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December 12, 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 Pennsylvania LLC's Initial Brief, with Proposed Findings of Fact and Conclusions of Law, in the above captioned matter.

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

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

Via E-Mail and Federal Express
cc: The Honorable Susan D. Colwell
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon Pennsylvania LLC's Initial Brief, with Proposed Findings of Fact and Conclusions of Law, upon the party, 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 12th day of December, 2014.

Via E-Mail and Federal Express

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** 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 INITIAL POST-HEARING BRIEF

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Dated: December 12, 2014

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Statutes

2 Pa. C.S. § 704

66 Pa. C.S. § 332(a)

I. INTRODUCTION

The Commission should deny Core's¹ latest baseless complaint against Verizon.² This time, Core demands payment for over \$4 million in facilities charges that violate the parties' Commission-approved interconnection agreement³ and are the exact same type of facilities bills that both the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit found to be invalid.

In early 2012, Core issued sizeable back-bills to Verizon for switched access and facilities charges. The facilities were ports and multiplexing on Core's network that Core contended were used to handle local traffic delivered to Core over trunks that Verizon self-provisioned, at its own expense, all the way to Core's switch. Although nothing had changed in the law, the parties' network configuration or the interconnection agreement, and Core had never before billed Verizon for these alleged facilities during the first *twelve* years of the agreement's existence, Core suddenly began issuing facilities bills to Verizon. What had changed in 2012 was that the parties were embroiled in litigation over Core's 2011 formal complaint and Core claimed that it was in dire financial condition and in desperate need of cash.

Three days after Verizon disputed Core's invalid back-bills, Core amended its already-pending Commission complaint to include a claim for payment on its *switched access* back-bills, but did not assert a claim for the *facilities charges* back-bills that it had rendered at the same time. Instead, Core waited nearly two more years to file the instant complaint – only after Verizon had expended considerable time and resources litigating the previous complaint case,

¹ Core Communications, Inc. ("Core").

² Verizon Pennsylvania LLC ("Verizon").

³ Verizon and Core interconnect pursuant to an interconnection agreement dated March 31, 2000 and approved by the Commission in Docket No. A-310922F0002. The full agreement is included in the record as Stipulated Joint Exhibit 1 and relevant excerpts are attached to Verizon's testimony.

and only after the matter was fully briefed before the Commission on exceptions to an initial decision largely in Verizon's favor.

As detailed below, Core's latest complaint should be denied because the parties' interconnection agreement does not permit Core to bill Verizon these facilities charges. The agreement strictly defines what Core may charge for the transport and termination of local traffic delivered by Verizon to Core and limits those charges to reciprocal compensation that Core already bills, and Verizon has already paid, and dedicated transport in limited circumstances that do not apply here. The interconnection agreement does not permit Core to bill for ports and multiplexing under any circumstances – regardless of the application of the financial point of responsibility, which has been the focus of much of this proceeding; that fact alone wipes out 99% (\$3.91M of \$3.95M) of the billed charges. Indeed, the interconnection agreement does not even contain authorized *Core* rates for the facilities for which it has billed Verizon. Moreover, Core's facilities bills are rife with errors that invalidate them for a number of additional reasons. For example, the bills include improper use of Verizon's facilities rates, use of inflated and outdated rate elements, improper billings associated with the Altoona LATA⁴ that are precluded by an interconnection agreement amendment Core omitted from the Complaint, and an invalid attempt to collect from *Verizon Pennsylvania LLC* facilities charges for the Erie LATA that were billed to its affiliate, *Verizon North LLC*, which is not a party to this proceeding.

Verizon has also established several affirmative defenses that require rejection of Core's claims. As in the 2011 proceeding, Core again failed to follow the interconnection agreement's mandatory dispute resolution process. Core's claims are also barred by the doctrines of claim preclusion – Core could have and should have brought this claim in the previous formal

⁴ "LATA" is an acronym for "Local Access and Transport Area."

complaint case – and/or issue preclusion, because the federal courts in Virginia already ruled against Core’s affiliate on the same issue. Moreover, Core comes to the Commission with unclean hands because it admits that it has not paid and has no intention of paying Verizon for any services provided by Verizon under the same interconnection agreement, including Verizon’s facilities charges to Core.

In short, Core’s facilities charges are invalid and the Commission should deny the instant complaint in its entirety.

II. STATEMENT OF THE CASE

Core is a competitive local exchange carrier (“CLEC”) authorized to operate in Pennsylvania. Core Statement (“Core Stmt.”) 1.0 at 1. Core does not offer local telephone service in the traditional sense, nor does it generally offer services to end users; instead, it describes itself as “a ‘niche’ facilities-based CLEC” focused primarily on providing services to Internet service providers (“ISPs”) and Voice over Internet Protocol providers. Verizon Statement (“VZ Stmt.”) 2.0 at 2 (citing Complaint,⁵ ¶ 2). In conjunction with its “niche” business plan, Core markets services that allow ISPs and other generators of high-volume incoming traffic to receive calls. VZ Stmt. 2.0 at 2. Core has stated that over half of its operating revenue in Pennsylvania historically has come from payments from Verizon and its incumbent local exchange carrier (“ILEC”) affiliate in the state for the termination of this high volume of incoming traffic. *Id.*

In early 2012, on the heels of alleging that it was in such dire financial straits that it would go out of business if it did not immediately receive payment on approximately \$75,000 in

⁵ “Complaint” refers to the February 18, 2014 “Complaint of Core Communications, Inc.” in the instant docket.

disputed invoices,⁶ Core suddenly sent Verizon millions of dollars of back-bills dating back four years, covering two categories of charges: (1) switched access services, and (2) “multiplexing” and “tandem ports” (referred to generally as “facilities charges”). VZ Stmt. 1.0 at 2-3. Core later claimed that the parties’ interconnection agreement authorized these charges, even though Core had never before billed Verizon such charges, and neither the relevant terms of the interconnection agreement nor the parties’ physical interconnection arrangements had changed since 2000.⁷ *Id.* at 2-4; VZ Stmt. 2.0 at 3; Complaint at ¶¶ 21-25.

On April 13, 2012, Verizon disputed Core’s switched access and facilities back-bills. Core Stmt. 1.0 at Exhibit I (copy of Verizon’s April 13, 2012 dispute correspondence, including attachments). One business day later, Core amended its pending complaint in Docket No. C-2011-2253750 to seek payment on its back-bills for *switched access charges*, but did not include a new claim for the \$1.8 million in disputed *facilities charges* back-bills issued at the same time.⁸ The parties litigated that proceeding 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.⁹

Instead of seeking to collect on the disputed facilities charge back-bills in 2012, Core simply continued to send Verizon monthly facilities bills reflecting multiplexing and tandem port charges associated with each of Core’s Pennsylvania wire centers. Complaint, ¶¶ 21-26. In

⁶ See “Complaint of Core Communications Inc.,” Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (July 22, 2011) at ¶¶ 21, 37-41.

⁷ As discussed below, the parties executed an ICA amendment specific to the Altoona LATA in 2003, and as a result of the Commission’s decision in a TELRIC docket, certain ICA rates changed in 2004. However, the general provisions of the interconnection agreement enumerating the types of charges Core may bill Verizon have remained constant since 2000.

⁸ See “Amended Complaint of Core Communications Inc.” Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (April 16, 2012).

⁹ See *Core Communications, Inc. v. Verizon Pennsylvania LLC et al.*, Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (Initial Decision entered July 11, 2013).

2013, Core began adding new charges to the ongoing facilities bills for “entrance facilities” and “TELRIC transport”¹⁰ at its Philadelphia location. Complaint, ¶¶ 27-29. Verizon continued to dispute Core’s invalid facilities charges, including the new Philadelphia charges. Verizon Stmt. 1.0 at 6-9; 13; Verizon Stmt. 1.1 at 4-6 and Exhibits I and J thereto.

On February 18, 2014, Core filed a single-count complaint against Verizon, seeking to collect on what by then had grown to nearly \$4 million in disputed facilities charges.¹¹ Complaint at ¶ 30. This amount had increased to \$4,288,813.76 by the time Core filed its direct testimony on July 11, 2014, because Core has continued to send facilities charges invoices in the amount of approximately \$67,000 per month since the filing of the Complaint. VZ Stmt. 1.0 at 6; Core Stmt. 1.0 at 13 and Exhibit H (invoice summary listing monthly invoices of \$66,626.93 per month for the period March through July of 2014); Complaint, Tab C (invoice for February 2014, which is representative of subsequent monthly bills).

Verizon answered the complaint on March 13, 2014, raising a number of affirmative defenses as part of its new matter. On that date, Verizon also filed preliminary objections seeking dismissal of the Complaint on a number of grounds and requested a stay of the proceeding in light of the ongoing appeal of the Virginia federal district court’s order. On May 5, 2014, the Administrative Law Judge denied Verizon’s preliminary objections without prejudice to making the arguments after development of a factual record, and denied the request for a stay.¹²

¹⁰ “TELRIC” is an acronym for Total Element Long Run Incremental Cost, the Federal Communications Commission’s (“FCC”) costing approach for Unbundled Network Elements (“UNEs”).

¹¹ The single count alleges breach of the parties’ interconnection agreement. Unlike Core’s earlier complaint, the instant complaint does not include claims against Verizon North LLC, Verizon’s ILEC affiliate operating in Pennsylvania.

¹² See “Order Denying Preliminary Objections” (May 5, 2014).

III. ARGUMENT

A. Burden of Proof

As the proponent of an order requiring Verizon to pay the disputed bills at issue, Core bears the burden of proving its claims. *See* 66 Pa. C.S. § 332(a); *see also* Transcript (“Tr.”) at 7. To establish a sufficient case and satisfy its burden of proof, Core must establish that Verizon is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196, *7 (1990). Core must make this showing by a preponderance of the evidence. *Id.*; *see also Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990), *app. denied*, 529 Pa. 654, 602 A.2d 863 (1992). While the burden of going forward with evidence may shift back and forth between the parties, the ultimate burden of persuasion remains with Core. *Milkie v. Pa. Public Utility Comm’n*, 768 A.2d 1217, 1220 (Pa. Commw. 2001).

Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm’n*, 67 Pa. Commw. 597, 601, 447 A.2d 1100, 1101 (1982); *Edan Transportation Corp. v. Pa. Public Utility Comm’n*, 154 Pa. Commw. 21, 25, 623 A.2d 6, 7 (1993), 2 Pa. C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen’s Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 292, 612 A.2d 434, 436 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Comm’n*, 489 Pa. 109, 128, 413 A.2d 1037, 1047 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 288, 166 A.2d 96, 97 (1960); *Murphy v. Dep’t of Public Welfare*, 85 Pa. Commw. 23, 29, 480 A.2d 382, 386 (1984).

Verizon bears the burden of proof on its affirmative defenses against Core. *See* 66 Pa. C.S. § 332(a); *Coldren v. Peterman*, 2000 Pa. Super. 364, *P15, 763 A.2d 905, 909 (2000), *app. denied*, 566 Pa. 633, 781 A.2d 137 (2001); *Commonwealth ex rel. Corbett v. Griffin*, 596 Pa. 549, 563, 946 A.2d 668, 676 (2008).

B. Factual and Legal Background

1. Core's Facilities Bills to Verizon

In January and February of 2012, multiple Core affiliates operating in several states issued dozens of back-bills for switched access and facilities charges to various Verizon affiliates operating in those states. VZ Stmt. 1.0 at 2. Among these were back-bills from Core Communications, Inc. to Verizon Pennsylvania LLC (the specific parties to this proceeding) for facilities charges dating back to May 2008.¹³ *Id.* Ten months after Core started sending the facilities charges invoices, it asserted that it had issued them pursuant to the parties' interconnection agreement. Core Stmt. 1.0 at 14-15 and Exhibit I thereto. Core has continued to send Verizon monthly facilities bills to the present day. VZ Stmt. 1.0 at 5.

¹³ While not explained anywhere in the invoices, Core apparently claims that Verizon "ordered" the above-referenced facilities from Core by virtue of sending Core copies of Verizon's *internal* orders for *self-provisioned* facilities (known as Access Service Requests, or "ASRs"), thereby notifying Core that Verizon was self-provisioning those facilities to carry its end users' traffic to Core. Core Stmt. 1.0 at 12 and Exhibit B thereto; Core Stmt. 2.0 at 4-5 and Exhibit N thereto. Notably, Verizon sent the same copies of ASRs during the twelve years that Core did not bill Verizon for these facilities. Core's Virginia affiliate similarly mischaracterized the ASRs in a federal district court proceeding against several Verizon affiliates, and the court rejected Core's characterization, noting that while "CoreTel contends the Defendants ordered facilities from CoreTel as evidenced by Access Service Requests ('ASRs') sent by Defendants, ...[t]he ASR that was provided to this Court as evidence of an order was in fact part of an e-mail and only evidences the sharing of this data with CoreTel so CoreTel could configure its own network." *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649, *10 (E.D. Va. April 22, 2013), *rev'd in part, remanded*, 752 F.3d 364 (4th Cir. 2014), *judgment entered on remand*, 2014 U.S. Dist. LEXIS 166879 (E.D. Va. December 2, 2014) ("*VA District Court Decision*"). Mr. Mingo appears to have backed off his position that the ASRs were orders for service, stating that "regardless of whether there was an order or not, facilities are being used." Tr. at 13. Moreover, even if the ASRs were considered "orders," the interconnection agreement does not support Core's attempt to bill for the facilities at issue. As the Fourth Circuit found in upholding the *VA District Court Decision* on this issue, "CoreTel supports its claim with documents that, it contends, reflect orders from Verizon for these facilities. As we explain below, CoreTel was not entitled to bill Verizon for these facilities regardless of whether Verizon submitted orders for them." *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364, 372 (4th Cir. 2014) ("*VA Fourth Circuit Decision*").

Although Core originally billed Verizon only for multiplexing and tandem ports, in 2013, it began to include charges for entrance facilities and TELRIC transport associated with the Philadelphia LATA. As of the filing of the Complaint, the disputed charges broke down as follows, with tandem port charges representing the vast majority – 93% – of the total:

Tandem Ports	\$3,673,057.61
Multiplexing	\$ 241,114.58
Entrance Facilities	\$ 27,325.20
TELRIC Transport	<u>\$ 14,181.72</u>
<u>TOTAL</u>	<u>\$3,955,679.11</u>

See VZ Stmt. 1.0 at 6 and Exhibit B thereto.

2. Verizon’s Disputes of Core’s Facilities Bills

Core and its affiliates have a long history of filing complaints against Verizon and its affiliates. VZ Stmt. 1.0 at 7. Given this reality, it is important to put the parties’ dispute communications regarding the January/February 2012 back-bills into context, rather than view the Pennsylvania correspondence in isolation, as Core has presented it. At the time, Core and Verizon (along with Verizon North LLC) were actively involved in a Commission-ordered mediation in Docket Nos. C-2011-2253750/C-2011-2253787. VZ Stmt. 1.0 at 7. Since multiple Core affiliates had simultaneously issued back-bills to multiple Verizon affiliates for the same types of switched access and facilities charges, the Verizon companies reviewed all of the invoices for all states before responding to any of them. *Id.* at 8. Considering that Core and its affiliates had suddenly transmitted years’ worth of back-bills for services and facilities for they had never previously billed, all within a short time frame and during the ongoing litigation and mediation of other complex disputes, responding within two and a half months was reasonable,

as even Mr. Mingo admitted. Core Stmt. 2.0 at 5; *see also* VZ Stmt. 1.0 at 8. Pertinent here, Verizon disputed Core's facilities charges back-bills in their entirety, and continued to send monthly letters disputing Core's subsequent facilities bills thereafter. VZ Stmt. 1.0 at 7; 9; 13; VZ Stmt. 1.1 at 5 and Exhibits I and J thereto; *see also* Core Stmt. 1.0 at 13-15 and Exhibit I thereto.

Although Verizon's dispute letters repeatedly asked Core to provide contractual or tariff authority for the charges, Core never responded beyond a November 9, 2012 e-mail from its controller that predated Core's new billings in 2013 for entrance facilities and TELRIC transport. VZ Stmt. 1.0 at 15; VZ Stmt. 1.1 at 9; Core Stmt. 1.0 at Exhibit I (November 9, 2012 e-mail from Jonathan Harris of Core). That e-mail attached three excerpts of the Pennsylvania interconnection agreement, but as discussed below, none supported Core's facilities charges billings.¹⁴

When Core's Virginia affiliate issued analogous facilities back-bills, Verizon's Virginia affiliates likewise disputed them. VZ Stmt. 1.0 at 8-9. After a different dispute between Core's Virginia affiliate and Verizon's Virginia affiliates was dismissed by the Virginia Corporation Commission (VZ Stmt. 1.1 at Exhibit K¹⁵), Core filed a complaint in the United States District Court for the Eastern District of Virginia to which it added the facilities charges dispute in

¹⁴ One such excerpt was Attachment VIII, Section 3.1.8.3 of the interconnection agreement (Core Stmt. 1.0 at Exhibit I), but Mr. Harris' reliance is misplaced. Attachment VIII, Section 3.1.8.3 of the ICA states that "failure by a providing Party to present bills to a purchasing Party in a timely or accurate manner shall not constitute a breach or default of this Agreement, or a waiver of a right of payment of the incurred charges, by the providing Party." *Id.*; *see also* Stipulated Joint Exhibit 1. This provision merely provides that rendering an untimely bill neither constitutes a breach of the interconnection agreement, nor a waiver of the right of the party issuing it to assert a right to payment thereon. However, this provision does not convert invalid bills into valid ones, or create a right of payment for invalid bills. Core's back-bills (and subsequent bills) were invalid because they were not supported by the parties' interconnection agreement, and this provision does not change that.

¹⁵ Mr. Mingo testified that the Virginia Commission "quickly dismissed the complaint so that Core's Virginia affiliate could seek a preliminary injunction against Verizon in a court of law" (Core Stmt. 2.0 at 6-7), but the Virginia Commission's order says no such thing. *See* VZ Stmt. 1.1 at Exhibit K.

August of 2012, well before Core filed the instant proceeding. VZ Stmt. 1.0 at 11. Although Core's Virginia affiliate initially offered to consolidate all of the respective Verizon and Core affiliates' billing disputes in the Virginia court case (stating that this was the Core companies' preference), Core ultimately refused to include its Pennsylvania claims in that proceeding, which therefore went forward only on the Virginia claims. *Id.* at 11 and Exhibit C thereto; VZ Stmt. 1.1 at 6. Thus, while Verizon was communicating with Core in the summer and fall of 2012 regarding its disputes of Core's Pennsylvania facilities back-bills, the parties' Virginia affiliates were simultaneously litigating the validity of the same sort of facilities charges bills in the Virginia court case, making the parties familiar with each other's positions. VZ Stmt. 1.0 at 12; *see also* Tr. at 88-90.

The Virginia federal district court denied Core's Virginia affiliate's facilities charges claims.¹⁶ *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at **10-11. The United States Court of Appeals for the Fourth Circuit upheld the federal district court's decision on this issue. *VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73.

3. Technical Configuration of the Interconnection of the Parties' Networks

In describing the parties' "interconnection architecture," Mr. Mingo intermingled discussion of the physical facilities that carry local traffic from Verizon's network to Core's network with legal assertions about which party bears financial responsibility for certain functions, making errors on both fronts. Core Stmt. 1.0 at 4-9. Verizon describes the parties'

¹⁶ Mr. Mingo testified that the Virginia federal district court granted Core's Virginia affiliate's request for an injunction, implying that the injunction had to do with facilities back-bills. Core Stmt. 2.0 at 7. However, the facilities charges billed by Core's Virginia affiliate were not even part of the court case at the time. VZ Stmt. 1.1 at 7. The court granted Core's Virginia affiliate's request for an injunction prohibiting Verizon's Virginia affiliates from terminating service due to non-payment, but also required Core's Virginia affiliate to post a \$45,000 bond and make escrow payments of \$5,500 per month as a condition of the injunction. *Id.* at 7 and Exhibit L thereto.

physical interconnection arrangements here, and discusses the relevant provisions of the interconnection agreement below in explaining why Core is not entitled to bill Verizon for each category of facilities for which Core has billed Verizon.

Although Mr. Mingo testified that Core and Verizon exchange traffic at one point in each of Pennsylvania's six LATAs (Core. Stmt. 1.0 at 4), he was incorrect. Core and Verizon exchange traffic in five of Pennsylvania's LATAs: LATA 226 (Harrisburg), LATA 228 (Philadelphia), LATA 230 (Altoona), LATA 232 (Wilkes-Barre) and LATA 234 (Pittsburgh). VZ Stmt. 2.0 at 4. In LATA 924 (Erie), Core exchanges traffic not with Verizon, but with Verizon's affiliate, Verizon North LLC ("Verizon North"). *Id.* Verizon North is not a party to this proceeding, and Core later conceded that it cannot collect from *Verizon* amounts billed to *Verizon North*. Core Stmt. 2.0 at 11. Core agreed with Verizon's calculation of the amount billed to Verizon North and erroneously included in Core's complaint against Verizon, which totaled \$324,717.05 as of August 2014. *Id.*

As to the five LATAs in which the parties to this proceeding interconnect, the parties exchange traffic at one point in each LATA. VZ Stmt. 2.0 at 4-5. The only traffic relevant here is *local* traffic that Verizon delivers to Core over Local Interconnection Trunks, which are one-way trunks that carry local and non-Feature Group D intraLATA toll traffic from Verizon's end office or tandem switches to Core. Interconnection Agreement, Attachment IV, Section 1.1.1 (included in Exhibit 1 to VZ Stmt. 2.0). Such local traffic may be originated by Verizon's end-user customers or by customers of third party carriers that interconnect indirectly with Core through Verizon's tandem switches. VZ Stmt. 2.0 at 5. Separate trunk groups carry traffic (1) from Core to Verizon, and (2) between Core and interexchange carriers, but these other trunk

groups are the subject of the disputes in Docket No. C-2011-2253750 and are not relevant here.

Id.

Verizon witness Mr. Peter J. D'Amico explained that from 2000 to at least early 2013, Verizon self-provisioned facilities to carry its traffic all the way to Core's switch in each of the five LATAs in which the parties interconnect. VZ Stmt. 2.0 at 5. For each of these LATAs, Core has billed Verizon for tandem ports and multiplexing, which it claims are functionalities of the equipment Core terms its "switch." *Id.*; *see also* Core Stmt. 1.0 at 2-3; 10. On cross-examination, Mr. Mingo confirmed that both multiplexing and port functionalities are a component of Core's switches, which Core describes as multiple elements in its central office working together. Tr. at 36-37; 41-43; 47-50.

In early 2013, Core represented to Verizon that it was "abandoning a Philly location, and need[ed] to discuss migrating DS"3s [sic] from 401 N Broad 9th floor to 900 Race street." VZ Stmt. 2.0 at 21 and Exhibit 6 thereto. At the time, Core's wire center was located at 401 North Broad Street in Philadelphia, while Verizon's was at 900 Race Street. *Id.* at 19. After Verizon moved its self-provisioned DS3s to 900 Race Street at its own expense, as requested by Core, Core began billing Verizon nearly \$3,000 per month for entrance facilities and TELRIC transport to carry Verizon's local traffic from 900 Race Street *back to* 401 North Broad Street – that is, back to the very "Philly location" Core had claimed it was "abandoning" (and from which Core had asked Verizon to move its self-provisioned DS3s to 900 Race Street). VZ Stmt. 2.0 at 19, 23-24; Core Stmt. 1.0 at 11; Complaint, ¶ 27.

Mr. Mingo stated on cross-examination that his e-mails merely meant that Core was moving its switch from the 9th floor to the 4th floor of the 401 Broad Street location, but admitted that his e-mails never communicated this fact, or otherwise indicated that Verizon could simply

provision cross-connects to terminate local traffic to the 4th floor of that building rather than move its self-provisioned facilities to 900 Race Street. Tr. at 61-62; 65-66. Mr. Mingo also testified that Core had actually moved its switch from the 9th floor to the 4th floor back in 2008, and the reason for requesting changes in 2012 was that Core no longer wanted to pay rent to continue leasing the 9th floor of that location. Tr. 61-62; 67. Verizon was perfectly capable of delivering traffic to Core for termination in the Philadelphia LATA over Verizon's own self-provisioned, in-place facilities without any payment to Core. VZ Stmt. 2.0 at 6; 23-24. Core's lack of candor in its communications regarding the subject would appear to violate the interconnection agreement's requirement of good faith dealing. Interconnection Agreement, Part A, Section 42.1, included in Exhibit 9 to VZ Stmt. 2.1.

4. The Interconnection Agreement's Interconnection Provisions

Attachment IV, Section 1.2.1 of the interconnection agreement defines the terms "point of interconnection" (or "POI") and "interconnection point" (or "IP") as follows:

1.2.1 Definitions

1.2.1.1 "Interconnection Point" or "IP" means the switching, Wire Center, or other similar network node in a Party's network at which such Party accepts Local Traffic from the other Party. [Verizon] IPs include any [Verizon] End Office, for the delivery of traffic terminated to numbers served out of that End Office, and/or any [Verizon] access Tandem Office, for the delivery of traffic to numbers served out of any [Verizon] End Office that subtends that access Tandem Office. [Core] IPs include any [Core] switch, for the delivery of traffic terminated to numbers served out of that Switch.

1.2.1.2 "Point of Interconnection" or "POI" means the physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between the Parties for Local Interconnection of their networks. Unless otherwise mutually agreed, [Core] will be responsible for engineering and maintaining its network on its side of the POI and [Verizon] will be responsible for engineering and maintaining its network on its side of the POI.

Verizon Stmt. 2.0 at 6-7 and Attachment 1 thereto.

In other words, the POI and the IP are physical locations that have significance under the interconnection agreement for the parties' respective engineering and financial responsibility, which are key to deciding several of the issues in this case. The interconnection agreement provides that "[e]ach (originating) Party is responsible for bringing their traffic to a POI." Interconnection Agreement, Attachment IV, Section 2.1.1, included in Attachment 1 to Verizon Stmt. 2.0. In this case, the relevant traffic is local traffic delivered by Verizon to Core, so Verizon is responsible for providing the facilities that carry its traffic to a POI. Verizon has chosen to self-provision those facilities.

Attachment IV, Section 2.2.1 of the interconnection agreement (included in Exhibit 1 to Verizon Stmt. 2.0) defines the charges that may apply beyond the POI as follows:

2.2.1 The POI determines the point at which the originating carrier shall pay the terminating carrier for the Transport and Termination of local traffic. The following compensation elements shall apply:

2.2.1.1 "Transport," which includes the transmission of Local Traffic from the POI to the terminating carrier's IPs, and any necessary Tandem Switching, and any necessary transport between the terminating carrier's access Tandem Office and the terminating carrier's End Office Switch that directly serves the called end user.

2.2.1.2 "Termination," which includes the switching of Local Traffic at the terminating carrier's End Office Switch.

Core asserts, without qualification, that the financial responsibility of the party originating the traffic extends from the POI to the IP (Core Stmt. 1.0 at 6). That is incorrect. The originating party (in this case, Verizon) is responsible for all costs required to transmit the traffic from its own network to the POI. However, the interconnection agreement does not impose the same broad financial responsibility for carrying traffic from the POI to the IP, as Core contends. Rather, as reflected in Attachment IV, Section 2.2.1 above, the interconnection

agreement specifically defines what may be charged for “Transport and Termination” of traffic beyond the POI. Any charges not specifically authorized by the interconnection agreement may not be imposed.

Core’s position that it may bill Verizon “for those facilities that are dedicated to handle incoming interconnection traffic from Verizon” (Core Stmt. 1.0 at 12) is likewise inconsistent with the terms of the interconnection agreement, which provides that the appropriate charge for the “Transport and Termination” of local traffic is “Reciprocal Compensation.” Part B of the interconnection agreement (Definitions) defines “Reciprocal Compensation” as “a reciprocal compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier’s network facilities of Local Traffic that originates on the network facilities of the other carrier.” VZ Stmt. 2.0 at Exhibit 1. The interconnection agreement does not authorize Core also to bill Verizon for facilities that “handle” or are “dedicated” to incoming Verizon local traffic.

Core bills Verizon reciprocal compensation for the transport and termination of local traffic *in addition to* the disputed facilities charges at issue here. VZ Stmt. 2.0 at 9. Based on the Commission’s order¹⁷ determining that the interconnection agreement had been modified by the terms of the FCC’s *ISP Remand Order*,¹⁸ Verizon pays Core the FCC rate of \$0.0007/minute for traffic that exceeds the 3:1 ratio of terminating to originating traffic (and is therefore presumed to be ISP-bound traffic) and pays the reciprocal compensation rate for the remainder of the traffic.

¹⁷ *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).

¹⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001).

Id. This is all the interconnection agreement entitles Core to bill, and all that Verizon is obligated to pay.

Core also asserts that the interconnection agreement entitles it to bill Verizon for transporting traffic between the POI and the IP in Philadelphia (Core Stmt. 1.0 at 11), but that is only true if purchasing such transport from Core is “necessary.” Attachment IV, Section 1.2.2 of the interconnection agreement (included in Exhibit 1 to Verizon Stmt. 2.0) provides that “[t]he Party delivering traffic to the other Party’s IP(s) shall do so *by purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary*” (emphasis added). If purchasing transport from the other party is “necessary,” the interconnection agreement allows the billing of Dedicated Transport at a rate that “shall not exceed [Verizon’s] equivalent charge.” Interconnection Agreement, Appendix IV, Section 2.4.2 (included in Exhibit 1 to VZ Stmt. 2.0). As discussed below, it was not “necessary” for Verizon to purchase transport from Core in the Philadelphia LATA, the only LATA in which Core has attempted to impose transport charges.

C. Core’s Facilities Bills Violate the Terms of the Parties’ Interconnection Agreement

1. Core’s Charges for Tandem Ports Are Invalid

a. The Interconnection Agreement Does Not Permit Core to Bill Verizon Tandem Port Charges in Addition to Reciprocal Compensation Charges

As mentioned above, Core’s tandem port charges to Verizon represent 93% of Core’s total claim against Verizon as of the filing of the Complaint (\$3,673,057.61 of the \$3,955,679.11 alleged in Paragraph 30 of the Complaint). VZ Stmt. 1.0 at 6 and Exhibit B thereto. Yet, nothing in the parties’ interconnection agreement permits Core to bill Verizon tandem port charges at all, much less at the \$214.57 monthly rate (per port) that Core purports to charge.

Although Core asserts that it may bill Verizon “for those facilities that are dedicated to handle incoming interconnection traffic from Verizon” – which Core claims include the trunk ports that enable Core’s switch to receive Verizon-originated local traffic (Core Stmt. 1.0 at 10; 12) – the interconnection agreement does not allow Core to bill for any and all facilities dedicated to handling Verizon-originated traffic on Core’s side of the POI. Rather, as explained above, it limits the compensation Core may charge for receiving Verizon’s local traffic to “Transport” and “Termination” as specifically defined in Attachment IV, Sections 2.2.1.1 and 2.2.1.2 of the interconnection agreement (included in Exhibit 1 to VZ Stmt. 2.0). Those definitions do not allow Core to charge Verizon for tandem ports – or *any* trunk ports, for that matter. Rather, as described above, they limit Core’s compensation for the termination of local traffic, including “the switching of Local Traffic,” to reciprocal compensation. Interconnection Agreement, Appendix IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2; Part B (definition of Reciprocal Compensation) (all included in Exhibit 1 to VZ Stmt. 2.0). This is one of the grounds upon which the United States Court of Appeals for the Fourth Circuit upheld the Virginia federal district court’s denial of the port charges of Core’s Virginia affiliate:

CoreTel also contends that it was entitled to bill Verizon for its use of these facilities because they were “necessary” to the use of Verizon’s self-provisioned facilities. But CoreTel points to no provision of the ICA that authorizes CoreTel to simply levy facilities charges for any piece of equipment that handles Verizon’s traffic. Instead, the ICA provides that CoreTel is to be compensated for the use of these facilities, on its side of the interconnection point, exclusively under the rubric of reciprocal compensation.

See VA Fourth Circuit Decision, supra, 752 F.3d at 373.

Like its affiliate in Virginia, Core has failed to demonstrate that the interconnection agreement authorizes it “to simply levy facilities charges for any piece of equipment that handles Verizon’s traffic.” Per the discussion above, the Pennsylvania interconnection agreement, like

the one in Virginia, provides that Core's exclusive compensation for tandem ports on its side of the IP is reciprocal compensation.

Because the interconnection agreement does not allow Core to charge for tandem ports in this situation, it is not necessary to consider Core's arguments about whether the Pricing Appendix contains valid Core rates for these facilities. Even if it does, those rates cannot be applied here because the interconnection agreement does not allow Core to charge for tandem ports in addition to billing reciprocal compensation. Nevertheless, Verizon addresses Core's rate arguments below.

b. The Interconnection Agreement Has No Core Rates for Tandem Ports

The interconnection agreement contains no Core rates for tandem ports, only underscoring that the interconnection agreement does not permit Core to bill Verizon for such facilities. The interconnection agreement's Pricing Appendix ("Appendix 2" to the parties' interconnection agreement adoption agreement, included in Exhibit 1 to VZ Stmt. 2.0¹⁹) does not have any applicable *Core* rates for such ports, precluding Core's attempt to bill Verizon for them. Core's Exhibit S, which identifies Section A.III.D on page 6 of the Pricing Appendix as the contractual basis for the \$214.57 monthly tandem port rate it billed Verizon, confirms that Core is attempting to charge Verizon the *Verizon* rate for a *Verizon-provided* unbundled Tandem Trunk Port.²⁰ However, Core cannot bill Verizon the rates in Section A of the Pricing Appendix, which lists the rates that *Verizon* may charge *Core* for applicable facilities, services and

¹⁹ The relevant Pricing Appendix is the Pricing Appendix to Core's agreement adopting the September 3, 1997 interconnection agreement between MCImetro Access Transmission Services, Inc. and Bell Atlantic – Pennsylvania, Inc. as Core's ICA with Verizon (*see* Exhibit 1 to VZ Stmt. 2.0), not the Pricing Appendix to the underlying adopted interconnection agreement.

²⁰ *See* Core's June 9, 2014 Response to VZ Interrogatory I-7(d), included in Core Exhibit S.

arrangements. The rates that *Core* may charge *Verizon* are detailed in *Section B* of the Pricing Appendix, beginning on page 23. Notably absent from Section B is any rate for trunk ports.

Core also relies on Section B.V. of the Pricing Appendix,²¹ which provides that other services available from Core to Verizon “for Purposes of Effectuating Local Exchange Competition” are “[a]vailable at CORE’s tariffed or otherwise generally available rates, not to exceed [Verizon’s] rates for equivalent services available to CORE.” Pricing Appendix, Section B.V (included in Exhibit 1 to VZ Stmt. 2.0). However, neither Core’s tariffs²² nor Section B of the interconnection agreement’s Pricing Appendix contain any tandem port rates, and the *Verizon* Tandem Trunk Port rate from Section A.III.D. of the Pricing Appendix that Core has purported to charge (which, as discussed below, is not even the correct Verizon rate) does not appear in a Core tariff and is not Core’s otherwise generally available rate. Core therefore has no “tariffed or otherwise generally available” port rates that could apply, and therefore, has no contractual or tariff basis to charge Verizon *any* port rate.

c. Under “Equivalent” Circumstances, Verizon’s Rate for Tandem Ports Is Zero

Even if Section B.V. of the Pricing Appendix were read to allow Core – without its own tariffed or otherwise generally available rate – nonetheless to charge a rate “not to exceed” Verizon’s rate for “equivalent services available to CORE,” Core would not be able to charge the Verizon rate for unbundled Tandem Trunk Ports in this instance because Verizon does not charge the rate Core has charged (or any rate, for that matter) for the “equivalent service.” As

²¹ See Core’s June 9, 2014 Response to VZ Interrogatory I-7(d), included in Core Exhibit S; see also Core Stmt. 2.0 at 13 (claiming that trunk ports “are for the purpose of effectuating local exchange competition because they enable interconnection traffic to pass between the ILEC (Verizon) and the CLEC (Core).”).

²² See Core’s July 28, 2014 response to Verizon Interrogatory II-5 (included in Exhibit 3 to VZ Stmt. 2.0), confirming that Core produced no tariffs in response to Verizon Request for Production I-5, which had requested that Core “[p]roduce copies of all Core tariffs that set forth the rates for the Core-provisioned facilities and services that are the subject of the Complaint.” See Core’s June 9, 2014 response to Verizon Request for Production I-5, included in Exhibit 2 to VZ Stmt. 2.0.

Verizon witness Mr. D'Amico testified, Verizon's port charges are embedded in its reciprocal compensation rates, and Verizon does not bill tandem port charges, on top of reciprocal compensation charges, for the termination of local traffic.²³ VZ Stmt. 2.0 at 13; VZ Stmt. 2.1 at 5-9; Core Cross Exhibit 2; Core Cross Exhibit 5.

In his oral surrejoinder, Mr. Mingo disputed that Verizon's port costs were included in the reciprocal compensation rates, asserting (while admitting that he had not participated in the proceeding investigating Verizon's cost studies) that Verizon's reciprocal compensation rates omitted one of the three pertinent trunk ports – the shared trunk port at the terminating end office switch. Tr. at 17; 19-20. However, Verizon witness Mr. D'Amico refuted this claim, explaining that the data request response on which Mr. Mingo relied in reaching his erroneous conclusion contained a simplified version of a more detailed diagram, which was included in the Verizon cost study that was produced to Core in conjunction with that data response, which confirmed that Verizon's reciprocal compensation rate included all three relevant trunk ports. Tr. at 111-13; 118-21; 123; *see also* Core Cross Exhibit 2 (simplified diagram); Core Cross Exhibit 5 (detailed diagram in cost study). Therefore, when Core (or any CLEC) sends Verizon *local* traffic for termination, Verizon does not bill Tandem Trunk Port charges, but rather, bills only reciprocal compensation for the transport and termination of this local traffic. Therefore, Verizon's rate for "equivalent services" is zero, and Core cannot rely on Section B.V. of the interconnection agreement's Pricing Appendix to justify its improper tandem port charges.

²³ Mr. Mingo claimed that Verizon does bill Core for trunk ports in Pennsylvania (Core Stmt. 2.0 at 15 and Proprietary Exhibit Q thereto), but as Mr. D'Amico explained, the billings cited by Mr. Mingo were for the termination of *interexchange* traffic (an access service provided under Verizon's access tariffs), not *local* traffic. VZ Stmt. 2.1 at 8-9. Mr. D'Amico reaffirmed that Verizon does not impose trunk port charges in conjunction with the termination of *local* traffic (which is the only traffic at issue in this case), because trunk ports are included in its reciprocal compensation charge. *Id.*

d. Core Billed Verizon *Triple the Actual Verizon Tandem Trunk Port Rate*

The above discussion explains why Core is not entitled to bill Verizon *any* tandem trunk port charges, or to bill Verizon under Section A of the interconnection agreement's Pricing Appendix, which sets forth only Verizon's rates to Core. However, even if the interconnection agreement permitted Core to do both these things (which it does not), Core has erroneously billed Verizon an incorrect \$214.57 per month rate for tandem trunk ports, rather than the much lower \$71.48 per month rate that has been in effect since 2004 (four years before the earliest back-bills at issue here).

Core originally billed Verizon for tandem ports at the \$214.57 per month rate, and then began billing for some tandem ports at the lower rate of \$71.48 per month (thereby acknowledging the current rate). In January 2014, Core reverted to the \$214.57 per month rate for *all* tandem ports. VZ Stmt. 2.0 at 13-14 and Exhibit 4 thereto. At that time, Core also issued invoice #3641 in the amount of \$418,824.43, representing Core's calculation of alleged "undercharges" associated with "erroneously" billing Verizon a tandem port rate of \$71.48 per month for a period of time, rather than what Core asserts is the "correct rate" of \$214.57 per month. See VZ Stmt. 1.0 at 5 and Exhibit A thereto.

However, at no time during the period covered by the disputing billings at issue here was Verizon's current rate for unbundled tandem trunk ports the \$214.57 rate that Core charged. Although that rate appeared in the Pricing Appendix approved in 2000 (*see* Pricing Appendix, Section A.III.D, included in Exhibit 1 to VZ Stmt. 2.0), footnote 1 on page 1 of the Pricing Appendix states that "the rates and charges set forth in [the Pricing Appendix] shall apply *until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time ...*" (emphasis added).

In 2004, the Commission completed a proceeding to update Verizon's TELRIC rates for unbundled network elements, including its rates for unbundled trunk ports. Following the submission of cost studies and a fully litigated case, the Commission approved revisions to Verizon Tariff PA P.U.C. – No. 216 that superseded the \$214.57 per month Tandem Trunk Port rate reflected in the 2000 Pricing Appendix with a new \$71.48 per month Tandem Trunk Port rate, effective October 1, 2004 – several years *before* the period covered by Core's back-billing.²⁴ A copy of Verizon Tariff PA P.U.C. – No. 216, Section 3, 2nd Revised Sheet 8B is included in Exhibit 5 to VZ Stmt. 2.0, with the \$71.48 per month Tandem Trunk Port rate appearing at Section C.2.c. Pursuant to footnote 1 of the Pricing Appendix to the interconnection agreement, this \$71.48 rate is (and was for the entire time period relevant to this case) Verizon's unbundled Tandem Trunk Port rate under the interconnection agreement for any circumstances in which an unbundled Tandem Trunk Port charge would apply. VZ Stmt. 2.0 at 15-16.

Mr. Mingo asserts that the outdated \$214.57 per month rate continues to apply because the interconnection agreement was never amended to incorporate the \$71.48 per month rate. Core Stmt. 2.0 at 15. However, no amendment was necessary. Under the express terms of Footnote 1 of the Pricing Appendix, the rates in the interconnection agreement are automatically superseded by new ones once the Commission approves them. VZ Stmt. 2.1 at 10. While the interconnection agreement does not permit Core to bill Verizon *anything* for tandem ports, simply correcting Core's rate error would immediately reduce the size of the parties' port charge

²⁴ See *Generic Investigation Re Verizon Pennsylvania Inc. 's Unbundled Network Element Rates*, Docket No. R-00016683 (Compliance Order entered July 16, 2004); *Generic Investigation Re Verizon Pennsylvania Inc. 's Unbundled Network Element Rates; Verizon Pennsylvania Inc. 's Petition to Stay the Effectiveness of Certain Rate Changes Pending Further Action by the FCC; Verizon Pennsylvania Inc. 's Petition for Expedited Adoption of an Interim Rate Pending Determination of Final Rates*, Docket Nos. R-00016683 and R-00049812 (Order entered September 30, 2004).

dispute by roughly \$2.5 million (from approximately \$3.7 million to \$1.2 million). VZ Stmt. 2.0 at 16-17.

The Commission should deny Core's attempt to collect the \$3,673,057.61 billed to Verizon for tandem ports as of the filing of the Complaint, and all port charges Core has billed thereafter.

2. Core's Charges for Multiplexing Are Invalid

As of the filing of the Complaint, Core had billed Verizon \$241,114.58 for "M13 Multiplexing," which Mr. Mingo described as a functionality of Core's switches that disaggregates a DS3 signal into smaller DS0 signals. Core Stmt. 1.0 at 10-11; VZ Stmt. 1.0 at 6 and Exhibit B thereto. However, as with the trunk ports discussed above, the parties' interconnection agreement does not permit Core to impose a separate multiplexing charge, since it limits Core to billing Verizon for the "Transport and Termination" of local traffic (Reciprocal Compensation), and Dedicated Transport from the POI to the IP, "if necessary" to purchase from Core. As such, the section of the Pricing Appendix that sets forth Core's rates to Verizon contains no Core-to-Verizon multiplexing rates. *See* Pricing Appendix, Section B (included in Exhibit 1 to VZ Stmt. 2.0).

Core attempts to impose a Multiplexing rate of \$242.57 per month (*see* Core Stmt. 1.0 at Exhibit A; *see also* Core's June 9, 2014 Response to Verizon Interrogatory I-6(a), included in Core Exhibit S). That is the rate that *Section A* of the interconnection agreement's Pricing Appendix authorizes *Verizon* to charge Core for "DS-3 to DS-1 Multiplexing" in connection with the provision of unbundled Entrance Facilities. Pricing Appendix, Section A.II.C (included

as part of Exhibit 1 to VZ Stmt. 2.0).²⁵ But there is no applicable rate for Multiplexing in *Section B* of the Pricing Appendix, which contains the rates *Core* may charge Verizon. And, as noted above, while Section B.V. of the Pricing Appendix provides that other Core services available to Verizon “for Purposes of Effectuating Local Exchange Competition” are “[a]vailable at CORE’s tariffed or otherwise generally available rates, not to exceed [Verizon’s] rates for equivalent services available to CORE,” Core does not have any tariffed rates for multiplexing and therefore has no “tariffed or otherwise generally available” multiplexing rates that could apply. VZ Stmt. 2.0 at Exhibits 2 and 3 (Core’s Responses to Verizon Interrogatory II-5 and Verizon Request for Production I-5). Mr. Mingo’s misinterpretation of Section B.V. of the Pricing Appendix remains untenable. Both the Virginia federal district court and the Fourth Circuit rejected Core’s Virginia affiliate’s multiplexing charges under identical pricing appendix language. *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at *10; *VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73.

The Commission should deny Core’s attempt to collect not only the \$241,114.58 in multiplexing charges billed to Verizon as of the filing of the Complaint, but all multiplexing charges Core has billed thereafter.

3. Core’s Charges for Entrance Facilities and TELRIC Transport Associated with the Philadelphia LATA Are Invalid

a. The Interconnection Agreement Does Not Permit Core to Bill Verizon for Entrance Facilities and TELRIC Transport Because It Was Not “Necessary” for Verizon to Purchase Transport from Core

Although Core’s charges for Entrance Facilities and TELRIC Transport associated with the Philadelphia LATA have consumed much ink, they actually represent only a tiny fraction of

²⁵ In this case, unlike with ports, the charge listed in the 2000 Pricing Appendix is the same as the current UNE charge in Verizon’s Tariff 216. *See* Verizon Tariff Pa. P.U.C. – No. 216, Section 3, 4th Revised Sheet 10, Section C.3.c., included in Exhibit 5 to VZ Stmt. 2.0.

the disputed charges at issue – \$41,506.92,²⁶ which is about 1% of the amount in dispute as of the filing of the Complaint. VZ Stmt. 2.1 at 11. Core began billing Verizon for Entrance Facilities and TELRIC Transport associated with the Philadelphia LATA in January 2013, ostensibly as a result of the facilities rearrangement Core requested as a result of its stated intention to “abandon a Philly location.” VZ Stmt. 2.0 at 19; Complaint, ¶ 27. However, as discussed in the Background section above, Core misled Verizon as to its intentions in requesting that Verizon move its self-provisioned facilities from 401 North Broad Street to 900 Race Street, and is now attempting to foist onto Verizon the majority of Core’s \$3,500 monthly expense for the fiber ring it installed, even though Core uses that fiber ring to transport its own traffic to Verizon.²⁷ VZ Stmt. 2.0 at 21 and Exhibit 2 thereto (Core’s June 9, 2014 Response to Verizon Interrogatories I-4(c) and (g)).

As noted above, Mr. Mingo admitted on cross-examination that Core was not in fact “abandoning” the 401 North Broad Street location, but rather, simply consolidated all of its space to the 4th floor over a multi-year period starting in 2008, when it moved its switch to the 4th floor. Tr. at 59-67. He also admitted that Core never advised Verizon that Core was not truly “abandoning” the 401 North Broad Street building, nor asked if Verizon would simply move its self-provisioned facilities to the 4th floor (responding “I don’t design your network”). *Id.* at 62; 65-66. When asked if it was important for Verizon’s engineers to understand Core’s plans to design Verizon’s network, Mr. Mingo asserted “[t]hey fully understood what they were doing, where our switches were.” *Id.* at 65. Yet, when asked if Core had ever advised Verizon’s

²⁶ This figure is comprised of \$27,325.20 in Entrance Facilities charges and \$14,181.72 in TELRIC Transport. VZ Stmt. 1.0 at 6 and Exhibit B thereto.

²⁷ Mr. Mingo’s claim that Core decided to construct the fiber ring “to avoid Verizon’s inflated access bills for transport, and other services relating to Core’s originating traffic” (Core Stmt. 2.0 at 16) is highly suspect given that he admitted on cross-examination that Core does not pay *any* of Verizon’s invoices. Tr. at 53; 69-71. It is simply not credible that Core would take on a \$3,500/month expense to avoid bills that it was not paying.

engineers that the consequence of Core’s request that Verizon move its self-provisioned DS-3s to 900 Race Street (rather than simply move them to the 4th floor of 401 North Broad Street) would be that Verizon would be billed transport charges, Mr. Mingo claimed only that Verizon’s engineers must have understood this. Tr. at 66. Core’s choice of the word “abandoning” appears calculated to make Verizon’s employees think that Core was no longer maintaining a switch or network node at the North Broad Street location,²⁸ and certainly did not indicate that Core was actually keeping its switch there and asking Verizon to relocate its self-provisioned facilities in order to bill Verizon transport on a route where Verizon had already self-provisioned the transport necessary to carry its traffic to Core’s switch.

Mr. Mingo contends that the relocation of Verizon’s self-provisioned transport facilities to 900 Race Street – at *Core’s* request – resulted in relocating the POI from 401 North Broad Street to 900 Race Street, thereby authorizing Core to bill Verizon for transporting Verizon’s local traffic from 900 Race Street *back to* 401 North Broad Street. As he testified, “I am not a lawyer, but the interconnection agreement clearly makes Verizon financially responsible for ‘transport charges from the POI to the Core Switch for Dedicated Transport’” (citing Attachment IV, Section 2.4.2 of the interconnection agreement and Section B.V. of the interconnection agreement’s Pricing Appendix). Core Stmt. 2.0 at 11 and Exhibit L thereto. However, Mr. Mingo ignores Attachment IV, Section 1.2.2 of the interconnection agreement (*see* VZ Stmt. 2.0 at Exhibit 1), which not only states that “[t]he party delivering traffic to the other Party’s IP(s) shall do so by *purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary,*” but further provides that Verizon “may request relief from the Commission if

²⁸ This undermines Mr. Mingo’s assertion that “Verizon could have approached Core for mid-span meet or to enter into a collocation arrangement at Core’s new suite, but Verizon did neither.” Core Stmt. 2.0 at 18. Mr. Mingo’s misleading e-mails gave no indication that Core was keeping its switch at 401 North Broad Street. VZ Stmt. 2.0 at 21-22 and Exhibit 6. Given this, there was no reason for Verizon to ask Core about a mid-span meet or collocation at that location.

[Verizon] reasonably believes that [Core] has manipulated the designation of POIs in order to maximize the transport revenues [Verizon] must pay to [Core]” (emphasis added).

In this case, it was not “necessary” for Verizon to purchase transport from Core. As discussed above, Verizon already had facilities in place to carry its traffic all the way to the building housing Core’s switch at 401 North Broad Street. Core misleadingly directed Verizon to relocate those facilities to 900 Race Street, only to turn around and bill Verizon transport charges to carry Verizon’s traffic right back to the original 401 North Broad Street location – which Core had not “abandoned” after all – in an apparent ploy to permit Core to bill the transport charges to Verizon (and likely to finance the fiber ring Core built for its own purposes).

Mr. Mingo contends that Verizon’s interpretation of the word “necessary” in Attachment IV, Section 1.2.2 of the interconnection agreement is unreasonable because it would “exonerate” an interconnecting party from financial responsibility for the transport it uses “if there is some alternative that is theoretically available to using that transport,” such as “purchas[ing] it from a third party carrier.” Core Stmt. 2.0 at 12. However, Verizon explained that in this case, the transport alternative was not theoretical. As Mr. D’Amico testified, “[i]t is undisputed that there was an actual transport route in place, self-provisioned by Verizon all the way to Core’s switch and carrying traffic from Verizon to Core,” and there was no reason for Verizon to change that arrangement. VZ Stmt. 2.1 at 13. Core misleadingly initiated the change, choosing to replace the Verizon self-provisioned transport with fiber leased from a third party for Core’s own purposes, including transporting its traffic to Verizon. *Id.*; see also Exhibit 6 to VZ Stmt. 2.0. This change did not create an obligation for Verizon to pay for Core’s decision to purchase transport from a third party.

Mr. Mingo advances a competing interpretation of the interconnection agreement whereby “if the POI and the IP are located in the same place, then no transport is ‘necessary.’” Core Stmt. 2.0 at 12. The seeming corollary is that if the POI and IP are in different places, transport is “necessary.” Mr. Mingo’s strained interpretation would result in it being “necessary” for Verizon to purchase transport from Core even if Verizon purchased transport between the POI to the IP *from a third party carrier* (the very alternative Mr. Mingo mentioned a sentence prior), or where Verizon had *self-provisioned* the transport facilities, as it had done prior to Core requesting the facilities rearrangement. Yet, on cross-examination, Mr. Mingo admitted that the interconnection agreement permits Verizon to decide how to send its traffic to Core, including self-provisioning transport or obtaining it from a third party. Tr. at 73-75. Mr. Mingo’s interpretation is also unreasonable because it ignores that Attachment IV, Section 1.2.2 refers specifically to the necessity of purchasing transport *from the other party*, not just to a general need for transport between the POI and IP: “[t]he Party delivering traffic to the other Party’s IP(s) shall do so *by purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary*” (emphasis added).

Verizon had already self-provisioned the transport facilities needed to carry local traffic to 401 North Broad Street. It was not “necessary” for Verizon to purchase transport from Core simply because Core requested a facilities rearrangement, misleadingly claiming to be “abandoning” that location as part of a plan to foist the costs of its fiber ring onto Verizon by maximizing the transport charges it billed to Verizon. Attachment IV, Section 1.2.2 of the interconnection agreement precludes Core’s behavior, and the Commission should reject Core’s attempt to collect the combined \$41,506.92 in charges for Entrance Facilities and TELRIC

Transport as of the filing of the Complaint, as well as additional amounts billed to Verizon thereafter.

b. Even If the Interconnection Agreement Permitted Core to Bill Verizon for Entrance Facilities and TELRIC Transport, Core Has Billed Verizon Outdated Rates and Applied Them Incorrectly

As detailed above, the interconnection agreement does not permit Core to bill Verizon for Entrance Facilities and TELRIC Transport. Even if it did, the interconnection agreement's Pricing Appendix has no *Core* rates for these facilities (*see* Pricing Appendix, Section B, included in Exhibit 1 to VZ Stmt. 2.0), and the Verizon UNE Transport rates that Core has billed are both outdated and misapplied.

Core has billed Verizon rates for DS3 Entrance Facilities and DS3 TELRIC Transport that appear in the *Verizon* section of the interconnection agreement's Pricing Appendix (Section A), not the *Core* section (Section B). Specifically, citing Section B.V. of the Pricing Appendix, Core has billed Verizon the \$975.90 per month Unbundled DS3 Channel Termination rate that appears in Section A.II.C of the Pricing Appendix, and the \$489.55 per month and \$16.94 per month per mile Dedicated Unbundled DS3 Transport rates that appear in Section A.II.A of the Pricing Appendix. VZ Stmt. 2.0 at Exhibit 2 (Core's June 9, 2014 responses to Verizon Interrogatories I-8 and I-9).

Not only does Section B.V. of the interconnection agreement's Pricing Appendix not support Core's attempt to bill Verizon the *Verizon-to-Core* entrance facility and TELRIC transport rates found in Section A of the Pricing Appendix (for all of the reasons discussed above with respect to Core's port and multiplexing charges), Core has not even billed Verizon the correct Verizon-to-Core rates. Like the Verizon's trunk port rate, the Verizon DS-3 Channel Termination and Dedicated Unbundled DS3 Transport rates listed in the Pricing Appendix were

superseded by new rates approved by the Commission in 2004. Specifically, the \$975.90/month rate for “DS-3 Channel Termination” that appears at Section A.II.C. of the 2000 Pricing Appendix (page 3 thereof) was reduced to \$446.43/month as a result of the Commission’s 2004 TELRIC pricing order. VZ Stmt. 2.0 at 27; *see also* Pa. PUC 216, Section 3, 4th Revised Sheet 10, included in Exhibit 5 to VZ Stmt. 2.0. Similarly, the \$506.49 “DS-3 TELRIC Transport” rate Core applies (Core Stmt. 1.0 at Exhibit A) – comprised of the Verizon Unbundled Dedicated Transport (DS-3) rate of \$489.55 per month plus \$16.94 per mile (one mile) appearing at Section A.II.A. of the 2000 Pricing Appendix (page 2 thereof) – was superseded by the new Commission-approved rates of \$492.68 per month and \$51.31 per mile as a result of the 2004 UNE case. VZ Stmt. 2.0 at 27; *see also* Pa. PUC 216, Section 3, 4th Revised Sheet 9, included in Exhibit 5 to VZ Stmt. 2.0.

In addition to billing Verizon *outdated* Verizon-to-Core Entrance Facilities and TELRIC Transport rates, Core applied those rates incorrectly. As Mr. D’Amico explained, even if such rates applied (and for the reasons discussed above, they do not), Core could only charge for *either* an entrance facility *or* dedicated transport, but not *both*. VZ Stmt. 2.0 at 26. This is because under Verizon’s cost model, an entrance facility applies from the POI to the Verizon serving wire center, and dedicated transport applies from the serving wire center to another wire center. *Id.* In the case of Core’s configuration in Philadelphia, Core has only a *single* serving wire center (at 401 North Broad Street), so there is no need to transport traffic from one wire center to another. As such, if a transport charge is for some reason determined to be “necessary,” the interconnection agreement states that Verizon would pay Dedicated Transport charges from the POI to the Core switch. Interconnection Agreement, Appendix IV, Section 2.4.2 (included in Exhibit 1 to VZ Stmt. 2.0). The most analogous Verizon UNE rate under such circumstances is

the Verizon rate for a DS-3 Channel Termination (also known as an entrance facility), since the facility is not connecting two Core serving wire centers. VZ Stmt. 2.0 at 26. The interconnection agreement does not allow Core to bill a dedicated transport charge on top of the entrance facility charge.

Finally, Core has improperly charged Verizon for two circuits of DS3 Entrance Facilities *and* two circuits of DS3 TELRIC Transport, even though it should only charge for Entrance Facilities *or* TELRIC Transport, not *both* (since during the relevant period, Verizon delivered traffic to Core over only two DS-3s, not four). VZ Stmt. 2.0 at 26. Therefore, even if permitted to bill TELRIC Transport, Core should only have billed for two DS-3 circuits. *Id.* Simply reducing the rate Core billed for DS-3 Channel Termination from the incorrect \$975.90/month to \$446.43/month for the 28 months up to the filing of the Complaint and limiting the billing to two circuits rather than four would reduce Core's transport billings from \$41,506.92 to \$12,500.04 as of the date of the Complaint. *Id.* at 27-28.

For all of the reasons listed above, the Commission should reject Core's efforts to collect Entrance Facilities and TELRIC Transport charges from Verizon – both the \$41,506.92 billed as of the filing of the Complaint, and all additional amounts billed thereafter.

4. Core's Charges for the Altoona and Erie LATAs Are Invalid

a. Amendment No. 1 to the Interconnection Agreement Precludes Core From Billing Facilities Charges Associated With the Altoona LATA (230)

As of August 2014, Core had billed Verizon \$933,028.53 in facilities charges associated with the Altoona LATA (230), an amount that has only continued to grow since then. VZ Stmt. 1.0 at 19-20 and Exhibits F and G thereto. However, the Commission approved Amendment No.

1 to the parties' interconnection agreement with an effective date of January 10, 2003.²⁹

Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0. Although Core excluded Amendment No. 1 from the interconnection agreement excerpts attached to the Complaint, the amendment precludes Core's attempt to bill Verizon any facilities charges associated with the Altoona LATA.

As reflected in Amendment No. 1, at Core's request, Verizon entered into a special interconnection arrangement in the Altoona LATA. In consideration for accommodating Core's request, Paragraph 1(a) of Amendment No. 1 provides that "Core has agreed at Verizon's request that Verizon is not responsible for any performance metrics reporting, *payment*, penalty, incentive or similar obligations in connection with such arrangements" (emphasis added). Paragraph 1(d) of Amendment No. 1 goes on to say that "[n]otwithstanding any other provision of this Amendment (or otherwise) and, *for the avoidance of any doubt, Core may not assess any charge(s) upon Verizon for the transport of traffic delivered by Verizon over the OC-12 fiber optic system to Core's POP* (or for the transport of traffic delivered by Core over the OC-12 loop fiber optic system) . . ." (emphasis added). On cross-examination, Mr. D'Amico confirmed his understanding that the term "transport," as used in paragraph 1(d) of Amendment No. 1, encompasses both the port and multiplexing charges Core has attempted to bill Verizon, noting that the term is not capitalized as "Transport," which might otherwise carry a more specific meaning. Tr. at 104-05. This refutes Mr. Mingo's assertion that these facilities are "technically not 'transport' as set forth in section 1.d. of the amendment." Core Stmt. 2.0 at 19.

Mr. Mingo also argued that Paragraph 1(b) of Amendment No. 1 "clearly relates to 'performance metrics ... or similar obligations,' which were established to track Verizon's

²⁹ See *Joint Petition for the Approval of Amendment No. 1 to the Interconnection Agreement Between Verizon Pennsylvania Inc. and Core Communications, Inc. under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-310922F7000 (Opinion and Order entered July 1, 2003).

compliance with the ‘271 Checklist’ for long distance authority, and which are not at issue here.” Core Stmt. 2.0 at 19. However, Verizon did not allege that Paragraph 1(b) precluded the facilities charges at issue here, and Paragraph 1(a) plainly relieves Verizon of “any ... payment” in connection with the Core-requested arrangements – not just penalty payments associated with performance metrics.

Finally, Mr. Mingo asserted that Amendment No. 1 no longer applies because it was premised upon Core’s switch being located at 1215 16th Street in Altoona, and Core has since moved it, resulting in Verizon being out of compliance with the amendment (because Verizon did not maintain cabling to Core’s former Altoona switch location). Core Stmt. 2.0 at 19-20. However, Core never executed a subsequent interconnection agreement amendment to revise the switch location listed in Paragraph 1(a) of Amendment No. 1, which expressly represents that “Core’s switch is located in such building at 1215 16th Street, Altoona, Pennsylvania.” *See* Amendment No. 1 at Paragraph 1(a). Core’s non-compliance with this provision excuses Verizon from compliance with provisions that Core itself rendered impossible by moving its switch. VZ Stmt. 2.1 at 16.

In effect, Core asserts that its relocation of its Altoona switch nullified Amendment No. 1 and amended the interconnection agreement to allow Core to bill Verizon nearly a million dollars in facilities charges for the Altoona LATA. It goes without saying that the interconnection agreement can only be amended in writing, signed by both parties and approved by the Commission. *See* Interconnection Agreement, Part A, Sections 2 (Regulatory Approvals) and 36 (Amendments and Modifications), included in Stipulated Joint Exhibit 1. Core’s position is specious and the Commission should deny its attempt to collect \$933,028.53 in facilities charges

for the Altoona LATA as of August 2014, as well as any subsequently-billed Altoona facilities charges.

b. Core Admitted That It Cannot Collect Facilities Charges Billed for the Erie LATA (924) in This Proceeding

As of August 2014, Core's claims in this proceeding included \$324,717.05 in facilities charges associated with the Erie LATA (924). VZ Stmt. 1.0 at 20 and Exhibits F and H thereto. However, as Mr. D'Amico explained, the Erie LATA is the exclusive territory of Verizon Pennsylvania LLC's affiliate, Verizon North LLC, and Core billed these amounts to Verizon North LLC, not Verizon Pennsylvania LLC. VZ Stmt. 2.0 at 29. Verizon Pennsylvania LLC is the sole respondent in this proceeding, and cannot be held liable for amounts billed to Verizon North LLC.³⁰ *Id.* at 29-30. On surrebuttal, Core conceded this and confirmed that Verizon's calculation of Core's Erie-related charges was correct. Core Stmt. 2.0 at 11. There is no dispute that Core cannot collect any Erie-related charges in this proceeding.

D. Verizon's Affirmative Defenses Require Denial of Core's Claims

1. Core's Failure to Follow the Interconnection Agreement's Mandatory Dispute Resolution Process Requires Denial of Its Claims

In Docket No. C-2011-2253750, the Administrative Law Judge found that Core had twice violated the interconnection agreement's mandatory dispute resolution process – in bringing its initial complaint, and again in amending that complaint to add a claim regarding the subset of Core's January/February 2012 back-bills associated with switched access charges. *See* "Initial Decision," Docket Nos. C-2011-2253750 and C-2011-2253787 (July 11, 2013) at pp. 19-20 (Findings of Fact 89-91) and 35-36. The ALJ made these findings because the parties'

³⁰ To be clear, Verizon disputes the validity of the charges that Core has billed to Verizon North LLC, for the same reasons discussed above, but it is without question that Core cannot collect such amounts from Verizon Pennsylvania LLC, which is the only respondent in this proceeding. VZ Stmt. 2.0 at 29-30.

interconnection agreement includes a mandatory, multi-step dispute resolution process that a party must follow before bringing a dispute to the Commission, and Core had failed to comply.

By filing the instant Complaint, Core has, for a third time, failed to follow the interconnection agreement's mandatory dispute resolution process. Attachment VIII, Section 3.1.9 of the interconnection agreement outlines the efforts that a party must undertake prior to instituting legal action, and Part A, Section 24 outlines the process for submitting a dispute to this Commission. *See* Complaint, Tab A (same provisions are also included in the complete interconnection agreement entered into the record as Stipulated Joint Exhibit 1). Core neither cited Attachment VIII, Section 3.1.9 of the interconnection agreement anywhere in its Complaint, nor pled compliance with its requirements. VZ Stmt. 1.0 at 23.

Attachment VIII, Section 3.1.9.1 to the parties' interconnection agreement states that once a party is notified of a billing dispute, "the Parties will endeavor to resolve the dispute within sixty (60) days of the Bill Date on which such disputed charges appear" at the "first level of management." If resolution does not occur within that time frame, Attachment VIII, Section 3.1.9.1.1. states that dispute must be escalated to a "second level of management for each of the respective Parties for resolution." If there is still no resolution within 90 days of the bill date, pursuant to Attachment VIII, Section 3.1.9.1.2, the dispute must be escalated to a "third level of management for each of the respective Parties for resolution."

If the dispute remains unresolved after escalation to the third level of management and the passage of 120 days, then and only then does the dispute resolution process in Part A, Section 24 of the interconnection agreement (which permits bringing an action before the Commission) come into play. *See* Attachment VIII, Section 3.1.9.1.3 to the interconnection agreement, included in Tab A to the Complaint and Joint Stipulated Exhibit 1 ("If the dispute is not resolved

within one hundred and twenty (120) days of the Bill Date, the dispute will be resolved in accordance with the dispute resolution procedures set forth in Part A of this Agreement.”); *see also id.* at Part A, Section 24 (“... the Parties agree that any dispute arising out of or relating to this Agreement *that the Parties themselves cannot resolve*, may be submitted to the Commission for resolution.”) (emphasis added).

Mr. Bando testified that Core never escalated the instant billing dispute beyond the first level of Verizon management before filing the instant Complaint. VZ Stmt. 1.0 at 22-23. Mr. Mingo confirmed this, asserting that Core’s failure did not matter, because it had no obligation to escalate the dispute to the second and third levels of management *at Verizon* – only to escalate the dispute *within Core* itself.³¹ Core Stmt. 2.0 at 9. Mr. Mingo’s reading of the interconnection agreement’s mandatory dispute resolution provisions is nonsensical. Attachment VIII, Section 3.1.9 is designed to require the parties to make reasonable efforts to resolve a dispute without litigation by discussing it with each other – including a requirement to escalate discussions of the disputed charges to managers of the individuals involved at the initial stage of the dispute discussions – prior to initiating litigation. This is why the escalation provisions require escalation to successively more senior representatives of *both* parties. The provisions of Attachment VIII, Section 3.1.9 are structured to prevent a dispute from going straight to costly litigation because of difficulty resolving it with the lowest-level employee of the other side. If these provisions required a party to escalate a dispute only within its *own* organization, the interconnection agreement would not require the back-and-forth dialog that would permit working through disputes informally, nor would it prevent a party from immediately filing a

³¹ Mr. Mingo also claimed that he did not know the details of the hierarchy of Verizon employees to which Core should have escalated the dispute. Core Stmt. 2.0 at 8-9. But as Mr. Bando noted, any representative of Core could simply have asked for the names of the managers of the first-line employees with whom it was communicating (initially Mr. Roos, and after the dispute functions moved to Verizon’s Oklahoma office, Ms. Terrell). VZ Stmt. 1.1 at 9.

complaint as long as that party's *own* management agreed to proceed. This would render the interconnection agreement's dispute resolution provisions meaningless.

Moreover, Mr. Mingo is trying to shift the obligation to satisfy the interconnection agreement's dispute resolution provisions to Verizon's shoulders. However, Verizon is not the party that filed the instant Complaint – Core is. As the complainant, Core had an obligation to follow the dispute resolution process before filing its formal complaint. Core failed to do so, and that failure precludes its claims here pursuant to Attachment VIII, Section 3.1.9 and Part A, Section 24 of the interconnection agreement.

2. The Doctrines of Claim Preclusion and Issue Preclusion Bar Core's Claims

a. Claim Preclusion (Technical Res Judicata)

Setting aside Core's non-compliance with the interconnection agreement's mandatory dispute resolution process, if Core wished to litigate the instant facilities billing claim against Verizon, it could have and should have brought that claim in the ongoing complaint case before the Commission at Docket No. C-2011-2253750, when it brought its claims against Verizon for other simultaneously-rendered back-bills. Having failed to do so then, and with that proceeding now litigated and an initial decision on the merits awaiting Commission action, the doctrine of claim preclusion bars Core's attempt to pursue those claims here because Core could have brought the instant claims in the earlier proceeding and simply chose not to. Mr. Mingo (a non-attorney) testified that Core's claims for its facilities back-bills were not ripe at the time Core amended its complaint in Docket No. C-2011-2253750. Core Stmt. 2.0 at 6. However, Core filed its amended complaint in that proceeding on Monday, April 16, 2012,³² the first business

³² See Amended Complaint of Core Communications Inc., Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (April 16, 2012).

day after Verizon disputed Core's switched access and facilities back-bills on Friday April 13, 2012.³³ Thus, either Core brought its amended complaint in Docket No. C-2011-2253750 before *any* claims associated with its January/February 2012 back-bills were ripe, or Core's claims in this proceeding were actually ripe as of April 16, 2012, but Core waited nearly two more years to raise them.

The doctrine of claim preclusion (sometimes called "technical res judicata") bars "claims that were actually litigated" in a prior proceeding, "as well as those matters that *should have been litigated*" therein. *Weney v. Workers' Comp. Appeal Bd. (Mac Sprinkler Sys.)*, 960 A.2d 949, 954 (Pa. Commw. 2009), *app. denied*, 601 Pa. 691 (2009) (emphasis in original; citing *Henion v. Workers' Comp. Appeal Bd. (Firpo & Sons, Inc.)*, 776 A.2d 362 (Pa. Commw. 2000)). "Technical res judicata applies when four conditions exist: (1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued." *Merkel v. Workers' Comp. Appeal Bd. (Hoffman Indus.)*, 918 A.2d 190, 192-93 (Pa. Commw. 2007) (citing *Henion, supra*).

Based on the previous complaint case before this Commission, all four conditions for applying claim preclusion are met, as Core could have and should have brought its claims for breach of the parties' interconnection agreement for non-payment of Core's facilities back-bills in Docket No. C-2011-2253750, when it pursued the other simultaneously-rendered (and – disputed) back-bills.³⁴ *See, e.g., Weney, supra*, 960 A.2d. at 954-56 (affirming dismissal of

³³ See Core Stmt. 1.0 at Exhibit I, the first three pages of which are the April 13, 2012 e-mail from Ken Roos of Verizon to Core disputing Core's switched access and facilities back-bills.

³⁴ Core may attempt to claim that because the Commission has not yet acted on the Initial Decision in Docket No. C-2011-2253750, there is no final judgment and res judicata (which encompasses, but is broader than the concept of technical res judicata) does not attach. However, the fact of Core's failure to raise its facilities claims in Docket No. C-2011-2253750 does not depend on a final judgment – that case has been tried and the

plaintiff's attempt to raise new claims arising from same injury addressed in prior litigation, noting that technical res judicata prevents "piece-meal review petitions without any justification for doing so, thereby requiring others to continually waste time and resources defending against issues that should have been raised in earlier proceedings"); *Merkel, supra*, 918 A.2d at 193 (plaintiff's claim regarding calculation of average weekly wage dismissed since claim could have and should have been raised in prior proceeding); *see also Naimani v. Workers Comp. Appeal Bd. (A. Duie Pyle)*, 32 A.3d 850 (Pa. Commw. 2011), *app. denied*, 616 Pa. 640 (2012) (plaintiff's new claims of injuries arising out of same injury litigated in prior case barred by technical res judicata); *Bullock v. City of Philadelphia*, 61 Pa. D.&C.4th 300, 308 (Pa. Common Pleas, Phila. County 2002), *aff'd*, 815 A.2d 45 (Pa. Commw. 2002), *app. denied*, 573 Pa. 699 (2003) (sustaining preliminary objections because plaintiff should have raised retaliatory discharge claim in litigation of prior wrongful discharge claim based on discrimination).

First, there is an identity of the issues because both proceedings involve the validity of back-bills rendered by Core to Verizon in January/February 2012 and thereafter, allegedly pursuant to the same interconnection agreement between Core and Verizon.

Second, there is an identity of the causes of action because both complaints raise a cause of action against Verizon PA for alleged breach of the interconnection agreement because of Verizon's non-payment of Core's back-bills. Compare Complaint at ¶¶ 21; 45-52 with Core's Amended Complaint in Docket No. C-2011-2253750 at ¶¶ 107-119. Indeed, Core relies on the exact same e-mails to establish its claims in both proceedings. Compare April 23, 2012 and May 8, 2012 e-mails from Bret Mingo of Core to Ken Roos of Verizon regarding bills rendered by

record (of which the Commission may take administrative notice) conclusively establishes that Core did not raise the facilities claim there, when it could have done so in conjunction with its attempt to collect on the remainder of its January/February 2012 back-billing. This is sufficient to establish that Core could have and could have brought its facilities claims in the earlier case.

Core in January 2012 to multiple Verizon entities, including Verizon (included in Complaint, Att. E) *with* Ex. BLM-6 to Core Statement 1.0 in Docket No. C-2011-2253750 (same e-mails).

Third, there is an identity of persons and parties to the action because this proceeding and Docket No. C-2011-2253750 involve the same complainant and the same respondent.

Fourth, there is identity of the quality and capacity of the parties suing or sued because Core's and Verizon PA's status remains unchanged from the earlier proceeding. Both entities continue to operate as going concerns and have the same capacity to sue and to be sued as they did in the prior docket.

b. Issue Preclusion (Collateral Estoppel)

The doctrine of issue preclusion (also called collateral estoppel), is related to, but distinct from, claim preclusion. The doctrine of issue preclusion “is based on the policy that a losing litigant does not deserve a rematch after fairly suffering a loss in adversarial proceedings on an issue identical in substance to the one he subsequently seeks to raise.” *Pa. Bd. of Prob. & Parole v. Pa. Human Rels. Comm'n*, 66 A.3d 390, 395 (Pa. Commw. Ct. 2013), *app. denied*, 79 A.3d 1100 (Pa. 2013); *see also Plaxton v. Lycoming County Zoning Hearing Board*, 986 A.2d 199, 208 (Pa. Commw. 2009), *app. denied*, 608 Pa. 633 (2010). As discussed herein, Core's Virginia affiliate litigated the validity of its facilities bills to Verizon's Virginia affiliates to conclusion, losing both in the federal district court and again at the Fourth Circuit Court of Appeals. The doctrine of issue preclusion prohibits Core from re-litigating here issues of fact and law that were decided against its affiliate in Virginia.

“Generally, collateral estoppel forecloses re-litigation of issues of fact or law in subsequent actions where the following criteria are met: (1) the issue in the prior adjudication was identical to the one presented in the later action; (2) there was a final judgment on the

merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in a prior action; and (5) the determination in the prior proceeding was essential to the judgment.” *Pa Bd. Of Prob. & Parole, supra*, 66 A.2d at 395. All five criteria are met here.

First, the issues in both cases are identical – the validity of a Core affiliate’s attempt to bill a Verizon affiliate facilities charges under provisions of an interconnection agreement that only allow the Core affiliate to bill reciprocal compensation, and doing so at rates not found in the Core affiliate’s section of the interconnection agreement’s pricing appendix. The Virginia and Pennsylvania pricing appendices contain virtually identical language, except that the Pennsylvania interconnection agreement additionally bars Core from charging any rate higher than that charged by Verizon:

Virginia:³⁵

X. All Other [Core Virginia] Services Available to Verizon for Purposes of Effectuating Local Exchange Competition

Available at [Core Virginia]’s tariffed or otherwise generally available rates.

Pennsylvania:³⁶

V. All Other CORE Services Available to [VERIZON] for Purposes of Effectuating Local Exchange Competition

Available at CORE’s tariffed or otherwise generally available rates, not to exceed [VERIZON] rates for equivalent services available to CORE.

³⁵ See Section B.X. of the Virginia interconnection agreement’s Pricing Appendix (page 155), included in Exhibit E to VZ Stmt. 1.0.

³⁶ See Section B.V. of the Pennsylvania interconnection agreement’s Pricing Appendix (page 23), included in Exhibit 1 to VZ Stmt. 2.0.

Second, there is a final judgment on the merits. The Fourth Circuit upheld the Virginia federal district court's denial of Core's Virginia affiliate's facilities charge claims. *VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73.

Third, Verizon and Core are in each in privity with their respective Virginia affiliates that litigated the facilities charge claims in that state. Mr. D'Amico explained that Verizon has two affiliates that are incumbent local exchange carriers in Virginia: Verizon Virginia LLC ("Verizon VA") and Verizon South Inc. ("Verizon South"), and all three of these Verizon entities are wholly-owned subsidiaries of Verizon Communications Inc.³⁷ VZ Stmt. 2.0 at 30-31. Core's discovery responses confirmed that it has a Virginia affiliate called CoreTel Virginia, LLC ("Core VA"), and that Core and Core VA are both wholly-owned by a parent company called CoreTel Communications, Inc. *Id.* at 31 and Exhibit 3 thereto (Core's July 28, 2014 responses to Verizon Interrogatories II-6 through II-10). Mr. Mingo provided deposition testimony in the Virginia court case that offered additional details demonstrating the privity between Core and Core VA, including the existence of common officers and employees. *Id.* at 31 and Proprietary Exhibit 8 thereto.

Fourth, Core had ample opportunity to litigate the validity of the facilities bills in the Virginia action, including the opportunity to challenge the lower court's decision to the Fourth Circuit Court of Appeals.

Fifth (and finally), the ruling on Core VA's facilities charge claims in the Virginia proceeding was essential to the judgment there, as Core VA's attempt to collect on the facilities charges back-bills there was a critical element of Count II of its amended complaint in Virginia,

³⁷ Verizon and Verizon VA are both directly wholly-owned by Verizon Communications Inc., and Verizon South is ultimately wholly owned by Verizon Communications, Inc. because it is wholly owned by GTE Corporation, which is in turn owned by Verizon Communications Inc. (91.31%), NYNEX LLC (7.24%) and Verizon Ventures LLC (1.45%), and NYNEX LLC and Verizon Ventures LLC are both, in turn, wholly owned by Verizon Communications Inc. VZ Stmt. 2.0 at 31.

which sought payment on its facilities charges back-bills. *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at *11.

Because all five elements of the doctrine of claim preclusion are met, Core is collaterally estopped from pursuing its claims against Verizon in this proceeding.

3. The Doctrine of Unclean Hands Bars Core's Claims

“The doctrine of unclean hands is derived from the unwillingness of a court to give relief to a suitor who has conducted himself so as to offend the moral sensibilities of the judge....” *Lucey v. Workmen's Comp. Appeal Bd. (Vy-Cal Plastics & PMA Group)*, 557 Pa. 272, 279 (1999) (citing *In re Estate of Pedrick*, 505 Pa. 530, 544 (1984)). “This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with iniquity or bad faith relative to the matter in which he seeks relief.” *Id.* The doctrine of unclean hands does not apply simply because a party's “conduct in general has been shown not to be blameless,” but rather, where “the wrongdoing directly affects the relationship subsisting between the parties and is directly connected with the matter in controversy.” *Pedrick, supra*, 505 Pa. at 545.

Core's hands are unclean in a manner directly connected to the instant dispute. As detailed above, Core brought a baseless claim against Verizon for facilities charges despite being collaterally estopped from doing so. It also seeks to collect millions of dollars in facilities charges from Verizon pursuant to the parties' interconnection agreement while simultaneously refusing to pay the facilities charges it owes Verizon under the same interconnection agreement provisions (an issue on which the Initial Decision in Docket No. C-2011-2253750 found in Verizon's favor). Moreover, Mr. Mingo admitted on cross-examination that Core is not paying *any* Verizon invoices in Pennsylvania – including those for collocation and other services

provided by Verizon with which Core has no issue – on the improper basis that “[y]ou owe us more money than we owe you.” Tr. at 53; 70-71. Core also intentionally delayed bringing this action (Complaint, ¶ 20), increasing Verizon’s litigation costs and depriving it of access to the expertise and recollection of several employees with direct knowledge of the facts, who left the company after 2012. VZ Stmt. 1.0 at 10. These facts demonstrate that Core has come to the Commission with unclean hands, warranting rejection of its claims here.

IV. CONCLUSION

For the reasons stated above, the Commission should deny Core’s complaint in its entirety and grant the relief sought in Verizon’s new matter by adopting the proposed findings of fact, conclusions of law and ordering paragraphs provided in the accompanying Appendix.

Respectfully submitted,



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Counsel for Verizon Pennsylvania LLC

Dated: December 12, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIZON’S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS**

Pursuant to 52 Pa. Code § 5.501, Verizon Pennsylvania LLC (“Verizon”) hereby submits its proposed findings of fact, conclusions of law and ordering paragraphs.

I. PROPOSED FINDINGS OF FACT

A. Background

1. The Parties

1. Core Communications, Inc. (“Core”) is certified as a competitive local exchange carrier (“CLEC”) authorized to operate in Pennsylvania. Core Statement (“Core Stmt.”) 1.0 at 1.

2. Verizon Pennsylvania LLC (“Verizon”) is an incumbent local exchange carrier (“ILEC”) that operates in portions of Pennsylvania and is required to provide interconnection to Core. VZ Stmt. 2.0 at 2.

3. Core does not offer local telephone service in the traditional sense, nor does it generally offer services to end users; instead, it describes itself as “a ‘niche’ facilities-based CLEC” focused primarily on providing services to Internet service providers (“ISPs”) and Voice over Internet Protocol providers. Verizon Statement (“VZ Stmt.”) 2.0 at 2; Complaint at ¶ 2.

4. In conjunction with its “niche” business plan, Core markets services that allow ISPs and other generators of high-volume incoming traffic to receive calls. VZ Stmt. 2.0 at 2. Core has stated that over half of its operating revenue in Pennsylvania historically has come from payments from Verizon and its ILEC affiliate in the state for the termination of this high volume of incoming traffic. *Id.*

5. Core and Verizon are parties to an interconnection agreement dated March 31, 2000 and approved by the Commission in Docket No. A-310922F0002. Stipulated Joint Exhibit 1.

6. The interconnection agreement is an adoption of a preexisting interconnection agreement between Verizon and MCImetro Access Transmission Services, Inc. Stipulated Joint Exhibit 1.

7. The Commission approved Amendment No. 1 to the parties’ interconnection agreement with an effective date of January 10, 2003.¹ Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0.

2. Core’s Facilities Bills to Verizon

8. In July 2011, Core alleged that its financial state was so dire that it would go out of business if it did not immediately receive payment on approximately \$75,000 in disputed invoices. *See* “Complaint of Core Communications Inc.,” Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (July 22, 2011) at ¶¶ 21, 37-41.

9. A few months later, in January /February 2012, Core and several of its affiliates suddenly issued millions of dollars in back-bills (for switched access services and facilities charges) to Verizon and several of its affiliates. VZ Stmt. 1.0 at 2.

¹ *See Joint Petition for the Approval of Amendment No. 1 to the Interconnection Agreement Between Verizon Pennsylvania Inc. and Core Communications, Inc. under Section 252(e) of the Telecommunications Act of 1996, Docket No. A-310922F7000 (Opinion and Order entered July 1, 2003).*

10. Among these were back-bills from Core to Verizon for amounts dating back to May 2008 and covering two categories of charges: (1) switched access services, and (2) “tandem ports” and “multiplexing” (referred to generally as “facilities charges”). VZ Stmt. 1.0 at 2-3.

11. Core later claimed that the parties’ interconnection agreement authorized these charges, even though neither the relevant terms of the parties’ interconnection agreement nor their physical interconnection arrangements had changed since 2000, and Core had never previously billed Verizon such charges. VZ Stmt. 1.0 at 2-4; VZ Stmt. 2.0 at 3; Complaint at ¶¶ 21-25.

12. Core asserted that Verizon had “ordered” tandem ports and multiplexing from Core by sending Core copies of Verizon’s *internal* orders for *self-provisioned* transport facilities (known as Access Service Requests, or “ASRs”). Verizon did so to notify Core that Verizon was self-provisioning facilities to carry local traffic to Core’s network so Core could prepare to receive that traffic. Core Stmt. 1.0 at 12; 14 and Exhibit B thereto; Core Stmt. 2.0 at 4-5 and Exhibit N thereto.

13. Verizon had sent Core copies of Verizon’s internal ASRs for self-provisioned facilities throughout the first twelve years of the parties’ interconnection agreement, during which Core had never previously billed Verizon facilities charges. VZ Stmt. 1.0 at 4.

14. The ASRs that Verizon sent Core reflect orders placed in Verizon’s own internal provisioning system, for *self-provisioned* facilities, not orders to Core for Core-provided ports, multiplexing, entrance facilities or transport. VZ Stmt. 1.0 at 14-15; VZ Stmt. 2.0 at 2-3; Tr. at 13.

15. After issuing the January/February 2012 back-bills, Core continued to send Verizon monthly facilities bills reflecting multiplexing and tandem port charges associated with each of Core's Pennsylvania wire centers. Complaint, ¶¶ 21-26; VZ Stmt. 1.0 at 5.

16. In 2013, Core began adding new charges to the ongoing facilities bills for "entrance facilities" and "TELRIC transport" associated with its Philadelphia location. Complaint, ¶¶ 27-29.

3. Verizon's Disputes of Core's Facilities Bills

17. Core and its affiliates have a long history of filing complaints against Verizon and its affiliates. VZ Stmt. 1.0 at 7.

18. When Core sent the switched access and facilities back-bills to Verizon, they (along with Verizon North LLC) were actively involved in a Commission-ordered mediation in Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787. VZ Stmt. 1.0 at 7.

19. On April 13, 2012, Verizon disputed Core's back-bills in their entirety (as did Verizon's affiliates in other states that had received similar back-bills from various Core affiliates). Core Stmt. 1.0 at Exhibit I (copy of Verizon's April 13, 2012 dispute correspondence, including attachments); VZ Stmt. 1.0 at 6-9.

20. One business day later, on April 16, 2012, Core amended its pending complaint against Verizon in Docket No. C-2011-2253750 to seek payment on its back-bills for *switched access charges*, but did not include a new claim for the \$1.8 million in disputed *facilities charges* back-bills issued at the same time. See "Amended Complaint of Core Communications Inc." Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (April 16, 2012).

21. The parties litigated Docket Nos. C-2011-2253750 and C-2011-2253787 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. *See Core Communications, Inc. v. Verizon Pennsylvania LLC et al.*, Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (Initial Decision entered July 11, 2013).

22. After April 13, 2012, Verizon continued to dispute Core's invalid facilities bills, including the new Philadelphia charges that began in 2013. Verizon Stmt. 1.0 at 6-9; 13; Verizon Stmt. 1.1 at 4-6 and Exhibits I and J thereto; *see also* Core Stmt. 1.0 at 13-15 and Exhibit I thereto.

23. When Core's Virginia affiliate issued analogous facilities back-bills, Verizon's Virginia affiliates likewise disputed them. VZ Stmt. 1.0 at 8-9.

24. After a different dispute between Core's Virginia affiliate and Verizon's Virginia affiliates was dismissed by the Virginia Corporation Commission (VZ Stmt. 1.1 at Exhibit K), Core filed a complaint in the United States District Court for the Eastern District of Virginia, to which it added the Virginia facilities charge dispute in August of 2012. VZ Stmt. 1.0 at 11.

25. Although Core's Virginia affiliate initially offered to consolidate all of the respective Verizon and Core affiliates' billing disputes in the Virginia court case (stating that this was the Core companies' preference), Core ultimately refused to include its Pennsylvania claims in that proceeding, which therefore went forward only on the Virginia claims. VZ Stmt. 1.0 at 11 and Exhibit C thereto; VZ Stmt. 1.1 at 6.

26. While Verizon was communicating with Core in the summer and fall of 2012 regarding its disputes of Core's Pennsylvania facilities back-bills, the parties' Virginia affiliates were simultaneously litigating the validity of the same sort of facilities charges bills in the

Virginia court case, making the parties familiar with each other's positions. VZ Stmt. 1.0 at 12; *see also* Tr. at 88-90.

27. Although Verizon's dispute letters repeatedly asked Core to provide contractual or tariff authority for the facilities charges, Core never responded beyond a November 9, 2012 e-mail from its controller that predated Core's new billings in 2013 for entrance facilities and TELRIC transport. VZ Stmt. 1.0 at 15; VZ Stmt. 1.1 at 9; Core Stmt. 1.0 at Exhibit I (November 9, 2012 e-mail from Jonathan Harris of Core).

28. On February 18, 2014, Core filed a single-count complaint against Verizon, seeking to collect on what by then had grown to nearly \$4 million in disputed facilities charges. Complaint at ¶ 30. The disputed charges broke down as follows, with tandem port charges representing the vast majority – 93% – of the total:

Tandem Ports	\$3,673,057.61
Multiplexing	\$ 241,114.58
Entrance Facilities	\$ 27,325.20
TELRIC Transport	<u>\$ 14,181.72</u>
<u>TOTAL</u>	<u>\$3,955,679.11</u>

See VZ Stmt. 1.0 at 6 and Exhibit B thereto.

29. Because Core has continued to send facilities charges invoices in the amount of approximately \$67,000 per month since the filing of the Complaint, the amount at issue had increased to \$4,288,813.76 by the time Core filed its direct testimony on July 11, 2014. VZ Stmt. 1.0 at 6; Core Stmt. 1.0 at 13 and Exhibit H (invoice summary listing monthly invoices of \$66,626.93 per month for the period March through July of 2014); Complaint, Tab C (invoice for February 2014, which is representative of subsequent monthly bills).

30. Verizon answered the complaint on March 13, 2014, raising a number of affirmative defenses as part of its new matter. On that date, Verizon also filed preliminary objections seeking dismissal of the complaint on a number of grounds and requested a stay of the proceeding in light of the ongoing appeal of the Virginia federal district court's order.

31. On May 5, 2014, the Administrative Law Judge denied Verizon's preliminary objections without prejudice to making the arguments after development of a factual record, and also denied the request for a stay.

4. Technical Configuration of the Interconnection of the Parties' Networks

32. The only traffic at issue here is *local* traffic that Verizon delivers to Core over Local Interconnection Trunks, which are one-way trunks that carry local and non-Feature Group D intraLATA toll traffic from Verizon's end office or tandem switches to Core. VZ Stmt. 2.0 at 4-5; Interconnection Agreement, Attachment IV, Section 1.1.1 (included in Exhibit 1 to VZ Stmt. 2.0). This local traffic may be originated by Verizon's end-user customers or by customers of third party carriers that interconnect indirectly with Core through Verizon's tandem switches. VZ Stmt. 2.0 at 5.

33. Separate trunk groups carry traffic (1) from Core to Verizon, and (2) between Core and interexchange carriers, but these other trunk groups are the subject of the disputes in Docket No. C-2011-2253750 and are not relevant here. VZ Stmt. 2.0 at 5.

34. Core and Verizon exchange traffic in five of Pennsylvania's Local Access and Transport Areas ("LATAs"): LATA 226 (Harrisburg), LATA 228 (Philadelphia), LATA 230 (Altoona), LATA 232 (Wilkes-Barre) and LATA 234 (Pittsburgh). VZ Stmt. 2.0 at 4. They exchange traffic at one point in each of these LATAs. *Id.* at 4-5.

35. In LATA 924 (Erie), Core exchanges traffic not with Verizon, but with Verizon's affiliate, Verizon North LLC ("Verizon North"). VZ Stmt. 2.0 at 4. Verizon North is not a party to this proceeding. *Id.*

36. From 2000 to early 2013, Verizon self-provisioned facilities to carry its traffic all the way to Core's switch in each of the five LATAs in which the parties interconnect. VZ Stmt. 2.0 at 5. For each of these LATAs, Core has billed Verizon for tandem ports and multiplexing, which it describes as functionalities of the equipment that Core considers to be its switches (which Core describes as multiple elements in its central office working together). Tr. at 36-37; 41-43; 47-50; *see also* Core Stmt. 1.0 at 2-3; 10.

37. Before 2013, the configuration in Philadelphia was the same as that in the other LATAs, with Verizon self-provisioning facilities that carried its traffic all the way to Core's switch. VZ Stmt. 2.0 at 5. In early 2013, Core represented to Verizon in a series of e-mails that it was "abandoning a Philly location, and need[ed] to discuss migrating DS"3s [sic] from 401 N Broad 9th floor to 900 Race street." *Id.* at 21 and Exhibit 6 thereto. At the time, Core's wire center was located at 401 North Broad Street in Philadelphia, while Verizon's was at 900 Race Street. *Id.* at 19.

38. After Verizon moved its self-provisioned DS3s to 900 Race Street at its own expense, as requested by Core, Core began billing Verizon nearly \$3,000 per month for entrance facilities and TELRIC transport to carry Verizon's local traffic from 900 Race Street *back to* the 401 North Broad Street "Philly location" that Core had claimed it was "abandoning." VZ Stmt. 2.0 at 19, 23-24; Core Stmt. 1.0 at 11; Complaint, ¶ 27.

39. Mr. Mingo's e-mails never communicated that Core was keeping its switch on the 4th floor of the 401 Broad Street location, where it had been since 2008, or otherwise indicated

that Verizon could simply provision cross-connects to terminate local traffic to the 4th floor of that building, rather than move its self-provisioned facilities to 900 Race Street. Tr. at 61-62; 65-66.

40. Mr. Mingo admitted that Core had actually moved its switch from the 9th floor to the 4th floor of 401 North Broad Street back in 2008, and the reason for requesting configuration changes in 2012 was that Core no longer wanted to pay rent to continue leasing the 9th floor of that location. Tr. 61-62; 67.

41. Verizon was capable of delivering traffic to Core for termination in the Philadelphia LATA over Verizon's own self-provisioned, in-place facilities at 401 North Broad Street without any payment to Core. VZ Stmt. 2.0 at 6; 23-24. It was not necessary for Verizon to purchase transport from Core to deliver Verizon's traffic to 401 North Broad Street. *Id.*

5. The Interconnection Agreement's Interconnection Provisions

42. Attachment IV, Section 1.2.1 of the interconnection agreement defines the terms "point of interconnection" (or "POI") and "interconnection point" (or "IP") as follows:

1.2.1 Definitions

1.2.1.1 "Interconnection Point" or "IP" means the switching, Wire Center, or other similar network node in a Party's network at which such Party accepts Local Traffic from the other Party. [Verizon] IPs include any [Verizon] End Office, for the delivery of traffic terminated to numbers served out of that End Office, and/or any [Verizon] access Tandem Office, for the delivery of traffic to numbers served out of any [Verizon] End Office that subtends that access Tandem Office. [Core] IPs include any [Core] switch, for the delivery of traffic terminated to numbers served out of that Switch.

1.2.1.2 "Point of Interconnection" or "POI" means the physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between the Parties for Local Interconnection of their networks. Unless otherwise mutually agreed, [Core] will be responsible for engineering and maintaining its network on its side of the POI and [Verizon] will be responsible for engineering and maintaining its network on its side of the POI.

Verizon Stmt. 2.0 at 6-7 and Attachment 1 thereto.

43. The interconnection agreement provides that “[e]ach (originating) Party is responsible for bringing their traffic to a POI.” Interconnection Agreement, Attachment IV, Section 2.1.1, included in Attachment 1 to Verizon Stmt. 2.0.

44. Attachment IV, Section 2.2.1 of the interconnection agreement (included in Exhibit 1 to Verizon Stmt. 2.0) defines the charges that may apply beyond the POI as follows:

2.2.1 The POI determines the point at which the originating carrier shall pay the terminating carrier for the Transport and Termination of local traffic. The following compensation elements shall apply:

2.2.1.1 “Transport,” which includes the transmission of Local Traffic from the POI to the terminating carrier’s IPs, and any necessary Tandem Switching, and any necessary transport between the terminating carrier’s access Tandem Office and the terminating carrier’s End Office Switch that directly serves the called end user.

2.2.1.2 “Termination,” which includes the switching of Local Traffic at the terminating carrier’s End Office Switch.

45. The interconnection agreement provides that the appropriate charge for the “Transport and Termination” of local traffic is “Reciprocal Compensation.” Part B of the interconnection agreement (Definitions) defines “Reciprocal Compensation” as “a reciprocal compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier’s network facilities of Local Traffic that originates on the network facilities of the other carrier.” Interconnection Agreement, Part B (Definition of Reciprocal Compensation), included in Exhibit 1 to VZ Stmt. 2.0.

46. Based on the Commission's order² determining that the interconnection agreement had been modified by the terms of the FCC's *ISP Remand Order*,³ Verizon pays Core the FCC rate of \$0.0007/minute for traffic that exceeds the 3:1 ratio of terminating to originating traffic (and is therefore presumed to be ISP-bound traffic) and pays the reciprocal compensation rate for the remainder of the traffic. VZ Stmt. 2.0 at 9.

47. Core bills Verizon reciprocal compensation for the transport and termination of local traffic *in addition to* the disputed facilities charges at issue here. VZ Stmt. 2.0 at 9.

48. Attachment IV, Section 1.2.2 of the interconnection agreement provides that “[t]he Party delivering traffic to the other Party’s IP(s) shall do so *by purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary*” (emphasis added). Interconnection Agreement, Appendix IV, Section 1.2.2 (included in Exhibit 1 to VZ Stmt. 2.0).

49. If purchasing transport from the other party is “necessary,” the interconnection agreement allows the billing of Dedicated Transport at a rate that “shall not exceed [Verizon’s] equivalent charge.” Interconnection Agreement, Appendix IV, Section 2.4.2 (included in Exhibit 1 to VZ Stmt. 2.0).

50. It was not “necessary” for Verizon to purchase transport from Core in the Philadelphia LATA, because Verizon had already put self-provisioned transport facilities in place before Core requested their removal. VZ Stmt. 2.0 at 23.

² *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).

³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001).

B. Core's Facilities Bills

1. Core's Charges for Tandem Ports

51. Core's tandem port charges to Verizon represent 93% of Core's total claim against Verizon as of the filing of the Complaint (\$3,673,057.61 of the \$3,955,679.11 alleged in Paragraph 30 of the Complaint). VZ Stmt. 1.0 at 6 and Exhibit B thereto.

52. The interconnection agreement does not permit Core to bill Verizon for tandem ports because it limits the compensation Core may charge for terminating Verizon's local traffic to "Transport" and "Termination" as defined in Attachment IV, Sections 2.2.1.1 and 2.2.1.2 of the interconnection agreement (included in Exhibit 1 to VZ Stmt. 2.0).

53. The interconnection agreement's definitions of "Transport" and "Termination" limit Core's compensation for the termination of local traffic, including "the switching of Local Traffic," to Reciprocal Compensation. Interconnection Agreement, Appendix IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2; Part B (definition of Reciprocal Compensation) (all included in Exhibit 1 to VZ Stmt. 2.0).

54. Section B of interconnection agreement's Pricing Appendix, which sets forth the rates that *Core* may charge *Verizon*, contains no tandem port rates. Interconnection Agreement, Pricing Appendix ("Appendix 2" to the parties' interconnection agreement adoption agreement), included in Exhibit 1 to VZ Stmt. 2.0, at Section B.⁴

55. Core also has no tariffed tandem port rates. VZ Stmt. 2.0 at Exhibit 2 (Core's June 9, 2014 response to Verizon Request for Production I-5) and Exhibit 3 (Core's July 28, 2014 response to Verizon Interrogatory II-5).

⁴ The relevant Pricing Appendix is the Pricing Appendix to Core's agreement adopting the September 3, 1997 interconnection agreement between MCImetro Access Transmission Services, Inc. and Bell Atlantic – Pennsylvania, Inc. as Core's interconnection agreement with Verizon (*see* Exhibit 1 to VZ Stmt. 2.0), not the Pricing Appendix to the underlying adopted Interconnection Agreement.

56. Core billed Verizon the \$214.57 monthly Tandem Trunk Port rate found at Section A.III.D of the Pricing Appendix (page 6 thereof), but Section A of the Pricing Appendix sets forth the rates that *Verizon* may charge *Core*, not the rates that *Core* may charge *Verizon*. Core Exhibit S (Core's June 9, 2014 Response to VZ Interrogatory I-7(d)); Core Stmt. 1.0 at Exhibit A (invoice reflecting \$214.57 tandem trunk port rate); Interconnection Agreement, Pricing Appendix, Section A.

57. Section B.V. of the Pricing Appendix, which provides that other services available from Core to Verizon "for Purposes of Effectuating Local Exchange Competition" are "[a]vailable at CORE's tariffed or otherwise generally available rates, not to exceed [Verizon's] rates for equivalent services available to CORE," does not authorize Core to charge Verizon for tandem ports because the \$214.57 monthly tandem trunk port rate Core billed Verizon does not appear in a Core tariff and is not Core's otherwise generally available rate. Core Exhibit S (Core's June 9, 2014 Response to VZ Interrogatory I-7(d)); Pricing Appendix, Section B.V (included in Exhibit 1 to VZ Stmt. 2.0).

58. Section B.V. of the Pricing Appendix prohibits Core from charging a rate higher than Verizon's rate for "equivalent services available to CORE," and Verizon's rate under equivalent circumstances is zero because Verizon's port charges are embedded in its reciprocal compensation rates. Interconnection Agreement, Pricing Appendix, Section B.V. (included in Exhibit 1 to VZ Stmt. 2.0); VZ Stmt. 2.0 at 13; VZ Stmt. 2.1 at 5-9; Core Cross Exhibit 2; Core Cross Exhibit 5.

59. Verizon does not impose trunk port charges in conjunction with the termination of *local* traffic (the only traffic at issue in this case), because trunk ports are included in its reciprocal compensation charge. VZ Stmt. 2.1 at 8-9.

60. Core originally billed Verizon for tandem ports at a \$214.57 per month rate, and then began billing for some tandem ports at the lower rate of \$71.48 per month (thereby acknowledging the current rate). In January 2014, Core began charging the \$214.57 per month rate for *all* tandem ports. VZ Stmt. 2.0 at 13-14 and Exhibit 4 thereto.

61. In January 2014, Core also issued invoice #3641 in the amount of \$418,824.43, representing Core's calculation of alleged "undercharges" associated with "erroneously" billing Verizon a tandem port rate of \$71.48 per month for a period of time, rather than what Core asserts is the "correct rate" of \$214.57 per month. See VZ Stmt. 1.0 at 5 and Exhibit A thereto.

62. Even if the interconnection agreement permitted Core to bill Verizon the *Verizon* tandem trunk port rate, which it does not, Core billed an outdated \$214.57 per month Verizon rate rather than the much lower \$71.48 per month Verizon tandem trunk port rate that has been in effect since 2004, four years before the earliest back-bills at issue here.

63. In 2004, following a proceeding to update Verizon's TELRIC rates for unbundled network elements, including its rates for unbundled trunk ports, the Commission approved revisions to Verizon Tariff PA P.U.C. – No. 216 that superseded the \$214.57 per month Tandem Trunk Port rate reflected in the 2000 Pricing Appendix with a new \$71.48 per month Tandem Trunk Port rate, effective October 1, 2004 – several years *before* the period covered by Core's back-billing.⁵ VZ Stmt. 2.0 at Exhibit 5 (Verizon Tariff PA P.U.C. – No. 216, Section 3, 2nd Revised Sheet 8B, with the \$71.48 per month Tandem Trunk Port rate appearing at Section C.2.c.).

⁵ See *Generic Investigation Re Verizon Pennsylvania Inc. 's Unbundled Network Element Rates*, Docket No. R-00016683 (Compliance Order entered July 16, 2004); *Generic Investigation Re Verizon Pennsylvania Inc. 's Unbundled Network Element Rates*; *Verizon Pennsylvania Inc. 's Petition to Stay the Effectiveness of Certain Rate Changes Pending Further Action by the FCC*; *Verizon Pennsylvania Inc. 's Petition for Expedited Adoption of an Interim Rate Pending Determination of Final Rates*, Docket Nos. R-00016683 and R-00049812 (Order entered September 30, 2004).

64. Footnote 1 on page 1 of the interconnection agreement's Pricing Appendix states that "the rates and charges set forth in [the Pricing Appendix] shall apply *until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time ...*" (emphasis added). VZ Stmt. 2.0 at Exhibit 1. This provision is self-executing and no separate amendment was required to incorporate the superseding Commission-approved rates into the interconnection agreement since those rates were automatically updated upon Commission approval thereof. VZ Stmt. 2.1 at 10.

65. Pursuant to footnote 1 of the Pricing Appendix to the interconnection agreement, the 2004 \$71.48 rate is (and was for the entire time period relevant to this case) Verizon's unbundled Tandem Trunk Port rate under the interconnection agreement for any circumstances in which an unbundled Tandem Trunk Port charge would apply. VZ Stmt. 2.0 at 15-16.

66. While the interconnection agreement does not permit Core to bill Verizon *anything* for tandem ports, simply correcting Core's rate error would immediately reduce the size of the parties' port charge dispute by roughly \$2.5 million (from approximately \$3.7 million to \$1.2 million). VZ Stmt. 2.0 at 16-17.

2. Core's Charges for Multiplexing

67. As of the filing of the Complaint, Core had billed Verizon \$241,114.58 for multiplexing. VZ Stmt. 1.0 at 6 and Exhibit B thereto.

68. The interconnection agreement does not permit Core to bill Verizon for multiplexing because it limits the compensation Core may charge for receiving Verizon's local traffic to "Transport" and "Termination" as specifically defined in Attachment IV, Sections 2.2.1.1 and 2.2.1.2 of the interconnection agreement (included in Exhibit 1 to VZ Stmt. 2.0).

69. The interconnection agreement's definitions of "Transport" and "Termination" limit Core's compensation for the termination of local traffic, including "the switching of Local Traffic," to Reciprocal Compensation. Interconnection Agreement, Appendix IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2; Part B (definition of Reciprocal Compensation) (all included in Exhibit 1 to VZ Stmt. 2.0).

70. Section B of the interconnection agreement's Pricing Appendix, which sets forth the rates that *Core* may charge *Verizon*, contains no multiplexing rates. Interconnection Agreement, Pricing Appendix, included in Exhibit 1 to VZ Stmt. 2.0, at Section B.

71. Core also has no tariffed multiplexing rates. VZ Stmt. 2.0 at Exhibit 2 (Core's June 9, 2014 response to Verizon Request for Production I-5) and Exhibit 3 (Core's July 28, 2014 response to Verizon Interrogatory II-5).

72. Core billed Verizon the \$242.57 per month "DS-3 to DS-1 Multiplexing" rate found at Section A.II.C of the Pricing Appendix, but Section A of the Pricing Appendix sets forth the rates that *Verizon* may charge *Core*, not the rates that *Core* may charge *Verizon*. Core Exhibit S (Core's June 9, 2014 Response to VZ Interrogatory I-6(a) and (d)); Core Stmt. 1.0 at Exhibit A (invoice reflecting \$242.57 multiplexing rate); Interconnection Agreement, Pricing Appendix, Section A.

73. Section B.V. of the Pricing Appendix, which provides that other services available from Core to Verizon "for Purposes of Effectuating Local Exchange Competition" are "[a]vailable at CORE's tariffed or otherwise generally available rates, not to exceed [Verizon's] rates for equivalent services available to CORE," does not authorize Core to bill for multiplexing because the \$242.57 monthly "DS-3 to DS-1 Multiplexing" rate that Core billed Verizon does not appear in a Core tariff and is not Core's otherwise generally available rate. Core Exhibit S

(Core's June 9, 2014 Response to VZ Interrogatory I-6(d)); Pricing Appendix, Section B.V (included in Exhibit 1 to VZ Stmt. 2.0).

3. Core's Charges for Entrance Facilities and TELRIC Transport Associated with the Philadelphia LATA

74. Core's charges for Entrance Facilities and TELRIC Transport associated with the Philadelphia LATA represent only about 1% of the amount in dispute as of the filing of the Complaint – \$41,506.92. VZ Stmt. 2.1 at 11. This figure is comprised of \$27,325.20 in Entrance Facilities charges and \$14,181.72 in TELRIC Transport. VZ Stmt. 1.0 at 6 and Exhibit B thereto.

75. Core began billing Verizon for Entrance Facilities and TELRIC Transport associated with the Philadelphia LATA in January 2013, following the facilities rearrangement Core requested as a result of its stated intention to “abandon a Philly location.” VZ Stmt. 2.0 at 19; Complaint, ¶ 27.

76. Core misled Verizon as to its intentions in requesting that Verizon move its self-provisioned facilities from 401 North Broad Street to 900 Race Street, and is now billing Verizon for the majority of Core's \$3,500 monthly expense for the fiber ring it installed, even though Core uses that fiber ring to transport its own traffic to Verizon. VZ Stmt. 2.0 at 21 and Exhibit 2 thereto (Core's June 9, 2014 Response to Verizon Interrogatories I-4(c) and (g)).

77. Mr. Mingo's claim that Core constructed the fiber ring at an expense to Core of \$3,500/month “to avoid Verizon's inflated access bills for transport, and other services relating to Core's originating traffic” (Core Stmt. 2.0 at 16) is not credible given that he admitted on cross-examination that Core does not pay *any* of Verizon's invoices, including those for Core's collocation space at Verizon's Race Street office necessary to support the fiber ring

configuration (even though Core does not dispute Verizon's collocation charges). Tr. at 53; 69-71.

78. When asked if it was important for Verizon's engineers to understand Core's plans in Philadelphia in order to design Verizon's network, Mr. Mingo asserted "[t]hey fully understood what they were doing, where our switches were." *Id.* at 65.

79. Yet, when asked if Core had ever advised Verizon's engineers that the consequence of Core's request that Verizon move its self-provisioned DS-3s to 900 Race Street (rather than to the 4th floor of 401 North Broad Street) would be that Core would begin billing Verizon transport charges, Mr. Mingo claimed only that Verizon's engineers must have understood this. Tr. at 66.

80. Core's choice of the word "abandoning" was calculated to make Verizon's employees think that Core was no longer maintaining a switch or network node at the North Broad Street location, even though it was. VZ Stmt. 2.0 at 22.

81. Mr. Mingo asserted that "Verizon could have approached Core for mid-span meet or to enter into a collocation arrangement at Core's new suite, but Verizon did neither." Core Stmt. 2.0 at 18.

82. However, Mr. Mingo's misleading e-mails gave no indication that Core was keeping its switch at 401 North Broad Street, giving Verizon no reason to ask Core about a mid-span meet or collocation at that location. VZ Stmt. 2.0 at 21-22 and Exhibit 6.

83. Attachment IV, Section 1.2.2 of the interconnection agreement states that "[t]he party delivering traffic to the other Party's IP(s) shall do so by *purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary*," and further provides that Verizon "may request relief from the Commission if [Verizon] reasonably believes that [Core] has manipulated

the designation of POIs in order to maximize the transport revenues [Verizon] must pay to [Core]” (emphasis added). VZ Stmt. 2.0 at Exhibit 1.

84. In this case, it was not “necessary” for Verizon to purchase transport from Core to carry its traffic to Core’s switch because Verizon already had *self-provisioned* transport facilities in place carrying its traffic all the way to the building housing Core’s switch at 401 North Broad Street, and there was no reason for Verizon to change that arrangement. VZ Stmt. 2.0 at 22-23; VZ Stmt. 2.1 at 13.

85. If Core moved the POI to Race Street as it contends, then Core manipulated the designation of the Philadelphia POI to maximize the transport revenues billed to Verizon, in effect requiring Verizon to pay for a fiber ring Core commissioned and used to deliver Core’s traffic to Verizon. VZ Stmt. 2.0 at 21 and Exhibit 2 thereto (Core’s June 9, 2014 Response to Verizon Interrogatories I-4(c) and (g)).

86. On cross-examination, Mr. Mingo admitted that the interconnection agreement permits Verizon to decide how to send its traffic to Core, including self-provisioning transport or obtaining it from a third party. Tr. at 73-75. Core never informed Verizon that Verizon could have moved its multiplexer to another location in the 401 North Broad Street building, leaving its self-provisioned transport route in place. Tr. 65.

87. Attachment IV, Section 1.2.2 refers specifically to the necessity of purchasing transport *from the other party*, not just to a general need for transport between the POI and IP: “[t]he Party delivering traffic to the other Party’s IP(s) shall do so *by purchasing from the other Party* transport between the POI(s) and the IP(s), *if necessary*” (emphasis added).

88. Core’s decision to replace the Verizon self-provisioned transport with fiber leased from a third party for Core’s own purposes, including transporting Core’s traffic to Verizon, did

not create an obligation for Verizon to pay for Core's decision to purchase transport from a third party. VZ Stmt. 2.1 at 13; *see also* Exhibit 6 to VZ Stmt. 2.0.

89. Even if the interconnection agreement permitted Core to bill Verizon for transport in Philadelphia following the 2013 reconfiguration at Verizon's UNE rates, which it does not, Core has billed Verizon outdated rates and applied them incorrectly.

90. Section B of interconnection agreement's Pricing Appendix, which sets forth the rates that *Core* may charge *Verizon*, contains no entrance facility or TELRIC transport rates. Interconnection Agreement, Pricing Appendix, included in Exhibit 1 to VZ Stmt. 2.0, at Section B.

91. Core also has no tariffed Entrance Facility or TELRIC Transport rates. VZ Stmt. 2.0 at Exhibit 2 (Core's June 9, 2014 response to Verizon Request for Production I-5) and Exhibit 3 (Core's July 28, 2014 response to Verizon Interrogatory II-5).

92. Core has billed Verizon the \$975.90 per month Unbundled DS3 Channel Termination rate that appears in Section A.II.C of the Pricing Appendix, and the \$489.55 per month and \$16.94 per month per mile Dedicated Unbundled DS3 Transport rates that appear in Section A.II.A of the Pricing Appendix. VZ Stmt. 2.0 at Exhibit 2 (Core's June 9, 2014 responses to Verizon Interrogatories I-8 and I-9); Core Stmt. 1.0 at Exhibit A (invoice reflecting \$975.90 DS3 Entrance Facility rate and \$506.49 (\$489.55 + \$16.94) DS3 TELRIC Transport rate). However, Section A of the Pricing Appendix sets forth the rates that *Verizon* may charge *Core*, not the rates that *Core* may charge *Verizon*. Interconnection Agreement, Pricing Appendix, Section A (included in Exhibit 1 to VZ Stmt. 2.0).

93. Section B.V. of the Pricing Appendix, which provides that other services available from Core to Verizon "for Purposes of Effectuating Local Exchange Competition" are

“[a]vailable at CORE’s tariffed or otherwise generally available rates, not to exceed [Verizon’s] rates for equivalent services available to CORE” does not authorize Core to bill for transport because the \$975.90 DS3 Entrance Facility and \$506.49 (combined) DS3 TELRIC Transport rates that Core billed Verizon do not appear in a Core tariff and are not Core’s otherwise generally available rates. VZ Stmt. 2.0 at Exhibit 2 (Core’s June 9, 2014 responses to Verizon Interrogatories I-8 and I-9).

94. Even if the interconnection agreement allowed Core to bill Dedicated Transport at a rate that “shall not exceed [Verizon’s] equivalent charge” (Interconnection Agreement, Appendix IV, Section 2.4.2), Core has not billed Verizon the correct Verizon-to-Core rates. The \$975.90/month rate for “DS-3 Channel Termination” that appears at Section A.II.C. of the 2000 Pricing Appendix (page 3 thereof) was reduced to \$446.43/month as a result of the Commission’s 2004 TELRIC pricing order. VZ Stmt. 2.0 at 27; *see also* Pa. PUC 216, Section 3, 4th Revised Sheet 10, included in Exhibit 5 to VZ Stmt. 2.0.

95. The \$506.49 “DS-3 TELRIC Transport” rate Core applies (Core Stmt. 1.0 at Exhibit A) – comprised of the Verizon Unbundled Dedicated Transport (DS-3) rate of \$489.55 per month plus \$16.94 per mile (one mile) appearing at Section A.II.A. of the 2000 Pricing Appendix (page 2 thereof) – was superseded by the new Commission-approved rates of \$492.68 per month and \$51.31 per mile as a result of the 2004 UNE case. VZ Stmt. 2.0 at 27; *see also* Pa. PUC 216, Section 3, 4th Revised Sheet 9, included in Exhibit 5 to VZ Stmt. 2.0.

96. Pursuant to footnote 1 on page 1 of the interconnection agreement’s Pricing Appendix, the new rates that the Commission approved in 2004 automatically superseded the rates listed in the 2000 Pricing Appendix. VZ Stmt. 2.0 at Exhibit 1; VZ Stmt. 2.1 at 10.

97. In addition to billing Verizon *outdated* Verizon-to-Core Entrance Facilities and TELRIC Transport rates, Core has also applied those rates incorrectly. Core could only charge for *either* an entrance facility *or* dedicated transport, but not *both*, because under Verizon's cost model, an entrance facility applies from the POI to the Verizon serving wire center, and dedicated transport applies from the serving wire center to another wire center. VZ Stmt. 2.0 at 26.

98. In the case of Core's configuration in Philadelphia, Core has only a *single* serving wire center (at 401 North Broad Street), so traffic is not transported from one wire center to another. As such, if a transport charge is for some reason determined to be "necessary," the interconnection agreement states that Verizon would pay Dedicated Transport charges from the POI to the Core switch. Interconnection Agreement, Appendix IV, Section 2.4.2 (included in Exhibit 1 to VZ Stmt. 2.0). The most analogous Verizon UNE rate under such circumstances is the Verizon rate for a DS-3 Channel Termination (also known as an entrance facility), since the facility is not connecting two Core serving wire centers. VZ Stmt. 2.0 at 26.

99. During the relevant period, Verizon delivered traffic to Core over only two DS-3s, not four. VZ Stmt. 2.0 at 26. Therefore, even if permitted to bill TELRIC Transport, Core should only have billed for two DS-3 circuits, not four. *Id.*

100. Simply reducing the rate Core billed for DS-3 Channel Termination from the incorrect \$975.90/month to \$446.43/month for the 28 months up to the filing of the Complaint and limiting the billing to two circuits rather than four would reduce Core's transport billings from \$41,506.92 to \$12,500.04 as of the date of the Complaint. VZ Stmt. 2.0 at 27-28.

4. Core's Charges for the Altoona and Erie LATAs

a. Altoona LATA (230)

101. As of August 2014, Core had billed Verizon \$933,028.53 in facilities charges associated with the Altoona LATA (230). VZ Stmt. 1.0 at 19-20 and Exhibits F and G thereto.

102. Amendment No. 1 to the interconnection agreement precludes Core's attempt to bill Verizon facilities charges associated with the Altoona LATA. As reflected therein, Verizon entered into a special interconnection arrangement in the Altoona LATA at Core's request, and in consideration for accommodating Core's request, Paragraph 1(a) provides that "Core has agreed at Verizon's request that Verizon is not responsible for any performance metrics reporting, *payment*, penalty, incentive or similar obligations in connection with such arrangements" (emphasis added). Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0.

103. Paragraph 1(d) of Amendment No. 1 goes on to say that "[n]otwithstanding any other provision of this Amendment (or otherwise) and, *for the avoidance of any doubt, Core may not assess any charge(s) upon Verizon for the transport of traffic delivered by Verizon over the OC-12 fiber optic system to Core's POP* (or for the transport of traffic delivered by Core over the OC-12 loop fiber optic system)" (emphasis added). Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0.

104. The term "transport," as used in paragraph 1(d) of Amendment No. 1, encompasses both the port and multiplexing charges Core has attempted to bill Verizon in Altoona, as the term is not capitalized as "Transport," which might otherwise carry a more specific meaning. Tr. at 104-05.

105. Although Mr. Mingo argued that Paragraph 1(b) of Amendment No. 1 “clearly relates to ‘performance metrics ... or similar obligations,’ which were established to track Verizon’s compliance with the ‘271 Checklist’ for long distance authority, and which are not at issue here” (Core Stmt. 2.0 at 19), Verizon did not allege that Paragraph 1(b) precluded the facilities charges at issue here. VZ Stmt. 2.1 at 15.

106. Paragraph 1(a) of Amendment No. 1 relieves Verizon of “any ... payment” in connection with the Core-requested arrangements, not just penalty payments associated with performance metrics. Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0.

107. Mr. Mingo asserted that Amendment No. 1 no longer applies because it was premised upon Core’s switch being located at 1215 16th Street in Altoona, and Core has since moved it, resulting in Verizon being out of compliance with the amendment (because Verizon did not maintain cabling to Core’s former Altoona switch location). Core Stmt. 2.0 at 19-20.

108. However, Core never executed a subsequent interconnection agreement amendment to revise the switch location listed in Paragraph 1(a) of Amendment No. 1, which expressly represents that “Core’s switch is located in such building at 1215 16th Street, Altoona, Pennsylvania.” Interconnection Agreement, Amendment No. 1 at Paragraph 1(a) (included in Exhibit 1 to VZ Stmt. 2.0). Core’s non-compliance with this provision excuses Verizon from compliance with provisions that Core itself rendered impossible by moving its switch. VZ Stmt. 2.1 at 16.

109. The parties’ interconnection agreement can only be amended in writing, signed by both parties and approved by the Commission. *See* Interconnection Agreement, Part A, Sections

2 (Regulatory Approvals) and 36 (Amendments and Modifications), included in Stipulated Joint Exhibit 1.

b. Erie LATA (924)

110. As of August 2014, Core's claims in this proceeding included \$324,717.05 in facilities charges associated with the Erie LATA (924). VZ Stmt. 1.0 at 20 and Exhibits F and H thereto.

111. The Erie LATA is the exclusive territory of Verizon Pennsylvania LLC's affiliate, Verizon North LLC, and Core billed facilities charges for the Erie LATA to Verizon North LLC, not Verizon Pennsylvania LLC. VZ Stmt. 2.0 at 29.

112. Verizon Pennsylvania LLC is the sole respondent in this proceeding, and cannot be held liable for amounts billed to Verizon North LLC. VZ Stmt. 2.0 at 29-30.

113. Core conceded that Core cannot collect facilities charges associated with the Erie LATA from Verizon Pennsylvania LLC and confirmed that Verizon's calculation of the Erie-related charges was correct. Core Stmt. 2.0 at 11.

D. Verizon's Affirmative Defenses

1. Core Failed to Follow the Interconnection Agreement's Mandatory Dispute Resolution Process

114. Attachment VIII, Section 3.1.9 of the interconnection agreement outlines the efforts that a party must undertake prior to instituting legal action, and Part A, Section 24 outlines the process for submitting a dispute to this Commission. Complaint, Tab A; Stipulated Joint Exhibit 1.

115. Attachment VIII, Section 3.1.9.1 to the parties' interconnection agreement states that once a party is notified of a billing dispute, "the Parties will endeavor to resolve the dispute within sixty (60) days of the Bill Date on which such disputed charges appear" at the "first level

of management.” If resolution does not occur within that time frame, Attachment VIII, Section 3.1.9.1.1. states that the dispute must be escalated to a “second level of management for each of the respective Parties for resolution.” If there is still no resolution within 90 days of the bill date, pursuant to Attachment VIII, Section 3.1.9.1.2, the dispute must be escalated to a “third level of management for each of the respective Parties for resolution.” Complaint, Tab A; Stipulated Joint Exhibit 1.

116. If the dispute remains unresolved after escalation to the third level of management and the passage of 120 days, only then does the dispute resolution process in Part A, Section 24 of the interconnection agreement come into play. Attachment VIII, Section 3.1.9.1.3 to the interconnection agreement, included in Tab A to the Complaint and Stipulated Joint Exhibit 1 (“If the dispute is not resolved within one hundred and twenty (120) days of the Bill Date, the dispute will be resolved in accordance with the dispute resolution procedures set forth in Part A of this Agreement.”); *see also id.* at Part A, Section 24 (“... the Parties agree that any dispute arising out of or relating to this Agreement *that the Parties themselves cannot resolve*, may be submitted to the Commission for resolution.”) (emphasis added).

117. Core did not cite Attachment VIII, Section 3.1.9 of the interconnection agreement anywhere in its Complaint, nor did Core plead compliance with its requirements. VZ Stmt. 1.0 at 23.

118. Core did not escalate the billing dispute beyond the first level of Verizon management before filing the instant Complaint. VZ Stmt. 1.0 at 22-23; Core Stmt. 2.0 at 9.

119. Core asserted that its failure to escalate the facilities charges dispute to the second and third levels of management at Verizon did not matter, because the interconnection agreement only required Core to escalate the dispute *within Core* itself. Core Stmt. 2.0 at 9.

120. Mr. Mingo claimed that he did not know the details of the hierarchy of Verizon employees to which Core should have escalated the dispute, but any representative of Core could simply have asked for the names of the managers of the first-line employees with whom it was communicating. Core Stmt. 2.0 at 8-9; VZ Stmt. 1.1 at 9.

121. Attachment VIII, Section 3.1.9 of the interconnection agreement is designed to require the parties to make reasonable efforts to resolve a dispute without litigation by discussing it with each other – including a requirement to escalate discussions of the disputed charges to managers of the individuals involved at the initial stage of the dispute discussions – prior to initiating litigation. Complaint, Tab A; Stipulated Joint Exhibit 1.

122. Attachment VIII, Section 3.1.9 of the interconnection agreement is structured to prevent a dispute from going straight to costly litigation because of difficulty resolving it with the lowest-level employee of the other side. Complaint, Tab A; Stipulated Joint Exhibit 1.

123. If these provisions required a party to escalate a dispute only within its *own* organization, the interconnection agreement would not require the back-and-forth dialog that would permit working through disputes informally, nor would it prevent a party from immediately filing a complaint as long as that party's *own* management agreed to proceed, rendering the interconnection agreement's dispute resolution provisions meaningless. Complaint, Tab A; Stipulated Joint Exhibit 1.

124. As the complainant, Core had an obligation to follow the dispute resolution process before filing its formal complaint. Interconnection Agreement, Attachment VIII, Section 3.1.9 and Part A, Section 24 (included in Complaint, Tab A; Stipulated Joint Exhibit 1).

2. The Doctrines of Claim Preclusion and Issue Preclusion Bar Core's Claims

a. Claim Preclusion (Technical Res Judicata)

125. Core could have and should have brought its facilities charges claims in the complaint case before the Commission at Docket No. C-2011-2253750, when it brought its claims against Verizon for other simultaneously-rendered back-bills.

126. Core filed its amended complaint in Docket No. C-2011-2253750 on Monday, April 16, 2012,⁶ the first business day after Verizon disputed Core's switched access and facilities back-bills on Friday April 13, 2012,⁷ and included the switched access bills as a new claim. It also could have included the facilities back bills, but Core waited nearly two more years to raise those claims.

127. There is an identity of the issues in this proceeding and Docket No. C-2011-2253750 because both involve the validity of back-bills rendered by Core to Verizon in January/February 2012 and thereafter, allegedly pursuant to the same interconnection agreement between Core and Verizon.

128. There is an identity of the causes of action because both complaints raise a cause of action against Verizon for alleged breach of the interconnection agreement because of Verizon's non-payment of Core's back-bills. Compare Complaint at ¶¶ 21; 45-52 with Core's Amended Complaint in Docket No. C-2011-2253750 at ¶¶ 107-119.

129. Core relies on the exact same e-mails to establish its claims in both proceedings. Compare April 23, 2012 and May 8, 2012 e-mails from Bret Mingo of Core to Ken Roos of

⁶ See Amended Complaint of Core Communications Inc., Pennsylvania PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (April 16, 2012).

⁷ See Core Stmt. 1.0 at Exhibit I, the first three pages of which are the April 13, 2012 e-mail from Ken Roos of Verizon to Core disputing Core's switched access and facilities back-bills.

Verizon regarding bills rendered by Core in January 2012 to multiple Verizon entities, including Verizon (included in Complaint, Att. E) *with* Ex. BLM-6 to Core Statement 1.0 in Docket No. C-2011-2253750 (same e-mails).

130. There is an identity of persons and parties to the action because this proceeding and Docket No. C-2011-2253750 involve the same complainant and the same respondent.

131. There is identity of the quality and capacity of the parties suing or sued because Core's and Verizon PA's status remains unchanged from the earlier proceeding. Both entities continue to operate as going concerns and have the same capacity to sue and to be sued as they did in the prior docket.

b. Issue Preclusion (Collateral Estoppel)

132. Core's Virginia affiliate litigated the validity of its facilities bills to Verizon's Virginia affiliates to conclusion, losing both in the federal district court and again at the Fourth Circuit Court of Appeals. *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649, *10 (E.D. Va. April 22, 2013), *rev'd in part, remanded*, 752 F.3d 364 (4th Cir. 2014), *judgment entered on remand*, 2014 U.S. Dist. LEXIS 166879 (E.D. Va. December 2, 2014) ("*VA District Court Decision*"); *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364, 372-73 (4th Cir. 2014) ("*VA Fourth Circuit Decision*").

133. The issues in the Virginia and Pennsylvania cases are identical – the validity of a Core affiliate's attempt to bill a Verizon affiliate facilities charges under provisions of an interconnection agreement that only allow the Core affiliate to bill reciprocal compensation, and doing so at rates not found in the Core affiliate's section of the interconnection agreement's pricing appendix.

134. The Virginia and Pennsylvania pricing appendices contain virtually identical language, except that the Pennsylvania interconnection agreement additionally bars Core from charging any rate higher than that charged by Verizon:

Virginia:⁸

X. All Other [Core Virginia] Services Available to Verizon for Purposes of Effectuating Local Exchange Competition

Available at [Core Virginia]’s tariffed or otherwise generally available rates.

Pennsylvania:⁹

V. All Other CORE Services Available to [VERIZON] for Purposes of Effectuating Local Exchange Competition

Available at CORE’s tariffed or otherwise generally available rates, not to exceed [VERIZON] rates for equivalent services available to CORE.

135. There is a final judgment on the merits of the facilities charge issue in the Virginia proceeding, as the Fourth Circuit upheld the Virginia federal district court’s denial of Core’s Virginia affiliate’s facilities charge claims. *See VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73.

136. Verizon and Core are each in privity with their respective Virginia affiliates that litigated the facilities charge claims in that state.

137. Verizon has two affiliates that are incumbent local exchange carriers in Virginia: Verizon Virginia LLC (“Verizon VA”) and Verizon South Inc. (“Verizon South”), and all three

⁸ See Section B.X. of the Virginia interconnection agreement’s Pricing Appendix (page 155), included in Exhibit E to VZ Stmt. 1.0.

⁹ See Section B.V. of the Pennsylvania interconnection agreement’s Pricing Appendix (page 23), included in Exhibit 1 to VZ Stmt. 2.0.

of these Verizon entities are wholly-owned subsidiaries of Verizon Communications Inc. VZ Stmt. 2.0 at 30-31.

138. Core and its Virginia affiliate, CoreTel Virginia, LLC (“Core VA”), are both wholly-owned by a parent company called CoreTel Communications, Inc. VZ Stmt. 2.0 at 31 and Exhibit 3 thereto (Core’s July 28, 2014 responses to Verizon Interrogatories II-6 through II-10). Deposition testimony in the Virginia court case offered additional details demonstrating the privity between Core and Core VA, including the existence of common officers and employees. *Id.* at 31 and Proprietary Exhibit 8 thereto.

139. Core had ample opportunity to litigate the validity of the facilities bills in the Virginia action, including the opportunity to challenge the lower court’s decision to the Fourth Circuit Court of Appeals.

140. The ruling on Core VA’s facilities charge claims in the Virginia proceeding was essential to the judgment there, as Core VA’s attempt to collect on the facilities charges back-bills there was a critical element of Count II of its amended complaint in Virginia, which sought payment on its facilities charges back-bills. *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at *11.

3. The Doctrine of Unclean Hands Bars Core’s Claims

141. Core’s hands are unclean in a manner directly connected to the instant dispute.

142. Core is seeking to collect millions of dollars in facilities charges from Verizon pursuant to the parties’ interconnection agreement while simultaneously refusing to pay the facilities charges it owes Verizon under the same interconnection agreement provisions (an issue on which the Initial Decision in Docket Nos. C-2011-2253750/C-2011-2253787 found in Verizon’s favor). Tr. 53, 70-71.

143. Core is not paying *any* Verizon invoices in Pennsylvania – including those for collocation and other services provided by Verizon with which Core has no issue – on the asserted basis that “[y]ou owe us more money than we owe you.” Tr. at 53; 70-71 (Mingo).

144. Core intentionally delayed bringing this action (Complaint, ¶ 20), increasing Verizon’s litigation costs and depriving it of access to the expertise and recollection of several employees with direct knowledge of the facts, who left the company after 2012. VZ Stmt. 1.0 at 10.

II. PROPOSED CONCLUSIONS OF LAW

A. Burden of Proof

145. As the proponent of an order requiring Verizon to pay the disputed bills at issue, Core bears the burden of proving its claims. *See* 66 Pa. C.S. § 332(a); *see also* Transcript (“Tr.”) at 7.

146. To establish a sufficient case and satisfy its burden of proof, Core must establish that Verizon is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196, *7 (1990). Core must make this showing by a preponderance of the evidence. *Id.*, *see also Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990), *app. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

147. While the burden of going forward with evidence may shift back and forth between the parties, the ultimate burden of persuasion remains with Core. *Milkie v. Pa. Public Utility Comm’n*, 768 A.2d 1217, 1220 (Pa. Commw. 2001).

148. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm’n*, 67 Pa. Commw. 597, 601, 447

A.2d 1100, 1101 (1982), *Edan Transportation Corp. v. Pa. Public Utility Comm'n*, 154 Pa.

Commw. 21, 25 623 A.2d 6, 7 (1993), 2 Pa. C.S. § 704.

149. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 292, 612 A.2d 434, 436 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Comm'n*, 489 Pa. 109, 128, 413 A.2d 1037, 1047 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 288, 166 A.2d 96, 97 (1960); *Murphy v. Dep't of Public Welfare*, 85 Pa. Commw. 23, 29, 480 A.2d 382, 386 (1984).

150. Verizon bears the burden of proof on its affirmative defenses against Core. 66 Pa. C.S. § 332(a); *Coldren v. Peterman*, 2000 Pa. Super. 364, *P15, 763 A.2d 905, 909 (2000), *app. denied*, 566 Pa. 633, 781 A.2d 137 (2001); *Commonwealth ex rel. Corbett v. Griffin*, 596 Pa. 549, 563, 946 A.2d 668, 676 (2008).

B. Core's Facilities Charges Bills to Verizon Are Not Authorized by the Interconnection Agreement

151. The interconnection agreement does not permit Core's bills to Verizon for tandem ports or multiplexing for the following reasons, rendering Core's tandem port and multiplexing charges invalid.

- a. The interconnection agreement limits the compensation Core may charge for terminating Verizon's local traffic to reciprocal compensation, which Core has already billed and Verizon has paid in the manner required by the interconnection agreement. Interconnection Agreement, Attachment IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2; Part B (definition of Reciprocal Compensation) (all included in Exhibit 1 to VZ Stmt. 2.0). Core's additional separate charges for tandem ports and multiplexing violate the interconnection agreement. *See VA Fourth Circuit Decision, supra*, 752 F.3d at 373.

- b. Because the interconnection agreement does not permit Core to bill Verizon for tandem ports or multiplexing in addition to reciprocal compensation for the transport and termination of local traffic, it is not necessary to consider whether the interconnection agreement's Pricing Attachment provides a Core rate for these facilities. Even if it did, such a rate could not apply in this situation since compensation is limited to reciprocal compensation.
- c. However, the Pricing Appendix also does not authorize Core to bill the rates it has charged for tandem ports and multiplexing. Core has no tariffed or "otherwise generally available rates" for tandem ports or multiplexing, as required by Pricing Appendix, Section B, and Section B.V. of the interconnection agreement's Pricing Appendix does not permit Core to bill Verizon the *Verizon-to-Core* rates set forth in Section A of the interconnection agreement's Pricing Appendix.

152. Even if the interconnection agreement permitted Core to charge for tandem ports and to use Verizon's rates, which it does not, Section B.V. of the Pricing Appendix prohibits Core from charging a rate higher than Verizon's rate for "equivalent services available to CORE." Verizon's port charges are embedded in its reciprocal compensation rates and therefore its "equivalent" rate for ports is zero. Interconnection Agreement, Pricing Appendix, Section B.V. (included in Exhibit 1 to VZ Stmt. 2.0); VZ Stmt. 2.0 at 13; VZ Stmt. 2.1 at 5-9; Core Cross Exhibit 2; Core Cross Exhibit 5; Tr. at 111-13; 118-21; 123.

153. Even if the interconnection agreement permitted Core to charge Verizon's UNE Tandem Trunk Port rate (which it does not), the current Verizon UNE Tandem Trunk Port rate under the interconnection agreement is \$71.48 per month, not the \$214.57 per month rate that Core billed.

154. The \$214.57 rate that appeared in the Pricing Appendix approved in 2000 was superseded by the Commission's new \$71.48 per month Tandem Trunk Port rate, effective

October 1, 2004.¹⁰ Verizon Tariff PA P.U.C. – No. 216, Section 3, 2nd Revised Sheet 8B (included in Exhibit 5 to VZ Stmt. 2.0). Pricing Appendix, Section A.III.D, included in Exhibit 1 to VZ Stmt. 2.0), footnote 1 on page 1 (“the rates and charges set forth in [the Pricing Appendix] shall apply *until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time ...*” (emphasis added); VZ Stmt. 2.0 at 15-16. While the interconnection agreement does not permit Core to bill Verizon *anything* for tandem ports, simply correcting Core’s rate error would immediately reduce its port charges by roughly \$2.5 million (from approximately \$3.7 million to \$1.2 million). VZ Stmt. 2.0 at 16-17.

155. Core’s entrance facility and TELRIC transport charges are invalid because the parties’ interconnection agreement only authorizes Core to bill Verizon for transport between the POI and IP “if necessary,” and only at a rate that does not exceed Verizon’s equivalent charge. Interconnection Agreement, Attachment IV, Sections 1.2.2 and 2.4.2 (included in Exhibit 1 to VZ Stmt. 2.0).

156. It was not “necessary” for Verizon to purchase transport from Core in the Philadelphia LATA because Verizon already had facilities in place to carry its traffic to 401 North Broad Street before Core requested that Verizon relocate those facilities to 900 Race Street, claiming Core was “abandoning” the North Broad Street location.

157. The interconnection agreement permits Verizon to decide how to send its traffic to Core, including self-provisioning transport or obtaining it from a third party and does not

¹⁰ See *Generic Investigation Re Verizon Pennsylvania Inc.’s Unbundled Network Element Rates*, Docket No. R-00016683 (Compliance Order entered July 16, 2004); *Generic Investigation Re Verizon Pennsylvania Inc.’s Unbundled Network Element Rates; Verizon Pennsylvania Inc.’s Petition to Stay the Effectiveness of Certain Rate Changes Pending Further Action by the FCC; Verizon Pennsylvania Inc.’s Petition for Expedited Adoption of an Interim Rate Pending Determination of Final Rates*, Docket Nos. R-00016683 and R-00049812 (Order entered September 30, 2004).

require Verizon to purchase transport from Core to carry its traffic to Core's switch. Tr. at 73-75 (Mingo).

158. Core "has manipulated the designation of POIs in order to maximize the transport revenues [Verizon] must pay to [Core]." Interconnection Agreement, Attachment IV, Section 1.2.2 (included in Exhibit 1 to VZ Stmt. 2.0).

159. Core's misleading e-mails regarding "abandoning" Core's 401 North Broad Street location in Philadelphia represent a lack of candor in its communications that violates the interconnection agreement's requirement of good faith dealing. Interconnection Agreement, Part A, Section 42.1 (included in Exhibit 9 to VZ Stmt. 2.1).

160. Even if the interconnection agreement permits Core to bill Verizon for transport in Philadelphia at rates not to exceed Verizon's equivalent rate, which it does not, Core has overbilled Verizon. At most, Core could have billed for a DS-3 Channel Termination (also known as an entrance facility), but could not also bill a dedicated transport charge on top of the entrance facility charge since the facility is not connecting two Core serving wire centers. Core also should have billed for only two DS-3 circuits, rather than four, since there were only two in place during the relevant time period. VZ Stmt. 2.0 at 26. Core also used an outdated DS-3 Channel Termination rate of \$975.90/month rather than the current Verizon UNE DS-3 Channel Termination rate of \$446.43/month. Correcting these errors would reduce Core's transport billings from \$41,506.92 to \$12,500.04 as of the date of the Complaint. VZ Stmt. 2.0 at 27-28.

161. Core's tandem trunk port and multiplexing charges for the Altoona LATA are invalid because Amendment No. 1 to the parties' interconnection agreement precludes Core from billing Verizon any facilities charges for Altoona. Interconnection Agreement, Amendment No. 1 (included in Exhibit 1 to VZ Stmt. 2.0).

162. Core's attempt to collect from *Verizon Pennsylvania LLC* tandem trunk port and multiplexing charges billed to *Verizon North LLC* for the Erie LATA is invalid. Core cannot collect from *Verizon*, under *Verizon's* interconnection agreement, amounts billed to *Verizon's affiliate*, under a *separate* interconnection agreement (as Core has conceded).

C. Verizon's Affirmative Defenses Are Sustained

163. The doctrine of claim preclusion (sometimes called "technical res judicata") bars "claims that were actually litigated" in a prior proceeding, "as well as those matters that *should have been litigated*" therein. *Weney v. Workers' Comp. Appeal Bd. (Mac Sprinkler Sys.)*, 960 A.2d 949, 954 (Pa. Commw. 2009), *app. denied*, 601 Pa. 691 (2009) (emphasis in original; citing *Henion v. Workers' Comp. Appeal Bd. (Firpo & Sons, Inc.)*, 776 A.2d 362 (Pa. Commw. 2000)). "Technical res judicata applies when four conditions exist: (1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued." *Merkel v. Workers' Comp. Appeal Bd. (Hoffman Indus.)*, 918 A.2d 190, 192-93 (Pa. Commw. 2007) (citing *Henion, supra*).

164. Having failed to raise its facilities charges claims in Docket No. C-2011-2253750, and with that proceeding now litigated and an initial decision on the merits awaiting Commission action, the doctrine of claim preclusion bars Core's attempt to pursue those claims here because Core could have brought the instant claims in the earlier proceeding and simply chose not to.

165. The doctrine of issue preclusion "is based on the policy that a losing litigant does not deserve a rematch after fairly suffering a loss in adversarial proceedings on an issue identical in substance to the one he subsequently seeks to raise." *Pa. Bd. of Prob. & Parole v. Pa. Human Rel. Comm'n*, 66 A.3d 390, 395 (Pa. Commw. Ct. 2013), *app. denied*, 79 A.3d 1100 (2013); *see*

also *Plaxton v. Lycoming County Zoning Hearing Board*, 986 A.2d 199, 208 (Pa. Commw. 2009), app. denied, 608 Pa. 633 (2010).

166. The doctrine of issue preclusion prohibits Core from re-litigating here issues of fact and law that were decided against its affiliate in Virginia.

167. The Virginia federal district court denied Core's Virginia affiliate's facilities charges claims. *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at **10-11.

168. The United States Court of Appeals for the Fourth Circuit upheld the federal district court's decision denying Core's Virginia affiliate's facilities charges claims. *VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73.

169. "Generally, collateral estoppel forecloses re-litigation of issues of fact or law in subsequent actions where the following criteria are met: (1) the issue in the prior adjudication was identical to the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in a prior action; and (5) the determination in the prior proceeding was essential to the judgment." *Pa Bd. Of Prob. & Parole v. Pa. Human Rels. Comm'n*, 66 A.3d 390, 395 (Pa. Commw. 2013), app. denied, 79 A.3d 1100 (Pa. 2013). All five criteria are met here.

170. The doctrine of collateral estoppel, or issue preclusion, bars Core's attempt to claim payment for tandem ports and multiplexing here because the Virginia federal courts ruled against Core's affiliate on these issues.

171. "The doctrine of unclean hands is derived from the unwillingness of a court to give relief to a suitor who has conducted himself so as to offend the moral sensibilities of the judge...." *Lucey v. Workmen's Comp. Appeal Bd. (Vy-Cal Plastics & PMA Group)*, 557 Pa. 272,

279 (1999) (citing *In re Estate of Pedrick*, 505 Pa. 530, 544 (1984)). “This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with iniquity or bad faith relative to the matter in which he seeks relief.” *Id.* The doctrine of unclean hands does not apply simply because a party’s “conduct in general has been shown not to be blameless,” but rather, where “the wrongdoing directly affects the relationship subsisting between the parties and is directly connected with the matter in controversy.”

Pedrick, supra, 505 Pa. at 545.

172. Core’s hands are unclean in a manner directly connected to the instant dispute because Core is seeking to collect millions of dollars in facilities charges from Verizon pursuant to the parties’ interconnection agreement while simultaneously refusing to pay Verizon facilities charges (or any other charges) under the same interconnection agreement, Tr. at 53; 70-71 (Mingo), and Core intentionally delayed bringing this action (Complaint, ¶ 20), increasing Verizon’s litigation costs and depriving it of access to the expertise and recollection of several employees with direct knowledge of the facts, who left the company after 2012. VZ Stmt. 1.0 at 10.

III. PROPOSED ORDERING PARAGRAPHS

1. The Formal Complaint filed by Core Communications, Inc. against Verizon Pennsylvania LLC at Docket No. C-2014-2406550 is denied in its entirety.

2. The New Matters filed by Verizon Pennsylvania LLC against Core Communications, Inc. at Docket No. C-2014-2406550 are sustained, consistent with this Opinion and Order.

3. Core Communications, Inc. is directed to cease billing Verizon Pennsylvania LLC for trunk ports, multiplexing, entrance facilities and TELRIC transport.

4. Core Communications, Inc. is directed to comply with the dispute resolution provisions of the parties' interconnection agreement before bringing any subsequent complaints against Verizon Pennsylvania LLC pursuant to that interconnection agreement.

5. This case is marked closed, but the Commission retains jurisdiction to monitor and enforce compliance with the terms of this Opinion and Order.

Respectfully submitted,



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