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September 16, 2013

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Verizon's Replies to Core's Exceptions, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter. Because the Replies to Exceptions include certain Proprietary information the Public Version of the Replies to Exceptions is being e-filed, with the Proprietary Version being provided via overnight delivery.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

Via E-Mail and Federal Express
cc: The Honorable Susan D. Colwell
Cheryl Walker Davis, Office of Special Assistants
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Replies to Core's Exceptions, upon the parties listed below, in accordance with the requirements of §1.54 (relating to service by a party) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 16th day of September, 2013.

Via E-Mail and Federal Express

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Core Communications, Inc.,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2011-2253750
	:	Docket No. C-2011-2253787
Verizon Pennsylvania Inc. and	:	
Verizon North LLC,	:	
Respondents.	:	

VERIZON'S REPLIES TO CORE'S EXCEPTIONS

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Counsel for Verizon Pennsylvania LLC and Verizon North LLC

Dated: September 16, 2013

PUBLIC VERSION

For years, Core has used Verizon's network without paying, while overbilling and over-collecting from Verizon in many ways.[1] Matters came to a head in 2011, when Verizon began to suspect that Core's bills (which Verizon had faithfully paid) were seriously inflated. Core refused to provide call records needed to validate its bills, so Verizon disputed them and withheld a small payment, which the Initial Decision ("ID") confirmed was "consistent with a reasonable reading" of the parties' interconnection agreements ("ICAs"). ID at 38. Core then bypassed the ICAs' contractual dispute resolution provisions and obtained an emergency order from this Commission requiring Verizon to pay Core's bills during this litigation, based largely on claims of imminent financial peril. Verizon has complied, paying Core more than a million dollars since the emergency order. That order unfairly benefits Core, as Verizon must pay Core's bills (which the ID found are overstated) while Core refuses to pay Verizon's valid invoices – an untenable double standard and particularly troubling since Core's president testified that it has not escrowed *any* funds to pay or refund amounts at issue and if the Commission ruled in Verizon's favor today, Core could not pay even a fraction of the amounts owed. Tr. 258-60; 267.

The outcome here should not be colored by a perception that one party deserves a "break" due to unrelated factors. Even if such extraneous perceptions had any bearing (and they do not), they would need to be rooted in fact. Although Core is a "CLEC," it does not provide local telephone or any other consumer service. Verizon is the only party that actually serves Pennsylvania consumers, providing Lifeline, 9-1-1, broadband and other important services. In contrast, Core's "customers" are those necessary to its "traffic pumping" business plan: dial-up Internet Service Providers (ISPs) and conference calling services that generate high volumes of incoming traffic, allowing Core to bill disproportionate intercarrier compensation charges to other carriers (VZ IB at 7-8) and causing the FCC to dub Core "the "poster boy of reciprocal compensation gamesmanship."[2] Nor is there any basis to assume that Verizon has a poor relationship with the hundreds of CLECs that use its network pursuant to ICAs, the vast majority of which rarely or never bring disputes with Verizon to the Commission. In contrast, Core's litigation against carriers across the industry is frequent. For a healthy system of interconnected networks to flourish, carriers must

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[1] The parties' names are abbreviated as follows: Core Communications, Inc. ("Core"); Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North") (together, "Verizon").

[2] FCC Response to Emergency Stay Motion, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001).

bill fairly and pay for other carriers' services, where law and contracts require. It would send the wrong message and harm the public interest to place Core above those rules.

The ID fairly and impartially sorted through the facts and law and correctly found that Core must pay Verizon what Core owes and refund what it has over-collected. The ID did not ignore Core's arguments – it analyzed them in detail and rejected them, independently making findings consistent with a recent federal district court decision that reviewed a separately-developed record on analogous disputes involving affiliates of the parties in another state, and reached the same conclusions on all common substantive matters.[3] The only reasonable conclusion on a fair consideration of the record is the one reached by the ID and the federal district court: that Core owes Verizon millions of dollars.

REPLIES TO CORE'S EXCEPTIONS[4]

Reply to Core Exception #1: Verizon Did Not Breach the ICAs by Withholding Payment on Core's May 2011 Invoices.

A. Verizon Was Correct to Dispute Core's May 2011 Invoices.

The ID appropriately concluded that "Verizon followed a reasonable interpretation of the ICAs to the letter" in withholding payment and initiating dispute resolution on Core's May 2011 invoices. ID at 39; 29-38. Core's claim that Verizon had no basis to challenge Core's bills (CEX at 3-6) ignores the record. Investigating a January 2011 inquiry from Core caused Verizon to suspect that Core had been overbilling by charging reciprocal compensation on traffic originated by third parties and on traffic that was interstate and/or international in nature (suspicions that turned out to be correct).[5] To investigate, Verizon repeatedly requested call detail records ("CDRs") from Core in June 2011[6] (not "only after litigation was commenced," as Core claims, CEX at 3), but Core refused to provide them (in violation of the ICAs[7]), ultimately forcing the Commission to *order* Core to do so.[8]

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3 *See CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649 (E.D. Va. April 22, 2013) ("*CoreTel VA Order*").

4 Verizon's briefs are abbreviated as follows: "VZ IB" (January 23, 2013 "Verizon's Initial Post-Hearing Brief"); "VZ RB" (March 18, 2013 "Verizon's Post-Hearing Reply Brief"); and "VZ SRB" (March 25, 2013 "Verizon's Post-Hearing Surreply Brief"). Core's January 23, 2013 "Main Brief of Core Communications, Inc." and March 18, 2013 "Reply Brief of Core Communications, Inc." are abbreviated as "Core MB" and "Core RB," respectively. The parties' Exceptions are abbreviated as "VZEX" (Verizon's) and "CEX" (Core's).

5 Verizon Statement ("VZ Stmt.") 2.0 at 46-57 and Ex. 17-R; VZ Stmt. 3.0 at 63. VZ Ex. 17-R is the e-mail string recited at pp. 32-34 of the ID, which Core also included in its own testimony (Core Stmt. 1.0 at Ex. BLM-4).

6 VZ Stmt. 2.0 at Ex. 17-R.

7 ID at 20 (FOF 92) (citing ICA provisions that required Core to produce the CDRs).

8 *See* September 23, 2011 "Opinion and Order" in this proceeding at 17, 21 (Ordering ¶ 5) ("*Emergency Order*") (noting Core's unclean hands, finding that "Core failed to respond to Verizon's repeated requests for CDRs relevant to the disputed billings," and directing Core to produce them), refuting Core's claim that it "never refused to provide Verizon with call records." CEX at 5. Core claims that Verizon failed to provide Core with requested records, but ignores the evidence that Core was not entitled to the records it requested (which were not used for billing), and that Verizon provided Core with billing records instead. VZ Stmt. 2.0 at 47-48.

Core's obstructionism on the CDRs augmented Verizon's suspicions, since it indicated that Core might be trying to prevent Verizon from uncovering the extent of Core's overbillings and Verizon's resulting overpayments. VZ Stmt. 2.0 at 53. Given Core's decade-long record of non-payment, it was obvious that Core would never willingly refund those past overpayments, which were guaranteed to eclipse the modest $75,441.67 total of Core's May 2011 invoices (and the record proves that at over $2.75 million, they did).[9] Under the circumstances, it made no sense for Verizon to make *additional* payments to Core until the overbilling and overpayment issues were resolved. Verizon invoked the dispute resolution provisions of the ICAs by withholding payment (just as Core had long done) and formally disputing Core's bills via letters outlining the bases for challenge – including that Core had overstated traffic quantities, billed incorrect rates, and billed Verizon reciprocal compensation for traffic that was not billable to Verizon as reciprocal compensation – and requesting that Core "provide some preliminary data that will assist in [] resolution [of the disputes]."[10] As soon as the Commission ordered Verizon to resume payment, it did, and it has continued to pay even though the record verifies that Core was and is overcharging it.[11]

Unable to refute the evidence confirming Verizon's valid suspicions, Core mischaracterizes the record in an effort to undermine the ID's conclusion that Verizon had a valid basis to dispute Core's bills. As examples only:

- Core claims that Verizon consistently maintained that *all* of the traffic billed to Verizon was non-compensable (CEX at 4), an assertion flatly contradicted by Verizon's testimony that upon analysis of records that Core had refused to produce *before* Verizon disputed the May 2011 bills, 35% – not *all* – was compensable by third parties rather than by Verizon.[12] This is the percentage refund Verizon seeks on past overpayments to Core, not "all."

- Core asserts that Verizon's witnesses "admitted" that Verizon had not reviewed call records and "skipped" the audit process authorized by the ICAs before disputing Core's bills (CEX at 4-5), but omits to mention that Verizon's witnesses testified that *Verizon was unable to do so because Core had refused to provide the requested CDRs*.[13]

- Core asserts that a document Core proffered after the hearings in this case, JPE-1,[14] corroborates Core's billings (CEX at 4), but the record shows that JPE-1 is useless because of an array of limitations in the system used to generate it.[15] Moreover, Core's affiant could only speculate about JPE-1's import because

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[9] VZ Stmt. 1.0 at 4;VZ Stmt. 2.0 at 53-54; VZ Stmt. 3.0 at 68-69. *See also* Core's May 16, 2012 Amended Complaint at ¶ 42.

[10] *See* Core's May 16, 2012 Amended Complaint at Ex. 5, Tab B (copies of Verizon dispute letters).

[11] The *Emergency Order* eliminated any incentive Core might have had to correct its flawed bills sooner or to settle with Verizon, since it required Verizon to pay Core's bills without regard to their validity.

[12] VZ Stmt. 3.0 at 68-69; *see also* VZ IB at 28-29, 34; VZ RB at 25-30, 34.

[13] Transcript ("Tr.") at 517; *see also Emergency Order* at 17.

[14] "JPE-1" refers to Joint Proprietary Exhibit 1.

[15] **[BEGIN PROPRIETARY]**

he lacked personal knowledge (in contrast to the expertise of Verizon's affiant, a 34-year employee and developer of the system used to generate it). VZ SRB at 2. The ID found Verizon's discussion of JPE-1's evidentiary weight persuasive, and concluded that JPE-1 was "ineffective in proving either case."[16]

- Core repeatedly complains that Verizon improperly failed to provide JPE-1 earlier in the case (*e.g.*, CEX at 4, 5), thereby violating Core's stipulation[17] that JPE-1 "was not previously requested in discovery and that neither party will make further allegations of impropriety by the other," which was the essential condition under which Verizon waived its right to prove before the ALJ that Core had not requested JPE-1 in discovery and that Verizon had acted properly, and is yet another example of Core's belief that it is above the rules that apply to other litigants.

B. Core Violated the ICAs' Dispute Resolution Provisions by Immediately Filing the Complaint.

Core's related contention that Verizon, not Core, violated the ICAs' dispute resolution provisions is similarly unsupported by the record. CEX at 4-6. As the ID stated at 35-36:

1. Verizon asked for information that it was entitled to seek under the ICA;
2. Core refused, seeking instead to use the requested information as leverage for addressing another matter not relevant here;
3. Verizon invoked its right to dispute the bills;
4. Core sought Commission intervention immediately instead of following the dictates of the ICAs that it voluntarily signed.

The ID's conclusions are fully supported by the relevant ICA provisions,[18] and the ALJ correctly found that the ICAs permitted Verizon to withhold payment in disputing Core's bills,[19] and that Core breached the parties' ICAs by refusing to engage in dispute resolution and instead immediately filing a complaint.[20] While Core argues (citing "Att. IV [*sic*], § 24.1"[21]; CEX at 4) that the Verizon PA ICA's dispute resolution procedures are elective only (but not those of the Verizon North ICA[22]), it ignores the mandatory nature of Att. VIII, § 3.1.9 of the Verizon PA

[END PROPRIETARY] *See* JPE-2 at ¶¶ 3-17*; see also* VZ SRB at 1-3.

16 ID at 38 (inadvertently referring to JPE-1 as JPE-3).

17 *See* Joint Motion of Verizon and Core for Admission of Late Filed Exhibits (March 4, 2013) at ¶ 5.

18 Verizon PA ICA at Att. VIII, §§ 3.1.8 (only undisputed amounts due 30 days from invoice); 3.1.9.1 (outlining timing of billing dispute process), 3.1.9.2 (payment of disputed amounts only due upon resolution of dispute); Part A, §§ 24.1 (unresolved disputes may be submitted to Commission) and 36 (no waiver of any provision of agreement unless in writing and signed by both parties); and Att. 1, § 4.2 (reciprocal compensation only due on local traffic, which does not include third party traffic); *see also* Verizon North ICA at General Terms & Conditions ("GT&C"), §§ 11.3 (outlining timing of dispute resolution process and permitting withholding of disputed amounts) and 17 (disputes must be negotiated before initiating action in regulatory or judicial forum); Part V, § 2.7.5 (Verizon "shall not pay" reciprocal compensation for traffic that is not reciprocal compensation traffic).

19 ID at 31-35; *see also* Verizon PA ICA at Att. VIII, §§ 3.1.9.1 and 3.1.9.2 and Part A, § 24.1; Verizon North ICA at General Terms & Conditions ("GT&C"), §§ 11.3 and 17.

20 The ICAs prohibited Core from bringing any formal action under the Verizon PA ICA until September 28, 2011, and until October 14, 2011 under the Verizon North ICA, but Core filed its complaint on July 22, 2011. VZ IB at 58-59*;* ID at 19 (FOF 89).

21 Core presumably means Part A, § 24.1.

22 Core offers no such argument with respect to the Verizon North ICA, nor could it. That ICA states that any dispute thereunder "shall be addressed by good faith negotiation by the Parties, in the first instance," and can only be brought to the Commission "[s]hould such negotiations fail." Verizon North ICA at GT&C, § 17. Bypassing dispute resolution breached the Verizon North ICA.

ICA (entitled "Billing Dispute"). The proper interpretation of the two provisions together is that Part A, § 24.1 (entitled "Dispute Resolution Procedures") may be invoked only *after* completion of the mandatory "Billing Dispute" process outlined in Att. VIII, § 3.1.9. Any other result would render Att. VIII, § 3.1.9 superfluous. Because Core failed to follow the mandatory billing dispute process in Att. VIII, § 3.1.9 of the Verizon PA ICA, Part A, § 24.1 thereof prevented Core from going to the Commission, and Core breached *both* ICAs in doing so.

Reply to Core Exception #2: Core Has Overcharged Verizon for Reciprocal Compensation, Requiring a Refund.

The ID correctly held that, for years, Core has overcharged Verizon due to an array of flaws in Core's bills.[23] Those errors (and the resultant overcharges) include billing Verizon for other carriers' traffic (and double-billing Verizon and other carriers for the same traffic), estimating the traffic on the Multi-Frequency ("MF") trunks rather than generating the actual call records mandated by the ICAs, and billing reciprocal compensation on VNXX and ISP-bound traffic.[24] Verizon incorporates its briefs detailing the abundant record evidence establishing Core's billing errors and overcharges. VZ IB at 27-48; VZ RB at 24-36.

A. Core Admits That It Billed Verizon for 100% of the Traffic Carried Over the LITGs, Which Necessarily Included Third Party Traffic for Which Verizon Is Not Responsible.

Core admits (as it has throughout the case) that it has billed Verizon for *every minute of traffic delivered over the Local Interconnection Trunk Groups* ("LITGs") (CEX at 8-9) – meaning that it billed Verizon for all third party traffic originated by other carriers and merely transited over the LITGs. Core initially asserted that all traffic coming over the LITGs was Verizon-originated because the ICAs only permitted Verizon to transmit Verizon-originated local traffic over the LITGs. Core Stmt. 1.0 at 13. When Verizon's witnesses pointed out that the ICAs allowed local and intraLATA toll calls originated by CLECs and independent ILECs, as well as intraMTA calls originated by wireless carriers, to be routed over the LITGs, Core admitted its error.[25] But even after it was forced to admit that it was receiving third party traffic over the LITGs, Core knowingly continued to bill Verizon reciprocal compensation for *100%* of the traffic delivered over the LITGs, including this third party traffic. Tr. 321-22. Core asserts that knowingly billing Verizon for third-party traffic is acceptable because it mirrors the way

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[23] ID at 10-12 (FOF 35-47); 16-17 (FOF 71-75); 56-57 (COL 17-22).

[24] Just last month, the Commission affirmed on reconsideration in Core's complaint case against AT&T that the proper rate for ISP-bound traffic is the FCC-ordered $.0007 rate that Verizon has already paid Core. *See* "Opinion and Order on Reconsideration," *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburg, Inc.*, Docket Nos. C-2009-2108186 and C-2009-2108239 (August 15, 2013) ("*Core/AT&T Reconsideration Order*") at 20.

[25] VZ Stmt. 1.0 at 49-50 (citing VZ PA ICA at Att. IV, § 1.1.1 and VZ North ICA at Part V, § 1.2.1); Core Stmt. 3.0 at 51; *see also* CEX at 8.

Verizon bills Core (CEX at 9), but there is a material difference: Verizon is a transit provider and Core is not. Core's frequent complaints against other carriers demonstrate its awareness that other carriers' traffic (for which Verizon is not financially responsible) comes to Core via Verizon's tandem switches.[26] Because Core is not a transit provider and has no tandems, it is proper to treat all traffic from Core to Verizon as Core-originated (and Core is liable to pay for its termination), but due to transiting, it is improper for Core to treat all traffic that Verizon sends to it as Verizon-originated.[27]

B. The ICAs Prohibit Core from Billing Verizon for Third Party Traffic.

Confronted with its admitted billing of Verizon for all third party traffic carried over the LITGs, Core incorrectly claims that this practice is authorized by the ICAs. CEX at 8-9. Core only cites ICA terms relating to the provisioning of *trunking* arrangements (not *billing* provisions, as Core claims; VZ RB at 32), and ignores the provisions that specifically *exclude* third party traffic from the definitions of "Local Traffic" and "Reciprocal Compensation" (the terms used in the Verizon PA ICA), and "Reciprocal Compensation Traffic" (per the Verizon North ICA), by limiting those terms to traffic *originated by a party to the ICA*.[28] While the Verizon PA ICA permits Core to charge "Reciprocal Compensation for the Exchange of Local Traffic,"[29] those terms *exclude* traffic originated by third parties. Similarly, the Verizon North ICA requires Verizon to compensate Core only for "Reciprocal Compensation Traffic,"[30] which, by definition, excludes third party-originated traffic.[31] Federal law and Core's admissions in other Commission cases also refute its stance that it was entitled to bill Verizon for traffic originated by other carriers.[32] The Virginia federal court reached the same conclusion, finding that similar provisions in the parties' Virginia ICA prohibited Core from billing Verizon for terminating third party traffic, and that Core must refund all such overcharges.[33]

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[26] Transit traffic was an issue in Core's disputed ICA arbitrations against the rural ILECs as well as its complaint cases against the CLECs AT&T, XO and Choice One.

[27] VZ RB at 30-31; *see also* VZ Stmt. 2.0 at 24 and Ex. 6-R; VZ Stmt. 3.0 at 42 and Ex. 7-SR; Tr. 298-99.

[28] Verizon PA ICA at Part B, definitions of "Local Traffic" and "Reciprocal Compensation"; Verizon North ICA at Att. 1 – Definitions (*see* "Reciprocal Compensation Traffic"); *see also* VZ IB at 29-31. Core effectively urges the Commission to read these definitions out of the ICAs altogether. CEX at 10.

[29] Verizon PA ICA at Att. 1, § 4.2.

[30] Verizon North ICA at Part V, § 2.7.

[31] *See* VZ IB at 29-31; VZ RB at 31-32.

[32] VZ IB at 29-31 (citing federal statute and FCC rules and decisions); VZ Stmt. 3.0 at 42, 49-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR (Core filings in various commission dockets arguing that the *originating carrier*, not the transit provider, is liable to compensate Core for the termination of traffic).

[33] *CoreTel VA Order* at **11-12.

Core denies any obligation to exclude such traffic from its bills, arguing that the ICAs have not been amended to require what Core has dubbed the "LNP Lookup method of billing" (a misnomer it has used throughout). CEX at 10-11. As Verizon explained (in pre-filed testimony, at hearing and in briefs), it performed a special study for this litigation to confirm and quantify the overbilling to which Core had already admitted. That study involved enriching CDRs provided by Core with additional data[34] to calculate the percentage of third-party traffic for which Core had erroneously billed Verizon, and to demonstrate that Core could have avoided such overbilling.[35] At hearing, Verizon's witness confirmed that he had *not* offered the enrichment process as the means by which Core should bill those third parties, but rather, as one possible way of avoiding overbilling Verizon. Tr. at 590-91. Core's argument that the ICAs do not require it to use the enrichment process is a straw man, as Verizon has never claimed that they do. But the ICAs forbid Core from billing Verizon for terminating other carriers' traffic, and the enrichment process illustrates: (1) that it was possible for Core to avoid doing so; and (2) the extent of Core's overbillings due to this error. Thus, although the ICAs did not require Core to use this particular process to avoid overbilling, they did obligate Core to render accurate bills and refrain from billing Verizon for other carriers' traffic.

C. Verizon Demonstrated Overpayments to Core of at Least $2,725,140 Through June 2012, and Core's Overbillings (and Verizon's Overpayments) Have Only Grown Since Then.

The record supports Verizon's refund calculations, which at $2,725,140 just through June 2012[36] are significantly higher than the $1 million refund ordered by the ID.[37] In fact, the record establishes that, just since the emergency order, Verizon has paid Core almost half a million dollars for terminating third party traffic because Core knowingly continued to bill Verizon for this traffic even as the developing record left no doubt that this practice was improper, and the emergency order required Verizon to continue to pay these invalid bills. (VZEX at 2). The record reflects that Verizon's refund calculation is already conservative (it includes no refunds for payments on VNXX calls[38] initiated by Verizon end users to Core's ISP customers or for Core's misapplication of

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[34] Verizon used the Local Exchange Routing Guide ("LERG") as it existed at the time of each call to add the originating and terminating LATA of each call, as well as the Operating Company Number ("OCN") of the local service provider at the time of each call. VZ Stmt. 1.0 at 71-72.

[35] VZ Stmt. 1.0 at 70-74; VZ Stmt. 3.0 at 67-69; Tr. 590-91; VZ RB at 26-27.

[36] Verizon's Exceptions summarize the evidence documenting Verizon's calculations and are incorporated herein by reference. VZEX at 10-11.

[37] VZ Stmt. 3.0 at 67-69; *see also* VZ Stmt. 1.0 at 70-74.

[38] Core's argument that VNXX traffic is local (CEX at 16-17) is irrelevant to the refund, as Verizon's calculation includes no amounts associated with VNXX traffic. However, the Commission should still adopt the ID's prohibition against Core billing Verizon reciprocal compensation or switched access charges on VNXX traffic (ID at 62, ¶14), in keeping with prior Commission precedent ignored by Core. *See* Opinion and Order, *Petition of Global NAPS South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions*

the 3:1 ratio, discussed below), and that *Core's own failure to maintain proper records*[39] *in accordance with the requirements of the ICAs* prevented a more precise calculation of the full extent of its overcharges,[40] as recognized by the ID.[41] Core now attempts to parlay its breach of the ICAs' recordkeeping provisions into a basis to deny Verizon *any* refund, arguing that because the full extent of the refund cannot be calculated to the precise penny – *due to Core's own misconduct* – Verizon is therefore entitled to *nothing*, not even the "conservative" $1 million required by the ID. CEX at 10-11. Verizon's exceptions explained why it should receive the full $2,725,140 (plus refunds of any overcharges after June 2012 and interest). VZEX at 8-16. Regardless, Core's self-serving position that Verizon should receive *nothing* is legally unsupported.

Core also quibbles with Verizon's conclusion that 35% of the traffic for which Core billed Verizon was originated by third parties, not Verizon, claiming that Core received EMI records from Verizon for a much smaller percentage of calls. CEX at 12. That the EMI percentages Core cites are less than 35% is meaningless. Verizon provides EMI records whenever it is able, but the ICAs only *require* EMI on a fraction of the calls from third parties, and the record shows that it is neither required, nor possible, to provide EMI on *all* traffic.[42] Thus, neither the record, nor the ICAs support Core's apparent expectation that it would receive EMI on *every* third party call.

Core also mischaracterizes the testimony, claiming that Verizon admitted that it could not identify "any actual percentage of third-party carrier traffic on the LITGs for which Core may have billed Verizon." CEX at 12. However, Verizon's witness *further* explained that the interrogatories discussed in that portion of the transcript were drafted in a manner that made it mathematically impossible to calculate a percentage *in the manner requested* (Tr. at

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with Verizon Pennsylvania Inc., PA PUC Docket No. A-310771F7000 (April 17, 2003) ("*Global NAPS*") at 45 (prohibiting billing reciprocal compensation on VNXX traffic) and 49 (prohibiting billing switched access on VNXX traffic).

[39] Core asserts that the process it used to guess at – and bill for – the amount of traffic carried on the MF trunks was "reliable and predictable" (CEX at 16), but Verizon has explained why Core's traffic "sampling" approach was unreliable and guaranteed to overstate the traffic billable to Verizon, including that it was conducted at erratic intervals, employed an arbitrary and unsupported upward adjustment factor, relied on an erroneous sample set, and offered no means by which Core could exclude third party-originated traffic. *See* citations at VZ IB at 34-36; VZ RB at 34-35. And in any event, it was not the method required by the ICAs.

[40] Core could have generated the ICA-required AMA records for calls on the MF trunks, but chose not to. VZ Stmt. 2.0 at 32-34 and Ex. 12-R.

[41] ID at 12 (FOF 43) and 57 (COL 20); *see also* VZ Stmt. 1.0 at 69-70 and Ex. 23; VZ Stmt. 2.0 at 27, 32-33 and Ex. 12-R; VZ Stmt. 3.0 at 58; Verizon PA ICA at Att. IV, § 7.1; Verizon North ICA at Part V, § 2.6.3. Core claims it decided not to generate the required records because Verizon "refused" to pass ANI/CPN over the MF trunks, but Verizon has thoroughly debunked Core's claim by demonstrating that it is not possible to do so other than on originating Feature Group D calls (long distance calls routed from Core to an IXC), as confirmed by the FCC and technical industry standards included in the record (in contrast to Core's unsupported assertions). VZ IB at 21-23 (citing extensive record evidence and FCC authority); VZ RB at 14-16 (same); VZ. Stmt. 1.0 at 59 and Ex. 19 (two separate Telcordia standards).

[42] Core ignores that the ICAs require Verizon to provide EMI records *only for* interexchange calls that IXCs route to Core via Verizon's tandems, *but not for*: (1) interexchange calls that CLECs and wireless carriers send to Core through Verizon's network; (2) calls from Verizon end users; and (3) calls from any non-interexchange carrier (for example, CLECs, wireless providers, rural ILECs, etc.). Verizon does voluntarily provide EMI for some categories not required by the ICAs, but is not able to do so for all traffic. VZ IB at 24 (citing extensive record evidence); VZ RB at 27 (same); Verizon PA ICA at Att. VIII, § 3.1.3; Verizon North ICA at Part V, § 3.3.

585-89), and the record quantifies that 35% of the traffic for which Core billed Verizon is third-party traffic. While Core again cites JPE-1, for the reasons discussed above (and more extensively in JPE-2 and the VZ SRB, incorporated by reference), the ALJ agreed that JPE-1 does not support Core's position. ID at 38.

D. Core Billed Verizon and Other Carriers for the Same Traffic.

Core denies that it double-billed Verizon and AT&T, Choice One and XO for the same calls (CEX at 12-15), but the math is simple. Locally-dialed CLEC traffic is routed over the LITGs, and Verizon provides EMI records for all locally-dialed CLEC traffic. VZ Stmt. 2.0 at 20, 22. Core admits that it billed (and still bills) Verizon for 100% of the traffic carried over the LITGs. Core also admits that it routinely uses Verizon-provided EMI records to bill an array of third-party carriers (including the above CLECs) for locally-dialed traffic they originate, but Core does *not* use those records to avoid double-billing Verizon reciprocal compensation for the same calls.[43] Core's double-billing is thus a logical truism: if Core billed Verizon for *all* of the traffic, and also billed third parties for *some* of the same traffic, Core necessarily double-billed for some of that traffic.[44]

To evade admitting that the traffic at issue in the referenced complaint proceedings was locally-dialed, CLEC-to-CLEC ISP-bound traffic transited to Core over the LITGs via Verizon's tandems, Core offered a contorted assertion that the third party traffic at issue in the AT&T proceeding must have been delivered over the Access Toll Connecting Trunks ("ATCTs"), because the EMI records it used to bill AT&T displayed a CIC code for AT&T, meaning it must have been long distance traffic, not local, and therefore would have traversed the ATCTs. Tr. 304-16. However, Core's own exceptions confirm that the AT&T traffic was "**locally-dialed traffic**, not long-distance traffic." CEX at 21 (emphasis in original). Moreover, the record shows that NANPA assigns CIC codes *both* to IXCs *and* CLECs (Core itself has one), and that AT&T received its CIC code before OCNs even existed, such that the presence of a CIC identifying AT&T did not mean that the traffic was long distance.[45] The Commission's order in the AT&T case repeatedly confirmed that the traffic at issue was *locally-dialed, CLEC-CLEC ISP-bound traffic*,[46] which the unrefuted record shows is ***only*** carried over the LITGs. Given Core's admissions, and the fact that the record establishes conclusively that all locally-dialed AT&T traffic would have

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[43] Core Stmt. 1.0 at 14;Tr. 335; VZ Cross Ex. 8; VZ Stmt. 2.0 at 27-29; VZ Stmt. 3.0 at 56-57.

[44] Moreover, the ICAs do not require Verizon to show that the traffic was billed to others to obtain a refund; Verizon need only show that Core billed it for third-party originated traffic for which it was not entitled to bill Verizon, which Verizon has established.

[45] VZ Redirect Ex. 2; Tr. 432; *see also* extensive discussion of Core's dissembling on this issue at p. 32, FN 52 of the VZ IB.

[46] *See, e.g., Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Opinion and Order entered Dec. 5, 2012) ("*Core/AT&T Initial Order*") at 5, 10, 15, 33 (repeatedly describing the traffic at issue as locally-dialed, CLEC-CLEC ISP-bound traffic).

gone to Core over the LITGs, there is no question that Core has double-billed Verizon and AT&T (as well as other carriers) for the same traffic.[47] Thus, *Verizon* has paid Core several hundred thousand dollars for the *same ISP-bound traffic* for which the Commission ordered *AT&T* to pay Core, as reaffirmed just last month.

E. Verizon's Refund Claim is not a "Hypothetical Damages Claim."

Verizon already refuted Core's allegation (CEX at 7) that Verizon's refund claim is a "hypothetical damages claim." *See* VZ RB at 32-34 (incorporated by reference). Very simply, for years, Core issued erroneous and inflated reciprocal compensation bills and Verizon paid for all minutes at the FCC's $0.0007 rate, including minutes now established to have been third-party traffic that the ICAs forbid Core from billing to Verizon. Verizon is entitled to a refund of those overpayments, as authorized by 66 Pa. C.S. § 1312(a). VZEX at 9, 12 and 16-18 (incorporated by reference). Core offers no legal citation to support its claim that § 1312(a) is limited to situations involving tariffed or unreasonably high rates (CEX at 8), and statute's the plain language reflects that the Commission has refund authority for the collection of *any* unjust or unreasonable amount (as well as charges that violate commission regulations or orders).

Reply to Core Exception #3: Core's Switched Access Back-Bills Are Invalid in Their Entirety.

Midway through this case, Core concocted two new arguments demanding more money on traffic for which Verizon had already paid Core at the FCC's $.0007 per minute rate (the same rate the Commission ordered AT&T to pay in the Core/AT&T case[48]). Core's first new claim was that it was entitled to back-bill Verizon $2,532,143.22 in inter- and intrastate switched access charges on ISP-bound traffic.[49] The ID correctly rejected these claims,[50] and Verizon incorporates by reference the discussion of this issue in its briefs. VZ IB at 48-58; VZ RB at 39-44.

A. Neither the ICAs Nor Core's Tariffs Authorized Its Switched Access Back-Bills.

Citing inapposite ICA provisions, Core asserts that it may back-bill Verizon millions of dollars in switched access charges for ISP-bound traffic carried over the SS7 trunks (CEX at 18, 20), even though Core has argued to

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[47] Core misrepresents the testimony at hearing, claiming that Verizon's witness admitted he was wrong about Core's double-billing. CEX 14-15. A review of the transcript citations shows that the witness did no such thing, and was instead responding to a hypothetical from Core's counsel that assumed facts not of record (that the local calls at issue in the other Core complaint cases were carried over the ATCTs).

[48] *Core/AT&T Reconsideration Order* at 7 (citing *Core/AT&T Initial Order* at 81-82). Core admits that Verizon has already paid for the traffic in question at the $.0007/minute rate. Core Stmt. 4.0 at 16.

[49] Core does *not* except to the denial of its additional claim for $2,661,655.78 in estimated "lost revenue damages" for switched access charges Core admits it never billed to Verizon, but claims it could have billed for traffic carried over the MF trunks (for which Core generated no billing records). ID at 43-44. Core's general counsel admitted on cross-examination that Commission precedent bars such claims. Tr. 338; *see also* cases cited at p. 58, FN 96 of VZ IB. The ICAs also bar such damage claims. VZ PA ICA, Part A, § 12.1; VZ N ICA at GT&C, § 11.1.

[50] ID at 12 (FOF 44); 13-16 (FOF 53-62; 70); 39-41; 57 (COL 24); 60 (COL 35).

the Commission that there is "never" a situation in which access charges apply to such traffic.[51] Tr. 342-43; Verizon Cross Ex. 9 at 6. As the Commission reconfirmed in the *Core/AT&T Reconsideration Order*, the proper compensation for this ISP-bound traffic is the $.0007/minute rate Verizon has already paid Core (payments Core has not subtracted from its claim[52]), not switched access charges. Core's exceptions avoid key flaws in its attempt to back-bill access charges:

- Conceding that its tariffs are incorporated into the ICAs, and it must therefore comply with their terms (CEX at 18), Core ignores Verizon's explanation (incorporated by reference) of why those tariffs do not authorize back-billing. VZ IB at 49-53; VZ RB at 40-41.
- Asserting that it provided "voluminous CDRs" supporting its switched access back-bills (CEX at 21), Core sidesteps the fact that the CDRs it produced were useless because they contained traffic *for all states in which Core operates, not just Pennsylvania*, and Core never identified: (1) which records were associated with Core's *Pennsylvania* invoices; or (2) which calls Core had re-rated as local v. non-local and intrastate v. interstate for purposes of issuing the *Pennsylvania* back-bills, thus failing to meet its burden of proof. VZ Stmt. 2.0 at 54-55.
- While claiming that at least some of the traffic at issue is VoIP and subject to access charges (CEX at 21-22), Core omits that it admitted on cross-examination that it had the capability to identify how much traffic was VoIP versus ISP-bound (Tr. 318-19), but chose not put such information into the record (even though it bears the burden of proof). In such circumstances, Commission precedent involving Core requires the Commission to assume that all of the traffic at issue is ISP-bound,[53] meaning that no access charges apply.
- While asserting that its switched access back-bills to Verizon are valid, Core ignores its own testimonial admission that the traffic for which it has back-billed Verizon switched access charges "is all IXC traffic" originated by *interexchange carriers*, not Verizon, meaning Core should have billed the originating IXCs, not the Verizon local exchange carriers.[54]

B. The FCC's *YMax Order* Precludes Core's Switched Access Back-Bills.

Core disputes that the FCC's *YMax Order*[55] forbids billing for switched access functions that Core does not provide, including end office switching, the carrier charge and tandem-related charges. CEX at 18-20. Yet, Core admitted at hearing that it does not provide the functions for which it is billing. For example, it bills a hefty carrier line charge (in many instances purportedly mirroring very high rural ILEC charges), but the purpose of that rate element is to recover the cost of local loops, which are the aerial or underground wires connecting the serving wire

[51] Core cites ICA provisions describing how to bill based on the amount of CPN received (using traffic factors instead of CPN if a certain percentage of CPN is not obtained), but those provisions do not allow Core to bill switched access on ISP-bound traffic in violation of its tariffs, the FCC's *ISP Remand Order* (discussed in conjunction with Exception #4 below) and Commission orders.

[52] Core Stmt. 1.0 at Ex. BLM-5.

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

[54] As Mr. Mingo stated in response to Verizon's dispute of Core's switched access invoices, "*this is all IXC traffic* delivered by Verizon to CoreTel over the interconnection arrangements." Core Stmt. 1.0 at Ex. BLM-6 (emphasis added).

[55] *AT&T v. YMax*, 26 FCC Rcd 5742 (2011).

center and the customer's home or business. The record shows that Core does not serve any homes or businesses or provide any outside plant facilities such as local loops; it instead terminates traffic to pieces of equipment (in the same building) that are *not* local loops – basically computers that send the traffic into the Internet cloud, without the outside plant wires that, for ordinary telephone service, would connect a local voice customer to the switched network.[56] Per the FCC's *Ymax Order,* the "commonly understood meanings of the terms 'termination[]' . . . and 'end user line' *do not include* the type of non-physical 'virtual connection'" that Core uses and, indeed, such "'virtual' loop[s] . . . *cannot be* what the Tariff means by 'termination' of . . . 'end user lines,'" rendering Core's tariff's inapplicable to the traffic at issue[57] (as a federal court recently held with respect to Core's Virginia affiliate[58]). Core cannot charge hefty carrier line charges when it has no outside plant and does not provide local loops. Similarly, as detailed in Verizon's briefs, Core provides no end office switching or tandem switching functions. VZ IB at 55; VZ RB at 41-42.

Core's citation to 47 C.F.R. § 61.26 is inapposite, since the FCC's *ICC Reform Order*[59] explicitly confirmed (citing the *YMax Order)* that "notwithstanding our rules, to the extent these charges are imposed via tariff, a carrier may not impose charges other than those provided for under the terms of its tariff."[60] Similarly, Core's attempt to distinguish the *YMax Order* by citing its six wire centers in Pennsylvania (CEX at 19) fails because the fact remains that Core does not terminate traffic to local loops, but rather, delivers traffic to computer equipment located in the same building. While the FCC found that LECs can charge the applicable intercarrier compensation "regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture," it also confirmed that "we make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner."[61] Indeed, the FCC subsequently expressly clarified

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[56] As Mr. Mingo explained, **[BEGIN PROPRIETARY]**

[END PROPRIETARY] Tr. 395-407. Core thus provides no tandem switching, no end office switching and no local loop. Core's only function is to receive the traffic from Verizon, convert it to Internet Protocol, and point it in the direction of the appropriate ISP or conference calling services provider.

[57] *YMax Order* at ¶¶ 43-45.

[58] *See CoreTel VA Order* at ** 12-13 ("Despite using these settled terms [*e.g.*, "end office switching" and "end user lines"] in its tariffs, CoreTel does not route calls to and from its customers via a physical transmission facility. Instead, it uses an IP cloud to send calls from its switches to its customers. The FCC has squarely held that the 'commonly understood meanings of the terms 'termination[]' ...and 'end user line' do not include the type of non-physical 'virtual connection" that CoreTel uses.").

[59] *Connect America Fund, etc.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*ICC Reform Order*").

[60] *ICC Reform Order* at ¶ 970, FN 2026.

[61] *ICC Reform Order* at ¶ 970.

that because YMax (like Core) does not provide the "last-mile transmission," it could not charge for associated access rate elements.[62]

C. Core's Switched Access Back-Bills Are Flawed and Unreliable.

Even if Core theoretically were permitted to bill switched access on ISP-bound traffic (and it is not), Core's switched access back-bills are so unreliable that Core has failed to meet its burden of proof to demonstrate their validity. Verizon's briefs detailed the record evidence of a wide variety of additional errors in Core's switched access bills, including that: (1) Core's "matching" process for purportedly avoiding double-billing Verizon and other carriers switched access for the same traffic was flawed since it did not exclude double-billing associated with wireless traffic or multi-line accounts (a significant volume of traffic);[63] (2) Core billed Verizon to terminate traffic in Delaware, even though the ICAs did not authorize this;[64] (3) Core was unable to document or validate the process by which it had used the *per access line* CCL rates of the rural LECs to arrive at the *per MOU* CCL rates it had billed Verizon; (4) Core admitted that it billed Verizon for 800 database queries that it had not performed, and at an incorrectly high rate to boot; and (5) Core admitted that it billed Verizon information surcharges *at a rate 100 times higher* than the tariffed rate. VZ IB at 55.

<u>**Reply to Core Exception #4**</u>**: Verizon Complied with the FCC's *ISP Remand Order*.**

Core's second new mid-case claim was to invoke a twisted reading of federal law that would undo the FCC's *ISP Remand Order* and force Verizon to pay reciprocal compensation for over a decade's worth of ISP-bound traffic for which Verizon had already paid at $0.0007,[65] for which Core demanded an additional $24 million.[66] The ID properly found this claim to be "without legal merit" (ID at 60 (COL 33)) and Verizon's briefs (incorporated herein) extensively refuted it. VZ IB at 42-48; VZ RB at 36-39.

In 2001, the FCC capped the rate for terminating ISP-bound traffic at $0.0007 to stop carriers like Core from profiting from a "regulatory arbitrage" scheme "target[ing] ISPs as customers merely to take advantage of . . .

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[62] *Connect America Fund, etc.*, Order, 27 FCC Rcd 2142 (Wireline Competition Bureau, Feb. 27, 2012) at ¶ 4.

[63] *See* extensive record citations at VZ IB at 33; VZ RB at 43.

[64] Core continues to claim that it may bill for such traffic, but offers no citation to the parties' ICAs to support its assertion. CEX at 22.

[65] Although the operative facts are no different, Core did not raise this faulty federal law argument in its case before the federal court in Virginia.

[66] Core quibbles with the ID's use of the word "collecting" (CEX at 22), but there is no dispute that Core is attempting to collect an *additional* $24 million *on top of what Verizon has already paid*, as the ID correctly recognized. ID at 60 (COL 32) (finding no basis for Core "retroactively collecting over a decade's worth of uneconomic and market-distorting reciprocal compensation payments.")

intercarrier payments"[67] on the huge volumes of terminating minutes generated when retail customers of Verizon and others dialed numbers assigned to ISPs for internet access. The FCC adopted a rebuttable presumption that a disproportionate volume of terminating to originating traffic (above a 3:1 ratio) was ISP-bound and capped terminating rates to halt this "troubling," "uneconomical" and market distorting practice. *ISP Remand Order*, ¶ 21. Core's decade-long campaign of litigation seeking to eliminate the $0.0007 rate cap followed,[68] during which the FCC dubbed Core the "poster boy of reciprocal compensation gamesmanship"[69] and the D.C. Circuit dismissed its arguments as giving "pettifoggery a bad name."[70] The FCC prevailed and the $0.0007 rate cap for ISP-bound traffic remains in force. This Commission also rejected Core's attempt to stop Verizon PA from implementing $0.0007, holding that specific language in Core's ICA adoption agreement permitted Verizon PA to stop paying reciprocal compensation for ISP-bound traffic and to pay $0.0007 instead.[71] And as noted above, the Commission reaffirmed the $0.0007 rate for ISP-bound traffic in the *Core/AT&T Reconsideration Order* just last month.

Yet, Core once again seeks to evade the $0.0007 rate, now claiming "two big problems" with Verizon's implementation of the "mirroring rule," which required Verizon to "offer" to CLECs "to exchange all traffic subject to section 251(b)(5) at the same rate" if it wished to apply the FCC $0.0007 rate to ISP-bound traffic. CEX at 22; *ISP Remand Order* ¶ 89. But there is no doubt Verizon made a valid mirroring offer in 2001, as the ID correctly found. ID at 58-59. Verizon sent an industry letter offering a mirroring ICA amendment that many carriers have accepted (including Core itself, for Verizon North), and the ID concluded that "[b]oth the FCC and this Commission have held that this offer satisfies the mirroring rule." [72] ID at 58 (COL 27).[73]

The first "problem" Core asserts is that Verizon did not offer to exchange <u>*access*</u> traffic at $0.0007. But the *ISP Remand Order* did not include access traffic in the "traffic subject to section 251(b)(5)" that must be subject to the

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[67] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, ¶¶ 2, 77 (2001) ("*ISP Remand Order*").

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

[69] FCC Respose to Emergency Stay Motion, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001).

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

[71] *Petition of Core Communications, Inc. for Resolution of Dispute with Verizon Pennsylvania Inc. Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. A-310922F7000 (Opinion and Order entered May 27, 2003 and Opinion and Order on Reconsideration entered January 22, 2004). Since 2003, Verizon PA has paid $0.0007 for traffic above the 3:1 ratio (presumed ISP-bound).

[72] In reviewing this same offer in the context of another state, the FCC's Wireline Competition Bureau "agree[d] with Verizon" that this May 14, 2001 offer "satisfied the mirroring rule." *In the Matter of Petition of WorldCom, Inc.*, 17 FCC Rcd 27039, 27161, ¶¶ 248-249 (FCC 2002) ("*WorldCom Order*"). This Commission has approved dozens of "Rate Plan B" amendments, acknowledging that they fulfill the mirroring offer required by the *ISP Remand Order*. VZ Stmt. 1.0 at 79-80.

[73] Core's Rate Plan B amendment with Verizon North "contractually admitted that the Rate Plan B amendment makes the mirroring offer required by the *ISP Remand Order.*" ID at 58 (COL 28). The ID also found Core judicially estopped from denying that the $0.0007 rate applies based on previous arguments in this litigation. ID at 58 (COL 29).

mirroring offer. This is not even a close question or subject to debate: the *ISP Remand Order* stated that in the context of the mirroring rule, "section 251(b)(5)" referred to traffic "that is *not interstate or intrastate access traffic....*"[74] Core concedes (as it must) that access traffic was not part of Section 251(b)(5) when the *ISP Remand Order* was issued,[75] but argues that Verizon's mirroring offer was retroactively invalidated a decade later, when the FCC first began to refer to access traffic as Section 251(b)(5) traffic for a different purpose in its *ICC Reform Order*, which in Core's view wipes the *ISP Remand Order* out of the history books and allows Core now to collect years' worth of reciprocal compensation payments for terminating ISP-bound traffic for which it has already been paid at $0.0007.

The *ICC Reform Order* did not alter the FCC's interim rules for ISP-bound traffic, and certainly did not retroactively nullify them, requiring millions of dollars to be paid to the ISP arbitrageurs, as Core argues.[76] The ID rightly rejected Core's self-serving attempt to eradicate the *ISP Remand Order*:

> Nothing in the FCC's 2011 *ICC Reform Order* allows Core to override the *ISP Remand Order* by retroactively collecting over a decade's worth of uneconomic and market-distorting reciprocal compensation payments for terminating ISP-bound traffic for which Verizon already paid at the FCC's $0.0007/MOU rate for ISP-bound traffic. This result would promote regulatory arbitrage, whereas a key purpose of the *ICC Reform Order* was to reduce arbitrage opportunities in the intercarrier compensation realm.[77]

The second "problem" Core advances is that it purportedly "discovered" in 2010 (when it started sending voice traffic to Verizon PA) that Verizon PA was not billing Core $0.0007 to terminate that traffic, arguing that Verizon PA is not properly "mirroring." CEX at 23. But Verizon PA billed Core correctly under the ICA because Core never accepted a mirroring amendment providing for mutual application of $0.0007 (although Core did for Verizon North). The *ISP Remand Order* required Verizon to *make* the offer, but it does not require the CLEC to *accept* it. If a carrier does not accept the offer, then ISP-bound traffic (traffic above the 3:1 ratio) remains subject to the FCC's $0.0007 rate, but local traffic below the ratio is exchanged subject to the applicable Section 251(b)(5) reciprocal compensation rates, which is how Verizon PA has handed this billing for years. *See ISP Remand Order* at ¶¶ 77-80; VZ Stmt. 1.0 at 81. This arrangement benefits Core, because for each minute of qualifying voice traffic Core sends to Verizon PA (which Verizon PA is entitled to bill at reciprocal compensation), Core can bill Verizon

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

[75] CEX at 23 ("Section 251(b)(5) traditionally applied to all traffic other than switched access traffic.")

[76] After years litigating against Core in federal court to preserve the *ISP Remand Order*, it is inconceivable that the FCC intended such a significant, industry-affecting result without even mentioning it.

[77] ID at 60 (COL 32) (footnote omitted).

PA at higher reciprocal compensation rates for three minutes flowing the other way (which otherwise would have been paid at $0.0007).[78] Not content with this billing advantage, Core argued in briefing that the mirroring rule requires Verizon PA to *accept* $0.0007 for Core's traffic, but still to *pay* reciprocal compensation for all traffic from Verizon to Core below the 3:1 ratio.[79] The ID correctly deemed this "contrary to the plain language of the *ISP Remand Order*, which says that an ILEC must "offer[] to *exchange all traffic*" at the same rate." ID at 59 (COL 30); *see also* VZ IB at 45-46. Verizon PA's billing is consistent with the ICA and the *ISP Remand Order*.

Core also quibbles with the ID's presumption that all traffic from Verizon to Core above the 3:1 ratio is ISP-bound (CEX at 23-24), but the *ISP Remand Order* requires this result, as it set a "rebuttable presumption" that all traffic above the (properly applied) 3:1 ratio is ISP-bound. *ISP Remand Order* ¶ 89. Thus, Core had to present specific evidence to quantify the volume of non-ISP traffic if it wished to rebut this presumption, but it did not do so (instead improperly attempting to shift its burden to Verizon). The Commission therefore must conclude that all traffic above the 3:1 ratio is ISP-bound, just as it did in the AT&T case.[80]

Reply to Core Exception #5: Verizon's Claims Are Within the Commission's Jurisdiction and the Majority Are Within Any Applicable Statute of Limitations.

Having invoked this Commission's authority to decide its disputes with Verizon, Core vainly argues that the Commission has no authority to rule in Verizon's favor due to the statute of limitations (or the doctrine of laches), and because the facilities billed to Core under the ICAs at rates drawn from Verizon's interstate tariff are allegedly outside the Commission's jurisdiction. CEX at 24-25.

Verizon's exceptions, incorporated by reference, addressed the statutes of limitations applicable to its claims. VZEX at 3-9, 16. As noted, the Public Utility Code includes no explicit limitations period for Verizon's claims for payment of its outstanding invoices to Core, which are, at worst, subject to a four-year limitations period

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[78] Since it began sending traffic to Verizon, Core has never paid Verizon's intercarrier compensation bills. Core offered no excuse for its failure to do so, nor has it even paid at the $0.0007 rate it wrongly asserts should apply. *See* VZ IB at 26. The ID found this failure to violate the Public Utility Code. ID at 56.

[79] The record shows Core was improperly inflating the minutes it appeared to send to Verizon (the 1 in the ratio) to increase the minutes it could bill Verizon at reciprocal compensation rates (3 for every 1). VZ Stmt. 1.0 at 22. Core conceded that this traffic is not from numbers assigned to Core and is not even necessarily originated in Pennsylvania, as Core acts as a "least cost router" aggregating traffic from other entities for termination in Pennsylvania. The ID therefore properly held "Core is directed to cease claiming credit under the 3:1 ratio set forth in the FCC's *ISP Remand Order* for any traffic that is not Core-originated and also locally-dialed." ID at 62 (OP 15).

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

beginning from the filing of Verizon's original counterclaims on August 16, 2011.[81] VZEX at 3-8. From August 16, 2007 through August 16, 2012, these unpaid amounts totaled $3,687,677.22, and only grow as Core's non-payment continues.[82] Verizon's claim for refund of past overpayments to Core is subject to the four-year limitations period of 66 Pa. C.S. § 1312(a). VZEX at 9. From January 2008 through June 2012 (well within the limitations period), this amount was $2,725,140. Verizon is also entitled to a refund of 35% of the amounts paid to Core since June of 2012, plus interest on the entire amount. *Id.* at 8-9. Laches cannot bar a claim brought within the applicable statute of limitations.[83]

Core's jurisdictional challenge to a Commission order requiring it to pay amounts invoiced under the ICAs at the rates in Verizon's federal access tariffs is defeated by the fact that the ICAs' price schedules incorporate Verizon's tariffed rates as the ICA's rates.[84] Core previously conceded this point (VZEX at 8, FN 16), and does so again in its exceptions, arguing that the Commission can order Verizon to pay Core's interstate switched access bills because the ICAs incorporate Core's interstate tariff. CEX at 18.

Reply to Core Exception #6: Verizon Fully Met Its Burden of Production.

Simply repeating its original allegations without regard to Verizon's response, Core continues to argue that Verizon failed to introduce sufficient evidence of its unpaid billings, and that Verizon does not maintain "any" billing detail for charges prior to January 2008 and refused to provide certain call records (a gross misrepresentation of Verizon's discovery responses). CEX at 25-26. Core completely ignores Verizon's refutation of these claims. VZ RB at 20-24 (incorporated by reference). Verizon's testimony (VZ St. 1.0 30-39, 43, 61-65):

(1) explains the three categories of facilities and services that Verizon provides to Core;

(2) confirms that the facilities and services were provided pursuant to the parties' ICAs and the tariffs incorporated therein;

(3) provides citations to the relevant ICA and tariff sections under which the facilities and services were ordered and billed and at what rates;

(4) states that Verizon bills Core monthly for these facilities and services;

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[81] The Public Utility Code imposes no limitations period, but should the Commission choose to apply one, it would either be 42 Pa. C.S. § 5525, applicable to contract actions, or 66 Pa. C.S. § 1312(a) (generally applied in refund situations). As the Commission recently confirmed, the federal statute of limitations in 47 U.S.C. § 415(a) does not apply. VZEX at 8, FN 16; *see also Core/AT&T Reconsideration Order* at 34-36.

[82] *See* VZ Stmt. 1.0 at Ex. 13; VZ RB at 18 (explaining calculations based on Ex. 13). The ICAs also require late payment charges of 18% per year under the Verizon North ICA, and 9% per year under the Verizon PA ICA. VZEX at 3, FN 7 (citing ID at 55-56 (COL 15)).

[83] *See Remedio v. Marian Bank*, 21 Phila. 84 (Phila. Cty. Comm. Pleas. 1990) (laches applies after expiration of statute of limitations).

[84] Verizon PA ICA, Adoption Agreement, App. 2 ("Pricing Attachment") at FN 1; Verizon North ICA at Part V, § 3.2.2 and Adoption Agreement, App. 1, §§ 2.4 and 2.5; *see also* VZEX at 8, FN 16.

(5) affirms that Verizon's bills are fully compliant with applicable industry standards of the Ordering and Billing Forum ("OBF") of the Alliance for Telecommunications Industry Solutions ("ATIS");[85]

(6) notes that the ICAs require Core to pay at least undisputed amounts; and

(7) states that because the physical bills themselves are exceedingly voluminous, Verizon compiled and provided a spreadsheet (Verizon Stmt. 1.0 at Ex. 13) detailing each bill issued to Core and payment made by Core for services rendered by Verizon in Pennsylvania. That spreadsheet lists the Core Billing Account Number (BAN), invoice number, bill date, invoiced amount, total due, and total past due for every invoice issued to Core in Pennsylvania, with all applied credits and payments reflected in red text.

At hearing, Verizon's witness authenticated Ex. 13 and confirmed that the amounts shown had been billed to Core. Tr. at 467-71. *Core's counsel confirmed that there was no dispute that Verizon had issued the referenced invoices*. Tr. at 471-72. In fact, Core argues that it has disputed those very invoices for years. CEX at 6. Core's "authentication" argument is unfounded.

Core's contention that Verizon does not maintain detail for billings prior to January 1, 2008 and refused to provide call records is also false. CEX at 25. As confirmed in Verizon's post-hearing reply brief – quoting excerpts from Verizon's testimony and discovery responses – Verizon maintains complete, pre-2008 billing detail in the form of full bill copies available for manual review, just not in a query-ready on-line database. VZ RB at 21-22. Core also misrepresents Verizon's discovery responses on the subject of call records. Core requested that Verizon re-create years' worth of EMI records that Core already had in its possession, at great risk of crashing Verizon's systems. After Verizon explained this at a meet-and-confer and offered to re-create a shorter time period sufficient to meet Core's purported need for the request, Core made no further requests or motion to compel production of records. VZ RB at 22-24.

<u>Reply to Core Exception #7</u>: Core Must Pay Verizon's Bills in Full, Not at Lower TELRIC Rates.

Core's unpaid invoices total more than $4.5 million ($3.7 million of which is for August 2007-June 2012, as discussed above), and only grow as Core continues to use Verizon's services without paying.[86] Core excepts to the ID's holding that it must pay anything for the use of high capacity circuits to transport traffic between Core's network and the networks of Verizon and third parties, and even refuses to pay the lower rates it claims should apply (*see* reply to Exception 8). ID at 56. According to Core's president, "[w]e recognize we are receiving value

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[85] Core misrepresents the cross examination of Verizon's witness in claiming that he could not authenticate the access bills transmitted to Core. The question asked was regarding the witness's familiarity with the format of Verizon's access bills *to Core in particular*. Tr. 495. Verizon's witness confirmed familiarity with Verizon's access bills *generally*, as "[t]he structure is basically the same" regardless of the particular entity being billed." *Id.*

[86] VZ Stmt. 1.0 at 4, 31 and Ex. 13.

from these trunks" but are only "willing to compensate Verizon for our use of these trunks as part of an overall settlement of this case, as well as other issues outside of this case," because Core is "not willing to pay" even amounts it acknowledges it owes absent resolution of all disputes with Verizon. Core Stmt. 3.0 at 39. Core argues in its own exceptions that "the ICA does not permit self-help non-payment without a legitimate basis" (CEX at 5), and yet admits to doing just that.[87]

The ID correctly held that "Core must pay Verizon all past-due amounts billed for facilities through the date of the Commission's order, together with late payment charges of 18% per year for Verizon North and 9% per year for Verizon PA" (the LPCs agreed to in the ICAs). ID at 56. Verizon has billed Core for two types of trunks at tariffed access rates incorporated into the ICAs: LITGs that carry local and certain toll traffic one way from Core's network to Verizon's (and through Verizon's tandem to third party carriers if so destined), and ATCTs, which are two-way and carry interexchange traffic between Core and IXCs that connect to Verizon's access tandems. VZ IB at 10-11.[88] Core attempts to excuse its non-payment by claiming that Verizon should have billed these trunks at TELRIC rates, not the access rates required by the ICAs.[89] The ID rejected this argument, correctly finding that the ICAs do not provide for TELRIC rates and Core must pay for them as billed. ID at 54 (COL 10). The federal district court in Virginia reached the same conclusion.[90] Verizon's briefs (incorporated herein and summarized below) refute Core's arguments in detail. VZ IB at 10-19; VZ RB at 7-13.

In brief, LITGs and ATCTs are a form of dedicated transport connecting a CLEC's network to Verizon's switch or tandem. In the early days of the Telecommunications Act, unbundled (UNE) transport could be purchased at TELRIC rates under 47 U.S.C. § 251(c)(3). But a transport function also continued to be available as an access service under Verizon's tariffs, the difference between the two being that *access* transport provides a finished product powered with Verizon equipment at both ends of the trunk, while *UNE* dedicated transport is an isolated network element that the CLEC must power and control by attaching its own equipment at both ends. The record shows that Core ordered and used the end-to-end access service, which cost more but allowed Core to avoid the

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[87] While Core excepts to the ID's holding on the facilities bills, Core offered no excuse for its refusal to pay Verizon's intercarrier compensation and directory listings charges and apparently does not except to the ID's finding that it should pay them. ID at 53 ("Core breached the ICAs by failing to pay Verizon's bills for ... traffic termination and directory listings"); *id* at 56 ("Core's failure to pay Verizon's switched access invoices violates 66 Pa. C.S. § 3017(b)").

[88] During this case, Core transferred all of its ATCTs to an alternative provider and now only uses LITGs from Verizon. VZ IB at 19. Before leaving Verizon, Core ran up $1,137,943.57 in unpaid bills for its use of ATCTs from January 2008 through June 2012. VZ Stmt. 2.0 at 15.

[89] TELRIC is the FCC's pricing methodology to set UNE rates. State commissions, including this one, use the FCC's methodology to set the actual TELRIC rates for a particular state. Core Stmt. 3.0 at 23-27.

[90] *CoreTel VA Order* at **7-8.

expense of purchasing equipment and collocation space. Thus, even when TELRIC-rated UNE dedicated transport was available, Core ordered and maintained access facilities and was correctly billed at the tariffed access rates incorporated into the ICAs, not TELRIC. ID at 53 (COL 8) ("Core ordered tariffed special access facilities, rather than UNEs."). Of course, Core actually paid Verizon nothing at all, so the difference was effectively academic.

The law on UNEs changed with the FCC's *Triennial Review Order* in 2003,[91] followed by its *Triennial Review Remand Order* in 2005,[92] which held that dedicated transport between a CLEC's network and Verizon switch or tandem was not available as a UNE. Once these facilities were delisted as UNEs, Core's ICAs no longer provided even an uninvoked option to purchase them as TELRIC-rated UNEs. Core argues that following delisting, it was nonetheless entitled to obtain these facilities at TELRIC, because they were "interconnection facilities" required to be provided at cost-based rates under 47 U.S.C. § 251(c)(2). A number of CLECs began to make this argument after delisting, but this Commission rejected it[93] and approved Verizon PA's amendment to its UNE Tariff 216 to reflect that these facilities (sometimes referred to as "entrance facilities") were no longer available as UNEs and instead would be available at "special access rates . . . under Verizon's tariffs."[94] At that point, under Pennsylvania law, these facilities were subject to access rates, and up to mid-2011 (when Core had racked up millions of dollars in unpaid facilities bills), there was no colorable basis to argue that they should have been billed at TELRIC.

There was a new legal development in June of 2011, just before Core filed its original complaint.[95] In *Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011), the U.S. Supreme Court held that some (but not all) entrance facilities qualify as interconnection facilities under § 251(c)(2), and that a CLEC can buy them at TELRIC rates, *provided its ICA so allows*. Core seized on this decision to argue that Verizon must retroactively re-rate all the LITGs and ATCTs at TELRIC (although Core continued to refuse to pay anything). Core is wrong: at best, *Talk*

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

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

[93] *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements, Docket No.* P-00042092 (Opinion and Order on Reconsideration entered July 21, 2006) at 10.

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

[95] ID at 54 (COL 13) ("Because the *Talk America* decision was issued in 2011, as a matter of law, it cannot justify Core's unilateral refusal to pay before that time, in violation of the ICAs.").

America allows Core to negotiate ICA amendments to provide prospectively for TELRIC-rated interconnection facilities under § 251(c)(2), and only to the extent they are truly being used to exchange traffic between Verizon and Core (as the ID held). ID at 55. The Virginia district court confirmed this reading of federal law, recognizing that *Talk America* does not automatically override the terms of the ICA or allow Core to circumvent it.[96]

The parties' ICAs are the first place the Commission must look to determine applicable rates.[97] The ID correctly held that Core's ICAs do not grant Core the automatic right to TELRIC-rated interconnection facilities, and must instead be amended to so provide. ID at 55. The provisions of 47 U.S.C. § 251 are not self-executing; when a CLEC has voluntarily opted into an agreement that "does not provide" a service that federal law requires, it has "effectively waived any right to insist" that it receive that service.[98]

While Core attempts to argue that the ICAs already entitle it to TELRIC-rated interconnection facilities, the provisions Core cites are simply generic references to Core's ability to purchase transport and two-way trunking and general language regarding performance in good faith and in compliance with applicable law. CEX at 27. But "applicable law" requires Core to seek amendments to implement changes in law and provides that Core has "effectively waived any right to insist" that it receive a service not found in its ICAs.[99] *CoreComm Order*, ¶ 32. Section 2.2 of the Verizon PA ICA Adoption Agreement allowed Verizon to cease providing delisted UNEs upon written notice (which was provided, as the Commission has held, and as Core admits), but this provision allowing implementation of certain changes in law upon notice explicitly only applies to Verizon, not Core. VZ IB at 14-15.[100] UNE entrance facilities ceased to be available under the ICAs once the law changed and Verizon provided the required notice, and no other ICA term provides for TELRIC-rated entrance facilities as Section 251(c)(2) interconnection facilities. In fact, the ICAs expressly establish access rates as the pricing for the ATCTs.[101] Core

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[96] *CoreTel VA Order* at **7-8.

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

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

[99] Core cites no provision of either ICA that establishes TELRIC rates for LITGs or ACTCs because there is none. VZ IB at 16.

[100] Paragraph I.B. of the Verizon North ICA Adoption Agreement and footnote 1 to Appendix A thereto, as well as Amendment No. 1 to the Verizon North ICA Adoption Agreement at §§ 2.4 and 2.5, have the same effect. VZ IB at 15.

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

has not followed the ICAs' change of law provisions requiring it to amend the ICAs to obtain TELRIC-rated interconnection facilities.[102]

Even if *Talk America* could override the clear language of the ICAs (which it cannot, as the FCC's *CoreComm* decision and the Virginia federal court held), Core's interpretation of that decision is faulty. Most of the past due charges are for ATCTs used to exchange traffic between Core and IXCs. VZ Stmt. 1.0 at 37. ATCTs are not interconnection facilities subject to § 251(c)(2) under the *Talk America* decision. The ATCTs carry only IXC traffic, not local traffic between Verizon and Core. *Id.* As explained in the FCC's amicus brief (to which the Supreme Court deferred),[103] only facilities that are used to link the incumbent provider's telephone network with the competitor's network for the mutual exchange of traffic are interconnection facilities under 47 USC § 251(c)(2), because they "enable[] customers of a competitive LEC to call the incumbent's customers, and vice versa," without which the CLEC's "customers would be unable to call (or receive calls from) the incumbent's much larger customer base," and therefore are used for the "mutual exchange of traffic" between the CLEC and ILEC end user customers. VZ Stmt. 1.0, Exhibit 14 ("*FCC Amicus*") at 2-3. All other types of dedicated transport that carry traffic between CLEC networks and ILEC switches are not "interconnection facilities" and are thus not required to be provided at TELRIC rates. *FCC Amicus* at 18. Therefore, the ID correctly held that the ATCTs are not local interconnection facilities and would not be available at TELRIC rates even if Core were allowed to apply *Talk America* retroactively, contrary to the plain language of the ICAs. ID at 55 (COL 14).[104]

Core incorrectly claims that "everyone agrees" LITGs are local interconnection trunks. Even LITGs are only Section 251(c)(2) local interconnection trunks to the extent they are used for the "mutual exchange of traffic" between Verizon's and Core's local exchange customers, not where they are used to deliver traffic originating from

[102] Section 2.2 of the adoption agreement provides that "if any judicial or regulatory authority of competent jurisdiction determines (or has determined) that [Verizon PA] is not required to furnish any service or item," then Verizon PA may "at its sole option, avail itself of any such determination by providing written notice thereof to Core." But this provision does not apply to Core. Rather, Core is governed by Section 2.2 of the underlying agreement, which states that "[i]n the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders." VZ IB at 15-17.

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

[104] Core confuses the issue by referring to an ALJ decision in Verizon's 2009 dispute with Choice One over the port by which ATCTs connect to Verizon's tandem switch. Core argues that the Commission found that ATCTs are Section 251(c)(2) interconnection facilities. But the Commission explicitly refrained from so classifying the trunks themselves, stating that it was only holding that the port was ***not*** an interconnection facility because Verizon recovers for it from IXCs through its access tariffs. The Commission emphasized that this holding was consistent with its 2006 decision that "any other transport required by the CLEC" such as ATCTs "may be presumed to be for 'non-interconnection' purposes." *Choice One v. Verizon*, Docket No. C-2008-2029477 (1/29/10) at 26. But even if the Commission had found ATCTs to be 251(c)(2) interconnection (which it did not) that holding would have been overruled by the Supreme Court's subsequent decision in *Talk America* making clear that they are not.

or terminating to third parties. The record shows that all of the traffic Core has been sending to Verizon over the LITGs since 2010 is wholesale traffic aggregated from other carriers as a "least cost router." Tr. 385-391 (conceding that the traffic is not from numbers assigned to Core and is not even necessarily originated in Pennsylvania).[105] Therefore, most or all of the past charges for LITGs also would not be for local interconnection facilities, even under *Talk America*. The ID correctly held that Core must pay for the facilities charges in full and is not entitled to a reduction of past charges to TELRIC rates.

Reply to Core Exception #8: Core Breached the ICAs by Failing to Pay the Undisputed Amount for Facilities.

Core complains that the ID "chastises" it for not even paying TELRIC rates for the facilities (the amount it deems undisputed), asserting that it would have been "impossible" for Core to do so. Verizon squarely refuted that claim at hearing by showing that *at Core's own request*, Verizon provided Core with a TELRIC re-rate nearly two years ago, showing exactly how much would be due if all of the past-due facilities charges were re-rated at TELRIC. Tr. 582.[106] It was certainly possible for Core to pay the undisputed amount; it just chose not to do so, in violation of the ICAs.[107] Core also suggests that it has no obligation to pay *anything* until Verizon issues new invoices re-rated at TELRIC, in contravention of the ICAs. CEX at 34-35. This argument is equally baseless, as underscored by Core's failure to offer any legal authority or ICA provision permitting it to pay *nothing* towards the TELRIC rates it does not dispute.

Reply to Core Exception #9: The Facilities Provided by Verizon Functioned Properly.

Verizon incorporates by reference its rebuttal of Core's claims that the facilities provided by Verizon were defective (CEX at 35-39), covered extensively in Verizon's post-hearing briefs. VZ IB at 19-26; VZ RB at 13-17. Core makes no effort to respond to Verizon's discussion of the evidence disproving Core's functionality claims, which demonstrated not only that they are baseless, but also do not excuse Core's failure to pay for its use of these facilities. *CoreTel VA Order* at *8.

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[105] There are two different sets of LITGs. The LITGs for which Core has failed to pay carry traffic from Core to Verizon. The LITGs discussed earlier, which carry Verizon and third-party traffic from Verizon switches to Core, are supplied by Verizon at no charge to Core.

[106] Core's claim that this re-rate is "subject to the mediation privilege" is patently unfair and ignores the record. CEX at 35. This fact was elicited at hearing to rebut to Core's incorrect suggestion that it had no way to know what the TELRIC amount would be. Core's counsel consented to the admission of the fact that a TELRIC rerate was provided during the mediation. Tr. at 582 ("Your Honor, I spoke with Mr. Gruin off the record and that's why I am going to be asking at least one brief question about something that went on during the mediation, but Mr. Gruin has consented to bringing this matter up even though it would typically be off limits."). Verizon's witness also testified that Core was fully capable of performing a TELRIC re-rate for itself. Tr. 493-95; 500; 580-582 and VZ Redirect Ex. 1.

[107] *See* Core Stmt. 3.0 at 39 (explaining that Core will not willingly pay anything to Verizon). Under the ICAs Core must pay at least the portion of the bills that it does not dispute. VZ St. 1.0 at 38-39 (citing Verizon PA ICA at Attachment VIII, Section 3.1.8 and Verizon North ICA at GT&C, Section 11).

Verizon Routed Calls Properly. As discussed in conjunction with Exception 2 above, Verizon did not route traffic over incorrect trunks. Core long ago admitted its error in asserting that only locally-dialed traffic could be sent over the LITGs, acknowledging that the ICAs also allow routing local and intraLATA toll calls originated by CLECs and independent ILECs, and intraMTA calls originated by wireless carriers, over them. Refuting Core's claim that Verizon controls the routing of transit traffic, the record shows that Verizon *does not alter the routing of incoming calls*: if a call comes into the Verizon tandem over an access trunk, the tandem routes the call over an ATCT; all other calls are routed over the LITGs (Verizon's tandems route calls based solely on the trunk group over which the call entered the tandem).[108]

The MF Trunks That Core Choose Cannot Pass ANI/CPN. As Verizon has repeatedly explained, Core mischaracterizes the ICAs in its effort to construct an argument that they require Verizon to pass ANI/CPN over the MF trunks, when in fact, the ICAs require Verizon to do so only "where available." VZ IB at 21-23. As discussed in conjunction with Exception 2 above, the record contains testimony and multiple technical documents refuting Core's unsupported assertion that the MF trunks can pass ANI/CPN other than on the originating end of a Feature Group D access call, as the FCC has recognized. *ICC Reform Order* at ¶ 716 (citing Verizon filing explaining technical limitations of MF trunks and recognizing need for waivers of call signaling rules as a result).

Verizon Populated CIC/OCN in the EMI Records Provided to Core. Core continues to complain that Verizon "refused" to pass CIC/OCN *in the SS7 call signaling stream* (CEX at 37), ignoring that: (1) the ICAs do not require this (Core still fails to offer a single ICA citation to support its argument); (2) there is no CIC, OCN or other call indicator present in the SS7 call signaling stream that could be used to identify the carrier that sent the call to the Verizon tandem; and (3) Verizon populates CIC/OCN *in the EMI records provided to Core, consistent with the parties' ICAs and the industry standard guidelines incorporated therein*.[109] While Core may prefer the way its current tandem provider does things, it is not the manner required by the ICAs.

Verizon Appropriately Includes Core's CIC in the EMI Records It Generates. Core again complains that Verizon improperly inserts Core's CIC into the EMI records Verizon transmits to other carriers for traffic that Core sends through Verizon's tandems, asserting that this would make Core's outbound, locally-dialed traffic appear to

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[108] VZ Stmt. 1.0 at 51-52; VZ Stmt. 2.0 at 21. Core's citation to a 2003 FCC decision regarding Virginia is irrelevant, as it deals with a different network, ten years ago, and relates to calls that *do not pass through Verizon's tandems*. CEX at 36.

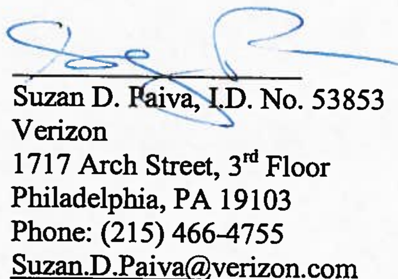
[109] VZ Stmt. 1.0 at 53-54, 57, 59-60; VZ Stmt. 2.0 at 18-19 and Ex. 4-R (MECAB industry guidelines).

be toll and subject Core to access charges if Core had not refrained from sending such traffic to third parties (underscoring the purely hypothetical nature of Core's grievance). CEX at 37-38. Simply, Core used its CIC to order facilities from Verizon, which is why that CIC appears in the EMI records.[110] As discussed under Exception #2, NANPA assigns CIC codes to *both* CLECs *and* IXCs, so any carrier that would bill access charges on the mere presence of a CIC code in the EMI would be violating industry billing standards (MECAB), which require carriers to jurisdictionalize traffic properly, not based on the presence of a code that merely indicates the *identity* of the carrier, not the jurisdiction of the call.[111] In any event, Core's hypothetical problem would be with that other carrier, not Verizon, and Verizon's inclusion of Core's CIC in the EMI records is proper.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the ID with the limited revisions outlined in Verizon's Exceptions, and deny Core's Exceptions in their entirety.

Respectfully submitted,



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[110] VZ Stmt. 2.0 at 11-12; Core Stmt. 4.0 at 4.

[111] VZ Stmt. 2.0 at 12; VZ Stmt. 3.0 at 22-23. Core has never offered an ICA citation to support its assertion that Verizon's process is improper, and could offer no support for its contention when asked in discovery. VZ Stmt. 3.0 at 23 and Ex. 5-SR.