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April 23, 2015

**VIA ELECTRONIC FILING**

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Exceptions of Core Communications, Inc. to the Initial Decision issued on April 3, 2015 in the above-referenced matter. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service.

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

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin

Encl.

cc: Cheryl Walker Davis, Director, Office of Special Assistants w/encl. (Hardcopy and CD,  
via First Class U.S. Mail)  
Honorable Susan Colwell, Administrative Law Judge (via First Class U.S. Mail)  
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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CORE COMMUNICATIONS, INC. Complainant	:	
	:	
v.	:	Docket No. C-2014-2406550
	:	
VERIZON PENNSYLVANIA LLC Respondent	:	
	:	

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**EXCEPTIONS OF CORE COMMUNICATIONS, INC.  
TO INITIAL DECISION**

Pursuant to 52 Pa Code § 5.533, Core Communications, Inc. (“ Core”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter.

Coupled with the initial decision in Commission Dockets C-2011-2253750 and 2253787,<sup>1</sup> the I.D. interprets the Interconnection Agreement (“ICA”) between Core and Verizon Pennsylvania, LLC (“Verizon”) in such a way that (1) Verizon is permitted to charge Core at highly inflated, legacy switched and special access rates for facilities and traffic,<sup>2</sup> any time Core sends traffic to Verizon or submits an ASR which implicates any Verizon facility; while conversely (2) Core is forbidden from charging Verizon for traffic that Verizon sends to Core, and must provision facilities for Verizon’s benefit free of charge. As set forth below, this interpretation is erroneous and it is contradicted by the express terms of the ICA between the parties. The ICA provides that Core, like Verizon, may bill and collect TELRIC rates for interconnection facilities.

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<sup>1</sup> Initial Decision, *Core Communications, Inc. v. Verizon Pennsylvania Inc. and Verizon North, LLC*, Pa. P.U.C. Docket Nos. C-2011-2253750 & C-2011-2253787 (June 6, 2013)(“2013 I.D.”).

<sup>2</sup> 2013 I.D., COL #s 8-16.

## I. BACKGROUND

This case involves unpaid charges for telecommunications facilities that Core provided, and continues to provide, to Verizon pursuant to the ICA between the parties,<sup>3</sup> which governs the terms of physical interconnection of networks and the exchange of traffic between the parties. These unpaid charges are for facilities which enable Verizon to deliver its originating interconnection traffic from the “Point of Interconnection” to the “Interconnection Point” (as the ICA defines those terms) on Core’s network in each of the five (5) Pennsylvania LATAs in which the parties interconnect.<sup>4</sup>

Verizon utilizes four types of Core facilities in order to deliver its interconnection traffic to Core pursuant to the ICA: 1) tandem trunk ports, 2) multiplexing, 3) dedicated transport and 4) entrance facilities. Core billed Verizon at the TELRIC rates applicable to each facility service as listed in the ICA’s price schedule.<sup>5</sup> Verizon disputed Core’s bills, and Core fulfilled all of the ICA’s billing dispute resolution provisions prior to filing its complaint in this matter. With its Complaint, Core is simply asking the Commission to require Verizon to pay Core’s bills for services rendered and which continue to be rendered, especially since Core (unlike Verizon) has applied the cost-based rates set forth in the ICA to the facilities that it provisioned for Verizon.

### A. **Procedural Background**

On February 18, 2014, Core filed its formal Complaint with the Commission against Verizon in this matter. On March 13, 2014, Verizon filed its Answer, New Matter and Preliminary Objections (“POs”) to Core’s Complaint. On March 24, 2014, Core filed its Answer to Verizon’s POs.

By Notice issued April 10, 2014, this matter was assigned to Administrative Law Judge (“ALJ”) Susan D. Colwell. By Order issued May 5, 2014, the presiding ALJ denied Verizon’s POs.

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<sup>3</sup> The ICA was admitted into the record in this case as **Stipulated Joint Exhibit One. Tr.**, at 137:2-15.

<sup>4</sup> Core also interconnects with Verizon North, LLC in Erie, Pennsylvania, pursuant to an ICA between Core and Verizon North, but that interconnection is not at issue here.

<sup>5</sup> The ICA’s price schedule is set forth at Appendix 2 (“Detailed Schedule of Itemized Charges”).

On July 11, 2014, Core served **Core Statement 1.0 (Direct Testimony of Bret L. Mingo)**, with **Core Exhibits A – J**. On August 28, 2014, Verizon served **Verizon Statement 1.0 (Rebuttal Testimony of Charles A. Bando)**, with **Verizon Exhibits A – H**, and **Verizon Statement 2.0 (Rebuttal Testimony of Peter J. D’Amico)**, with **Verizon Exhibits 1 – 8**. On September 25, 2014, Core served **Core Statement 2.0 (Surrebuttal Testimony of Bret L. Mingo)**, with **Core Exhibits K – R**. On October 15, 2014, Verizon served **Verizon Statement 1.1 (Rejoinder Testimony of Charles A. Bando)**, with **Verizon Exhibits I – L**, and **Verizon Statement 2.1 (Rejoinder Testimony of Peter J. D’Amico)**, with **Verizon Exhibit 9**.

An evidentiary hearing in this matter was held on October 21, 2014. At this hearing Core provided the oral surrejoinder testimony of Bret L. Mingo, including introduction of **Core Exhibit S**. All of the pre-served written testimony and exhibits were admitted into the record, except that, upon Verizon’s oral motion, **Core Exhibit M** was not admitted. Each witness was cross-examined, and **Core Cross Exhibits 2 – 7**, and **Verizon Cross Exhibit 1**, were admitted into the record. Finally, the ICA between Core and Verizon was admitted into the record as **Stipulated Joint Exhibit One**.

The parties filed Main Briefs on December 12, 2014 and Reply Briefs on January 12, 2015. The Initial Decision in this matter was issued on April 3, 2015.

#### **B. Summary of the Initial Decision**

The I.D. included eighty-five (85) Findings of Fact and eleven (11) Conclusions of Law. The I.D. correctly determined that none of Verizon’s Affirmative Defenses barred Core’s Complaint from being considered by the Commission (I.D. pp. 22-29), but the I.D. ultimately recommends the dismissal of Core’s Complaint on the merits. In recommending rejection of Core’s Complaint, the I.D. held that:

- 1) Verizon never ordered the relevant facilities from Core, and the “Access Service Requests” (“ASRs”) that Verizon sent to Core were internal Verizon records for self-provisioned trunks used to send local telecommunications traffic to Core. (I.D., at 34-36)
- 2) The ICA does not permit Core to bill Verizon for tandem trunk ports, and Core does not have tariffed or otherwise generally available rates for tandem ports (I.D., at 36-42).
- 3) Allowing Core to bill Verizon tandem port charges in addition to reciprocal compensation would permit Core to double-recover tandem port charges (I.D., at 44).
- 4) The ICA does not permit Core to bill Verizon for standalone multiplexing (I.D. at 45).
- 5) The ICA does not permit Core to bill Verizon for entrance facilities and TELRIC transport associated with the Philadelphia LATA (I.D., at 46).
- 6) Amendment No. 1 to the ICA (the “Altoona Amendment”) bars Core from billing Verizon for the use of Core facilities in the Altoona LATA (I.D., at 47-48).

In the section below, Core explains in detail why each of these conclusions is erroneous and why a proper application of the ICA’s terms to the evidence in the record demonstrates that Core has met its burden of proving its entitlement to payment for the facilities that it provided, and continues to provide, to Verizon.

## **II. EXCEPTIONS**

### **Exception # 1: VERIZON ORDERED FACILITIES FROM CORE USING “ASR” FORMS, AS PROVIDED IN THE ICA**

Before the ALJ, Core demonstrated that Verizon submitted ASRs to Core to for the purpose of ordering trunk facilities from Core to carry the interconnection traffic that Verizon sends to Core. The I.D. incorrectly finds that “Access Service Requests “(ASRs”) that Verizon submitted to Core did not constitute orders for service from Core. I.D., at 31-36. Core excepts to this ruling and associated conclusions and findings, and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 6-9; Core Reply Brief, at 1-2.

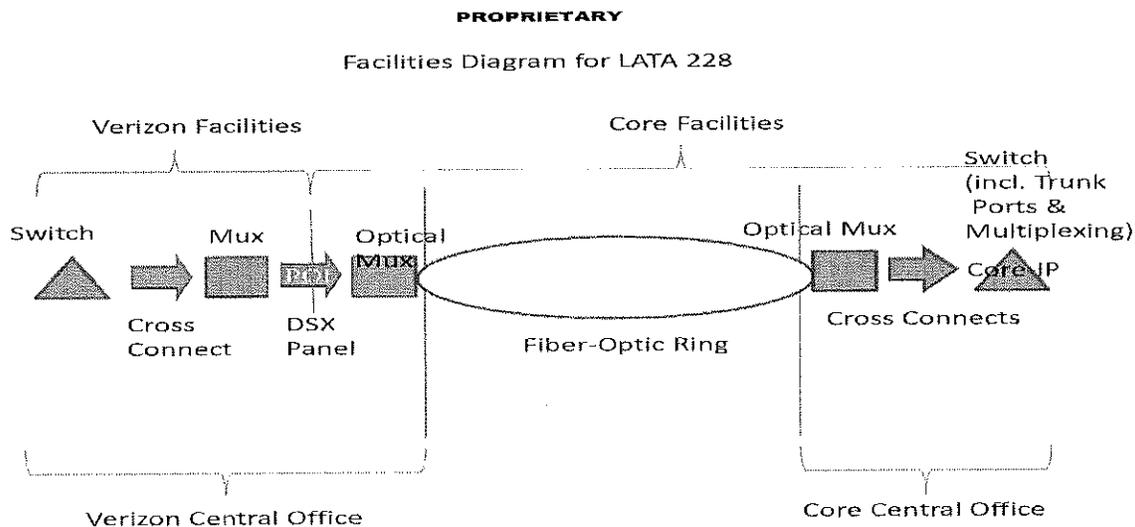
Core's position on ASRs was entirely consistent with the plain terms of the ICA, which states that "[t]he ASR may be used to order trunking and facilities between [Core] and [Verizon] for local interconnection." ICA, Part B ("Definitions"). The ICA further provides that "[o]rders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Access Service Request ("ASR")...", ICA, Att. IV, § 4.3.1., and that "[Verizon] will issue an ASR to [Core] to trigger changes [Verizon] desires to the [Verizon] Local Interconnection Trunk Groups based on [Verizon]'s capacity assessment." There is no question that Verizon ordered trunking from Core, that Verizon submitted ASRs to Core, or that Core billed Verizon based on those ASRs. The only issue here is Verizon's claim that the ASRs it admittedly sent Core were merely internal documentation which Verizon bestowed upon Core as a gratuitous "heads up."

The I.D. found that "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," I.D., at 36, and, crucially, that "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." I.D., at 36, note 13.

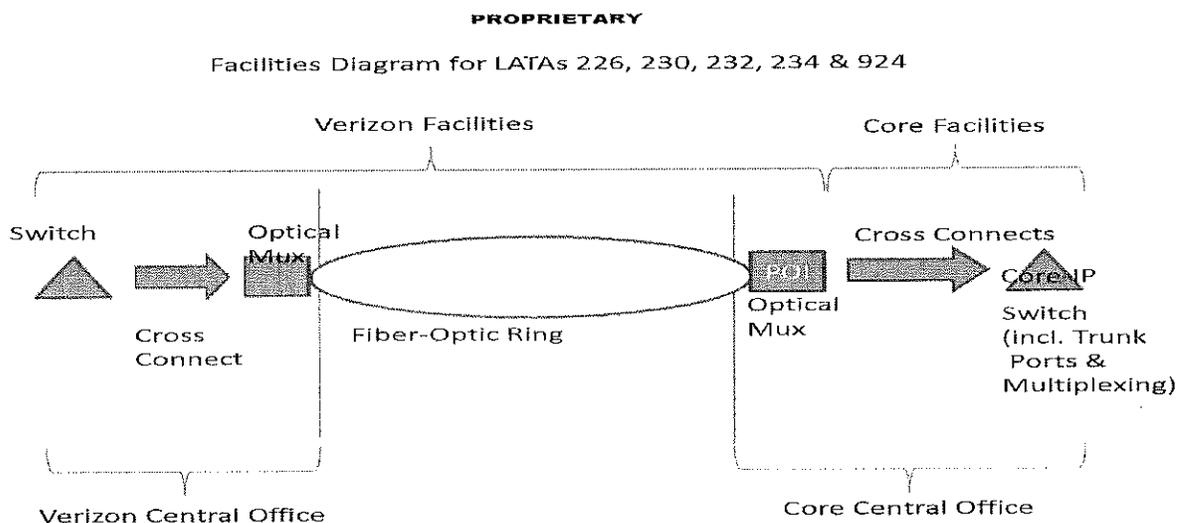
This conclusion in the I.D. based on a misunderstanding of the nature of the facilities that are at issue in this case. While the ICA does provide that "[Verizon] will be responsible for engineering and maintaining its network on its side of the POI." ICA, Att. IV, § 1.2.1.2, **this case does not involve facilities on Verizon's side of the POI.** Rather, this case involves facilities used to transport Verizon's traffic from the POI to the IP on Core's network.

In the case of Philadelphia (LATA 228), the POI is located at a DSX panel by Core's collocation space in Verizon's Race Street Central Office. **Core Stmt. 1.0**, at 4-9 and **Figure BLM-**

3. Everything Core bills Verizon in Philadelphia – transport, trunk ports and multiplexing – is on Core's side of the POI – not Verizon's.



In the case of the other five LATAs in which the parties interconnect, the POI is located at a Verizon multiplexer stationed inside Core's central office. But here again, everything Core bills Verizon – trunk ports and multiplexing – is on Core's side of the POI, not Verizon's. **Core Stmt. 1.0**, at 4-9 and **Figure BLM-2**.



Furthermore, while it is true that the ICA does not actually *prohibit* Verizon from using ASRs as an internal device to self-provision facilities,<sup>6</sup> a much more natural reading of the ICA is that, when one party submits an ASR to the other party, requests a FOC date, and, having received that FOC, sends a confirmation back to the other party, the first party has ordered service. **Core Stmt. 1.0**, at 12-13. Indeed, that is precisely Core's position with respect to the ASRs it submitted to Verizon. *See, 2013 I.D.*, at 45. The only difference is that Core bills Verizon for ASR facilities at the TELRIC rates set forth in the ICA; whereas Verizon bills Core for ASR facilities at tariffed access rates that do not appear in the ICA. Finally, although it is Core's position that the ASRs demonstrate Verizon's intent to order trunks and facilities from Core, as a strict matter of ICA interpretation, Verizon's intent with respect to ASRs it sent Core does not determine Verizon's financial obligations when it actually uses those facilities.

**Exception # 2: THE ICA AUTHORIZES CORE TO BILL VERIZON AT THE RATES SET FORTH IN THE ICA**

Core demonstrated below that 1) Verizon ordered trunk facilities from Core, 2) Core provisioned those facilities for Verizon and 3) Verizon utilized those facilities. Accordingly, Core billed Verizon for those facilities at the rates set forth in the ICA. As a matter of contract law, it is axiomatic that the rates in the ICA should govern the services provided pursuant to that ICA.<sup>7</sup> That is precisely how Core billed Verizon. Core Main Brief, at 18-21; Core Reply Brief, at 6. But Verizon contends that rates the Commission ordered in a 2004 TELRIC proceeding involving Verizon's UNE services tariff control the services provided under the ICA, even though the ICA was never amended to reflect those 2004 rates.<sup>8</sup>

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<sup>6</sup> To be clear, the ICA nowhere sanctions or even mentions using ASRs in this manner, either.

<sup>7</sup> "When interpreting agreements containing clear and unambiguous terms, we need only examine the writing itself to give effect to the parties' intent." *Profit Wise Mktg. v. Wiest*, 2002 PA Super 380, ¶ 11, 812 A.2d 1270, 1274 (2002).

<sup>8</sup> In a previous case, the ALJ found that Verizon did not have to charge the rates set forth in the ICA, either. Only, in the case of Verizon, instead of using the Commission's 2004 TELRIC rates, Verizon was entitled to charge much higher rates from its access tariffs. The sum result of these I.D.s is that the rates in the ICA do not apply to *any* services provided pursuant to the ICA.

The ALJ ruled that (1) Core could not charge Verizon *any* rate because Core had no rates independent of the ICA itself; and (2) to the extent Core could charge any rates, it could only charge the 2004 TELRIC rates. I.D., at 39-42. Core excepts to these rulings and associated conclusions and findings, (including without limitation FOFs # 40, 42, 47, 49, 52, 54, 55, 61, 64, 65, 66 and 67), and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 18-21; Core Reply Brief, at 6.

The ALJ found that “the 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 no basis for billing Verizon for the rates it does not have.” I.D., at 40. But Core does have “generally available rates” – the rates in the ICA,<sup>9</sup> which Core made available to Verizon by virtue of its bills. The I.D. appears to presume that Core should have jotted down these same rates in some other document, outside the ICA, although the exact nature of this alternative document is never identified. The plain facts are that Verizon had notice that these interconnection rates might be applied to it, just as the reciprocal compensation rates in the ICA applied to it. Indeed the ICAs expressly contemplate that Core can use the ICA rates in its bills to Verizon, not only in Section B.V. of the Pricing Appendix, but also in the ICA’s operative provisions for interconnection

The ICA, Appendix 2, Item B.V., provides that Core may mirror Verizon’s rates:

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.”

In the case of transport, the ICA, Att. IV, § 2.4.2 provides:

When Local Traffic from [Verizon] is terminating on [Core]’s network through the POI, [Verizon] shall pay [Core] transport charges from the

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<sup>9</sup> Core does not have tariffed rates for interconnection, and has never argued that it does. Nor would such a tariff make sense. Verizon is the only LEC with which Core interconnects directly pursuant to 47 U.S.C. §§ 251-252, at least in Verizon territory. Furthermore, that interconnection is governed explicitly by the ICA, so that a tariff would only serve to further complicate the parties’ legal interactions.

POI to the [Core] Switch for Dedicated Transport. This transport charge shall not exceed [Verizon]'s equivalent charge.

The I.D. found that “[t]he 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.” I.D., at 40, note 15. It is true that the Virginia and Pennsylvania ICAs contain *similar* language with respect to the rates Core may bill Verizon. But the “pricing appendix language” in the Virginia ICA is not “identical” to that in the ICA here, as Verizon’s own brief makes clear. *See*, V. Br., at 41 (setting forth verbatim language of each provision). Indeed, the Virginia ICA does not include the key phrase “not to exceed [Verizon’s] rates for equivalent services available to Core”—a limitation which the Pennsylvania ICA does include and which Verizon itself repeatedly relies upon in this case.

Furthermore, the Fourth Circuit did not rely on this “pricing appendix language” in deciding against CoreTel Virginia on its facilities claims. Rather, that court relied on § 4.3.5 of the Virginia ICA, which led it to conclude that only the party that provides an entrance facility may bill for other interconnection services, like trunk ports and multiplexing.<sup>10</sup> The ICA at issue in *CoreTel Virginia* did not include interconnection language that resembles Attachment IV of the ICA here. Nowhere in the Fourth Circuit’s opinion are terms such as “Transport,” “Termination,” “Tandem Switching” or “trunk connect facilities” analyzed. That is because those terms do not figure prominently in the Virginia ICA that was before the court. Conversely, the court’s opinion revolved primarily around

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<sup>10</sup> The court’s central holding with respect to CoreTel Virginia’s facilities charges was “[w]e agree with Verizon that the multiplexing and trunk ports at issue are not entrance facilities under the ICA. ICA § 4.3.5 therefore provides no basis for CoreTel’s facilities charges.” *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364,372-73 (4th Cir. 2014).

the Virginia ICA's definition of "Entrance Facility"—a term that does not even appear in Attachment IV to the Pennsylvania ICA.

The ALJ agreed with Verizon that "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." I.D., at 42. The language of that footnote, however, does not support the ALJ's analysis.

The ICA, Appendix 2, Note 1 provides:

The rates and charges set forth in Exhibit A 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 pursuant to the FCC Regulations, subject to a stay or other order issued by any court of competent jurisdiction.

This footnote says nothing about when or how the rates in the ICA should be "replaced by new rates." Multiple provisions of the ICA make clear that it can be amended only by a written instrument executed by both parties.

For example, ICA, Part A, § 36 provides:

Section 36. Amendments and Modifications

36.1 No provision of this Agreement shall be deemed waived, amended or modified by either Party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties.

And, ICA, Part A, § 39 provides:

Section 39. Entire Agreement

39.1 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation on the subject matter hereof. Except as otherwise provided in this Agreement, the terms in this Agreement may not be waived or modified except by a written document which is signed by the Parties.

In addition, the ICA, Part A, § 1.3 speaks directly to the process for updating the ICA to account for changes to either party's tariffs:

1.3.3 Any change or modification to any Tariff (including any Tariff filed after the Effective Date hereof) filed by either Party that materially and adversely impacts the provision or receipt of services hereunder or which materially and adversely alters the terms hereof shall only be effective against the other Party to the extent permitted by: (i) that Party's written consent; or (ii) an affirmative order of the Commission. Each Party shall file any required Tariff revisions, modifications or amendments in order to comply with Applicable Law and to continue performance of this Agreement in a lawful manner.

It is indisputable that the 2004 TELRIC rates were determined in the context of a Verizon tariff proceeding. *In Re Verizon Pennsylvania Inc.*, R-00016683, 2004 WL 2492571 (Sept. 30, 2004) (“On July 16, 2004 the Commission entered a Compliance Order (Compliance Order) directing Verizon Pennsylvania Inc. (Verizon) to file a tariff in accordance with the findings of its Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates, Docket No. R-00016683 (Generic Investigation).”). Nor is there any dispute that the changes to Verizon's tariff “materially and adversely alters the terms” of the ICA by lowering the rates Core may charge Verizon, per ICA, Part A, § 1.3.<sup>11</sup>

The issue then becomes whether and how those tariff rates may be imported into the ICA. The ICA, Part A, § 1.3 resolves this issue and applies because Verizon's position is that the ICA rates should be updated to reflect the tariff rates. That section requires “written consent” or “an affirmative order.” But Verizon never asked Core for its “written consent” to adopt the rates in Verizon's Tariff No. 216 (whether in 2004 or at any other time); and Core never gave that consent. And, the Commission's *2004 TELRIC Compliance Order*<sup>12</sup> was not “an affirmative order” which changed or

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<sup>11</sup> As Core made clear below, it does not object to the 2004 TELRIC rates *per se*. Indeed, Core is willing to negotiate an amendment to the ICA to incorporate those rates, even retroactively. But it makes little sense for Verizon to argue that Core is limited by TELRIC rates which were never incorporated into the ICA, while Verizon ignores those same rates and instead bills Core using much higher switched and special access rates for interconnection.

<sup>12</sup> Order, *Generic Investigation Re Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Pa. P.U.C. Docket R-00016683, 2004 WL 2983037 (July 16, 2004).

modified the ICA's pricing per ICA, Pt. A, § 1.3. The Order scarcely mentions ICAs,<sup>13</sup> much less requires amendment of any particular ICA.

**Exception # 3: THE ICA AUTHORIZES CORE TO BILL VERIZON FOR TANDEM TRUNK PORTS**

Before the ALJ, Core demonstrated that the ICA permitted it to bill Verizon for tandem trunk ports. Core Main Brief, at 9-14; Core Reply Brief, at 5-8. Tandem trunk ports are the "trunk-connect facilities" referenced in the ICA's definition of "Tandem Switching." ICA, § 14.1. The ICA's interconnection provisions permit Core to bill Verizon for "Tandem Switching." ICA, § 2.2.1.1. The ICA's price schedule sets forth a flat monthly recurring rate ("MRC") for tandem trunk ports. ICA, Pricing Appendix, Item III.D. Notably, this MRC is separate and apart from the per-minute charge which is also applicable to Tandem Switching. ICA, Pricing Appendix, Item III.B.

Nonetheless the ALJ decided that "the ICA does not permit Core to bill Verizon for ports for the termination of local traffic because: (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." I.D., at 42. The ALJ concluded that "[t]o 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." I.D., at 44. Core excepts to these rulings and associated conclusions and findings, (including without limitation FOFs # 32, 38, 39, 40, 42, 44, 47, 49 and 51), and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 9-14; Core Reply Brief, at 5-8.

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<sup>13</sup> The order's only reference to interconnection agreements encourages *negotiation* of changes to ICAs that reflect new regulatory requirements. Compliance Order, at 23 ("As the regulatory landscape changes, the Commission urges carriers to continue efforts to negotiate interconnection agreements that will govern their business relationship. In these matters, negotiation is clearly superior to litigation and the parties are encouraged in the strongest possible terms to reach agreements that will help provide additional stability to the market."). True to form, Verizon never sought to negotiate the ICA pricing changes it now presents to the Commission as a *fait accompli*.

The ICA authorizes Core to bill Verizon for trunk ports. The ICA, Attachment IV (Interconnection) provides that the originating carrier (here, Verizon) shall pay the terminating carrier (here, Core) for the “Transport and Termination of local traffic,” ICA § 2.2.1, which includes “Tandem Switching,” ICA § 2.2.1.1. Additionally, the ICA makes clear that “[w]hen Local Traffic from [Verizon] is terminating on [Core]’s network through the POI, [Verizon] shall pay [Core] transport charges from the POI to the [Core] Switch for Dedicated Transport... [including] a charge symmetrical to [Verizon’s] own charges to [Core] for Tandem Switching....” ICA, § 2.4.2. The ICA, in turn defines “Tandem Switching” to include “trunk-connect facilities,” i.e. tandem trunk ports.<sup>14</sup> ICA, Part B (Definitions) and Attachment III, Section 14.<sup>15</sup> The I.D. repeatedly presumes that ICA § 2.2.1, 2.2.1.1 and 2.2.1.2 limits cost recovery for switching of all stripes to “Reciprocal Compensation,” *see, e.g.*, FOF # 39, but none of those provisions use the term “Reciprocal Compensation.” These provisions may encompass or overlap with “Reciprocal Compensation,” but they are plainly more expansive than just “Reciprocal Compensation.”

The ICA very clearly sets forth the flat rate applicable to tandem trunk ports, separate and apart from reciprocal compensation. ICA, Appendix 2, Section III (“Unbundled Switching”) includes both a “Tandem Switching Usage” rate of \$0.000795 per MOU (Item III.B.) and a “Trunk Ports – Tandem” rate of \$214.57 per month recurring charge (Item III.D.). Verizon challenged that rate as having been superseded by the Commission’s *2004 TELRIC Compliance Order*, but for all the reasons set forth herein, Exception No. 2, the rates set forth in that order were never imported into the ICA. The fact that the ICA’s pricing schedule provides for “Tandem Switching Usage” in addition to “Trunk Port – Tandem” means that tandem switching usage and tandem trunk ports are distinct elements, the latter being billed on a flat-rate monthly recurring basis, and the former on a per-minute

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<sup>14</sup> Tandem trunk ports, which connect the incoming trunks to the switch, **Core Stmt. 1.0**, at 10, are the “trunk-connect facilities” referenced in the ICA’s definition of “Tandem Switching,”

<sup>15</sup> To be sure, Attachment III covers unbundled network elements, but here, the ICA, Part B, specifies that “Tandem Switching” – a term which appears in Attachment IV (“Interconnection”) is defined, throughout the ICA, in the same way as in Attachment III.

usage basis. Accordingly, per the ICA, tandem trunk ports are not subsumed within the tandem reciprocal compensation rate.

A great deal of testimony and briefing before the ALJ was devoted to the issue of whether the *2004 TELRIC Compliance Order* specified that tandem trunk ports were or were not subsumed within the tandem rate for reciprocal compensation. For all of the reasons set forth in Core's Main Brief, at 11-13, and Core Reply Brief, at 7, and the testimony and exhibits cited therein, it is clear that the Commission considered flat-rated tandem trunk ports as separate from tandem reciprocal compensation. Ultimately, the Commission's *2004 TELRIC Compliance Order*—just like the ICA's pricing schedule—includes separate and independent rates for (1) tandem and end office trunk ports; and (2) tandem and end office reciprocal compensation. *2004 TELRIC Compliance Order*, at 19-20. The I.D.'s conclusion that trunk port costs were somehow subsumed into reciprocal compensation simply does not add up.

Finally, Verizon bills Core for trunk ports in equivalent circumstances. As a factual matter, Verizon *does* bill Core for dedicated trunk ports when Core orders trunks to deliver its traffic to Verizon. Core Reply Brief, at 7; citing, **Core Stmt. 2.0**, at 15; and **Proprietary Exh. Q (Spreadsheet of Verizon charges to Core for multiplexing and trunk ports)**. In fact, Verizon's access tariff charges for trunk ports (billed at inflated access rates) are among the millions of dollars in compensation Verizon seeks in Docket Nos. 2011-C-2253750 & 2253787.<sup>16</sup>

**Exception # 4: THE ICA AUTHORIZES CORE TO BILL VERIZON FOR MULTIPLEXING**

Multiplexing is the disaggregation of a DS3 circuit into 28 DS1 "trunks" and then into 672 individual DS0 telecommunications channels. **Core Stmt. 1.0**, at 10. There is no dispute in this case that Core provides multiplexing to Verizon in connection with the DS3 trunks that carry Verizon's traffic to Core's network in Pennsylvania. Core demonstrated that the ICA permitted it to bill

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<sup>16</sup> 2013 I.D., COL #s 8-16.

Verizon for this multiplexing. Nevertheless, the I.D. adopts Verizon's view that the ICA permits Verizon to bill Core for multiplexing (at switched and special access rates); but Core cannot bill Verizon for the same service, even at the much lower TELRIC rates set forth in the ICA. I.D., at 45-46, and note 21. Core excepts to these rulings and associated conclusions and findings, (including without limitation FOFs # 52, 54 and 55), and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 14-16; Core Reply Brief, at 8-10.

The entire issue with respect to multiplexing is the contract interpretation question of whether the ICA contains language that permits CoreTel to bill Verizon for multiplexing. As Core demonstrated below, the ICA permits Core to bill "Dedicated Transport" when, as is the case here, "Local Traffic" is flowing from Verizon to Core. ICA § 2.4.2. "Dedicated Transport" is defined by the ICA as set forth in Attachment III, Section 10 thereof. ICA, Part B ("Definitions). Attachment III, Section 10 of the ICA defines "Dedicated Transport" to include a wide array of charges, including "multiplexing... both together with and separately from Dedicated Transport." ICA, § 10.2.4.<sup>17</sup> In the Philadelphia LATA, Core provides multiplexing "together with" Dedicated Transport, **Core Statement 1.0, Figure BLM-3 (IP/POI Diagram--Philadelphia)**, and in the other LATAs in which the parties interconnect, Core provides multiplexing "separately from" Dedicated Transport. **Core Statement 1.0, Figure BLM-2 (IP/POI Diagram)**. In either case, Core's charges are permissible.

The ICA is complex, but it is not ambiguous. Core may bill Verizon, up to the same ICA TELRIC rate Verizon bills (or should bill) Core, for the same service. ICA, Pricing Appendix, Item B.V.<sup>18</sup> Neither the I.D., nor Verizon, offers any legal or policy reason why the ICA could have or should have recapitulated the entire Pricing Appendix to set forth Core's rates, instead of relying (as it does), on a simple rate mirroring provision. The fact that the actual numeric rates for multiplexing

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<sup>17</sup> Even if this section of the ICA did not establish Core's right to bill for multiplexing (and it does), Core would be entitled to bill for multiplexing nonetheless because multiplexing is indisputably provided "for Purposes of Effectuating Local Exchange Competition" pursuant to the ICA Pricing Appendix, Item B.V.

<sup>18</sup> In this vein, it is notable that Verizon bills Core for multiplexing, at access rates, in equivalent circumstances. **Proprietary Exh. Q (Spreadsheet of Verizon charges to Core for multiplexing and trunk ports)**.

appear in section A. of the Pricing Appendix (with the heading “[Verizon] Services, Facilities and Arrangements”) does not mean that Core may not bill Verizon those same rates, as permitted in section B of the appendix (“Core Services, Facilities and Arrangements”), and elsewhere in the ICA.<sup>19</sup> In a similar context, the Fourth Circuit has cautioned that headings in an ICA pricing appendix should not be accorded undue substantive weight, especially where the ICA itself speaks to that precise interpretive issue.<sup>20</sup>

**Exception # 5: THE ICA AUTHORIZES CORE TO BILL VERIZON FOR ENTRANCE FACILITIES AND DEDICATED TRANSPORT**

Entrance facilities and dedicated transport are facilities that carry the originating party’s traffic from the originating party’s switch, known as the “POI,” to the terminating party’s switch, known as the “IP.” There is no dispute in this case that Core provides the physical facilities that transport Verizon’s traffic from its switch to Core’s switch in Philadelphia. **Core Stmt. 1.0**, at 11 and **Core Figure BLM-3 (IP/POI Diagram—Philadelphia)**. Core demonstrated that the ICA authorizes it to bill Verizon for entrance facilities and dedicated transport. Nevertheless, after reciting lengthy passages from Verizon’s brief, the ALJ concluded: “Core’s entrance facility and TELRIC transport charges are denied.” I.D., at 47. The I.D. accepts, without analysis, Verizon’s theory that it is entitled to free transport because Core somehow duped Verizon into complying with the terms of the ICA. Core excepts to these rulings and associated conclusions and findings (including without limitation FOF #s 24, 25, 26, 28, 32, 37, 57-61, 65, 66 and 68-71), and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 16-18; Core Reply Brief, at 10-14.

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<sup>19</sup> See, ICA § 38 (“Headings Not Controlling): “38.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.”

<sup>20</sup> The court stated: “Verizon suggests that, because rates for entrance facilities are listed in Exhibit A only under the heading “Unbundled Transport,” they are available only to entrance facilities ordered under § 11, “Unbundled Access.” The ICA, however, specifically provides that headings “are not intended to be a part of or to affect the meaning” of the agreement.” *CoreTel Virginia*, 752 F.3d, at 371.

The ICA requires each party that originates traffic to pay the other party for transport between the POI and the IP. ICA, Attachment IV, § 2.4.2, states “[w]hen Local Traffic from Bell Atlantic is terminating on MCI’s network through the POI, Bell Atlantic shall pay MCI transport charges from the POI to the MCI Switch for Dedicated Transport.” ICA Attachment IV, § 1.2.2, states “[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.” Core billed Verizon for “transport” and “Dedicated Transport” in compliance with these provisions.

“[T]he implied duty of good faith cannot act to displace the express terms and there can be no implied duty as to any matter specifically covered by the written agreement.” *Pennsylvania Chiropractic Ass’n v. Independence Blue Cross*, No. 2705, 2001 WL 1807781, at \*6 (Pa. Com. Pl. July 16, 2001), *citing*, *Hutchison v. Sunbeam Coal Corp.*, 513 Pa. 192, 198, 519 A.2d 385, 388 (1986); *Greek v. Wylie*, 266 Pa. 18, 23, 109 A.529, 530 (1920); *and*, *Reading Terminal Merchants Ass’n v. Samuel Rappaport Assocs.*, 310 Pa.Super. 165, 176, 456 A.2d 552, 557 (1983). *Also see*, *Northview Motors, Inc. v. Chrysler Motors Corp.*, 227 F.3d 78, 91 (3d Cir. 2000). (“Courts have utilized the good faith duty as an interpretive tool to determine the parties’ justifiable expectations in the context of a breach of contract action, but that duty is not divorced from the specific clauses of the contract and cannot be used to override an express contractual term.”)

Verizon relies on the term “necessary” in ICA, Att. IV, § 1.2.2 and Verizon’s alleged reliance on the word “abandoning,” in an email from Core’s President to Verizon’s interconnection team to concoct an *ex post facto* scenario in which Core duped Verizon into using Core’s facility to reach Core’s switch. The scenario hinges on Verizon’s alleged reliance on communications made at the time when Core completed its construction of a fiber ring connecting its switch to Verizon’s switch in Philadelphia. At that time, Core had two locations within 401 N. Broad Street, one on the Ninth

Floor and one on the Fourth Floor. The Ninth Floor location housed the interconnection with Verizon and the Fourth Floor location housed (and still houses) Core's switch.

It is absolutely true that Core was abandoning its leased space at 401 N. Broad Street, Ninth Floor, which is the point to which Verizon had theretofore interconnected its facilities. **Core Stmt. 2.0**, at 16-17; *and see*, Tr., 62:2-16. This meant that the Verizon transport facility that connected to that space could no longer be used for interconnection, in either direction. **Core Stmt. 2.0**, at 16-17. But Core's switch remained at 401 N. Broad Street, on the Fourth Floor, where it had been located (and listed in the LERG), since 2005. Verizon's engineers fully understood these facts. Tr., at 63:10-14. ("We told you exactly what we were doing. We were abandoning the ninth floor and we were closing it in your space. If you wanted any other options, we told you explicitly where the switch was...."). Further, Verizon's own ASRs associated with the new Philadelphia interconnection arrangements in 2012 specify Core's 401 N. Broad Street switch location (PHLAPAFGGT8) in the "CSL" field, showing that Verizon's engineers were fully aware that Core's switch CLLI remained, as before, at 401 N. Broad Street. **Core Stmt. 2.0**, at 17; **Core Exh. N (Verizon ASR dated 10/19/12)**; and **Core Exh. R (LERG Entry for Core's Switch)**.

In any event, Verizon had no reason to believe that Core was relocating its switch to Verizon's Race Street central office. Therefore, Verizon must have known that *some* transport, outside of the Race Street office, would be necessary for it to reach Core's switch. However, again, Verizon's engineers never once asked about the location of Core's switch, most likely because the LERG indicated that it remained at 401 N. Broad Street. Notably, even after billing commenced, Verizon never requested to utilize its old facilities, order cross-connects, or in any way return to the *status quo ante* the parties' 2012 network rearrangements.

If, as Verizon claims, its engineers were concerned about the possible financial ramifications of Core's abandoning that space, Verizon has put forth absolutely no evidence thereof. Verizon's

sole “evidence” of reliance is based on mischaracterizations of Core’s witness’ testimony on cross-examination. But Mr. Mingo’s testimony on cross is wholly consistent with his written testimony. On the other hand, Verizon put forth no witness of its own who could speak to the actual facts surrounding the Philadelphia interconnection discussions. The witnesses Verizon did make available could only make conclusory conjectures about other employees’ subjective impressions of the word “abandoning.”

Finally, there can be no question that Verizon bills Core for transport whenever Core uses Verizon’s transport facilities to get its traffic from Core’s switch/POI to Verizon’s switch/IP. Indeed, such transport charges are the centerpiece of Verizon’s multi-million dollar facilities claim in Dockets C-2011-2253750 & 2253787. 2013 I.D., at COL #s 8-16. The only difference is that Core bills Verizon the TELRIC rates set forth in the ICA; whereas Verizon bills Core the inflated, subsidy-laden rates set forth in its switched and special access tariffs.

**Exception # 6: THE ALTOONA AMENDMENT DOES NOT BAR CORE FROM BILLING VERIZON FOR FACILITIES IN ALTOONA**

Core demonstrated that the “Altoona Amendment” does not bar Core’s facilities charges relating to the Altoona LATA. The I.D. found that “Core’s claim for facilities charges for the Altoona LATA are denied.” I.D., at 48. Core excepts to these rulings and associated conclusions and findings (including without limitation FOF # 73 and 75-77), and incorporates by reference the relevant passages from its briefs. Core Main Brief, at 25-26; Core Reply Brief, at 14-15.

According to the I.D., the key provision is ¶ 1(d) to ICA, Amendment No. 1, the so-called “Altoona Amendment,” which states 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) ....” I.D., at 47. This clause would clearly bar any Entrance Facility or Dedicated Transport charge. However, Core’s

only facilities charges relating to Altoona are for trunk ports and multiplexing, which are technically not “transport” as set forth in section 1.d. of the amendment. They are separate and independent items in the ICA’s pricing schedule, Appendix 2, and can be billed in conjunction with, or independent from, transport, as discussed herein, Exception Nos. 3 and 4.

According to the Verizon testimony upon which the I.D. relies:

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. Tr. 104-05. I.D., at 47-48, citing, Verizon Statement 2.1.

But Verizon cannot have its cake and eat it, too. For every other LATA, Verizon insists that trunk ports and multiplexing cannot possibly constitute the “transport” for which the ICA, §§ 1.2.2 and 2.4.2, expressly permit Core to bill. Only in the case of Altoona does Verizon argue that “transport” includes trunk ports and multiplexing, because the Altoona Amendment (unlike the main body of the agreement), arguably excludes “transport” charges, rather than authorizes them.<sup>21</sup>

In ruling again for Verizon on the Altoona issue, the I.D. also relies on another circuitous and self-defeating Verizon argument.

According to the I.D., Verizon’s position is that:

[T]he 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 16<sup>th</sup> 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. I.D., at 48, citing, Verizon Statement 2.1.

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<sup>21</sup> The notion that some significance can be gleaned from the fact that transport is spelled with a capital “T” in Attachment IV, but only with lower case “t” in the Altoona Amendment, has no basis in the ICA or any other legal theory. Nor is it true. *See*, ICA, Att. IV, § 1.2.2 (using the term “transport”).

To be sure, Core's position is that nothing in the Altoona Amendment required Core to keep its switch located in the same place. The amendment simply memorializes that, at the time of its execution, Core's switch was located at a specific location. So, no amendment was necessary for Core to move its switch across the street. But the larger point is that, when it suits Verizon to argue that the ICA is automatically updated without amendment, it will do so, as is the case with its position relative to the ICA's pricing appendix. *See, infra.*, Exception No. 2. But here, it suits Verizon's purposes to insist on a written amendment. That is advocacy, but these conflicting positions cannot both be correct. Furthermore, if it is true that Core's moving its switch across the street somehow voided the Altoona Amendment, there can be no basis for Verizon to simultaneously argue that the amendment applies in order to exclude Core's "transport" charges.

### **III. CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Core respectfully requests that the Commission rule in Core's favor with respect to all of the issues raised in the Complaint, and grant the relief requested in the Complaint in its entirety.

Respectfully submitted,



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CORE COMMUNICATIONS, INC.  
Complainant

v.

VERIZON PENNSYLVANIA LLC  
Respondent

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Docket No. C-2014-2406550

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Exceptions upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL AND FIRST CLASS US MAIL**

Suzan D. Paiva, Esq.  
Verizon Pennsylvania, Inc.  
1717 Arch Street, 3 East  
Philadelphia PA 19103



April 23, 2015

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Michael A. Gruin, Esq.