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January 28, 2016

VIA HAND DELIVERY

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 and C-2011-2253787**

Dear Secretary Chiavetta:

Enclosed for filing please find the Public and Proprietary Versions of the Exceptions of Core Communications, Inc. to the Supplemental Initial Decision in the above-referenced matter. A copy of Core's Exceptions have 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

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Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2253750- 7
	:	Docket No. C-2011-2253787
VERIZON PENNSYLVANIA INC.	:	
And	:	
VERIZON NORTH, LLC	:	
Respondents	:	

**EXCEPTIONS OF CORE COMMUNICATIONS TO
SUPPLEMENTAL INITIAL DECISION ON REMAND**

PUBLIC VERSION

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January 28, 2015

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Pursuant to 52 Pa Code § 5:533, Core Communications, Inc. (“ Core”) hereby files its Exceptions to the Supplemental Initial Decision on Remand (“S.I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter.

I. BACKGROUND AND OVERVIEW OF CLAIMS

The Procedural History of this case is lengthy and complex, and is set forth in detail in the Commission’s May 28, 2015 Order in this proceeding (the “*May 2015 Order*”) at 5-7 and the November 9, 2015 Order denying Verizon’s Petition for Reconsideration (“*November 2015 Order*”), at 10-13. Following the issuance of the *November 2015 Order*, Core and Verizon filed Main Briefs on Remand and Reply Briefs on Remand, and the S.I.D. was issued on January 8, 2016.

The *May 2015 Order* instructed the parties to address whether the FCC’s February, 2015 *VOIP Symmetry Order*¹ impacts the intercarrier compensation issues in this matter, as well as “whether either party has met its burden of proof with regard to the amount of traffic for the claimed backbilling as well as the appropriate compensation.”² The “backbilling” in question relates, at a minimum, to Core’s issuance of intrastate and interstate switched access bills to Verizon in January of 2012, covering the period from February 2009 to December 2011, for toll traffic that Verizon sent to Core’s network for termination over Local Interconnection Trunk Groups (“LITGs”).³ Core’s claim also involves toll traffic sent by Verizon over these LITGs from January 2012 through June 2012, for which Core billed switched access on a monthly basis (i.e., it was not backbilling but rather contemporaneous billing based on traffic received in the preceding month.⁴) Core’s switched access backbilling from February 2009 to December 2011,

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

² *May 2015 Order*, at 10.

³ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 32.

⁴ Core Stmt. 1.0, at 32-33 and 35; and Exhibit BLM-5.

and the monthly switched access bills issued by Core between January 2012 and June 2012, shall be referred to collectively herein as “Core’s Switched Access Claim”.

The traffic at issue in Core’s Switched Access Claim is comprised entirely of non-local, toll traffic that Verizon transmitted to Core for termination to Core’s end users. This traffic was a mix of toll calls terminated to dial-up ISPs and toll Voice over Internet Protocol (“VOIP”) calls terminated to Core’s VOIP-carrier customers.⁵ As Core maintained throughout this proceeding, the Interconnection Agreements (“ICAs”) between the parties permit the party terminating toll traffic to bill the sending party at intrastate or interstate switched access rates, by rating each call using the Calling Party’s Number (“CPN”).⁶ The ICAs specifically reference and incorporate the parties’ respective intrastate and interstate switched access tariffs to establish the rates and rate elements applicable to the termination of toll traffic.⁷ Core’s switched access billings to Verizon were calculated using the rate elements set forth in Core’s Commission-approved intrastate switched access tariff and FCC-approved interstate switched access tariff, depending on the CPN of each call.⁸

Core’s position throughout this proceeding has been that the toll traffic sent by Verizon to Core was – and is – billable at switched access rates, regardless of whether the traffic was ISP-bound traffic or VOIP traffic. Neither party advocated for any distinction between the two types of traffic in their written testimony in this case. Verizon first raised the issue of VOIP symmetry during its cross-examination of Core’s witnesses at the December, 2012 hearings,⁹ even though

⁵ Core Stmt. 1.0, at 2-4; *also see*, Tr., at 340.

⁶ Verizon PA ICA, Attachment IV, § 7.3. The ICAs between Core and Verizon Pennsylvania, LLC and Verizon North, Inc. are publicly available and on file with the Commission.

⁷ Verizon PA ICA, Pricing Schedule, App. 2, p. 23, Item B.III.

⁸ Core Stmt. 1.0, at 15-16.

⁹ As Verizon puts it, “the topic came up at the hearing.” Verizon Reply Brief, at 41.

Core has been completely open and forthright about the VOIP nature of the traffic it terminates, from the very beginning of this case.

The FCC found that Verizon generally did not begin to dispute VOIP symmetry issues until 2013 – a year or more following issuance of the 2011 *ICC Transformation Order* – and long after discovery and briefing had concluded in this case.¹⁰ For this reason, the record is not as complete on the VOIP symmetry issue as it might have been if Verizon had raised the issue in the ordinary course of business or litigation. Nevertheless, there is ample evidence to demonstrate that Core provides the functions for which it billed Verizon, consistent with the *VOIP Symmetry Order*.

Core recognizes that this case involves complex and highly technical issues, which were complicated further by intervening Commission and Federal Court decisions issued since the record in this case closed. Core commends the ALJ for her efforts in attempting to take all of these decisions into consideration and apply those decisions to the large and highly technical record evidence in the case. But, respectfully, there are several clear factual and legal errors in the S.I.D. that require reversal by the Commission.

First, the S.I.D. improperly found that Core's billings to Verizon were unreliable, and upheld Verizon's claim for refunds of "overbillings." But Core's bills were fully supported by relevant call records and were corroborated by Verizon's own study of traffic exchanged between the parties.

Second, the S.I.D. improperly found that Core did not provide credible evidence to support its Switched Access Claim. But Core provided mountains of data to support the entirety

¹⁰ *VOIP Symmetry Order*, 30 F.C.C. Red. 1587, ¶ 47.

of its Switched Access Claim, in stark contrast to Verizon, which provided no call records to support its own claims or to contest Core's claims.

Third, even though it was beyond the scope of the Remand, the ALJ conducted an analysis of the 3rd Circuit Court of Appeals November 25, 2015 decision in the *AT&T v. Core* case, and applied holding from that case to Core's Switched Access Claims. Even though the ALJ found that Core provided the functions for which it billed, because it "provided the facilities to deliver the calls to the receiving party," S.I.D., at 28, the S.I.D. nevertheless rejected Core's Switched Access Claim to the extent it sought to recover a rate higher than \$0.0007, based on the Third Circuit's recent decision in *AT&T v. Core*¹¹. This was improper, because the *AT&T v. Core* case only involved **locally-dialed** ISP-bound calls, whereas Core's Switched Access Claim in this case involves only **non-local** ISP-bound and VOIP calls.

Fourth, the S.I.D. improperly recommends dismissal of Core's claims because Core did not differentiate between VOIP traffic and ISP-bound traffic received from Verizon. But the distinction is irrelevant because until 2012 toll ISP-bound traffic and toll VOIP traffic were both billable at switched access rates. From 2012 forward, the FCC's intercarrier compensation regime kicked in, lowering the rate for all toll-VOIP traffic (intrastate and interstate). To account for this rule change, Core rerated its entire Switched Access Claim for the period implicated by the FCC's regime (January-June, 2012) at the lower interstate rates, even though it is arguable that ISP-bound toll traffic remained billable at the higher intrastate rates.

Fifth, the S.I.D. found that Core did not act in good faith before or during this litigation. But Core demonstrated that it had consistently disputed Verizon's billings since at least 2003, and Verizon has willfully refused to issue a bill to Core that reflects TELRIC rates, despite the

¹¹ *AT&T Corp. , Teleport Communications of America, LLC v. Core Communications, Inc. and the Pa. Pub. Util. Comm'n.*, 806 F.3d 715, 718 (3d Cir. 2015)(Opinion filed November 25, 2015)("AT&T").

Supreme Court’s landmark 2010 decision in *Talk America*¹², **and**, willfully refused to address documented service and technical issues. As such, Core had no obligation to pay Verizon for its defective facilities bills while its disputes were unresolved.

Sixth, the S.I.D. improperly reiterates the dismissal of Core’s claim regarding the “mirroring rule”. But as Core demonstrated below, Verizon never “mirrored” rates in compliance with the *ISP Remand Order*.

Seventh, the S.I.D. improperly sustains Verizon’s counterclaim for access tariff compensation for the use of its facilities and services, as originally pronounced in the Initial Decision. But as *Talk America* and *CoreTel Virginia* mandate, Verizon should offer those services at the TELRIC rates set forth in the ICA.

Eighth, the S.I.D.’s order for Core to remit payment to Verizon “for all outstanding bills” is unclear and requires clarification, as it appears to be merging Verizon’s counterclaims for payment of facilities-bills with Core’s claims for switched access for traffic sent by Verizon to Core, and does not address the Statute of Limitations and Jurisdictional issues associated with Verizon’s claims.

Ninth, the S.I.D. fails to apply the central holding of *CoreTel Virginia* to the facts of this case, thereby permitting Verizon to charge access tariff rates for interconnection facilities, despite that holding and *Talk America*.

¹² *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2258, 180 L. Ed. 2d 96 (2011)(“*Talk America*”).

II. EXCEPTIONS

EXCEPTION NO. 1: THE S.I.D. IMPROPERLY FOUND THAT CORE'S BILLINGS TO VERIZON WERE "UNRELIABLE"

The S.I.D. found that "Core's evidence shows inconsistencies and a lack of reliability," including (1) double-billing "Verizon and other carriers for terminating the same minutes of use" (2) billing Verizon for "calls originated by other carriers and merely transited by Verizon...", and (3) Core's bills were inaccurate and unreliable. S.I.D., at 28-29. Accordingly, the S.I.D. upheld Verizon's counterclaim that "Core is grossly overcharging Verizon for traffic termination by charging for traffic that does not originate with Verizon's customers," S.I.D., at 31, and that Core's claim for switched access is "unsustainable. S.I.D., at 29.

Core excepts to these findings and the related Ordering Paragraphs 2, 3, 6 and 8, and incorporates by reference the discussion from its original Exceptions, at 7-17 (demonstrating the reliability of Core's reciprocal compensation bills; and 18 (demonstrating the accuracy of Core's switched access bills, and methodology through which they were generated).

A. Per the ICAs, Core Properly Billed Verizon for all Traffic Received Over the LITGS

Verizon's entire dispute regarding the "reliability" of Core's past reciprocal compensation billings arose only because Verizon sent Core large volumes of interexchange toll traffic over local interconnection trunk groups ("LITGs") - trunks that are presumably designed primarily for local interconnection traffic. Prior to the events leading up to this case, Core billed Verizon at local rates for all of the minutes that Verizon sent Core over the LITGs, and collected the local ISP Remand rate of \$0.0007/MOU for those minutes.¹³ Verizon never raised any issue or dispute with Core's reciprocal compensation bills until January, 2011, when it demanded Call Detail Records ("CDRs") from Core, ostensibly in order to analyze Core's billings.

¹³ Core Stmt. 1.0, at 13.

Following its provision of CDRs to Verizon, Core reexamined its CDRs for traffic received on the SS7 LITGs and ATCs, and discovered that Verizon had been sending Core substantial volumes of **toll traffic** over the interconnection arrangements, for years. Using the Called Party Number (“CPN”) provided in the SS7 call stream, and the billing methodology expressly set forth in the ICAs, Core issued backbills to Verizon in January, 2012 dating back to the inception of the SS7 interconnection trunks, to recalculate the rate that was due on traffic that was clearly interexchange in nature.¹⁴ As the S.I.D. correctly found, at 27, backbilling and rerating is permitted both by the ICA and the Third Circuit’s recent opinion in *AT&T v. Core*. Subsequently, Core has issued Verizon monthly switched access invoices on a current basis.¹⁵

Since the S.I.D. again concludes that Core’s billings were “unreliable”, it is important to review the amount and quality of information that Core provided to support its bills to Verizon. Throughout the course of this proceeding, **Core produced massive volumes of call records to document every minute of use (“MOU”) it billed**, as well as detailed descriptions of how the bills were generated.¹⁶ As the S.I.D. correctly noted, Core received traffic from Verizon over two sets of trunks – the Access Toll Connecting Trunks (“ATCs”) and Local Interconnection Trunk Groups (“LITGs”). S.I.D., at 14. The ICAs mandate that the sending carrier will transmit local and intraLATA toll traffic, and traffic transiting **to** other ILECs, over the **LITGs**;¹⁷ and that the receiving carrier shall bill the sending carrier for **each minute of traffic** received over the LITGs.¹⁸ The ICAs state that **ATCs** are for the parties’ joint use in the provision of exchange

¹⁴ *Id.*, at 14.

¹⁵ *Id.*, at 32.

¹⁶ Core Stmt. 1.0, at 12-18, and Core Statement 4.0 (Panel Surrebuttal Testimony), at 14.

¹⁷ Verizon PA ICA, Att. IV, § 1.1.1; Verizon North ICA, Pt. V, § 1.2.

¹⁸ Verizon PA ICA, § 7.2; Verizon North ICA, § 2.6.2.

access service to IXCs.¹⁹ Despite Verizon's protestations to the contrary, the FCC has found that "Verizon does have control over how it passes calls" over LITGs to CLECs.²⁰

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.²¹ **This is precisely same way in which Verizon bills Core.**²²

Verizon incorrectly argued, and the S.I.D. incorrectly concludes, that some of the traffic that Verizon sent to Core over the LITGs was originated by third-party carriers, and that the ICAs do not permit Core to bill Verizon for this traffic. S.I.D., at 25, 28, incorporating I.D., COL # 17. This interpretation of the ICAs is erroneous, because 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 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). Notably, the ICA defines "Party" as a party to the ICA, i.e., either Core or Verizon. See ICA, Pt. B -- Definitions. There

¹⁹ Verizon ICA, Att. IV, § 1.1.2; and Att. VIII, §§ 3.1.3.1 and 3.1.3.5.

²⁰ *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

²¹ Core Stmt 1.0, at 13, 16, N.T., at 252, 301, and I.D., FOF # 38.

²² Core Stmt. 3.0, 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, N.T., at 510-512.

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.²³

In finding that Core should not have billed Verizon for traffic that may have originated with third-party carriers and transited Verizon's network, the ALJ 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 for terminating third-party traffic that transits Verizon's network. COL # 17 (reciting Verizon's M. Br., at 30-31). But as Core explained in its Reply Brief, at 29-30, this interpretation is simply wrong, because these 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.

The ICAs say nothing about conducting an analysis to determine the carrier that is associated with an originating telephone number before billing reciprocal compensation. Yet the ALJ accepted Verizon's assertion that Core was obligated to somehow delve into the traffic that Verizon sent over the LITGs and determine which traffic may have originated from other carriers, and not bill Verizon for such traffic. In doing so, the S.I.D. again implicitly accepted a novel methodology that Verizon developed to retroactively associate third-party carriers with portions of the traffic that Verizon delivered to Core.

The methodology in question was developed and performed by Verizon witness Bill Munsell after the case was initiated, and is referred to as the "LNP Lookup" method. The LNP

²³ The ICAs do, however, contemplate the parties' joint provision of meet point billing trunks, i.e., ATCs, to IXCs for the termination of exchange access traffic. For these ATCs, the Parties are to bill one another "all applicable rates specified in this Agreement" and the Parties are to bill third-party carriers the rates set forth in their respective tariffs. Verizon PA ICA, Att. VIII, §§ 3.1.3.5 and 3.1.3.6. For the traffic passing over these ATCs, the parties are to exchange EMI call records. *Id.*, §§ 3.1.3.8 and 3.1.3.9.

Lookup methodology was the prime justification that Verizon presented at the hearing to support its claim for a refund of monies paid to Core. And the S.I.D. evidently appears to accept Verizon's LNP Lookup analysis to determine that Core improperly billed Verizon reciprocal compensation for calls originated by other carriers and merely transited by Verizon". See S.I.D. page 25, referencing FOF # 42.

The S.I.D.'s conclusion on this point is clearly erroneous. Core easily demonstrated that Verizon's LNP Lookup method was defective in all of its key assumptions, and cannot be used as a basis for determining the responsible carrier for purposes of intercarrier compensation or support Verizon's claim for a refund. Core proved that:

- LNP Lookup does not reliably identify the carrier responsible to pay intercarrier compensation for that call. Core M. Br., at 26.
- LNP Lookup is not sanctioned by the ICAs. *See generally*, Core R. Br., at 28-30.
- LNP Lookup is not industry standard. Core Stmt. 1.0, at 31-32 and Core M. Br., at 25-26.
- Verizon admitted it does not use LNP Lookup to bill Core or other carriers. N.T., at 510-512
- Verizon bills Core the same way that Core bills Verizon, i.e., Verizon bills Core for each call Core sends it over LITGs. Core Stmt. 4.0, at 9; Core R. Br., at 28,30; and Core Exhibit R-28.
- Verizon's witnesses all but admitted that the "35%" estimate of third party traffic billed to Verizon was an estimate extrapolated from a sample done well after the case had started. *See*, N.T., at 529-532.

- Exchange Message Interface (“EMI”) records, not LNP Lookup, is the industry standard method for tandem providers such as Verizon to indicate third-party carrier traffic to terminating carriers. Core M. Br., at 25-26.

Verizon attempted to argue that a different set of rules should apply to Core’s billing, because Verizon is a tandem provider and Core is not. But under the ICA, it makes no difference whether or not Core is a “tandem provider.”²⁴ In summary, Core demonstrated that Verizon’s LNP Lookup methodology is *nothing more than an academic exercise, which has no relevance to the provisions of the ICAs that govern how the terminating carrier is supposed to bill the other party.* To the extent the Commission is inclined to impose the “LNP Lookup methodology” on a going forward basis, it should require the parties to execute amendments to the ICAs to impose that methodology equally to both parties’ billings, so that both Core and Verizon are operating under the same set of principles with respect to third-party originated traffic.

B. Verizon Failed to Credibly Demonstrate Any Overbillings

Even if Verizon’s interpretation of the ICA is correct, and Core was required to somehow sift through the traffic that Verizon sent over the LITGs to originating carriers other than Verizon, *and exclude this traffic from its bills to Verizon, Verizon still failed to demonstrate that it was, in fact, “double-billed” by Core.* But the S.I.D. incorrectly agreed with Verizon’s interpretation and held that Core “improperly billed Verizon reciprocal compensation for all locally dialed calls originated by other carriers and merely transited by Verizon”. S.I.D., at 25, referencing I.D., FOF # 42.

To the extent that the S.I.D. continues to find that Core should issue a refund to Verizon for past reciprocal compensation billings, such a finding must be rejected. Importantly, the

²⁴ An optional side agreement, which was never executed, addresses special provisions for transited traffic from other LECs and local carriers. *See*, Verizon PA ICA, Att. III, Exh. H (“Intralata Telecommunications Services Settlement”).

Initial Decision issued in this case explicitly acknowledged that Verizon had not been able to accurately quantify the alleged amount of overbilling that Verizon was claiming.²⁵ Verizon had the burden of proving that it had been overcharged by Core, and utterly failed to do so. Verizon's allegations about over-billing and double-billing completely crumbled as this case proceeded, to the point where Verizon's witnesses admitted that they could not point to any instance of overbilling, or reliably quantify the extent of the alleged overbilling. On the stand, in a particularly illuminating sequence, Mr. Munsell confirmed that **Verizon could not identify any actual percentage of third-party carrier traffic on the LITGs for which Core may have billed Verizon.** See, N.T., at 527-38 and Core Cross Exhibit 13. This admission by Mr. Munsell is fatal to Verizon's LNP Lookup/refund claim.

The fact is that Core demonstrated that only a very small percentage of third-party traffic on the LITGs, as identified in the EMI, was ever billed to Verizon. Core Stmt. 3.0, at 65. As set forth above, pursuant to the clear language of the ICAs, Core traditionally billed Verizon for "each minute" on the LITGs, and Core always assumed that third-party traffic, to the extent it existed, came in over the ATCs, not the LITGs.²⁶ Consistent with industry standards and FCC authority, Core assumed that the EMI Verizon sent was associated with the traffic on the ATCs.²⁷ Core now knows, courtesy of this litigation, that Verizon sent all kinds of traffic (i.e. local, non-local, Verizon originated, IXC-originated, etc...) down both sets of trunks, and the EMI records are not matched to either set of trunks.²⁸

²⁵ See, I.D., at 50.

²⁶ Core Stmt. 1.0, at 13.

²⁷ The FCC has concluded that a CLEC such as CoreTel is permitted to bill Verizon for all of the traffic Verizon sends the CLEC over LITGs, unless Verizon provides EMI and other information sufficient to permit the CLEC to bill a third-carrier. *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

²⁸ Core Stmt. 3.0, at 65.

As explained in Core's Reply Brief, pp. 27-30, Core analyzed the traffic being sent from Verizon over the LITGs, and Core demonstrated that since January 2012, Verizon only provided EMI on a small percentage (5.4%-8.0%) of calls on the LITGs, which means that at most 5.4%-8.0% of calls could have been originated by 3rd parties. This modest percentage in no way supports the 35% claim Mr. Munsell derives using LNP Lookup.²⁹ Furthermore, during earlier periods, the EMI Verizon provided never came close to 35% of the traffic Verizon sent over the LITGs. Indeed, from 2008 through 2010, EMI MOUs as a percentage of LITG billed MOUs hovered between 1.2% and 3.8%, and that does not even take into account that most of those EMI records likely correlate to traffic on the ATCs when they were in service. Core Stmt. 4.0, at 9.

The S.I.D., if upheld on this point, would permit Verizon to pass unlimited volumes of third-party traffic to Core over the LITGs, without the appropriate EMI records, then demand a refund based on LNP Lookup years after the fact. Considering Verizon operates as a CMRS carrier and an IXC, as well LEC and tandem provider, such a ruling would permit, and in fact incentivize, Verizon to abuse its tandem status to funnel affiliate traffic to terminating LECs without paying intercarrier compensation.

C. Core's Suits Against AT&T, Choice One and XO Involve ATC Traffic Which Core Never Billed to Verizon

The S.I.D.'s findings regarding alleged "double-billing" by Core incorporate the I.D.'s findings regarding Core's complaint cases with other carriers (e.g., AT&T, XO Communications and Choice One). S.I.D., at 28, referencing I.D., FOF # 40. To reach this finding, the I.D. reasoned that Core billed those carriers for traffic that transited Verizon's network, and that Core

²⁹ Core has offered to credit these amounts back to Verizon by issuing Verizon credits against the unpaid switched access bills which Verizon does not pay. N.T., at 322-23. As explained in Core's Reply Brief, at 29, this offer is not required by the ICA, but Core has offered this solution to remedy Verizon's stated concerns.

billed Verizon for “100% of the minutes” that Verizon transits, so Core must have double-billed Verizon. (I.D. at 50). As Core explained in its Exceptions, this is one of the most erroneous findings in the I.D., and demonstrates a complete lack of consideration of any of the evidence that Core submitted. Core repeatedly explained that **Core only billed Verizon for traffic received on the LITGs**, and billed Verizon nothing for the traffic received on the **ATCs**.³⁰

Core also explained that the traffic received from AT&T, XO, and Choice One was received on the **ATCs**, and based on EMI received from Verizon, and therefore, it was impossible for Verizon to have been billed for this traffic. Core Stmt. 4.0 at 6, and N.T., at 252, 304. Core’s position on this point is supported by Verizon’s own testimony,³¹ Verizon’s Phantom Traffic White Paper,³² the FCC³³ and the Commission.³⁴ Furthermore, as Core pointed out, the traffic involved in the AT&T, XO, and Choice One cases were from a different time-period than the traffic involved in the current complaint against Verizon, which is another reason why there is no legitimate basis to rely on those cases to conclude that Core double-billed Verizon.³⁵

Further, it is important to note that in the *AT&T v. Core* cases, AT&T never raised the possibility that Verizon may have paid Core for traffic for which Core sought to bill AT&T. Obviously, AT&T aggressively litigated the *AT&T v. Core* cases, as evidenced by its appeal of the Commission’s decision to federal district court, and had a powerful incentive to raise this argument if it were in fact true or even had any substantial basis in fact. AT&T raised multiple

³⁰ Core Stmt. 1.0, at 13,16, N.T., at 252, 301, and I.D., FOF # 38.

³¹ Verizon Stmt. 1.0, at 52-53 and 57.

³² See, NPRM & FNPRM, *In the Matter of Connect America Fund*, WC Docket 10-90 et al., FCC Item 11-13 (rel. Feb. 9, 2011), at ¶ 622, n. 950 (summarizing Verizon white paper which explains how Verizon routes traffic with a “CIC” as “IXC” traffic).

³³ *Id.*

³⁴ *Core Comm., Inc. v. AT&T Comm. of Pa., LLC*, Pa. P.U.C. Docket No. C-2009-2108186 (Order entered Dec. 5, 2012)(“*AT&T*”), at 2 (““This proceeding involves... calls originated by AT&T’s customers that are routed through **Verizon’s access tandem switches** to Core’s end-user customers.”). (Emphasis added).

³⁵ See N.T., at 250-251.

defenses to Core's claims for payment, but the fact that AT&T never argued that Core had already been paid by Verizon for the traffic seriously undermines Verizon's argument that the AT&T case somehow validates Verizon's "double-billing" refund claims.

It also should be noted that **Verizon's witness retracted his double-billing accusations** while on the stand. Verizon had initially attempted to argue that Core was billing for traffic over ATCs. But Core demonstrated that Verizon's claim was based solely on Mr. Munsell's mistaken interpretation of Core's "hunt group" list, which he admits was based on an erroneous assumption, and Verizon has not submitted evidence of one call that came in over ATC for which it was billed. There was an extended discussion of this point during the hearing, which is reflected in the transcript, at 544-560. During this discussion Mr. Munsell acknowledged that he had misinterpreted a Core discovery response, which led him to conclude that Core had improperly designated ATC trunks as LITGs, and that was the basis for his "double-billing" theory.

Mr. Munsell also acknowledged that Core must have used EMI records to bill AT&T (N.T. 546), and that Verizon does not track which trunks groups are used to send traffic to Core (N.T. 556). After initially submitting testimony stating that Core "indisputably" double-billed Verizon, Mr. Munsell retracted his testimony, and was forced to admit under cross-examination that he was wrong about his "double-billing" allegations. (N.T., at 555-557, 566-568). At bottom, Mr. Munsell's theory of "double-billing" was exposed as being mere speculation that relied on multiple erroneous assumptions.

D. Verizon's Own Internal Study Corroborates Core's Billings

It is important to recall that Verizon initiated this dispute in July of 2011 by boldly claiming that "all" of the traffic that it sent to Core was non-compensable. However, since at

least July 19, 2011, [**BEGIN PROPRIETARY**]

|END

PROPRIETARY] *See*, Core R. Br., at 46-48.

EXCEPTION NO. 2: CORE PROVIDED CREDIBLE EVIDENCE TO SUPPORT ITS SWITCHED ACCESS CLAIM

The S.I.D. acknowledges that “Core may keep the payments Verizon submitted” at the ISP Remand Order’s \$0.0007/MOU rate, S.I.D., at 31, **and** that Core “provides the facilities to deliver the calls to the receiving party” consistent with its switched access tariffs and applicable law, S.I.D., at 28, but nevertheless reverts back to the I.D.’s earlier finding that “Core failed to provide credible evidence to support the higher (switched access) rate,” and recommends

dismissal of Core's Switched Access Claim in its entirety. S.I.D., at 30-31 and Ordering Paragraph 8. Core excepts to these findings, rulings and directives for the reasons set forth below, and incorporates by reference its Main Brief, at 12-15, Reply Brief, at 38-43, and original Exceptions, at 18 and 21.

The S.I.D. ignores the fact that Core submitted ample, undisputed evidence to support its claim for switched access charges. The evidence begins with the call detail records Core generated at its switches, maintained for years and produced in discovery. Using information collected in the SS7 signaling stream on the LITGs, Core records the calling party number ("CPN"), called number (CN), 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.³⁶ The validity of these call records is beyond reproach and even Verizon has never questioned their veracity or accuracy. Indeed, it was Core—and Core alone—that kept call records to support its claims.³⁷ Core demonstrated that Verizon's own data and analysis (to the limited extent any existed) fully supported Core's intercarrier compensation billing, and that the parties' records reflect nearly identical views of the volumes of traffic exchanged between the parties.³⁸

The billing methodology Core applied to the call records is industry standard and not subject to serious objection. The ICAs mandate that the sending carrier will transmit local and toll traffic over the LITGs;³⁹ and that the receiving carrier "**shall bill**" the sending carrier for "**each minute**" of traffic received over the LITGs.⁴⁰ Using the call records, whose accuracy is

³⁶ Core Stmt. 1.0, at 31 and 35-36; Core Stmt. 4.0, at 14-15.

³⁷ Verizon claims it does generate call records to support its own usage bills to Core, or to verify Core's usage bills to Verizon. Core Statement 2.0 (Direct Testimony of Christopher F. Van de Verg), at 8-10.

³⁸ See, Core R. Br., at 46-48; and Joint Proprietary Exhibit No. 3.

³⁹ Verizon PA ICA, Att. IV, § 1.1.1; Verizon North ICA, Pt. V, § 1.2.

⁴⁰ Verizon PA ICA, § 7.2; Verizon North ICA, § 2.6.2.

not disputed, Core compared the NPA-NXX of calling and called parties to rate calls as interstate or intrastate, local or toll, consistent with ICA, Att. IV, § 7.3 and industry standard practice.⁴¹ 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.⁴² This methodology is fully consistent with the manner in which Verizon bills Core for traffic Core sends Verizon over the interconnection trunks.⁴³

Complexity arises only because Core volunteered to use a matching algorithm to weed out calls for which EMI records provided by Verizon permitted Core to bill another IXC for switched access calls—even though Verizon makes no attempt to weed out third-party calls when it bills Core for usage.⁴⁴ 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.⁴⁵ 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.⁴⁶ 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. 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.⁴⁷

⁴¹ Core Stmt. 1.0, at 31.

⁴² *Id.*

⁴³ Core Stmt. 3.0, 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*, N.T., at 510-512.

⁴⁴ Core Stmt. 4.0, at 17.

⁴⁵ Core Stmt 1.0, at 15-16.

⁴⁶ *Id.*

⁴⁷ *Id.*, at 16.

For its part, Verizon proffered no alternative methodology for Core to bill Verizon for the toll calls Verizon sent Core. Instead Verizon relied on the notion, which appears nowhere in the ICA or any applicable legal authority, that it is a tandem provider, and thus entitled to send Core traffic without having any responsibility to pay intercarrier compensation.⁴⁸ 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.⁴⁹ Nor was it mere accident that determined which calls Verizon sent down which trunks. The FCC has found that “Verizon does have control over how it passes calls” over LITGs to CLECs.⁵⁰

Finally, Verizon raised several arguments throughout this proceeding regarding 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 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. N.T., at 357. Verizon’s witnesses provided no evidence or testimony to rebut the CCL charges or challenge their legitimacy. 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. N.T., at 350-352.

⁴⁸ Core Stmt. 4.0, at 17.

⁴⁹ Core Stmt. 1.0, at 13,16, N.T. at 252, 301, *and*, I.D., FOF # 38.

⁵⁰ *In Re Cavalier Tel. LLC*, 18 F.C.C.R. 25887, 25910 (2003).

But even if all of Verizon's technical objections were valid, which they are not, they would only impact the specific items to which they relate. None of them, for example, relate to charges for end office switching. Verizon's only defense against those charges was the *YMax*⁵¹ decision, which the FCC distinguished in the *VOIP Symmetry Order*. Accordingly, Verizon's technical objections are not a rational basis on which to reject Core's entire switched access claim.

EXCEPTION NO. 3: THE THIRD CIRCUIT'S DECISION IN *AT&T V. CORE* DOES NOT CONTROL THE DISPOSITION OF CORE'S SWITCHED ACCESS CLAIMS

The S.I.D. analyzed the Third Circuit Court of Appeals' November 25, 2015 decision in *AT&T*, and applied the holding from that case to Core's Switched Access Claim. The S.I.D. held that ISP-bound traffic is not subject to access charges. S.I.D., at 30. Core excepts to these findings, because the *AT&T* case only involved locally-dialed ISP-bound calls, whereas the present case involves only non-local, toll ISP-bound and VOIP calls. Core incorporates by reference its Reply Brief, at 38, original Exceptions, at 21-22, Supplemental Main Brief, at 13-14 and Supplemental Reply Brief, at 9-10.

AT&T is not on point because the Third Circuit held only that the ISP Remand Order rate of \$0.0007/MOU applies to locally-dialed ISP calls,⁵² a point which is not disputed here.⁵³

Moreover, a long line of federal circuit court cases, cited with approval by the Third Circuit,

⁵¹ *AT&T v. YMax*, 26 FCC Rcd 5742 (2011) (“*YMax*”).

⁵² *AT & T Corp. v. Core Commc'ns, Inc.*, 806 F.3d 715, 718 (3d Cir. 2015) (“Because we find that the FCC's jurisdiction over local ISP-bound traffic is not exclusive and the PPUC orders did not conflict with federal law, we will vacate the judgment of the District Court and remand this case for entry of judgment in favor of Core and the members of the PPUC.”); *id.*, at 721 (“In 2001, the FCC responded with the *ISP Remand Order*, reaching the same substantive conclusion—that local ISP-bound traffic is not subject to reciprocal compensation—but on different legal grounds.”); and *id.*, at 723 (“AT & T's customers placed calls to Core's customers in order to gain dial-up access to the internet. All of the calls at issue were local, originating and terminating in the same local exchange area. Each AT & T customer's call was delivered by AT & T to Verizon (the local ILEC), which then sent the call to Core, and Core terminated the call to the ISP.”)(Emphases added).

⁵³ The *ISP Remand Order's* “mirroring rule” was not at issue in *AT&T* because, in that case, both AT&T and Core were CLECs, and the mirroring rule applies only to ILECs.

holds that the *ISP Remand Order* only applies only to local ISP calls,⁵⁴ not toll ISP calls.⁵⁵ The Commission's orders in the *AT&T* case, which the Third Circuit reviewed and approved, was similarly confined to locally-dialed ISP traffic.⁵⁶ In fact, the Commission confirmed that the *ISP Remand Order* does not override the access regime for toll ISP traffic.⁵⁷ Accordingly, *AT&T* is inapposite and the *ISP Remand Order* rate of \$0.0007/MOU does not apply to Core's Switched Access Claim.

EXCEPTION NO. 4: THE S.I.D. IMPROPERLY RECOMMENDS DISMISSAL OF CORE'S CLAIMS BECAUSE CORE DID NOT DIFFERENTIATE BETWEEN VOIP TRAFFIC AND ISP-BOUND TRAFFIC RECEIVED FROM VERIZON

The S.I.D. agreed with Core's argument on the primary issue on remand. The S.I.D. correctly found that Core's tariffs permit it to bill switched access for VOIP calls, and that *CoreTel Virginia* is not on point because, unlike its affiliate in Virginia, Core provides the physical facility in Pennsylvania. S.I.D., at 28. Core demonstrated in its Main Brief on Remand,

⁵⁴ *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. 2006) (“*Global NAPS I*”) (“Global NAPS cannot point to any language in the order that explicitly preempts state regulation of access charges for the non-local ISP-bound traffic at issue.”); *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.”); and *Global NAPS, Inc. v. Verizon New England, Inc.*, 454 F.3d 91, 99 (2d Cir. 2006) (“*Global NAPS II*”) (“The ultimate conclusion of the 2001 *Remand Order* was that ISP-bound traffic *within a single calling area* is not subject to reciprocal compensation.”). The Third Circuit cites to *Global NAPS I* and *Global NAPS II* with approval throughout its opinion.

⁵⁵ The ancillary question whether a so-called “VNXX” call is local or toll is not at issue here, because all of the calls that comprise Core's Switched Access Claim were dialed by the calling end user as a toll call. VNXX calls are by definition locally-dialed calls. The decision to dial a toll call to access the Internet, and thereby possibly incur end user toll charges, is the consumer's own choice, and may reflect a relative lack of competitive choice for Internet access. In any event, Core cannot and does not control these consumer dialing choices, and the Commission should ignore Verizon's predictable cries of “regulatory arbitrage” when it comes to these toll calls.

⁵⁶ *Core Communications, Inc. v. AT&T Corp.*, Docket No. C-2009-2108186, 2013 WL 4499089, at *7 (Order entered Aug. 15, 2013) (“In our *December 2012 Order*, we ruled that we are authorized to establish rates consistent with the FCC's intercarrier compensation regime for ISP-bound traffic. As such, we determined, consistent with federal law, that 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).

⁵⁷ *Core Communications, Inc. v. AT&T*, Dkt. No. C-2009-2108186 (Order entered December 12, 2012), at 25-26 (“The same observation holds with respect to local ISP-bound traffic and non-local ISP-bound traffic. The FCC has preempted the states with respect to the former, but has *not* preempted the states with respect to the latter.”). See also, Order on Reconsideration, entered August 15, 2013, at pp. 41-42, confirming that Core's Access Tariff applies to non-local calls originated by LECs and wireless carriers.

at 15-20, and Reply Brief on Remand, at 11-14, that it is entitled to switched access for VOIP traffic, and Core hereby incorporated these passages by reference in anticipation that Verizon will except to the S.I.D. on this point. Nevertheless, the S.I.D. found that the inability to discern the amount of traffic subject to the VOIP Symmetry Rule supports dismissal of Core's Complaint. S.I.D. at 30. Core excepts to this finding, for the reasons set forth below, and hereby incorporates by reference its Supplemental Brief on Remand, at 15-20; and Reply Brief on Remand, at 11-14.

The S.I.D.'s finding that Core had a burden of proof to distinguish toll VOIP from toll ISP traffic is based on the erroneous legal conclusion that the ISP Remand Order limits compensation for toll ISP traffic to \$0.0007. Because Core did not distinguish the traffic, the S.I.D. treats it all as ISP-bound and subject to the lower rate. But that legal conclusion is erroneous: as set forth herein, in Exception 3, the *ISP Remand Order* and the \$0.0007 rate do not apply to toll ISP traffic, the access regime does.

Since 2000, Core has provided service to dial-up ISPs in Pennsylvania.⁵⁸ Beginning in 2009, Core began providing service to VOIP customers as well.⁵⁹ The calls at issue in Core's claim for switched access are entirely made up of toll calls, as determined by the NPA-NXX of the calling and called parties.⁶⁰ Verizon does not dispute that these calls are toll-dialed; rather it claims either that the precise wording in Core's tariffs does not cover the calls, or that some third

⁵⁸ *Core Communications, Inc. v. AT&T Corp.*, Docket No. C-2009-2108186, 2013 WL 4499089, at *7 (Order on Reconsideration entered Aug. 15, 2013) From the time Core began providing telecommunications services in Pennsylvania through the end of September 2009, Core's only customers in Pennsylvania were ISPs. In or about October 2009, Core alleged that it began providing service to VoIP providers.”).

⁵⁹ *Id.* See also, Core Stmt. 1.0, at pp. 2-3, and N.T., at 272, 363.

⁶⁰ Core Stmt. 1.0, at 31:5-15; and, Verizon PA ICA, Att. IV, § 7.3 (“At such time as either Party has the ability, as the Party receiving the traffic, to use such CPN information to classify on an automated basis traffic delivered by the other Party as either Local Traffic or toll traffic, such 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....”).

party IXC(s), not Verizon, are responsible for compensating Core for these calls.⁶¹ However, Core's FCC and Pa. P.U.C. switched access tariffs unquestionably apply to toll calls, whether delivered to Core by an IXC, or by another LEC, such as Verizon.⁶²

Since at least 2010, the Commission has consistently ruled that IP-based communications are subject to switched access charges, and in fact, has gone to great lengths to ensure that appropriate charges are paid in connection with VOIP traffic in Pennsylvania.⁶³ Meanwhile, the FCC for many years failed to act on the burgeoning issue of VOIP compensation. As the FCC noted in the *VOIP Symmetry Order*, “[p]rior to the [*ICC Transformation Order*], the Commission had declined to expressly address the intercarrier compensation obligations associated with VoIP traffic.”⁶⁴

Finally, in the 2011 *ICC Transformation Order*, the FCC approved new rules (effective January 1, 2012) which clarify compensation for VOIP traffic moving forward.⁶⁵ The FCC's 2011 rules define “VOIP-PSTN” traffic as traffic “exchanged between a local exchange carrier

⁶¹ Verizon's Replies to Exceptions, at 11 (“Core should have billed the originating IXCs, not the Verizon local exchange carriers.”). The Commission should note that Verizon's IXC's have not paid *any* Core invoice for switched access since 2010. Core Stmt. 2.0, at 5:24-6:2.

⁶² *Core Communications, Inc. v. AT&T Corp.*, Docket No. C-2009-2108186, 2013 WL 4499089, at *29 (Order on Reconsideration entered Aug. 15, 2013)(“carriers other than interexchange carriers, such as other local exchange carriers and wireless carriers that are not interexchange carriers, also transmit toll or non-local calls that are subject to Core's Switched Access Tariff.”).

⁶³ *Palmerton Tel. Co.*, Docket No. C-2009-2093336, 2010 WL 1259661, at *21 (Order entered Feb. 11, 2010)(“The evidentiary record is clear that GNAPS has not paid *any* access charges to Palmerton, whether interstate or intrastate, and that Palmerton's monetary claim is concentrated on the intrastate portion of the intercarrier compensation dispute at issue that is clearly within this Commission's jurisdiction.”); *and, id.* (“The fact that GNAPS transports and indirectly terminates traffic that may have initially originated in IP, inclusive of nomadic VoIP, is largely immaterial to this analysis on whether this Commission has subject matter jurisdiction and whether the appropriate jurisdictional intercarrier compensation should apply for this common carriage function.”).

⁶⁴ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 4.

⁶⁵ *In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, 26 F.C.C. Rcd. 17663, 18005, ¶ 939 (2011)(“*ICC Transformation Order*”)(“despite the varied opinions in the record regarding the appropriate approach to VoIP-PSTN intercarrier compensation, there is widespread agreement that the Commission needed to act to address that issue now.”). Although several carriers filed petitions to preempt or forbid state commission imposition of switched access charges on VOIP calls, the FCC, at ¶ 975, neither approved nor denied claims for VOIP compensation arising prior to the *ICC Transformation Order*.

and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format,”⁶⁶ with the additional clarification that “[t]elecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.”⁶⁷ The FCC requires that carriers pay for terminating, toll-dialed VOIP-PSTN traffic at the applicable interstate rate, both for interstate **and** intrastate VOIP.⁶⁸

Full background of the VOIP Symmetry Rule and *VOIP Symmetry Order* can be found in Core’s Main Brief on Remand, at 6-12, which is incorporated herein by reference.

The FCC’s new toll VOIP regime did impact the last six months’ worth of Core’s Switched Access Claim, **but not the first four years**. For the later, six-month period, ISP-bound toll traffic is arguably rated at full intrastate access, whereas toll VOIP traffic, even intrastate, would be capped at interstate rates. Therefore, Core has conceded that in the absence of any definitive proof to split ISP from VOIP, the entire amount billed in this six -month period should be rated at the lower, interstate rates. Core R. Br. on Remand, at 15-16 and Appx. 1. This concession is more than fair considering that Verizon never raised this issue in any of its written testimony.

Nothing in Verizon’s three rounds of written testimony suggested that it would seek to exclude VOIP traffic from Core’s Switched Access Claim. 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. Throughout this period, Verizon was fully aware that Core’s customer base included VOIP

⁶⁶ 47 C.F.R. § 51.913(a)(1).

⁶⁷ 47 C.F.R. § 51.913(a)(3).

⁶⁸ 47 C.F.R. § 51.913(a)(1).

providers as well as the traditional focus on ISPs, and that the parties were likely exchanging VOIP traffic. Core satisfied its initial burden of proof by presenting its Switched Access Claim, and by producing the relevant invoices and call records. 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. With respect to VOIP, Verizon never attempted to meet this burden.

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. 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 pp. 16-17. Whether destined for an ISP or a VOIP customer, Verizon's toll traffic is subject to appropriate switched access charges. Although the issue was not raised until the last possible moment in the case, there is nevertheless ample evidence in the record to support Core's Switched Access Claim, and meet Core's burden of proof, in the face of Verizon's *YMax* defense.

EXCEPTION NO. 5: THE S.I.D. IMPROPERLY FOUND THAT CORE DID NOT ACT IN GOOD FAITH BEFORE OR DURING THIS LITIGATION

The S.I.D. found that "Core filed this Complaint instead of following the terms of the ICAs. Core has not acted in good faith before or during this litigation, and pays Verizon nothing." S.I.D., at 30. Core excepts to this finding, for the reasons explained in its Exceptions, at 3-7 and 27-38.

The Commission has already held that Verizon – not Core – acted improperly in refusing to pay any compensation for Core’s termination of traffic pursuant to the ICAs for the 88 days between July 2, 2011 and September 28, 2011 breached numerous provisions of the ICAs. The record in this case affirms the Commission’s initial conclusion, that Verizon “instituted what amounts to a “self-help” remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action,” and “violate[d] the spirit, if not the letter, of the Commission-approved ICAs between the Parties.”⁶⁹

Core was well within its rights to seek relief from the Commission for Verizon’s actions. The ICA, Att. IV, § 24.1 permits either party to file a complaint with the Commission at any time, if the parties cannot resolve their differences. In this case, Verizon withheld payments prior to the discovery of any *bona fide* dispute, and Core, facing imminent financial crisis, was fully justified to file its Petition for Emergency Relief. Conversely, if Verizon had documented a *bona fide* dispute (such as identifying specific a percentage of Core’s bill as third-party carrier traffic for which Verizon had sent Core EMI records), it is probable that Core would have had no need to seek emergency relief at all, and no imminent harm basis to do so. This fact, more than any other, highlights the bad faith and malicious nature of Verizon’s actions.

In making its conclusions about Core’s lack of good faith, the S.I.D. ignores the many documented instances of Verizon’s bad faith in unilaterally ceasing all payments to Core in 2011 without justification. Core demonstrated that:

⁶⁹ See *Material Question Order* issued in the instant proceeding on September 23, 2011, at 16 and note 8 (referencing actual or potential violations of provisions of the Verizon PA ICA regarding payment (Part A, § 4.1), compliance with laws (Part A, § 6.1), dispute resolution (Part A, § 24), good faith performance (Part A, § 42), compensation for local traffic transport and termination (Att. IV, § 2.42), and billing disputes (Att. VII, § 3.19); and provisions of the Verizon North ICA regarding payment, good faith performance (§ 5.0), payment terms, disputed amounts and audits (§ 11.0), and reciprocal compensation arrangements (§ 2.7)).

- Verizon had no legitimate basis in July, 2011 to claim that 100% of the traffic that it sent to Core was non-compensable. *Id.*, at 43-47. See also N.T., at 517.
- Verizon *knew* that its claim of non-compensability was bogus, based on information Verizon had on July 19, 2011. *Id.*, at 43-47.
- Verizon continued to submit verified pleadings and sworn testimony throughout the case which maintained the clearly erroneous position that all of the traffic was non-compensable. *Id.*, at 43-47.
- Verizon's justification for withholding payment to Core changed multiple times throughout this proceeding. *Id.*, at 43-47.
- Verizon's *post-hoc* conclusions about potential "overbilling" by Core were based on grossly erroneous assumptions that were unequivocally disproven at the hearing. Core M.Br., at 25-27 and R.Br., at 26-33.
- Verizon's witnesses admitted that Verizon had not even reviewed any records related to the traffic Verizon sent Core before asserting that it was all non-compensable. N.T., at 507-509.
- Verizon's witnesses acknowledged that there was no valid basis to claim that all of the Verizon traffic sent to Core was non-compensable. N.T., at 517-525.
- Verizon made several highly pejorative allegations against Core, which were uniformly disproven by Verizon's own data. Core R. Br., at 1-7 and 43-47.

The Commission's initial assessment that Verizon had no legitimate basis to stop paying Core's reciprocal compensation disputes in July, 2011 has been confirmed many times over by the record in this case. Indeed, that record demonstrates that Verizon's refusal to pay was intended to harm Core financially and hopefully (from Verizon's point of view), put Core out of

business. Although Verizon has since concocted a counterclaim involving a hypothetical model for “third-party” carrier traffic (disputing either 28% or 35% of Core’s billings, depending which round of testimony one reads), Verizon’s initial position before this Commission was that 100% of the traffic it sent Core was “non-compensable.”⁷⁰

Verizon’s second position was that “92%” of the traffic it sent Core was directed to a handful of telephone numbers, alleging a nefarious scheme by Core to self-generate traffic for which it could bill Verizon.⁷¹ The fact that Verizon has since abandoned these absurdly aggressive positions does not excuse its original transgression. Combined with evidence of Verizon’s coordinated litigation and non-payment posture against Core and its affiliates in other states,⁷² Verizon’s bogus positions and refusal to pay Core’s Pennsylvania reciprocal compensation invoices demonstrate Verizon’s intent and motivation to harm Core above all else.

Conversely, Core was well within its rights to withhold payment to Verizon for its faulty facilities bills. The fact is that Core’s disputes of Verizon’s facilities bills date back to 2003. Core submitted into the record voluminous correspondence with Verizon over many years, demonstrating Core’s clear desire to order local interconnection services from Verizon, pursuant to its ICAs, the Act, and FCC rules. Core used Verizon’s “Access Service Request” (“ASR”) process to order, or attempt to order, local interconnection facilities. Under the ICA, Pt. B (Definitions), “[t]he ASR may be used to order trunking and facilities between MCI and Bell Atlantic for local interconnection.” Core did everything it could to specify its intent to order local interconnection trunks, including inserting a note to that effect into each and every ASR it submitted to Verizon.⁷³

⁷⁰ Core Stmt. 1.0, at 23.

⁷¹ Verizon Answer, New Matter & Counterclaims, at ¶ 115.

⁷² Core Stmt. 3.0, at 2-7.

⁷³ Core Stmt. 4.0, at 4; and Exhibit CORE SR-1.

Yet despite Core's clear and unequivocal requests for local interconnection facilities, Verizon has never provided a local interconnection trunk to Core, and never submitted a TELRIC bill to Core.⁷⁴ For years, Verizon continually ignored Core's orders for local interconnection facilities and instead provisioned **access** facilities designed for use by IXCs connecting to Verizon's access tandems for the delivery of their toll traffic to Verizon's end users.⁷⁵ An access facility is designed for an IXC to send and receive its subscribers' long distance toll traffic to and from end users residing on an incumbent LEC's local network.⁷⁶ Core has steadily and consistently disputed Verizon's access billing since at least 2003,⁷⁷ and Core never ordered service out of Verizon's tariffs.⁷⁸ *See*, Core M. Br., at 18-19.

In holding that Core acted in bad faith by refusing to pay Verizon's bills, the S.I.D. also ignores the fact that ignores that **Verizon has never submitted a TELRIC bill to Core.**⁷⁹ Verizon cannot now claim that it is owed "at least" TELRIC for the access services it did provision and never billed for. Indeed, Core would have relished receiving a TELRIC bill for local interconnection services. Verizon's failure to do so has crippled Core's ability to price outbound services in any rational or predictable way.⁸⁰

Finally, the S.I.D. ignores the ignored the numerous technical issues Core raised with respect to the Verizon facilities that justified Core's disputes of the billings for those facilities. These technical issues are discussed at length in Core's Main Brief, at 23-25 and its Reply Brief, at 20-25, and include:

⁷⁴ N.T., at 492 (Verizon witness Peter D'Amico).

⁷⁵ Core Stmt. 3.0, at 28.

⁷⁶ *Id.*; and Figure R-1.

⁷⁷ Core Stmt. 3.0, at 30-34; and Exhibit CORE R-19.

⁷⁸ *Id.*, at 39.

⁷⁹ N.T., at 492 (Verizon witness Peter D'Amico).

⁸⁰ *MilleniaNet Corp. v. Verizon Pa., Inc.*, Docket C-20055173 (Order entered May 2, 2008)("MilleniaNet"), at 9,12.

- Verizon improperly routed traffic to Core over the LITGs that should have been routed over the ATCs, and vice versa.
- Despite numerous requests dating back to 2000,⁸¹ Verizon never enabled the MF trunks to pass ANI/CPN to and from Core's end users.⁸² Verizon's refusal to permit ANI/CPN to pass over the MF trunks rendered those trunks useless to Core because consumers expect to receive ANI/CPN when they subscribe to Caller ID and related services.⁸³
- For the SS7 ATCs, Verizon refused to transmit carriers' CIC or OCN in the SS7 signaling stream across these trunks, making it difficult or impossible for Core to properly bill and collect appropriate switched access charges from carriers.⁸⁴
- With respect to the SS7 trunks, Verizon improperly inserted Core's CIC into the EMI records for traffic Core passes over the SS7 LITGs.⁸⁵

For all of the foregoing reasons, the Commission should reject the S.I.D.'s finding that Core acted in bad faith.

EXCEPTION NO. 6: THE S.I.D. IMPROPERLY REITERATES THE I.D.'S DISMISSAL OF CORE'S CLAIM REGARDING THE "MIRRORING RULE"

The S.I.D. found that "Core's third count is that Verizon failed to comply with the "mirroring" rule that originated in the FCC's 2001 ISP Remand Order" and reiterated the I.D.'s dismissal of this count. Core excepts to this finding, for the reasons explained in Core's Exceptions, at 22-25. In addition, Core notes that the S.I.D. appears to agree to the thrust of Core's mirroring rule argument when it concludes that both parties are limited to billing one another at \$0.0007/MOU for ISP-bound traffic, although Core disagrees with the conclusion that to traffic destined to ISPs is subject to \$0.0007. S.I.D., at 32.

⁸¹ See, e.g., Exhibit CORE R-19 (Letters dated March 5, 2008 and December 6, 2005 from Core to Verizon).

⁸² Core Stmt. 1.0, at 10,11.

⁸³ Core Stmt. 3.0, at 47.

⁸⁴ Core Stmt. 1.0, at 10-11.

⁸⁵ Core Stmt. 3.0, at 47.

EXCEPTION NO. 7: THE S.I.D. IMPROPERLY SUSTAINS VERIZON'S COUNTERCLAIM FOR COMPENSATION FOR THE USE OF ITS FACILITIES AND SERVICES

The S.I.D. reiterated the finding from the Initial Decision which upheld Verizon's claim for compensation for the use of its facilities and services. S.I.D., at 31. The S.I.D. also recommends a process for Verizon to submit of table of bills that Core has not paid, for which Verizon seeks payment, and requires Core to pay those bills after any disputes are resolved by Commission review. S.I.D., Ordering Paragraphs 10-13. Core excepts to the finding to the extent that it upholds Verizon's facilities claims, for the extensive reasons explained in Core's Exceptions, at 22-39, and Reply Exceptions, at 3-6. As explained at length by Core, Verizon's claims must fail because:

- 1) The majority of Verizon's claims are beyond the Statute of Limitations,
- 2) Verizon's claims are barred by the doctrine of laches,
- 3) Verizon failed to meet its burden of production,
- 4) Verizon failed to offer local interconnection in violation of the ICAs and Commission precedent,
- 5) Verizon never billed nor sought TELRIC charges for local interconnection, and
- 6) The facilities that Verizon provided were defective.
- 7) The vast majority of Verizon's claim is based on its interstate tariff.⁸⁶

In addition to ignoring the multitude of issues with Verizon's facilities' bills, the process outlined by the S.I.D. for the payment of Verizon's facilities bills is inequitable and flawed. To the extent that Verizon is permitted to issue or re-issue a claim for facilities for periods after the

⁸⁶ Core's primary position is that the Commission has jurisdiction to resolve this claim, because it arises under an ICA. In that case, the Commission similarly has jurisdiction to rule on the interstate portion of Core's switched access claim. But if the Commission concludes that it has no jurisdiction over interstate tariff services, that finding must be applied equally to both parties' interstate access tariff claims.

close of the record in his proceeding, Core should likewise be able to revise its claims to include unpaid bills that reflect the Commission's final rulings in this case, and supplement its claims for periods from the close of the record to the final Commission decision. Finally, to the extent the Commission adopts the S.I.D.'s proposed procedures for presenting and disputing bills, Core's position is that each party should receive equal time (60 days) to present its own bills, and to dispute the other party's bills.

EXCEPTION NO. 8: THE S.I.D.'S ORDER FOR CORE TO REMIT PAYMENT TO VERIZON "FOR ALL OUTSTANDING BILLS" IS UNCLEAR AND REQUIRES CLARIFICATION

The S.I.D. would require Core to submit payment to Verizon for "all outstanding bills within the confines of the applicable statute of limitations, recognizing that some of the bills must be issued or re-issued reflected the \$.0007 rate for switched access charges." S.I.D., at 31. This passage in the S.I.D. requires clarification, because the bills underlying Verizon's claims related to facilities and services, and include only very limited usage charges. This holding from the S.I.D. appears to be conflating Verizon's counterclaims for payment of its facilities bills with Core's claims for switched access for traffic sent by Verizon to Core. Furthermore, the S.I.D. does not address the statute of limitations and jurisdictional issues associated with Verizon's claims, as set forth in Core's Reply Exceptions at 3-6.

EXCEPTION NO. 9: THE S.I.D. FAILS TO ACKNOWLEDGE THAT THE PENNSYLVANIA ICAS INCORPORATE TELRIC RATES FOR SECTION 251(C)(2) INTERCONNECTION TRUNKS JUST LIKE THE ICAS IN CORETEL VIRGINIA

The S.I.D., at 18, correctly summarizes the Fourth Circuit's holding in *CoreTel Virginia* relative to Verizon's duty to provide entrance facilities for interconnection at cost-based

(TELRIC) rates.⁸⁷ The S.I.D. also correctly notes that this duty is subject to the plain language of the ICAs. *Id.* However, having gone that far, the S.I.D. fails to close the loop and apply the thrust of the Fourth Circuit’s ruling to the present case. Therefore, Core excepts to the S.I.D.’s explication of *CoreTel Virginia*, and hereby incorporates by reference passages from its Main Brief, at 19-20, original Exceptions, at 28-29 and Letter to Secretary Chiavetta dated June 25, 2014, at 2-3.

Just like the ICAs in Virginia, which incorporated Verizon’s duty to provide interconnection at TELRIC,⁸⁸ the primary ICA at issue in this case (the Core/Verizon PA ICA) clearly limits Verizon’s charges for interconnection facilities to “Dedicated Transport,”⁸⁹ a rate element that is defined in the ICA,⁹⁰ and for which a cost-based TELRIC rate is set forth in the ICA’s pricing schedule.⁹¹ In this way, the Verizon PA ICA is closely analogous to the ICA at issue in *CoreTel Virginia*,⁹² the difference being, that the Core-Verizon PA ICA uses the term

⁸⁷ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 368 (4th Cir. 2014) (“while an incumbent carrier no longer has a general obligation to provide entrance facilities at TELRIC under § 251(c)(3), it remains obligated to provide entrance facilities at TELRIC when they are used for interconnection under § 251(c)(2).”); *citing*, *Talk America*, 131 S.Ct. at 2264–65; *Triennial Review Remand Order*, 20 F.C.C. 1533, ¶ 140; and *Triennial Review Order*, 18 F.C.C. 16978, ¶¶ 365, 366.

⁸⁸ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 372 (4th Cir. 2014) (“the CoreTel/Verizon ICA entitles CoreTel to order entrance facilities for interconnection at TELRIC.”).

⁸⁹ Verizon PA ICA, Part IV, § 2.4.1 (“[Core] will pay [Verizon] transport charges from the POI to the Tandem Office [IP] for Dedicated Transport.”).

⁹⁰ Verizon PA ICA, Part III, § 10.1.1 (“Dedicated Transport is an interoffice transmission path of a fixed capacity between MCI designated locations to which MCI is granted exclusive use. Such locations may include Bell Atlantic Central Offices, other Telecommunication Carrier locations, subscriber premises, or other mutually agreed locations.”).

⁹¹ Verizon PA ICA, Appendix 2, Detailed Schedule of Itemized Charges, II.A. (“Dedicated Transport” rates); Verizon North ICA, Appendix A, at 6 (rates for “Dedicated Transport Facilities”).

⁹² *See, CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 370-71 (4th Cir. 2014) (“ICA § 4.3 is the only provision of the ICA that deals specifically with interconnection. Within that section, § 4.3.1 authorizes CoreTel to order “an Entrance Facility ... leased from Verizon” for interconnection. ICA § 4.3.3 then provides that CoreTel may order this entrance facility at the ‘rates and charges, set forth in this Agreement, in any applicable Tariff(s), or as may be subsequently agreed to between the parties.’ Exhibit A of the ICA lists, in turn, the schedule of rates for various network elements and services, including TELRIC rates for entrance facilities. Though Verizon contends otherwise, the most natural reading of these provisions is that the TELRIC rates listed at Exhibit A § A.II.C. are the ‘rates and charges, set forth in this Agreement’ referred to in ICA § 4.3.3.”).

“Dedicated Transport” to refer to the same type of link which the Virginia ICA refers to as “Entrance Facility,” i.e., the link between the CLEC’s network and Verizon’s IP.⁹³

In stark contrast to the Verizon PA ICA, the Verizon North ICA admittedly lists “Intrastate Special Access Tariff” rates for “Entrance Facility and Transport for Interconnection Charges.”⁹⁴ However, the amounts Verizon billed for interconnection facilities under the Verizon North ICA are minimal. According to Verizon, “the vast majority” of Verizon’s facilities claim “is owed to Verizon PA, and the remainder to Verizon North.”⁹⁵ Nor does the record reflect whether Verizon North actually provides any interconnection facilities to Core whatsoever. Thus, “the vast majority” (perhaps all) of Verizon’s interconnection charges arose under the Verizon PA ICA and were unambiguously subject to the TELRIC rates for Dedicated Transport set forth therein.

III. CONCLUSION

The primary issue on remand is whether Core’s Switched Access Claim is supported by the FCC’s 2015 *VOIP Symmetry Order*. The S.I.D. correctly found that it is. The *VOIP Symmetry Order* provided important and definitive clarifications that bear directly on Core’s Switched Access Claims, and the Commission was correct to seek additional briefing from the parties on this topic. The *VOIP Symmetry Order* makes it abundantly clear that CLECs that provide the functional equivalent of end office switching are entitled to collect access charges under the VoIP Symmetry Rule. Furthermore, the *VOIP Symmetry Order* confirmed that the

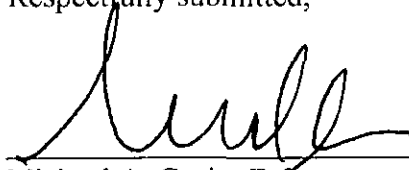
⁹³ Compare, *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 368-69 (4th Cir. 2014)(“[Virginia] ICA § 4, ‘Interconnection and Physical Architecture,’ addresses the physical interconnection of the parties’ two networks. This section provides that CoreTel may specify one of three physical methods to connect with Verizon at an agreed-upon interconnection point. One of the methods allows CoreTel to lease an entrance facility from Verizon.”); *with*, ICAs, Part IV, § 2.4.1 (“[Core] will pay [Verizon] transport charges from the POI to the Tandem Office [IP] for Dedicated Transport.”).

⁹⁴ Verizon North ICA, Appendix A, at 1, § 1.C.. The fact that the Verizon North ICA specifies tariff rates for interconnection entrance facilities, whereas the Verizon PA ICA specifies a TELRIC rate for Dedicated Transport may simply indicate that the two ICAs are not in sync on this crucial point in the litigation.

⁹⁵ Verizon New Matter and Counterclaims (May 16, 2012), ¶ 158.

functional equivalent of end-office switching exists when a CLEC provides intelligence associated with call set-up, supervision and management, and the record in this case clearly demonstrates that Core provides these functions to its end-users. Finally, the *VOIP Symmetry Order* mandates rejection of Verizon's main argument against paying Core's switched access charges, i.e., the *YMax* defense. Accordingly, Core respectfully requests that the Commission enter an Order which confirms that Core is entitled to the full amount of its Switched Access Claim.

Respectfully submitted,



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January 28, 2015

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**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 Exceptions to Supplemental Initial Decision upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

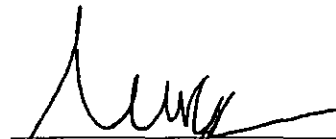
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