

Suzan DeBusk Paiva
Assistant General Counsel



1717 Arch Street, 3 East
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

June 9, 2014

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 LLC
Docket No. C-2014-2406550

Dear Secretary Chiavetta:

Enclosed please find Verizon's Prehearing Memorandum, being filed on behalf of Verizon Pennsylvania LLC in the above captioned matter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

Via E-Mail and Federal Express
cc: The Honorable Susan D. Colwell

Via E-Mail and First Class U.S. Mail
cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Prehearing Conference Memorandum, 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 9th day of June, 2014.

Via E-Mail and First Class Mail

Michael A Gruin, Esquire
Stevens & Lee
17 North Second St., 16th Fl.
Harrisburg, PA 17101

Christopher F. Van de Verg, Esquire **
General Counsel
Core Communications, Inc.
209 West Street, Suite 302
Annapolis, MD 21401



Suzan D. Paiva
Pennsylvania Bar ID No. 53853
1717 Arch Street, 3rd Floor
Philadelphia, PA 19103
(215) 466-4755

Attorney for Verizon

** Service being made by e-mail only

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|---------------------------|
| Core Communications, Inc., | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Docket No. C-2014-2406550 |
| | : | |
| Verizon Pennsylvania LLC, | : | |
| | : | |
| Respondent. | : | |

VERIZON'S PREHEARING MEMORANDUM

Pursuant to 52 Pa. Code §5.222, Verizon Pennsylvania LLC (“Verizon”) respectfully submits this prehearing memorandum for purposes of the prehearing conference scheduled for June 12, 2014 in this matter, which involves a complaint by Core Communications, Inc. (“Core”) against Verizon.

I. BACKGROUND

In January 2012, while the parties were mediating the complaint case at Docket No. C-2011-2253750,¹ Core issued dozens of back-bills going back to 2008 for facilities and services for which it had never previously attempted to charge Verizon. Three months later, after the mediation failed, and without following the dispute resolution process mandated by the parties’ interconnection agreement, Core amended its complaint in Docket No. C-2011-2253750 to attempt to collect on a subset of the back-bills (those for switched access service). The parties litigated Docket No. C-2011-2253750 to conclusion on a full evidentiary record, and the presiding officer’s initial decision rejecting Core’s switched access bills and ruling against Core on most other issues is pending before the Commission on exceptions.

¹ Docket No. C-2011-2253750 was litigated with Docket No. C-2011-2253787 (against Verizon North LLC), as Core filed a single complaint naming both Verizon affiliates as respondents.

Core did not amend its complaint in Docket No. C-2011-2253750 to attempt to collect on the *other* category of back-bills it issued in January of 2012, although Verizon had also disputed those bills in full. In addition to back-billing millions of dollars in switched access charges, Core had also back-billed Verizon approximately \$1.8 million for “multiplexing” and “tandem ports” (generally referred to as “facilities charges”), facilities that Core claimed were used to deliver Verizon-originated traffic into Core’s network. Core continued to bill these multiplexing and tandem port fees monthly for each of its wire centers, and in 2013, began adding new charges for “entrance facilities” and “TELRIC transport” in its Philadelphia location to its ongoing facilities bills. Now, nearly two years later, Core files the instant complaint against Verizon² seeking to collect on nearly \$4 million in bills for multiplexing, tandem ports, entrance facilities and TELRIC transport.

While the validity of Core’s attempt to bill Verizon for these facilities was not litigated here in Pennsylvania – because Core chose to leave such claims out of the case at Docket No. C-2011-2253750 when it amended its complaint there to pursue other back-bills issued simultaneously – the parties’ affiliates operating in Virginia *did* litigate this issue and the federal courts have ruled against Core and in favor of Verizon. In 2011, Core’s Virginia affiliate complained first to the Virginia State Corporation Commission and, following dismissal of that case, to the United States District Court for the Eastern District of Virginia, seeking, among other things, to collect on its “facilities” bills for multiplexing and tandem ports. On summary judgment, the district court ruled in favor of Verizon’s Virginia affiliates and against Core’s affiliate (CoreTel Virginia, LLC) on these facilities claims (as well as all other issues), finding that CoreTel was not entitled to bill Verizon for multiplexing and trunk ports because Verizon’s

² The instant complaint does not include claims against Verizon North.

Virginia affiliates had self-provisioned the facilities used to carry their customers' traffic to Core's network.³ On May 13, 2014, the United States Court of Appeals for the Fourth Circuit affirmed the district court's holding on CoreTel's facilities bills (and most other issues).⁴ The Fourth Circuit held that Verizon provisioned its own facilities to carry its traffic to CoreTel, that CoreTel was improperly attempting to bill Verizon for facilities on CoreTel's own network for which CoreTel was solely responsible and that the parties' interconnection agreement contemplated that CoreTel would be compensated through traffic termination charges (reciprocal compensation), not separate and additional facilities charges.⁵

The answer here is no different. Core claims that the parties' interconnection agreement supports its attempt to bill Verizon for these facilities charges, but it is wrong. Here, as in Virginia, Verizon self-provisioned, at its own expense, the facilities that carry its customers' traffic from Verizon's network to the Core interconnection point. The interconnection agreement permits Core to bill local traffic termination charges (reciprocal compensation or the FCC's \$0.0007 rate for ISP-bound traffic, as applicable), but it does not permit Core additionally to bill Verizon for the use of its own facilities to reach Core's network. And, as in Virginia, neither the interconnection agreement nor any other document contains rates or other authorization for Core to bill for tandem ports, multiplexing or entrance facilities, precluding Core from billing these charges. In short, Verizon did not order these facilities and services, and the interconnection agreement does not support Core's attempt to bill Verizon for them. Core

³ See *Memorandum Opinion, CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649, **6-12 (E.D. Va. April 22, 2013).

⁴ See *CoreTel Virginia, LLC v. Verizon Virginia LLC*, 2014 U.S. App. LEXIS 8902, **18-21 (4th Cir. May 13, 2014). On May 27, 2014, the Verizon Defendants-Appellants petitioned for panel rehearing and rehearing *en banc* of an aspect of the Fourth Circuit's decision that is not relevant to this proceeding.

⁵ Core's claims for payment for its facilities bills here are barred in whole or in part by the doctrine of claim preclusion based on the holdings of the federal district court in Virginia and the United States Court of Appeals for the Fourth Circuit. Based on the presiding officer's order on preliminary objections, Verizon intends to raise these arguments in its briefs.

has billed and Verizon has already paid the local traffic termination charges that the interconnection agreement contemplates as the only compensation for the termination of local traffic under the circumstances presented here. For this reason, Verizon has disputed Core's bills in full.⁶

II. ISSUES

Based on the pleadings to date, the Commission will have to address at least the following issues (Verizon reserves its right to add additional issues as discovery proceeds):

1. Whether Verizon self-provisioned the facilities that carry traffic to Core for which Core has billed Verizon multiplexing, tandem ports, entrance facilities and TELRIC transport charges.
2. Whether Core's bills for multiplexing, tandem ports, entrance facilities and TELRIC transport are compensable from Verizon under the interconnection agreement and applicable law.
3. Whether Verizon ordered from Core any of the facilities and services for which Core has billed Verizon.
4. Whether Core has demonstrated that Verizon owes Core the amounts alleged in its bills.
5. Whether Verizon's affirmative defenses, including the statute of limitations, set-off, claim preclusion, issue preclusion, unclean hands, laches and waiver, preclude a finding of breach of the interconnection agreement against Verizon.

III. PROCEDURAL SCHEDULE

The parties have conferred and reached agreement on the following schedule:

| | |
|----------------------------|--------------------|
| Core Direct Testimony | July 11, 2014 |
| Verizon Rebuttal Testimony | August 28, 2014 |
| Core Surrebuttal Testimony | September 25, 2014 |

⁶ With its Answer, Verizon filed a number of new matters in the nature of affirmative defenses. However, discovery has just begun and information gathered through the discovery process may warrant amending Verizon's March 13, 2014 answer to include additional new matters and/or counterclaims against Core, and Verizon reserves the right to do so.

| | |
|-----------------------------|---|
| Verizon Rejoinder Testimony | October 15, 2014 |
| Core Surrejoinder Testimony | At evidentiary hearing (oral) |
| Evidentiary Hearing | Two consecutive days in late October. Parties are available for hearing on the following dates: October 21, 22, 23, 28, 29 and 30 (parties are also available the first week of November if there is no October availability) |
| Initial Briefs | Approximately 30 days after transcript is available, with parties to finalize specific dates by agreement at hearing |
| Reply Briefs | Approximately 30 days after Initial Briefs, with parties to finalize specific dates by agreement at hearing |

IV. WITNESSES

Verizon identifies the following potential witnesses, but reserves its right to supplement and/or modify its witness list as this case proceeds, including, but not limited to, in response to issues Core raises in its testimony or new evidence learned in discovery:

WITNESS

TOPICS

Peter J. D’Amico
416 7th Avenue, 19th Floor
Pittsburgh, PA 15219

Issues relating to Core’s and Verizon’s facilities and the interconnection of their networks, the parties’ interconnection agreement, Core’s billings and Verizon’s billing disputes

Dustin Fisher
6929 N. Lakewood Ave.
Tulsa, OK 74117

Issues relating to Core’s billings and Verizon’s billing disputes

V. DISCOVERY

The parties have already commenced discovery in this matter. Verizon recommends that the parties continue to abide by the Commission’s standard discovery rules.

VI. PROTECTIVE ORDER

Discovery in this matter calls for the disclosure of information that the parties view as competitively sensitive or otherwise proprietary. Pursuant to 52 Pa. Code § 5.423(c)(4), the parties worked together to propose a form of protective order to govern their production of proprietary and highly confidential information, and Verizon filed an uncontested motion for adoption thereof on June 4, 2014. Verizon respectfully requests that the administrative law judge enter this or a similar form of protective order to govern the information already produced and that may in the future be produced or filed in this case.

VII. VERIZON'S *PRO HAC VICE* MOTION

On June 9, 2014, Verizon filed its "Motion for Admission of Deborah L. Kuhn *Pro Hac Vice* on Behalf of Verizon Pennsylvania LLC." Verizon respectfully requests that the presiding officer grant the motion so that Ms. Kuhn can be added to the service list for these proceedings and otherwise participate as counsel to Verizon.

VIII. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, Verizon's representatives for the service list in this proceeding are as follows:

Suzan D. Paiva
Assistant General Counsel
Verizon
1717 Arch St., 3rd Floor
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
suzan.d.paiva@verizon.com

Deborah Kuhn, *pro hac vice** (*subject to ruling on *pro hac vice* motion)
Assistant General Counsel
Verizon
205 N. Michigan Ave., 7th Floor
Phone: (312) 894-2354
Fax: (301) 282-4710
deborah.kuhn@verizon.com

IX. SETTLEMENT

Verizon suspects that settlement is unlikely given that the parties' Virginia affiliates recently litigated analogous issues and the Verizon companies prevailed in the United States Court of Appeals for the Fourth Circuit. However, Verizon remains amenable to any settlement discussions Core may wish to initiate.

Respectfully submitted,



Suzan D. Paiva, I.D. No. 53853

Verizon

1717 Arch Street, 3rd Floor

Philadelphia, PA 19103

Phone: (215) 466-4755

Suzan.D.Paiva@verizon.com

Counsel for Verizon Pennsylvania LLC

Dated: June 9, 2014