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June 25, 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 Inc. and Verizon North LLC;
Docket Nos. C-2011-2253750 and C-2011-2253787

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

Dear Secretary Chiavetta:

Enclosed please find Verizon's Opposition to Core's Motion to Consolidate, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in each of the above captioned matters. Verizon's Opposition is being e-filed at both matters' respective dockets.

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

Very truly yours,

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

Suzan D. Paiva

SDP/slb

Via E-Mail and First Class Mail

cc: The Honorable Susan D. Colwell
Cheryl Walker Davis, Office of Special Assistants
Attached Certificate of Service

Via Federal Express

cc: The Honorable Gladys M. Brown, Chairman
The Honorable John F. Coleman, Vice Chairman
The Honorable James H. Cawley, Commissioner
The Honorable Pamela A. Witmer, Commissioner
The Honorable Robert F. Powelson, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Opposition to Core's Motion to Consolidate, upon the parties 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 25th day of June, 2015.

Via E-Mail and First Class

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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-2011-2253750 and
	:	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 INC.	:	
	:	
Respondent.	:	

VERIZON’S OPPOSITION TO CORE’S MOTION TO CONSOLIDATE

The Commission should see Core’s¹ consolidation motion² for what it is: the latest tactic to prolong the monthly payments Verizon has been required to make for four years³ while Core pays *nothing* for the services and facilities it receives from Verizon. Core aims to continue the one-sided gravy train, while delaying examination of the underlying merits of the cases that the administrative law judge (“ALJ”) found would require Core to pay millions of dollars to Verizon for services and facilities it has used for free for years.⁴ The games that Core plays in pursuit of

¹ Core Communications, Inc. (“Core”)

² See Core’s “Motion to Consolidate,” Docket Nos. C-2011-2253750, C-2011-2253787 and C-2014-2406550 (June 15, 2015) (“*Consolidation Motion*”).

³ See “Opinion and Order,” Docket No. P-2011-2253650 (September 23, 2011) (“*Payment Order*”).

⁴ Verizon Pennsylvania LLC (“Verizon Pennsylvania”) and Verizon North LLC (“Verizon North”) (together, “Verizon”).

this aim are breathtaking. Last year, when Core invented new claims to bring its 2014 complaint to offset the ALJ's Initial Decision in the 2011 complaint, it argued that its 2011 and 2014 complaints were unrelated. Now, because it believes consolidating the cases would support its effort to continue the inequitable, one-sided payment arrangement and thwart the Commission's goal of resolving the 2011 case on an expedited basis,⁵ Core advocates that the Commission combine the complaints. The Commission should reject Core's self-serving doublespeak and deny the *Consolidation Motion*.

ARGUMENT

A. Core Claimed Previously That the 2011 and 2014 Complaints Are Unrelated

Core's own words contradict its request for consolidation. In March of 2014, Verizon objected to Core's 2014 complaint on the grounds that Core could have and should have raised those claims in the 2011 case. Core did not seek consolidation at that time; to the contrary, it asserted that its 2011 intercarrier compensation and 2014 facilities charge complaints were unrelated. According to Core:

Core's [2014] Complaint raises a single, discrete issue which is ripe for adjudication Core and Verizon have filed various claims at various times and in various jurisdictions; but none of those claims had as its [sic] subject matter Core's bills for Pennsylvania facilities, and none of those cases can determine the ultimate issue in the case at bar....⁶

Core further asserted that "[t]he fact that the parties were litigating *entirely separate claims* against one another during the same time that invoices underlying the [2014] dispute were being generated provides no basis" for dismissal.⁷

⁵ See "Opinion and Order," Docket Nos. C-2011-2253750 and C-2011-2253787 (May 28, 2015) ("*Remand Order*").

⁶ See "Answer of Core Communications, Inc. to Verizon Preliminary Objections," Docket No. C-2014-2406550 (March 24, 2014) at 1-2 ("*Core PO Answer*").

⁷ *Core PO Answer* at 4 (emphasis added).

Core also opposed Verizon's suggestion that the Commission stay the 2014 complaint proceeding pending a ruling in the 2011 case, arguing:

Similarly, there is no basis for staying the current [2014] Complaint to await the Commission's final ruling on the 2011 Pennsylvania Litigation, because that matter involves separate issues entirely. ... Overall, ***the claims and counterclaims made in the 2011 Litigation have absolutely no relation to claims being made by Core in the present [2014] complaint, and the current claims by Core implicate an entirely different set of issues.*** Verizon's attempt to conflate the disputes involved in the 2011 Pennsylvania Litigation with the disputes underlying the current [2014] Complaint is disingenuous."⁸

Core's ironic use of the word "disingenuous" would be comical if the games it plays were not at the Commission's expense. The ALJ accepted Core's position that the cases were unrelated,⁹ making that finding law of the case.¹⁰ Core flip-flops now because the Initial Decisions in both the 2011 and 2014 cases found in Verizon's favor on all material issues, and Core wants to delay Commission orders on the merits that could require a sizeable payment by Core to Verizon and the termination of the one-sided *Payment Order*. Pennsylvania law does not permit litigants to "play fast and loose" with the judicial process "by switching legal positions to suit their own ends."¹¹

Core's recent pleadings also indicate that it does not intend to comply with the true-up provisions of the *Payment Order*. Based on sworn statements made opposing Verizon's petition for partial reconsideration,¹² Core will simply join its Virginia affiliate in filing for bankruptcy

⁸ *Core PO Answer* at 6-7 (emphasis added).

⁹ Even Core acknowledges this. *See Consolidation Motion* at 4 (citing the ALJ's Initial Decision at 25-26).

¹⁰ Under this doctrine, "where a court has ruled on a question, that same court will normally not reverse that determination upon consideration of another phase of the case." *See Recommended Decision, In re: Application of PPL Electric Utilities Corporation*, 2009 Pa. PUC LEXIS 905 (January 30, 2009) at *216; *adopted by Commission* (July 24, 2009). The Commission invokes and applies the doctrine of law of the case. *See id.*; *see also Initial Decision, Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Katrina V. Waddington t/d/b/a Waddington Tours*, 2002 Pa. PUC LEXIS 20 (February 1, 2002) at *15; *adopted by Commission* (May 10, 2002).

¹¹ *Ligon v. Middletown Area School Dist.*, 136 Pa. Commw. 566, 573-574 (Pa. Commw. Ct. 1990) (party is judicially estopped from switching a successfully maintained position within the same case).

¹² *See "Answer of Core Communications, Inc. in Opposition to Verizon's Petition for Partial Reconsideration,"*

when the time comes to pay Verizon what it owes. Core has already professed to be unable to continue operations if it either ceases to receive the monthly \$40,000 that the *Payment Order* requires Verizon to pay on Core's erroneous and inflated bills,¹³ or has to escrow even the undisputed¹⁴ half of the \$180,000 it owes Verizon each month.¹⁵

B. Consolidation Would Delay Decisions in Both Cases and Increase Verizon's Costs

Core moves¹⁶ to consolidate pursuant to 52 Pa. Code § 5.81, which allows consolidation of proceedings involving a common question of law or fact. However, 52 Pa. Code § 5.81 does not *mandate* consolidation in the event of a common question of law or fact; it merely *permits* it.¹⁷ The Commission is free to reject any consolidation request – even if a common issue of law or fact is present – particularly if the result would be increased costs and delay (as is the case here).¹⁸ The code language authorizing the Commission to “make orders ... as may avoid

Pa. PUC Docket Nos. C-2011-2253750, C-2011-2253787 and P-2011-2253650 (June 12, 2015) at ¶ 60 (“*Core Opposition*”).

¹³ Core attempts to depict Verizon's monthly payments under the *Payment Order* as a small fraction of what Verizon actually owes Core, but the other claims that Core attempts to throw into the pot have been rejected by the ALJ, the Virginia federal district court and the Fourth Circuit, all of which denied Core's attempt to collect on its flawed facilities invoices and switched access bills. The federal courts in Virginia likewise rejected Core's ostensible claims against Verizon affiliates that are not parties to either Pennsylvania proceeding.

¹⁴ Core attempts to confuse matters by suggesting that it has disputed every penny that Verizon has ever billed it, but this is untrue. Mr. Mingo conceded at the hearing in the 2014 case that Core owes Verizon for collocation, directory listings and other services with which Core has no issue, but nevertheless refuses to pay *any* of Verizon's bills because he believes Verizon ultimately owes Core more than Core owes Verizon. *See* Transcript of October 21, 2014 Evidentiary Hearing in Pa. PUC Docket No. C-2014-2406550 at 53; 70-71.

¹⁵ After castigating Verizon for providing an updated total of amounts paid by Verizon to Core and amounts billed to Core by Verizon but never paid, Core dumps a plethora of irrelevant, extra-record information into the *Core Opposition*, including allegations of non-payment against Verizon interexchange carrier affiliates that are not parties to either of the instant cases, and that prevailed in their disputes of Core's unfounded switched access bills in the Virginia litigation, and an array of assertions about the merits of its bankruptcy case. *Core Opposition* at ¶¶ 61-64 and Attachments A-C thereto.

¹⁶ Core failed to comply with 52 Pa. Code § 5.103(b)'s requirement that “[w]ritten motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.”

¹⁷ *See* Opinion and Order, *Davenport v. National Utilities, Inc.*, Pa. PUC LEXIS 17, *9 (April 1, 1997) (noting “there is nothing in the Commission's rules that mandates consolidation” and affirming ALJ's decision to deny consolidation where it would delay resolution of earlier complaint due to later complaint).

¹⁸ *See Davenport, supra*, Pa. PUC LEXIS 17 at *9.

unnecessary costs or delay” would be superfluous unless the underlying policy goal of consolidation is to avoid these detrimental repercussions.

Both the language of 52 Pa. Code § 5.81 and Commission decisions applying it make clear that consolidation is contemplated at the *start* of a proceeding, to reduce the time and costs otherwise associated with litigating common issues in serial fashion across multiple proceedings.¹⁹ At the beginning of a case, consolidation can limit the time and money spent on discovery; the need for multiple rounds of duplicative testimony; the number of separate evidentiary hearings and associated witness-related travel expenses; and the number and length of the briefs and exceptions that must be filed. But consolidation carries no benefit here because the 2011 and 2014 proceedings have been fully litigated before the ALJ and fully briefed on exceptions. The 2011 case had already been ripe for decision for 22 months before the recent remand. The 2014 proceeding case has been fully briefed and ready for a Commission decision for 2 months. And as discussed in Section C below, the remand of the 2011 proceeding involves a narrow issue limited exclusively to that case, with no bearing on the 2014 proceeding.

By dividing its alleged causes of action against Verizon in separate proceedings over the course of three years – maintaining they were unrelated – Core forced Verizon to incur the costs of separately litigating two cases from start to finish. Other than to delay a Commission order that might adopt the ALJ’s (and the federal courts’) rejection of Core’s facilities bills so that Core can continue to claim that Verizon owes it money, consolidating the cases now would bring no benefits because the two proceedings are fully briefed. To the contrary, consolidation would delay resolution of both cases and cause additional costs, particularly if Verizon is forced to

¹⁹ See Opinion and Order, *Hyslop et al. v. Philadelphia Suburban Water Company*, 1996 Pa. PUC LEXIS 77 (April 1, 1996) (eight complaints relating to automated tele-reader measuring water usage consolidated prior to prehearing conference); Initial Decision, *Azer v. PPL Electric Utilities Corporation*, 2012 Pa. PUC LEXIS 689 (April 30, 2012), *adopted by Commission* (June 21, 2012) (two complaints from same customer in same six-month period consolidated for hearing to avoid unnecessary delay or cost).

continue paying Core approximately \$40,000 per month on disputed invoices and to forgo being paid on its monthly \$180,000 invoices to Core until such time as the Commission issues a final order covering both proceedings (with little hope of Core complying with the required true-up at that time).

C. There Are No Benefits From Consolidation at This Late Stage of the Cases

Core offers a selective and inaccurate summary of the rate-related disputes in the 2011 and 2014 complaints in an attempt to argue that the Commission cannot decide the cases separately.²⁰ But Core's arguments do not survive closer scrutiny; there is no benefit to be gained from consolidation at this late stage of the cases.

Core attempts to re-litigate both cases in its *Consolidation Motion* and in the accompanying *Core Opposition*, repeating a host of fallacies about the record evidence in both cases that Verizon has already debunked in its post-hearing briefs and exceptions. While Verizon does not repeat its arguments on the merits here, they are thoroughly addressed in Verizon's pleadings and in the two Initial Decisions rejecting most of Core's arguments.²¹

There is no need for consolidation simply because the Commission might have occasion to review provisions of the Verizon Pennsylvania/Core interconnection agreement in both cases, particularly where Core has previously claimed that the cases have "absolutely no relation to" each other and where both cases are in their end stages.²² *First*, the 2014 case does not involve Verizon North or its interconnection agreement at all, so there is no reason to delay resolution of the 2011 case involving that entity. *Second*, the Commission can interpret the Verizon

²⁰ *Consolidation Motion* at ¶¶ 14-20.

²¹ Core never points to the Initial Decisions for support because the ALJ rejected its substantive arguments in both cases. Instead, Core repeatedly misrepresents the record as support for its imagined entitlement to millions of dollars from Verizon. Verizon addressed Core's rampant misrepresentation of the record in post-hearing briefing and on exceptions and need not repeat itself here.

²² *Core PO Answer* at 7.

Pennsylvania/Core interconnection agreement and apply it to the record facts of each case separately.

What Core really argues is that Verizon's claim to be paid for Core's use of Verizon's trunks at issue in the 2011 case is effectively the same as Core's claim to be paid for "facilities" at issue in the 2014 case, and thus must be decided identically. Not only is this a complete about-face from its earlier claims that the two cases are unrelated, it is also false and misleading. Core must pay for its use of trunks and facilities leased from Verizon because Core chose not to build out its network to carry traffic to Verizon or other carriers, and instead knowingly ordered trunks from Verizon to fulfill its obligation to deliver traffic to Verizon (interconnection trunks), and to exchange traffic between Core and interexchange carriers (access toll connecting trunks). This is one of the issues to be decided in the 2011 case.

But the fact that Core must pay Verizon for the use of trunks obtained from Verizon does not mean that Core's attempt to bill Verizon for facilities is valid. Unlike Core, Verizon *self-provisioned* the trunks used to carry its traffic all the way to Core's switch, and the interconnection agreement prohibits Core from billing additional fees on top of what Verizon Pennsylvania has already paid through reciprocal compensation. This is the issue in the 2014 case. The Virginia federal district court and the Fourth Circuit understood the difference, and with the same network configuration and the same types of bills for the parties' Virginia affiliates before them (Verizon's facilities bills to Core and Core's to Verizon), concluded that Core was required to pay Verizon (albeit at different rates) and that Core's facilities bills were invalid in their entirety.²³

The remand of the 2011 complaint case also provides no basis for consolidation. The

²³ See "Verizon's Replies to Core's Exceptions," Docket No. C-2014-2406550 (May 4, 2015) at 1-2.

remand is to consider the implications of the FCC's *VoIP Symmetry Order*²⁴ on Core's invented claims for switched access charges in the 2011 case, and this issue has no bearing on Core's 2014 claims for facilities charges. Core concocted its switched access claims only after the mediation phase of the 2011 case failed, as part of its effort to inflate its monetary claims to exceed Verizon's counterclaims. However, the ALJ here,²⁵ a U.S. District Court in Virginia,²⁶ the Fourth Circuit Court of Appeals,²⁷ and the FCC (interpreting *Core's own tariff*)²⁸ have all rejected Core's position that switched access charges are due. Moreover, Core's switched access back-bills are invalid for an array of *other* reasons, including that Core improperly billed these charges to Verizon on traffic originated by carriers other than Verizon, as well as on ISP-bound traffic, and committed rampant rate and rate application errors.²⁹ The *VoIP Symmetry Order* does not affect these independent bases for denying Core's switched access charges, and certainly has no bearing on Core's unrelated 2014 claims for facilities charges.

²⁴ *In the Matter of Connect America Fund – Developing a Unified Intercarrier Compensation Regime*, WC Docket 10-90 (Rel. February 11, 2015) (“*VoIP Symmetry Order*”).

²⁵ See Initial Decision of ALJ Susan D. Colwell, Pa. PUC Docket Nos. C-2011-2253750 and C-2011-2253787 (issued July 11, 2013) at 61-62 (“*2011 Initial Decision*”).

²⁶ See *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 2013 U.S. Dist. LEXIS 58649 (E.D. Va. April 22, 2013) at **12-16, *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).

²⁷ See *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364, 374-75 (4th Cir. 2014).

²⁸ *VoIP Symmetry Order*, ¶¶ 39-40.

²⁹ *2011 Initial Decision* at 14-15.

In short, there are no synergies to be gained from consolidation; it would merely add costs and impose unfair delay.

CONCLUSION

Core's *Consolidation Motion* is nothing more than an attempt to delay the long-awaited decisions in its 2011 and 2014 complaints so it can continue to take advantage of the *Payment Order* while shirking its obligation to pay Verizon's bills. Additional delay matters, as Core almost certainly will seek bankruptcy protection when it finally must pay both the amounts it has improperly collected and those it has long owed. But Core is bound by its prior assertion that its 2011 claims "have absolutely no relation to claims being made by Core in the [2014] complaint," which "implicate[s] an entirely different set of issues,"³⁰ as well as the ALJ's earlier acceptance of that argument. The Commission should reject Core's self-serving change of tune and deny the *Consolidation Motion*.

Respectfully submitted,



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Dated: June 25, 2015

³⁰ *Core PO Answer at 7.*