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September 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 Reply of Core Communications, Inc. to the Exceptions filed by Verizon Pennsylvania, Inc. and Verizon North, LLC in this matter. 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. Guin

Enclosures

cc: Certificate of Service  
The Office of Special Assistants w/encl. (Hardcopy and CD, via Federal Express)

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A PROFESSIONAL CORPORATION

**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

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**REPLY OF CORE COMMUNICATIONS, INC. TO  
VERIZON'S EXCEPTIONS**

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Pursuant to 52 Pa Code § 5.533, Core Communications, Inc. ("Core") hereby files its Reply to the Exceptions filed by Verizon Pennsylvania Inc. and Verizon North, LLC (collectively "Verizon") to the Initial Decision (I.D.) in the above-referenced matter. As set forth below, Verizon's Exceptions are meritless, and seek a result that is contrary to the law and that is completely unsupported by the record in this case.

**I. REPLY TO VERIZON INTRODUCTION**

As expected, Verizon uses the Introduction to its Exceptions to continue its campaign of disparaging Core, its business plan and its customers. Verizon's introduction is an exercise in disdainful name-calling, ostensibly meant to persuade the Commission to adopt the findings of the I.D. because Core is "bad." For good measure, Verizon's Introduction makes misleading, extra-record references about the payments between the parties during the pendency of this litigation in order to cast itself as a victim.

Contrary to Verizon's assertions, the I.D. does not reach "sound conclusions" about Core's "misconduct" or Verizon's right to relief. As explained at length in Core's Exceptions, the I.D. contains multiple factual and legal errors, and in many cases the I.D. simply adopts Verizon's flawed and unsupported allegations in the face of overwhelming evidence to the contrary. Not satisfied with the I.D.'s already unjustified conclusions, Verizon is now doubling down and placing even more reliance on its unsupported theories that were roundly disproven throughout the course of this proceeding.

Verizon's introduction refers to a dollar figure (unsupported by any record reference) which supposedly represents the amount of money that Verizon has paid to Core since the inception of this litigation. But when put into the proper context of the evidence actually entered into the record, it is clear that Verizon has massively underpaid Core for the traffic that Verizon and its affiliates have sent to Core's network since July 2011, and continues to do so each month. The figure that Verizon references in its introduction relates to traffic delivered by Verizon to Core's network in Pennsylvania, almost all of which was paid at the miniscule rate of \$.0007/minute.<sup>1</sup> Verizon only paid this amount because it was ordered to do so by the Commission, after unilaterally ceasing all payment to Core in Pennsylvania. But Verizon fails to mention that its IXC and Maryland affiliates refuse to pay anything for the traffic they send to Core's network.<sup>2</sup> And Verizon also fails to mention that Core definitively proved that Verizon itself has been drastically underpaying Core, and that much of the traffic that Verizon has sent and continues to send Core is properly rated as toll traffic that entitles Core, per the ICA, to switched access rates well in excess of \$.0007.<sup>3</sup>

Furthermore, Verizon would have the Commission believe that its "35% overcharge factor" is an unquestioned, airtight certainty. This could not be further from the truth. As explained at length

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<sup>1</sup> Core Stmt. 1.0, at 13.

<sup>2</sup> Core Stmt. 2.0, at 4-5

<sup>3</sup> Under the ICA, "back-billing of any underpayments" is specifically permitted. ICA, § 23.4 ("The audited Party shall promptly correct any error that is revealed in a billing audit, including back-billing of any underpayments and making a refund, in the form of a billing credit, of any over-payments.").

in Core's Exceptions, Verizon's methodology for calculating "overcharges" was horribly flawed and based on multiple mistaken assumptions, to the point where Verizon's own witness testified that he could not identify with any certainty any traffic for which Verizon was overcharged.<sup>4</sup> Verizon's Introduction also revives its previous gambit of relying on the *Core v. AT&T* case for the proposition that Core was "double-billing" Verizon. But as Core explained in its Exceptions, Core never billed Verizon for AT&T's traffic, and the very conclusions of the I.D. that Verizon relies upon to seek a larger refund from Core cannot withstand any serious scrutiny.<sup>5</sup>

## II. REPLY TO VERIZON EXCEPTIONS

### Reply to Verizon Exception #1: Verizon's Counterclaims Are Barred By the Equitable Doctrine of Laches

Verizon's first Exception relates to Verizon's counterclaim against Core for facilities charges dating back to 2003. The I.D. granted Verizon's Counterclaims for its ancient facilities charges, but applied a three-year statute of limitations to those counterclaims. Verizon argues that "the Public Utility Code does not require the Commission to apply a limitations period at all", but that if it chooses to do so, the correct statute of limitations to apply to Verizon's Counterclaim is a four-year statute of limitations, calculated from the date the Verizon filed its original Counterclaim in this matter (August 16, 2011). Verizon asserts that the four-year contract statute of limitations of 42 Pa.C.S.A. 5525 applies.

Putting aside the fatal deficiencies in Verizon's counterclaims that were discussed in Core's Exceptions, Verizon's argument overlooks a critical component for determining the limitations period: the doctrine of laches, which Core raised in its Answer and New Matter to Verizon's Amended Counterclaims. Under Pennsylvania law, laches is an equitable doctrine which bars relief when the complaining party is guilty of a lack of due diligence in failing to promptly institute the

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<sup>4</sup> See Core's Exceptions, pp. 10-13

<sup>5</sup> Core Exceptions, pp. 13-15

action, which delay prejudices the rights of the other party. In order to prevail on an assertion of laches, a plaintiff must establish: (1) a delay arising from defendant's failure to exercise due diligence in asserting the claim, and (2) prejudice to the defendant resulting from the delay. *Sprague v. Casey*, 520 Pa. 38 (1988); *In re Estate of Aiello*, A.2d 283 (2010).

The Commission has applied the doctrine of laches to dismiss complaints, and has stated that doctrine of laches provides that an action can be barred if one party can show delay arising from the other party's failure to exercise due diligence and prejudice from that delay. *See, Dolman v. Pennsylvania Power and Light Company*, Docket No. C-892353, Order entered April 30, 1990 (citing *Kehoe v. Gilroy*, 320 Pa.Super.Ct. 206, 467 A.2d 1 (1983)). The Commission has found that "a six-year delay in filing a claim raises a presumption of unreasonable delay." *Id.*, citing, *A. Stucki Co. v. Schwam*, 638 F.Supp. 1257 (E.D.Pa.1986).

The current case is a textbook example of a case that warrants the invocation of the doctrine of laches. Verizon delayed for so long in bringing its facilities counterclaims that it no longer had any backup detail to support its claims, and was unable to present a witness who could authenticate the bills underlying its claims. Core began disputing Verizon's facilities bills in 2003. Core Statement 3.0, at pp. 30-34, recounts Core's repeated and detailed disputes of Verizon's bills. Core's disputes were not limited to the rates billed, as Verizon has misleadingly represented throughout this case. Core Exhibit R-19 includes copies of multiple emails and letters sent by Core to Verizon between 2003 and 2011 which explain all of legal and technical grounds for Core's disputes of Verizon's facilities bills. Core also made numerous attempts to discuss the billings with Verizon personnel face-to-face and telephonically, to no avail.<sup>6</sup>

Despite Core's repeated disputes of the billings, Verizon never corrected the issues identified by Core over the years. But Verizon also never filed any action to seek compensation from Core for

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<sup>6</sup> Core Stmt. 3.0, at 30-34; and Exhibit CORE R-19.

the facilities bills – an implicit concession that the bills had serious flaws. Verizon had plenty of opportunities to file claims against Core regarding its facilities bills while the bills were still fresh and while Verizon still had the records to support its billings. But for some reason Verizon waited nine years - until the filing of its original answer in this case on August 16, 2011 - to file any action against Core to attempt to collect these charges. Verizon provided no justification for its unreasonable delay, and Verizon's witnesses were unable to explain why Verizon took no action on its facilities bills for nine years.<sup>7</sup>

By the time Verizon finally did file its counterclaim in this case, it did not have records to support its allegations and could not present a witness with first-hand knowledge of its billings. Verizon has admitted that much of its claim is premised on amounts billed as far back as 2002,<sup>8</sup> and that it no longer maintains any billing detail at all for charges prior to January 1, 2008.<sup>9</sup> 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.<sup>10</sup> Because it waited so long to bring suit on its facilities bills, Verizon was also unable to submit any testimony supporting anything other than the existence of a claimed balance due—no explanation of how, when or by whom the putative services were ordered, nor that in fact they were provisioned or used. In fact, Verizon was unable to 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."<sup>11</sup> When

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<sup>7</sup> Tr., 476-478 (D'Amico)

<sup>8</sup> Tr., 474 (D'Amico).

<sup>9</sup> Exhibit CORE R-12 (Verizon Response to Core Interrogatory IV-1), subparts (c) and (d).

<sup>10</sup> Core Statement 2.0 (Direct Testimony of Christopher F. Van de Verg, Esq.), at 10.

<sup>11</sup> Tr., 495 (Verizon Witness D'Amico)

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."<sup>12</sup>

Core was clearly prejudiced by Verizon's unexplained and unreasonable delay in filing a claim for its facilities bills. Due to Verizon's delay, Core had no ability to analyze Verizon's charges in the context of this litigation, or obtain relevant details about the bills, or cross-examine Verizon individuals with first-hand knowledge of the billings. Essentially, due to its own delay, Verizon was only able to submit an historical account statement into the record, with no copies of bills or any other supporting information.

The paucity of information available to the parties about Verizon's bills is startling, especially when compared to the voluminous and highly detailed information the Core submitted in support of its own billings to Verizon. Core produced massive volumes of SS7 call records, MF time stamp records and monthly worksheet calculations to document every minute of use that it billed to Verizon as reciprocal compensation going back to May, 2008, as well as detailed descriptions of how the bills were generated.<sup>13</sup> By contrast, Verizon was unable to provide data to support even one month of its reciprocal compensation or switched access billings to Core.<sup>14</sup>

As explained in Core's Exceptions, the I.D. improperly accepted Verizon's facilities claims despite all of their serious evidentiary flaws (which justify denying the claims in their own right). But in addition, because Verizon unreasonably delayed the filing of claims for its facilities charges for over nine years, Core was prejudiced in its ability to respond to Verizon's allegations. Accordingly, the doctrine of laches justifies the outright dismissal of Verizon's counterclaims.

Alternatively, if Verizon's counterclaims are permitted to proceed in the face of its unreasonable and prejudicial delay, the appropriate statute of limitations depends on jurisdiction

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<sup>12</sup> Tr., 497 (D'Amico)

<sup>13</sup> Core Statement 4.0 (Panel Surrebuttal Testimony), at 14.

<sup>14</sup> *Id.*

under which Verizon billed Core. Applying Pennsylvania's four-year statute of limitations for contract claims,<sup>15</sup> Verizon's intrastate claim is limited to amounts accrued after August 16, 2007, that is, invoices which became due after that date. Core asked Verizon in discovery to identify such charges, but Verizon was unable or unwilling to do so, explaining that it "is unable to provide a breakdown of charges billed before January 1, 2008 because the detailed billing records are no longer available."<sup>16</sup> With respect to Verizon's interstate tariff claims, the federal Communications Act's two-year statute of limitations would apply,<sup>17</sup> and Verizon admitted at least \$556,728.44 of its interstate access charges accrued prior to relevant date for the federal statute, which is August 16, 2009.<sup>18</sup>

**Reply to Verizon Exception No. 2: Verizon's Exception No. 2 Highlights the Inconsistencies Present In Its Own Claims**

Attempting to simultaneously support and attack the ALJ's arbitrary award of \$1,000,000.00 in damages for unspecified billing violations, Verizon's Exception No. 2 merely serves to accentuate the vague and un-provable nature of its claims.

**a. Neither the I.D., Nor Verizon's Exceptions, Can Quantify Verizon's Various Claims**

As if conceding that Verizon's "hard" claim of overbilling for third-party traffic (which is the only claim Verizon attempted to quantify) was suspect, both the I.D. and Verizon appear to rely on a range of unquantified allegations of overbilling—VNXX, lack of records, etc.—to justify an award against Core. Verizon Exceptions, at 9-10. But combining multiple unsubstantiated claims together does not make up a single, substantiated claim, and the I.D.'s "\$1,000,000" award is completely arbitrary, as even Verizon agrees.<sup>19</sup>

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<sup>15</sup> 42 Pa.C.S.A. § 5525.

<sup>16</sup> Exhibit CORE R-12 (Verizon Response to Core Interrogatory IV-1), subparts (c) and (d).

<sup>17</sup> 47 U.S.C. § 415.

<sup>18</sup> Exhibit CORE R-12 (Verizon Response to Core Interrogatory IV-1), subpart (e).

<sup>19</sup> See, Verizon Exceptions, at 13 (referring to the ALJ's \$1,000,000 award as "arbitrary and capricious.").

Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312, does not authorize the Commission to award damages based on complex theoretical models such as Verizon's LNP Lookup. This methodology, which was entirely unknown to Core prior to Verizon's testimony in this case, is not supported by the ICAs, TA-96, or any Commission or FCC rule. LNP Lookup is the invention of Verizon's witness, Mr. Munsell; it is, in essence, an expert damages report that is based on multiple assumptions and extrapolations. In the case cited by Verizon, *Metro. Edison Co. v. Pennsylvania Pub. Util. Comm'n*, 62 Pa. Cmwlth. 460, 462, 437 A.2d 76, 78 (1981), the Commission sought to compel the utility to refund certain amounts collected pursuant to the "fuel cost adjustment provision of the company's tariff." The problem was that the utility had agreed to pay its suppliers higher prices for fuel than it was contractually required to pay.<sup>20</sup> The Commission wanted the utility to refund the difference between what it paid under the contract amendments, and what it would have paid under the original contracts. *Metro Edison* can be distinguished from the present case in that (1) it involved a tariffed charge; (2) it directly impacted consumers; (3) the calculation of the amount to be refunded was straightforward; and (4) it involved the Commission's "limited" "authority to interfere in the internal management of a utility company."

Under both state and federal law, the Commission has no power to award damages for breach of contract, such as the breach Verizon alleges. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 8, 383 A.2d 791, 794 (1977) ("the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power."); and *Core Commc'ns, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir.

<sup>20</sup> *Metro Edison*, at 473 ("The gravamen of the Commission's case was that Met-Ed had paid the higher prices through imprudent administration of its contracts with the named coal brokers. Central to the Commission's case was the contention that the utility did not compel the coal brokers to justify, contractually, the higher coal prices they demanded and received."). Here, there is no basis upon which the Commission could find that Core should have been using Verizon's LNP Lookup methodology for the past decade.

2007)(“Pursuant to the FCC's guidance, we hold that interpretation 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.”). The Commission, if it finds that Core breached the ICA at all, should direct Verizon to take its LNP Lookup methodology to federal district court, where it may undergo the analyses for which courts are uniquely suited.<sup>21</sup>

Any statutory refund power the Commission may have is limited by the specific terms of the ICA. *See, Puerto Rico Tel. Co., Inc. v. SprintCom, Inc.*, 662 F.3d 74, 97-98 (1st Cir. 2011)(“Article 1795 of the Civil Code does not apply where, as here, there is a valid and binding agreement between the parties that governs the dispute at issue and mandates a specific result, i.e., that the invoices in question, which were belatedly challenged by Sprint under the Waiver Provision, are deemed correct and binding between PRTC and Sprint.”). Here, the ICA provides for refunds, but only upon conclusion of an audit pursuant to section 23 thereof. ICA, § 23.4 (“The audited Party shall promptly correct any error that is revealed in a billing audit, including back-billing of any underpayments and making a refund, in the form of a billing credit, of any over-payments.”). Verizon, in its haste to cut off all payments to Core, skipped over the ICA’s audit procedure entirely. Having repudiated its rights to pursue a refund under the ICA, Verizon should not be allowed to bypass the ICA and utilize the statutory procedures of 66 Pa. C.S. § 1312.

**b. Verizon’s “Third-Party Billing” Claim Is, As the I.D. Implicitly Acknowledges, Speculative At Best**

Verizon claims that “Core overbilled Verizon – and Verizon overpaid Core – at least \$2,725,140 in local traffic termination services” for traffic associated with third-party carriers. VZ

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<sup>21</sup> *See, e.g., ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 290 (3d Cir. 2012), *cert. denied*, 133 S. Ct. 2025, 185 L. Ed. 2d 886 (U.S. 2013)(“Under Rule 702, the district court acts as a gatekeeper to ensure that the expert's opinion is based on the methods and procedures of science rather than on subjective belief or unsupported speculation.”).

Exceptions, at 8-9, citing to VZ Stmt. 3.0, at 67-69 and VZ Stmt. 1.0, at 70-74. This figure is based solely and completely on Verizon's LNP Lookup theory. *Also see*, VZ Exceptions, at 10 (outlining the LNP Lookup Methodology). But Core demonstrated that the LNP Lookup methodology was flawed in multiple respects. These flaws were discussed at length in Core's Exceptions, at 10-11; Core M. Br., at 25-27; Core R. Br., at 26-31; Core Stmt. 1.0, at 31-32; Core Stmt. 3.0, at 62-66; and Core Stmt. 4.0, at 5-9. 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 quantify the extent of the alleged overbilling. See N.T. 527-38 and Core Cross Exhibit 13.

**c. EMI, Not LNP Lookup, Is the Industry Standard Method to Measure Third-Party Traffic Volumes**

The use of 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. And EMI records are the appropriate means to bill third-party carriers. Core Stmt. 1.0, at 31-32; *and see id.*, at 13. As such, Core could only bill third party carriers to the extent that those carriers were identified in EMI records. Verizon sent Core some EMI records, but not nearly enough to support Verizon's claim that 35% of Core's bills to Verizon related to third-party traffic. From 2008 through 2010, the EMI records Verizon sent Core hovered between 2 and 4 % of total traffic received by Core on the LITGs. Core Stmt. 3.0, at 64-65. In 2011, EMI rose to a peak of 16.9% of total traffic on the LITGs. *Id.* In 2012, EMI fell to 6-8%. But even these figures greatly overstate the percentage of minutes Verizon sent over the LITGs with an EMI record. This is because, until January 2012, Verizon sent traffic to Core over two sets of trunks:

ATCs and LITGs<sup>22</sup>, and the EMI records do not indicate whether each call was sent to Core over an ATC or an LITG. Core Stmt. 3.0, at 68; Core Stmt. 4.0, at 9. This is significant because Core never billed Verizon anything for traffic on the ATCs. Core Stmt. 1.0, at 13; Core Stmt. 3.0, at 68. Based on Verizon's own testimony before the Commission and previous statements submitted to the FCC, it is probable that the EMI minutes came to Core over ATCs, not LITGs. Core Stmt. 4.0, at 6; Core R. Br., at 31 and footnote 12. Because Core never billed Verizon for ATC minutes, it is impossible for Core to have "double-billed" Verizon for traffic received over the ATCs.

Beginning in January, 2012, EMI minutes can be tied directly to traffic on the LITGs, for which Core billed Verizon. Again, EMI minutes account for only 6-8% of traffic on the LITGs during this period, which is obviously far less than the 35% figure that Verizon postulates. Whether or not Core was legally required to use EMI to subtract minutes from its reciprocal compensation bills to Verizon depends on the Commission's interpretation of the ICA.<sup>23</sup> In any event, Core has offered to credit back to Verizon any and all such amounts, an offer which Verizon has thus far ignored.<sup>24</sup> The fact that any EMI records exist for LITG traffic in 2012 is most likely attributable to Verizon's recent efforts to require rural incumbent LECs that use its local tandems to pass CPN in the call stream when they originate calls to Verizon.<sup>25</sup>

**d. Verizon's Claims Are False, Misleading, or Both**

Verizon claims "Core billed Verizon for traffic originated by CLECs, other ILECs and wireless carriers." VZ Exceptions, at 9. Other than EMI records that represent 6-8% of the traffic received over the LITGS for the period beginning in January, 2012, there is no evidence that Core billed Verizon for any third-party traffic. Verizon's witnesses admitted that they could not point to

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<sup>22</sup> *Id.*

<sup>23</sup> *See*, Core M. Br., at 75-76 (Proposed COL # 28-37). The ICAs only contemplate using EMI to identify third-party IXC traffic on the ATCs, not presumably local traffic on the LITGs.

<sup>24</sup> Core R. Br., at 29; Tr., 322-23 (Core witness Mr. Mingo).

<sup>25</sup> Verizon Stmt. 2.0, at 23 ("Due to recent efforts, Core should now begin seeing some EMI records for intraLATA local and toll calls originated by some ILECs.").

any instance of overbilling, or quantify the extent of the alleged overbilling. See N.T. 527-38 and Core Cross Exhibit 13. With respect to CLEC-originated traffic, Verizon passed that traffic to Core over ATCs, and was therefore never billed for such traffic. Core Stmt. 4.0, at 5-6. As for ILEC-originated traffic, Verizon admitted that it had passed these calls to Core without EMI for years. Therefore, Core had no basis to bill those ILECs in the first place, because without EMI, Core has no way of knowing which carrier originated a call. *Id.*, at 6-7. As for wireless traffic, Verizon never explains why wireless callers could or would call Core's ISP customers.

Verizon claims that “[t]he law and the ICAs do not permit Core to bill Verizon for terminating traffic originated by these third party carriers.” Verizon Exceptions, at 9. Citing, LCO, ¶ 1034; 47 U.S.C. § 252(d)(2)(A)(i); 47 C.F.R. § 51.700. But Verizon never comes to grips with the actual language of the ICA concerning how to bill for intercarrier compensation. ICA, Att. IV, § 7.3; Core M. Br., at 75-76, COL # 28-37. As explained at length in Core's Exceptions, these billing provisions, not Verizon's LNP Lookup methodology, govern billing for intercarrier compensation. As it is wont to argue, Verizon “cannot rely upon the general section 251 duties to circumvent the terms of its agreement.” *Core Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications, Inc., et al.*, 18 F.C.C.R. 7568, 7582 (2003). Furthermore, Core bills Verizon in exactly the same way Verizon bills Core. Core Stmt. 4.0, at 9, and Exhibit CORE R-28 (Verizon Interrogatory Response)(“Third party traffic sent by Core is billed to Core.”).

Verizon claims “Core has double billed Verizon and other carriers... including specifically the traffic at issue in the *Core v. AT&T* case...” Verizon Exceptions, at 9. But like other CLEC traffic, the AT&T traffic was associated with a CIC, and was therefore transmitted to Core via ATCs and not billed to Verizon. Core Stmt. 4.0, at 5-6. Core repeatedly explained that Core **only billed Verizon for traffic received on the LITGs**, and billed Verizon nothing for the traffic received on

the ATCs.<sup>26</sup> 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.

**e. Verizon's Arguments Undermine Its Own Claims**

Verizon argues that “[t]he I.D. plainly concludes that a full refund is proper..., but does not direct repayment of the entire amount Core improperly collected from Verizon.” Verizon Exceptions, at 13. The I.D. did not “direct repayment” to the extent Verizon requested, because Verizon’s LNP Lookup method is inherently flawed and unsupportable. That is why the I.D. does not endorse LNP Lookup, but rather relies on a combination of unsubstantiated and unquantified assertions to arrive at the arbitrary figure of \$1,000,000.

Verizon argues that “the Commission cannot exercise its discretion in an arbitrary and capricious manner, and may only deny or reduce a refund if it has a sound legal and factual basis to do so...” Verizon Exceptions, at 13. Citing, *In re Women’s Homeopathic Hospital*, 393 Pa. 313, 316 (1958). By the same token, the Commission may only adopt LNP Lookup if it has a “sound legal and factual basis to do so,” which it does not.

Verizon recites the I.D.’s finding that “all traffic originated by all carriers over the MF trunks was billed to Verizon.” Verizon Exceptions, at 13. This is simply not true. Core only billed for traffic on the LITGs; never on the ATCs. Core Stmt. 1.0, at 13; Core Stmt. 3.0, at 68; Tr. 544-60 (Verizon witness Mr. Munsell).

Verizon recites the I.D.’s finding that Core’s sampling method for MF traffic “was wholly unreliable.” Verizon Exceptions, at 14. But Core demonstrated that the MF sampling method produced consistent, predictable results, and resulted in traffic volumes which declined steadily over several years in conjunction with the adoption of broadband Internet access by dial-up end users.

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<sup>26</sup> 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

Core Stmt. 4.0, at 10-12 and Figure SR-2. The chart provided by Core in its testimony, Figure SR-2, shows that, as MF minutes drop off, SS7 minutes pick up, but the total minutes billed steadily falls throughout the entire period. Neither Verizon nor the I.D. ever explains how Verizon was damaged by this steady decline in minutes billed.

Verizon claims that Core's alleged "billing violations are a highly lucrative and potentially profitable venture in Pennsylvania." Verizon Exceptions, at 15. Verizon has been aware of the third-party traffic issue since 2003,<sup>27</sup> yet made no effort to notify Core of a potential problem or seek an ICA amendment. Indeed, Verizon could have solved its own problem from a technical perspective, for example, by sending EMI for all third-party originating calls. Core Stmt. 3.0, at 66 ("There are many ways for Verizon to avoid the issues it raises in its testimony."). Yet, Verizon admitted it only recently began to transmit EMI for *some* calls originated by *some* ILECs. Verizon Stmt. 2.0, at 23.

Verizon refers to "overpayments that the Commission's emergency order still forces Verizon to make every month...", but Verizon fails to mention that it withholds 100% of the switched access charges for toll traffic it sends Core over the LITGs, against which Core has offered to credit EMI minutes. Verizon's toll traffic to Core, and Core's switched access bills to Verizon, have continued to increase throughout the period of the Commission's emergency order. Verizon argues that the I.D. would amount to "forcing Verizon to finance a multi-year loan to Core..." Verizon Exceptions, at 16. Yet Verizon fails to mention the payments Verizon has withheld from Core for switched access in Pennsylvania, for interstate switched access, and in Maryland. Core Stmt. 2.0, at 4 (referencing Verizon's withholding of at least \$1.5 million from Core as of August, 2012).

Verizon argues that "[b]y improperly billing and double-billing Verizon, and continuing these unsupportable practices even after Verizon pointed them out in this litigation, Core assumed the risk that its actions would be found illegal." But this exact point goes to Verizon's improper billing of

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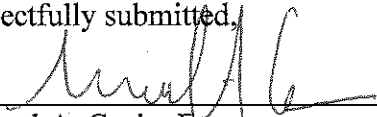
<sup>27</sup> See, *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

interstate facilities access to Core, not Core's reciprocal compensation billing to Verizon. Core followed the billing procedures set forth in the ICA; Verizon, by its own admission, billed out of its interstate tariff *in lieu of* the ICA.

To the extent the Commission orders any refund for payments required by the September 23, 2011 emergency Order, as Verizon asks, Verizon Exceptions, at 18, such a refund should be deducted from future reciprocal compensation billings, as Core had no notice whatsoever that Verizon had any problem relating to third-party billings until September, 2011, when Verizon shared its initial conclusions from Core's data. Even then, Verizon's LNP Lookup methodology is not a billing methodology that any carrier uses,<sup>28</sup> and it is not at all clear how Core would go about using it on a prospective basis. Finally, the ICA specifically contemplates that any over-billings be refunded in the form of "a billing credit." ICA, § 23.4 ("The audited Party shall promptly correct any error that is revealed in a billing audit, including back-billing of any underpayments and making a refund, in the form of a billing credit, of any over-payments.").

**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,

  
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<sup>28</sup> Core Stmt. 1.0, at 32.

