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February 8, 2016

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 Reply to Core's Exceptions to Supplemental Initial Decision on Remand, filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter. Because the Reply to Core's Exceptions includes certain Proprietary information the Public Version of the Reply to Core's Exceptions is being e-filed, with the Proprietary Version being provided via overnight delivery.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "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 Reply to Core's Exceptions to 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 8<sup>th</sup> day of February, 2016.

**Via E-Mail and Federal Express**

Michael A Guin, Esquire  
Stevens & Lee  
17 North Second St., 16<sup>th</sup> Fl.  
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Attorney for Verizon

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**(PUBLIC VERSION)**

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*Counsel for Verizon Pennsylvania LLC  
and Verizon North LLC*

Dated: February 8, 2016

**TABLE OF CONTENTS**

**REPLIES TO CORE’S EXCEPTIONS TO THE SID**..... 2

**Reply to Core Exception to SID No. 1: The SID Properly Reaffirmed That Core’s Billings to Verizon Are Unreliable and Core Must Refund Overcharges.** ..... 2

    A.    The Parties’ Interconnection Agreements Do Not Permit Core to Bill Verizon for Third Party Traffic. .... 3

    B.    Verizon Demonstrated Significant Overbilling by Core. .... 6

    C.    Core Billed Verizon for the Same Traffic for Which It Billed AT&T, Choice One and XO Communications..... 8

    D.    Joint Proprietary Exhibit 1 Does Not Corroborate Core’s Billings. .... 9

**Reply to Core Exception to SID No. 2: Core Failed to Submit Evidence to Support Rebilling Any Traffic at Switched Access Rates.** ..... 10

**Reply to Core Exception to SID No. 3: The Third Circuit’s Opinion in *AT&T v. Core* Supports the SID’s Conclusions.**..... 14

**Reply to Core Exception to SID No. 4: Core Failed to Present Evidence Establishing What Portion of the Traffic for Which It Billed Verizon Switched Access Was VoIP.** ..... 17

**Reply to Core Exception to SID No. 5: The SID Properly Concluded That Core Has Failed to Act In Good Faith.** ..... 18

**Reply to Core Exception to SID No. 6: Verizon Complied with the FCC’s *ISP Remand Order*.** . 20

**Reply to Core Exception to SID No. 7: The ID Correctly Rejected Core’s Technical Arguments to Evade Paying for the Facilities It Used.**..... 20

**Reply to Core Exception to SID No. 8: The SID’s Directives Regarding Bill Re-Rating and Payment Warrant Clarification.** ..... 21

**Reply to Core Exception to SID No. 9: The ID and SID Correctly Held That Core Must Pay Verizon’s Facilities Bills at the Rates Billed.** ..... 22

**CONCLUSION** ..... 25

## TABLE OF AUTHORITIES

### Cases

*AT&T Corp. v. Core Communs., Inc.*, 806 F.3d 715 (3<sup>rd</sup> Cir. 2015)

*Core Communs., Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010), *cert. denied*, 131 S.Ct. 597 (2010)

*CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364 (4<sup>th</sup> Cir. 2014)

*Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011)

### Regulatory Opinions (Federal)

*In the Matter of Connect America Fund-Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90 (FCC, rel. Feb 11, 2015), Declaratory Ruling, FCC 15-14, *appeal pending*, *AT&T Corp. v. FCC*, Case No. 1059, (D.C. Cir., filed March 18, 2015) (“*VoIP Symmetry Order*”)

*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151 (2001) (“*ISP Remand Order*”)

### Federal Communications Commission Briefs

Brief of the United States as Amicus Curiae, *Talk America Inc. v. Michigan Bell Tel. Co.*, U.S. S.Ct. Nos. 10-313 and 10-329) (February 2011)

*Response of the Federal Communications Commission to Emergency Motion for a Stay and Motion for Expedited Consideration, WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir., June 12, 2001).

### Regulatory Opinions (Pennsylvania)

*Core Communs., Inc. v. AT&T Corp.* Docket No. C-2009-2108186 (Opinion and Order entered Dec. 5, 2012)

*Core Communs., Inc. v. AT&T Corp.*, Docket No. C-2009-2108186 (Opinion and Order entered August 15, 2013)

*Palmerton Telephone Company v. GNAPS South, Inc.*, Docket No. C-2009-2093336 (Opinion and Order entered March 16, 2010)

*Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with Windstream Pennsylvania, LLC Pursuant to 47 U.S.C. §252(b)*, Docket No. A-310922F7004 (Opinion and Order on Reconsideration entered November 13, 2014)

### Statutes

47 U.S.C. § 251(c)(2)

The Supplemental Initial Decision on Remand (“SID”)<sup>1</sup> was tasked with considering the effect of the FCC’s *VoIP Symmetry Order* on the intercarrier compensation issues in this case. But rather than confine its exceptions to that narrow issue, Core instead reargues the entire case. Although the Commission should simply ignore the Core exceptions that exceed the scope of remand, Verizon nevertheless responds briefly to each, incorporating by reference its more extensive refutations already in the record. For clarity, the disputed issues are:

- ***Core’s overbilling.*** For years, Core has overcharged Verizon. Among other things, Core billed incorrect rates, and billed for services it did not actually provide. Core also frequently billed Verizon for other carriers’ traffic (some of which it double-billed to both Verizon and the originating party – something Core still denies even after going to the Third Circuit to confirm that it can bill AT&T and other carriers for this traffic). The ID and the SID correctly found that Core should refund Verizon’s overpayments due to this overbilling.
- ***Core’s failure to pay for Verizon facilities.*** Core has *never* paid for its use of facilities leased from Verizon to send its traffic to Verizon and other carriers. Core attempts to evade payment on spurious technical grounds and contends that the facilities charges should be re-rated at lower TELRIC rates. But Core has never paid even the lower amount it claims should apply, although it admits it has gained “value” from using Verizon’s trunks. The ID and SID correctly found Core should pay the amounts billed.
- ***Core’s failure to pay Verizon intercarrier compensation.*** Core has never paid Verizon intercarrier compensation for the traffic Core sends to Verizon. While the SID lacked complete clarity on what rate should apply (*see* Verizon EX SID at 4-6), there is no doubt that Core must pay Verizon, yet Core has never done so.
- ***Core’s failure to pay for directory listings.*** Verizon’s directory listing charges are undisputed: as of June 2012, Core owed Verizon \$32,685.91 for directory listings. SID at 27. Core did not except to the ID or the SID on this point, but yet withholds payment. The Commission should order Core to pay this amount to Verizon immediately.
- ***Core’s attempt to bill switched access.*** During mediation of the case (at which point, the key issues had already been identified), Core suddenly issued millions of dollars in switched access back-bills purporting to re-rate, at higher switched access rates, traffic for which Verizon had already paid Core at the FCC’s \$0.0007 per minute rate for ISP-bound traffic. The ID and SID correctly found Core’s switched access bills to be without basis in law or in fact.

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<sup>1</sup> See the attached Glossary for the abbreviations/citation forms for other pleadings and documents in this case, as well as selected cases.

- ***Core’s attempt to undo the entire ISP Remand Order regime.*** More than a decade ago, the FCC sought to stop arbitrageurs like Core from unfairly collecting millions of dollars in “reciprocal” compensation payments for ISP-bound traffic by limiting the rate to \$0.0007 per minute. Core’s multiple appeals seeking to invalidate this rate failed. This Commission determined in 2004 that Verizon properly incorporated the arrangement in its interconnection agreement (“ICA”) with Core. Years later, Core argues (again) that the Commission was wrong and seeks (again) to collect reciprocal compensation on all of the traffic for which Verizon has paid at \$0.0007. The ID and SID rightly rejected this baseless argument.
- ***Breach of dispute resolution and good faith provisions.*** Each party claims that the other breached these ICA provisions. The ID and SID sifted through these competing claims and correctly concluded that “Verizon followed a reasonable interpretation of the ICAs to the letter” while Core acted in bad faith.
- ***Emergency order.*** Since 2011, Verizon has paid Core in compliance with an emergency order while Core withholds all payment from Verizon, even for facilities and services for which it concedes something is owed. While Verizon subsidizes Core by paying inflated bills and providing wholesale service for free, Core admits it maintains no reserve and is “unlikely” to be able to pay any amount the Commission might order. SID at 29. The Commission’s order on the merits should immediately dissolve the emergency order. If any interim payment requirement is deemed necessary during a post-order bill validation process, it should be bilateral, with both parties paying current bills or paying into escrow.
- ***Post-order bill reconciliation process.*** The SID recommends a process for Verizon to submit a table of bills and the Commission to adjudicate any disputes on an expedited basis. Neither party appears to object conceptually, although both raise concerns with the details. Whatever process is adopted, it should not leave an opening for Core to re-litigate any substantive issues or delay payment and final closure of this matter.

## **REPLIES TO CORE’S EXCEPTIONS TO THE SID**

### **Reply to Core Exception to SID No. 1: The SID Properly Reaffirmed That Core’s Billings to Verizon Are Unreliable and Core Must Refund Overcharges.**

Although the issue of refunds owed for Core’s overbilling was not part of the remand, Core seizes on the SID’s reaffirmation of the original ID’s finding that Core has overcharged Verizon to reargue it. Core raises nothing new and the ID’s finding remains correct.

**A. The Parties' Interconnection Agreements Do Not Permit Core to Bill Verizon for Third Party Traffic.**

Core cannot deny that it billed Verizon for traffic originated by other parties and merely transited through Verizon to Core. So it argues that the ICAs permit it to double-bill Verizon for transit traffic originated by and billable to other carriers. Core is wrong, as explained below.

“Transit” service allows providers to avoid constructing direct connections with every other provider, which would be cost prohibitive for many. Instead, any incumbent or competitive local exchange carrier or wireless carrier can exchange traffic indirectly by routing calls through Verizon’s tandem switches and having Verizon transit them on to their destined terminating carrier. Carriers can also exchange calls with interexchange carriers (“IXCs”) by routing them through Verizon’s access tandems. VZ Stmt. 1.0 at 45-46. Core receives most or all of this third party traffic through transit arrangements over two types of trunks: two-way Access Toll Connecting Trunks (“ATCTs”) that carry traffic between Core and IXCs,<sup>2</sup> and one-way Local Interconnection Trunk Groups (“LITGs”) carry both Verizon and third party-originated local and non-Feature Group D IntraLATA toll traffic to Core. ID at 8 (FOF 16-21). Core initially asserted that all traffic coming over the LITGs was Verizon-originated (Core Stmt. 1.0 at 13), but was forced to concede that the ICAs allow local and intraLATA toll calls originated by CLECs and independent ILECs, as well as intraMTA calls originated by wireless carriers, to be routed over the LITGs.<sup>3</sup> Yet, Core knowingly continued to bill Verizon for *all* traffic delivered over the LITGs, including this third party traffic (Tr. 321-22), and maintains that it is permitted to do so. Core EX SID at 6.

Core first asserts that Verizon must pay for terminating all of the traffic that comes to Core from Verizon’s tandem switches because Verizon bills Core for all of the traffic Core sends to

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<sup>2</sup> For many years Core subtended Verizon’s access tandem and exchanged its IXC traffic through Verizon using ATCTs leased from Verizon, but in recent years, Core has moved to a competitive access tandem provider and now leases ATCTs from that company. VZ IB at 19.

<sup>3</sup> VZ Stmt. 1.0 at 49-50 (citing VZ PA ICA at Att. IV, § 1.1.1 and VZ North ICA at Part V, § 1.2.1); Core Stmt. 3.0 at 51; *see also* CEX at 8.

Verizon. Core EX SID at 8. But this is an “apples to oranges” comparison. Core knows that Verizon is a transit provider with tandem switches that allow Core to interconnect directly with many other carriers to receive their traffic without incurring the cost of establishing a direct connection.<sup>4</sup> Indeed, Core has sued many of these third party carriers, including AT&T, to collect compensation for the traffic they transit to Core through Verizon. In contrast, Core is not a tandem or transit provider. The difference is well-illustrated by *Palmerton Telephone Company v. GNAPS South, Inc.*, where the Commission found that GNAPs – which, like Core, was a least cost router terminating nomadic VoIP and other traffic for companies like Transcom, CommPartners and PointOne – was required to compensate Palmerton for terminating that traffic.<sup>5</sup> The traffic was transited through Verizon, but the Commission never considered that the transit provider would be required to pay the terminating charges. The principle that the “originator pays,” not the transit provider, was reiterated by this Commission in the AT&T case and affirmed by the Third Circuit.<sup>6</sup>

Core next incorrectly asserts that the parties’ ICAs allow it to bill Verizon for 100% of the traffic carried over the LITGs. Core EX SID at 7-9. Core cites Attachment IV, § 1.1.1 of the Verizon PA ICA and Part V, § 1.2 of the Verizon North ICA, but these address interconnection architecture, not billing, and neither authorizes Core to bill Verizon as the “sending carrier” (Core’s term) of third party-originated traffic. Core’s citation to Part V, § 2.6.2 of the Verizon North ICA is similarly inapposite – it describes an automated billing process used to classify traffic and bill the associated rate, but does not allow Core to bill Verizon for 100% of the traffic carried on the LITGs. Core also cites Attachment IV, §§ 7.2 and 7.3 of the Verizon PA ICA, but they merely address the

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<sup>4</sup> VZ IB at 29, FN 45, 55; VZ RB at 30-31; ID at 15 (FOF 61); Tr. 298-99; VZ Stmt. 2.0 at 24 and Ex. 6-R thereto; VZ Stmt. 3.0 at 42 and Ex. 7-SR thereto.

<sup>5</sup> *Palmerton Telephone Company v. GNAPS South, Inc.*, Docket C-2009-2093336 (Opinion and Order entered March 16, 2010).

<sup>6</sup> See *AT&T Corp. v. Core Communs., Inc.*, 806 F.3d 715 (3<sup>rd</sup> Cir. 2015). Indeed, Core itself has argued before the Commission that the *originator* of the traffic is liable for compensating it. VZ Stmt. 3.0 at 42, 49-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR.

proper measurement and rounding-up of minutes of use (“MOUs”) and the applicable rates, and recognize that the “originating party” will be billed. Core EX SID at 8. The ICAs are clear that Core is entitled to bill Verizon reciprocal compensation only on “Local Traffic” (in the case of Verizon PA) and “Reciprocal Compensation Traffic” (in the case of Verizon North) and in both instances, the definitions of these terms *explicitly exclude third party-originated traffic*.<sup>7</sup> The only traffic for which Core may bill Verizon reciprocal compensation is “traffic that is originated by an end user subscriber of” Verizon PA or traffic “originated by a Customer of” Verizon North. VZ IB at 30-31 (with ICA citations).

Core misconstrues the record by arguing that Verizon unreasonably expects Core to identify third party traffic using what it has termed Verizon’s “LNP Lookup” method. Core EX SID at 9-11. Core’s misnomer refers to Verizon witness Mr. Munsell’s in-depth analysis of 18 months of call records for traffic for which Core had billed Verizon to quantify the amount of the overbilling. Mr. Munsell researched Local Number Portability (“LNP”) records to determine what carrier had actually acted as the local service provider at the time of the call. VZ Stmt. 3.0 at 67-69. His review revealed that 35% of the calls for which Core had billed Verizon during the sample period were actually originated *by third parties* for which Verizon had merely acted as a transit provider. *Id.* at 68-69. Core erects a straw man by spending several pages arguing that “LNP Lookup” is not an industry-accepted billing method, nor required by the parties’ ICAs (Core EX SID at 9-11), but as detailed in Verizon’s earlier briefs, Core’s argument is a red herring. Mr. Munsell confirmed that Verizon had *not* proposed this process as a method for Core to bill third parties, but rather, as a means of: (1) confirming and quantifying the extent of Core’s improper billing to Verizon; (2) verifying the presence of substantial amounts of third party-originated traffic in the calls billed to

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<sup>7</sup> ID at 56 (COL 17); VZ IB at 30-31; VZ RB at 31-32; VZ REX at 5-10.

Verizon; and (3) demonstrating that Core could have avoided billing Verizon for third party traffic if it had wanted to do so.<sup>8</sup>

Core's admission that it billed Verizon for 100% of the traffic transmitted over the LITGs even though it knew that it was receiving substantial amounts of third-party originated traffic through Verizon's tandems<sup>9</sup> is just one of many facts that support the SID's finding that "Core's haphazard billing and inability to support the bills with any amount of reliability render its formal Complaint unsustainable." SID at 29. Core should have taken steps to cease improperly billing Verizon in violation of the ICAs – and the record shows that Core could have used traffic exchange agreements and billing factors to do so – but it never even tried. VZ Stmt. 2.0 at 23.

**B. Verizon Demonstrated Significant Overbilling by Core.**

Core claims it received EMI records from Verizon for fewer than 35% of calls, suggesting that it was thus not possible for 35% of the traffic billed to Verizon to be third party traffic. Core EX SID at 13. Core ignores that the ICAs did not require Verizon to provide EMI for 100% of calls, and that Verizon provided EMI for all required calls and more (including those from CLECs and wireless carriers, and more recently, rural ILECs ("RLECs")).<sup>10</sup> The record does not support Core's presumption that the percentage of minutes for which it received EMI (and the accuracy of Core's estimate of those minutes is unproven) equals the percentage of third party traffic. The record shows that Core knew it was receiving RLEC-originated traffic (Core Stmt. 1.0 at 13-14; Core Stmt. 4.0 at 6-7), and that Verizon was not obligated (or even able) to send EMI for all RLEC-

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<sup>8</sup> VZ RB at 26-30; VZ REX at 7; Tr. at 590-91.

<sup>9</sup> VZ Stmt. 1.0 at 48, 61, 75-76; VZ Stmt. 2.0 at 17-18, 43; VZ Stmt. 3.0 at 42, 45, 48-50 and Exs. 9-SR, 11-SR, 12-SR and 13-SR; Tr. 250.

<sup>10</sup> Core Stmt. 1.0 at 13-14; *see also* VZ Stmt. 1.0 at 48; VZ Stmt. 3.0 at 40-41, 52-53; Core Stmt. 4.0 at 6-7. The ICAs require Verizon to provide EMI records *only for* interexchange calls that IXCs route to Core via Verizon's tandems, *but not for*: (1) interexchange calls that CLECs and wireless carriers send to Core through Verizon's network; (2) calls from Verizon end users; and (3) calls from any non-interexchange carrier (for example, CLECs, wireless providers, rural ILECs, etc.). Verizon does voluntarily provide EMI for some categories not required by the ICAs, but is not able to do so for all traffic. VZ IB at 24 (citing extensive record evidence); VZ RB at 27 (same); Verizon PA ICA at Att. VIII, § 3.1.3; Verizon North ICA at Part V, § 3.3.

originated traffic (VZ Stmt. 3.0 at 53), so it stands to reason that the total percentage of third party traffic for which Core billed Verizon would be *larger* than the percentage of EMI minutes acknowledged by Core. VZ RB at 26-29. Core's EMI discussion confirms that Core has been billing Verizon improperly for *some* amount third party traffic,<sup>11</sup> but is insufficient to quantify the full amount of such traffic because not all third party traffic would have associated EMI, particularly in the earlier periods before Verizon was able to generate EMI on some RLEC traffic.

Core also mischaracterizes the testimony by claiming that Verizon's witness admitted he could not identify "any actual percentage of third-party carrier traffic on the LITGs for which Core may have billed Verizon." Core EX SID at 12. However, Mr. Munsell was asked if Verizon could subcategorize the different types of third party-originated minutes that Verizon had transited to Core, not what percentage of the traffic for which Core billed Verizon was third party-originated. Tr. at 527-29. Core ignores Mr. Munsell's redirect testimony explaining that he could not calculate the percentage of each subcategory of such third party traffic because it is mathematically impossible to calculate a percentage absent a denominator to associate with a numerator. The denominator could not be determined because flat-rated Verizon-originated traffic is not *tracked* by the minute (because it is not *billed* per minute). Tr. 585-89. Mr. Munsell also explained that the special study he conducted for the litigation was specifically designed to determine what percentage of the minutes Core billed to Verizon were not Verizon-originated, and stood by the conclusion that 35% of the minutes in that study were third party-originated. Tr. at 529-533.

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<sup>11</sup> For example, Core's chart shows it received EMI (and therefore that the traffic originated with a third party carrier) for from 5.4% to 8% of the minutes billed to Verizon in 2012, all of which would have been delivered over the LITGs (since the ATCTs were disconnected by that time, and Core stated that it continues to bill Verizon 100% of the LITG minutes). Core Stmt. 3.0 at 64-65. Thus, Core effectively admits that it overbilled Verizon by at least that percentage.

**C. Core Billed Verizon for the Same Traffic for Which It Billed AT&T, Choice One and XO Communications.**

To prove its case for a refund, Verizon must prove only that Core billed it for third party traffic that was not billable to Verizon. Verizon need not additionally prove that Core double-billed the same minutes to the originating carrier. But Verizon's evidence included documents from Core's complaint cases against AT&T, XO Communications and Choice One in which Core sought compensation for traffic originated by those carriers and transited by Verizon. Those documents showed that Core alleged under oath that EMI records provided by Verizon proved that these third parties were legally obligated to pay Core for the termination of traffic originated by their end users and transited to Core through Verizon's tandems.<sup>12</sup> The math is simple: Core admits that it billed (and still bills) Verizon for 100% of the traffic carried over the LITGs.<sup>13</sup> Core also admits that it routinely uses Verizon-provided EMI records to bill an array of third-party carriers (including the above CLECs) for traffic they originate, but does *not* use those records to avoid double-billing Verizon for the same calls.<sup>14</sup> Core's double-billing is thus a logical truism: since Core billed Verizon for *all* of the traffic, and also billed third parties for *some* of the same traffic, Core necessarily double-billed for some of that traffic.

Core argues that the locally-dialed ISP-bound traffic for which it sued AT&T, Choice One and XO Communications must have traversed the ATCTs, not the LITGs, and therefore was never billed to Verizon. Core EX SID at 13-15. Verizon rebutted this specious claim years ago in response to Core's exceptions to the original ID and refers the Commission to the full discussion there. VZ REX at 9-10. Core predicates its contorted argument on the presence of AT&T's Carrier

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<sup>12</sup> VZ Stmt. 1.0 at Ex. 15; VZ Stmt. 2.0 at 17-18, 22, 24 and Ex. 5-R; VZ Stmt. 3.0 at 48-49 and Exs. 11-SR and 12-SR; *see also* VZ IB at 31-33; VZ RB at 2, 31-32; VZ REX at 9-10.

<sup>13</sup> Locally-dialed CLEC traffic is routed over the LITGs, and Verizon provides EMI records for all locally-dialed CLEC traffic. VZ Stmt. 2.0 at 20, 22.

<sup>14</sup> Core Stmt. 1.0 at 14; Tr. 335; VZ Cross Ex. 8; VZ Stmt. 2.0 at 27-29; VZ Stmt. 3.0 at 56-57.

Identification Code (“CIC”) in the EMI records provided by Verizon, claiming that this signifies AT&T’s status as a long-distance provider, and consequently, the traffic at issue – while locally-dialed – must have been carried over the ATCTs (which carry toll traffic). Core EX SID at 14. Core is wrong not only because the governing body that assigns CIC codes assigns them to *both* CLECs *and* IXCs – indeed, Core itself (a CLEC) has one – but also because CIC codes have no bearing whether traffic is routed over the ATCs versus the LITGs. VZ REX at 9. Locally-dialed and non-Feature Group D IntraLATA toll traffic CLEC traffic – including the locally-dialed ISP-bound traffic at issue in the AT&T, Choice One and XO proceedings – is transmitted *exclusively* over the LITGs.<sup>15</sup> VZ Stmt. 2.0 at 20, 22. Because Core admits that it billed Verizon for 100% of the traffic transmitted over the LITGs, it billed *both* Verizon *and* these CLECs for the same calls, reaping a windfall.

Core also attempts to treat AT&T’s litigation strategy as an admission against Verizon’s interests, arguing that if Verizon were right about Core’s double-billing, AT&T would have raised the issue in its own case against Core. Core EX SID at 14-15. AT&T’s litigation strategy cannot be “imputed” to Verizon, nor is it “evidence” demonstrating that double-billing did not occur. AT&T had no access to proprietary discovery and data in this proceeding, and in any event could not evade liability for compensating Core for traffic it originated by arguing that the wrong party had already paid Core. It appears that AT&T’s litigation strategy focused mainly on arguing that the Commission lacked jurisdiction and/or that Core lacked the contractual or tariff basis to bill AT&T.

**D. Joint Proprietary Exhibit 1 Does Not Corroborate Core’s Billings.**

Core dusts off three-year-old arguments regarding the purported import of Joint Proprietary Exhibit 1 (“JPE 1”), which the ID correctly concluded (purposefully using general language due the

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<sup>15</sup> This renders irrelevant whether Mr. Munsell’s interpretation of Core’s characterization of trunks as ATCs versus LITGs was correct, despite Core’s attempt to depict it as a “retraction” of his conclusion that Core committed double-billing. Core EX SID at 15.

proprietary nature of the document) was irrelevant to either party's case: "The explanation given by Verizon in its Surreply Brief regarding the evidentiary weight of the exhibit is persuasive and the arguments provided by Core in its Reply Brief are sufficient to result in rendering the exhibit ineffective in proving either case." ID at 38.

As detailed in Verizon's Post-Hearing Surreply Brief, JPE 1 represents nothing more than a snapshot of a limited subset of traffic that traversed Verizon's network in multiple states during a single month in 2011, and does not corroborate Core's billings. VZ SR at 1. More specifically,

[BEGIN PROPRIETARY

. [END PROPRIETARY]

*Id.*; see also JPE 2 (Verizon affidavit). Despite these deficiencies, Core attempts to use JPE 1 – a document created *six months after* Verizon disputed the bills that gave rise to this case – to undermine the sincerity of Verizon's concerns *six months earlier* regarding the reliability of Core's invoices.<sup>16</sup> Core EX SID at 6-7. JPE 1 is a red herring with no relevance here.

**Reply to Core Exception to SID No. 2: Core Failed to Submit Evidence to Support Rebilling Any Traffic at Switched Access Rates.**

Core first billed all traffic as local and Verizon paid at the FCC's \$0.0007 rate.<sup>17</sup> While this case was pending, Core then "back-billed" Verizon \$2.5 million (purporting to have re-rated some of that earlier traffic at higher switched access rates), and has continued to send switched access bills throughout this case. The ALJ did not deny Core compensation, but recognized that Verizon

<sup>16</sup> In doing so, Core also violates – for the second time – the parties' stipulation that JPE 1 had not been requested in discovery and precluding Core from asserting any impropriety relating thereto. See Joint Motion of Verizon and Core for Admission of Late-Filed Exhibits (March 3, 2013) at ¶ 5.

<sup>17</sup> Verizon PA has paid Core \$0.0007 for traffic that exceeds the 3:1 ratio (presumed to be ISP-bound traffic) and reciprocal compensation on traffic below the ratio.

had already paid for this traffic at the appropriate rate and Core had not justified its attempt to rebill at the higher rate. The ALJ also found fundamental errors with Core's switched access calculations and methodology that, independent of the legal issues addressed in the other exceptions, required a finding that Core failed to meet its burden of proving any right to payment of these bills. Core simply repeats arguments it made in its initial testimony without acknowledging or rebutting any of the specific issues that the ALJ found defeated Core's switched access claim.

***Failure to support calculations:*** The ALJ found that Core failed to explain and verify the calculations by which it purported to identify what portion of the traffic, originally billed as local, it now considers to be non-local and billable at switched access rates. Core claims it submitted evidence that was "undisputed," "beyond reproach," and "never questioned," and that its methodology was "industry standard" (Core EX SID at 17), but the record shows these exaggerated claims are untrue. According to Core, Mr. Mingo prepared the back-bills by reviewing old traffic records and comparing the calling and called number of each call, and re-categorizing some calls as non-local if the numbers were not within the same exchange. But Core failed to present any documentation to explain or verify these calculations, even after Verizon raised this lack of evidence.<sup>18</sup> In discovery, Core only pointed to voluminous "CDR" records produced earlier, but never identified which records were associated with Core's Pennsylvania invoices, or which calls Core had re-rated as non-local and intrastate, rendering the CDRs useless and making it impossible for Verizon or the ALJ to check Core's calculations.<sup>19</sup>

Core has the evidentiary burden to justify the accuracy of its switched access bills. That burden includes the threshold requirement to show that the traffic at issue was in fact non-local, or

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<sup>18</sup> VZ Stmt. 2.0 at 40. Based on Core's apparent inability to support its calculations, Verizon suggested that Mr. Mingo "merely estimated the percentage of traffic to which he decided to apply switched access charges" and Core never satisfactorily answered this charge. *Id.*

<sup>19</sup> VZ Stmt. 2.0 at 54-55; SID at 25; ID at 14, FOF 55.

at least that it had a valid and reliable methodology to make that determination. Core had plenty of opportunity to submit evidence and explain its calculations, but never did so. The SID thus correctly repeated the original ID's finding that "Core has offered no data to support the process it used to rejurisdictionalize the calls to issue the back bills (already paid at the lower rate)," and "provided only the pertinent call detail records mixed with other call records, which did not disclose which calls it considered local versus non-local, or intrastate versus interstate, for purposes of its back billing, rendering Core's switched access back bills unsupported and invalid." SID at 25. Core's Exception 2 provides nothing to refute the ALJ's finding.

*Core's switched access bills are inflated with third party traffic:* The SID also found that Core "failed to exclude third party traffic, including interexchange minutes that should have been billed to IXCs, and resulted in overstating the minutes billable to Verizon." SID at 25. Core claims that it only billed Verizon for traffic delivered over the LITGs (Core EX SID at 17-18), but that does not mean Core properly excluded third-party-originated traffic. Nor does it refute the ALJ's factual finding, because as discussed above, LITGs carry not only Verizon-originated traffic, but also third-party toll traffic. And it is not even clear from the record that all of the trunks Core classified as LITGs were in fact LITGs, and not ATCTs. VZ Stmt. 3.0 at 64-66. When Core rerated some of the billed traffic as access, it did not attempt to exclude this third party traffic. Verizon proved that the switched access bills were for traffic originated by other carriers (for which Verizon is not responsible) and Core never showed that Verizon originated any of the traffic.<sup>20</sup>

Core claims that it used some sort of "algorithm" to "weed out" IXC-originated calls, proving that it did not bill Verizon for IXC-originated traffic. Core EX SID at 8. But Core fails to address the evidence that showed that Core's matching process was flawed and did not eliminate

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<sup>20</sup> VZ. St. 2.0 at 42-43. In fact, Core admitted that the traffic for which it has back-billed Verizon switched access charges "is all IXC traffic delivered by Verizon to CoreTel over the interconnection arrangements" Core Stmt. 1.0 at Ex. BLM-6 (emphasis added).

billing for third-party traffic. Core used EMI records, but they cover only some third party-originated calls. Even for those calls where EMI was provided, Core's process did not exclude double-billing associated with wireless traffic or multi-line accounts (a significant volume of traffic), nor was its "weeding out" process generally accepted in the industry.<sup>21</sup> Core also failed to apply the process to traffic delivered over the LITGs, although Verizon provides EMI for many third party calls delivered over those trunks. VZ Stmt. 2.0 at 27-28. Core failed to address these detailed criticisms in the record or its exceptions to the SID. The result of these flaws is that the matching "algorithm" did not avoid billing Verizon for minutes billable to (and likely billed to) other carriers. The ALJ correctly found that Core's switched access bills attempt to charge Verizon for calls originated by IXCs and other carriers.

**Rate application errors:** The SID also reaffirms that Core's switched access bills are unreliable "because they contain rate and rate application errors, and the Core witness could not verify the calculation of the carrier common line charges billed to Verizon (which constitute the majority of the amount billed)." SID at 25. The record supports this finding. The majority of Core's switched access back billing is for the intrastate carrier common line ("CCL") charges,<sup>22</sup> but Core could not demonstrate that how it calculated those CCL charges. Mr. Mingo testified that he had "personally supervised the calculation and preparation of these invoices," and was "very much on top of" the CCL charges billed to Verizon,<sup>23</sup> but admitted on cross examination that: (1) he could not explain how Core derived *per-minute* CCL rates it billed from the *per-access line* CCL rates charged by rural ILECs whose rates Core was attempting to mirror; (2) did not know how Core's consultant had calculated the per minute CCL rates; and (3) would not be surprised to learn that the

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<sup>21</sup> ID, FOF 41, 44 and 70. *See also* extensive record citations at VZ IB at 33; VZ RB at 43.

<sup>22</sup> This is evident from even a cursory review of the switched access billing detail attached as Proprietary Ex. SR-5 to Core Stmt. 4.0. That exhibit also shows that in many cases Core purported to charge the very high CCLs of the rural ILECs in place at that time.

<sup>23</sup> Core Stmt. 1.0 at 32; Tr. 354.

per-minute rate it charged was inconsistent with the per-minute rate billed by the associated RLEC. Tr. 356-58; VZ IB at 54-55. This is insufficient support for amounts that totaled *over half* of the switched access charges billed to Verizon for the month Core offered supporting detail.<sup>24</sup>

Core admitted other flaws in its access billings to Verizon. Although Core is not a tandem provider, it repeatedly billed Verizon tandem-related charges that only the tandem provider may bill (including both intrastate and interstate tandem facility charges, *double* tandem trunk termination charges and tandem switching charges). Similarly, Core consistently billed Verizon for 800 database queries that Core admitted it had not performed and should not have billed (because the traffic at issue was not 800 number toll-free traffic), and compounded this error by billing per minute rather than per query. Core also admitted to overbilling Verizon for information surcharges at a rate *one hundred times higher* than the rate established in Core's Pennsylvania PUC Tariff No. 4 by erroneously billing the surcharge *per minute*, whereas the tariff states that the information surcharge applies only *per 100 access minutes*.<sup>25</sup>

Core claims that even if all these flaws exist, none of them relate to the rate element of "end office switching." Core EX SID at 20. But the multitude of errors in Core's bills, together with the fact that it could not substantiate the fundamental step of classifying this traffic as non-local in the first place, requires rejection of all of Core's switched access bills as unreliable.

**Reply to Core Exception to SID No. 3: The Third Circuit's Opinion in *AT&T v. Core* Supports the SID's Conclusions.**

Core tries to distance itself from the Third Circuit decision allowing Core to back-bill originating carriers such as AT&T for ISP-bound traffic transited to Core via Verizon's tandem switches, but the holding in *AT&T Corp. v. Core Communs., Inc.*, 806 F.3d 715 (3<sup>rd</sup> Cir. 2015) ("*AT&T*") supports the SID's conclusions for several reasons.

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<sup>24</sup> Core Stmt. 4.0 at Ex. SR-5.

<sup>25</sup> See VZ IB at 55-56 (containing detailed record citations).

**Billing for transit traffic.** *AT&T* undercuts Core’s claim that it can bill Verizon, the transit provider, for third-party traffic. If the originating third party must pay, as the Third Circuit held, Core cannot then also double-bill the transit provider (Verizon) for the same charges. So while the Third Circuit confirmed this Commission’s authority to require AT&T to pay Core for terminating transited ISP-bound traffic so long as the rate did not exceed \$0.0007, the evidence here shows that Verizon has already paid Core for terminating AT&T’s (and other carriers’) traffic. As discussed above, Verizon only delivers locally-dialed, CLEC-originated traffic to Core over the LITGs, for which Core bills Verizon 100% and does not even attempt to exclude traffic that the associated EMI records identify as originated by another carrier.<sup>26</sup> Core’s exceptions maintain that it is entitled to bill Verizon for “each minute of traffic” delivered over the LITGs, even if originated by a third party, glossing over the fact that this Commission and the Third Circuit have allowed Core to bill the originating party. Core EX SID at 7. Based on the *AT&T* decision, the Commission must require Core to refund amounts it billed Verizon for third-party-originated traffic.

**Statute of limitations.** The *AT&T* decision is also relevant to the issue raised in Verizon’s Exception 1 to the original ID, objecting to the three year statute of limitations applied to its claim for payment of its unpaid bills. The Third Circuit affirmed the Commission’s application of a four-year statute of limitations in *AT&T*. *AT&T*, 806 F.3d at 731 (“the PPUC’s application of a four-year statute of limitations is proper.”). Accordingly, the Commission should grant Verizon’s Exception 1 to the original ID.

**Non-local ISP-bound traffic.** In Core’s view, the Third Circuit held that the rate of \$0.0007 only applies to locally-dialed ISP-bound traffic. In fact, the Third Circuit held more broadly that ISP-bound traffic (all such traffic, not just locally-dialed) is “*jurisdictionally* interstate” based on an

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<sup>26</sup> Core admits that it routinely uses Verizon-provided EMI records to bill an array of third-party carriers (including CLECs like AT&T) for locally-dialed traffic they originate, but Core does *not* use those records to avoid double-billing Verizon for the same calls. Core Stmt. 1.0 at 14; Tr. 335; VZ Cross Ex. 8; VZ Stmt. 2.0 at 27-29; VZ Stmt. 3.0 at 56-57.

end-to-end analysis, but “is still subject to state control unless otherwise preempted by the FCC.” *AT&T*, 806 F. 3<sup>rd</sup> at 730 (emphasis in original). “[A]lthough ISP-bound traffic is interstate, states retain jurisdiction to regulate ISP-bound traffic where the state regulations do not conflict with federal law.” *Id.* at 729. On the specific facts before the Court (AT&T’s locally-dialed ISP-bound traffic), there was no conflict with federal law because the rate the Commission required AT&T to pay did not exceed the FCC’s \$0.0007 cap, but the Third Circuit recognized that the Commission could have applied a \$0 rate (bill and keep), and stated that it expected the Commission to determine what was “fair” compensation for ISP-bound traffic within the confines of federal law. *Id.* at 731.

The *AT&T* Court did not hold, as Core suggests, that non-local ISP-bound traffic is subject to switched access rates. First, Core has not demonstrated that any of the traffic for which it seeks to bill switched access is in fact non-local, or even originated by Verizon (as discussed in response to Exception 2), so all of the traffic must be presumed to be local ISP-bound traffic subject to the \$0.0007 limit under the parties’ ICA and the *AT&T* decision. But even if Core had shown that some traffic was both non-local and Verizon-originated ISP-bound traffic (which it has not shown), none of the authorities Core cites holds that switched access rates apply to that traffic.<sup>27</sup> Core chooses not to cite a recent Commission decision recognizing that “VNXX-enabled ISP-bound Traffic” is “non-local,” but determining that the compensation for that traffic would not be switched access charges or even \$0.0007, but rather “bill and keep.”<sup>28</sup> This is consistent with *AT&T*’s observation that the Commission should determine what is “fair” compensation for terminating ISP-bound

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<sup>27</sup> For example, the Commission’s August 15, 2013 order in the *AT&T* case simply recognized the general principle that Core’s intrastate tariff is not limited to IXCs but could also apply to non-local traffic originated by other types of carriers. It did not specifically consider whether access rates should apply to ISP-bound traffic. *Core Communs., Inc. v. AT&T Corp.*, Docket No. C-2009-2108186 (Opinion and Order entered August 15, 2013 at 42.

<sup>28</sup> *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with Windstream Pennsylvania, LLC Pursuant to 47 U.S.C. §252(b)*, Docket No. A-310922F7004 (Opinion and Order on Reconsideration entered November 13, 2014) at 32-33

traffic within the limits of federal law, which could be \$0.0007 or nothing at all. Here, Verizon is willing to pay (and already paid) \$0.0007 for this ISP-bound traffic and is not asking for a “bill and keep” arrangement. The SID determined that if Core “*can verify that [any switched access] service had been rendered*” it could bill at the \$0.0007 rate. SID at 28 (emphasis in original). This is “fair” and is consistent with the *AT&T* decision and Commission precedent.<sup>29</sup>

**Reply to Core Exception to SID No. 4: Core Failed to Present Evidence Establishing What Portion of the Traffic for Which It Billed Verizon Switched Access Was VoIP.**

Core failed to present evidence quantifying what portion of the traffic for which it billed Verizon switched access was VoIP traffic, versus ISP-bound, and admitted it could not make that quantification.<sup>30</sup> This distinction is important because different intercarrier compensation rates apply for the termination of ISP-bound traffic versus VoIP traffic. ISP-bound traffic is subject to the FCC’s \$0.0007 rate whereas non-ISP-bound VoIP traffic is subject to different compensation. VZ EX SID at 6. The SID found that Core’s “inability to discern the amount of traffic subject to the VoIP Symmetry Rule” required dismissal of its switched access claim. SID at 30. Given this failure of proof, both this Commission’s own precedent<sup>31</sup> and federal law<sup>32</sup> require the Commission to presume that all of the traffic is ISP-bound, and thus limited to the FCC’s \$0.0007 rate.

Core does not disagree that it failed to quantify what portion of the re-rated traffic was VoIP, but argues that the distinction is irrelevant, asserting that the compensation for terminating interexchange VoIP traffic is effectively the same as that for “toll” ISP-bound traffic – switched

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<sup>29</sup> At a minimum, given its interstate jurisdiction, ISP-bound traffic would have to be billed at interstate rather than intrastate switched access rates to avoid a conflict with federal law.

<sup>30</sup> VZ IB REM at 7-8; VZ RB REM at 5.

<sup>31</sup> See Opinion and Order, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Dec. 5, 2012) (“*AT&T Order*”) at 55 (“Having failed to meet its burden of proof, Core cannot be heard to complain that, in the absence of record evidence, the ALJ treated all of the traffic in question as ISP-bound.”).

<sup>32</sup> *The ISP Remand Order* permits Core to present evidence to rebut the *ISP Remand Order*’s “rebuttable presumption” that all traffic above the (properly applied) 3:1 ratio is ISP-bound, but since Core failed to do so the Commission must conclude that all of its traffic is ISP-bound. *ISP Remand Order* ¶ 89 (full citation in Glossary).

access rates.<sup>33</sup> This argument depends on the Commission accepting Core's Exception 3. If the Commission rejects Core's Exception 3 and agrees with the SID that all ISP-bound traffic is subject to the \$0.0007 rate, regardless of whether it is locally-dialed or not, the Commission must also rule against Core on Exception 4 because all of this traffic is presumed to be ISP-bound and subject to the \$0.0007 rate (which Verizon already paid).

Even if the Commission agrees with Core on Exception 3 (which it should not), Core's Exception 4 still fails because (as Verizon explained in response to Core's Exception 2) Core failed to present evidence proving that any of the traffic at switched access rates was in fact "interexchange," rather than "locally-dialed," based on the calling and called numbers. With no such evidence, the Commission can only presume that the traffic was locally-dialed, as Core did when it originally billed Verizon for that traffic. The compensation for that traffic is thus limited by the FCC's \$0.0007 rate for ISP-bound traffic (which Verizon already paid).

**Reply to Core Exception to SID No. 5: The SID Properly Concluded That Core Has Failed to Act In Good Faith.**

The SID appropriately found that Core has failed to act in good faith by refusing to pay Verizon *anything* for well over a decade; failing to reserve any money to pay an eventual judgment against it; and bypassing the ICAs' mandatory dispute resolution process in initiating this case. SID at 29-30. In response, Core offers a five-page tirade cut-and-pasted from its prior filings that questions the sincerity of Verizon's decision to dispute Core's error-riddled invoices in 2011, although Verizon has been paying them ever since, as ordered. Core EX SID at 25-30. Verizon has

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<sup>33</sup> Core is forced to admit that after January 1, 2012, all interexchange VoIP traffic is limited to interstate switched access rates. Core EX SID at 24. Core attempts to evade its failure of proof by offering to rate all of the traffic at interstate rates after that date (intrastate rates remained higher than interstate for a period of time under the FCC's rules). Core assumes that before 2012, VoIP traffic could be charged at intrastate rates (a significant issue because the bulk of Core's switched access back-bills is made up of the intrastate Carrier Common Line Charge). In fact, the appropriate rate, if any, for terminating intrastate, interexchange VoIP traffic is a question that the FCC did not address and this Commission has not addressed. It need not be addressed here either, since Core's switched access bills are invalid for so many other reasons.

fully responded to this diatribe in its prior briefs, to which it refers the Commission.<sup>34</sup> Verizon also points out Core's convenient sidestepping of the Commission's admonishment that "Core does not necessarily have clean hands here" because "it failed to respond to Verizon's repeated requests for [call detail records] relevant to the disputed billings"<sup>35</sup> (which only bolstered Verizon's initial suspicions that something was amiss), providing them *only after the Commission ordered. Id.*

Core slings mud on this because it cannot refute the fundamental facts: it has steadfastly refused to pay *anything* for the facilities and services it has obtained from Verizon for over a decade – including undisputed amounts it concedes are owed for intercarrier compensation, directory listings, collocation and facilities<sup>36</sup> – and improperly bypassed the requirements of the parties' ICAs in running to the Commission with its complaint.<sup>37</sup> In contrast, the ID concluded that "Verizon followed a reasonable interpretation of the ICAs to the letter" in withholding payment and initiating dispute resolution on Core's May 2011 invoices. ID at 39; 29-38.

It is for good reason that the FCC deemed Core the "poster boy of reciprocal compensation gamesmanship"<sup>38</sup> and the D.C. Circuit said its legal strategy gives "pettifoggery a bad name"<sup>39</sup> – Core's traffic-pumping practices are well-documented,<sup>40</sup> and it has profited from refusing to pay companies like Verizon that provide the facilities and services that keep its arbitrage schemes running while simultaneously suing them for justifiably disputing its invalid invoices. The irony of Core continuing to lambast Verizon for engaging in "improper self help" for withholding payment

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<sup>34</sup> VZ IB at 4-8; 58-59; VZ RB at 44-45; VZ REX at 1-5.

<sup>35</sup> Opinion and Order (September 23, 2011) at 17.

<sup>36</sup> ID at 9; VZ Stmt. 1.0 at 37. Core has not even paid Verizon's facilities bills at the TELRIC rates Core asserts apply, even though Verizon provided Core with a TELRIC rerate of those invoices in 2012. Tr. 582.

<sup>37</sup> ID at 19-20 (FOF 89-92), 52; SID at 29-30. Verizon has painstakingly detailed the relevant ICA provisions and Core's violation thereof in its prior briefs. See VZ IB at 4-8; 58-59; VZ RB at 44-45; VZ REX at 1-5.

<sup>38</sup> Response of the Federal Communications Commission to Emergency Motion for a Stay and Motion for Expedited Consideration, *WorldCom, Inc. v. FCC*, No. 01-1218 at 14 (D.C. Cir., June 12, 2001).

<sup>39</sup> *Core Communications, Inc. v. FCC*, 592 F.3d 139, 145 (D.C. Cir. 2010), *cert. denied*, 131 S.Ct. 597 (2010).

<sup>40</sup> VZ IB at 7-8; see also VZ Stmt. 1.0 at 4-5, 9-27 and Exhibits 2-8; VZ Stmt. 3.0 at 8-13 and Ex. SR-1.

on a single month's disputed charges of \$75,000 while Core is a chronic deadbeat that has paid Verizon *nothing* for well over a decade on invoices that now total over *\$11 million*<sup>41</sup> (not including the millions of dollars that it should refund Verizon for overbilling) speaks volumes about its bad faith. The SID properly reaffirmed the ID's filings that Core has acted in bad faith before and during this proceeding.

**Reply to Core Exception to SID No. 6: Verizon Complied with the FCC's ISP Remand Order.**

Core's Exception 6 simply repeats the arguments made in Core's Exception 4 to the original ID. The remand did not affect this issue and the SID did not change the original holding. Verizon refers the Commission to its reply to Core's original Exception 4.<sup>42</sup>

**Reply to Core Exception to SID No. 7: The ID Correctly Rejected Core's Technical Arguments to Evade Paying for the Facilities It Used.**

The SID reiterated the ID's original finding that "Core must compensate Verizon for use of Verizon's facilities and services to serve its ISP and conference calling customers." SID at 31. There is no dispute that Core continues to use trunks and other facilities leased from Verizon to operate its business, but has never paid for them. According to Core's president, "[w]e recognize we are receiving value from these trunks" but are only "willing to compensate Verizon for our use of these trunks as part of an overall settlement of this case, as well as other issues outside of this case," because Core is "not willing to pay" even undisputed amounts absent resolution of all disputes with Verizon nationwide. Core Stmt. 3.0 at 39.

The disputed issues involve what facility rates should apply (discussed in response to Core's Exception 9 to the SID) and various technical arguments by which Core attempts to excuse its years

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<sup>41</sup> At the close of the record in 2012, Verizon's unpaid invoices to Core totaled \$4.5 million. Between then and May 2015, Core has refused to pay one penny on an additional \$5 million in Verizon invoices. *See* Attachment D to Verizon's June 2, 2015 Petition for Partial Reconsideration. That figure has grown by approximately \$183,000 per month since then. *Id.*

<sup>42</sup> VZ REX at 13-16; *see also* VZ IB at 42-48; VZ RB at 36-39.

of non-payment, which Verizon has already addressed. *See, e.g.*, VZ REX at 18-25. To respond briefly to Core's bullet points on these technicalities:

- ***Statute of limitations:*** Verizon agreed that a four-year statute of limitations applies to its claims for payment of its facilities bills, limiting payment claims to August 16, 2007 forward, but that still left Core owing \$3.7 million for facilities as of August of 2012, and Core has continued to ignore all of Verizon's bills since then. The two-year federal statute of limitations does not apply because Verizon is enforcing the ICA, a state contractual matter. VZ RB at 17-20.
- ***Burden of production:*** Verizon refuted Core's challenge to the sufficiency of the evidence supporting its facilities bills, showing that Verizon's witness authenticated all of Verizon's billings and that underlying bill detail remains available for all relevant periods. VZ RB at 20-24. For the same reason, the doctrine of laches (argued for the first time in Core's reply exceptions to the original ID) does not apply because Core was not prejudiced and the claim is limited to the statute of limitations period.
- ***Alleged failure to provide local interconnection:*** Verizon explained that it provided the service Core ordered, a special access service powered at both ends by Verizon equipment. Core could have ordered a simple unbundled circuit, which would have entailed additional costs and complexities for Core to use, but it did not do so. VZ RB at 8.
- ***Rates:*** Verizon explained that Core's disagreement over the rates to be charged (TELRIC versus access) did not justify Core withholding *all payment whatsoever* while it continues to use the facilities. VZ RB at 12. The issue of the applicable rate is discussed in response to Core's Exception 9 to the SID.
- ***Functionality:*** Verizon demonstrated that Core's functionality claims are baseless and do not justify its failure to pay for the facilities it used. VZ RB at 13-17.

**Reply to Core Exception to SID No. 8: The SID's Directives Regarding Bill Re-Rating and Payment Warrant Clarification.**

The Commission should provide maximum clarity in bringing Core's fifteen years of non-payment to a close by ordering it to remit the millions of dollars it owes Verizon as soon as possible. To that end, Verizon agrees that the portion of the SID referenced by Core warrants clarification (as noted in Verizon's Remand Exception 2). Core EX SID at 32.<sup>43</sup> Verizon agrees

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<sup>43</sup> Verizon disagrees with Core's suggestion that the SID "appears to be conflating Verizon's counterclaims for payment of its facilities bills with Core's claims for switched access traffic sent by Verizon to Core." *Id.* Rather, as explained in Verizon's Remand Exception 2, the SID appears to confuse the \$0.0007 per minute the ID applied to *ISP-bound traffic* with the reciprocal compensation or switched access rate applicable to the *100% VoIP traffic* Core sends to Verizon for termination. VZ EX SID at 4-6.

that the Commission must be exceedingly clear regarding any re-rating of prior invoices, as well as regarding which invoices the Commission is ordering be paid and those it is not (whether due to lack of jurisdiction or the applicable statute of limitations, an issue addressed in Verizon's Exception 1 to the original ID; VZ EX at 3-8). And as Verizon previously noted, the Commission should require Core to refund Verizon's past overpayments via an immediate *payment* remitted to Verizon, not as a *credit* towards Core's future billings to Verizon. VZ EX at 16-18. Core has had the benefit of holding onto Verizon's money for years, to which the Commission must put an immediate end. The Commission should also require immediate payment of Verizon's directory listings charges, given that Core did not except to the ID's holding on that issue.

**Reply to Core Exception to SID No. 9: The ID and SID Correctly Held That Core Must Pay Verizon's Facilities Bills at the Rates Billed.**

Core's Exception 9 relates to the rates for facilities Core leased from Verizon to carry traffic to and from Core's network – both LITGs (which carry traffic from Core's switch to Verizon<sup>44</sup>) and ATCTs (which carry traffic between Core's switch and Verizon's access tandem for purposes of exchanging traffic with interexchange carriers<sup>45</sup>). Core argues that all of the facilities charges should be re-rated at TELRIC rates, but has never paid *anything* for its use of these facilities (even the lower TELRIC rates it claims should apply).

The parties' briefs and original exceptions thoroughly covered this issue. *See* VZ REX at 18-23; VZ RB at 9-13. The ID concluded that Core must pay these charges at the rates that were billed, together with late payment charges of 18% per year for Verizon North and 9% per year for

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<sup>44</sup> Only the LITGs carrying Core-originated traffic from Core to Verizon are at issue here. Verizon supplies the LITGs carrying traffic from Verizon to Core (the ISP-bound traffic that is the bulk of the traffic at issue in this case) at no charge to Core.

<sup>45</sup> The majority of the facilities for which Verizon billed Core from the beginning of 2008 to mid-2012 – approximately 65% – were ATCTs, with the remainder being LITGs. VZ Stmt. 1.0 at 37. During this proceeding, Core transferred all of its ATCTs to an alternative provider and no longer purchases them from Verizon, but continues to use LITGs obtained from Verizon. Core Stmt. 3.0 at 39.

Verizon PA. ID at 56. The SID does not alter this finding. SID at 31. Nor does the Fourth Circuit decision in *CoreTel Virginia, LLC v. Verizon Virginia LLC et al.*, 752 F.3d 364, 374 (4<sup>th</sup> Cir. 2014) (“*CoreTel*”) change the ID’s correct conclusion on the facts here.

The applicable legal framework is not subject to dispute; is guided by the Supreme Court decision in *Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011) (“*Talk America*”); and clarified by the Fourth Circuit’s decision in *CoreTel*:

- CLECs are entitled to purchase “entrance facilities” at TELRIC rates for the purpose of local interconnection under 47 U.S.C. § 251(c)(2). *Talk America*, 131 S.Ct. at 2260.
- The incumbent LEC’s duty to provide TELRIC-rated local interconnection facilities is not “directly enforceable,” but rather, only applies if the competitive LEC has terms in its ICA providing for TELRIC-rated local interconnection facilities under 47 U.S.C. § 251(c)(2). *CoreTel*, 752 F.3d at 368. If those terms are absent, the ICA must be amended before the duty will apply. *Id.*
- The only “local interconnection facilities” that must be provided at TELRIC rates are those used to link the incumbent provider’s telephone network with the competitor’s network for the mutual exchange of traffic between the incumbent and the competitor’s local exchange customers. All other types of dedicated transport that carry traffic between competitive LEC networks and incumbent LEC switches or other locations are not “interconnection facilities” and are thus not required to be provided at TELRIC rates. *See, e.g., Talk America*, 131 S.Ct. at 2263, 2265; *CoreTel*, 752 F.3d at 367.

Core argues that its ICA with Verizon PA requires no amendment because it already provides for TELRIC-rated local § 251(c)(2) local interconnection facilities,<sup>46</sup> relying on *CoreTel*, which found that the specific language of the ICA between the parties’ affiliates in Virginia already provided for TELRIC-rated § 251(c)(2) interconnection facilities and did not need to be amended. But the language in the Pennsylvania and Virginia agreements differs. The Fourth Circuit relied on a specific provision of the Virginia agreement that “authorizes CoreTel to order ‘an Entrance Facility . . . leased from Verizon’ for interconnection . . . then provides that CoreTel may order this entrance facility at the ‘rates and charges, set forth in this Agreement, in any applicable Tariff(s),

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<sup>46</sup> Core concedes that for the Verizon North LLC ICA an amendment would be required to implement TELRIC-rated local interconnection facilities. Core EX SID at 34.

or as may be subsequently agreed to between the parties.” *CoreTel*, 752 F.3d at 370-71. The Verizon PA ICA lacks such language. Instead, Core relies here on general language relating to its ability to purchase dedicated transport, which does not specifically address § 251(c)(2) interconnection facilities. In this instance, as Verizon explained, the ICA requires Core to follow the change of law process and seek an amendment.<sup>47</sup>

But even if the Commission found that the ICA entitles Core to purchase TELRIC-rated local interconnection facilities without an amendment, the vast majority of Verizon’s bills (if not all) still would not be subject to TELRIC rates because the trunks at issue are not § 251(c)(2) local interconnection facilities, which are limited only to those trunks used for the “mutual exchange of traffic” between Verizon’s and Core’s local exchange customers. Facilities used to deliver traffic originating from or terminating to third parties, such as the ATCTs Core uses to exchange traffic with IXCs, are not § 251(c)(2) facilities available at TELRIC rates. As explained in the FCC’s amicus brief (to which the Supreme Court in *Talk America* deferred),<sup>48</sup> only facilities that are used to link the incumbent provider’s telephone network with the competitor’s network for the mutual exchange of traffic are interconnection facilities under 47 USC § 251(c)(2), because they “enable[] customers of a competitive LEC to call the incumbent’s customers, and vice versa,” without which the CLEC’s “customers would be unable to call (or receive calls from) the incumbent’s much larger customer base,” and therefore are used for the “mutual exchange of traffic” between the CLEC’s and ILEC’s end user customers.<sup>49</sup> All other types of dedicated transport that carry traffic between

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<sup>47</sup> VZ IB at 16-17; VZ RB at 10-11; VZ REX at 21-22.

<sup>48</sup> VZ Stmt. 1.0 at Exhibit 14 (Brief of the United States as Amicus Curiae Supporting Petitioners in the *Talk America* case, U.S. S.Ct. Nos. 10-313 and 10-329 (February 2011) (“*FCC Amicus*”)); *Talk America*, 131 S.Ct. at 2257, 2265 (deferring to *FCC Amicus*).

<sup>49</sup> VZ Stmt. 1.0, Exhibit 14 at 2-3.

CLEC networks and ILEC switches are not “interconnection facilities,” and thus not required to be provided at TELRIC rates. *FCC Amicus* at 18.<sup>50</sup>

Therefore, the ID correctly held that the ATCTs are not § 251(c)(2) local interconnection facilities and not available at TELRIC rates. ID at 55 (COL 14). Even the LITGs are only § 251(c)(2) local interconnection trunks to the extent they are used for the “mutual exchange of traffic” between Verizon’s and Core’s *local exchange customers*, not when used to deliver traffic originating from or terminating to third parties. The record shows that all of the traffic Core has sent to Verizon over the LITGs since 2010 is wholesale traffic aggregated from other carriers, with Core acting as a “least cost router.”<sup>51</sup> Therefore, most or all of LITGs are not § 251(c)(2) local interconnection facilities because they are not delivering traffic from Core’s local exchange customers.

### CONCLUSION

For the foregoing reasons, the Commission should adopt the SID with the limited revisions outlined in Verizon’s exceptions, and deny Core’s exceptions.

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<sup>50</sup> The ICA also specifies that trunks like the ATCTs that carry toll traffic are subject to access rates. Footnote 1 to the Pricing Attachment (Appendix 2 to the Adoption Agreement) of the Verizon PA ICA states that “[Verizon PA] rates and services for use by [Core] in the carriage of Toll Traffic shall be subject to [Verizon PA]’s tariffs for Exchange Access service.”

<sup>51</sup> Tr. 385-391 (conceding that the traffic is not from numbers assigned to Core and is not even necessarily originated in Pennsylvania).

## GLOSSARY

### Decisions of the Office of Administrative Law Judge

<b>ID</b>	Initial Decision (July 11, 2013)
<b>SID</b>	Supplemental Initial Decision on Remand (January 8, 2016)

### Decisions of the Federal Communications Commission

<b>ISP Remand Order</b>	<i>In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic</i> , 16 F.C.C.R. 9151 (2001)
<b>VoIP Symmetry Order</b>	<i>Connect America Fund and Developing a Unified Intercarrier Compensation Regime, Declaratory Ruling</i> , WC Docket No. 10-90 and CC Docket No. 01-92, FCC 15-14 (rel. Feb. 11, 2015)

### Verizon's Briefs and Exceptions

VZ IB	Verizon's Initial Post-Hearing Brief (January 23, 2013)
VZ RB	Verizon's Post-Hearing Reply Brief (March 13, 2013)
VZ SRB	Verizon's Post-Hearing Surreply Brief (March 25, 2013)
VZ IB REM	Verizon's Main Brief on Remand (November 20, 2015)
VZ RB REM	Verizon's Reply Brief on Remand (November 30, 2015)
VZ EX	Verizon's Exceptions to Initial Decision (August 16, 2013)
VZ REX	Verizon's Reply to Core's Exceptions to Initial Decision (September 16, 2013)
VZ EX SID	Verizon's Exceptions to Supplemental Initial Decision on Remand (January 28, 2016)

### Core's Briefs and Exceptions

Core MB	Core's Main Brief (January 23, 2013)
Core RB	Core's Reply Brief (March 18, 2013)
Core MB REM	Core's Supplemental Main Brief (November 20, 2015)
Core RB REM	Core's Supplemental Reply Brief (November 30, 2015)
Core EX	Core's Exceptions to Initial Decision (August 16, 2013)
Core REX	Core's Reply to Verizon's Exceptions to Initial Decision (September 16, 2013)
Core EX SID	Core's Exceptions to Supplemental Initial Decision on Remand (January 28, 2016)