires passing ANI "where available," but argues that ANI is "not available in the terminating direction." This is circular. It is not available in the terminating direction because Verizon chooses not to make it available. The ICA cannot possibly mean that Verizon's obligation to pass ANI ceases when it decides it does not want to pass ANI. Verizon also cites *to its own comments* before the FCC: "MF trunks are configured to signal ANI only on the originating end of a Feature Group D access call." (22-23). The key word here is "configured." Verizon is simply describing the way it likes to do things. The Act and the ICA require more. Indeed, the FCC, in passing new rules *requiring* passage of ANI/CPN over MF trunks by all carriers, Core Exhibit SR-2 (excerpt from the FCC's *ICC Transformation Order*), rejected Verizon's argument that it can't be done.

Passing CIC and OCN in the Call Stream

Verizon states that, although it does not provide CIC/OCN in the call stream, "it does provide CIC/OCN *in the EMI records* it provides to Core, consistent with the parties' ICAs and the industry standard guidelines incorporated therein." VZ M. Br., at 23. Core has acknowledged

this. But Verizon clearly is not passing CIC/OCN in the EMI records either, at least not for all of the calls it claims to be originated by third-party carriers. Verizon continues by stating that it does not provide EMI on 100% of calls it sends Core because this is not required by the ICAs. VZ M. Br., at 24. Again, Core concedes there is no *per se* requirement to send EMI for the LITG traffic. But if Verizon is not passing EMI on all the transited traffic it passes to Core, the industry standard is that Core bills Verizon for this traffic.

Verizon deceptively argues that “Core has repeatedly testified in other Commission proceedings that using the Verizon EMI, it can distinguish other carrier’s traffic from Verizon’s...” VZ M. Br., at 24. Once again, Core agrees. The problem is that Verizon apparently does not send EMI for all third-party carrier traffic, but somehow expects Core to divine their presence in the call stream. To the extent Verizon has failed to pass EMI, it has failed to mitigate its own damages. Further, it has damaged Core by making it impossible for Core to bill any third party carriers.

CIC Insertion

Verizon states that “Core ordered its facilities using its CIC...,” VZ M. Br., at 25. But Core only has a CIC because Verizon requires CLECs to use a CIC when ordering facilities. Core Stmt. 4.0, at 4. Verizon states 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 M. Br., at 25. Yet, Verizon stated in testimony that it populates EMI records with a CIC when it receives the traffic on trunks ordered by a carrier using a CIC, and that it transits traffic received from these “CIC” trunks over ATCs to third party terminating carriers such as Core. Verizon Statement 1.0, at 52-53 and 57. Under the ICA and

standard industry practice, the ATCs are used for interexchange traffic, not local traffic.¹²

Finally, Verizon argues that “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. This is because Core never sends this traffic, as Core does not wish to be misbilled. Core Stmt. 3.0, at 47.

Verizon’s Intercarrier Compensation Bills are Unsubstantiated

Verizon now claims “\$93,000” in “reciprocal compensation and switched access services rendered by Verizon”—a figure Core has never seen before. VZ M. Br., at 26. Verizon admits that this figure would only amount to “\$17,000” if Verizon had rated the calls properly at the FCC’s \$0.0007/MOU mirroring rate.” *Id.* However, Verizon has not produced *a single CDR* or other record to support one minute of the traffic it has billed to Core, despite its complaint that Core did not always keep “AMA” records for Verizon’s traffic. Nor does Verizon explain, anywhere in its testimony or briefs, how it calculated these amounts. As with its facilities invoices, Verizon has completely failed to carry its burden of proof, and asks the Commission to accept Verizon’s own summaries of Verizon’s own invoices at face value.

¹² As Verizon explained in detail to the FCC:

Tandem switches transmitting traffic in TDM format create billing records by combining CPN or Charge Number (CN) information from the SS7 signaling stream with information identifying the originating service provider to provide terminating service providers with information necessary for billing. See Verizon, Verizon’s Proposed Regulatory Action to Address Phantom Traffic at 5–7 (Verizon Phantom Traffic White Paper), attached to Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Dec. 20, 2005). The tandem switch creating the billing record identifies service providers from whom it receives traffic using the trunk group number (TGN) of the trunk on which a call arrives. Cf. Verizon Phantom Traffic White Paper at 4. The tandem switch translates the TGN into one of two codes identifying the originating service provider: Carrier Identification Code (CIC) if the originating service provider is an IXC, or Operating Company Number (OCN) for non-IXC calls. The appropriate CIC or OCN is then added, by the tandem switch if it is equipped to record such information, to the billing record for the call, which is then forwarded to the terminating service provider. See Verizon Phantom Traffic White Paper at 4; see also Verizon ICC FNPRM Reply at 16.

C. Verizon's Arguments Regarding Core's Bills to Verizon Lack Merit

Third-Party Carrier Traffic

Verizon baldly claims that “Core has overbilled Verizon, and Verizon has overpaid Core, by approximately “\$2,725,140.” VZ M. Br., at 28. Of course, this claim is premised entirely on the testimony of Verizon witness Mr. Munsell and his hypothetical “LNP Lookup” methodology, which has no basis in the ICA, industry billing standards or in fact. Core identified numerous methodological flaws with the LNP Lookup method, Core M. Br., at 25-26, including most importantly, that looking up the carrier associated with a calling party telephone number in the LNP database does not reliably identify the carrier responsible to pay ICC for that call. *Id.*, at 26. Furthermore, EMI records, not Verizon’s undocumented LNP Lookup method, is the industry standard method to identify third-party carrier traffic. On the stand, Mr. Munsell and confirmed the earlier testimony of Verizon witness Mr. Polding that Verizon could not actually identify any actual percentage of third-party carrier traffic on the LITGs, for which Core may have billed Verizon. Tr. 527-38 and Core Cross Exhibit 13.

Verizon asserts that “Core admits that it continues to bill Verizon for other carriers’ traffic...” VZ M. Br., at 28. If this is meant to bolster Mr. Munsell’s theory that 35% of Core’s historical billings to Verizon have been for third-party carrier traffic and should be refunded, it is a wild exaggeration indeed. Core currently bills a very small percentage of third-party traffic on the LITGs, as identified in the EMI, to Verizon. Core Stmt. 3.0, at 65. The issue is that the billing provisions of Attachment IV to the Verizon Pennsylvania ICA dictate that Core bill Verizon for *all* incoming traffic on the LITGs, either as local, intrastate access or interstate access:

Section 7. Usage Measurement

* * *

7.2 Measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. *The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill-round and then rounded to the next whole minute.*

7.3 *For billing purposes, each Party shall pass Calling Party Number ("CPN") information on each call carried over the traffic exchange trunks at such time as the originating Switch is equipped for SS7 and from all switches no later than December 31, 1998. At such time as either Party has the ability, as the Party receiving the traffic, to use such CPN information to classify on an automated basis traffic delivered by the other Party as either Local Traffic or toll traffic, such receiving Party shall bill the originating Party the Local Traffic termination rates, intrastate Exchange Access rates, or interstate Exchange Access rates applicable to each minute of traffic for which CPN is passed, as provided in Attachment I and applicable Tariffs. (Emphasis added).*

Consistent with this language, Core traditionally billed Verizon for "each minute" on the LITGs at the "Local Traffic" rate.

This was based on Core's assumption that third-party traffic, to the extent it existed, came in over the ATCs, not the LITGs. Core Stmt. 1.0, at 13. Consistent with the industry standard, which is that EMI is the method for tandem providers such as Verizon to indicate third-party carrier traffic to terminating carriers, Core assumed that the EMI Verizon sent was associated with the traffic on the ATCs. *Id.* Core now knows, courtesy of this litigation, that Verizon sent all kinds of traffic down both sets of trunks, and the EMI is not matched to either set. Core Stmt. 3.0, at 65. However, since Core cut down the last remaining ATCs in January, 2012, all of the traffic Verizon sends Core now comes in on LITGs. *Id.* Since then, all of the EMI Verizon sends Core can be associated with these trunks. For this isolated LITG-only period, one can identify a small percentage (5.4%-8.0%) of calls on the LITGs for which EMI was provided. This modest percentage in no way supports the 35% claim Mr. Munsell derives using LNP Lookup.

Verizon's assertion that 35% of its traffic is not reciprocal compensation traffic obscures the fact that much of that same 35% is interexchange traffic for which Verizon is responsible to

pay rates much higher than reciprocal compensation. When Verizon began to dispute 100% of Core bills and demand CDRs in 2011, one of the disputes it identified was that Core had billed Verizon reciprocal compensation charges for interexchange calls. Core Stmt. 1.0, at 29. So, Core reexamined the traffic based on its own CDRs, identified the interexchange traffic which should have been billed as switched access charges, weeded out calls for which an EMI was provided, and billed Verizon accordingly, pursuant to section 7.3 of the Verizon PA ICA. Core Stmt. 1.0, at 31-34. When Verizon refused to pay these bills, the result was Count II of Core's Amended Complaint.

Verizon's LNP Lookup method is defective in all of its key assumptions, and cannot be used as a basis for determining the responsible carrier for purposes of intercarrier compensation. Verizon "reviewed 18 months of call detail records" VZ M. Br., at 28. Yet Core provided Verizon with records going back to 2008. Verizon never explains why it did not use all the records, nor how it selected the records it did use. 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..." *Id.* However, Verizon's LNP Lookup method cannot actually identify the carrier responsible for Intercarrier Compensation payment on a call. Core Stmt. 1.0, at 32; Core Stmt. 3.0, at 62-63. Nor is LNP Lookup an industry standard billing methodology or authorized by the ICAs. Core Stmt. 1.0, at 32. Even Verizon itself does not use LNP Lookup for Core's traffic, *id.*, and Verizon admitted that it simply bills Core for each call Core sends it. Core Exhibit R-28 ("All traffic sent by Core to Verizon is billed to Core.").

Creating a distinction without a difference, Verizon states that LNP Lookup is not intended to help Core bill third-parties, but rather as a means "to determine what Core should not bill to Verizon." VZ M. Br., at 28. But the ICA tells Core how to bill Verizon, and its

methodology is quite clear—bill each minute on the LITGs as local, intrastate access or interstate access, period. Verizon appears to assume Core has some extra-contractual duty to guarantee that the traffic Verizon sends Core on the LITGs is not third-party carrier traffic. No such duty exists. Verizon is the only party who can identify such traffic, by sending an EMI.

Verizon repeats its mantra that “Core bills Verizon for third-party traffic.” VZ M. Br., at 29. Again, Core currently bills a very small percentage of traffic on the LITGs that can be reliably traced back to a third-party carrier through EMI. Core has offered to credit these amounts back to Verizon, although the ICA does not require this. Tr. 322-23. The best way for Core to credit this back is to issue Verizon credits against the unpaid switched access bills which Verizon does not pay. *Id.*, at 323. This is because of the timing of the reciprocal compensation invoices relative to Verizon’s delivery of EMI records. Core bills Verizon reciprocal compensation at the beginning of each calendar month, for the previous month’s usage. *Id.* But Core does not receive all of the EMI for each month from Verizon until ten days or more into the next month, at which point it can analyze how many EMI MOUs should be deducted from Verizon’s reciprocal compensation bills and how many EMI MOUs should be rebilled to Verizon as switched access. *Id.* Again, none of this is required by the ICA. Core has offered this solution to remedy Verizon’s stated concerns. The fact that Verizon offers Core nothing except a unreliable and impractical LNP Lookup method speaks volumes about Verizon’s motives.

It is not a “fundamental principle of law” that “Core may not charge Verizon for terminating third-party traffic simply because that traffic transits Verizon’s network.” VZ M. Br., at 29. The parties are bound by the terms of the ICA. When Verizon sends traffic down the LITGs, it represents that the traffic falls within the purposes set forth in the ICA: “for the reciprocal exchange of combined Local Traffic, nonequal access intraLATA toll traffic, and local

transit traffic to other ILECs.” VZ PA ICA, Att. IV, § 1.1.1. (Emphasis added). Once the traffic is sent down the LITGs, Core “the Party receiving the traffic... shall bill the originating Party the Local Traffic termination rates, intrastate Exchange Access rates, or interstate Exchange Access rates applicable to each minute of traffic for which CPN is passed...” VERIZON ICA, Att. IV, § 7.3. Notably, the ICA defines “Party” to mean “a party to this Agreement, either [Verizon] or [Core].” Thus, in this context, “originating Party” can only mean the party delivering the traffic over the LITGs, and “the Party receiving traffic” can only mean the party that terminates the traffic coming in on the LITGs. Indeed, this is exactly how Verizon interprets these provisions, *when it bills intercarrier compensation to Core*. Core Stmt. 4.0 at 9; Exhibit Core R-28.

Verizon offers largely unsubstantiated assertions that it has no control over the traffic it sends down the LITGs. VZ M. Br., at 29 and note 45. Verizon’s difficulties managing its trunking arrangements with third party carriers do not alter the terms of the ICA with Core, nor do they impose any implicit burden on Core.

Verizon’s sole reference to the ICA is to its definition of “Local Traffic.” VZ M. Br., at 30-31. But a definition does not impose a duty, and must be read in conjunction with the operative provisions of the ICA, such as those that define the traffic Verizon should be sending over the LITGs, and those that require Core to bill Verizon for “each minute” that is transmitted over the LITGs. As demonstrated above, those provisions instruct Core to bill Verizon for each minute it receives over the LITGs, at one of three rates.

Interestingly, Verizon admits that “industry standard EMI records... are used to bill other carriers.” VZ M. Br., at 31. Verizon appears to be confused about the underpinnings of its own methodology. Time and again, Verizon insists Core should be using EMI to identify and bill

third-party carrier traffic. Yet, the EMI Verizon actually provided never came close to 35% of the traffic Verizon sent over the LITGs. Indeed, from 2008 through 2010, EMI MOUs as a percentage of LITG billed MOUs hovered between 1.2% and 3.8%, and that does not even take into account that most of those EMI records likely correlate to traffic on the ATCs when they were in service. Core Stmt. 4.0, at 9 (“since the ICAs contemplate using EMI only for IXC traffic on ATCTs, it is reasonable to assume that the bulk of the minutes recorded in EMI over the years came over the ATCTs—traffic for which Core never billed Verizon.”).

Verizon states “Core has known for years that third party carriers route traffic to Core through Verizon’s tandems.” VZ M. Br., at 31. This is factually true but once again, highly misleading. Again Core reasonably assumed that third party traffic identified in the EMI traffic came in, for the most part, over the ATCs, and was therefore never billed to Verizon. All of the AT&T and other CLEC traffic Verizon refers to was associated with a CIC, not an OCN, in the EMI provided by Verizon, and Verizon itself testified that traffic for which the EMI bears a CIC is associated with ATC trunks, traffic for which Core did not bill Verizon. Core Stmt. 4.0, at 6; Verizon Stmt. 1.0, at 52-53 and 57.¹³ More recently, EMI traffic has increased on the LITGs, but that is due to an effort by Verizon to generate EMI for rural carriers, a process that only began recently and apparently remains incomplete. VZ Stmt. 2.0, at 23. (“Due to recent efforts, Core should now begin seeing some EMI records for intraLATA local and toll calls originated by some ILECs.”).

Contrary to Verizon’s claim, Core never “suggest[ed] that it tries to use the EMI records to avoid double billing.” VZ M. Br., at 33. Core’s matching algorithm compares EMI records to Core’s switch records to determine which traffic should be billed as switched access to third-parties, and which should be billed to Verizon, pursuant to Attachment IV, § 7.3. of the Verizon

¹³ *And see, infra.*, at note 12 (FCC discussion of Verizon White Paper).

Pennsylvania ICA. Core's matching algorithm, far from being "flawed," is actually very generous to Verizon, as it assumes that any call in the EMI that has the same calling party number and called party number, and is placed on the same day as a call in Core's switch records is a match, and should be billed to a third-party carrier. Core Stmt. 1.0, at 16. If Verizon believes Core's algorithm misses wireless traffic because "calling numbers are normally populated with zeroes," VZ M. Br., at 33, Verizon should stop "populat[ing]" the records "with zeroes." Core Stmt. 4.0, at 48. Verizon quibbles that Core's algorithm is not "industry standard" yet Verizon fails to offer any alternative method. It is content to simply poke at Core's bills, without offering real solutions that can work.

As demonstrated herein, the five bullet points Verizon lists, VZ M. Br., at 34, are far from undisputed. There may be double billing, but it is difficult to pinpoint, and never, ever even approached 35%. Further, the ICA mandates that Core bill Verizon for all traffic on the LITGs. The ICA simply does not account for Verizon's sending transited traffic over the LITGs and expecting Core to divine its presence. There is an independent side agreement for such traffic, which Verizon never invoked and the parties never executed. Core Exhibit R-26 ("INTRALATA TELECOMMUNICATIONS SERVICES SETTLEMENT"). Finally, it bears repeating that Verizon's 35% claim is a hypothetical damages model. It is not a concrete refund request that the Commission has the authority to grant.

MF Traffic

Verizon complains that "Core did not use actual switch records" in rendering its reciprocal compensation bills for traffic that came in over the now-retired MF trunks. VZ M. Br., at 34. Verizon says Core's method was "unreliable," *id.*, and "certainly resulted in overcharging." *Id.*, at 35. Yet, Verizon has completely failed to explain why this is so, or to

quantify its alleged damages. Verizon's subject matter experts made no attempt to study this phenomenon in any comprehensive way. These minutes were billed and paid for since 2005, without objection as to the numbers billed. It is Verizon's burden to show why it deserves a refund, but it is a burden Verizon never attempts to carry.

As for the claim that "Core failed to... create per-call AMA records," VZ M. Br., at 35, had Verizon sent ANI/CPN over the MF trunks, Core could have, and would have, generated traditional switch records. Core Stmt. 3.0, at 61. Verizon's use of colorful terms such as "guestimating" simply reveal the vague nature of Verizon's claims. Similarly, Verizon fails to demonstrate that a "ten to thirteen-minute interval," VZ M. Br., at 35, would result in an inaccurate sampling. There are 43,200 minutes in a 30-day month (30 x 24 x 60). Sampling every 13 minutes would result in 3,323 samples per monthly bill cycle (43,200/13). Verizon also claims that Core's factor for modem training time and call that don't train on the MF trunks was "arbitrary," *Id.*, at 35, but Core fully explained the basis for this factor. Core Stmt. 3.0, at 59-60. And, Core produced all of the worksheets it used to make these calculations. Core Stmt. 4.0, at 14.

Verizon claims Core sampled ATCs as well as LITGs. VZ M. Br., at 36. Verizon seems to be confused, here. Mr. Munsell's testimony regarding alleged billing on the ATCs was limited to SS7 trunks, for which Core generated switch records. Contrary to Verizon's suggestion, *id.*, Core's MF sampling technique has nothing to do with third-party carrier traffic issues. Again, Core could not generate switch records on the MF trunks because Verizon was not sending ANI/CPN in the call stream on the MF trunks. Finally, Verizon complains Core's method was not "industry standard." VZ M. Br. At 36. Yet, it fails to acknowledge that its own LNP Lookup method has no basis in industry standards, either. Finally, Verizon asks the

Commission to “require Core to calculate and refund all amounts billed to and paid by Verizon under this approach.” That is Verizon’s burden, not Core’s.

VNXX Traffic

Verizon devotes two pages in a half-hearted attempt to create a “VNXX” issue out of whole cloth. VZ M. Br., at 37-38. Once again, there is no attempt to quantify this claim, for which Verizon bears the burden of proof. The Commission has studied what it terms as Core’s use of VNXX, and determined that VNXX arrangements generate “local” traffic.¹⁴ Thus, there is no legal basis for Verizon arguments, although there are factual defects as well. Core does not offer a product called “VNXX”—that is simply a term that has arisen to describe traffic Verizon would prefer not to pay for. Tr. 363-64. Verizon cites the ICA’s definition of “Local Traffic,” VZ M. Br., at 38, but as with its third-party traffic arguments, makes no attempt to relate that definition to the practical methods through which traffic is identified and billed. The ICA tells Core exactly how to bill traffic, which is “to use such CPN information [i.e., the NPA-NXX of the calling party] to classify on an automated basis traffic delivered by the other Party as either Local Traffic or toll traffic...” VERIZON ICA, Att. IV, § 7.3. This is consistent with the

¹⁴ *RTCC v. Pennsylvania P.U.C.*, 941 A.2d 751, 758-59 (“*RTCC*”) (“Under Chapter 30 of the Code, a local exchange carrier must offer the transmission of messages or communications that originate and terminate within a prescribed local calling area for a fee to the public. Petitioners contend that this is not what Core does, nor is it what Core contemplates doing in the territories of the RLECs. Petitioners admit that Core currently owns and operates five switch equivalents (they do not admit that they are switches), all located in the territory of Verizon. Core leases capacity on other carrier’s transmission lines to connect its ISP customers to Core’s switch equivalents. Core provides no connections from end users to Core’s ISP customers, but relies on the use of VNXX to permit its ISP customers to make a “local” telephone number available which uses the RLEC’s facilities to connect the end user with the ISP. Therefore, Core offers its ISP customers to arrange for their end user customers to make a “local” call from Allentown to Philadelphia, a call that is not normally local. This transmission does not “originate and terminate within a prescribed local calling area.” Thus, Petitioners contend Core does not meet the definition of a “local exchange telecommunications company,” a term considered synonymous with “local exchange carrier.” Petitioners believe that dial-up calls to a fixed point to access the internet using local numbers outside a prescribed local calling area is beyond the Commission’s jurisdiction.

Core, on the other hand, considers dial-up calls to a fixed point located outside a prescribed local calling area but within a LATA to constitute a local call so long as the NXX combination is properly rated as a local call. The Commission found that classification of the NXX, not the physical location of the NXX, is the basis used for determining if a call is local or long-distance. Thus, Core’s placement of its NXXs within a LATA, but outside of the rural carrier’s local calling area, would still be a local call. Based on the above, the Commission properly determined that Core was a local exchange service.”).

Commission's finding that "classification of the NXX, not the physical location of the NXX, is the basis used for determining if a call is local or long-distance." *RTCC*, at 759.

Rate Issues

Verizon recounts the long history of the *ISP Remand Order* in the courts. *VZ M. Br.*, at 39. The relevance of this account is not clear. The reason Core bills Verizon at TELRIC is simple: some of the minutes are payable at TELRIC, under the 3:1 ratio test. *Core Stmt. 1.0*, at 17. If Core did not bill at TELRIC, Verizon would not pay any minutes at TELRIC. The other reason Core bills at TELRIC is Core does not believe Verizon is in compliance with its mirroring obligations. *Core Stmt. 3.0*, at 57-58; *Core Stmt. 4.0*, at 14.

3 to 1 Ratio

Core is a loss to understand Verizon's claim that it "manipulated the 3:1 ratio by giving itself credit for traffic... that was not local." *VZ M. Br.*, at 40. Core has no ability to "manipulate" the ratio. When Core sends traffic to Verizon, whether it is local or long distance, Verizon should bill Core at the appropriate rate, pursuant to Attachment IV, section 7.3 of the ICA. Verizon in fact does bill Core for each and every minute. So, if Verizon is billing Core for those minutes, those same minutes should count for purposes of the 3:1 ratio. In the end, though, Verizon makes its own calculations pursuant to the ratio, and pays Core accordingly. In fact, the January, 2011 discussions Verizon references were initiated *by Core to clarify how Verizon was calculating payments under the ratio*. Core does not make "calculations under the 3:1 ratio," *VZ M. Br.*, at 42, but it does certainly have an interest in how Verizon does so. Again, Core produced call records to aid the discussion, which came to a grinding halt when Verizon stopped responding to Core's emails. *See*, *Core Stmt. 1.0*, at 20-21 (timeline of communications).

Mirroring Rule

Verizon argues that the policies inherent in the *ISP Remand Order* militate against awarding Core TELRIC rates for traffic termination. VZ M. Br., at 42-43. Those same policies, however, require Verizon to mirror properly. “It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed.” *ISP Remand Order*, at ¶ 89. Verizon benefitted greatly by reducing its payments to Core and other CLECs. Every dollar denied Core was a dollar kept by Verizon. The issue now is whether Verizon deserves to keep those savings (with respect to Core only), based on the language of the mirroring rule.

Verizon asserts that the FCC’s Wireline Competition Bureau approved Verizon’s May 14, 2001 Industry Letter as having “satisfied the mirroring rule.” VZ M. Br., at 43. But it is apparent from a review of the Bureau’s order that it never considered the type of challenge Core raises here. *See, Order, 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 (2002). Verizon also alleges that “Core concocted its eleventh hour challenge... following the mediation.” VZ M. Br., at 44. Core raised this issue early in 2011, but Verizon declined to discuss it, or anything else, with Core. Core Stmt. 1.0, at 21.

Verizon argues Core is “judicially estopped from now claiming that the higher rate is due,” because it sought and won interim relief after telling the Commission that the applicable rate for ISP-bound traffic was \$0.0007. VZ M. Br., at 45 and note 71. But Core only sought the relief that would avoid imminent harm, i.e., Core sought to maintain the status quo, which at that time was that Verizon paid Core’s bills at a rate of \$0.0007/MOU. Core was not obliged, at that time, to raise distinct, additional issues such as the mirroring rule. Verizon also argues Core’s claim is barred by the doctrine of accord and satisfaction. VZ M. Br., at 45. Given that Core has billed Verizon at TELRIC for years preceding the events in this case, that Verizon paid these bills at \$0.0007 and disputed the remainder on the basis of improper rate, and that issues relating to the 3:1 ratio and the mirroring rule have festered for years, *see generally*, Core Stmt. 1.0, at 17-18, there never was an accord and satisfaction with respect to Core’s reciprocal compensation bills.

Verizon makes a number of textual arguments in an attempt to show that the FCC meant for CLECs to lower their rates for section 251(b)(5) traffic. For example, Verizon argues that “[e]xchange means a reciprocal giving and receiving...” VZ M. Br., at 45. However, the FCC specifically and unequivocally expressed its intent with respect to CLEC rates. It found there was no need to regulate them whatsoever. In its 2001 intercarrier compensation *NPRM*, issued the same day as the *ISP Remand Order*, the FCC noted that it had never regulated CLEC-CLEC traffic, and had no intention of doing so. Notice of Proposed Rulemaking, *In Re Developing A Unified Intercarrier Comp. Regime*, 16 F.C.C.R. 9610, 9679 and n1 (2001)(noting the absence of any “symptoms of market failure,” the FCC concluded that “we do not contemplate a need to

adopt new rules governing CLEC-to-CLEC... arrangements.”). In addition, this Commission has ruled that the mirroring rule simply does not apply to CLECs.¹⁵

Verizon states that its mirroring obligation is limited to “section 251(b)(5)” which means “telecommunications traffic between a LEC and telecommunications carrier other than CMRS carrier that is *not interstate or intrastate access traffic*.” VZ M. Br., at 46. But Core’s position is that the actual mirroring language Verizon offers in its “Rate Plan B” amendments is less extensive than section 251(b)(5) and therefore fails to implement the mirroring rule. Core Stmt. 2.0, at 12-13. And, contrary to Verizon’s claim, VZ M. Br., at 47, Core’s interpretation of the scope of section 251(b)(5)—and Verizon’s obligation under the mirroring rule—does not depend on the FCC’s 2011 *ICC Transformation Order*. Although that order greatly expanded the scope of section 251(b)(5), Core’s position is that Verizon’s mirroring offer was deficient even under the preexisting scope of section 251(b)(5).

Switched Access Claims

The ICA very clearly permits Core to bill Verizon tariffed switched access charges for traffic on the LITGs. VERIZON ICA, Att. IV, § 7.3. When Verizon disputed Core’s reciprocal compensation bills, in part, on the basis that some of the minutes were switched access, Core rebilled those minutes as switched access, and Verizon cannot now claim surprise. Contrary to Verizon’s assertion, VZ M. Br., at 49, the Commission’s recent *AT&T* order involved locally-dialed traffic, not long-distance traffic. In that case, the Commission specifically found that the *ISP Remand Order* does not apply to switched access traffic. *AT&T*, at 25-26 (“The same observation holds with respect to local ISP-bound traffic and non-local ISP-bound traffic. The

¹⁵ Opinion & Order, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. P.U.C. Dockets C-2009-2108186 & C-2009-2108239, at 43-44 (rel. December 5, 2012)(“*AT&T*”), quoting, *AT&T Communications of Cal., Inc. v. Pac-W. Telecomm, Inc.*, 651 F.3d 980, 987 (9th Cir. 2011)(“The *ISP Remand Order* reflects this reality, imposing its rules on all LECs, with the exception of the ‘mirroring’ rule, which the FCC singled out as applicable only to ILECs.”).

FCC has preempted the states with respect to the former, but has *not* preempted the states with respect to the latter.”). Nor does Verizon’s argument that ISPs and conference calling providers are interexchange carriers, VZ M. Br., at 50, hold water. These entities are “End Users” under Core’s tariffs because they buy tariffed local exchange services from Core. Core Stmt. 1.0, at 2.

The doctrine of accord and satisfaction does not apply to bar Core’s switched access bills. Verizon has disputed various portions of Core’s reciprocal compensation bills for many years prior to the events in this case, and those disputes remain unresolved. In July, 2011, Verizon itself expanded those disputes to include complete non-payment, and it now demand a multi-million dollar refund. Those issues are being resolved right now, in this case. To claim that there has been an accord and satisfaction with respect to Core’s reciprocal compensation bills to Verizon is simply not credible. In addition, Verizon’s previous payments do not bar Core’s imposition of backbills based on a rerate. The ICA provides for backbilling, Verizon ICA, Att. VIII, § 3.1.8.3 (“Although it is the intent of each Party as a providing Party to submit timely and accurate bills, failure by a providing Party to present bills to a purchasing Party in a timely or accurate manner shall not constitute a breach or default of this Agreement, or a waiver of a right of payment of the incurred charges, by the providing Party.”). By contrast, the tariffs are silent on the issue of backbilling. Hence, the ICA controls. Verizon ICA, Pt. A, § 1.3.2. (“The fact that a condition, term, right or obligation appears in the Agreement and not in a Tariff, or in a Tariff but not in the Agreement, shall not be interpreted as, or deemed grounds for finding, a conflict”). Also, not all of Core’s switched access claim is “backbilling.” Since January, 2012, Core has billed switched access to Verizon on a current basis, for the previous month’s usage. Core Stmt. 1.0, at 32.

Core Provides Tandem and End Office Functions

Verizon claims Core can charge neither tandem nor end office rates because its architecture does not mirror Verizon's. VZ M. Br., at 52-53. But FCC rules dictate that Core is permitted to charge for the *functional equivalent* of traditional LEC charges,¹⁶ even if it does not literally use each and every piece of machinery as an ILEC in the 1980s when switched access tariffs were initially developed. Core's tariffs support billing for functional equivalents.¹⁷ Verizon tried and lost this argument in federal court. *Paetec Communs. v. MCI Communs. Servs.*, 712 F. Supp. 2d 405, 410, 411, 413-415 (E.D. Pa. 2010) (" [W]e find that where a CLEC routes calls to its end-users through a tandem switch, whether it owns that tandem switch or not, it may charge the full benchmark rate for that service. PAETEC has not violated the FCC's benchmark by charging Verizon for the functional equivalent of the tandem switching rate and the end-office switching rate for its SWAS access services."). Notably, when Verizon describes Core's "function to receive the traffic from Verizon... and point it in the direction of the appropriate ISP or conference calling services provider..." is it is in fact, describing switching functionality.

¹⁶ 47 C.F.R. 61.26 ("[CLEC] Switched exchange access services shall include: (i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching...").

¹⁷ See, e.g., Core FCC Tariff No. 3, Section 1 (Definitions & Abbreviations) (" Switched Access Service - Access to the network or facilities of the Company for the purpose of originating or terminating communications. Switched Access Service is available to carriers, as defined in this rate sheet. Switched Access Service includes services and facilities provided for the origination or termination of any interstate or foreign communications regardless of the technology used in transmission, including, but not limited to, local exchange, long distance, and data communications services that may use either TDM or Internet Protocol ("IP") or other technology. Switched Access Service includes, but is not limited to, the functional equivalent of the incumbent local exchange carrier interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination; tandem switched transport facility (per mile); tandem switching; common transport multiplexing; and common trunk port. Consistent with 47 C.F.R. § 61.26(a)(3)(ii), Switched Access Services includes the termination of interexchange telecommunications traffic to any retail end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.").

That switching functionality is the basis for Core's switched access charges to Verizon. In any event, Core separately catalogued the numerous functions its switches provide. Core Stmt. 1.0, at 5-6.

Nor is there any comparison between Core's network architecture and that at issue in the FCC's *Ymax* case. *AT&T Corp. v. YMax Communications Corp.*, 26 FCC Rcd 5742 (2011)(("Ymax").¹⁸ The FCC indeed has stated explicitly that *YMax* establishes principles that are tied to the architecture and tariff at issue in *YMax* and do not disallow compensation for carriers that use IP transmissions. *See In re Connect Am. Fund, A Nat'l Broadband Plan for Our Future et al.*, 26 FCC Rcd 17663, 18027 (F.C.C. 2011) (noting that "the *YMax* decision . . . was based on 'the specific configuration of YMax's network architecture'" and that absent a restriction in a tariff "regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture" or not is irrelevant). Beyond this point, *YMax* is irrelevant because its network architecture is completely different from Core's.

In *YMax*, the FCC's characterized YMax's network architecture as follows:

As far as any physical presence of YMax is concerned, 110 of YMax's 141 POIs exist only on paper (presumably for the purpose of permitting YMax to obtain telephone numbers in those LATAs); that is, YMax has no equipment of its own and leases no space at these locations, [redacted confidential information regarding YMax's network configuration]. As it turns out, all of "the equipment, facilities, configurations and interconnections" in these 110 locations are actually "provided exclusively [to YMax] by AT&T."

CoreTel, by contrast, has established a physical presence, including leased space, a switch, and additional communications equipment, in each of the Pennsylvania's six LATAs. Core Stmt. 1.0, at 5-6.

¹⁸ Verizon's insertion of the word "[CoreTel's]" in place of "YMax" in its quotation on p. 23 of DE 152, is false argument, but does demonstrate that Verizon could find no language in CoreTel's tariff to support this argument, so needed to falsely cite YMax's tariff.

Alleged Rate and Rate Application Errors

Verizon asserts it is not responsible for traffic “that was originated by IXCs and merely transited Verizon.” VZ M. Br., at 54. But the ICA says otherwise: Core is to bill Verizon for “each minute” on the LITGs, applying local or switched access rates depending on the CPN of the call. VERIZON ICA, Att. IV, § 7.3. Verizon claims the ICAs do not permit Core to bill for traffic that terminates in Delaware. VZ M. Br., at 54. But Verizon delivers this “Delaware” traffic to Core in Pennsylvania. Verizon is therefore liable to pay Core under the Pennsylvania ICA. Core Stmt. 1.0, at 30-31.

Verizon’s objections relative to the carrier common line charge (“CCL”), VZ M. Br., at 55, arose for the first time *on cross examination at the hearing*. Verizon’s own testimony is bereft of discussion on CCL. Core’s witnesses cannot be expected to walk into a hearing room prepared to talk in detail about every conceivable issue which Verizon might bring up. Even so, Core witness Mr. Mingo explained in detail the process he followed to calculate the CCL and vet it with Commission staff prior to filing. Tr. 357 (“I can tell you that we had a consultant talk with Pennsylvania staff and go through the data we have on our access lines, and this was the calculation that came out of it.”).

As for the tandem rate element issue, Core is permitted to charge tandem rates, even if, as Verizon argues, VZ M. Br., at 55, the tandem belongs to Verizon. *Paetec Communs. v. MCI Communs. Servs.*, 712 F. Supp. 2d 405, 410, 411, 413-415 (E.D. Pa. 2010).

Finally, Core admitted at the hearing that the 800 database charges were issued in error. Tr. 350-352.

MF Switched Access Claim

Verizon objects to Core's claim with respect to lost switched access revenue on the MF trunks on the basis that Core never billed Verizon for this traffic. VZ M. Br., at 56-58. The reason Core never billed Verizon for this hypothetical traffic is that this claim is a damages claim, just like Verizon's third-party carrier traffic claim is a damages claim. Core only needs the Commission to rule that Verizon violated the ICA by refusing to provide ANI/CPN. Core can take that finding to a court of law, and seek appropriate damages there. Verizon also argues that "[t]he ICAs squarely prohibit what amount to consequential damages." VZ M. Br., at 57. Assuming this clause is applicable to Core's claim, this too, should apply equally to Verizon's third-party carrier damages claim. Finally, Core did not make AMA records on the MF trunks, VZ M. Br., at 57, because Verizon refused to send ANI/CPN. Without ANI/CPN, calls cannot be rated. That is why Core constructed a hypothetical damages model to estimate its lost switched access revenue.

Unclean Hands

Verizon asserts that Core comes to the Commission with "unclean hands." VZ M. Br., at 58-59. Verizon is the party with unclean hands. Core produced call records in January, 2011. But Verizon did not want to continue the discussion. Later, in June, Verizon demanded additional records. Core said, wait a minute, what about the records we already provided—Will you provide your records? Again, there was no reciprocity forthcoming on Verizon's part. **BEGIN PROPRIETARY** Now we know Verizon was secretly calculating Core's traffic, using its Traffic Track system, and had a completely independent path to evaluate Core's traffic. Core showed these secret reports in the course of discussions, all the while falsely asserting that it was entirely dependent on Core's records. **END PROPRIETARY.**

IV. [BEGIN PROPRIETARY] The Traffic Track Report Determines Verizon's Version of the Events Leading Up to this Case and Presents Additional Evidence Concerning Core's Reciprocal Compensation and Switched Access [END PROPRIETARY]

Verizon's Assertions Relative to the Events Leading Up to this Case

In this case, Verizon has made several key factual assertions relative to the events leading up to Core's initial filing of its original complaint,—assertions which **[BEGIN PROPRIETARY]** the Traffic Track Report overhauled and exposed as being hypothetical. **[END PROPRIETARY]**

First, on June 30, 2011, and at various other points in time, Verizon told Core by email that it did not maintain any of its own data relating to its own outbound traffic, and was entirely dependent on Core to maintain records for such traffic. Core Stmt. 1.0, at 22. The point of this assertion was to make it appear that Core's "refusal" to provide CDRs in June, 2011 meant that Verizon had no basis whatsoever upon which to validate Core's bills. **[BEGIN**

PROPRIETARY] The Traffic Track Paper claims that Verizon "did not have the ability to collect or analyze its traffic to Core and thereby validate Core's (unverified) compensation bill." According to the report itself, "Traffic Track" is "[p]rovider-based call detail record (CDR) collection data warehouse." Joint Proprietary Exhibit 1, at Page 1. Verizon uses Traffic Track among other things, "to validate (oversee the comparison of) bills issued by CLEC's, MPO's and LEC entities." Joint Proprietary Exhibit 5, at ¶ 4. **[END PROPRIETARY]**

Second, in its Direct Testimony, Verizon claims that:

In January 2011, after Verizon pressed Core for some call detail records, Core provided a .txt file containing a sample of what Core claimed were records of Core-originated, Verizon terminated local calls. But Verizon's analysis of those records indicated that all of the calls in the sample were third-party traffic, non-local traffic, or otherwise invalid. Verizon made the reasonable assumption that, like Verizon and most other carriers, Core's traffic profile in the opposite direction would be similar, and therefore that Core likely had included such third party traffic in Core's billings to Verizon. VZ Stmt. 1.0, at 66.

While it is hard to believe that Verizon ever thought that Core's traffic profile in the originating direction would mirror its profile in the terminating direction (since Core traditionally served dial-up ISPs only), Verizon had absolutely no basis to believe this once it [BEGIN PROPRIETARY] saw the Traffic Track Report on July 19, 2011. The report contains an early analysis of the traffic in the Core-Verizon and in the Verizon-to-Core directions. These analyses show strikingly different patterns. See Joint Proprietary Exhibit 1, at Page 3 (providing, for example, that 84.82% of traffic in the "Core-to-VZ" direction was "Direct" whereas only 19.60% of traffic in the "VZ-to-Core" direction was "Direct"). [END PROPRIETARY]

Third, on August 1, 2011, Verizon filed its answer to Core's petition for interim emergency relief, in which it stated that it "simply does not believe that the traffic billed by Core is compensable under the ICAs... the issue is whether Core is *actually* terminating the traffic reflected in its bills..." Answer of Verizon Pennsylvania, Inc. and Verizon North Inc. to Petition of Core Communications, Inc. for Interim Emergency Order, at 7-8 (Aug. 1, 2011). This, of course, was meant to raise the specter that Core was billing for traffic that didn't exist. [BEGIN PROPRIETARY] However, the Traffic Track Report, generated just 15 days prior to Verizon's Answer was filed, substantiates large volumes of traffic in the Verizon-to-Core direction. See Joint Proprietary Exhibit 1, at Page 3, indicating that more than 8,000,000 calls were made in the (direction); and Page 5 (indicating that more than 98,000,000 of the aforementioned 132,000,000+ MOUs in the "VZ to Core" direction were classified as "LOCAL" as opposed to "TRANSIT" or "Access"). [END PROPRIETARY] Verizon well knew that it was indeed sending Core large amounts of compensable, local traffic; *it was simply hoping Core would not be able to come forth with its own records to substantiate what Verizon already knew.*

Support for Core's Own Claims

[BEGIN PROPRIETARY] The Traffic Track Report actually supports Core's claims in this case in a number of ways. **[END PROPRIETARY]**

First, Core has argued that Mr. Munsell's LNP Lookup method is unreliable because the OCN listed in the LNP database as maintaining a particular telephone number is often not the same carrier that is responsible to pay intercarrier compensation on calls for which that number appears in a CDR. Core Stmt. 3.0, at 62-63. Core explained that the telephone number of the calling party ("CPN") is "simply the "return address" of the end user who placed the call; it does not determine which carrier is responsible for ICC resulting from that call." Core also explained that "[i]n another common scenario, the originating LEC hires a "least cost router"... to terminate its calls... The LCR then hands the calls to Verizon which then terminates the calls to Core over the LITGs." *Id.*, at 63. **[BEGIN PROPRIETARY]** The Traffic Track Report confirms this fact. In defining the term "TRAFFIC TRACKING (LITG) ID" the report explains that it means "[t]raffic passing to/from Verizon from a switch that is not the carrier under study, but whose OCN is the carrier under study. For example, in a Comcast report, calls could have originated from Comcast to VZ, but [t]hose calling number files could be covered by Verizon's LITG. In the example scenario, Comcast is indirectly routing traffic to Verizon through Comcast, which is responsible for intercarrier compensation, even though the calling number belongs to Comcast." **[END PROPRIETARY]**

Second, Core seeks recovery of switched access charges from Verizon for the termination of intrastate and interstate interexchange traffic in this case. **[BEGIN PROPRIETARY]**

Out-of-State, Intra-State, Intra-LATA, Inter-LATA) in the Verizon-Core Direction. Joint Proprietary Exhibit 1, at Page 5 ("Study Totals VZ to CLEC"). **[END PROPRIETARY]**

Third, Core has explained its methodology for billing intercarrier compensation to Verizon in the face of various Verizon claims that Core's bills are inaccurate. **[BEGIN PROPRIETARY]** The Traffic Track Report supports the accuracy of Core's bills. This is demonstrated as follows:

The Traffic Track Report indicates that the following MOC's were sent from Verizon switches to Core switches in Erie, Harrisburg and Philadelphia in May, 2011 and are marked "mocs":

Erie: 10,419,306.00

Harrisburg: 16,583,576.00

Philadelphia: 21,250,288.00

Joint Proprietary Exhibit 3, at # 14; and Joint Proprietary Exhibit 1, at Page 15 (columns marked "nam_moc").

For the month of May, 2011, Core billed the following MOC's in the same direction:

Erie: 8,466,142.58

Harrisburg: 16,471,737.50

Philadelphia: 17,704,541.45

Core Proprietary Exhibit BLM-7 (Action# of Peter Mingo, The A-Club's May 31, 2011 Invoices to Verizon.)

In each case, the difference between the amount of traffic MOC's in the same direction as the Traffic Track and the number of MOC's Core billed is explained by reference to Core's records for traffic in the same direction as the Traffic Track.

Erie: 12,837,78

Harrisburg, 85,041 78

Philadelphia, 4,031 440.38

Joint Proprietary Exhibit A, at 7-13.

That is, in each case Traffic Track MOU's usage or very nearly equals the sum of the ATC MOU's plus the MOU's Core billed, i.e., the DTN MOU's. It is not surprising since "Traffic Track works on a point-to-point basis" and "records 95% (approx.) traffic going to and from switch, whether over an UUT or an ATC." Joint Proprietary Exhibit A, at 7-13. Moreover, [redacted] demonstrates that Core and Verizon actually shared a switch, i.e., a core of the network, and that Verizon was sending Core, and that conclusively demonstrated that Verizon's counterclaim in June and July 2010 may well have resulted in a violation of the DTN MOU's. [redacted] Verizon surely demanded Core's records, [redacted] and [redacted] Traffic Track Report. **[END PROPRIETARY]**

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Core respectfully requests that the Commission rule in Core's favor on Counts I-III of its Amended Complaint, and dismiss Verizon's Counterclaims in their entirety.

Respectfully submitted,



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March 18, 2013

**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	:	
	:	

CERTIFICATION OF SERVICE

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

VIA EMAIL ONLY

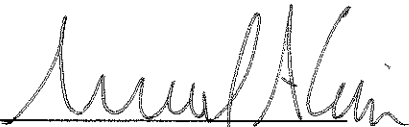
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