

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

August 16, 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 Exceptions of Core Communications, Inc. to the Initial Decision in the above-referenced matter. The Proprietary Version of the Exceptions 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
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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

**EXCEPTIONS OF
CORE COMMUNICATIONS, INC.
PUBLIC VERSION**

Michael A. Gruin Esq.
Stevens & Lee
Attorney ID No.: 78625
17 N. 2nd St.
16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
mag@stevenslee.com

*Counsel for Complainant
Core Communications, Inc.*

Dated: August 16, 2013

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Pursuant to 52 Pa Code § 5.533, Core Communications, Inc. (“ Core”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter.

I. BACKGROUND AND OVERVIEW OF CLAIMS

This case involves a Formal Complaint filed by Core against Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively “Verizon”), and Counterclaims filed by Verizon against Core. The claims and counterclaims in this matter can be broken down into two main categories.

The first category of claims relates to Core’s intercarrier compensation billings to Verizon for telecommunications traffic delivered from Verizon to Core. Both parties have asserted claims related to Core’s billings for this traffic. Core alleges that Verizon had no legal basis for suddenly refusing to pay Core for this traffic, and Core further alleged that Verizon had actually drastically underpaid Core for traffic that Verizon has sent to Core for termination. Verizon responded by alleging that Core had been overpaid for such traffic, and that Verizon was entitled to a refund.

The second category of claims relates to Verizon’s billings to Core for certain telecommunications facilities that Verizon claims it provisioned to Core, along with some billings for intercarrier compensation charges that Verizon billed to Core. For the past eight years in multiple voluminous sets of correspondence, Core has denied that it was liable to Verizon for these billings, and Verizon never sought to pursue the issue until it filed its counterclaim in this case. In its pleadings and testimony in this case, Core once again explained why it was not liable to Verizon for these billings. Core also explained that even if Core responsible for payment on some of Verizon’s facilities, Verizon’s counterclaims must fail because 1) Verizon billed Core at a grossly inflated and unlawful rate for these facilities, 2) nearly all of Verizon’s counterclaims claims are well beyond the statute of limitation, and 3) the majority of facilities at issue in Verizon’s counterclaims are interstate in nature, and therefore outside of the Pennsylvania Public Utility Commission’s jurisdiction.

The Commission-approved interconnection agreements (“ICAs”) between Core and Verizon are the primary sources of authority for resolving the disputes between the parties. The Commission has delegated jurisdiction over this dispute pursuant to the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended by the Telecommunications Act of 1996, 47 U.S.C. § 251, et seq. (hereinafter, the “Act”). The Commission has authority pursuant to section 252 of the Act to review and resolve disputes arising under interconnection agreements that they have approved. Therefore, the Commission in this case must decide which party acted in accordance with the ICAs, and also determine the proper compensation that should be paid for intrastate services pursuant to the ICAs.

The parties to this case presented markedly different versions of the facts underlying their dealings, and widely diverging interpretations of the ICAs and other controlling legal authority that governs this dispute. The ALJ in this case chose to adopt Verizon’s version of the facts and interpretations of law whole-cloth, as evidenced by the I.D.’s almost complete lack of reference to any Core-sponsored testimony, evidence or argument. In many cases, the I.D. simply adopts Verizon’s testimony, without any independent analysis or reference to binding legal precedent.

But an objective review of the record in this case shows that Core provided overwhelming support for its positions, that Core’s positions were consistent and credible throughout the proceeding, and that Core’s interpretations of ICAs are correct as a matter of law. By contrast, Verizon provided very little in the way of credible evidence to support its claims, and its witnesses made numerous admissions that actually undermined Verizon’s positions. Verizon’s positions on various issues morphed throughout the case, and in large part its positions were based on conjecture and speculation about the nature of the traffic exchanged between the parties. Furthermore, many of the I.D.’s conclusions of law are based on erroneous interpretations of the applicable provisions of the parties’ interconnection agreements (ICAs), FCC rules and previous Commission orders. For these

reasons, Core respectfully requests that the Commission reject the I.D. and issue an Order granting Core's Complaint and denying Verizon's Counterclaims.

II. EXCEPTIONS

Exception # 1: VERIZON BREACHED THE ICAS WHEN IT CEASED PAYING INTERCARRIER COMPENSATION TO CORE IN 2011

The I.D. found that Verizon "legitimately" disputed Core's May 2011 reciprocal compensation invoices, and that Verizon was entitled to question invoices, demand call detail records and stop payment at any time, regardless of whether it had a legitimate basis for doing so. The I.D. determined that Verizon's cessation of payments to Core in 2011 was "consistent with a reasonable reading of the ICAs". FOF # 88-92; Discussion, pp. 30-39. Core excepts to these findings, and incorporates by references passages from its Main Brief, pp. 9-12, and Reply Brief, pp. 3-6, 44-48.

A. Verizon Had No Legitimate Basis To Dispute Core's Bills in 2011

In June of 2011 Verizon abruptly ceased paying intercarrier compensation on all of the traffic that it sent to Core in Pennsylvania, and repeatedly asserted that "none of the traffic was in fact compensable". In evaluating Verizon's actions, it is important to recognize the scope and scale of Verizon's cessation of payment. Verizon did not dispute a percentage of Core's bills, or raise a specific concern about the calculation of invoices or the rating of traffic. Rather, Verizon boldly declared that none of billed traffic was compensable, and that Core's entire invoice was "invalid".¹ One would think that Verizon would have a well-developed basis for its statements and actions. But the record in this case unequivocally shows that Verizon had no data or analysis whatsoever to support its "100% non-compensable" assertion in 2011, and that it scrambled to develop a theory to support its claims only after litigation was commenced. The record also shows that at the time Verizon was restating its bold assertions, **BEGIN PROPRIETARY** Verizon had an internal study to

¹ See Core Statement 1.0 (Direct Testimony of Bret Mingo), and Exhibit BLM-4

its possession which fully corroborated Core's billings, and that Verizon failed to share this study with Core or the Commission until well after the hearing in this matter. **END PROPRIETARY.**

As outlined at length in Core's Reply Brief, the record is clear that:

- Core fully substantiated its billings to Verizon. Core R.Br., at 25-42.
- Core billed in exact accordance with the terms of the ICAs. *Id.*, at 25-27, 30.
- Core billed Verizon the exact same way that Verizon billed Core. *Id.*, at 29-30.
- Verizon had no legitimate basis in July, 2011 to claim that 100% of the traffic that it sent to Core was non-compensable. *Id.*, at 43-47. See also N.T. 517.
- Verizon *knew* that its claim of non-compensability was bogus, based on information Verizon had on July 19, 2011. *Id.*, at 43-47.
- 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. *Id.*, at, 43-47.
- Verizon's justification for withholding payment to Core changed multiple times throughout this proceeding. *Id.*, at 43-47.
- Verizon's *post-hoc* conclusions about potential "overbilling" by Core were based on grossly erroneous assumptions that were unequivocally disproven at the hearing. Core M.Br., at 25-27 and R.Br., at 26-33.
- Verizon's witnesses admitted that Verizon had not even reviewed any records related to the traffic Verizon sent Core before asserting that it was all non-compensable. N.T., at 507-509.
- Verizon's witnesses acknowledged that there was no valid basis to claim that all of the Verizon traffic sent to Core was non-compensable. N.T. at 517-525.
- Verizon made several highly pejorative allegations against Core, which were uniformly disproven by Verizon's own data. Core R.Br., at 1-7 and 43-47.

B. Core Did Not Violate the ICA's Dispute Resolution Procedures; Verizon Did

Contrary to the I.D.'s conclusion in FOF 89, the ICA's billing dispute procedures in Att. VIII, § 3.1.9.1, are not "mandatory." Either party may invoke those procedures "upon the discovery of a billing dispute." However, the ICA, Att. IV, § 24.1 permits either party to file a complaint with the Commission at any time, if the parties cannot resolve their differences. In this case, Verizon withheld

payments prior to the discovery of any *bona fide* dispute, and Core, facing imminent financial crisis, was fully justified to file its Petition for Emergency Relief. Conversely, if Verizon had documented a *bona fide* dispute (such as identifying specific a percentage of Core's bill as third-party carrier traffic for which Verizon had sent Core EMI records), it is probable that Core would have had no need to seek emergency relief at all, and no imminent harm basis to do so. This fact, more than any other, highlights the bad faith and malicious nature of Verizon's actions.

Core never refused to provide Verizon with call records. As set forth in the detailed email exchanges between the parties on pages 32-34 of the I.D., Core requested clarification of the discrepancies alleged by Verizon, and suggested a reciprocal exchange of records, and reminded Verizon of its failure to respond to records Core produced previously. Core's emails at that time expressed reasonable concerns over the legitimacy of Verizon's demand for records, and the evidentiary record in this case has fully validated Core's concerns. Verizon, not Core, is the party that refused to a reciprocal exchange of records and the party that failed to disclose the existence of the **BEGIN PROPRIETARY** **END PROPRIETARY**. Verizon also refused to explain the nature of its inquiry when it demanded records from Core. For example, it never told Core that it was concerned that Core's bills included third-party carrier traffic. Instead, Verizon just demanded records and refused to explain the basis for its concerns. The I.D. also ignores earlier emails from 2010-11 in which Core repeatedly pressed Verizon for resolution of traffic-related issues, and Verizon completely stonewalled Core. (See Core R.Br., at 8; Core Amended Complaint, ¶¶ 17-30; Core Exh. BLM-4).

The ICA does not permit self-help non-payment without a legitimate basis. The ICA, Pt. A, § 23 allows either party to audit the bills of the other party; and Att. VIII, § 3.1.9.1 allows either party to request dispute resolution and to withhold payments tied to legitimate disputes. In this case, Verizon skipped the audit and proceeded directly to withhold 100% of its bill based on suspicions

which were only articulated after the fact, and which have now proven to be meritless.² The I.D. interpreted the ICAs as allowing a billed Party to unilaterally dispute the entirety of the billing Party's invoice, withhold all payment, and force the billing party into a protracted dispute process while the non-payment continues. Under the ID's reading of the ICA, a Party does not need a bona fide basis for a dispute; it may simply stop paying, and make the providing Party prove its right to payment. This interpretation is neither reasonable nor logical, and is not consistent with the spirit or letter of the ICAs.

C. Core's Disputes of Verizon's Bills Are Not Comparable to Verizon's Disputes of Core's Bills

The ID fails to recognize that Core repeatedly and consistently disputed Verizon's bills from the day they were first issued, and practically begged Verizon to address Core's concerns. Core lodged legitimate disputes to Verizon's billing since at least 2003, by means of voluminous correspondence, including emails, spreadsheets and formal letters, as well as numerous attempts to discuss the billings with Verizon personnel face-to-face and telephonically.³ Verizon's failure to respond to these disputes, escalate them, or seek Commission resolution of has no bearing on Core's ability to seek Commission intervention on a separate, blatant, and potentially crippling violation of the ICA by Verizon. To be blunt, Verizon did not care to address Core's disputes until Core sued Verizon. Now that the Commission action has been sought by both parties on their respective billing disputes, the record reflects that Core's disputes about Verizon's bills were completely justified, while Verizon's cessation of payment on Core's bills were violations of the ICAs.

² Compare, Order of ALJ, *Armstrong Telecommunications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2216205 (July 18, 2011), at 10-11. ("Armstrong... is losing substantial money on the basis of what appears to be a unilateral action by Verizon contrary to prior agreement and, it would appear, in complete disregard of a lawfully filed tariff...").

³ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 30-34; and Exhibit CORE R-19.

Exception # 2: CORE'S RECIPROCAL COMPENSATION BILLS ARE FULLY SUPPORTED BY THE ICAS AND RELEVANT CALL RECORDS

The I.D. found that Verizon was entitled to a \$1,000,000 refund based on its "LNP Lookup" theory that purported to identify third-party carrier traffic that Verizon sent to Core over a period of several years. The I.D. also found that Core misbilled Verizon for so-called "VNXX" traffic, and had committed other billing errors. (FOF # 35-46; COL # 17-19; and discussion, pp. 23-26 and 49-50.) Core excepts to these findings, and hereby incorporates by reference passages from its Main Brief, pp. 25-27, and Reply Brief, pp. 26-36.

Verizon's "refund" claim challenged the validity of Core's 2008-2011 reciprocal compensation invoices. As the party seeking a finding from the Commission on, Verizon bears the burden of proving that Core's bills were erroneous.⁴ Verizon did not come close to meeting this burden. The I.D. lends scant analysis to this issue, despite significant amounts of evidence, testimony, and legal argument that was directed to it during the proceeding. Instead, the I.D. merely recites Verizon's allegations, references several other complaint cases involving Core and other carriers, and concludes that Core "double-billed" Verizon. But an objective review of the record demonstrates that Verizon failed to provide coherent evidence that Core's invoices were incorrect.

A. Verizon's "Refund" Claim Is Actually a Contract Damages Claim

Verizon's "refund" claim is actually a complicated, hypothetical damages claim which is based on Verizon's reading of the ICA's definition of "Local Traffic" and which poses the question, "What would Core's bills look like if Core had applied Verizon's new 'LNP Lookup' method for billing, rather than the clear procedures set forth in the ICA, Att. IV, § 7.2 and 7.3.?" In other words, Verizon is attempting to gain the benefit of a billing methodology which it did not bargain for, and which it never even brought to Core's attention until service of written testimony in this case.

⁴ See, 66 Pa. C.S. §332(a), and, *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The I.D., at COL # 18 and 19, relied on Section 1312 of the Public Utility Code.⁵ However, this statute is inapplicable to Verizon's claim because (1) the statute is limited to tariff rates, not ICA rates; and (2) the statute covers claims for a refund because the rate charged was unreasonably high, not complicated theories about the presence of third-party carrier traffic in the call stream. The Commission does not have the authority to award damages for perceived or speculative harms. "[I]nterpretation and enforcement actions that arise after a state commission has approved an interconnection agreement must be litigated in the first instance before the relevant state commission. A party may then proceed to federal court to seek review of the Commission's decision or move on to the appropriate trial court to seek damages for a breach, if the commission finds one."⁶ In other words, Verizon must first prove a breach of the ICA to the Commission, and only then may it seek damages on that breach in Federal Court.⁷

B. Per the ICAs, Core Billed Verizon for all Traffic Received Over the LITGS

Core produced massive volumes of call records to document every Minute of Use ("MOU") it billed as reciprocal compensation, as well as detailed descriptions of how the bills were generated.⁸ As the ID correctly noted, Core received traffic from Verizon over two sets of trunks – the Access Toll Connecting Trunks ("ATCs") and Local Interconnection Trunk Groups ("LITGs"). The ICAs mandate that the sending carrier will transmit local and intraLATA toll traffic, and traffic transiting to other ILECs over the LITGs;⁹ and that the receiving carrier shall bill the sending carrier for **each minute of traffic** received over the LITGs.¹⁰ **It is undisputed that this is precisely how Core billed Verizon for reciprocal compensation.** Core billed Verizon for each minute of traffic

⁵ 66 Pa.C.S.A. § 1312.

⁶ *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir. 2007).

⁷ Indeed, Core has pursued an ICA damages suit against Verizon Maryland, Inc. in federal court for several years. The case is currently before the U.S. Court of Appeals for the Fourth Circuit in *Core Communications, Inc. v. Verizon Maryland LLC*, U.S.C.A. (4th) Docket 12-2572.

⁸ Core Statement 1.0 (Mingo Direct Testimony), at 12-18, and Core Statement 4.0 (Panel Surrebuttal Testimony), at 14.

⁹ Verizon ICA, Att. IV, § 1.1.1; Verizon North ICA, Pt. V, § 1.2.

¹⁰ Verizon ICA, § 7.2; Verizon North ICA, § 2.6.2.

delivered by Verizon over the LITGs, but Core did not bill Verizon anything for traffic delivered over the ATCs.¹¹ This is precisely same way in which Verizon bills Core.¹²

Verizon incorrectly argued, and the I.D. incorrectly concluded, that some of the traffic that Verizon sent to Core over the LITGs was originated by third-party carriers, and that the ICAs do not permit Core to bill Verizon for this traffic. ID, COL # 17. The I.D.'s interpretation of the ICAs is erroneous, because under the billing provisions of the ICAs, it makes no difference whether the originating phone number on a call was associated with Verizon or not. The billing provisions of Att. IV to the Verizon Pennsylvania ICA dictate that Core bill Verizon for *all* incoming traffic on the local interconnection trunk groups ("LITGs"), either as local, intrastate access or interstate access. The Core-Verizon PA ICA, Att. IV, § 7.2 states "[t]he 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;" and § 7.3 states "[the] **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...." (Emphasis added). Notably, the ICA defines "Party" as a party to the ICA, either Core or Verizon. ICA, Pt. B -- Definitions. There is nothing in the ICA that discusses either party billing a third-party for traffic Verizon passed over the LITGs, or excluding such calls from billing.¹³

The I.D. improperly accepted Verizon's interpretation of the ICA, which is that the ICAs' definition of "Local Traffic" and "Reciprocal Compensation Traffic" bar Core from billing Verizon for terminating third-party traffic that transits Verizon's network. COL # 17 (reciting Verizon's M.Br., at 30-31). But as Core explained in its Reply Brief, at pp. 29-30, this interpretation is simply

¹¹ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 13,16, N.T at 252, 301, and I.D. FoF 38

¹² Core Stmt. 3.0, at 50; and **Exhibit CORE R-28** (Verizon Interrogatory Response)("All traffic sent by Core to Verizon is billed to Core. When Core handles third party originated traffic, those third parties are Core's customers. Third party traffic sent by Core is billed to Core."). See also N.T. 510-512

¹³ The FCC has found that "Verizon does have control over how it passes calls" over LITGs to CLECs. *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

wrong, because these definitions do not impose a duty, and must be read in conjunction with the **operative billing 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, at one of three possible rates.

The ICAs say nothing about conducting an analysis to determine the carrier that is associated with an originating telephone number before billing reciprocal compensation. Yet the I.D. accepted Verizon’s assertion that Core was obligated to somehow delve into the traffic that Verizon sent over the LITGs and determine which traffic may have originated from other carriers, and not bill Verizon for such traffic. In doing so, the I.D. accepted a novel methodology that Verizon developed to retroactively associate third-party carriers with portions of the traffic that Verizon delivered to Core. The methodology in question was developed and performed by Verizon witness Bill Munsell after the case was initiated, and is referred to as the “LNP Lookup” method. The LNP Lookup methodology was the prime justification that Verizon presented at the hearing to support its claim for a refund of monies paid to Core. And the ALJ evidently accepted Verizon’s LNP Lookup analysis to determine that “35% of the calls that Core billed Verizon for had originated at telephone numbers for which Verizon was not the local service provider at the time of the call.” ID, FOF # 45.

Core easily demonstrated that 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 or support Verizon’s claim for a refund. Core proved that:

- LNP Lookup does not reliably identify the carrier responsible to pay intercarrier compensation for that call. Core M.Br., at 26.
- LNP Lookup is not sanctioned by the ICAs. *See generally*, Core R.Br., at 28-30.
- LNP Lookup is not industry standard. Core Stmt. 1.0, at 31-32 and Core M.Br., at 25-26.
- Verizon admitted it does not use LNP Lookup to bill Core or other carriers. N.T. 510-512

- Verizon bills Core the same way that Core bills Verizon, i.e., Verizon bills Core for each call Core sends it over LITGs. Core Stmt. 4.0, at 9; Core R.Br., at 28,30; and Core Exhibit R-28.
- Verizon’s witnesses but admitted that the “35%” figure was an estimate extrapolated from a sample done well after the case had started. *See*, N.T. 529-532.
- Exchange Message Interface (“EMI”) records, not LNP Lookup, is the industry standard method for tandem providers such as Verizon to indicate third-party carrier traffic to terminating carriers. Core M.Br., at 25-26.

Verizon attempted to argue that a different set of rules should apply to Core’s billing, because Verizon is a tandem provider and Core is not. But under the ICA, it makes no difference whether or not Core is a “tandem provider.”¹⁴ In summary, Core demonstrated that Verizon’s LNP Lookup methodology is nothing more than an academic exercise, which has no relevance to the provisions of the ICAs that govern how the terminating carrier is supposed to bill the other party.

C. Verizon Failed to Credibly Demonstrate Any Overbillings

Even if Verizon’s interpretation of the ICA is correct, and Core was required to somehow sift through the traffic that Verizon sent over the LITGs to originating carriers other than Verizon, and exclude this traffic from its bills to Verizon, Verizon still failed to demonstrate that it was, in fact, “double-billed” by Core. The I.D. agreed with Verizon’s interpretation and held that Core “improperly billed Verizon reciprocal compensation for all locally dialed calls originated by other carriers and merely transited by Verizon”. FOF # 42. The I.D. noted it was “impossible to accurately quantify” the amount of such traffic, but still held that Verizon had met its burden of proof and recommends ordering Core to pay a \$1,000,000 refund to Verizon for this traffic.

The I.D.’s findings on this issue are flawed on their face. The ID recommends that Core should issue a refund of exactly \$1,000,000 to Verizon, while explicitly acknowledging that Verizon had not been able to accurately quantify the alleged amount of overbilling. In other words, the I.D.

¹⁴ An optional side agreement, which was never executed, addresses special provisions for transited traffic *from* other LECs and local carriers. *See*, ICA, Att. III, Exh. H (“Intralata Telecommunications Services Settlement”).

states that Verizon failed to meet its burden of proof, but still finds that Verizon is entitled to relief. The Commission should reject this finding. Verizon had the burden of proving that it had been overcharged by Core, and utterly failed to do so. Verizon's allegations about over-billing and double-billing completely crumbled as this case proceeded, to the point where Verizon's witnesses admitted that they could not point to any instance of overbilling, or reliably quantify the extent of the alleged overbilling. On the stand, in a particularly illuminating sequence, Mr. Munsell confirmed that **Verizon could not identify any actual percentage of third-party carrier traffic on the LITGs for which Core may have billed Verizon.** See N.T. 527-38 and Core Cross Exhibit 13. This admission by Mr. Munsell is fatal to Verizon's LNP Lookup claim.

D. Core Never "Admit[ted]" That It Double-Billed Verizon

Besides relying on Verizon's flawed conclusions from the LNP Lookup study, the I.D. also improperly accepted Verizon's wildly exaggerated assertion that "Core admits that it continues to bill Verizon for other carriers' traffic..." VZ M. Br., at 28. This is patently untrue. To the contrary, Core demonstrated that only a very small percentage of third-party traffic on the LITGs, as identified in the EMI, was ever billed to Verizon. Core Stmt. 3.0, at 65. As set forth above, pursuant to the clear language of the ICAs, Core traditionally billed Verizon for "each minute" on the LITGs, and Core always assumed that third-party traffic, to the extent it existed, came in over the ATCs, not the LITGs.¹⁵ Consistent with industry standards and FCC authority, Core assumed that the EMI Verizon sent was associated with the traffic on the ATCs.¹⁶ Core now knows, courtesy of this litigation, that Verizon sent all kinds of traffic (i.e. local, non-local, Verizon originated, IXC-originated, etc...) down both sets of trunks, and the EMI records are not matched to either set of trunks.¹⁷ As explained in Core's Reply Brief, pp. 27-30, Core analyzed the traffic being sent from Verizon over the LITGs,

¹⁵ Core Stmt. 1.0, at 13.

¹⁶ The FCC has concluded that a CLEC such as CoreTel is permitted to bill Verizon for all of the traffic Verizon sends the CLEC over LITGs, *unless Verizon provides EMI and other information sufficient to permit the CLEC to bill a third-carrier.* *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

¹⁷ Core Stmt. 3.0, at 65.

and Core demonstrated that since January 2012, Verizon only provided EMI on a small percentage (5.4%-8.0%) of calls on the LITGs, which means that at most 5.4%-8.% of calls could have been originated by 3rd parties. This modest percentage in no way supports the 35% claim Mr. Munsell derives using LNP Lookup.¹⁸ Furthermore, during earlier periods, the EMI Verizon 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. Thus, the I.D. permits Verizon to pass unlimited volumes of third-party traffic to Core over the LITGs, without the appropriate EMI records, then demand a refund based on LNP Lookup years after the fact. Considering Verizon operates as a CMRS carrier and an IXC, as well LEC and tandem provider, such a ruling would permit, and in fact incentivize, Verizon to abuse its tandem status to funnel affiliate traffic to terminating LECs without paying intercarrier compensation.

E. Core's Suits Against AT&T, Choice One and XO Involve ATC Traffic Which Core Never Billed to Verizon

With Verizon's LNP Lookup theory speculative at best, the I.D. relied heavily on the fact that Core was involved in complaint cases with other carriers (e.g., AT&T, XO Communications and Choice One) to justify its finding that Core had double-billed Verizon. To reach this finding, the I.D. reasoned that Core billed those carriers for traffic that transited Verizon's network, and that Core billed Verizon for "100% of the minutes" that Verizon transits, so Core must have double-billed Verizon. (I.D. at 50). This is one of the most blatantly erroneous findings in the I.D., and demonstrates a complete lack of consideration of any of the evidence that Core submitted. Core repeatedly explained that Core **only billed Verizon for traffic received on the LITGs**, and billed

¹⁸ Core has offered to credit these amounts back to Verizon by issuing Verizon credits against the unpaid switched access bills which Verizon does not pay. Tr. 322-23. As explained in Core's Reply Brief at 29 this offer by Core is not required by the ICA, but Core has offered this solution to remedy Verizon's stated concerns.

Verizon nothing for the traffic received on the ATCs.¹⁹ Core also explained that the traffic received from AT&T, XO, and Choice One was received on the ATCs, and based on EMI received from Verizon, and therefore, it was impossible for Verizon to have been billed for this traffic. Core Stmt. 4.0 at 6, and N.T. 252, 304. Core's position on this point is supported by Verizon's own testimony,²⁰ Verizon's Phantom Traffic White Paper,²¹ the FCC²² and the Commission.²³ Furthermore, as Core pointed out, the traffic involved in the AT&T, XO, and Choice One cases were from a different time-period than the traffic involved in the current complaint against Verizon, which is another reason why there is no legitimate basis to rely on those cases to conclude that Core double-billed Verizon.²⁴

Verizon had initially attempted to argue that Core was billing for traffic over ATCs. But Core demonstrated that Verizon's claim was based solely on Mr. Munsell's mistaken interpretation of Core's "hunt group" list, which he admits was based on an erroneous assumption, and Verizon has not submitted evidence of one call that came in over ATC for which it was billed. There was an extended discussion of this point during the hearing, which is reflected in the transcript at pp. 544-560. During this discussion Mr. Munsell acknowledged that he had misinterpreted a Core discovery response, which led him to conclude that Core had improperly designated ATC trunks as LITGs, and that was the basis for his "double-billing" theory. Mr. Munsell also acknowledged that Core must have used EMI records to bill AT&T (N.T. 546), and that Verizon does not track which trunks groups are used to send traffic to Core (N.T. 556). After initially submitting testimony boldly stating that Core "indisputably" double-billed Verizon, Mr. Munsell retracted his testimony, and was forced to

¹⁹ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 13,16, N.T at 252, 301, and I.D. Finding of Fact 38

²⁰ Verizon Stmt. 1.0, at 52-53 and 57.

²¹ See, NPRM & FNPRM, *In the Matter of Connect America Fund*, WC Docket 10-90 et al., FCC Item 11-13 (rel. Feb. 9, 2011), at Para. 622 and note 950. (summarizing Verizon white paper which explains how Verizon routes traffic with a "CIC" as "IXC" traffic).

²² *Id.*

²³ Order, *Core Comm., Inc. v. AT&T Comm. of Pa., LLC*, Pa. P.U.C. Dockets C-2009-2108186 (Dec. 5, 2012)(*"AT&T"*), at 2 ("This proceeding involves... calls originated by AT&T's customers that are routed through **Verizon's access tandem switches** to Core's end-user customers."). (Emphasis added).

²⁴ See N.T. 250-251.

admit under cross-examination that he was wrong about his “double-billing” allegations. (N.T. 555-557, 566-568). At bottom, Mr. Munsell’s theory of “double-billing” was exposed as being mere speculation that relied on multiple erroneous assumptions. This hardly qualifies as sufficient to meet Verizon’s burden of proof, yet the I.D. simplistically accepted Verizon’s disproven theories and held that Core had double-billed Verizon.

Finally, Core never “conceded in other Commission proceedings that the originating party is liable to compensate Core for the termination of traffic through Verizon’s tandem switches, rather than Verizon,” as the ID claims, at FOF # 69. The ID appears to be referring to several ongoing arbitration cases involving RLECs, and Core has never billed those carriers any intercarrier compensation. See N.T. 249-251.

F. Verizon’s Own Internal Study Corroborates Core’s Billings

It is important to recall that Verizon initiated this dispute in July of 2011 by boldly claiming that all of the traffic that it sent to Core was non-compensable. However, since at least July 19, 2011,

BEGIN PROPRIETARY

[END PROPRIETARY] Core R.Br., 46-48.

G. Core's Minute Counts Were Reliable, Predictable and Accurate

The I.D. found that Core violated the ICA by failing to create "AMA" records for traffic it received over the multi-frequency ("MF") trunks. ID, at COL # 20. But Core showed that the reason it did not create AMA records for the MF traffic is that Verizon refused to pass ANI/CPN over the MF trunks, which rendered call detail records useless for billing purposes. Core R.Br., at 32-34. Core has demonstrated that its MF minute counts were reliable and predictable.²⁵ Indeed, Core's minute counts fell dramatically in this period, consistent with the overall "churn" in the dial-up Internet access market.²⁶ Further, Verizon never challenged Core's minute counts for seven (7) years.²⁷ In the end, Verizon put forth no evidence which in any way allows for a finding that it had been overbilled for traffic sent over the MF trunks, and the ID failed to identify any specific harm to Verizon.

H. Per the ICAs and Settled Precedent, VNXX Traffic Is "Local"

The I.D. relied on the ICA's definition of "Local Traffic" to hold that Core could not bill Verizon for VNXX Traffic (COL # 22), but it once again ignored the operative provision that tells the parties how to bill. The ICA, Att. IV, § 7.3 states "[f]or billing purposes, each Party shall pass Calling Party Number ("CPN") information on each call carried over the [LITGs]... 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, the 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

²⁵ Core Statement 4.0 (Panel Surrebuttal Testimony), at 10-13 (MF trunks); and 13 (SS7 trunks).

²⁶ *Id.*, at 12 and Figure SR-2.

²⁷ Core Stmt. 1.0 (Direct Testimony of Bret Mingo), at 18.

passed, as provided in Attachment I and applicable Tariffs.” This is precisely how Core bills Verizon for reciprocal compensation: it uses CPN and called number information passed by Verizon in the SS7 signaling stream for the LITGs to rate calls “as either Local Traffic or toll...”. Core Stmt. 1.0, at 30-31. And this is also exactly how Verizon bills Core for the traffic that Core sends to Verizon over LITGs.²⁸ Furthermore, settled precedent dictates that so-called “VNXX” traffic is local traffic. On numerous occasions, the FCC has stated that VNXX arrangements are local and subject to section 251(b)(5) Act.²⁹ The Commonwealth Court upheld the Commission’s approval of Core’s VNXX arrangements as being consistent with a local exchange service under Pennsylvania law and specifically, Chapter 30.³⁰ As for ISP-bound traffic, the Commission held in 2006 that, per the *ISP Remand Order*, the FCC’s mirroring rates applies to ILEC-CLEC VNXX traffic.³¹

Exception # 3: CORE’S SWITCHED ACCESS BILLS TO VERIZON ARE VALID AND PAYABLE

The I.D. found that Core’s was not permitted to bill Verizon switched access charges for toll traffic that Verizon delivered over the LITGs. FOF # 37,44,53-62,64-65,70; COL # 24,35.

Discussion, pp. 39-41. Core excepts to these findings, and hereby incorporates the passages from its Main Brief, pp. 12-15, and Reply Brief, pp. 38-43. The I.D.’s findings on this issue are based on incorrect interpretations of controlling authority, the ICAs’ billing provisions and Core’s tariffs.

A. Core’s Switched Access Bills Comply With the ICAs and Are Backed by Call Records

²⁸ Core Stmt. 3.0, at 50; and **Exhibit CORE R-27** (Verizon Interrogatory Response)(explaining that Verizon uses NPA-NXX of the calling and called parties to rate and bill Core’s traffic to Verizon). See also N.T 510-512

²⁹ Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, 17 FCC Rcd. 27039, ¶ 301 (2002); Order, *Starpower Comm. v. Verizon South Inc.*, 18 FCC Rcd 23625, 23633, ¶ 17 (2003) (“*Starpower*”).

³⁰ *RTCC v. Pa. P.U.C.*, 941 A. 2d. 751, 758-59 (Pa. Cmwlth 2008)(“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... the Commission properly determined that Core was a local exchange service.”); *also see*, Order, *Palmerton Telephone Company v. Global NAPs South, Inc., et al.*, Pa. P.U.C. Docket C-2009-2093336, at 43 (March 16, 2010)(approving Palmerton’s use of NPA-NXXs to rate inbound calls).

³¹ Order, *Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996*, Pa. P.U.C. Docket No. A-310814F7000 (entered Jan. 18, 2006), at 10.

The ICAs contain straightforward procedures for the terminating party to bill the originating party switched access charges for switched access traffic transmitted via the LITGs. The ICAs require that each party pass calling party number (“CPN”) for all, or substantially all, the traffic it sends over the LITGs.³² The ICAs permit the party terminating the traffic to bill the sending party at intrastate or interstate switched access rates, by rating each call using CPN.³³ The ICAs specifically reference and incorporate the parties’ respective intrastate and interstate switched access tariffs to establish the rates and rate elements applicable to this traffic.³⁴ Core demonstrated that its switched access billing methodology is fully documented and industry standard. Core generates call detail records at its switch, using CPN and called number as passed by Verizon in the SS7 signaling stream to rate each call on the LITGs as local, intrastate access, or interstate access.³⁵ Core also explained that its methodology is fully consistent with the manner in which Verizon bills Core for traffic that Core sends Verizon over the interconnection trunks.³⁶ And, the ICA, Att IV, § 23.4 and Att. VIII, § 3.1.8.3 expressly authorize Core’s re-rating and backbilling. Verizon begin this matter when it questioned 100% of Core’s bills, and it cannot be surprised that, as a consequence, Core was able to identify substantial underbillings, that Core is entitled to remedy via backbilling.

B. Core Provides Tandem Functionality and End Office Functionality

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,³⁷ even if it does not literally use each and every piece of machinery that an ILEC does. Core’s tariffs support billing for functional

³² Verizon ICA, Att. IV, § 7.3; Verizon North ICA, Pt. V, § 2.6.1.

³³ Verizon ICA, Att. IV, § 7.3; Verizon North ICA, Pt. V, § 2.6.2.

³⁴ Verizon ICA, App. 2 (Price Schedule), Item B.III.

³⁵ See, Core Stmt. 1.0 at 31-32 and Main Brief at 12-15.

³⁶ See, Exhibit Core R-27.

³⁷ 47 C.F.R. 61.26.

equivalents.³⁸ At the state level, Commission rules and state law permit CLECs to tariff rates which mirror the incumbents; and if they do so, CLECs are immune from exacting cost studies.³⁹ Only if CLECs attempt to tariff higher rates, are they exposed to cost scrutiny.⁴⁰ 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 in fact, describing switching functionality. 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. As for the tandem rate element issue, I.D., at 43, Core is permitted to charge tandem rate elements, even if, the tandem belongs to Verizon. Indeed, Verizon tried and lost this argument in federal court.⁴¹

Core is also clearly permitted to charge for end office elements. For starters, the I.D. refers to Core's switches as "end office[s]" no less than 16 times, as a word search of the I.D. reveals. Further, Verizon's reliance on the FCC's *Ymax* case is misplaced.⁴² The FCC has stated explicitly that *YMax* establishes principles that are tied to **the specific architecture and tariff at issue in *YMax*** and does not bar compensation for carriers that use IP.⁴³ The network architecture in *YMax* is completely different from Core's, as Core explained in its Reply Brief at p. 41. Whereas *YMax* apparently had no facilities in the majority of its POPs, Core's facilities includes six wire centers in Pennsylvania, each equipped with a switch and each connected to extensive network of other carriers

³⁸ See, eg.s, Core FCC Tariff No. 3, Section 1 (Definitions & Abbreviations)("Switched Access Service").

³⁹ *Global Order*, 1999 WL 1041892 (Pa.P.U.C.), at 18-19.

⁴⁰ See *Verizon Pennsylvania, Inc., et al. v. CTSI, Inc.*, Dkt No. C-20077332 (Op. & Order entered August 29, 2008), and *Verizon Pennsylvania, Inc. et. al. v. Penn Telecom, Inc.*, Dkt. No. C-2006-6987 (Op. & Order entered August 29, 2008).

⁴¹ *Paetec Communs. v. MCI Communs. Servs.*, 712 F. Supp. 2d 405, 410, 411, 413-415 (E.D. Pa. 2010) ("[W]here 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...").

⁴² *AT&T Corp. v. YMax Communications Corp.*, 26 FCC Rcd 5742 (2011).

⁴³ 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 "whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture" or not is irrelevant).

and customers.⁴⁴ Indeed, Core, unlike YMax, connects directly to its ISP and wholesale VOIP customers over dedicated intraoffice facilities.⁴⁵ Additionally, Core's Pennsylvania tariff incorporates the FCC "VOIP Symmetry Rule" which permits CLECs to bill for the functional equivalent of ILEC rate elements, regardless of the specific facilities used.⁴⁶

C. Core Is Permitted to Charge the CCL to Switched Access Customers

The I.D., FOF # 62, appears to adopt Verizon's objections relative to the carrier common line charge ("CCL"). Verizon's objections relative to the CCL, VZ M. Br., at 55, arose for the first time *on cross examination at the hearing*. Although it bore the burden of proof to challenge Core's tariff, Verizon's own testimony is bereft of discussion on CCL. This was a key omission, because it is not even clear whether the CCL is tied to a specific physical facility, or is simply a subsidy associated with so-called "NTS" costs.⁴⁷ Core provides its customers with a variety of arrangements which serve as the functional equivalent of a loop or line,⁴⁸ but, since Verizon never raised its objection to the CCL, there is little discussion of these costs or functions on the record.

D. Core Only Billed Verizon For Switched Access Based On the NPA-NXX Provided In the Call Stream And the Methodology Proscribed By the ICA

In rejecting Core's access billing claim, the I.D. incorrectly relied on several other arguments by Verizon, to wit, that Core billed Verizon for traffic that was originated by IXCs, Core billed Verizon switched access rates for ISP-bound traffic; and Core billed Verizon Pennsylvania intrastate access charges for traffic originated in PA and terminated in DE. (I.D. at 51). None of these claims by Verizon provide a valid basis for rejecting Core's access billing claims, as discussed at length in Core's Reply Brief, at pp. 38-43.

⁴⁴ Core Stmt. 1.0 (Direct Testimony of Bret Mingo), at 5-7.

⁴⁵ *Id.*, and, Core Exh. BLM-1 (switch center diagram).

⁴⁶ Core Communications, Inc. Pa.P.U.C. Tariff No. 4, Orig. Sheet 52.37, § 5.5; 47 C.F.R. §§51.913 and 61.26.

⁴⁷ *Global Order*, 1999 WL 1041892 (Pa.P.U.C.), 1. ("The *Carrier Common Line Charge* (CCLC) is the only switched access rate element designed to recover NTS costs. However, historically, this rate has been charged on a per minute of use (MOU) basis and is the largest contributor to local service rates not directly related to costs.").

⁴⁸ Core Stmt. 1.0 (Direct Testimony of Bret Mingo), at 2-8

With respect to the data to support Core's bills, Core provided voluminous CDRs to support its switched access billing to Verizon as part of the discovery in this case.⁴⁹ Core's Main Brief, at pp. 13-15, explained the methodology that Core employed to generate its access bills to Verizon, and the safeguards that were employed to protect against double-billing of Verizon and another carrier for the same switched access call. Core compared NPA-NXX of calling and called parties to rate calls, consistent with ICA, Att. IV, § 7.3 and industry standard practice. Core used a matching algorithm to weed out calls for which Verizon-provided EMI permitted Core to bill another IXC for switched access calls. Verizon quibbles with Core's algorithm, but offered no alternative. And, if Verizon does not want to be billed for IXC minutes delivered over the LITGS, all Verizon needs to do is deliver such traffic over the ATCs or other arrangements. Core M.Br., at 27.

With respect to the applicability of access charges to ISP-bound traffic, the I.D. held that all ISP-bound traffic must be billed at \$.0007/MOU according to the Commission's recent order in the *AT&T* case. Contrary to ID's finding, however *AT&T* involved **locally-dialed traffic**, not long-distance traffic, which is the type of traffic at issue in Core's access bills to Verizon. In *AT&T*, the Commission specifically found that the *ISP Remand Order* does not apply to switched access traffic.⁵⁰ Furthermore, Core explained in its testimony that not all of the traffic Verizon sends Core is ISP-bound, so the I.D.'s ISP-bound traffic findings cannot be used to dismiss Core's access bills universally even if those findings were correct as a matter of law. Much of the traffic that Verizon sends to Core is VOIP traffic⁵¹, and therefore, and compensable at local, intrastate or interstate rates,

⁴⁹ *Id.*

⁵⁰ *Core Communications, Inc. v. AT&T*, Dkt. No. C-2009-2108186 (December 12, 2012), at 25-26 ("The same observation holds with respect to local ISP-bound traffic and non-local ISP-bound traffic. The FCC has preempted the states with respect to the former, but has *not* preempted the states with respect to the latter."). See also, *AT&T Order on Reconsideration*, entered August 15, 2013, at pp. 41-42, confirming that Core's Access Tariff applies to non-local calls originated by LECs and wireless carriers.

⁵¹ Core Statement 1.0, at pp. 1-4

and the ISP-Remand Order has no bearing on such traffic.⁵² With respect to the assertion that Verizon is not responsible for traffic originated in PA and terminated in Delaware, Core explained that Verizon **Pennsylvania** delivers this “Delaware” traffic to Core **in Pennsylvania**. Verizon is therefore liable to pay Core under the Pennsylvania ICA. *See*, Core Stmt. 1.0, at 30-31.

Exception # 4: VERIZON FAILED TO MIRROR RATES IN COMPLIANCE WITH THE ISP REMAND ORDER.

The I.D. found that Verizon has properly “opted-in” to the FCC’s “mirroring rate” for ISP-bound traffic. I.D., FOF # 49,50; COL # 24-32; Discussion, pp. 42,50. Core excepts to these findings, and incorporates passages from its Main Brief, pp. 15-17, and Reply Brief, pp. 36-38.

According to the I.D., Verizon claimed that “Core **is collecting** tens of millions of dollars from Verizon for reciprocal compensation payments through a contorted methodology misconstruing the FCC's ISP Remand Order.” I.D., at 21, 50. Actually, Verizon alleged that Core was “**trying to** collect tens of millions of dollars from Verizon for reciprocal compensation payments through a contorted argument misconstruing the FCC’s ISP Remand Order...” Vz. Stmt. 1.0, at 5-6. (Emphasis added). There is clearly a big difference between trying to collect and actually collecting. The I.D. makes it appear that, should the Commission rule in Verizon’s favor on this issue, Verizon would be entitled to a huge refund based on the mirroring rule. This is not the case, as Verizon has paid the overwhelming majority of minutes to Core at the \$0.0007 mirroring rate, not the TELRIC rate.

Core’s Main Brief (at pp. 15-17) and Reply Brief (at pp. 36-38) explain in detail why there are two big problems with Verizon’s implementation of the mirroring rule, and why those problems entitled Core to be paid at full TELRIC rates for ISP bound traffic delivered from Verizon between 2008 and 2012. *First*, the mirroring rule requires Verizon to lower the rate it charges *for all section*

⁵² The I.D. also incorrectly held that Core advocated a position in this case that is contrary to a position taken in other cases (related to applicability of access charges to ISP-bound traffic). I.D. FoF 57, CoL 29. This analysis is flawed, because those cases involved the applicability of originating access charges to VNXX ISP-Bound traffic, whereas this case involves the applicability of terminating access to both voice and data traffic.

251(b)(5) traffic. Section 251(b)(5) traditionally applied to all traffic other than switched access traffic.⁵³ However, following the FCC's November, 2011 *ICC Transformation Order*, section 251(b)(5) now applies to switched access traffic, as well.⁵⁴ This means Verizon has been able to confine the class of traffic for which it has actually mirrored the FCC's rate to a tiny subset of the section 251(b)(5) universe. *Second*, with respect to traffic Core sends Verizon pursuant to the Verizon Pennsylvania, Inc. ICA, Verizon has utterly failed to adopt the FCC's mirroring rate.

Beginning in August, 2010, Core began to send substantial amounts of section 251(b)(5) voice traffic to Verizon.⁵⁵ Subsequently, Core discovered and has since confirmed that Verizon bills Core either at the TELRIC reciprocal compensation rates set forth in the ICAs, or the switched access rates set forth in Verizon's tariffs, for the termination of Core's section 251(b)(5) traffic, but never at the FCC's mirroring rate of \$0.0007/MOU.⁵⁶ Therefore, Verizon has never properly opted in to the *ISP Remand Order*. The policies inherent in the *ISP Remand Order* require Verizon to mirror properly.⁵⁷ 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.⁵⁸

Lastly, the I.D. found that Core had failed to carry its alleged burden of proof with respect to the *ISP Remand Order's* 3:1 ratio to distinguish voice from ISP-bound traffic. I.D., COL # 25. The ALJ got the burden exactly backwards. Had Core attempted to show that the ratio undercounted its voice minutes, Core would have borne the burden of proof. But if Verizon attempted to show that the

⁵³ *In re Connect America Fund, et al.*, WC Docket No. 10-90 *et al.* (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-61, 26 FCC Red 17663 (2011) (“*ICC Transformation Order*”), *appeals pending*, at ¶ 761.

⁵⁴ *Id.*, at ¶ 762.

⁵⁵ Core Statement 2.0 (Direct Testimony of Christopher F. Van de Verg, Esq.), at 14.

⁵⁶ *Id.*

⁵⁷ “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.

⁵⁸ The ID appears to ignore the fact that the mirroring rule applies to ILECs only—not CLECs. *AT&T*, at 43-44.

ratio overcounted voice minutes (and it is not clear that it did), the burden was on Verizon to rebut the ratio.⁵⁹ As for the I.D.'s comments regarding Core's outbound traffic to Verizon, I.D., at 52, Core demonstrated that (1) Core's end users include VOIP providers;⁶⁰ (2) Core only delivers calls destined to Verizon end users,⁶¹ and (2) Verizon bills Core for each and every call Core sends. ID, FOF # 66. In these circumstances, the 3:1 ratio applies to Core's outbound traffic.⁶²

Exception # 5: VERIZON'S CLAIMS AGAINST CORE FALL OUTSIDE THE STATUTE OF LIMITATIONS AND THE COMMISSION'S JURISDICTION

The majority of Verizon's claims against Core have fallen outside the applicable statutes of limitations. This is because Verizon waited until the filing of its Answer in this case to initiate a suit to collect these charges, even though Core has disputed Verizon's bills for over a decade. The I.D. references the statute of limitations applicable to "penalties and forfeitures,"⁶³ but it fails to conclusively apply any statute to limit Verizon's older claims, and appears to grant Verizon each and every amount it ever billed Core, regardless of how old the bills are.⁶⁴ Such a finding is clearly erroneous, as explained in Core's Main Brief. This finding also ignores the doctrine of laches, which was raised in Core's Answer.⁶⁵ Further, the I.D. fails to account for the fact that the great majority of Verizon's billings were issued pursuant to its **interstate** access tariff, and therefore its claim for associated amounts is entirely outside the Commission's jurisdiction. This is also clearly erroneous. The Commission only has jurisdiction over **intrastate** traffic and tariffs,⁶⁶ and therefore has no

⁵⁹ Order, *In Re Implementation of Local Competition Provisions in Telecommunications Act of 1996*, 16 F.C.C.R. 9151, 9188 (2001) ("if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic.").

⁶⁰ Core Stmt. 1.0, at 2, 19.

⁶¹ Core Stmt. 4.0, at 4.

⁶² The *ISP Remand Order*, ¶ 79, speaks only of "a 3:1 ratio of terminating to originating traffic," and does not impose the restrictions Verizon seeks to impose.

⁶³ 66 Pa. C.S. § 3314, ID, at 22 *and see*, Ordering Paragraph # 8.

⁶⁴ See ID FOF 14, 23, 25-26, 31; COL 6, 8, 16; Discussion, pp. 44-46, 48-49

⁶⁵ Laches is the omission to assert a right for an unreasonable and unexplained length of time. *Kinter v. Com. Trus Co*, 274 Pa. 436, 116 A 392 (1922).

⁶⁶ Order, *MilleniaNet Corp. v. Verizon Pa., Inc.*, Docket C-20055173, at 11 (May 2, 2008). ("*MilleniaNet*").

jurisdiction to evaluate Verizon's interstate access claims. Accordingly, as explained in Core Main Brief, pp. 22-23, the absolute maximum that the Commission has jurisdiction to consider is Verizon's intrastate access claims that are within the applicable statute of limitations.⁶⁷

Exception # 6: VERIZON FAILED TO MEET ITS BURDEN OF PRODUCTION

The I.D. ignored several fatal evidentiary flaws with Verizon's claims. First, Verizon did not actually introduce any of its reciprocal compensation, special access or switched access bills into evidence, and its designated witness was unable to authenticate any of Verizon's billings, stating that "I don't think that I looked at Core's bills specifically, you know, access bills, you know."⁶⁸ When asked to identify the last Core bill that he reviewed, Verizon's witness again stated that "I don't think I've looked at their actual bills."⁶⁹ Nor did Verizon submit any testimony supporting anything other than the existence of an unpaid balance allegedly owed by Core—no explanation of how, when or by whom services were ordered, or even that the services were in fact provisioned or used. It is impossible to conclude that Verizon substantiated a claim for unpaid invoices, when Verizon did not submit copies of any of those invoices into the record, or even present testimony from a witness who had actually viewed those invoices.

Verizon also admitted that much of its facilities and intercarrier compensation 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, 2008.⁷⁰ 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 occasions to provide call detail records (CDRs) to support even one month's worth of billings,⁷¹ 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 the amounts of its

⁶⁷ See Core M.Br. at 22-23, and Exhibit CORE R-10, which displays the intrastate charges since 2008.

⁶⁸ N.T. 495 (Verizon Witness D'Amico)

⁶⁹ N.T. 497 (D'Amico)

⁷⁰ Exhibit CORE R-12 (Verizon Response to Core Interrogatory IV-1), subparts (c) and (d).

⁷¹ Core Stmt 2.0 (Direct Testimony of Christopher F. Van de Verg, Esq.), at 10

invoices. As a result of all of the deficiencies noted above, Verizon has not even carried its burden of production, much less its burden of persuasion, with respect to its facilities and intercarrier compensation counterclaims.

Exception # 7: VERIZON'S REFUSAL TO OFFER LOCAL INTERCONNECTION VIOLATED THE ACT, ICAS AND COMMISSION PRECEDENT

The I.D. concluded that Verizon was entitled to interpret Core's repeated requests for local interconnection services as orders for switched and/or special access services pursuant to Verizon's interstate and intrastate access tariffs.⁷² Core excepts to these findings, and hereby incorporates by reference passages from its Main Brief, pp. 17-23, and Reply Brief, pp. 10-20. Core submitted into the record voluminous correspondence with Verizon over many years, demonstrating Core's clear desire to order **local interconnection services** from Verizon, pursuant to its ICAs, the Act, and FCC rules.⁷³ By way of background, Local Interconnection Trunk Groups ("LITGs") are "*one-way* trunks that carry local and non-Feature Group D intraLATA toll traffic from Core's network to Verizon's; and access toll connecting trunks ("ATCs") are "*two-way* trunks that carry traffic exchanged between Core and IIXCs that connect to the Verizon access tandems." Verizon M.Br., at 10-11. The specific elements Core requested include, primarily, dedicated transport, which is the linking of two switches, and a specialized form of dedicated transport known as entrance facilities, which connect a CLEC switch and an ILEC switch.⁷⁴

A. Core Ordered Local Interconnection Services, Not Access Services

The I.D. states that "[t]he parties' ICAs control their contractual relationship and are the first place the Commission must look to determine applicable rates."⁷⁵ On this point, the I.D. is 100% correct. The ICA defines "Local Interconnection" as "the interconnection of the networks of the

⁷² FOF # 8-9, 13-18, 22-31; COL # 6-16; Discussion, pp. 22-24, 27-28; 44-50.

⁷³ See, Core Stmt. 4.0, at 2-3; Exhibit CORE R-19 (correspondence); Exhibit CORE SR-1 (ASR with instructions).

⁷⁴ Core Stmt. 3.0, at p. 19

⁷⁵ Conclusion of Law # 7

Parties for the exchange of Local Traffic and other traffic, in accordance with the requirements of 47 U.S.C. Section 251, and other Applicable Law.” See, ICA, Pt. B (Definitions). The ICAs also commit Verizon to “perform terms, conditions and operations under this Agreement in a manner that complies with all Applicable Law, including all regulations and judicial or regulatory decisions of all duly constituted governmental authorities of competent jurisdiction,”⁷⁶ and “act in good faith and consistently with the intent of the Act.”⁷⁷

Section 251 and other applicable law clearly require Verizon to provide LITGs and ATCs to Core at the cost-based rates set forth in the ICA. The Act requires Verizon to provide interconnection “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A). In 1996, the FCC concluded that prices for interconnection services, which connect two networks for the exchange of traffic, should be set at TELRIC.⁷⁸ Specific services and elements, such as entrance facilities and other, related forms of dedicated transport are local interconnection services which Verizon must make available to CLECs at cost-based TELRIC rates pursuant to section 251(c)(2) of the Act, 47 U.S.C. § 251(c)(2) and FCC implementing rules.⁷⁹ When it applied for and received long distance authority in Pennsylvania under 47 U.S.C. § 271, Verizon told the Commission that it had “established [TELRIC] rates for local interconnection trunks in accordance with the Commission’s Order in ‘MFS Phase III’”⁸⁰

Core used Verizon’s “Access Service Request” (“ASR”) process to order, or attempt to order, local interconnection facilities. Under the ICA, Pt. B (Definitions), “[t]he ASR may be used to order trunking and facilities between MCI and Bell Atlantic for local interconnection.” Core did everything it could to specify its intent to order local interconnection trunks, including inserting a

⁷⁶ Verizon ICA, § 6.1; Verizon North ICA, General Terms & Conditions, § 8.1.

⁷⁷ Verizon ICA, § 42.1.; Verizon North ICA, General Terms & Conditions, § 5.

⁷⁸ First Report & Order, *In re Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 ¶¶ 672, 1062 (1996) (“LCO”).

⁷⁹ *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2258, 180 L. Ed. 2d 96 (2011).

⁸⁰ Core Exh. R-14 (Verizon Checklist Declaration in Docket M-00001435).

note to that effect into each and every ASR it submitted to Verizon.⁸¹ If Verizon believed that Core was somehow not ordering local interconnection properly, it could have, and should have, informed Core as such.⁸² Verizon has never provided a local interconnection trunk to Core, and never submitted a TELRIC bill to Core.⁸³ For years, Verizon steadfastly ignored Core's orders for local interconnection facilities and instead provisioned access facilities designed for use by IXCs connecting to Verizon's access tandems for the delivery of their toll traffic to Verizon's end users.⁸⁴ An access facility is designed for an IXC to send and receive its subscribers' long distance toll traffic to and from end users residing on an incumbent LEC's local network.⁸⁵ Core has steadily and consistently disputed Verizon's access billing since at least 2003,⁸⁶ and Core never ordered service out of Verizon's tariffs.⁸⁷ *See* Core M.Br. 18-19.

B. LITGs Are Local Interconnection Services

Everyone agrees that the LITGs are *local interconnection trunks*. As such, they must be provisioned and priced pursuant to the Act. The ICA, Att. IV, § 1.1.1 provides that “[Verizon] shall make available to [Core] two-way trunks, to be used one-way, for the reciprocal exchange of combined Local Traffic, nonequal access intraLATA toll traffic, and local transit traffic to other ILECs.” The ICA, Att. IV, § 1.2.2 provides that “[t]he Party delivering traffic to the other Party’s IP(s) [here, Core] shall do so by purchasing from the other Party [here, Verizon] transport between the POI(s) and the IP(s), if necessary,” and the ICA, Att. IV, § 2.4.1, further specifies that “When Local Traffic from [Core] is terminating on [Verizon]’s network through the [Verizon] access Tandem Office IP, [Core] will pay [Verizon] transport charges from the POI to the Tandem Office for Dedicated Transport.” The rates for specific services and elements that make up the LITGs,

⁸¹ Core Stmt. 4.0 (Panel Surrebuttal Testimony), at 4; and Exhibit CORE SR-1.

⁸² *MilleniaNet* at 12

⁸³ N.T., 492 (Verizon witness Peter D’Amico).

⁸⁴ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 28.

⁸⁵ *Id.*; and Figure R-1.

⁸⁶ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 30-34; and Exhibit CORE R-19.

⁸⁷ *Id.*, at 39.

including entrance facilities and dedicated transport, are set forth in the ICA's Pricing Schedule. ICA, App. 2 ("Detailed Schedule of Itemized Charges").

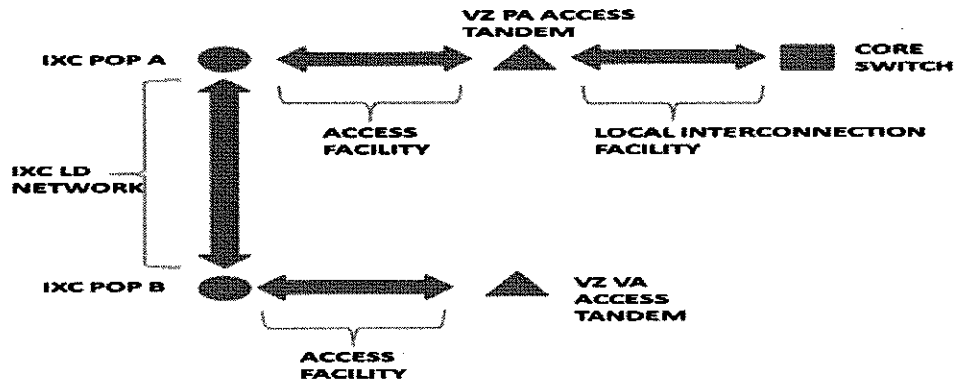
C. ATCs Are Local Interconnection Services

Although they carry traffic to and from IXCs, ATCs are every bit as much *local interconnection trunks* as are LITGs. The ICA, Att. IV, § 1.1.2 provides that "[Verizon] shall make available to [Core] a two-way trunk group, to [Verizon's] appropriate access tandem(s), to be used two-way, for the exchange of equal access traffic between MCI and purchasers of Bell Atlantic's switched Exchange Access Services." The ICA, Att. VIII, § 3.1.3.5 specifies that "[f]or all traffic carried over MPB arrangements [i.e., ATCs] using Network Elements or **interconnection services provided under this Agreement**, the Parties shall bill each other all applicable **rates specified in this Agreement**." (Emphasis added). This clarifies that ATCs, like LITGs, are a form of "Local Interconnection," and are to be billed at the "rates specified in this [ICA]," not Verizon's tariffs.

Core does not offer IXC service; Core offers *exchange access* to IXCs. IXCs deliver their end users' traffic to Verizon's tandems, which switch that traffic to Core over the ATCs, and Core terminates that traffic. See, Core Stmt. 3.0, at 29 and Figure R-1 (reproduced below), and bills the IXCs accordingly. Indeed, the FCC specifically recognized the distinction. It found that IXCs may not order section 251(c)(2) trunks to deliver their end users' toll traffic to LECs.⁸⁸ But 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:⁸⁹

⁸⁸ LCO, ¶ 191. See Core Reply Brief at pp. 12-15 for a detailed discussion of this point.

⁸⁹ *Id.* ("providers of competitive access services... receive interconnection pursuant to section 251(c)(2)").



The Commission thoroughly examined the status of ATCs in *Choice One*.⁹⁰ Per the Initial Decision in that case, “[t]he FCC’s [1997] Access Reform Order consistently refers to the connection between the IXC and the tandem switch as the “serving wire center side” of the tandem [i.e., everything to the left of the “VZ PA ACCESS TANDEM on the figure above], and the connection between the tandem switch and the end office (or local) switch as the “end office side” of the tandem. [i.e., everything to the right of the tandem]”⁹¹ Verizon may bill IXCs dedicated switched access circuit charges for services on the “serving wire center” side of the Verizon tandem, as well as per-MOU switching charges; but may not bill a CLEC switched access charges for ATCs, as those trunks are jointly provided by Verizon and the CLEC to IXCs.⁹² The ALJ there concluded “[t]he provision of dedicated facilities to CLECs for use as ATC trunks is an interconnection service, not an access service.”⁹³ The Commission approved and adopted the ALJ’s analysis.⁹⁴ In the present case, the record reflects that Verizon charges Core several different access rate elements for the ATC trunks, including but not limited to the same dedicated trunk ports at issue in *Choice One*.⁹⁵ However, it is undisputed that all of the ATC-related access services for which Verizon bills Core access arise on

⁹⁰ Order, *Choice One Comm. of Pa. v. Verizon Pa.*, Dockets C-2008-2029477 (Jan. 29, 2010) (“*Choice One*”).

⁹¹ Initial Decision, *Choice One*, (May 12, 2009) (“*ChoiceOne ID*”), at 12.

⁹² *Choice One ID*, at 18-19.

⁹³ *Id.*, at 19, citing, *Petition of WorldCom, Inc. for Expedited Arbitration*, CC Docket No. 00-251, Order, 17 FCC Rcd 27039 (2002), ¶ 177; and, *Petition of AT&T Communications of Maryland, Inc. for Arbitration*, Md. P.S.C. Case No. 8882, Order 79250, 2004 WL 1896988 (Md.P.S.C.) (Jul. 7, 2004), at 6.

⁹⁴ *Choice One*, at p. 14.

⁹⁵ See, Core Cross Exh. 4 (detailing Verizon charges for “access tandem dedicated trunk port charge.”).

the end-office side of the tandem. Therefore, under the Commission's analysis in *Choice One*, those access charges are invalid.

Verizon cites to an *amicus* brief filed by the FCC with the *Talk America* court for the proposition that ATCs are not local interconnection trunks because 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, is simply background *dicta* describing what amount to LITGs. 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. Here, the 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).⁹⁶ There is nothing in the *amicus* brief to suggest that ATCs are not local interconnection facilities, or that the status of ATCs as a form of local interconnection was at issue. Further, to read such a limitation into section 251(c)(2) would fly in the face of the FCC's recent finding that CLECs may use interconnection trunks to exchange "toll" VOIP traffic.⁹⁷ Core's traffic includes substantial amounts of VOIP traffic.⁹⁸

The I.D. relies on footnote 1 to the ICA's Pricing Attachment for the proposition that "rates and services for use by [Core] in the carriage of Toll Traffic shall be subject to [Verizon PA]'s tariffs for Exchange Access service."⁹⁹ Presumably, this is meant to apply to the ATCs. But this footnote simply recites the FCC's ban on IXCs/CLECs' using section 251(c)(2) ATCs to bypass access charges

⁹⁶ LCO, ¶ 191.

⁹⁷ Order, *In the Matter of Connect Am. Fund*, 26 F.C.C.R. 17663, 26 F.C.C.R. 17663, ¶ 972 (2011) ("CAF Order").

⁹⁸ Core Statement 1.0, at 1-4

⁹⁹ ID, at 54 and note 19.

for their own end users' IXC traffic. Like Choice One, Core is not an IXC; it is a CLEC offering (not purchasing) exchange access, in conjunction with Verizon, for use by IXCs and their end users.¹⁰⁰

D. Entrance Facilities are Local Interconnection Services

For many years, Verizon contended that it was entitled to charge Core switched access for entrance facilities (an element which can be used for LITGs and ATCs) because the FCC had delisted entrance facilities as a UNE. Verizon pointed to the FCC's 2003 *TRO* and 2005 *TRRO* for the proposition that the FCC has delisted entrance facilities as a UNE.¹⁰¹ However, the Supreme Court confirmed that *TRO* and *TRRO* "d[id] not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2)."¹⁰² "[CLECs] contend that [an ILEC] must lease its existing entrance facilities for interconnection at cost-based rates. We agree."¹⁰³ The Court explained: "[b]ecause entrance facilities are used for backhauling and interconnection purposes, the FCC effectively eliminated only unbundled access to entrance facilities for backhauling purposes..."¹⁰⁴ Similarly, the Commission found that the *TRO* and *TRRO* "[did] 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."¹⁰⁵ The section 251(c)(2) cost-based rates applicable to Verizon's provision of entrance facilities to Core are set forth in the ICA, App. 2.

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.

¹⁰⁰ *ChoiceOne ID*, at 21 ("It is the IXCs' end users, not [One]', that are enabled to make and receive calls via the joint provision of switched exchange access services that are being provided by [One] and Verizon.").

¹⁰¹ VZ M. Br., at 14-15. This argument clearly cannot apply to dedicated transport, which was never delisted.

¹⁰² *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2258, 180 L. Ed. 2d 96 (2011).

¹⁰³ *Id.*

¹⁰⁴ *Id.*, at 2255.

¹⁰⁵ Order, *Pa.P.U.C. v. Verizon Pa.*, Docket No. R-00050800 (Feb. 10, 2006), at 2.

Rather, *Talk America* says what the law has been all along. Although the FCC did advance a “novel interpretation” of the law, it was only novel because the question arose after the *TRO* and *TRRO*.¹⁰⁶

E. Core Was Not Required to Collocate To Obtain Local Interconnection

The I.D. incorrectly held that Core affirmatively chose to order entrance facilities from Verizon as special access facilities rather than UNEs. I.D., at 47. The I.D. accepted Verizon’s reasoning that Core chose to order access facilities that were many times more expensive than UNEs, so that Core would not have to maintain collocation space and equipment. I.D., at 47. There is no evidence Verizon ever offered UNEs to Core in lieu of interconnection, despite Core’s repeated requests for interconnection. It is possible, that, had Verizon made such an offer, Core may have pursued that option. However, Core was entitled to request **interconnection**; and Verizon was obliged to provide it, pursuant to the ICA. Nor does the ICA require Core to collocate equipment in Verizon’s offices in order to obtain interconnection. The ICA, Att. IV, § 2.4.1, states that Core may simply “pay... Dedicated Transport [charges]” or “[a]lternatively... choose to collocate” or “also choose to purchase [Dedicated Transport]” at a collocation. Given these choices, the ICA cannot be read to require Core to collocate in order to purchase dedicated transport for interconnection.¹⁰⁷ Similarly, the ICA, Att. VIII, § 3.1.3.5 contemplates that the parties may purchase “Network Elements or interconnection services” from one another in connection with ATCs, but makes no mention of a collocation requirement.

F. Core Never Waived Its Right To Local Interconnection

The I.D. relies on *CoreComm* for the proposition that a CLEC may waive its rights under the Act by entering into an ICA. (I.D. COL # 11). But *CoreComm* involved an ICA which *contradicted* the requirements of the Act. The ICA in *CoreComm* *explicitly* “exclude[d]s the very section 251(c)

¹⁰⁶ *Talk America*, at 2263-64.

¹⁰⁷ The ICA, Att. IV, § 2.4.1 defines “Dedicated Transport” as transport “from the POI to the Tandem Office” and thus appears to subsume entrance facilities, since POI is established at Core’s switch.

obligations at issue” there. *CoreComm, Reconsideration Order*, 19 FCC Rcd 8447, 8451 (FCC 2004). Minus such an explicit exclusion, however, the statute and the ICA are naturally presumed to complement and reinforce one another. For the reasons set forth herein, the ICA establishes Core’s right to “Local Interconnection... in accordance with the requirements of 47 U.S.C. Section 251, and other Applicable Law,” ICA, Pt. B (Definitions) and *CoreComm* does not apply.

G. Verizon’s Tariffs, By Their Own Terms, Do Not Apply To Core

Nothing in the ICA allows Verizon to apply its access tariffs to LITGs, ATCs, entrance facilities or dedicated transport. Similarly, Verizon’s access tariffs do not cover local interconnection services. First, Verizon’s FCC tariff applies to interstate communications,¹⁰⁸ but the I.D. never explains how or why an LITG is an interstate service. Second, Verizon’s FCC tariff defines "Customer" by reference to "Interexchange Carriers and End Users." FCC Tariff No. 1 -- Section 2 (Definitions). But Core is a CLEC; not an IXC or an End User which is defined as “any customer of an interstate or foreign telecommunications service that is not a carrier.”¹⁰⁹ Third, Verizon's FCC tariff defines "Switched Access Service" as "a two-point electrical communications path to a customer's facilities from an end user's premises." FCC Tariff No. 1—Section 6.1. As to the ATCs, those trunks do not connect Core's facilities to end users at all. They connect Core's facilities to IXCs that collocate at Verizon's tandems.

Exception # 8: VERIZON NEVER BILLED NOR SOUGHT TO COLLECT TELRIC CHARGES FOR LOCAL INTERCONNECTION

The I.D. repeatedly chastises Core for not paying TELRIC rates for local interconnection services Verizon allegedly rendered.¹¹⁰ But the I.D. ignores the impossibility of doing so, which Core explained in its Reply Brief, at pp. 15-16, which Core incorporates herein by reference. Verizon

¹⁰⁸ Verizon’s FCC tariff is accessible online at:

http://www22.verizon.com/tariffs/Sections.aspx?docnum=FCCIEA1&type=T&sch=N&se=Y&att=N&typename=IT&time>Status=E&entity=I*

¹⁰⁹ *ChoiceOne ID*, at 21 (“[t]he ‘customers’ referred to in the Verizon tariffs are IXCs, not One Communications.”).

¹¹⁰ FOF # 25, 86, 88; COL # 6; and Discussion, pp. 28-29, 44-45, 48-49.

has never provided a local interconnection trunk to Core, and *never submitted a TELRIC bill to Core*.¹¹¹ Verizon cannot now claim that it is owed “at least” TELRIC for the access services it did provision and never billed for. Indeed, Core would have relished receiving a TELRIC bill for local interconnection services. Verizon’s failure to do so has crippled Core’s ability to price outbound services in any rational or predictable way.¹¹² 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 re-rated at TELRIC.” VZ M. Br., at 9; *and see*, ID, at 46. Such a “re-rate” would be subject to the mediation privilege, and Verizon cannot now use it to bolster its case in litigation. Verizon had every opportunity to re-rate its facilities bills **on the record**, but for reasons unknown to Core, chose not to do so.

Exception # 9: THE FACILITIES VERIZON PROVIDED WERE DEFECTIVE

The I.D. dismissed or ignored the numerous technical issues Core raised with respect to the Verizon facilities. Discussion, pp. 26, 41, 46-48. Core hereby excepts to these findings, and incorporates the passages from its Main Brief, pp. 23-25 and its Reply Brief, pp. 20-25.

A. Verizon Routed Traffic Over the Wrong Trunks

Verizon improperly routed traffic to Core over the LITGs that should have been routed over the ATCs, and vice versa. 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. The ATCs are for Core to connect with IXCs at Verizon’s tandems for switched access traffic. Verizon’s 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. And Verizon uses the LITGs in particular

¹¹¹ Tr., 492 (Verizon witness Peter D’Amico).

¹¹² *MilleniaNet*, at 9, 12.

to deliver third-party and interstates toll calls.¹¹³ Verizon controls the way it routes calls to Core,¹¹⁴ and the trunking arrangements it has put in place simply do not conform to the ICAs' requirements.

The I.D., at 41, claims Core admitted "that it has no way to discern whether a call is locally-dialed or not (N.T. 372), precluding it from claiming that locally-dialed traffic was mixed with interexchange traffic on a particular trunk." Actually, Core's witness only stated that it is not possible to determine whether a call was "one-plus dialed" based on information in the signaling stream. N.T. 372. That is different from the question whether it is possible to determine whether a call was locally-dialed: a call is locally-dialed if the NPA-NXX of the calling and called parties are associated with the same exchange. The I.D., at 41, also claims that "Core itself erroneously miscategorized some ATCTs as LITGs." But Verizon's witness backed down from this allegation under cross-examination (N.T. 544-560), so the I.D. is clearly wrong on this point.

B. Verizon Refused to Enable the MF Trunks to Pass ANI or CPN

The ICAs require the parties to pass ANI and/or CPN over the LITGs.¹¹⁵ Yet, despite the ICAs and despite numerous requests dating back to 2000,¹¹⁶ Verizon never enabled these trunks to pass ANI/CPN to and from Core's end users.¹¹⁷ Verizon's refusal to permit ANI/CPN to pass over the MF trunks rendered those trunks useless because consumers expect to receive ANI/CPN when they subscribe to Caller ID and related services.¹¹⁸ 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 as Core explained in its Reply Brief at p. 22, "technically feasible" as defined in the ICA and the FCC's rules, is extremely broad. Verizon relies on industry

¹¹³ An optional side agreement, which was never executed, addresses special provisions for transited traffic *from* other LECs and local carriers. *See*, ICA, Att. III, Exh. H ("Intralata Telecommunications Services Settlement").

¹¹⁴ The FCC has found that "Verizon does have control over how it passes calls" over LITGs to CLECs. *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

¹¹⁵ Verizon ICA, Att. IV, § 7.3 ("each Party shall pass Calling Party Number ("CPN") information on each call"); and Att. III, § 11.1.6 and Att. IV, § 3.3 (In such an [MF] arrangement, each Party will outpulse ANI...").

¹¹⁶ *See, e.g.*, Exhibit CORE R-19 (Letters dated March 5, 2008 and December 6, 2005 from Core to Verizon).

¹¹⁷ Core Stmt. 1.0 (Direct Testimony of Bret L. Mingo), at 10,11.

¹¹⁸ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 47.

standards which simply document Verizon's ordinary practice, one which must be modified in light of Core's repeated requests for ANI/CPN on all trunks. But Verizon had the burden, to "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," a burden it never attempted to fulfill. Further, the FCC has already examined and rejected Verizon's technical feasibility claims for MF signaling.¹¹⁹

C. Verizon Refused to Pass CIC and OCN in the Call Stream

With respect to the SS7 ATCs, Verizon is not transmitting carriers' CIC or OCN in the SS7 signaling stream across these trunks, making it difficult or impossible for Core to properly bill and collect appropriate switched access charges from carriers.¹²⁰ Core has disconnected all of the SS7 ATCs because Verizon refuses to address the outstanding issues, and because competitive alternatives exist.¹²¹ Core initiated the transition from MF to SS7 trunking arrangements with Verizon in 2008, a process which was completed in November, 2011.¹²² Core's competitive tandem provider can and does pass CIC and OCN in the SS7 stream—and in the EMI records it provides—further underlining Verizon's obstinacy.¹²³

D. Verizon Inserted Core's CIC Into Outbound Call Records

With respect to the SS7 trunks, Verizon is inserting Core's CIC *into the EMI records* for traffic Core passes over the SS7 LITGs.¹²⁴ This is a significant problem because, when third-party carriers receive EMI records from Verizon indicating Core's CIC (as opposed to an OCN), the industry standard protocol is to bill Core as an IXC (i.e., expensive access charges) as opposed to a

¹¹⁹ *CAF Order*, ¶ 716 (2011).

¹²⁰ Core Stmt. 1.0 (Direct Testimony of Bret L. Mingo), at 10-11.

¹²¹ Core Stmt. 1.0 (Direct Testimony of Bret L. Mingo), at 10.

¹²² Core Stmt. 3.0 (Panel Rebuttal Testimony), at 46.

¹²³ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 53.

¹²⁴ Core Stmt. 3.0 (Panel Rebuttal Testimony), at 47.

LEC (i.e., relatively cheap reciprocal compensation).¹²⁵ This is why Core limits the traffic it sends Verizon to traffic destined for Verizon telephone numbers (even though Core is entitled to use the LITGs for transit traffic to other ILECs), and this is why Core contends the SS7 LITGs have limited functionality.¹²⁶ 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 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.¹²⁷

E. Verizon May Not Charge For Facilities Which Do Not Conform to the ICA

The I.D.’s holdings on the technical issues rest 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 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, 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.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See, NPRM & FNPRM, *In the Matter of Connect America Fund*, WC Docket 10-90 et al., FCC Item 11-13 (rel. Feb. 9, 2011), at Para. 622 and note 950.

III. CONCLUSION

In response to these Exceptions, the Commission can expect Verizon to re-hash many of the same disparaging comments about Core and its business model that Verizon included in its testimony and briefs, and will repeat the same speculative and unsupported allegations that Core disproved throughout this litigation. Core urges the Commission to carefully review the extensive proposed Findings of Fact and Conclusions of Law that are included in Core's Main Brief, each of which are fully supported by the record and by applicable legal authority.

The fact is that totality of the record supports Core's credibility, and demonstrates Verizon's repeated lack of good faith and credibility. The I.D. chastises Core for filing a complaint after Verizon failed to pay one month's bills, while Core did not pay Verizon's facilities bills for seven years. But the I.D. fails to recognize that Core repeatedly and consistently disputed Verizon's bills from the day they were first issued, and practically begged Verizon to address Core's concerns, to no avail. The I.D. chastises Core for not paying Verizon TELRIC for facilities – but completely ignores the fact that Verizon never issued Core a bill at TELRIC and never even alleged what Core would owe at TELRIC, making it impossible for Core to pay TELRIC. The I.D. criticizes Core for a minor discrepancy in one rate element, but ignores Verizon's repeated imposition of tandem port charge rate elements that the Commission explicitly found to be unlawful in several formal complaint cases filed against Verizon. The I.D. critiques Core for not creating an escrow in favor of Verizon, but fails to acknowledge that Verizon has already insured itself against any reasonable risk of loss by refusing to pay Core any intercarrier compensation (interstate access, for example) other than that which the Commission specifically enjoined.¹²⁸

The I.D. also fails to recognize that the record is replete with events that call Verizon's integrity into question, such as:

¹²⁸ Core Stmt. 2.0, at 4. (stating that Verizon has withheld over \$1,000,000 in interstate switched access from Core since the beginning of 2011.)

- **BEGIN PROPRIETARY**

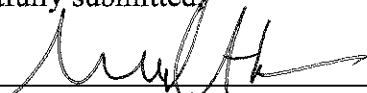
END PROPRIETARY

- Verizon made numerous bombastic statements in pleadings and testimony that its witnesses later retracted
- Verizon's pleadings and testimony contained exaggerated claims of damages exceeding \$4 million. But under cross examination, Verizon's witnesses acknowledged that only 1/10th of the amounts claimed were intrastate charges within the Statute of Limitations.
- Verizon's witness admitted serious errors with his original double-billing allegations.
- Verizon's positions on the compensability of traffic sent to Core changed four times throughout the proceeding. Meanwhile, Core's positions never changed and have remained constant from the day this case was initiated.
- Core provided massive amounts of records to support its billings, while Verizon has produced almost none, and did submit any invoices to support its facilities claims
- The Verizon witness who was supposed to authenticate Verizon's claim admitted that he had not even looked at Core's bills.

By the end of the hearing in this matter, it became apparent that Verizon never had a valid basis to cease paying Core's bills, and that its overblown facilities claims were nearly all beyond the statute of limitations and outside the Commission's jurisdiction, and were invalid for the same reasons that Core articulated for the past seven years.

WHEREFORE, for all of 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,



Michael A. Gruin, Esq., Counsel for Core Communications, Inc.
ID No. 78625
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101
717-255-7365
mag@stevenslee.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.
Complainant

v.

VERIZON PENNSYLVANIA INC.
and

VERIZON NORTH, LLC
Respondents

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

CERTIFICATION OF SERVICE

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

VIA EMAIL ONLY

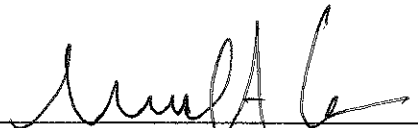
Thomas Sniscak, Esq.
William Lehman, Esq.
Hawke McKeon & Sniscak
100 North 10th Street
Harrisburg, PA 17101

Deborah Kuhn, Esq.
Verizon
205 N. Michigan Ave., 7th Floor
Chicago, Illinois 60601

VIA EMAIL AND FIRST CLASS US MAIL

Suzan D. Paiva, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street, 3 East
Philadelphia PA 19103

August 16, 2013



Michael A. Gruin, Esq.