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January 28, 2016

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

Dear Secretary Chiavetta:

Enclosed please find Verizon's Exceptions to the Supplemental Initial Decision on Remand, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter.

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Verizon's Exceptions to the Supplemental Initial Decision on Remand, 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 28th day of January, 2016.

Via E-Mail and Federal Express

Michael A Gruin, Esquire
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Attorney for Verizon

**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.	:	

**VERIZON’S EXCEPTIONS TO SUPPLEMENTAL
INITIAL DECISION ON REMAND**

The January 8, 2016 Supplemental Initial Decision on Remand (“Supplemental ID”) correctly decides the disputes in this case. It confirms the Original ID’s¹ dismissal of Core’s² Amended Complaint against Verizon,³ finding that Verizon has already paid Core at the “appropriate rate” of \$0.0007 for terminating Verizon-originated traffic and Core is not entitled to bill more. Supplemental ID at 31. On the specific remanded issue, it concludes that the *VoIP Symmetry Order*⁴ does not alter the Original ID’s proper rejection of Core’s attempt to re-bill Verizon at much higher switched access rates.⁵

¹ Initial Decision of Administrative Law Judge (“ALJ”) Susan D. Colwell issued on July 11, 2013 (“Original ID”).

² “Core” refers to Core Communications, Inc. (“Core”).

³ “Verizon” refers to Verizon Pennsylvania LLC (“Verizon PA”) and Verizon North LLC (“Verizon North”).

⁴ *In the Matter of Connect America Fund – Developing a Unified Intercarrier Compensation Regime*, WC Docket 10-90 (Rel. February 11, 2015) (“*VoIP Symmetry Order*”).

⁵ See Supplemental ID at 30. If the Commission accepts the Supplemental ID, it need never reach the alternative arguments in Verizon’s Initial and Reply briefs on remand. However, Verizon makes clear for the record that it does not waive those arguments, and should the Commission need to address them, it refers the Commission to those briefs. For example, Verizon disagrees with the Supplemental ID’s conclusion that the Fourth Circuit decision in *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364, 374 (4th Cir. 2014) does not bar Core’s attempt to bill switched access. Supplemental ID at 28. The Fourth Circuit’s reasoning applies equally here because the record shows that, just as in Virginia, Core in Pennsylvania does not provide the physical infrastructure over which calls are delivered to its customers. VZ Initial Br. on Remand at 8-11; VZ Reply Br. on Remand at 10-12; see also Tr. 405-06; 411-13; VZ Initial Brief at 53 (describing how Core terminates

The Supplemental ID also correctly sustains Verizon’s counterclaims against Core, finding that “Verizon has supported [them] with . . . substantial evidence.” Supplemental ID at 31-32. It thus confirms that Core must pay Verizon’s bills for facilities and directory listings; requires Core to pay intercarrier compensation for the traffic it sends to Verizon (subject to the rating issue raised in Verizon’s second exception below); and confirms that Core has overcharged Verizon for terminating traffic originated by third parties and must refund those overcharges.

The Supplemental ID also highlights the need to bring this case to a swift conclusion to halt the present unfair situation in which the Commission’s 2011 Emergency Order requires Verizon to pay Core’s inflated bills while Core owes Verizon millions of dollars and continues to withhold all payment to Verizon for the services Core uses to keep its business running.

According to the Supplemental ID:

[T]he record shows that Core has not escrowed *any* funds to pay whatever amounts the Commission may eventually determine are due from Core to Verizon. FOF 84. 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. Despite the Commission's Order requiring Verizon to pay disputed bills, Core has refused to pay anything to Verizon pending litigation, even the lower amounts that it claims are due to Verizon. FOF 88. This is alarming, as Core’s president also testified that even if Core is not required to pay anything to Verizon, it is “unlikely” that Core can survive if it loses on its affirmative claims against Verizon. FOF 87.

Supplemental ID at 29.

traffic). The *VoIP Symmetry Order* correctly recognized that the Fourth Circuit’s decision did not conflict with its general conclusion because ultimately the specific language of a carrier’s tariffs governs. *VoIP Symmetry Order*, ¶¶ 19, FN 64; 34; 39-40. Likewise, although not reached by the Supplemental ID, Core’s attempt to charge the hefty intrastate carrier common line charge that comprises most of its billings is invalid because Core does not provide carrier common line service and because intrastate rates do not apply. VZ Initial Br. on Remand at 11-12; VZ Reply Br. on Remand at 17.

The Supplemental ID's findings on the key issues are correct, and Verizon files limited exceptions only to clarify two issues. First, Verizon seeks to clarify that the Original ID's \$1 million refund limitation applied only to the refund due to Verizon, not to any payment on its billings for services rendered (though this clarification would be rendered moot if the Commission agrees that the limitation simply should be set aside). Second, Verizon seeks to clarify that, based on the nature of the traffic for which Verizon billed switched access charges to Core, none of that traffic should be re-billed at the rate of \$0.0007.

REMAND EXCEPTIONS

Verizon Remand Exception #1: The \$1 Million Limitation from the Original ID Applies only to the Refund for Overcharges for Third Party Traffic.

Page 32 of the Supplemental ID introduces potential confusion regarding the Original ID's decision to limit the required refund for Core's overbilling of Verizon for traffic originated by third parties to \$1 million. The evidence showed that Core had over-collected nearly three times that amount from Verizon as of the close of the record, and has continued to overcharge Verizon throughout the years this case has been pending.⁶ Verizon thus excepted to the Original ID's finding that the "lesser amount [of \$1 million] . . . will, nonetheless, make the point to Core that double-billing is a serious violation which will not be tolerated" (*see* Original ID at 50; Verizon Exception 2 to the Original ID). The Supplemental ID agreed with Verizon's exception, but seems to suggest that the Original ID's \$1 million limitation related to Verizon's claims for payment of Verizon's bills to Core. Supplemental ID at 32. That is incorrect, as the \$1 million

⁶ The record supported a full refund of \$2,725,140 for the January 2008 to June 2012 time frame, plus 35% of amounts Verizon has paid to Core from June 2012 through the date of the Commission's final order, plus interest at the statutory rate of 6%, as required by 66 Pa. C.S. § 1312(a). Verizon filed exceptions arguing that the reduction to \$1 million was not supported by substantial evidence. Verizon also argued that the Commission should order Core to remit the full refund of \$2,725,140 to Verizon as a payment, rather than to apply it as an account credit against Core's future billings to Verizon. See Verizon Exception 2 to Original ID.

limitation related solely to Verizon's claim for refund of overpayments to Core due to Core's overbilling.⁷

Verizon presumes the Commission will address the issue of the \$1 million refund limitation when it resolves Verizon's Exception 2 to the Original ID and refers the Commission to those arguments, but points out the Supplemental ID's incorrect suggestion regarding the scope of the limitation to avoid any confusion.

Verizon Remand Exception #2: Verizon Should Not Rebill for Inter-carrier Compensation Charges.

The Supplemental ID confirms the Original ID's holding that Core must pay Verizon for terminating the outbound traffic that Core sends to Verizon (services for which Core has steadfastly refused to pay, even though it concedes that it owes some payment). But the Supplemental ID suggests, with little explanation, that Verizon might have to re-rate some of its switched access charges to the \$0.0007 rate that might apply to locally-dialed ISP-bound traffic. Supplemental ID at 32. For the reasons below, \$0.0007 is not the correct rate for the particular traffic that Core sent to Verizon for termination.

Verizon bills Core to terminate traffic that Core sends to Verizon. As the Supplemental ID explained, this is not ISP-bound traffic; it is voice traffic for which "Core is acting as a least-cost router, taking traffic from other wholesale traffic aggregators and terminating it in Pennsylvania. The traffic is all Voice over Internet Protocol (VoIP), is not from numbers assigned to Core, and is not even necessarily originated in Pennsylvania." Supplemental ID at 26. As of the submission of Verizon's direct testimony in 2012, Verizon's combined unpaid

⁷ Compare Original ID Ordering Paragraph 7 ("Core Communications, Inc., shall credit Verizon Pennsylvania, Inc., and Verizon North, LLC, for \$1,000,000 which represents the amount overbilled for the reciprocal compensation for third-party originated traffic transited by Verizon") with Original ID Ordering Paragraph 8 ("Core Communications, Inc., shall pay the bills tendered on or after May 17, 2009, by Verizon Pennsylvania, Inc., and Verizon North LLC, pursuant to the interconnection agreements existing between the companies.").

invoices to Core for reciprocal compensation and switched access services provided by Verizon in terminating Core's outbound traffic totaled approximately \$93,000, but Core refused to pay any of those bills. Original ID at 10 (FOF 31). The Original ID held that that Core had breached the ICA by failing to pay Verizon's intercarrier compensation charges and should pay the outstanding \$93,000 plus any subsequent billings. Original ID at 53 (COL 6); 56 (COL16). Core did not except to this holding. Verizon Reply Exceptions at 19, n. 87. As the case has remained pending before the Commission for several years and Core has continued to refuse to pay Verizon for terminating Core's traffic, that amount has continued to grow. It totaled approximately \$1.2 million when Verizon filed its Petition for Reconsideration in June of 2015. Verizon PFR at 6 and Attachment D.

The Supplemental ID confirms that Core should pay Verizon intercarrier compensation for terminating Core's outbound traffic. Supplemental ID at 31. It directs "Core to remit to Verizon full payment of all outstanding bills, within the confines of the applicable statute of limitations," but it goes on to say, without further explanation, "that some of the bills must be issued or reissued reflecting the \$0.0007/MOU rate for switched access charges." Supplemental ID at 32. It is not clear on what basis a \$0.0007 rate would apply to any of Verizon's intercarrier compensation bills to Core to date, and to the extent the Supplemental ID is holding that this rate applies, Verizon excepts to it. In the *AT&T* decision⁸ cited by the Supplemental ID, the appeals court upheld the Commission's decision to require AT&T to pay Core at the rate of \$0.0007 per minute of use for locally-dialed traffic delivered by AT&T to Core and terminated to an ISP. That decision has no bearing on the interexchange voice traffic that Core delivers to Verizon (or to any other carrier). The outbound traffic Core sends to Verizon for termination is not ISP-

⁸ *AT&T Corp. v. Core Comm's, Inc.*, 2015 U.S. App. LEXIS 20499 (November 25, 2015) (3rd Cir. 2015).

bound traffic; as the Supplemental ID noted, it is 100% VoIP traffic. The following would thus apply: (1) if local, the traffic would be subject to reciprocal compensation under the terms of the parties' interconnection agreements;⁹ (2) if interexchange, the traffic would be subject to the applicable switched access charges.¹⁰

If the Commission believes that a post-order review or any re-rating of Verizon's intercarrier compensation bills is required, Verizon respectfully requests that the Commission's final order provide clear guidance on the applicable rates for these and any other type of bill that is subject to a post-order validation process to avoid undue complication or delay.


⁹ As explained in Verizon's Reply Exceptions to the Original ID (pages 15-16), Core did not accept Verizon PA's offer to exchange all local traffic at \$0.0007. *See also* Original ID at 59 (COL 30); Verizon Initial Brief at 45-46. Therefore, Verizon pays higher reciprocal compensation rates, rather than \$0.0007, on traffic below the 3:1 ratio. This arrangement has operated to Core's financial benefit as it has allowed Core to use its non-Core originated VoIP traffic to manipulate the FCC's 3:1 ratio so that for each minute of traffic for which Core is billed higher reciprocal compensation rates (which it has never paid in any event) it collects the higher reciprocal compensation rate on 3 minutes of traffic from Verizon. *See* Verizon Initial Brief at 40-43.

¹⁰ Following the January 1, 2012 effective date of the FCC's new intercarrier compensation rules, the applicable rate for terminating VoIP-PSTN traffic is "a rate equal to the relevant *interstate terminating access charges* specified by this subpart." 47 C.F.R. § 51.913(a) (emphasis added). Verizon's commission-approved tariffs contain the methodology to be used for a carrier to identify its traffic as VoIP-PSTN. The FCC's rules do not apply \$0.0007 to VoIP traffic at this time, but that rate will begin to apply for certain traffic on July 1, 2016 as the FCC transitions down to bill and keep for intercarrier compensation. *See* 47 C.F.R. § 51.907(f) and (g).

CONCLUSION

For the foregoing reasons, the Commission should adopt the Supplemental Initial Decision on Remand and the Original Initial Decision, with the limited clarifications discussed above and in Verizon's Exceptions to the Original Initial Decision.

Respectfully submitted,



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