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June 12, 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 of Pennsylvania, Inc. and Verizon North, LLC
Docket Nos. C-2011-2253750, C-2011-2253787 and P-2011-2253650

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

Dear Secretary Chiavetta:

Enclosed for filing please find Core Communications, Inc.'s Motion for Consolidation of the above-captioned proceedings. 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.

Sincerely,

STEVENS & LEE

Michael A. Gruin

Encl.
cc: Certificate of Service
Hon. Gladys M. Brown, Chairman

Hon. John F. Coleman, Jr., Vice-Chairman
Hon. James H. Cawley, Commissioner
Hon. Pamela A. Witmer, Commissioner
Hon. Robert F. Powelson, Commissioner
Cheryl Walker Davis, Director, Office of Special Assistants
Administrative Law Judge Susan Colwell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CORE COMMUNICATIONS, INC.	:	
Complainant	:	
	:	
v.	:	**Docket No. C-2011-2253750**
	:	**Docket No. C-2011-2253787**
VERIZON PENNSYLVANIA INC.	:	
	:	
and	:	
	:	
VERIZON NORTH, LLC	:	
Respondents	:	
	:	
CORE COMMUNICATIONS, INC.	:	
Complainant	:	
	:	
v.	:	**Docket No. C-2014-2406550**
	:	
VERIZON PENNSYLVANIA LLC	:	
Respondent	:	

MOTION TO CONSOLIDATE

Pursuant to 52 Pa Code § 5.81,[1] Core Communications, Inc. ("Core") hereby files its motion to consolidate the above-styled proceedings.

BACKGROUND

1. Currently pending before the Commission are two formal complaint cases involving Verizon Pennsylvania LLC ("Verizon") and Core. One of the two cases also involves Verizon's incumbent LEC affiliate, Verizon North LLC ("Verizon North").

[1] "The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." 52 Pa. Code § 5.81(a).

2. In *Core Communications, Inc. v. Verizon Pennsylvania Inc. & Verizon North LLC*, Docket Nos. C-2011-2253750 & C-2011-2253787 (the "2011 Case"), Core filed a formal complaint against both Verizon LECs, alleging sudden and unexplained cessation of reciprocal compensation payments that had been made continuously since 2004.[2]

3. Verizon filed an answer, new matter and counterclaims alleging (1) overbilling of reciprocal compensation, based on alleged self-generation of reciprocal compensation traffic;[3] and (2) nonpayment of bills for interconnection facilities, which Verizon issued based on its interstate and intrastate access tariffs.[4]

4. Core denied Verizon's counterclaims, demonstrating that the ICA and federal law required Verizon to bill Core, at most, using the TELRIC rates set forth in the ICA, not the much higher rates in Verizon's access tariffs.[5]

5. Core later filed an amended complaint, stating that much of the "third party traffic" Verizon alleged was non-compensable was actually switched access traffic, and should be billed to Verizon as such.[6] The ALJ ruled in Verizon's favor on substantially all of the issues in the 2011 Case. With respect to Verizon's interconnection facilities bills, the Initial Decision found that the ICAs entitled Verizon to bill Core out of Verizon's access tariffs, which contain rates many times higher than the cost-based TELRIC rates set forth in the ICA.[7]

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2 2011 Case, Core Formal Complaint (July 22, 2011), ¶¶ 10-23.

3 Verizon subsequently abandoned the allegation that Core had self-generated traffic, and refocused its overbilling claim on the theory that it had compensated Core for some traffic which should have been billed to other carriers (so-called "third party traffic"). *See*, Verizon Answer, New Matter & Counterclaims (May 16, 2012), ¶¶ 201-202.

4 *See generally*, 2011 Case, Verizon Answer & Counterclaims (August 16, 2011), ¶¶ 71-130.

5 2011 Case, Core Reply to New Matter & Answer & New Matter to Counterclaims (September 6, 2011), ¶ 80. Core's position is fully consistent with the Supreme Court's decision on the very issue of pricing for interconnection facilities. *See generally, Talk Am., Inc. v. Michigan Bell Tel. Co., 131 S. Ct. 2254, 2257, 180 L. Ed. 2d 96 (2011)*, ("*Talk America*"),as well as the Fourth Circuit's decision in a similar dispute between Core's and Verizon's Virginia affiliates. *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 367-72 (4th Cir. 2014). ("*CoreTel Virginia*").

6 2011 Case, Core Amended Complaint (April 16, 2012), ¶¶ 107-119.

7 *See generally*, 2011 Case, Initial Decision (June 6, 2013), pp. 44-48.

6. Both parties filed Exceptions to various portions of the 2011 Case Initial Decision,[8] and the case is currently pending before the Commission.

7. In a recent order, the Commission held in abeyance the 2011 Case and the parties' Exceptions, and remanded the 2011 Case back to the OALJ for further development of specific issues.[9]

8. Verizon then filed a Petition for Reconsideration, (the "Reconsideration Petition") asking the Commission to utilize its equitable powers to impose certain additional requirements on Core pending resolution of the 2011 Case.[10] Concurrent with this filing, Core is filing its opposition to the Verizon Reconsideration Petition in the 2011 Case.

9. In *Core Communications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2014-2406550 (the "2014 Case"), Core filed a Complaint alleging Verizon's nonpayment of Core's bills for interconnection facilities, which were based on the TELRIC rates set forth in the ICA.[11] Verizon filed an Answer claiming that it was not responsible to pay any of the charges set forth in Core's bills.[12] Verizon also raised the affirmative defense of *res judicata* applied, arguing that Core should be barred from raising the issue of its facilities bills in the 2014 Case, because it could and should have brought that claim earlier, in the 2011 case.[13]

10. The ALJ ruled in Verizon's favor on the substantive issues in the 2014 Case, finding that the ICAs did not require Verizon to pay Core anything for interconnection facilities.[14]

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8 *See generally*, 2011 Case, Core Exceptions (August 16, 2013) and Verizon Exceptions (August 16, 2013).
9 *See generally*, 2011 Case, Commission Opinion & Order (May 28, 2015).
10 2011 Case, Verizon Petition for Partial Reconsideration (June 2, 2015).
11 2014 Case, Core Formal Complaint (February 18, 2014).
12 2014 Case, Verizon Answer (March 13, 2014), ¶¶ 1-52.
13 2014 Case, Verizon New Matter (March 13, 2014), ¶ 4.
14 2014 Case, Initial Decision (April 3, 2015), pp. 30-48.

11. Addressing Verizon's affirmative defenses, the ALJ ruled that *res judicata* does not apply.[15]

12. However, the Initial Decision did not find that there was *no* common question of law or fact in the 2011 and 2014 Cases. Instead, the ALJ found that Core could not have brought the 2014 Case until it was ripe, i.e., until Core had exhausted the ICA's dispute resolution process, which it did.[16]

13. Core filed Exceptions to the Initial Decision's substantive conclusion that the ICA did not require Verizon to pay Core for interconnection facilities provided by Core.[17] Verizon did not file exceptions.

ARGUMENT

14. The ICA between Core and Verizon states that Core may bill Verizon at a rate not to exceed Verizon's rate for equivalent services.[18] This mirroring principle is enshrined in at least two provisions of the ICA.

15. The ICA, Appendix 2, Item B.V., provides that Core may generally mirror Verizon's rates for interconnection and other competition-enhancing services:

> 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 interconnection transport (entrance facilities), 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 POI to the [Core] Switch for Dedicated

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15 *Id.*, at 25-26.
16 *Id.*, at 26.
17 2014 Case, Core Exceptions (April 23, 2015).
18 The ICA was entered into the record in the 2014 Case as Stipulated Joint Exh. 1.

> Transport. This transport charge shall not exceed [Verizon]'s equivalent charge.

16. In the 2011 Case, Verizon argued and the ALJ ruled that Verizon is entitled to bill Core for interconnection facilities using the relatively high rates found in its access tariffs.

17. In the 2014 Case, Verizon argued and the ALJ ruled that Core is not entitled to bill Verizon anything for interconnection facilities, even at the relatively low TELRIC rates set forth in the ICA.

18. Core's position in both cases is that both parties are entitled to bill for interconnection facilities at the TELRIC rates set forth in the ICA.[19] The ICA's mirroring provisions, set forth above, clearly bear closely on both parties' positions relative to mutual billing for interconnection facilities, as well as the Commission's review of the Initial Decisions in the 2011 and 2014 Cases.[20]

19. Specifically, the questions of law common to both the 2011 Case and the 2014 Case are (1) whether the services Core provided in the 2014 Case are equivalent to the services

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[19] The FCC has found that "[I]in establishing the rates for transmission facilities that are dedicated to the transmission of traffic between two networks, state commissions should be guided by the default price level we are adopting for the unbundled element of dedicated transport.[2541] For such dedicated transport, we can envision several scenarios involving a local carrier that provides transmission facilities (the "providing carrier") and another local carrier with which it inter connects (the "interconnecting carrier"). The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 F.C.C. Rcd. 15499, 16027-28, ¶ 1062 (1996).

[20] Notably, in the 2014 Case, the ICA's mirroring provisions have been raised by *both* parties as controlling the rates each party may charge for interconnection facilities. *Compare*, Core Main Brief (December 12, 2014), pp. 18-19; *with*, Verizon Initial Brief, pp. 9-11; and 19-20.

Verizon provided in the 2011 Case;[21] and (2) whether the TELRIC rates Core charges in the 2014 Case exceed the rates Verizon is permitted to charge in the 2011 Case.[22]

20. Based on the central importance of this "common question of law or fact", 52 Pa. Code § 5.81 (the proper interpretation and application of the ICA's mirroring provisions) to both cases, it is appropriate for the Commission to consolidate the 2011 and 2014 Cases for coordinated deliberation and disposition.

21. Apart from common questions of law and fact, there are equitable considerations which counsel in favor of consolidation.

22. In its recent petition for reconsideration in the 2014 Case, Verizon complained that Core is withholding payment on Verizon's interconnection facilities bills.[23]

23. By the same token, Verizon is unquestionably withholding payment on 100% of Core's interconnection facilities bills.

24. Indeed, Verizon does not now pay, nor has it ever paid, any of Core's Pennsylvania facilities or switched access bills.

25. In order to arrive at a result in these cases that is both equitable, as well as legal, the Commission should consider the cases, and the competing claims for compensation, in

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[21] *Compare, e.gs.*, 2011 Case, Verizon Counterclaims (August 16, 2011), ¶ 75 ("Verizon bills Core for switched access DS1 services, transport, trunk termination charges, entrance facilities, channel termination, multiplexing, and trunk ports, among other things.") *with*, 2014 Case, Core Formal Complaint (February 18, 2014), ¶ 14 (specifying rates applicable to "Dedicated Transport, Entrance Facilities, Multiplexing and Trunk Ports).

[22] Notably, Verizon takes the position in the 2014 Case that, even if Core were entitled to bill Verizon at TELRIC (which Verizon denies), the specific TELRIC rates Core used (which are set forth in the ICA's Pricing Attachment) were automatically superseded by newer (and somewhat lower) TELRIC rates approved by the Commission in 2004. *See*, 2014 Case Initial Decision (April 3, 2015), pp. 41-42.

[23] 2011 Case, Verizon Recon Petition (June 2, 2015), p. 1. ("Core continues to withhold *all* payment for facilities and services it obtains from Verizon.").

tandem. Verizon suggests repeatedly that the Commission consider *Verizon's* charges only, and ignore Core's charges, but such a one-sided approach is the opposite of "equitable."[24]

CONCLUSION

WHEREFORE, for the foregoing reasons, Core respectfully requests that the Commission consolidate the 2011 Case and the 2014 Case for purposes of deliberation and disposition.

Respectfully submitted,

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June 12, 2015

[24] *Pennsylvania Human Relations Comm'n v. Uniontown Area Sch. Dist.*, 455 Pa. 52, 65, 313 A.2d 156, 163 (1973), *quoting, Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 226, 93 S. Ct. 2686, 2706, 37 L. Ed. 2d 548 (1973)("Neglect of either the obligation or the interests destroys the even-handed spirit with which equitable remedies must be approached."). *Dastgheib v. Genentech, Inc.*, 457 F. Supp. 2d 536, 544 (E.D. Pa. 2006)("In its broadest sense, equity and equitable principles are synonymous with notions of justice, fairness, and even handed dealings.").

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	
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	:	**Docket No. C-2011-2253787**
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	:	
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Complainant	:	
	:	
v.	:	**Docket No. C-2014-2406550**
	:	
VERIZON PENNSYLVANIA LLC	:	
Respondent	:	

CERTIFICATION OF SERVICE

I hereby certify that I have this day served by Electronic Mail and Federal Express Overnight Delivery a true and correct copy of the foregoing Motion upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS OVERNIGHT

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

June 12, 2015

Michael A. Gruin, Esq.