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January 9, 2017

VIA ELECTRONIC FILING

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Core Communications, Inc. v. Verizon of Pennsylvania, Inc. and Verizon
North, LLC
Docket Nos. C-2011-2253750 and C-2011-2253787**

Dear Secretary Chiavetta:

Enclosed for filing please find the Petition for Reconsideration and Clarification of Core Communications, Inc. in the above-referenced matter. Copies of Core's Petition 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

Enclosures

cc: Certificate of Service
The Office of Special Assistants w/encl. (via email and First Class U.S. Mail)

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.
Complainant

v.

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

VERIZON PENNSYLVANIA INC.
and

VERIZON NORTH, LLC
Respondents

**PETITION OF CORE COMMUNICATIONS, INC.
FOR RECONSIDERATION & CLARIFICATION OF
COMMISSION OPINION & ORDER**

I. Introduction

Pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, Core Communications, Inc. (“Core”) requests that the Commission reconsider and clarify its December 23, 2016 Opinion & Order in the above-captioned proceeding (“*Order*”). In further support of this Petition, Core avers as follows:

1. Core recognizes that the disputes involved in this proceeding are extremely complex, both legally and factually, and Core greatly appreciates the Commission’s conscientious efforts to resolve the issues in this case. However, a careful and thorough review of the 157-page Order reveals that it contains several internal inconsistencies that require clarification. Accordingly, Core files this petition to respectfully request that the Commission address five specific issues arising from issuance of the *Order*.¹

¹ Core continues to evaluate whether to exercise its legal rights to appeal or otherwise seek judicial review of the *Order*, including the Commission’s analysis of the jurisdictional and preemption issues raised in this case. The

- *First*, Core requests clarification and reconsideration of the *Order's* treatment of third-party carrier traffic exchanged between the parties, because as drafted it appears that the *Order* contradicts itself in this respect.
- *Second*, Core requests clarification and reconsideration of the Commission's conclusion that switched access traffic is subject to the FCC's rate cap of \$0.0007/MOU set forth in the *ISP Remand Order*² and not the switched access rates that would normally apply, because as drafted it appears that the *Order* contradicts itself in this respect.
- *Third*, Core requests reconsideration of the Commission's conclusion that the ISP-bound traffic is subject to the ICA's definitions of "Local Traffic" and "Reciprocal Compensation," when ISP-bound traffic is neither local nor subject to reciprocal compensation.
- *Fourth*, Core requests clarification and reconsideration of the Commission's interpretation of the Verizon PA ICA's provisions regarding pricing for Access Toll Connecting Trunks, namely, Attachment IV, Section 1.1.2 and Appendix II, because as drafted it appears that the Order contradicts itself in this respect.
- *Fifth*, Core requests reconsideration of the Commission's conclusion that the state law four-year statute of limitations applies to Verizon federal tariff claims, when the very cases cited by the Commission in support of its conclusion favor application of the federal two-year statute.

filing of this petition, and the arguments raised herein, do not constitute, and shall not be construed to constitute, any estoppel, modification or waiver of Core's rights with respect to judicial review, or of any argument Core may raise on judicial review.

² In Re Implementation of Local Competition Provisions in Telecommunications Act of 1996, 16 F.C.C. Rcd. 9151, 9154 (2001)("ISP Remand Order").

II. Standard for Reconsideration

2. The Commission has articulated the circumstances under which a petition for reconsideration under 66 Pa. C.S. § 703(g) is appropriate:

A petition for reconsideration under Subsection 703(g)... may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us.³

III. Intercarrier Compensation Issues

A. Third Party-Originated Traffic

3. The Commission ruled that Verizon may bill Core for all traffic flowing from Core to Verizon, because Core does not send Verizon any third-party originated traffic:

[W]e concur with Verizon that it is proper to treat all traffic flowing from Core to Verizon as traffic originated by Core, and for which Core is responsible to pay Verizon for its termination. *Order*, at 125.

4. However, the Commission’s ruling with respect to calculation of amounts due pursuant to the *ISP Remand Order’s* 3:1 ratio necessarily concludes that Core **does send** third-party originated traffic to Verizon:

Core Communications, Inc. shall cease claiming credit under the 3:1 ratio set forth in the FCC’s *ISP Remand Order* for any traffic that is not Core-originated and also locally-dialed. *Order*, at 156, COL # 22.

This ruling demonstrates that the Commission believes that Core is sending Verizon third-party, locally-dialed traffic and “claiming credit” for such traffic under the 3:1 ratio.

³ Opinion & Order, *In re Department of Transp. of Pennsylvania*, 2006 WL 3511224 (Pa. P.U.C.)(2006) A-00119288 (entered November 15, 2006)(emphasis added)(internal citations omitted).

5. Further, Verizon itself acknowledged that Core sends third-party traffic to Verizon:

In January 2011, after Verizon pressed Core for some call detail records, Core provided a .txt file containing a sample of what Core claimed were records of Core-originated, Verizon terminated local calls. But Verizon's analysis of those records indicated that all of the calls in the sample were third-party traffic, non-local traffic, or otherwise invalid." Verizon Stmt. 1.0 (Verizon Panel Direct Testimony), at 66.

6. Verizon's analysis of third-party traffic delivered by Core over the interconnection trunks was accepted by the ALJ in the Initial Decision.⁴

7. In order to resolve the conflict between these findings with respect to third-party traffic sent by Core, the Commission should clarify that, just as Core may not claim credit under the ratio for third-party traffic, neither may Verizon bill Core for such third-party traffic.

B. Applicability of FCC Rate Cap to Switched Access Traffic

8. The Commission ruled that Core's claim for switched access on toll-dialed traffic was limited by the *ISP-Remand Order's* \$0.0007/MOU rate cap:

[E]ven if Core had parsed out the amount of non-ISP-bound traffic versus the amount of ISP-bound traffic or had indicated the portion of the ISP-bound traffic that was non-local, we are not persuaded by Core's argument in its Exceptions on Remand that the Third Circuit *Core v. AT&T* Decision has no relevance to the present matter. Although Core is correct that the *Core v. AT&T* proceeding dealt only with local ISP-bound traffic, we find no basis in Core's claim that because the ISP-bound traffic at issue in the present matter is non-local ISP-bound traffic, such traffic is payable at switched access charges. Rather, we concur with the ALJ that the proper rate to apply to the ISP-bound traffic at issue is \$0.0007/MOU. We further note that this determination is consistent with our action in a complaint proceeding involving

⁴ Initial Decision, at 13, FOF # 52; and, id., at 18, FOF # 82.

Core and XO Communications Services, Inc. where we cited the Third Circuit *Core v. AT&T* Decision and directed, consistent with federal law, that the parties apply a rate of \$0.0007/MOU to non-local ISP-bound traffic. In re: Core Communications Inc. v. XO Communications Services, Inc., Docket No. C-2009-2133609 (Order entered November 23, 2016)(*Core v. XO Order*). *Order*, at 56-57.

9. However, the Commission also found, in the *Order*, that:

[W]e are not persuaded that Verizon failed to adhere to the objectives and policies of the “mirroring rule” in not lowering the rates it charged Core for switched access traffic. Such traffic is non-local and non-ISP-bound and is, therefore, not subject to the prescribed rate for local ISP-bound traffic established in the *ISP Remand Order*. *Order*, at 77.

10. This finding is at odds with the Commission’s ruling that the *ISP Remand Order’s* rate cap applies to the switched access ISP-bound traffic Verizon sent Core. Clearly, the *ISP Remand Order’s* rate cap cannot apply to switched access traffic in one instance (i.e., when Core is the terminating carrier), but not in another (i.e., when Verizon is the terminating carrier). The Commission should clarify that in both cases, switched access or toll-dialed traffic is not subject to the *ISP Remand Order’s* rate cap.

11. The Commission should make this clarification because neither the FCC nor any federal court has ever found that the *ISP Remand Order* preempts state jurisdiction over switched access regimes, or caps the rate applicable to switched access traffic.

12. Application of switched access rates to ISP-bound traffic by a state commission is consistent with *Global NAPs I* and *II*. In *Global NAPs I*, the First Circuit approved the Massachusetts Commission’s order imposing access charges for a certain type of ISP-bound traffic called “VNXX”—charges. According to the First Circuit, “[t]he question before us is whether the FCC intended in the *ISP Remand Order* to exercise its jurisdiction over the precise

issue here, to the exclusion of state regulation.”⁵ Applying this analysis, the First Circuit found that “the *ISP Remand Order* does not clearly preempt state authority to impose access charges for interexchange VNXX ISP-bound traffic; it is, at best, ambiguous on the question, and ambiguity is not enough to preempt state regulation here.”⁶

13. In approving state commission application of access charges to ISP-bound traffic, the *Global Naps I* court was guided by an FCC amicus brief submitted in that case, in which the agency stated that:

[T]he administrative history that led up to the *ISP Remand Order* indicates that in addressing compensation, the Commission was focused on calls between dial-up users and ISPs in a single local calling area.

The administrative history does not indicate that the Commission's focus broadened on remand. The *ISP Remand Order* repeats the Commission's understanding that “an ISP's end-user customers typically access the Internet through an ISP service located in the same local calling area.” The Order refers multiple times to the Commission's understanding that it had earlier addressed - and on remand continued to address - the situation where “more than one LEC may be involved in the delivery of telecommunications within a local service area.”⁷

14. In the *Global Naps Amicus Brief*, the FCC spoke directly to the issue of application of access charges to ISP-bound traffic:

The dispute before the Court involves a variation on the typical ISP dial-up access scenario. The calls at issue are not delivered to an ISP that is located in the caller's local calling area. Instead, the dialing-in customer, served by Verizon, an ILEC, is located in one exchange and the equipment of the ISP, served by Global Naps, a CLEC, is located in a different exchange. Ordinarily, such a call would be subject to a toll paid by the caller to the IXC (in many cases, the originating LEC acts as the de facto IXC), which would carry the call to the facilities of the terminating LEC. In that way,

⁵ Global Naps, Inc. v. Verizon New England, Inc., 444 F.3d 59, at 71 (1st Cir. 2006).

⁶ Id., at 72.

⁷ FCC Amicus Brief, GLOBAL NAPS, INC., Plaintiff-Appellant, v. VERIZON NEW ENGLAND, INC., et al., Defendants-Appellees., 2006 WL 2415737 (C.A.1), 12 (“Global Naps Amicus Brief”).

the originating LEC, acting in the role of an IXC, would pay a terminating access charge to the terminating LEC.⁸

15. The *Order* conflicts with the FCC's amicus brief in *Global NAPs I*, a controlling authority which was not briefed previously in this case. The *Order* finds that the *ISP Remand Order* applies to switched access traffic, whereas the amicus brief finds that such traffic is subject to terminating access charges.⁹ Further, it does not appear that the Commission considered the *Global NAPs Amicus Brief* in drafting the *Order*.

16. In *Global NAPs II*, the Second Circuit approved the Vermont Commission's imposition of access charges on VNXX ISP-bound traffic. Rejecting the CLEC's position that the *ISP Remand Order* preempted all state commission jurisdiction over ISP-bound traffic, the Second Circuit found that "a more reasonable interpretation of the *2001 Remand Order* is not that the FCC has preempted the field relating to ISPs, but only that it intended to reserve jurisdiction over intercarrier compensation issues with respect to ISP-bound traffic on matters that would conflict with the FCC's specific directives about reciprocal compensation."¹⁰

17. In *Pac-West*, the Ninth Circuit found that "with the *ISP Remand Order* and related pronouncements, the FCC has *not* exercised its jurisdiction over *all* manifestations of ISP-bound traffic. For example, this Court held in *Peevey* that the CPUC correctly interpreted the *ISP Remand Order* as not applying to interexchange (that is, non-local) ISP-bound traffic."¹¹

18. In *Peevey*, the Ninth Circuit reviewed the California Commission's imposition of a "carrier origination charge," or "COC," on certain ISP-bound calls. The court found that "Pac-West further contends that the COC ruling is contrary to the *ISP Remand Order* which preempts

⁸ Global NAPs Amicus Brief, at 8-9.

⁹ Id., 12-13.

¹⁰ Global NAPs, Inc. v. Verizon New England, Inc., 454 F.3d 91, at 101 (2d Cir. 2006).

¹¹ AT & T Commc'ns of Cal., Inc. v. Pac-W. Telecomm, Inc., 651 F.3d 980, 991 (9th Cir. 2011); citing, Verizon California, Inc. v. Peevey, 462 F.3d 1142 ("Peevey").

state commissions from imposing any intercarrier compensation not provided for in the order. We disagree, as the *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.”¹² *Id.*, at 1158.

19. The FCC amicus brief in *Pac-West* does not address—directly or indirectly—the issue of whether a state commission may impose access charges on toll-dialed ISP-bound traffic. The Ninth Circuit’s decision in *Pac-West* too, which relied substantially on the *Pac-West Amicus Brief*, is clearly limited to reciprocal compensation for locally-dialed traffic. For example, the court noted that the CLEC tariffs at issue there were *not* intrastate switched access tariffs, but rather Pac-West’s “intrastate tariffs... purport[ing] to set Pac-West’s rates for... terminating local traffic originating with another LEC; [and] apply only in the absence of an interconnection agreement.”¹³

20. Application of switched access rates to ISP-bound traffic is consistent with the Commission’s reconsideration order in *Core v. AT&T*. There, the Commission found that “Core’s Switched Access Tariff applies to the settlement of charges for the origination and termination of toll or non-local calls between Core and *all other carriers* that originate and/or terminate these types of calls.”¹⁴ While the Commission did not speak directly to the issue of long distance ISP-bound traffic in that finding, ISP-bound traffic was the sole type of traffic at issue in that case, and the Commission has noted repeatedly that Core historically terminated ISP-bound traffic exclusively or to a large extent. The *Order* does not address why the Commission now deems Core’s access tariffs to be void with respect to long-distance traffic,

¹² Peevey, 462 F.3d, at 1158.

¹³ AT & T Commc'ns of Cal., Inc. v. Pac-W. Telecomm, Inc., 651 F.3d 980, 988 (9th Cir. 2011).

¹⁴ Opinion & Order, Core Communications, Inc. v. AT&T, Pa. P.U.C. Docket No. C-, at 42 (C-2009-2108186 & C-2009-2108239)(Aug. 15, 2013)(Emphasis added).

when just three years ago, it specifically found that Core's tariff applies to any switched access traffic, no matter what type of carrier delivers it.¹⁵

21. ICAs do not always speak to this precise issue, because the industry standard is that long-distance calls are almost always rated as switched access. However, the Core-CenturyLink ICA, recently approved by the Commission after lengthy litigation revolving around ISP-bound traffic and VNXX arrangements, does speak very directly to this issue:

A call placed on a non-local basis (e.g., a toll call or 8yy call) to an ISP shall not be treated as ISP-Bound Traffic for compensation purposes. The Parties agree that, to the extent such "non-Local" ISP calls are placed, that the rates, terms and conditions for IntraLATA and/or InterLATA calling shall apply, including but not limited to rating and routing according to the terminating parties' Exchange Access intrastate and/or interstate tariffs.¹⁶

22. Similarly, the Core-Windstream ICA states:

With the exception of VNXX ISP-Bound Traffic, any intercarrier telecommunications traffic utilizing the Public Switched Telephone Network, regardless of transport protocol method, where the originating and terminating points, are in different LATAs, or in different local calling areas as defined by the originating Party and delivered to the terminating Party using switched access services shall be considered Switched Access Traffic.¹⁷

23. The *Order's* conclusion that the *ISP Remand Order* preempts state commission authority over switched access charges for ISP-bound traffic is inconsistent with the Commission's orders in the *CenturyLink ICA Arbitration* and *Windstream ICA Arbitration*, in

¹⁵ Bell Atl.-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, 672 A.2d 352, 354 (Pa. Commw. Ct. 1995). ("[P]rior adjudications of the Commission have no precedential value before this Court. Nor is an administrative agency bound by the rule of *stare decisis*; however, as Bell correctly notes, an administrative agency must render consistent opinions and should either follow, distinguish or overrule its own precedent.").

¹⁶ Interconnection Agreement, Petition of Core Communications, Inc. for Arbitration of Rates, Terms, and Conditions with the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Pa. P.U.C. Docket No. A-310922F7002, at 77 (ICA § 55.5)(August 6, 2014).

¹⁷ Interconnection Agreement, Petition of Core Communications, Inc. for Arbitration of Rates, Terms, and Conditions with Windstream Pennsylvania, Inc., Pa. P.U.C. Docket No. A-310922F7004, at 85 (ICA Att. 12, § 3.4)(Dec. 15, 2014).

which the Commission found that it is preempted only with respect to local ISP-bound traffic. In the *CenturyLink ICA Arbitration*, the Commission found: “we do not believe that the FCC has expanded the intercarrier compensation regime established in the *ISP Remand Order* for local ISP-bound traffic to other types of traffic, including VNXX ISP-bound traffic.”¹⁸ In the *Windstream ICA Arbitration*, the Commission found that “the FCC has not preempted state regulation of non-local ISP-bound traffic.”¹⁹ While the Commission is not subject to the rule of *stare decisis*, nevertheless the Commission offers no reason why it should now deviate from its previous findings with respect to the scope of the *ISP Remand Order*.²⁰

C. Applicability of ICA Definitions of Local Traffic and Reciprocal Compensation to ISP-Bound Traffic

24. The Commission ruled that Core’s claim for intercarrier compensation associated with ISP-bound traffic was limited by the ICA’s definitions of “Local Traffic” and “Reciprocal Compensation.” According to the Commission, Core cannot collect reciprocal compensation for termination of traffic (all of which the Commission deemed to be ISP-bound) that is originated by third-party carriers and transits Verizon’s tandems:

[O]ur review of the Verizon PA ICA’s definitions for Local Traffic and Reciprocal Compensation, and the Verizon North ICA’s definition for Reciprocal Compensation Traffic provide support for Verizon’s position that the ICAs do not authorize Core to bill Verizon for third-party traffic. The Verizon PA ICA defines Local Traffic as “traffic that is originated by an end user subscriber of one Party on that Party’s network and terminates to an end user

¹⁸ Petition of Core Commc'ns, Inc. for Arbitration of Interconnection Rates, Terms, & Conditions with the United Tel. Co. of Pennsylvania d/b/a Centurylink, A-310922F7002, 2013 WL 6835139, at *45 (Dec. 19, 2013).

¹⁹ Petition of Core Commc'ns, Inc. for Arbitration of Interconnection Rates, Terms, & Conditions with Windstream Pennsylvania, LLC Pursuant to 47 U.S.C. S252(b), A-310922F7004, 2014 WL 6386897, at *18 (Nov. 13, 2014).

²⁰ Bell Atl.-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, 672 A.2d 352, 354 (Pa. Commw. Ct. 1995). (“[P]rior adjudications of the Commission have no precedential value before this Court. Nor is an administrative agency bound by the rule of *stare decisis*; however, as Bell correctly notes, an administrative agency must render consistent opinions and should either follow, distinguish or overrule its own precedent.”).

subscriber of the other Party on the other Party's network within a given local calling area or expanded area service ('EAS') area." This ICA defines Reciprocal Compensation, in pertinent part, as follows:

[an] arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of Local Traffic that originates on the network facilities of each carrier.

Additionally, the term "Party" is defined in this ICA as "a party to this Agreement, either [Verizon PA] or [Core]." Hence, the Verizon PA ICA only authorizes the charging of reciprocal compensation for the exchange of Local Traffic, which excludes third-party traffic. Similarly, the Verizon North ICA, under Attachment 1: Definitions, describes Reciprocal Compensation Traffic as traffic "originating on one Party's network and terminating on the other Party's network," thereby also excluding third-party traffic. (122-23).

25. However, the Commission also notes that the ICA was never amended to implement the *ISP Remand Order*. Instead, Verizon was simply permitted to implement the order, with no change to the ICA's language.²¹

26. In light of the fact that the ICA was never amended to incorporate the *ISP Remand Order's* operative provisions, the *Order* neglects to explain how or why the ICA definitions of "Local Traffic" and "Reciprocal Compensation" apply to ISP-bound traffic, which is indisputably interstate in nature²² and which is, by virtue of the *ISP Remand Order*, and the ICA's change-of-law provisions, not subject to reciprocal compensation.²³

²¹ In Re Core Commc'ns, Inc., 98 Pa. P.U.C. 272 (May 27, 2003)("[T]he terms of Section 2.1 of the Core adoption agreement simply state that, upon a change of "applicable law," Verizon PA "reserves its right to not pay Reciprocal Compensation for Internet Traffic...." We agree with the ALJ that the adoption of the *Order on Remand* by the FCC changed the applicable law for purposes of Section 2.1, thus triggering the operation of that Section.").

²² In the Matter of High-Cost Universal Serv. Support Fed.-State Joint Bd. on Universal Serv. Lifeline & Link Up Universal Serv. Contribution Methodology Numbering Res. Optimization Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Developing A Unified Intercarrier Comp. Regime Intercarrier Comp. for Isp-Bound Traffic Ip-Enabled Servs., 24 F.C.C. Rcd. 6475, 6478 (2008)(" we hold that although ISP-bound traffic falls within the scope of section 251(b)(5), this interstate, interexchange traffic is to be

27. The *ISP Remand Order* makes no exemption for third-party originated calls, but instead simply requires that “traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order.”²⁴ In fact, Verizon’s own opt-in agreement language to the ICA, the very provision it relied upon to implement the *ISP Remand Order*, plainly states that ISP-bound traffic is not subject to reciprocal compensation.²⁵

28. The Commission should clarify the *Order* to state which provisions, if any, of the ICA permit ISP-bound traffic to be subject to rules governing “Local Traffic” or “Reciprocal Compensation.”

IV. Interconnection Facilities

A. Pricing of Access Toll Connecting Trunks

29. Attachment IV, Section 1.1.2 is the section of the Verizon PA ICA that outlines Verizon’s provision of Access Toll Connecting trunks (“ATCs”) to Core. According to the *Order*:

The Verizon PA ICA grants Core the right to purchase entrance facilities from Verizon PA. Specifically, Attachment IV, Section 1.1.2 states that “[Verizon PA] shall make available to [Core] a two-way trunk group, to [Verizon PA]’s appropriate access tandem(s), to be used two-way, for the exchange of equal access traffic between [Core] and purchasers of [Verizon PA]’s switched Exchange Access Services.” *Order*, at 94-95.

afforded different treatment from other section 251(b)(5) traffic pursuant to our authority under section 201 and 251(i) of the Act.”).

²³ In Re Implementation of Local Competition Provisions in Telecommunications Act of 1996, 16 F.C.C. Rcd. 9151, 9154 (2001)(“we affirm our conclusion in the *Declaratory Ruling* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).”).

²⁴ *ISP Remand Order*, ¶ 79.

²⁵ ICA, Adoption Agreement, § 2.1 (“Core believes that the [ICA]’s Reciprocal Compensation arrangements apply to Internet Traffic... [Verizon]... reserves its right to not pay Reciprocal Compensation for Internet Traffic... if and to the extent that the Commission’s [Global Order]... does not constitute applicable law.”).

30. With respect to these ATCs, the Commission ruled that:

Section[] 1.1.2... of the Verizon PA – Core ICA grant[s] Core the right to purchase entrance facilities. Appendix II, Exhibit A, Part II.c of the ICA governs the charges for entrance facilities. *Id.*, at 95.

31. In sum, the Commission appears to have ruled that the ICA permits Core to purchase entrance facilities for ATCs at the rates set forth in Appendix II of the ICA (i.e., the TELRIC rates). The Commission ultimately fails, however, to make these necessary conclusions, relying instead on a generically-applicable footnote in Appendix II to (apparently) overturn the plain meaning of Attachment IV, Section 1.1.2 and the actual rates set forth in Appendix II for entrance facilities.

32. The Commission concluded, without addressing the import of ICA Attachment IV, Section 1.1.2, that Verizon’s tariffed special access rates—not the TELRIC rates in Appendix II—applied to the ATCs:

Turning to the rate that is applicable to the ATC entrance facilities at issue, we concur with the ALJ’s finding that there currently are no provisions in either ICA that permit Core to pay TELRIC rates.... [F]ootnote 1 of the pricing schedule in the Verizon PA ICA provides that Verizon PA’s rates and service for use by Core in carrying Toll Traffic are subject to Verizon PA’s interstate and intrastate access tariffs. *Order*, at 97.

33. Thus, the Commission appears to have identified conflicting provisions (Attachment IV, Section 1.1.2 v. Appendix II, footnote 1) without explicitly resolving the conflict. To the extent there is any ambiguity in the Commission’s analysis of the Attachment IV, section 1.1.2, such ambiguity can be resolved by examining other sections of the ICA.

34. Attachment VIII, Section 3.1.3 of the Verizon PA ICA governs “meet-point billing,” which is the arrangement whereby Verizon provides tandem switching and Core provides end office elements to IXCs for exchange access traffic transiting over Verizon access

tandems to Core telephone numbers.²⁶ The ATCs are part and parcel of this meet-point billing scheme in that they facilitate the flow of exchange access traffic from the IXCs, through Verizon's access tandems, and on to Core's end offices.²⁷ Attachment VIII, Subsection 3.1.3.5 provides that "[f]or all traffic carried over MPB arrangements using Network Elements or interconnection services provided under this Agreement, the Parties shall bill each other all applicable rates specified in this Agreement." Thus, ICA Attachment IV, section 1.1.2 and Attachment VIII, section 3.1.3.5, both from the main body of the ICA, mandate application of the ICA's rates specifically to the ATCs, overriding the generically-applicable footnote in the pricing schedule appendix upon which the Commission ultimately relied.²⁸

35. Any ambiguity in the ICA language relative to the rates applicable to ATCs can also be resolved by virtue of the ICA's reference "Local Interconnection" to include "the provision of Exchange Access Service," the definition of "Local Interconnection" to include more than just local traffic,²⁹ and the numerous ICA provisions which incorporate TA-96 section 251.³⁰ That statutory provision, on its face, makes clear that ATCs are a form of local

²⁶ ICA, Att. VIII, § 3.1.3.1 ("The arrangements described in this section are intended to be used to provide switched Exchange Access Service that originates and/or terminates on a Telephone Exchange Service that is provided by either Party, where the transport component of the switched Exchange Access Service is routed through a Tandem Switch that is provided by the Tandem Party.").

²⁷ ICA, Pt. A, § 1.4.4 ("Conflicts among terms in Parts A and B of this Agreement, the Attachments and the Exhibits thereto, and the Tariffs shall be resolved in accordance with the following order of precedence, where the document identified in Subsection "(i)" shall have the highest precedence: (i) Parts A and B of this Agreement; (ii) the Attachments and the Exhibits thereto; and (iii) the Tariffs. The fact that a matter is addressed in one of these documents, but not in another, shall not constitute a conflict for purposes of this Section 1.4.4."). Here, the footnote upon which the Commission relied is set forth in an Appendix to the ICA which has no standing whatever in the ICA's explicit "order of precedence.").

²⁸ *PBS Coal, Inc. v. Hardhat Min., Inc.*, 429 Pa. Super. 372, 378; 632 A.2d 903, 906 (1993)("[W]here specific or exact terms seem to conflict with broader or more general terms, the former is more likely to express the meaning of the parties with respect to the situation than the general language.").

²⁹ ICA, Pt. B, p. 10 ("Local Interconnection" is the interconnection of the networks of the Parties for the exchange of Local Traffic and other traffic, in accordance with the requirements of 47 U.S.C. Section 251, and other Applicable Law.").

³⁰ See, e.g., ICA, Pt. A, § 7.1 ("The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties, shall be governed by the Act and the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws rules.").

interconnection, inasmuch as ATCs are specifically designed to carry “exchange access” traffic.³¹

36. All of the ICA provisions which govern Local Interconnection and the provision of ATCs point to the TELRIC rates in Appendix II as the rates applicable to Verizon’s provision of ATCs to Core. By contrast, footnote 1 to Appendix II is a generic catch-all provision which does not specifically address ATCs. Therefore, the Commission should clarify the conflicting findings in the *Order* and determine that the Verizon PA ICA’s TELRIC rates apply to the ATCs, and not Verizon’s access tariffs.

B. Statute of Limitations Applicable to Claims for Tariffed Interstate Charges

37. The Commission ruled that the four-year statute of limitations codified at 42 Pa. C.S. § 5525 for generic contract claims applies to Verizon’s claims for unpaid interstate switched and special access tariff charges, in lieu of the two-year federal statute of limitations codified at 47 U.S.C. § 415(a):

In our August 2013 *Core v. AT&T Order*, supra, we found that application of the state four-year statute of limitations, in lieu of the federal two-year limitation at 47 U.S.C. § 415(a), is consistent with federal court precedent. August 2013 *Core v. AT&T Order* at 32-34. We explained that the state four-year statute of limitations was upheld by the Fifth Circuit Court of Appeals in a case involving a class action suit seeking to prevent the collection of cell phone debt that was approximately three years old. *Id.* at 34 (citing *Castro v. Collecto, Inc.*, 634 F.3d 779 (5th Cir. 2011) (Section 415(a) did not apply because Congress had not made it clear that it intended to preempt state statutes of limitations with respect to actions to collect debt). *Core* does not cite to, nor can we identify, any case law which would disturb this finding or

³¹ Under Section 251 of TA-96, an incumbent LEC such as Verizon has “[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network... for the transmission and routing of telephone exchange service and exchange access....” 47 U.S.C.A. § 251.

which would support Core's argument that Congress intended to preempt state statutes of limitations using 47 U.S.C. § 415(a). To the contrary, in its proceeding with AT&T, which involved intercarrier compensation payments where no ICA was involved, Core argued against the application of the federal statute of limitations. August 2013 *Core v. AT&T*. Order at 31-32. Order, at 119-20.

38. However, *Castro* and *AT&T*, the cases upon which the Commission relied, support application of the two-year federal statute here.

39. In *Castro*, the issue was "whether the term "lawful charges" in § 415(a) should be read to include non-tariffed charges or only tariffed charges."³² The court reasoned that "[i]f "lawful charges" does include non-tariffed as well as tariffed charges, then we would agree with *Castro* that conflict preemption would apply, because the Texas statute of limitations would be in conflict with the balancing of interests expressed in the federal statute of limitations."³³ The court ruled that, because the charges at issue were not tariffed, they were not subject to 47 U.S.C. § 415(a).³⁴

40. In *AT&T*, the Commission, parsing *Castro*, recognized that section 415(a) applies to tariffed, or "lawful" charges:

[Section] § 415(a) of the Act applies to "actions at law by carriers for recovery of their lawful charges," and the Fifth Circuit has held that the term "lawful charges" is limited to tariffed rates... In accordance with the Fifth Circuit holding, the FCC's rate cap, as non-tariffed, would not be considered a "lawful charge" for statute of limitations purposes, and hence would not be subject to the two-year statute of limitations at § 415(a) of the Act. Rather, the four-year general statute of limitations at 28 U.S.C. § 1658 would apply.³⁵

³² *Castro v. Collecto, Inc.*, 634 F.3d 779, 785 (5th Cir. 2011).

³³ *Id.*

³⁴ *Id.*, at 786-87.

³⁵ Opinion & Order on Reconsideration, *Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC*, et al., Docket Nos. C-2009-2108186 and 2009-2108239, at 38 (Aug. 15, 2013).

41. The Third Circuit in *AT&T* also recognized that *Castro* was limited to non-tariffed charges:

Finally, AT & T argues that the PPUC Orders violate federal law by applying a four-year state statute of limitations to Core's claims instead of 47 U.S.C. § 415, which applies to “[a]ll actions at law by carriers for recovery of their lawful charges.” But AT & T concedes that § 415(a) applies only to charges that are subject to federal tariffing requirements.³⁶

42. Here, Verizon’s interstate federal access tariff claims are the very “lawful charges” that the *Castro* court, the Commission and the Third Circuit recognize as subject to Section 415(a). The Commission should reconsider its application of a state law-based four-year statute of limitations to Verizon’s interstate access tariff claims, and rule instead that the federal two-year statute, 47 U.S.C. § 415(a) applies.

V. Conclusion

43. As set forth above, there are compelling reasons to clarify and/or reconsider each of the five issues identified in this Petition. Accordingly, Core respectfully requests that the Honorable Commission grant this Petition and modify its December 23, 2016 Opinion and Order to address each of the five issues identified herein.

Respectfully submitted,



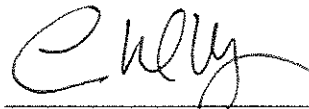
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January 9, 2017

³⁶ AT & T Corp. v. Core Commc'ns, Inc., 806 F.3d 715, 731 (3d Cir. 2015).

VERIFICATION

I, Christopher Van De Verg, General Counsel of Core Communications, Inc.; hereby state that the facts set forth in the above Petition are true and correct to the best of my knowledge, information, and belief and expect to be able to prove the same at any hearing held in this matter. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Chris Van de Verg

Dated: January 9, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

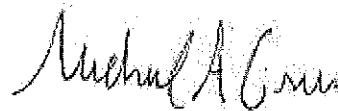
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January 9, 2017



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