

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

**Core Communications, Inc. v. Verizon
Pennsylvania LLC and Verizon North LLC**

**Public Meeting November 9, 2016
2253750-OSA
Docket Nos. C-2011-2253750
C-2011-2253787**

MOTION OF CHAIRMAN GLADYS M. BROWN

This motion resolves an intercarrier compensation dispute between Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North and collectively, Verizon) and Core Communications, Inc. (Core) for entrance facilities.¹ Intercarrier compensation is what each carrier pays the other carrier for using each other's network. Intercarrier compensation includes not only the rate for transport and termination of traffic, but also, the rates charged for entrance facilities, a technical term that allows the parties to physically link their networks (interconnection) "for the mutual exchange of traffic."² In this case, the entrance facilities at issue are Local Interconnection Trunking Groups (LITGs) and Access Toll Connecting Groups (ATCs).

Core disputes Verizon's charges to Core for entrance facilities at any rate other than Total Element Long Run Incremental Cost (TELRLIC) rates.³ Verizon counterclaims that Core owes special access rates for these facilities.⁴

Sections 1.1.2 and 2.4.1 of the Verizon PA-Core Interconnection Agreement (ICA) grant Core the right to purchase entrance facilities, and Appendix II, Exhibit A, Part II. C of the ICA governs the charges for entrance facilities.⁵ Although the ICA contemplated Verizon PA's providing entrance facilities as an unbundled network element at specified rates, it is unclear whether these specific provisions envision Verizon PA's providing entrance facilities for interconnection purposes at unbundled TELRIC rates under Section 251(c)(2).⁶

¹ The compensation dispute between Verizon North, Inc. and Core is disposed of through application of the terms of Appendix A of the Verizon North-Core Interconnection agreement dated August 19, 2005 and approved by the Commission on November 1, 2005 in Docket A-310922F7001. Appendix A stipulates that Core shall compensate Verizon North for the Entrance Facilities and Transport for Interconnection that Core sought for exchange access at Intrastate Special Access Tariff Rates. Core is liable to Verizon North for that compensation for the time period at issue in this proceeding through application of the four-year Statute of Limitations through the date of entry of an Opinion and Order on this motion in this matter. Verizon shall submit that invoice to Core within 60 days of entry of an Opinion and Order; Core shall remit payment 90 days thereafter.

² *Talk America v. Michigan Bell Telephone*, 546 U.S. 2254, 180 L. Ed. 2d 96 (2011),

³ Core Statement 3.0

⁴ Verizon M.B. at 12-14 citing Tr. 493, 582, Core Stmt. 3.0, Verizon Statement 3.0, and ICA Section 2.2

⁵ *Interconnection Agreement of Bell Atlantic-PA and Core Communications, Inc.* (March 31, 2000), Appendix 2, Exhibit A.

⁶ 47 USC § 251(c)(2). In accordance with the FCC's *Triennial Review Remand Order* (TRRO) issued in 2005, Verizon was no longer required to offer UNEs for entrance facilities under Section 251(c)(3). Under the change-of-

Because of the ambiguity in the ICA's provision of entrance facilities under Section 251(c)(2) or 251(c)(3), in accordance with the United States Supreme Court's decision in *Talk America*, I believe Core should be billed at TELRIC rates for the Verizon PA LITG entrance facilities. Under *Talk America*, entrance facilities are subject to TELRIC rates when they are used for interconnection purposes under Section 251(c)(2) for the mutual exchange of traffic between a CLEC and an ILEC.

I believe the Verizon PA LITGs were used by Core for interconnection purposes as defined by *Talk America*. The record establishes that most of the traffic exchanged between Core and Verizon during the time period in question was one-way ISP-bound traffic from Verizon to Core. However, I do not believe this means the traffic exchanged between the Parties is not mutual. Consistent with Commission precedent,⁷ the right to purchase an entrance facility for interconnection purposes pursuant to Section 251(c)(2) and *Talk America* is not impacted by whether the relevant facilities carry one-way ISP-bound traffic. In any event, the record demonstrates that by 2010, the traffic exchanged between the Parties became asymmetrical two-way traffic. Thus, I believe *Talk America* allows Core to purchase the Verizon PA LITG entrance facilities at TELRIC rates.

Consequently, Verizon must issue an invoice using TELRIC rates for Core's use of the Verizon PA LITG entrance facilities, for past service subject to the 4-year statute of limitations as provided in the draft Order and going forward to the day of entry of an Opinion and Order in this matter.⁸ Verizon shall provide that invoice to Core within 60 days of entry of an Opinion and Order.

Verizon shall do the same for traffic that Core erroneously billed to Verizon that Core should have billed to third parties. The percentage returned to Verizon for this erroneous billing shall be the 35% Verizon established, based on its 18-month study.

law provision in the Verizon PA-Core agreement, Verizon was permitted to cease offering UNEs for entrance facilities to Core upon written notice to Core. Here, such written notice occurred on February 10, 2005. Therefore, post-*TRRO*, entrance facilities under the agreement were no longer available to Core at TELRIC rates under Section 251(c)(3). By comparison, the Verizon North-Core agreement, adopted in 2005 after the issuance of the *TRRO*, clearly applied intrastate special access tariffed rates for entrance facilities.

⁷ *Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with The United Telephone Company of Pennsylvania d/b/a CenturyLink*. Docket No. A-310922F7002 (Order entered July 9, 2014).

⁸ Verizon Answer and Counterclaims filed August 16, 2011.

THEREFORE, I MOVE THAT:

1. Along with the other invoice recalculations to be undertaken in the order, Verizon shall submit a revised invoice to Core reflecting a TELRIC rate for the Verizon PA LITG entrance facilities previously billed at tariff rates for the period August 16, 2007 through the date of entry of this Opinion and Order using the rates specified in Appendix A, Exhibit A;
2. Verizon shall submit all revised Verizon invoice calculations to Core as required by this Opinion and Order during the period August 16, 2007 through the date of entry of this Opinion and Order, within 60 days of entry of this Opinion and Order;
3. Core shall pay the revised Verizon invoices within 90 days of receipt from Verizon;
4. Core shall return to Verizon as a bill credit 35% of all payments received from Verizon for third party originated traffic from August 16, 2007 as set forth in the Opinion and Order;
5. OSA shall prepare an Opinion and Order consistent with this Motion.

November 9, 2016
Date


Gladys M. Brown, Chairman