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January 12, 2015

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 Post-Hearing Reply Brief, in the above captioned matter. Because the Reply Brief includes certain Proprietary information the Public Version of the Reply Brief is being e-filed, with the Proprietary Version being provided via overnight delivery.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon Pennsylvania LLC's Post-Hearing Reply Brief, 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 January, 2015.

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 POST-HEARING REPLY BRIEF

PUBLIC VERSION

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Dated: January 12, 2015

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I. INTRODUCTION

Core[1] ignores the facts and the law that refute its improper attempt to bill Verizon[2] millions of dollars in facilities charges. Core simply repeats the assertions made in its direct testimony without attempting any meaningful response to the contrary facts and arguments introduced by Verizon. Core never mentions the decisions of the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit that considered and rejected the very same facilities charges Core has attempted to bill here, finding in favor of Verizon's Virginia affiliates.[3] Core also ignores much of the evidentiary record developed in this case because it undermines Core's unfounded effort to collect over $4 million from Verizon.

A full examination of the facts, the law and the interconnection agreement[4] shows that Core's complaint is a baseless attempt to collect on invalid facilities bills generated and sent to Verizon only after Core found itself in dire financial condition and in desperate need of cash. Although the parties' interconnection agreement has been in place since 2000, Core never attempted to bill Verizon facilities charges during the *first twelve years* of that agreement's existence – throughout which Verizon terminated local traffic to Core's network over facilities that Verizon had *self-provisioned* at its own expense. Nothing had changed in the parties' interconnection agreement or physical network interconnection configuration in 2012, when

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1 Core Communications, Inc. ("Core").

2 Verizon Pennsylvania LLC ("Verizon").

3 *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649, **9-11 (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*").

4 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 1and relevant excerpts are attached to Verizon's testimony.

Core suddenly issued millions of dollars of facilities back-bills to Verizon (which billings have continued to this day).

As detailed in Verizon's initial brief, the parties' interconnection agreement does not permit Core to bill Verizon the facilities charges at issue. That agreement instead limits Core's compensation to the reciprocal compensation charges that Verizon has already paid (and transport charges only under limited circumstances not present here). Indeed, the interconnection agreement does not even contain Core rates for the tandem ports, multiplexing, entrance facilities and TELRIC transport for which Core has attempted to bill Verizon. As a result, Core uses outdated *Verizon* rates for those facilities as a substitute for authorized rates of its own. Verizon has also established several affirmative defenses that include Core's failure to follow the agreement's mandatory dispute resolution process before filing the Complaint and the doctrines of claim preclusion, issue preclusion and unclean hands.

For all these reasons, Core's claims are invalid and the Commission should deny Core's complaint in its entirety.

II. ARGUMENT

A. Core Failed To Carry Its Burden of Proof

As the complainant, Core bears the burden of proving its claims. 66 Pa. C.S. § 332(a). Core has not carried that burden. Although 52 Pa. Code § 5.501(a)(3) requires the party with the burden of proof to "*completely address*, to the extent possible, every issue raised by the relief sought and *the evidence adduced at hearing*" (emphasis added), Core's initial brief[5] ignores much of the prefiled Verizon testimony admitted at hearing.[6] Core therefore fails to address

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5 "Main Brief of Core Communications, Inc." (December 12, 2014) ("Core Brief").

6 Core cited Verizon's written testimony just 12 times, generally to substantiate that Verizon disputed Core's assertion of liability. Core Brief at 7, 11, 17, 19, 23, 25-26.

many of the key issues in the case, including the decisions of two federal courts finding virtually identical facilities bills from Core's Virginia affiliate invalid, Core's misleading representations regarding its network redesign in the Philadelphia LATA, and the many rate application errors associated with its entrance facility and TELRIC transport charges. Verizon's initial brief[7] addressed those issues, as well as most of the other arguments found in Core's initial brief.

In addition to failing to acknowledge a large portion of the record in its brief, Core also continues to assert inaccurate facts. For example, Core continues to claim that Verizon bills Core for tandem trunk ports under the circumstances present here. Core Brief at 9. However, Core ignores Verizon's rejoinder testimony, which explained that Verizon only bills Core for trunk ports on *non-local* traffic subject to Verizon's access tariff, and not on *local* traffic, which is the only type of traffic at issue in this case. Verizon Statement ("VZ Stmt.") 2.1 at 8-9; VZ Stmt. 2.0 at 4-5. Core did not dispute this in its oral surrejoinder, but repeats this incorrect factual allegation in its brief.

B. Core's Argument that Verizon's Access Service Requests Were Orders to Core Is Irrelevant and Wrong

Core devotes many pages to arguing that Verizon's internal Access Service Requests ("ASRs") were orders to Core for the facilities for which Core has billed Verizon. Core Brief at 6-9. They were not. The record demonstrates that these ASRs are not "orders" to Core, but internal Verizon orders submitted to its own provisioning systems to self-provision the trunks used to carry local traffic from Verizon's network to Core's switches.[8] But whether these ASRs are characterized as "orders" is irrelevant. As the Fourth Circuit explained in the Virginia proceedings:

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7 "Verizon's Initial Post-Hearing Brief" (December 12, 2014) ("VZ Brief"). Citations to Verizon's brief incorporate the record and legal citations contained therein.

8 VZ Stmt. 1.0 at 3-4; 14-15; VZ Stmt. 1.1 at 2-4.

> CoreTel supports its claim with documents that, it contends, reflect orders from Verizon for these facilities.... CoreTel was not entitled to bill Verizon for these facilities regardless of whether Verizon submitted orders for them ... [because it] is to be compensated for the use of these facilities, on its side of the interconnection point, exclusively under the rubric of reciprocal compensation.

VA Fourth Circuit Decision, supra, 752 F.3d at 372-73. In short, and as explained in Verizon's initial brief, even if the ASRs were "orders," which they were not, the interconnection agreement does not permit Core to bill Verizon for ports, multiplexing, entrance facilities or TELRIC transport.

In his oral surrejoinder, Core witness Mr. Mingo seemed to retreat from his earlier argument that Verizon's ASRs were orders *to Core* for facilities. He asserted that Verizon nonetheless should be liable for Core's facilities charges because "regardless of whether there was an order or not, the facilities are being used." Transcript ("Tr.") at 13. However, Core's brief appears to revive Mr. Mingo's original position. Core Brief at 6-9. Core's position that Verizon's ASRs were orders for facilities from Core is simply wrong. Since the inception of the parties' interconnection agreement, Verizon has self-provisioned the trunks used to carry local traffic to Core's network for termination and provided Core with copies of Verizon's internal ASRs for those self-provisioned trunks so that Core could prepare to receive local traffic over them. VZ Stmt. 1.0 at 14-15; VZ Stmt. 1.1 at 2. For the first twelve years of the parties' interconnection agreement, Core never asserted that Verizon's internal ASRs were orders *to Core* for facilities *from Core*, nor did Core bill Verizon for facilities. VZ Stmt. 2.0 at 3; VZ Stmt. 1.1 at 2. However, Core suddenly took an opposite stance in 2012, claiming that Verizon's internal ASRs for self-provisioned trunks were actually orders to Core for an array of facilities. *Id.* Verizon witness Mr. Bando testified that in his 28 years of experience, he has never seen any

carrier besides Core (and its affiliates) take such a position, nor have his colleagues. VZ Stmt. 1.0 at 14-15.

Core's brief ignores that both the U.S. District Court for the Eastern District of Virginia and the U.S. Court of Appeals for the Fourth Circuit soundly rejected the contention that Verizon's ASRs constituted orders for facilities from Core, ruling against Core's affiliate, CoreTel Virginia, LLC ("Core VA") on this issue. VZ Brief at 7, FN 13; *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at *10; *VA Fourth Circuit Decision, supra*, 752 F.3d at 372-73. As the federal district court noted, 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." *VA District Court Decision, supra*, 2013 U.S. Dist. LEXIS 58649 at *10. The Fourth Circuit upheld the district court's denial of Core VA's facilities charges claims. *VA Fourth Circuit Decision, supra,* 752 F.3d at 372-73.

The factual record developed here supports the same result in this case. Verizon witness Mr. Bando explained that the "REMARKS" field of the ASR discussed by Mr. Mingo (Core Stmt. 1.0 at 12) actually demonstrates that the ASR represents a "Verizon order, placed via Verizon's own provisioning system, for a new set of *self-provisioned* trunks to ride on the *self-provisioned* DS3s that Verizon installed to carry local traffic to Core." VZ Stmt. 1.1 at 3. Mr. Bando also explained that the fictitious Billing Account Number (215 Y99-9999) listed in the ADMINISTRATIVE SECTION" of the ASR upon which Mr. Mingo relies is included to prevent Verizon's Carrier Access Billing system from generating bills from Verizon *to itself* for

these trunks, again confirming that the ASR is *not* an order *to Core* for the facilities for which Core billed Verizon, but an *internal* Verizon order for *self-provisioned* Verizon facilities. *Id.*

Mr. Bando finally explained that contrary to Mr. Mingo's assertions (Core Stmt. 2.0 at 4-5), the "BILLCON" field of the ASR is not a directive for Core to bill Verizon the disputed charges at issue. Rather, the Alliance of Telecommunication Industry Solutions' Access Service Ordering Guidelines require that every ASR contain a billing contact in the "BILLING INFORMATION" field so that if charges are appropriate, the billing party knows where to send an invoice. VZ Stmt. 1.1 at 3. However, the specific terms of the parties' interconnection agreement determine whether charges are appropriately billed under that agreement, not the mere presence of a billing contact in the BILLCON field of an ASR (since the BILLCON field will always include a billing contact, but charges are not always appropriate). *Id.* Core's brief repeats the same misinformation about the ASRs that Mr. Mingo originally offered (Core Brief at 8-9), without even attempting to take on Mr. Bando's subsequent refutation of Core's assertions. Mr. Mingo had full opportunity to offer oral surrejoinder to Mr. Bando's testimony, but said nothing on the subject, thereby conceding that Mr. Bando's explanation was correct. Tr. 12-21.

Finally, Core's claim that the interconnection agreement somehow supports its argument that the ASRs authorize it to bill for facilities is also wrong. Core argues that "Verizon's characterization of the ASRs is not consistent with the relevant provisions of the ICA," citing Part B (Definition of "Access Service Request") and Attachment IV, Sections 4.3.1 and 4.3.2. Core Brief at 7-8. However, these provisions of the parties' interconnection agreement neither prohibit Verizon from using ASRs for internal provisioning purposes, nor support Core's attempt to bill Verizon for Verizon's *self-provisioned* facilities.

While Part B's definition of "Access Service Request" says that an ASR "may be used to order trunking and facilities between [Core] and [Verizon] for local interconnection," it does not declare this to be the *exclusive* use of an ASR, nor does it prohibit a party from using an ASR to submit an internal order to its own provisioning system for facilities it is self-provisioning (rather than obtaining from the other party or a third party). Nor does Part B's definition of ASR have any bearing on the parties' financial responsibility for facilities. VZ Stmt. 2.0 at Exhibit 1 (ICA excerpts, including Part B).

Core effectively contends that because Part B says that an ASR "may be used" to order facilities from the other party, that is the *only* permissible use of an ASR, and an ASR must therefore constitute an order for facilities from the other party. But as Mr. Bando explained, the interconnection agreement permits Verizon to use self-provisioning as a means of carrying traffic to Core's network (a point with which Mr. Mingo agreed; Tr. 74-75), and does not impose requirements on Verizon's internal self-provisioning processes. Tr. 90-91; Interconnection Agreement, Attachment IV, Section 1.2.1.2 (included in Exhibit 1 to VZ Stmt. 2.0). In this case, Verizon issued ASRs to its own provisioning system to self-provision the facilities used to terminate local traffic to Core, as Attachment IV, Section 1.2.1.2 of the interconnection agreement permits it to do.[9] Part B does not authorize Core to bill Verizon for facilities based on Verizon's internal ASRs for the engineering of its own network.

Core's reliance on Attachment IV, Sections 4.3.1 and 4.3.2 of the ICA fares no better. Core Brief at 7-8. These provisions are located in the "Trunk Servicing" subsection of the "Network Servicing" section of the ICA and state that ASRs are the means to submit orders

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[9] Attachment IV, Section 1.2.1.2 confirms that "[Verizon] is responsible for engineering and maintaining its network on its side of the [Point of Interconnection]" and places no restrictions on the ordering and provisioning processes Verizon uses in performing this engineering and maintenance. Interconnection Agreement, Attachment IV, Section 1.2.1.2 (included in Exhibit 1 to VZ Stmt. 2.0).

"between the parties" for various actions relating to trunks. VZ Stmt. 2.0 at Exhibit 1 (ICA excerpts). However, like Part B, these ICA provisions do not prohibit the use of ASRs for internal self-provisioning orders, nor do they address financial responsibility for facilities or authorize Core to bill Verizon for facilities that Verizon *self-provisioned*. Core appropriately admits that Verizon is permitted to self-provision its own trunks (Tr. 74-75) and points to no provision of the interconnection agreement that prohibits Verizon from using internal ASRs to submit self-provisioned trunk orders into its own internal provisioning systems.

C. Core Misreads the Interconnection Agreement's Rate Provisions

Verizon's initial brief explained that the interconnection agreement contains no authorized Core rates for the facilities for which it billed Verizon and that Core cannot simply bill the *Verizon* rates found in the interconnection agreement as a substitute for having its own rates. VZ Brief at 18-19; 23-24; 29. Verizon also explained that in many instances, Core billed Verizon *outdated Verizon rates* rather than current ones. *Id.* at 21-23; 29-31. For example, Core used an outdated tandem trunk port rate of $214.57 per month instead of the $71.48 monthly rate that has been in place since 2004, resulting in overcharges of approximately $2.5 million as of filing the complaint, even assuming Core could charge Verizon's rates in the absence of rates of its own (which, as discussed below and in Verizon's initial brief, the interconnection agreement does not allow). VZ Brief at 22-23.

Core admits that it has no tariffed rates for ports, multiplexing, entrance facilities or TELRIC transport, and that Section B of the interconnection agreement's Pricing Appendix[10] (entitled "*CORE* SERVICES, FACILITIES AND ARRANGEMENTS"; emphasis added), which lists the rates Core may charge, contains no Core rates for such facilities. Core Brief at 18-19.

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[10] "Appendix 2" to the parties' interconnection agreement adoption agreement, included in Exhibit 1 to VZ Stmt. 2.0.

But Core argues that it can bill Verizon the rates set forth in *Section A* of the agreement's Pricing Appendix, which contains the rates for "[*VERIZON*] SERVICES, FACILITIES AND ARRANGEMENTS" (emphasis added). *Id.* Core also claims that the Verizon rates set forth in the 2000 Pricing Appendix were never replaced by the new Verizon TELRIC rates approved by the Commission in 2004, such that Core is entitled to bill outdated Verizon rates that have not been in effect for over a decade. Core Brief at 18-21. Core is wrong on both points.

1. Section B.V. of the Pricing Appendix Does Not Authorize Core to Bill the Verizon-to-Core Facility Rates in Section A of the Pricing Appendix

Core admits that it has billed Verizon facilities rates that appear in *Section A* of the interconnection agreement's Pricing Appendix – which sets forth the rates for services, facilities and arrangements that *Verizon* provides to *Core* under the agreement – but asserts that Section B.V. of the Pricing Appendix allows this. Core Brief at 18-19; *see also* Core Exhibit S (Core's June 9, 2014 responses to Verizon Interrogatories I-6(d), I-7(d), I-8(d) and I-9(d)). Verizon's initial brief refuted this argument, noting that Core lacks "tariffed" or "otherwise generally available rates" for the facilities at issue, which are the only rates that Section B.V. of the Pricing Appendix authorizes Core to charge. VZ Brief at 18-19; 23-24; 29. Specifically, Section B.V. of the Pricing Appendix states as follows:

B. CORE SERVICES, FACILITIES AND ARRANGEMENTS

Service or Element Description:	**Recurring Charges:**	**Non-Recurring Charge:**
V. All other CORE Services Available to [VERIZON] for Purposes of Effectuating Local Competition.	**Available at CORE's tariffed or otherwise generally available rates, not to exceed [VERIZON] rates for equivalent services to CORE.**	

Core admits that it has no tariffed rates for the facilities at issue, but asserts that the *Verizon* facilities rates listed in Section A of the Pricing Appendix constitute *Core's* "generally

available rates" because "Core made these ICA rates available to Verizon quite simply by billing Verizon for the services...." Core Brief at 19. That interpretation would render the phrase "otherwise generally available rates" a nullity. The phrase "CORE's tariffed or otherwise generally available rates" in Section B.V. offers context demonstrating that the phrase "otherwise generally available rates" means rates that Core otherwise makes generally available *to all carriers* through some means similar to a tariff. Core's contention that it makes rates "generally available" by using them in a bill to a single company is nonsensical.

Similarly invalid is Core's attempt to insert words into Section B.V. of the agreement's Pricing Appendix, claiming that this provision "explicitly states that Core may simply bill Verizon at *any* generally available rate, not to exceed Verizon's." Core Brief at 19 (emphasis added). Section B.V. says no such thing – it says that Core may bill Verizon "***CORE's*** tariffed or otherwise generally available rates," not "***ANY*** tariffed or otherwise generally available rate." To the extent that Core contends that the word "CORE's" in the phrase "CORE's tariffed or otherwise generally available rates" modifies only the word "tariffed," but not the words "otherwise generally available," Core's interpretation defies both grammar and common sense. If "CORE's" modified only the word "tariffed," the sentence would make no sense, because the adjective "tariffed" would not modify any noun. Moreover, if Section B.V. of the Pricing Appendix permitted Core to charge *Verizon's* otherwise generally available rates, there would be no reason to have two separate sections of the Pricing Appendix, one explicitly setting forth Verizon's rates to Core (Section A), and the other setting forth Core's rates to Verizon (Section B).

The only logical reading of Section B.V. of the Pricing Appendix is that the word "CORE's" modifies both "tariffed … rates" and "otherwise generally available rates." Core has neither for the facilities at issue, preventing it from billing Verizon for them.[11]

2. The Commission-Approved 2004 TELRIC Rates Were Automatically Incorporated into the Parties' Interconnection Agreement

Verizon's initial brief explained that many of the Verizon rates Core billed were outdated, having been superseded by new Verizon TELRIC rates approved by the Commission in 2004.[12] VZ Brief at 21-23; 29-31. Those rates were automatically incorporated into the parties' interconnection agreement upon Commission approval pursuant to Footnote 1 on page 1 of the Pricing Appendix, which 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 Brief at 21-23 (trunk port rates); 29-31 (entrance facility and TELRIC transport rates); Interconnection Agreement, Pricing Appendix (included in Exhibit 1 to VZ Stmt. 2.0).

Core disputes this plain reading of the interconnection agreement's terms, arguing that Core never consented in writing to the new rates and the Commission's 2004 TELRIC rate order was not an "affirmative order of the Commission" that modified the interconnection agreement. Core Brief at 19-21. The Commission need not even reach this issue because the interconnection

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[11] The pricing appendix to the interconnection agreement between the parties' Virginia affiliates contains the same language (*see* VZ Stmt. 2.1 at 5, referencing Section B(X) of the Virginia ICA's Pricing Appendix, included in Exhibit E to VZ Stmt. 1.0), and both the federal district court and Fourth Circuit held that the interconnection agreement did not allow Core's Virginia affiliate to bill Verizon for facilities. *VA District Court Decision*, *supra*, 2013 U.S. Dist. LEXIS 58649 at ** 9-11; *VA Fourth Circuit Decision*, *supra*, 752 F.3d at 372-73.

[12] *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).

agreement does not allow Core to bill the Verizon rates therein as Core's own, and furthermore, as detailed in Verizon's initial brief, the interconnection agreement limits Core's compensation for the transport and termination of local traffic to reciprocal compensation (which Verizon has already paid). VZ Brief at 14-17. Nevertheless, Core's argument that it had to "consent" to the new Commission-approved rates before they became effective is baseless.

Core relies on Part A, Section 1.3 of the interconnection agreement to support its position. Core Brief at 20-21. However, that section is limited to services, facilities and arrangements provided "under and subject to the terms of the federal or state Tariffs of the Party providing them," and subsequent changes to those tariffs that "materially and adversely alter" their terms, not changes to the agreement's Pricing Appendix. *See* Interconnection Agreement, Part A, Sections 1.3 and 1.3.3 (included in Stipulated Joint Exhibit 1). For example, Part A, Section 1.3 (which frames all subsections thereof), states that "[t]o the extent that a Tariff of a Party applies to any service, facility or arrangement provided pursuant to this Agreement, the following shall apply...." Core relies on Part A, Section 1.3.3 for the proposition that a "Party's written consent" or "an affirmative order of the Commission" is required to update the rates set forth in Part A of the Pricing Appendix, but that section applies only in the context of "[a]ny change or modification *to any Tariff* ... that materially and adversely alters the terms" thereof (emphasis added). Tariffed "terms" are different from tariffed "rates," and in any event, Commission-ordered *reductions* to Verizon's TELRIC rates could not "materially and adversely" alter the terms of a Verizon tariff incorporating them (or the interconnection agreement, for that matter) such that Core's "consent" to the reductions would be required.

The rates listed in Section A of the Pricing Appendix for the facilities for which Core billed Verizon are not mere cross-references to Verizon tariffs, but actual dollars and cents rates

(compare Sections A.II.A, A.II.C, A.III.D of the Pricing Appendix, which list actual prices, with Section A.XI, which simply references Verizon's interstate and intrastate access tariffs). Thus, while the new TELRIC rates approved by the Commission in 2004 were incorporated into Verizon's tariff PA P.U.C. No. 216 (as ordered by the Commission), they were also automatically incorporated into Section A of the interconnection agreement's Pricing Appendix upon Commission approval, replacing the superseded rates. Core's apparent claim that the tariff-related provisions of Part A, Section 1.3 of the interconnection agreement invalidate the provisions of footnote 1 on page 1 of the Pricing Appendix regarding updates to the rates contained therein is specious and contrary to Part A, Section 1.3.2's directive that the agreement be construed to avoid conflicts. *See* Stipulated Joint Exhibit 1

Footnote 1 on page 1 of the Pricing Appendix is self-executing and no separate amendment was required to incorporate the superseding Commission-approved rates into the ICA because the Pricing Appendix was automatically updated to incorporate those rates upon Commission approval thereof.[13] In any event, Section B.V. of the Pricing Appendix prohibits Core from billing Verizon the higher, outdated rates, since it bars Core rates that "exceed [VERIZON] rates for equivalent services available to CORE," and the "equivalent services available to CORE" are available only at the Commission-approved 2004 TELRIC rates incorporated into the interconnection agreement.

D. Core's Tandem Port Charges Are Invalid

Core asserts that Verizon ordered tandem ports from Core and breached the interconnection agreement by disputing Core's tandem port charges. Core Brief at 9-13. As demonstrated above, the Verizon ASRs were internal orders for self-provisioned trunking, not

[13] For this reason, Core's citation to Part A, Section 36 of the interconnection agreement (governing amendments and modifications) is irrelevant. Core Brief at 21.

orders for facilities of any kind from Core. In any event, whether the ASRs were "orders" is irrelevant because the interconnection agreement does not permit Core to bill Verizon for ports for the termination of local traffic. Verizon's initial brief detailed the many reasons that Core's tandem port charges are invalid, including: (1) the terms of the parties' interconnection agreement do not permit Core to bill tandem port charges in addition to reciprocal compensation charges; (2) Core has no tariffed or otherwise "generally available" rates for tandem ports; (3) under "equivalent" circumstances, Verizon's rate for tandem ports is zero; and (4) Core billed Verizon *triple* the actual Verizon tandem trunk port rate. VZ Brief at 16-23.

1. Core Admits That Verizon Delivered Local Traffic to Core's Switches

Under Attachment IV, Section 2.1.1 of the parties' interconnection agreement, "[e]ach (originating) Party is responsible for bringing their traffic to a POI." Interconnection Agreement, Attachment IV, Section 2.1.1 (included in Stipulated Joint Exhibit 1). "POI" refers to the Point of Interconnection, defined in Attachment IV, Section 1.2.1.2 of the interconnection agreement (quoted in full at page 13 of the VZ Brief). Pursuant to Attachment IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2 of the interconnection agreement, the only charges Core may impose for carrying Verizon's traffic past the POI are those for "Transport" and "Termination" of local traffic – that is, "Reciprocal Compensation" as defined in Part B (Definitions) of the interconnection agreement. VZ Brief at 13-15; *see also* Stipulated Joint Exhibit 1.

With the exception of the Philadelphia LATA (discussed below in conjunction with Core's invalid entrance facility and TELRIC transport charges), Core has not billed Verizon transport charges, thereby acknowledging that Verizon has delivered local traffic all the way to Core's switches. VZ Stmt. 2.0 at 5; Core Stmt. 1.0 at 4-5. Core has also repeatedly confirmed that tandem trunk ports are a component of its switches. Core Brief at 9 (tandem trunk ports are

receptacles on the periphery of a switch); Core Stmt. 1.0 at 2-3 (trunk ports are a function of each Core switch); Tr. at 36-37; 41-43; 47-50 (Mr. Mingo's confirmation that both multiplexing and trunk ports are components of Core's switches). Yet, Core has billed Verizon tandem trunk port charges *in addition to* billing Verizon reciprocal compensation for the transport and termination of local traffic that Verizon transported to Core's switches.

To use Mr. Mingo's analogy regarding the USB port on a computer (Core Stmt. 1.0 at 10), Core's conduct is akin to Core billing Verizon not only for receiving data that Verizon sent to Core's computer through a USB cable provided by Verizon at its own expense, but billing Verizon a separate, additional charge for the USB port built into Core's computer on the grounds that Verizon did not transport its data all the way to the hard drive of Core's computer, but rather, only up to the lip of the USB port on the side of that computer. Core's position is untenable, as the Fourth Circuit recognized:

> 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.

Verizon has already paid Core reciprocal compensation[14] for the "Transport" and "Termination" of local traffic from the POI to Core's IP.[15] VZ Stmt. 2.0 at 9. Under Attachment IV, Sections 2.2.1, 2.2.1.1 and 2.2.1.2 and Part B (Definitions) of the interconnection agreement

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[14] Pursuant to Commission order, 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). VZ Brief at 15.

[15] Interconnection Point ("IP"), defined in Attachment IV, Section 1.2.1.1 of the interconnection agreement (quoted in full at page 13 of the VZ Brief).

(included in Exhibit 1 to VZ Stmt. 2.0), Core is not permitted to impose another separate charge for the use of the tandem port functionality of its switches.

2. The Interconnection Agreement's "Tandem Switching" Definition Does Not Authorize Core to Bill for Tandem Trunk Ports

Core argues that because the interconnection agreement's definition of "Tandem Switching" includes "trunk-connect facilities," and the Pricing Appendix includes separate rates for "Tandem Switching Usage" and unbundled "Trunk Ports – Tandem," Core may bill Verizon separate, additional charges for tandem trunk ports. Core Brief at 10-11. Core again misinterprets the interconnection agreement.

As noted above (and at length at pages 13-16 of Verizon's initial brief), the interconnection agreement limits what Core can charge for carrying Verizon's local traffic past the POI to reciprocal compensation. The definition of "Tandem Switching" includes tandem ports by reference to "trunk connect facilities" (Interconnection Agreement, Attachment III, Section 14.1.1, included in Stipulated Joint Exhibit 1), but the interconnection agreement's definition of "Reciprocal Compensation" already encompasses compensation for "Tandem Switching," because "Reciprocal Compensation" includes both "transport and termination of Local Traffic." Interconnection Agreement, Part B (Definition of "Reciprocal Compensation"). "Transport," in turn, already includes "any necessary Tandem Switching...." *Id.* at Attachment IV, Section 2.2.1.1. In other words, because Verizon is paying Core for reciprocal compensation, Core is already receiving compensation for the tandem port costs incurred in its provision of tandem switching, which is subsumed in the transport component of its reciprocal compensation charges. To allow Core to bill Verizon tandem port charges in addition to

reciprocal compensation would permit Core to double-recover tandem port charges and is not permitted by the interconnection agreement.

3. Verizon's Tandem Trunk Port Costs Are Included in Its Reciprocal Compensation Rate

Core's brief repeats Mr. Mingo's erroneous assertion that Verizon bills Core for tandem trunk ports under the circumstances present here (Core Brief at 9), ignoring Mr. D'Amico's rejoinder testimony confirming that Verizon does *not* bill Core for tandem trunk ports in conjunction with *local* traffic, which is the only type of traffic at issue here. VZ Stmt. 2.1 at 8-9; VZ Stmt. 2.0 at 4-5. Verizon bills Core for tandem trunk ports only on *non-local* (interexchange) traffic subject to its access tariffs. VZ Stmt. 2.1 at 8-9.

In response to Mr. Mingo's reliance on Exhibit Q to Core Stmt. 1.0 to substantiate his erroneous claims, Mr. D'Amico testified that while Exhibit Q lists various categories of port charges, it demonstrates that Verizon has not billed Core any port charges other than for the Altoona LATA, where Core designated its traffic to be 100% interstate, and thus, *non-local* traffic subject to Verizon's access tariff. VZ Stmt. 2.1 at 9. Mr. Mingo had every opportunity to offer oral surrejoinder to this testimony, but did not attempt to refute it because Mr. D'Amico was correct. Tr. 12-21. Verizon does not bill Core tandem trunk port charges in conjunction with local traffic.

Core also continues to dispute that Verizon's reciprocal compensation rate for the termination of local traffic includes Verizon's trunk port costs. Core Brief at 11-13. Core first misrepresents Mr. D'Amico's testimony, claiming that "Verizon argues that tandem trunk ports were subsumed in the *per-minute tandem switching rate*" the Commission approved in 2004. *Id.* at 11 (emphasis added). That is not what Mr. D'Amico said. Mr. D'Amico testified that "Verizon's port charges are embedded in its *Reciprocal Compensation rates*." VZ Stmt. 2.0 at

13 (emphasis added). As reflected in Core Proprietary Cross Exhibits 2 and 5, Tandem Switching is just one of several individual cost components added together to arrive at Verizon's Commission-approved tandem reciprocal compensation rate. As reflected at page 3 of Core Proprietary Cross Exhibit 5, those cost components also include **[BEGIN PROPRIETARY]**

[END PROPRIETARY]

Core next claims that the methodology of Verizon's 2001 Reciprocal Compensation Cost Study **[BEGIN PROPRIETARY]**

[END PROPRIETARY] Core Brief at 12 (emphasis in original). To support this assertion, Core cites Bates page VZ000818 of the Verizon Pennsylvania Inc. Master TELRIC Usage Cost Study, which sets forth the cost study methodology for Verizon's reciprocal compensation rate and states that **[BEGIN PROPRIETARY]**

[END PROPRIETARY] *Id.* (emphasis in original); *see also* Core Proprietary Cross Exhibit 4 at Bates Page VZ000818.

Core has misconstrued the cost studies produced by Verizon in discovery. As the Reciprocal Compensation cost study methodology reflects, Verizon excluded trunk port costs only from the **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** component[16] of its Reciprocal Compensation rate, not from its *total composite* Reciprocal Compensation rate. Core Proprietary Cross Exhibit 4 at Bates Page VZ000818; *see also* Core

[16] Because switching is not merely a component of the Reciprocal Compensation rate, but also an unbundled network element provided on a stand-alone basis (*see* Core Cross Exhibit 1 at page 19), Verizon had to exclude trunk port costs when modeling the costs of **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to arrive at a stand-alone rate for that particular unbundled network element.

Proprietary Cross Exhibit 5 (3rd page). Had Verizon not done this, it would have *double-recovered* its trunk port costs when adding the common trunk port cost components to other cost components to arrive at its total composite Reciprocal Compensation rate. *Id.*

Core also attempts to undermine Mr. D'Amico's testimony by arguing that the air mileage distance included in Mr. D'Amico's chart showing the rate elements comprising the total composite Verizon reciprocal compensation rate of $.002439/minute that the Commission approved in *2004* is inconsistent with the air mileage distance that Verizon proposed for approval in its *2001* cost study. Core Brief at 12-13; Core Cross Exhibit 2 (2nd page); Core Proprietary Cross Exhibit 6. But Core ignores that the Commission required modification of various inputs used in Verizon's 2001 *proposal* to arrive at the reduced reciprocal compensation rate the Commission actually *approved* in 2004, as Mr. D'Amico confirmed on redirect examination. Tr. 134. The validity of that testimony is demonstrated by a simple comparison of the **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** composite reciprocal compensation rate Verizon *proposed* in its 2001 cost study (*see* Core Proprietary Cross Exhibit 5 (3rd page)) and the considerably lower $.002439/minute rate the Commission actually *approved* in 2004. Core Cross Exhibit 1 at 20 (2004 order reflecting Commission-approved $.002439/minute tandem reciprocal compensation rate).

Finally, Core continues to attempt to manufacture a "discrepancy" between the number of trunk ports represented in the simplified diagram Mr. D'Amico included as part of Verizon's written response to Core Set III, Interrogatory No. 7 and in the more detailed diagram included in the actual Verizon cost study produced as part of Verizon's response to that same interrogatory. Core Brief at 13. Mr. D'Amico explained on cross-examination that in his simplified diagram, he combined the shared end office trunk port costs and end office switching costs into the end

office rate represented by the "Verizon End Office" box, whereas the more detailed diagram in the cost study itself (Core Proprietary Cross Exhibit 5 (3rd page)) reflected the common trunk port as a smaller box within the larger box representing the Verizon terminating end office switch. Tr. 111-112; 120; 123. His discussion included the following back-and-forth:

> Q. And looking at the diagram as well as the table below, these are the diagrams and table that your diagram and table correspond to, or similar?
>
> A. Like I said, the difference is, where I have end office rate, that's really a combination of the End Office Switch and the Shared Trunk Port. ... I combined them to be under number six. It is a combination of the Shared End Office Trunk Port and the End Office Switch.

Tr. 120.

Mr. D'Amico unequivocally confirmed that Verizon's reciprocal compensation rate includes **[BEGIN PROPRIETARY]**

[END PROPRIETARY], and that the common end office trunk port Core claims is "missing" from his simplified diagram is actually **[BEGIN PROPRIETARY]**

END PROPRIETARY] portion of that diagram. Tr. 123. Core's claim that Verizon's Commission-approved reciprocal compensation rate does not include the costs of all three tandem trunk ports is incorrect.

E. Core's Multiplexing Charges Are Invalid

Verizon's initial brief explained that as with the tandem port charges discussed above, the parties' interconnection agreement does not permit Core to impose a separate multiplexing charge. VZ Brief at 23-24. Instead, 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. *Id.; see also* Interconnection Agreement, Attachment IV, Sections 1.2.2, 2.2.1, 2.2.1.1, 2.2.1.2 and 2.4.2 (included in Exhibit 1 to VZ

Stmt. 2.0). Core nonetheless asserts that it can bill Verizon for "standalone multiplexing" pursuant to Attachment III, Section 10 of the interconnection agreement. Core Brief at 15.

Core misinterprets the applicability of Attachment III, Section 10 of the interconnection agreement, which governs *Verizon's* provision of unbundled network elements *to Core*, and not *Core's* provision of services, facilities or arrangements to *Verizon*. *See, e.g.,* Interconnection Agreement, Attachment III, Sections 1.1 ("[Verizon] shall provide unbundled Network Elements ..."), 2.1 ("[Verizon] shall offer Network Elements to [Core] on an unbundled basis..."); 10.1.2 ("[Verizon] shall offer Dedicated Transport as a circuit dedicated to [Core]."). *See* Stipulated Joint Exhibit 1. That Section 10.1.3.1 of Attachment III states that when *Verizon* provides Dedicated Transport "as a circuit," it will "have available ... "[o]ptional multiplexing functionality," and that Section 10.2.4 requires *Verizon* to offer multiplexing "both together with and separately from Dedicated Transport" does not support Core's attempt to bill Verizon for "standalone multiplexing" because Attachment III does not address *Core's* provision of "Dedicated Transport" or "standalone multiplexing" – or *any* unbundled network elements, (which, as a CLEC, Core does not provide).

Core also argues that it can bill Verizon for "standalone multiplexing" because Verizon bills Core for multiplexing.[17] Core Brief at 15-16. However, the interconnection agreement permits Core to bill Verizon for transport only if purchasing it from Core is "necessary," in which case, Core may bill "Dedicated Transport," which includes multiplexing (unless Core has manipulated the POIs to maximize the transport revenues from Verizon, as it did in the Philadelphia LATA). The interconnection agreement says nothing about Core providing

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[17] Core chose to opt into an interconnection agreement that authorizes Verizon to bill Core for multiplexing and contains a Verizon rate for multiplexing. Interconnection Agreement, Attachment III, Section 10; Pricing Appendix, Section A.II.C (included in Stipulated Joint Exhibit 1).

"standalone multiplexing" when it is not providing Dedicated Transport. Interconnection Agreement, Attachment IV, Section 1.2.2 (included in Exhibit 1 to VZ Stmt. 2.0).

Verizon self-provisioned the transport facilities that carry its local traffic to Core's network, so it was not "necessary" to purchase transport from Core. VZ Stmt. 2.0 at 5; VZ Stmt. 2.1 at 13-14 (Philadelphia situation discussed below). As a result, Core cannot bill Verizon for Dedicated Transport or "standalone multiplexing" not contemplated by the interconnection agreement (and for which its Pricing Appendix contains no Core rate).

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

Core continues to assert that its charges for entrance facilities and TELRIC transport associated with the Philadelphia LATA are valid. Core Brief at 16-18. Those charges represent a tiny fraction of the amount in dispute – $41,506.92 as of the filing of the Complaint, or approximately $12,500 if the outdated Verizon rates and erroneous rate application Core used to render its bills are replaced with proper rate application and the "correct" Verizon rates – and Verizon's initial brief explained why it does not owe Core even this small amount.[18] VZ Brief at 24-31.

Verizon detailed Core's deception regarding its alleged "abandonment" of the 401 North Broad Street location in Philadelphia, as well as Core's attempt to manipulate the Philadelphia POI and inflate its transport charges to Verizon by insisting that Verizon move its self-provisioned transport facilities from 401 North Broad Street to 900 Race Street, and then billing Verizon for entrance facilities and TELRIC transport to carry Verizon's traffic right back to 401 North Broad Street. VZ Brief at 12-13; 25-27. Although 52 Pa. Code § 5.501(a)(3) requires that

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[18] As discussed above and in Verizon's initial brief, the interconnection agreement does not authorize Core to bill Verizon the *Verizon* rates in *Section A* of the Pricing Appendix when Core has no "tariffed or otherwise generally applicable rate" of its own.

the party with the burden of proof "completely address" the evidence, Core's brief completely ignores these issues, even though both parties discussed Mr. Mingo's misleading e-mails in their written testimony and Mr. Mingo addressed the matter at length on cross-examination. VZ Stmt. 2.0 at 21-22 and Exhibit 6; VZ Stmt. 2.1 at 14; Core Stmt. 2.0 at 16-19; Tr. 59-69.

Core's behavior in misrepresenting that it was "abandoning" the 401 North Broad Street location in Philadelphia violated the interconnection agreement's duty of good faith dealing. Interconnection Agreement, Part A, Section 42.1, included in Exhibit 9 to VZ Stmt. 2.1. It also prevents Core from billing Verizon for entrance facilities and TELRIC transport in the Philadelphia LATA, particularly at the outdated rates and erroneous rate application reflected in its invoices. VZ Brief at 12-13; 24-31; Interconnection Agreement, Attachment IV, Section 1.2.2 (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]").

Core nonetheless continues to argue that Attachment IV, Sections 1.2.1.1, 1.2.1.2, 1.2.2 and 2.4.2 of the interconnection agreement justify its entrance facility and TELRIC transport charges to Verizon, because it was "necessary" for Verizon to purchase transport from Core. Core Brief at 18. Verizon preemptively refuted this argument – including Core's contorted and unsupportable interpretation of the term "necessary" in Attachment IV, Section 1.2.2 of the interconnection agreement – at pages 26-29 of its initial brief and refers the Commission to that discussion. Core does not address, much less attempt to rebut, Verizon's testimony regarding Core's erroneous application of the *Verizon* entrance facility and TELRIC transport rates Core billed in the absence of "tariffed or otherwise generally applicable" entrance facility or TELRIC

transport rates of its own.[19] Verizon incorporates herein its earlier discussion of Core's multiple rate and rate application errors. VZ Brief at 29-31.

The Commission should deny Core's entrance facility and TELRIC transport charges in their entirety.

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

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

Core maintains that it is entitled to bill Verizon facilities charges for the Altoona LATA, despite the provisions of Amendment No. 1 to the parties' interconnection agreement. Core Brief at 25-26. Verizon detailed why Amendment No. 1 to the parties' interconnection agreement precludes Core from billing Verizon any facilities charges associated with the Altoona LATA, explaining that Core agreed that no charges would apply in consideration for Verizon's accommodation of Core's request for a non-standard interconnection arrangement there. VZ Brief at 31-34; Interconnection Agreement, Amendment No. 1, included in Exhibit 1 to VZ Stmt. 2.0.

Core disputes that Paragraph 1(b) of Amendment No. 1 precludes such billing (Core Brief at 25), but that argument is a red herring because Verizon has not relied on Paragraph 1(b), which deals with FCC and/or state-set interconnection trunk performance metrics. Rather, Verizon explained that Paragraphs 1(a) and (d) of Amendment No. 1 prevent Core from assessing facilities charges for the Altoona LATA. VZ Stmt. 2.0 at 28-29; VZ Stmt. 2.1 at 15-16; VZ Brief at 31-34. As memorialized therein, Verizon's accommodation of Core's request for special interconnection arrangements in the Altoona LATA was expressly conditioned upon

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[19] The invalidity of Core's attempt to charge Verizon outdated *Verizon* entrance facility and TELRIC transport rates is addressed in Section II.B above.

Core's agreement that Verizon would not be subject to *any* payment obligations as a result – not simply payment obligations associated with performance metrics, as Core claims.

Paragraph 1(a) of Amendment No. 1 recites the special OC-12 loop fiber optic interconnection arrangements agreed to by the parties and states 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). 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) …." *Id.* (emphasis added). Core asserts that the trunk ports and multiplexing for which it has billed Verizon do not constitute "transport" as the term is used in Paragraph 1(d), but ignores Mr. D'Amico's cross-examination testimony explaining that as used therein, the term "transport" encompasses Core's port and multiplexing charges, which might not necessarily be the case if the term "Transport" (with a capital T) – which appears at Attachment IV, Section 2.2.1.1 of the interconnection agreement – had instead been used. Tr. 104-05.

Finally, Core claims that Amendment No. 1 is predicated upon Core's switch being located at 1215 16th Street in Altoona and is now irrelevant because Core has since moved that switch to another location. Core Brief at 25. In effect, Core asserts that its unilateral relocation of its Altoona switch without an associated amendment to Amendment No. 1 not only nullified that amendment, but amended the interconnection agreement to allow Core to bill Verizon nearly a million dollars in facilities charges for the Altoona LATA. But 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 never executed an amendment revising 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 involving connections to a switch that Core itself rendered impossible by moving it. VZ Stmt. 2.1 at 16.

The Commission should deny Core's attempt to collect any facilities charges for the Altoona LATA.

2. Core Admitted That It Cannot Collect Facilities Charges Billed to Verizon North LLC for the Erie LATA (924) in This Proceeding

Core's brief reflects its agreement that it is not entitled to collect the $324,717.05 in facilities charges billed to Verizon Pennsylvania LLC's affiliate, *Verizon North LLC* (which is not a party to this case) through Core's July 2014 invoice period from the sole respondent in this proceeding, *Verizon Pennsylvania LLC*. Core Brief at 26. Core also agrees that it is not entitled to collect in this proceeding the $6,707.67 per month that Core has continued to bill Verizon North LLC since that time.[20] *Id.* It is undisputed that the Commission must deny all Erie LATA-related claims in this case.

H. 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

[20] As noted in Verizon's initial brief, Verizon disputes the validity of the charges that Core has billed to Verizon North LLC for the same reasons discussed in this proceeding. VZ Brief at 34, FN 30.

Verizon's initial brief explained that Attachment VIII, Section 3.1.9 of the interconnection agreement contains a mandatory dispute resolution process that Core was required to follow before filing a complaint pursuant to Part A, Section 24 of that agreement. VZ Brief at 34-37. Core cites these same provisions of the parties' interconnection agreement, but claims that compliance with Attachment VIII, Section 3.1.9 thereof was not a "condition precedent" to the filing of a complaint. Core Brief at 21-25.

As detailed in Verizon's initial brief, the dispute resolution provisions of Attachment IV, Section 3.1.9 of the agreement are not merely elective or advisory, but mandatory, and the authorization to proceed with a complaint pursuant to Part A, Section 24 is expressly conditioned upon compliance with the mandatory dispute resolution process outlined in Attachment IV, Section 3.1.9. *See* Interconnection Agreement, Attachment VIII, Section 3.1.9.1.3 (included in 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* Interconnection Agreement 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).

Core notes that it waited more than 120 days to file its complaint (Core Brief at 24), continuing to ignore that Attachment VIII, Section 3.1.9 of the interconnection agreement required Core to spend at least 120 days *escalating the dispute to three successive levels of management within Verizon*, not simply to wait 120 days before filing a complaint. Core's insistence that it was only required to escalate the dispute within Core's own ranks (Core Brief at 24) is a nonsensical interpretation of the interconnection agreement, as Verizon's initial brief

explained.[21] VZ Brief at 36-37. Core's apparent frustration with the usefulness of its communications with Verizon's first-level employee (Core Brief at 25) is why the interconnection agreement requires escalation to several successive levels of the other party's management – the process is designed to prevent matters from going straight to costly litigation because of difficulty resolving a dispute with the lowest-level employee involved. VZ Brief at 36-37.

Lastly, Core continues to misrepresent that Verizon's objection to Core's facilities charges is based only on back-billing. Core Brief at 23. As explained in Verizon's initial brief (as well as in Mr. Bando's testimony), while Attachment VIII, Section 3.1.8.3 of the interconnection agreement 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, it does not convert invalid bills into valid ones, or create a right of payment for invalid bills. Stipulated Joint Exhibit 1 at Attachment VIII, Section 3.1.8.3; VZ Stmt. 1.0 at 16. Core's facilities charge back-bills (and subsequent facilities charge bills) were invalid because they were not supported by the parties' interconnection agreement, and Attachment VIII, Section 3.1.8.3 of the interconnection agreement does not change that. That Core waited until twelve years into the interconnection agreement – and only after it claimed to be experiencing dire cash flow issues – to assert that the agreement authorized it to bill Verizon facilities charges only further undermines the credibility of Core's flawed interpretation of the agreement. VZ Stmt. 1.0 at 4; VZ Stmt. 1.1 at 2.

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[21] Core also misrepresents a Verizon discovery response, claiming that "Verizon apparently reviewed Core's bills through a panel of high ranking executives." Core Brief at 24. However, that discovery response asked not only who had reviewed Core's facilities bills, but also who had been involved in the "compilation, drafting, approval or transmittal of Verizon's disputes of Core's facilities bills." *See* Core Stmt. 1.0 at Exhibit J. Core's request did not ask for of identification of which listed employees were involved in each of these two discrete activities.

In Docket No. C-2011-2253750, the Administrative Law Judge found that Core had twice violated the mandatory dispute resolution process set forth in Attachment IV, Section 3.1.9 of the interconnection agreement.[22] The Commission should reach the same conclusion here.

2. Core Failed to Address Verizon's Affirmative Defenses of Claim Preclusion, Issue Preclusion and Unclean Hands

Although Verizon moved for dismissal of the Complaint based on the doctrines of claim preclusion and issue preclusion,[23] and also raised these doctrines, as well as that of unclean hands, as affirmative defenses in its Answer and New Matter, [24] Core did not address these subjects in its initial brief.

III. CONCLUSION

For the reasons stated above and in Verizon's Initial Post-Hearing Brief, the Commission should deny Core's complaint in its entirety and grant the relief sought in Verizon's new matter.

Respectfully submitted,

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22 *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.

23 *See* "Verizon's Preliminary Objections to Core's Complaint" (March 13, 2014) at 12-18.

24 *See* "Verizon's Answer and New Matter" (March 13, 2014) at pp. 18-19 (¶¶ 4-5; 8).

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