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November 30, 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

Dear Secretary Chiavetta:

In accordance with the Briefing Order issued on November 9, 2015 in the above-captioned matter, enclosed for filing is the Supplemental Reply Brief of Core Communications, Inc. Also enclosed is a binder containing copies of the cases cited by Core in its Supplemental Main Brief and Reply Brief, as requested in the Briefing Order.

A copy of Core's Supplemental Reply brief and the binder containing the cited cases has been served upon the parties of record in accordance with the attached Certificate of Service.

Sincerely,

STEVENS & LEE



Michael A. Gruin

Encl.

cc: Certificate of Service
Administrative Law Judge Susan Colwell (via email and first class U.S. mail)

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Wilkes-Barre • Princeton • Charleston • New York • Wilmington

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SUPPLEMENTAL REPLY BRIEF
OF
CORE COMMUNICATIONS, INC.**

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November 30, 2015

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Pursuant to the Orders issued by the Pennsylvania Public Utility Commission (“Commission”) on May 28, 2015 (the “May 2015 Order”) and November 9, 2015 (“November 2015 Order, and the Briefing Order issued by the Administrative Law Judge (“ALJ”) on November 9, 2015, Core Communications, Inc. (“Core”) hereby files its Supplemental Reply Brief in the above-referenced matter.

I. INTRODUCTION

Even though the scope of the Commission’s May 2015 Order directed the parties to address a narrow subset of issues related to the *VOIP Symmetry Order*¹, Verizon used its Main Brief on Remand to re-argue several points regarding Core’s Switched Access Claim, which points are wholly unrelated to the *VOIP Symmetry Order*. As such, Core herein briefly responds to the general arguments from Verizon’s Main Brief on Remand (“Verizon Main Brief on Remand”) regarding the legitimacy of Core’s Switched Access Claims.

In addition, Verizon’s Main Brief on Remand argues that 1) Core failed to carry its burden of proof regarding the VOIP traffic at issue in this case, 2) The *VOIP Symmetry Order* does not support Core’s Switched Access Claims, and 3) Core cannot charge Intrastate Access Rates to Terminate VOIP Traffic. This Reply Brief addresses each of these arguments in turn.

First, Core never had an added “burden of proof” to distinguish VOIP from ISP-bound calls, as Verizon claims, and there is no need for Core perform a retroactive analysis of the traffic at issue in this case to differentiate between VOIP and ISP-bound traffic. Second, Verizon’s heavy reliance on the *Coretel Virginia* case is misguided, because the *Coretel Virginia* case solely involved over-the-top VOIP traffic that was delivered to end users over the public Internet, whereas the present case involves calls delivered by Core to its ISP and CSC customers’ servers

¹ *In the Matter of Connect Am. Fund*, 30 F.C.C. Rcd. 1587 (2015) (“*VOIP Symmetry Order*”).

over physical connections owned and controlled by Core. In addition, Verizon's technical objections to Core's tariff language incorporating the VOIP Symmetry Rule are flawed and hypocritical. Third, while Verizon's argument regarding the application of interstate rates to VOIP traffic is in part correct, it is important to clarify that the FCC's VOIP-PSTN regime only became effective on January 1, 2012, and the vast majority of the traffic at issue in this case pre-dates that regime.

II. CORE'S SWITCHED ACCESS BILLS ARE VALID AND FULLY SUPPORTED

A. Core Properly Billed Verizon For Traffic That Verizon Sent

First, Verizon again argues that Core billed Verizon for traffic that was originated by IXCs, not Verizon. Verizon Main Brief on Remand, at 5. As Core explained in its Exceptions to the Initial Decision, at 20-22, Verizon's argument on this point is based on a flawed reading of the ICAs between the parties.

The ICAs mandate that the sending carrier will transmit local and toll traffic, and traffic transiting to other ILECs over the LITGs;² and that the receiving carrier shall bill the sending carrier for **each minute of traffic** received over the LITGs.³ It is undisputed that this is precisely how Core billed Verizon for reciprocal compensation and switched access. Core billed Verizon for each minute of traffic delivered by Verizon over the LITGs, but Core did not bill Verizon anything for traffic delivered over the ATCs, which were intended to carry traffic between Core and third-party IXCs.⁴ This is precisely same way in which Verizon bills Core.⁵

² Verizon ICA, Att. IV, § 1.1.1; Verizon North ICA, Pt. V, § 1.2.

³ Verizon ICA, § 7.2; Verizon North ICA, § 2.6.2.

⁴ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 13,16, N.T. at 252, 301, and I.D. FoF 38

⁵ Core Statement 3.0 (Panel Rebuttal Testimony), at 50; and **Exhibit CORE R-28** (Verizon Interrogatory Response)("All traffic sent by Core to Verizon is billed to Core. When Core handles third party originated traffic, those third parties are Core's customers. Third party traffic sent by Core is billed to Core."). *See also*, Tr., at 510-512.

As Core explained in its Exceptions, at 8-10, under the billing provisions of the ICAs, it makes no difference whether the originating phone number on a call was associated with Verizon or not. The billing provisions of Att. IV to the Verizon Pennsylvania ICA dictate that Core bill Verizon for *all* incoming traffic on the local interconnection trunk groups (“LITGs”), either as local, intrastate access or interstate access. The Core-Verizon PA ICA, Att. IV, § 7.2 states “[t]he total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill-round and then rounded to the next whole minute;” and § 7.3 states “[the] receiving Party shall bill the originating Party the Local Traffic termination rates, intrastate Exchange Access rates, or interstate Exchange Access rates applicable to each minute of traffic for which CPN is passed....” (Emphasis added). There is nothing in the ICA that discusses either party billing a third-party for traffic Verizon passed over the LITGs, or excluding such calls from billing.⁶

The I.D. improperly accepted Verizon’s interpretation of the ICA, which is that the ICAs’ definition of “Local Traffic” and “Reciprocal Compensation Traffic” bar Core from billing Verizon—at any rate whatsoever—for terminating third-party traffic that transits Verizon’s network. I.D., COL # 17 (reciting Verizon’s Initial Post-hearing Brief, at 30-31). But as Core explained in its Reply Brief, at 29-30, this interpretation is simply wrong, because definitions do not impose a duty, and must be read in conjunction with the operative billing provisions of the ICA, such as those that define the traffic Verizon should be sending over the LITGs, and those that require Core to bill Verizon for “each minute” that is transmitted over the LITGs, at one of three possible rates.

⁶ The FCC has found that “Verizon does have control over how it passes calls” over LITGs to CLECs. *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

B. Core's Methodology For Generating Switched Access Bills Was Reliable

Verizon also argued that the methodology that Core used to generate its switched access bills was flawed. But as Core explained in its Exceptions, at 17-18, Core's switched access billing methodology was fully documented and industry standard. Core records the CPN, called number, start time, answer time and end time of each call at its terminating switches in order to generate switch records which it then stores and uses to generate switched access bills to Verizon.⁷ Core compares the CPN and the called number of each call to identify switched access (as opposed to local) traffic that Verizon sends Core, and to jurisdictionalize the traffic as intrastate or interstate.⁸ This methodology is fully consistent with the manner in which Verizon bills Core for traffic Core sends Verizon over the interconnection trunks.⁹

In order to eliminate the possibility of double-billing for switched access minutes, Core compares its switch records against the EMI records, and eliminates any call for which there is a corresponding EMI record from the bucket of calls for which switched access bills are rendered.¹⁰ In comparing switch records against Verizon's EMI, Core assumes that any call in the EMI that has the same calling party and called party number, and is placed on the same day, as a call found in Core's switch records, is a match.¹¹ Once a call is determined to have a matching EMI, Core does not bill Verizon switched access for such calls, rather, Core relies on the EMI to bill the appropriate third-party carrier. Every switched access invoice Core issues Verizon is accompanied by lengthy bill detail which lists the specific rate elements billed and

⁷ *Id.*, at 31.

⁸ *Id.*

⁹ *See, Exhibit Core R-27.*

¹⁰ Core Stmt 1.0, at 15-16.

¹¹ *Id.*

specific rates applicable to each and every MOU Core billed.¹² Should Verizon ever decide to pay, or be compelled to pay, its switched access bills, Core will deduct any amounts previously paid at the \$0.0007 rate.¹³

Verizon has never articulated a serious dispute with respect to Core's switched access bills. Verizon's sole business-to-business response to these bills was a cursory, one-page dispute letter.¹⁴ Core offered to provide CDRs to support its switched access billings to Verizon; but Verizon never responded.¹⁵ However, Core has nonetheless provided CDRs to support its switched access billing to Verizon as part of the discovery in this case.¹⁶

Finally, Core demonstrated that Verizon's own analysis fully supported Core's intercarrier compensation billing, and that the parties' records reflect nearly identical view of the volumes of traffic exchanged between the parties. Core urges to Commission to carefully review Core's Reply Brief, at 46-48, for a detailed explanation of how Verizon's own analysis supports the reliability of Core's bills.

C. Core's Switched Bills Are Accurate

Verizon's third argument in opposition to Core's Switched Access Claim is a rehash of arguments made in its Main Brief regarding some purported calculation and rate errors in Core's switched access bills. Core thoroughly addressed each of these arguments in its Reply Brief, at 42.

Verizon's objections relative to the carrier common line charge ("CCL"), arose for the first time on cross examination at the hearing, and Verizon's own testimony contains no

¹² Core Statement 4.0 (Panel Surrebuttal Testimony), at 15; and Exhibit CORE SR-5.

¹³ *Id.*, at 16.

¹⁴ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 33-34.

¹⁵ *Id.*

¹⁶ *Id.*

discussion whatsoever regarding problems with the CCL. Core presented its switched access billings which included the CCL charges, and explained the basis for the CCL charges, and as such met the burden of production and persuasion with respect to these charges. Core witness Mr. Mingo explained in detail the process he followed to calculate the CCL and vet it with Commission staff prior to filing. Tr., at 357. Verizon's witnesses provided no evidence or testimony to rebut the CCL charges or challenge their legitimacy. With Core having met its burden of production and persuasion with respect to the CCL charges, and with Verizon providing no evidence to rebut Core's evidence, Core carried its burden of proving the accuracy of its CCL charges.

With respect to the relatively minor issue of 800 database charges, Core admitted at the hearing that the 800 database charges were issued in error. Tr., at 350-352.

D. The ICAs Clearly Permit Back-Billing

Verizon also argues that Core's Switched Access Claim is precluded because Core's intrastate tariff allegedly precludes back-billing. Verizon Main Brief on Remand, at 7. Verizon's argument on this point is flawed in two respects. First, a significant portion of the Core's Switched Access Claim does not relate to back-billing, but rather to switched access bills issued in the ordinary course of business from January 2012 through June 2012, for which Core billed Verizon on a monthly basis.¹⁷ Second, Verizon continues to ignore the fact that the ICAs specifically authorize re-rating and back-billing between the parties. Specifically, the ICAs, Att. VIII, § 3.1.8.3, provides that “[a]lthough it is the intent of each Party as a providing Party to submit timely and accurate bills, failure by a providing Party to present bills to a purchasing Party in a timely or accurate manner shall not constitute a breach or default of this Agreement, or

¹⁷ Core Stmt. 1.0, at 32-33 and 35; and Exhibit BLM-5.

a waiver of a right of payment of the incurred charges, by the providing Party.” The ICAs further state, at Pt. A, § 23.4, that “[t]he audited Party shall promptly correct any error that is revealed in a billing audit, including back-billing of any underpayments....” By contrast, the tariffs are silent on the issue of backbilling. Hence, the ICAs control, by virtue of the clause in Verizon-Core ICA, Pt. A, § 1.3.2, which delineates the respective scope of the agreements and referenced tariffs: “[t]he fact that a condition, term, right or obligation appears in the Agreement and not in a Tariff, or in a Tariff but not in the Agreement, shall not be interpreted as, or deemed grounds for finding, a conflict.”

III. CORE HAD NO BURDEN OF PROOF SPECIFIC TO VOIP

Nothing in Verizon’s three rounds of written testimony suggested that it would seek to exclude VOIP traffic from Core’s Switched Access Claim.¹⁸ Verizon’s disputes included claims that the ICA forbade Core from billing Verizon for “third party” and “transit” traffic; that Core’s claims should be limited to intraLATA toll traffic, and that Core somehow failed to provide sufficient call records. But nothing in these extensive passages related whatsoever to VOIP.¹⁹ Throughout this period, Verizon was fully aware that Core’s customer base included VOIP providers as well as the traditional focus on ISPs, and that the parties were likely exchanging VOIP traffic.²⁰ Accordingly, Core was not on notice to distinguish ISP-bound from VOIP traffic, and, for this reason, no “burden of proof” to identify VOIP attached to Core’s Switched Access Claim, as Verizon argues. Verizon Main Brief on Remand, at 7. Core satisfied its initial burden of proof by presenting its Switched Access Claim, and by producing the

¹⁸ See, Verizon Statement 1.0 (Panel Direct Testimony)(Aug. 23, 2012), at 65-83; Verizon Statement 2.0 (Panel Rebuttal Testimony)(October 4, 2012), at 39-45; and, Verizon Statement 3.0 (Panel Surrebuttal Testimony)(October 25, 2012), at 70-71.

¹⁹ *Id.*

²⁰ Verizon Stmt. 1.0, at 9 and 49.

relevant invoices and call records.²¹ At that point, the burden of persuasion shifted to Verizon to show, through discovery, testimony and briefing, why and how VOIP calls should be excluded from Core's claim.²² With respect to VOIP, Verizon never attempted to meet this burden.

Verizon's statement that the VOIP Symmetry Rule applies only to VOIP traffic, Verizon Main Brief on Remand, at 7, while true, only serves to obscure the broader significance of the *VOIP Symmetry Order*; and Verizon's implicit claim that that order is irrelevant to Core's Switched Access Claim, *id.*, is false. As Core explained in its Main Brief on Remand, at pp. 16-17, the *VOIP Symmetry Order* clarifies not only the VOIP Symmetry Rule, but also the traditional, pre-rule, test for end office switching as it relates to end user lines, which is whether the LEC "own[s] or control[s] the transmission path over which the call is finally transmitted to the end user."²³ The FCC's discussion of the traditional end office switching model also invoked the "functional equivalency" rule which predates the *ICC Transformation Order*,²⁴ and which further bolsters Core claim to switched access compensation even though its network architecture may not match precisely that of an incumbent LEC. As demonstrated in Core's Main Brief on Remand, at 16-17, Core owns and controls the transmission path over which calls are delivered to its ISP and VOIP customers, and therefore meets the FCC's traditional test for end office switching. Further, the *VOIP Symmetry Order* guts Verizon's reliance on *YMax*.²⁵

²¹ See, e.g., Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 32-36 and **Exh. BLM-5**.

²² *May 2015 Order*, at 8 ("Upon the presentation of evidence sufficient to initially satisfy the burden of proof by the party seeking affirmative relief, the burden of going forward with the evidence to rebut the evidence of the party seeking affirmative relief shifts to the other party.")

²³ *VOIP Symmetry Order*, at ¶ 31.

²⁴ *VOIP Symmetry Order*, at ¶ 9; citing, 47 C.F.R. § 51.903(d)(3)(defining "End Office Access Service" as "[a]ny functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier... End office Access Service rate elements for a nonincumbent local exchange carrier include any functionally equivalent access service.").

²⁵ *VOIP Symmetry Order*, at ¶¶ 34-35.

Verizon's Main Brief restates Verizon's incorrect view that the *ISP Remand Order* applies to toll calls. See Verizon Main Brief on Remand, at 7. But Core demonstrated, in its Main Brief on Remand at pp. 13-14, that the *ISP Remand Order* applies only to locally-dialed calls. Neither Verizon nor the ALJ cite to a single case applying the *ISP Remand Order* to toll-dialed calls. Thus, there is no legal basis to discriminate against ISP-bound calls in the toll context, or to apply that order's \$0.0007/minute rate or 3 to 1 ratio provisions to Core's Switched Access Claim.

For all of these reasons, Core never had an added "burden of proof" to distinguish VOIP from ISP-bound calls, as Verizon claims. However, it is important to note for the record that Verizon's related claim—that "Core conceded... that it is unable" to distinguish ISP-bound from VOIP²⁶—although a moot point, nevertheless misstates Core's testimony. Core testified that it is possible to distinguish ISP-bound from VOIP traffic when using Core's own switch records, which records the trunk group over which each type of call (ISP-bound or VOIP) is carried, but not when using EMI provided by Verizon, which does not provide trunk group information.²⁷ Notably, Verizon previously acknowledged that Core had some ability to classify traffic,²⁸ but now, for unknown tactical reasons, insists that Core is categorically unable to distinguish ISP from VOIP.

The Commission's decision in *AT&T*, cited by Verizon to argue that Core was required to distinguish Verizon's terminating VOIP from ISP-bound traffic, (Verizon Main Brief on Remand, at p. 8), is not on point. In *AT&T*, the distinction between ISP and VOIP mattered because Core sought compensation for locally-dialed traffic pursuant to Core's switched access

²⁶ Verizon Main Brief on Remand, at 7.

²⁷ Tr., at 319-320 (Verizon Cross Examination of Bret L. Mingo).

²⁸ Verizon Replies to Exceptions, at 11 ("Core... had the capability to identify how much traffic was VoIP versus ISP-bound..., but chose not put [sic] such information into the record...").

traffic, most of which traffic was ISP-bound and a small, unidentified portion of which was VOIP. The Commission found that the *ISP Remand Order*, not Core's tariff, applied to locally-dialed ISP-bound traffic;²⁹ and, because Core did not split out VOIP from ISP-bound, applied the *ISP Remand Order's* \$0.0007/minute rate to all of the traffic in that case.³⁰ Here, all of the traffic for which Core seeks compensation (i.e., Core's Switched Access Claim) is toll-dialed, and the *ISP Remand Order* does not apply to toll traffic.³¹ Core has demonstrated that a toll call dialed to an ISP server in a LATA is a call to an end user of local exchange services (i.e., the ISP) and therefore compensable pursuant to the terms of its tariffs, and fully consistent with the Commission's orders in *Palmerton* and the *Core Rural Certification Case*. See Core Main Brief on Remand, at 16-17. Another distinction between *AT&T* and the present case is that the issue of VOIP versus ISP-bound traffic was raised relatively early on in *AT&T*, at the motion to dismiss stage,³² whereas in this case it was not raised until cross examination at the hearing. This is another indication that, while the issue of VOIP versus ISP was an important one in *AT&T*, it is not in this case.

²⁹ *AT&T*, 2013 WL 4499089, at *7 (“the FCC's rate cap of \$0.0007 per minute of use is the appropriate reciprocal compensation rate that should apply to the locally-dialed ISP-bound traffic that AT&T sends to Core for termination on Core's network.”)(Emphasis added); see also, *AT & T Corp. v. Core Commc'ns, Inc.*, No. 14-1499, 2015 WL 7567520, at *9 (3d Cir. Nov. 25, 2015)(“Because these calls were local calls, the intrastate long distance tariff Core had filed with the PPUC filed did not directly apply; it applied only between two *different* local exchange areas within the state.”).

³⁰ *Core Commc'ns, Inc. v. AT&T Corp.*, Dkt No. C-2009-2108186, 2012 WL 6208428 (Dec. 5, 2012)(“because the record evidence did not support a breakdown of traffic between ISP-bound traffic and VoIP traffic, the ALJ reasonably decided that all traffic in this proceeding would be presumed to be locally dialed ISP-bound traffic.”). (Emphasis added).

³¹ See, e.g., *Verizon California, Inc. v. Peevey*, 462 F.3d 1142, 1158 (9th Cir. 2006). (“[T]he *ISP Remand Order* was exclusively concerned with the operation of § 251(b)(5) of the Act and the imposition of reciprocal compensation charges on ISP-bound traffic.”)

³² *Core Commc'ns, Inc. v. AT&T Corp.*, C-2009-2108186, 2012 WL 6208428 (Dec. 5, 2012)(“Regarding the traffic after September 2009, we stated, ‘this Commission unequivocally stated in *Global NAPS* that it has jurisdiction to address intercarrier compensation issues related to VoIP traffic.’ The Commission found that the ALJ properly denied the Motion to Dismiss regarding VoIP traffic. The Commission agreed that there remained outstanding genuine issues of fact.”).

IV. **THE VOIP SYMMETRY ORDER VALIDATES CORE'S SWITCHED ACCESS CLAIMS**

Verizon's reliance on *CoreTel Virginia* and, by extension, *YMax*, Verizon Main Brief, at 8-11, fails for two separate reasons.

A. **CoreTel Virginia Involved Over-the-Top VOIP Traffic**

In *CoreTel Virginia*, all of the traffic at issue was over-the-top ("OTT") VOIP, that is, traffic that was delivered to end users over the public Internet.³³ The *CoreTel Virginia* court found that "[t]he language of CoreTel's end-office switching service does not permit that specific tariff rate to be applied when CoreTel delivers calls to customers over the public Internet rather than using a physical facility owed by CoreTel."³⁴ In this case, unlike *CoreTel Virginia*, Core delivers calls to its ISP and CSC customers' servers over physical connections owned and controlled by Core. Core Main Brief on Remand, at 16-17. Verizon asserts that Core uses the public Internet in this case (See Verizon Main Brief on Remand, at 9-10), but provides no record evidence on that point. Further, Core agrees with Verizon that its tariffs from 2009-2012 incorporate "end user lines," (Verizon Main Brief on Remand, at 11), but here, Core provides the physical connections (lines), consistent with its tariffs.

B. **Core's Switched Access Tariffs Fully Authorize Charges For VOIP Traffic**

Second, even though the point is moot (because Core provides the physical lines), it is nevertheless worth noting that the *VOIP Symmetry Order* does not "conclude[] that the VOIP Symmetry Rule did not apply" to Core's (or CoreTel Virginia's) tariffs, as Verizon insinuates in its Main Brief on Remand, at p. 9. The FCC did not review Core's tariff or the

³³ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 374 (4th Cir. 2014) ("CoreTel... delivers these calls to its customers over the public internet.").

³⁴ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 375 (4th Cir. 2014).

underlying facts in *CoreTel Virginia*, much less the tariffs and facts in the present case before the Commission. The FCC merely acknowledged that in some cases, a carrier may have failed to incorporate the VOIP Symmetry Rule into its tariffs.³⁵ The FCC also provided what could be considered an implicit test for tariffing the VOIP Symmetry Rule, when it observed that “[m]any competitive LECs have incorporated tariff language that describes functionally equivalent services under the VoIP symmetry rule, either by explicitly reciting the VoIP symmetry rule, or by referring to the “functional equivalent” of TDM-based end office switching.³⁶ Core’s FCC and P.U.C. tariffs from 2009-2012 explicitly recite the rule (using its actual legal citation, 47 C.F.R. § 51.913(b)), and refer to the functional equivalent of TDM-based end office switching.³⁷ To the extent that the *CoreTel Virginia* court applied a different test, such as “the specific

³⁵ *VOIP Symmetry Order*, at ¶ 40 (“We find that this case does not impact the clarification provided here.”).

³⁶ *Id.*

³⁷ Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. No. 2 (Tab D to Core’s November 2015 Main Brief), Original Sheet No. 52.37 (Effective February 11, 2011)(“In the absence of an interconnection agreement between Customer and Company that provides otherwise, **Customer shall compensate Company for Switched Access Service as set forth in this Tariff for any traffic that falls within the scope of “toll VoIP-PSTN traffic”** (as that term is discussed in FCC Item No. 11-161 (rel. November 18, 2011) and 47 U.S.C. § 51.913(a)), at the interstate switched access rates for the state of Pennsylvania as set forth in section 5.6 of this tariff (Intrastate Switched Access Tariff PA PUC No. 4). Customer shall be entitled to assess and collect Switched Access Charges for toll VoIP-PSTN traffic from Customer **to the full extent permitted under applicable law, including the functions described in FCC Item No. 11-161 and 47 C.F.R. § 51.913(b)**”(Emphasis added); Core Communications, Inc. FCC Tariff No. 3 (Tab G to Core’s November 2015 Main Brief), 5th Revised Page No. 13 (effective March 27, 2012)(“Switched Access Service - Access to the network or facilities of the Company for the purpose of originating or terminating communications. Switched Access Service is available to carriers, as defined in this rate sheet. Switched Access Service includes services and facilities provided for the origination or termination of any interstate or foreign communications regardless of the technology used in transmission, including, but not limited to, local exchange, long distance, and data communications services that may use either TDM or Internet Protocol (“IP”) or other technology. **Switched Access Service includes, but is not limited to, the functional equivalent of the incumbent local exchange carrier interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination; tandem switched transport facility (per mile); tandem switching; common transport multiplexing; and common trunk port. Consistent with 47 C.F.R. § 61.26(a)(3)(ii), Switched Access Services includes the termination of interexchange telecommunications traffic to any retail end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.**”(Emphasis added).

governs the general”, mentioned by Verizon in its Main Brief on Remand, at p. 11, the *VOIP Symmetry Order* supersedes such a narrow, backward-looking approach.³⁸

Finally, in reviewing Verizon’s technical objections to Core’s tariff language incorporating the VOIP Symmetry Rule, it may be useful for the Commission to keep in mind some related observations.

From 2009-2012, Core duly tariffed switched access charges for toll calls of all kinds, and the Commission has never required special tariff language as a condition precedent to assessing switched access charges on VOIP traffic. In *Palmerton*, the seminal case with respect to VOIP compensation, the Commission never required or even discussed the possibility of VOIP-specific tariff language. The type of hyper-technical parsing Verizon would have the Commission undertake would apply, if at all, only to interstate traffic *after* January 1, 2012, the effective date of the *ICC Transformation Order*, which is the point in time at which the FCC preempted state commission regulation of switched access charges for VOIP prospectively. Of course, in 2012, Core like most other carriers revised its tariffs to include language to implement the FCC’s new VOIP-PSTN compensation regime. See Core Main Brief on Remand, at p. 8 & n. 36.

Notably, Verizon’s own switched access tariffs generally neglect to incorporate the VOIP-PSTN regime or the VOIP Symmetry Rule. In its written testimony, Verizon identified four tariffs as the legal basis for its switched access bills to Core:

³⁸ *VOIP Symmetry Order*, at ¶ 48 (“the findings and conclusions in the *USF/ICC Transformation Order* do not support the limited application of the VoIP symmetry rule advanced by these parties. Indeed, all of the policies underlying adoption of the transitional VoIP intercarrier compensation regime, including the VoIP symmetry rule, support the clarification advanced by the Commission here. Additionally, as also discussed above, the description in the *USF/ICC Transformation Order* of how the rule would be applied and the text of the adopted rules support the clarification adopted herein. Further, the cases cited by AT&T and Verizon to support their proposed interpretation are distinguishable from the facts before us or have been superseded by the changes adopted in the *USF/ICC Transformation Order*.”).

Q. HOW DOES VERIZON DETERMINE THE RATES IT BILLS
CORE FOR TRAFFIC TERMINATION?

- A. Verizon bills Core reciprocal compensation for the termination of local traffic based on the respective ICAs. Verizon bills Core access charges for termination of interexchange traffic based on the relevant Verizon access tariff. These are Verizon FCC Tariff No. 1, Section 6 (switched access), FCC Tariff No. 14, Section 4 (facilities for switched access), Pennsylvania PUC Tariff No. 302, Section 6 (Verizon PA) and Pennsylvania PUC Tariff No. 9, Section 4 (Verizon North).³⁹

Three of these four tariffs fail to reference “VOIP” traffic or even the term “Internet.”⁴⁰ Only the fourth tariff (Verizon North’s intrastate tariff) incorporates the FCC’s VOIP rules to any degree.⁴¹ This defect in three out of four referenced tariffs is glaring in this case because Verizon itself states that 100% of the traffic for which it billed Core was VOIP-originated.⁴² Verizon, by its own argument, has failed to establish its entitlement to any compensation for Core’s 100% VOIP traffic. Should the Commission conclude that Core somehow failed to incorporate VOIP provisions into its tariffs, at the very least, the Commission must also then conclude that Verizon, too, has failed in this respect.

³⁹ Verizon Stmt 1.0, at 62, lines 14-21.

⁴⁰ Verizon FCC Tariff No. 1, Section 6 (“Switched Access Service):
<http://www.verizon.com/tariffs/PDFViewer.aspx?doc=180317>
Verizon FCC Tariff No. 14, Section 4 (Facilities for Switched Access):
<http://www.verizon.com/tariffs/PDFViewer.aspx?doc=182476>
Pennsylvania PUC Tariff No. 302, Section 6 (Switched Access Service):
<http://www.verizon.com/tariffs/PDFViewer.aspx?doc=180343>

⁴¹ Pennsylvania PUC Tariff No. 9, Section 4.3.3.E (Identification and Rating of VoIP-PSTN Traffic):
<http://www.verizon.com/tariffs/PDFViewer.aspx?doc=180342>

⁴² Verizon Initial Post-Hearing Brief, at 42; *and see*, I.D., FOF # 81 (“The traffic is all VoIP-originated....”).

V. THE JURISDICTIONAL ACCESS RATES FOR VOIP TRAFFIC VARY OVER TIME

Verizon notes that the FCC's VOIP-PSTN regime applies interstate rates to all VOIP traffic, including intrastate VOIP. See Verizon Main Brief on Remand, at p. 12. That much is true. But Verizon's implicit corollary argument, that this observation somehow invalidates all of CoreTel's intrastate charges, is false. The FCC's regime was effective January 1, 2012. Prior to that date, the FCC admittedly had not acted to preempt state commission imposition of switched access charges on VOIP traffic, such as the Commission's order in *Palmerton*. Core Main Brief on Remand, at 6.

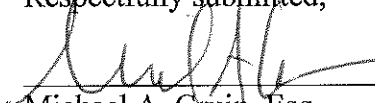
The VOIP-PSTN regime became effective January 1, 2012. Core's Switched Access Claim extends from traffic exchanged from February, 2009 through June, 2012. Core Stmt. 1.0, **Exh. 5**. It must be noted that only six invoices, i.e., those issued between January-June 2012, are impacted by the FCC's VOIP-PSTN regime. If the Commission were to presume that all of this traffic was ISP-bound, as Verizon argues, Verizon Main Brief on Remand, at 7-8, then all of the traffic remains subject to interstate and intrastate rates, as reflected in Core's bills and Core's claim. However, given the decline of ISP-bound traffic and the rise of VOIP, Core believes it would be just as reasonable to assume that all of the traffic was VOIP in this period. Therefore, to eliminate any grounds for yet another last-minute Verizon dispute, Core has rerated all of Verizon's switched access traffic at the lowest possible interstate rates (i.e., Verizon's own) from January to June, 2012, by applying interstate rates to intrastate

traffic.⁴³ This rerating results in a revised total Core Switched Access Claim of \$2,168,706.12, which represents a significant reduction from Core's original claim of \$2,532,143.22.⁴⁴

VI. CONCLUSION

With the *VOIP Symmetry Order* definitively rejecting Verizon's main arguments against Core's Switched Access Claims, Verizon is asking the Commission to deny Core's entitlement to switched access for traffic that was clearly non-local in nature, even though such charges are authorized by the Core switched access tariffs that the Commission previously approved. Under Verizon's interpretation, Verizon would be permitted to 1) route traffic to Core, including its own wireless and IXC traffic, 2) pay Core nothing, and, 3) simultaneously, collect full switched access rates from Core for traffic that Core routes to Verizon. This result is contrary to the VOIP Symmetry Rule, *the Voip Symmetry Order*, and *the ICC Transformation Order*, not to mention the Commission's own policies and orders. Consequently, the Commission should reject Verizon's arguments and grant Core's Switched Access Claim consistent with the modified total set forth herein.

Respectfully submitted,



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November 30, 2015

⁴³ **Appendix I** (Chart showing rerating of six 2012 Core intrastate switched access bills to Verizon).

⁴⁴ Core Stmt. 1.0, at 32-33 and 35; and **Exhibit BLM-5**. To the extent Verizon has billed Core at intrastate switched access rates for Core's traffic to Verizon—which Verizon claims in 100% VOIP—the Commission should require that such charges be similarly rerated at interstate rates from January 1, 2012 forward.

APPENDIX 1

Core Communications, Inc.
Balance Details for OCN-92XX - Verizon LEC PA
All Transactions

Type	Num	Date	Due Date	Usage Month	Usage Year	Jurisdiction	Amount	Rerated Amount
Invoice	2664-OCN	07/15/2012	08/14/2012	June	2012	Intrastate	\$ 51,015.55	\$ 5,332.24
Invoice	2588-OCN	06/15/2012	07/15/2012	May	2012	Intrastate	\$ 56,387.11	\$ 5,949.36
Invoice	2503-OCN	05/15/2012	06/14/2012	April	2012	Intrastate	\$ 85,150.76	\$ 7,808.56
Invoice	2424-OCN	04/15/2012	05/15/2012	March	2012	Intrastate	\$ 72,194.64	\$ 6,315.98
Invoice	2278-OCN	03/15/2012	04/14/2012	February	2012	Intrastate	\$ 67,226.85	\$ 6,618.58
Invoice	2277-OCN	02/15/2012	03/16/2012	January	2012	Intrastate	\$ 71,024.47	\$ 7,537.56
							\$ 402,999.38	\$ 39,562.28
						Rerate Differential	\$ 363,437.10	
						Total Claim (BLM-5)	\$ 2,532,143.22	
						Revised Total Claim	\$ 2,168,706.12	

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.
Complainant

v.

VERIZON PENNSYLVANIA INC.
and

VERIZON NORTH, LLC
Respondents

Docket No. C-2011-2253750
Docket No. C-2011-2253787

CERTIFICATE OF SERVICE

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

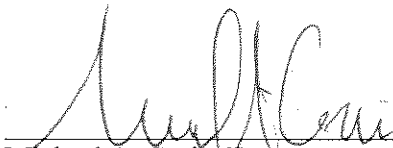
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