

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

Core Communications, Inc. v. Verizon  
Pennsylvania LLC, and Verizon North LLC

Public Meeting May 7, 2015  
2253750-OSA  
Docket No. C-2011-2253750  
C-2011-2253787

**JOINT STATEMENT OF  
CHAIRMAN ROBERT F. POWELSON AND  
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions and Reply to Exceptions of Core Communications, Inc. (Core) and the jointly filed Exceptions and Reply to Exceptions of Verizon Pennsylvania LLC (Verizon PA) and Verizon North, LLC (Verizon North) (collectively, Verizon).<sup>1</sup>

This proceeding involves two Formal Complaints filed by Core against Verizon regarding Verizon's cessation of payment for intercarrier compensation invoices (*i.e.* bills for reciprocal compensation and switched access). The invoices were issued by Core pursuant to the interconnection agreements (ICAs) between the Parties. The Parties' dispute centers around two main categories: Core's billings to Verizon, which Core inflates, and Verizon's billings to Core, which Core doesn't pay.

Almost four years after the case was filed and almost two years after the ALJ issued an Initial Decision dismissing the complaint, the motion proposes to remand the case for further proceedings. One of the main reasons for the remand is to allow Core another shot to refute Verizon's claim, which is supported by substantial, credible record evidence, that Core has over billed it by nearly \$2.8 million between January 2008 and mid-2012.

In our view, this case has been pending for much too long and needs to be resolved rather than remanded to give Core another opportunity to explain what it has not been able to explain thus far, despite ample opportunity to do so. After a thorough review of the record, we were prepared today to resolve the matter on the merits, based on the applicable law and a well-developed record.

By giving Core another "bite at the apple," the Commission prolongs what is an unfair situation. Verizon is forced to subsidize Core's operations by compelling payment for traffic originated by other carriers that Verizon is not legally obligated to pay. As the record shows, Core has over billed Verizon for third-party-originated traffic to the tune of nearly \$2.8 million as of mid-2012. According to the credible record evidence, Core also owes Verizon almost \$3.7 million in unpaid facilities charges, intercarrier compensation, and directory listing charges covering August 2007 through August 2012.

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<sup>1</sup> The Exceptions/Replies are to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Susan D. Colwell.

Although Verizon has disputed the over billed amounts regarding the charges for third-party traffic, Verizon is forced to continue paying the disputed invoices to Core in accordance with the Commission's Emergency Order issued in September 2011.<sup>2</sup> With the emergency relief, the Commission sought to maintain the status quo by having Verizon to continue pay the entirety of Core's bills during the pendency of the case, despite the fact that both Interconnection Agreements (ICAs) permit a party contesting an invoice to withhold the disputed amount in an escrow account.<sup>3</sup> This would have the effect of preserving the disputed amount for prompt full payment or refund. Meanwhile, Core is under no similar obligation to pay disputed amounts of Verizon bills issued to Core.

At the time the emergency relief was issued, however, we did not contemplate that the case would have dragged on as long as it has. Due to the amount of time that has transpired in this case, we are concerned that Core will not be able to pay the disputed amount at the end of the case, which is potentially a substantial amount. Consequently, we would support reconsideration to allow Verizon, during the pendency of the remand, to withhold disputed amounts owed to Core. To do otherwise merely exacerbates the potential outcome that Core will be unable to pay what it rightfully owes to Verizon.

In any event, the issues for remand are twofold: Core's continuing billing to Verizon for traffic generated by other carriers and the so-called application of the VoIP Symmetry Rule. As discussed below, these issues are easily resolvable based on the applicable law and the record presented to us. Of course, we will give thorough review to the record on remand, but the following is the current state of affairs:

- **The ICAs expressly preclude Core from billing Verizon for traffic originated by third parties, and Core admits that it has, in fact, billed Verizon for third party traffic.** Verizon's development of a factor based upon eighteen-months of call detail records is the best evidence offered in this proceeding to replicate the volume of traffic for which Verizon has been over billed during the period in question. Based on this analysis, Core has overbilled Verizon for termination of local traffic by at least thirty-five percent. In contrast, Core's EMI-based analysis, which concludes that the amount of the over bills was 5-8%, is critically flawed. Core's analysis erroneously assumes that all third-party traffic is captured in the EMI records and that all non-EMI traffic was Verizon-originated. Consequently, Core's analysis understates the amount of third-party traffic originated from non-Verizon carriers and under states the amount that Core improperly billed Verizon.

Core's practice of billing Verizon for third-party traffic is in complete contravention of intercarrier billing standards generally and the controlling ICAs specifically. Core could and should have ceased doing so, particularly once it was put on notice that Verizon was

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<sup>2</sup> The Commission's September 2011 Emergency Order was not a pre-determination of a final decision in Core's favor, and the order should not be construed as a final determination that Verizon violated the applicable ICA by withholding payment to Core in July 2011. Rather, the Order represented a finding, based on the information presented to the Commission at the time, that Core had raised a legitimate issue as to whether Verizon's decision to cease all payments to Core for intercarrier compensation at that time was consistent with the relevant ICAs.

<sup>3</sup> See, Core/Verizon North ICA at § 11.3 (a) and Core Verizon PA ICA at §21.3.

disputing this unauthorized practice. Core was put on full notice with the filing of Verizon counterclaims in 2011 that its invoices included third party traffic.<sup>4</sup> Core's involvement in other Commission proceedings supports that it knew it was receiving third party traffic through Verizon's tandem. We do not believe it is reasonable for Core to plead ignorance of the fact that it was receiving third-party traffic that it billed to Verizon. Core added insult to injury by claiming that it could not quantify the traffic and then denying Verizon access to the data from which a calculation could be made. The fact that Verizon was forced to litigate this issue is unfortunate and should not accrue to Core's benefit by an extended repayment period.

- **The FCC's *VoIP Symmetry Order*<sup>5</sup> is not reasonable grounds for a remand here.** The FCC in the *VoIP Symmetry Order* made a declaratory ruling terminating a controversy between IXCs and competitive LECs and their VoIP provider partners over the assessment of end office switching charges for VoIP-PSTN traffic. However, Core offers no record evidence to substantiate the claim that a portion of the traffic at issue here is destined for VoIP providers and therefore, is VoIP-PSTN traffic. Rather, in accordance with the FCC's *ISP Remand Order*, the traffic at issue here is presumed to be local ISP-bound traffic that is subject to the FCC-established rate cap of \$0.0007/MOU. Because the *VoIP Symmetry Order* is not implicated here, we do not believe that any further analysis of the *VoIP Symmetry Order* is required.

Moreover, even if there were VoIP-PSTN traffic here, the *VoIP Symmetry Order* would still not authorize Core to charge switched access for terminating such traffic. Under the VoIP Symmetry Rule, a LEC may charge the appropriate intercarrier compensation for functions that either it or its retail VoIP partner provider, regardless of whether the functions performed or the technology used exactly resemble those functions performed by a traditional LEC.<sup>6</sup> However, such charges are ultimately governed in accordance with applicable tariffs,<sup>7</sup> and a carrier may not impose charges other than those provided for under the terms of the applicable tariff.<sup>8</sup> The record in this case is clear that Core does not provide End Office Switching or Tandem Switching in Pennsylvania *within the meaning of the services described in its Pennsylvania Intrastate Switched Access Tariff*. Consequently, Core cannot back bill Verizon for such charges under its tariff, the *VoIP Symmetry Order*, or any other applicable law.

Despite our frustration with allowing the litigation of this matter to be prolonged and a resolution to be further delayed, we would have joined the motion, if it had also included reconsideration of whether Verizon should also be permitted to exercise its ICA right of

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<sup>4</sup> Actually, notice was given earlier as Verizon attempted to obtain the data from Core to make such a calculation and Core refused.

<sup>5</sup> See *In the Matter of Connect America Fund-Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90 (FCC, Rel. Feb 11, 2015), Declaratory Ruling, FCC 15-14 (*VoIP Symmetry Order*)

<sup>6</sup> This rule is codified at 47 C.F.R. § 51.913(b).

<sup>7</sup> *In the Matter of Connect America Fund-Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90 (FCC, Rel. Feb 11, 2015), Declaratory Ruling, FCC 15-14 (*VoIP Symmetry Order*) at ¶19, n.64.

<sup>8</sup> *In the Matter of Connect America Fund*, 26 FCC Rcd. 17663 (2011), *aff'd In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014) (*USF/ICC Transformation Order*) at n.2026, *reh'g petitions denied, certiorari petitions denied NARUC v. FCC*, S.Ct., No. 14-901, *Allband Com. Coop. v. FCC*, S.Ct., No. 14-900.

withholding disputed amounts, pending resolution of this proceeding. The remand continues this unfair scenario where one party can withhold payment, while the other party cannot. This perpetuates what amounts to unequal treatment of the parties and an arbitrary practice. Core has stated on the record that it has not escrowed any potential refund to Verizon and, otherwise, has made no provision to pay in such an event.<sup>9</sup> The September 2011 ruling was based on the limited facts available at that time and was intended as a temporary measure, and our prior support of it was based upon our expectation of prompt resolution to this case. However, the resolution of this case has been anything but prompt, which we believe justifies us considering a change in course to allow Verizon to withhold payment of disputed amounts, pending a final resolution in this case.

  
ROBERT F. POWELSON  
CHAIRMAN

  
JOHN F. COLEMAN, JR.  
VICE CHAIRMAN

**DATE: May 7, 2015**

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<sup>9</sup> See ALJ Initial Decision FOF 84 (“Core has not escrowed *any* funds to pay whatever amounts the Commission may eventually determine are due from Core to Verizon. Tr. 258.) and 85 (“Core has failed to make reasonable provisions to ensure that it can pay amounts determined to be due to Verizon, even though its president has testified that it likely will not be financially able to pay Verizon at the conclusion of this case, should it be ordered to do so. Tr. 259-60, 267.”)