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January 19, 2017

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Verizon's Answer to the Petition for Reconsideration and Clarification of Core Communications, Inc., filed on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") in the above captioned matter.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

Via E-Mail and First Class U.S. Mail
cc: 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 Answer to Core Communications, Inc.'s Petition for Reconsideration and Clarification, 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 19th day of January, 2017.

Via E-Mail and First Class Mail

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIZON'S ANSWER TO THE PETITION FOR RECONSIDERATION AND CLARIFICATION OF CORE COMMUNICATIONS, INC.

Pursuant to 52 Pa. Code §5.572(e), Verizon[1] opposes Core Communications, Inc.'s ("Core") petition for reconsideration and clarification[2] of the Commission's December 23, 2016 Order (the "Order").

INTRODUCTION

After more than six years of litigation, with a thorough evidentiary proceeding including discovery, testimony, cross-examination and briefing, as well as a remand to the administrative law judge and two initial decisions, there is no issue or argument Core could raise now that is "new and novel," "not previously heard," or "overlooked" by this Commission.[3] Core tries to dress up some of its old arguments in new clothes by asserting that the Commission's Order is internally "inconsistent" on a few limited points, but its convoluted and misleading claims do not survive scrutiny.

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1 Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North") (together "Verizon").

2 *See* "Petition of Core Communications, Inc. for Reconsideration & Clarification of Commission Opinion & Order" (January 9, 2017) ("Petition").

3 *Duick v. Philadelphia Gas and Water Co*., 56 Pa. PUC 553 (1982).

Core does not challenge the vast majority of the Order's key factual and legal holdings.[4] On the few issues Core does challenge, it raises no reason for the Commission to alter the Order's correct and well-supported decisions. Some of Core's requests for "clarification" would be pointless "make-work" for the Commission since they would not change the outcome of the case even if accepted. Whatever Core's intentions, the Commission should promptly reject Core's Petition and close this long-running docket.

ARGUMENT

A. Core's Petition Fails to Satisfy the *Duick* Standard for Reconsideration.

Core quotes this Commission's standard for reconsideration as set forth in *Duick v. Philadelphia Gas and Water Co.*, 56 Pa. PUC 553 (1982), without any discussion or effort to explain how the issues it raises satisfy that standard after more than six years of litigation. Petition at ¶ 2. A petition for reconsideration – particularly after a lengthy and detailed proceeding like this one – must raise "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick, supra,* 56 Pa. PUC at 559.

Core's Petition fails that standard. It offers nothing but repackaged versions of the same arguments Core has been making for the past six years. It raises no new law, no new facts, and nothing that Core could not already have submitted to the Commission for consideration years ago. Even if Core had mustered a truly "new" argument – which it did not – it is well-established that the Commission will not entertain a petition for reconsideration that is nothing but "an attempt to raise an argument that [the petitioner] failed to raise in its case in chief."[5] As

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[4] Perhaps Core is saving those arguments for the appeal or federal court challenge that it foreshadows in its first footnote.

[5] *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, R-00006042 etc., 2001 Pa. PUC LEXIS 107, *47 (Opinion and Order entered December 6, 2001).

the Commission has observed, "[a]n important element of the administrative process is there must be finality to administrative proceedings." *Id*. So where a party "has had ample opportunity to present its case in chief during the proceeding," it may not use a petition for reconsideration as an "opportunity to retry or amend its case in chief after the administrative proceeding has properly been completed." *Id*. The Commission should deny Core's Petition for this reason alone.

B. Core's Petition Does Not Stay the Effectiveness of the Order or Relieve Core of Its Compliance Obligations.

The mere filing of Core's Petition challenging limited portions of the December 23, 2016 Order does not stay the Order's effectiveness. The Public Utility Code is clear that "[n]o application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct." 66 Pa. C.S. § 703(f). As this Commission has explained, "[i]t is well settled that an application for supersedeas or stay is a specific request for affirmative relief which must be affirmatively pleaded. . . . *A petition for reconsideration, in and of itself, does not function as a petition for stay or supersedeas*."[6] Core has not tried to argue that the criteria for a stay are satisfied, and has not asked the Commission to stay the compliance activities directed by the Order.[7]

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[6] *2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket Nos. P-00981428F1000, R-00061375, etc., 2008 Pa. PUC LEXIS 402 (Opinion and Order entered April 9, 2008) (emphasis added) (finding that D&E companies were obligated to comply with refund order notwithstanding the filing of petitions for reconsideration). The Commission also noted that the fact that the companies still had the right to appeal the order after the Commission decided the petitions for reconsideration did not justify the failure to comply with the order because "[a]n appeal does not, in and of itself, stay the order of this Commission. *See* Pa. R.A.P. 1701. A party seeking a stay pending disposition of an appeal generally must apply to the Commission for a stay, Pa. R.A.P. 1781(a), and, if that application is denied, may apply to the Commonwealth Court for a stay. Pa. R.A.P. 1781(b)." *Id*.

[7] *Pa. PUC v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983), *rev'd on other grounds by* 511 Pa. 88, 511 A.2d 1315 (1986).

So even if the Commission chooses to consider the merits of Core's Petition, Core still must comply with the Order. Verizon will submit revised invoices to Core as outlined in the Order (within sixty days of entry) and Core must "remit payment to Verizon ninety days thereafter." Order at 146. Core must also immediately "apply credits against future reciprocal compensation invoices it issues to Verizon until such time as it has reimbursed Verizon for amounts Verizon has overpaid, inclusive of interest at six percent per annum." Order at 152.

C. Core's Arguments on Reconsideration are Meritless.

1. The Order Does Not Contradict Itself Regarding Compensation For Third Party-Originated Traffic (Core Issue 1; ¶¶ 1; 3-7 of Petition).

Core's claim that the Order "contradicts itself" on whether Core sends Verizon "third-party originated" traffic recycles an argument that Core already made, and the Commission already considered and rejected. Core's argument relates to Verizon's charges to Core for terminating the traffic Core sends to Verizon.[8] Core never paid Verizon's bills and the Order directed Core to pay them.[9] To evade payment, Core now offers the misleading claim that – since the Order found that Core should not have charged Verizon for terminating traffic that third party carriers transited through Verizon's tandems to Core – Core similarly should not have to pay Verizon for terminating "third party" traffic that Core aggregates from other carriers and sends to Verizon for termination. Petition at ¶¶ 1; 3-7.

Core manufactures the alleged inconsistency by misconstruing the Order. Core first asserts that the Commission ruled that "Core does not send Verizon any third-party originated traffic," and then argues that this finding contradicts the Order's holding elsewhere that Core had

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[8] The traffic Core sends Verizon that is the subject of Core's argument is only a tiny fraction of the traffic Verizon sends to Core, for which Core overcharged Verizon for terminating other parties' traffic. The Commission found that the "record indicates that Core terminates large amounts of traffic from Verizon PA but that it only originates a miniscule amount of traffic, none of which is ISP-bound." Order at 81.

[9] The Commission held that Core must pay Verizon at the rate of $0.0007 for the locally-dialed traffic and at switched access rates for the non-local traffic. Order at 155-56.

improperly claimed credit under the *ISP Remand Order's*[10] 3:1 ratio for traffic that was not Core-originated, which means that Core must be sending Verizon third-party originated traffic. Petition at ¶ 3-4 (citing Order at 125). But the Commission never held that "Core does not send Verizon any third-party originated traffic," as Core misrepresents. Rather, the Commission found that it is proper *to treat all traffic flowing from Core to Verizon as Core-originated* for intercarrier compensation purposes because Core is not a tandem transit provider, whereas Verizon is. Order at 125. The Commission so held with full knowledge that Core's business plan is to aggregate traffic from other carriers as a least-cost router and send it all to Verizon for termination. Order at 90.

This is not a "new or novel" argument or something the Commission has not already considered, and thus is improperly raised on reconsideration. Core's original exceptions and exceptions on remand argued that it should be treated the same as a tandem provider with respect to compensation for the third party traffic it aggregates (albeit asserting that *both* parties should be able to charge for terminating third party traffic, whereas now it argues that *neither* party should).[11] The Commission considered this argument in depth in the Order, noting that "Core contests Verizon's assertion, *infra*, that Verizon may bill differently because it, and not Core, is a tandem provider." Order at 121. The Commission explicitly rejected Core's argument, holding that:

> In view of the above, we also are of the opinion that Core's argument that it may bill Verizon for third-party traffic because the ICA makes no distinction regarding which Party is the tandem provider is without merit. *The record indicates that Core is not a provider of tandem transit service and owns no tandems*. Tr. at 298-99, 339. *Conversely, Verizon is a tandem provider and provides tandem transit*

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[10] *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, ¶ ¶ 2, 77 (2001*)* ("*ISP Remand Order*").

[11] *See* "Exceptions of Core Communications, Inc." (August 16, 2013) at 8-11; "Exceptions of Core Communications to Supplemental Initial Decision on Remand" (January 28, 2015) ("Core EX SID") at 6-10.

> *service between LECs that are not directly interconnected. Accordingly, we 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.* However, because Verizon provides tandem transit traffic service, routing traffic from one carrier to another via its tandems, Verizon is not the originating party for the entirety of the traffic it sends to Core. We concur with the ALJ's finding that any such traffic which merely transits Verizon's network is compensable to Core by the originating party, and not by Verizon.

Order at 125 (emphasis added); *see also* Initial Decision (July 11, 2013) ("ID") at pp. 10, Finding of Fact ("FOF") 36 (Verizon is a transit provider delivering third party-originated traffic to Core); p. 12, FOF 42 (Core improperly billed Verizon for transit traffic originated by third parties); p. 15, FOF 61 (Core operates no tandems).

This holding reflects no contradiction or misunderstanding. The Commission was well aware that some of Core's traffic was of the same nature as GNAPS' traffic in *Palmerton Telephone Company v. GNAPS South, Inc*.[12] – aggregated from other third-party carriers, with Core acting as a "least-cost router."[13] Consistent with its holding in *Palmerton*, the Commission found that for intercarrier compensation purposes, all of this traffic is treated as Core-originated, and Core has raised no basis to reverse that decision. That does not constitute a "contradictory" factual finding that Core does not send Verizon any third party-originated traffic; it represents the Commission's determination of how to treat the aggregated third-party traffic that Core – acting as a least-cost router – delivered to Verizon for intercarrier compensation purposes pursuant to the parties' interconnection agreements. Order at 122-25. There is no conflict with the Order's separate conclusion that Core improperly claimed credit under the *ISP Remand*

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[12] *Palmerton Telephone Company v. GNAPS South, Inc*., Docket C-2009-2093336 (Opinion and Order entered March 16, 2010).

[13] *See* Order at 90; ID at p. 18, FOF 81 ("For all of the outbound traffic it sends to Verizon for termination, Core is acting as a least-cost router, taking traffic from other wholesale traffic aggregators and terminating it in Pennsylvania. The traffic is all Voice over Internet Protocol ("VoIP"), is not from numbers assigned to Core, and is not even necessarily originated in Pennsylvania.")

Order's 3:1 ratio for traffic sent to Verizon that was not Core-originated,[14] as the Commission never held that Core transmits no third party-originated traffic to Verizon.

Because the Order does not contradict itself, and because this issue has already been "well-considered," the Commission should deny Core's request for reconsideration and clarification on this issue.

2. The Commission Correctly Rejected Core's Switched Access Bills on Numerous Separate Grounds (Core Issue 2; ¶¶ 1; 8-23 of Petition).

The Commission properly rejected Core's attempt to rerate bills that Verizon had already paid at the FCC's $0.0007 rate to collect higher switched access rates on the same traffic. Core does not challenge most of the alternative grounds on which the Commission rejected Core's switched access back-bills. For example, Core does not contest the finding that it "wrongly billed Verizon for traffic originated by IXCs." Order at 60. Nor does it challenge the finding that it did not provide the end office switching functionality described in its tariffs and therefore could not back-bill for end office switching. Order at 68. Core does not take issue with the findings that, because it does not provide the requisite functionality, it cannot bill for tandem switching or the carrier common line charge. Order at 69. Nor does it challenge the conclusion that "Core was not able to support any of its backbills with any degree of reliability" and therefore "has failed to meet its burden of proving its switched access claims based on the record evidence developed in this proceeding." Order at 69-70. All of these separate (and unchallenged) findings provide alternative bases to reject Core's switched access bills, no matter how the Commission might answer the narrow legal issue Core raises on reconsideration.

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[14] Order at 156 (Conclusion of Law 22); *see also* ID at p. 18, FOF 82 (most calls for which Core claimed credit under the 3:1 ratio were not Core-originated).

Core challenges only the Commission's legal conclusion that non-local ISP-bound traffic is subject to the FCC's $.0007 rate cap. Order at 57-58. The Commission correctly relied on the Third Circuit's recent decision in *AT&T Corp. v. Core Comm's, Inc.*, 806 F.3d 715 (3rd Cir. 2015) ("*AT&T*") for this holding. The Third Circuit held that *all* ISP-bound traffic (not just locally-dialed) is "*jurisdictionally* interstate" based on an end-to-end analysis, but "is still subject to state control unless otherwise preempted by the FCC." *AT&T*, 806 F.3d 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. The *AT&T* court found there was no conflict with federal law where the rate the Commission required AT&T to pay did not exceed the FCC's $0.0007 cap for ISP-bound traffic. *Id*. at 731.

Core attempts to manufacture an "inconsistency" in the Order by claiming that Core's charges should not be capped at $0.0007 unless Verizon's charges to Core for terminating non-local traffic are also capped. But as the Commission recognized, there is a major difference between the two. The traffic for which Core seeks to bill Verizon is ISP-bound, whereas the much smaller volume of traffic for which Verizon seeks to bill Core is voice traffic that is *not* ISP-bound. Significantly, Core does not challenge the Commission's conclusion that all of its traffic above the 3:1 ratio must be presumed ISP-bound under the FCC rules. As the Commission stated:

> We concur with Verizon that Core has not presented the necessary evidence regarding the amount of ISP-bound traffic it terminates vis-à-vis the amount of non-ISP-bound traffic it terminates in order to rebut the *ISP Remand Order's* rebuttable presumption for 3:1 traffic. Accordingly, in the absence of evidence to the contrary, the traffic for which Core now seeks to backbill Verizon at switched access rates must be deemed local ISP-bound traffic. Order at 57.

Core's real complaint is not with the Order's affirmation of Verizon's right to charge switched access rates on the "miniscule"[15] amount of non-ISP-bound voice traffic Core sends to Verizon. Core erects its straw man in an attempt to inflate the rates that Verizon pays Core, as Core's Petition argues that *both* parties should charge switched access on all "non-local" traffic because Core asserts that non-local *ISP-bound* traffic is not subject to the $0.0007 cap. Petition at ¶ 10. The Commission should deny Core's petition for several reasons.

First, Core's argument is academic because the Commission found as a factual matter that Core did not meet its burden of proving that any portion of the traffic for which it sought to back-bill Verizon was "non-local." Order at 69-70 ("Core was not able to support any of its backbills with any degree of reliability. For example, the CDRs Core provided to Verizon failed to divulge which calls Core considered local versus non-local or intrastate versus interstate, for re-billing purposes"). The Commission thus found as a matter of fact *that all of the traffic for which Core sought to back-bill switched access was local ISP-bound traffic* (due to Core's failure to substantiate its attempt to reclassify the traffic after originally classifying all of it as local). The Petition does not challenge this evidentiary conclusion.

Second, Core's argument that the $0.0007 rate cap does not apply to non-local traffic is neither "new or novel" nor "overlooked." Core made the exact same argument at page 22 of its Exceptions to the Supplemental Initial Decision ("the ISP Remand Order and the $0.0007 rate do not apply to toll ISP traffic, the access regime does."). The Commission rejected Core's legal argument at page 57-58 of the Order and noted that it reached the same legal conclusion in the Core/XO complaint case at Docket No. C-2009-2133609, where it rejected the same argument

[15] Order at 81 ("the record indicates that Core terminates large amounts of traffic from Verizon PA but that it only originates a miniscule amount of traffic, none of which is ISP-bound.")

made by Core.[16] Therefore this issue has already been raised and decided and is not properly argued again on reconsideration.

Third, Core is wrong on the substance. It relies primarily on outdated cases from 2006 and ignores more recent and relevant precedent, including the Third Circuit's 2015 decision in *AT&T*.[17] Two years after the 2006 cases Core cites, the FCC issued its *ISP Mandamus Order* setting forth its final rationale for the $0.0007 rate cap on ISP-bound traffic.[18] This order made clear that the distinction between "local" and "non-local" traffic does not matter for ISP-bound traffic because ***all*** ISP-bound traffic is inherently both "interstate" and "interexchange." *Id.* at ¶ 6. In fact, the FCC stated that it had been a "mistake" to view the reciprocal compensation regime of 47 U.S.C. § 251(b)(5) as limited to "local" traffic and, in applying the rate-cap regime to ISP-bound traffic, noted that "this interstate, interexchange traffic is to be afforded different treatment from other section 251(b)(5) traffic pursuant to our authority under section 201 and 251(i) of the Act." *Id.* at ¶¶ 7, 9. The FCC went on to state that "the transport and termination of ***all*** telecommunications exchanged with LECs is subject to the reciprocal compensation regime in sections 251(b)(5) and 252(d)(2)." *Id*. at ¶ 15 (emphasis added). So the *ISP Mandamus Order*'s rules for compensation for ISP-bound calling apply to ***all*** ISP-bound traffic.

Core ignores the 2008 *ISP Mandamus Order* and relies instead on a 2006 FCC amicus brief in one of the GNAPS cases. For one thing, an amicus brief from over ten years ago cannot reasonably be viewed as "controlling authority which was not briefed previously in this case."

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[16] Core has also filed a petition for reconsideration of the same issue in that case. *See* "Petition of Core Communications, Inc. for Reconsideration & Clarification of Commission Opinion & Order," *Core Communications, Inc. v. XO Communications Services, Inc.*, C-2009-2133609 (December 8, 2016).

[17] *See Verizon California, Inc. v. Peevey*, 462 F.3d 1142 (9th Cir. 2006); *Global NAPS, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir. 2006); *Global NAPS v. Verizon New England, Inc.*, 454 F.3d 91 (2d Cir. 2006).

[18] *See High-Cost Universal Service Support, et al*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) ("*ISP Mandamus Order*"), *aff'd, Core Commun's, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010)

Petition at 7, ¶ 15. Core filed the present case in 2011 and litigated it heavily for the next six and a half years. Core could have raised the GNAPS amicus brief at any time, but never did. Yet, it now faults the Commission for not addressing the decade-old, extra-record document in the Order. *Id*. In any event, Core misrepresents the FCC's position in the GNAPS amicus brief. Core takes out of context a snippet where the FCC describes the parties' respective arguments and the factual divergences from "ordinary" practices (Petition at ¶ 14), and uses it to claim that the FCC stated that non-local ISP-bound traffic is subject to access charges. Core ignores the amicus brief's discussion just a few paragraphs down, where the FCC's litigation staff tells the First Circuit that it is unable to answer the compensation question one way or the other, while noting that the *ISP Remand Order* could reasonably be interpreted to apply the $0.0007 rate cap to *all* ISP-bound traffic:

> The Court has asked us to address whether the *ISP Remand Order* was intended to preempt states from establishing the compensation regime that governs a call placed by an ILEC customer in one exchange to a CLEC-served ISP located in a different exchange using a VNXX number assigned to the ISP by the CLEC. The *ISP Remand Order* does not provide a clear answer to this question. As set forth below, the *ISP Remand Order* deemed *all* ISP-bound calls to be interstate calls subject to the jurisdiction of the FCC, and the language of the *ISP Remand Order* is sufficiently broad to encompass all such calls within the payment regime established by that Order. Nevertheless, the order also indicates that, in establishing the new compensation scheme for ISP-bound calls, the Commission was considering only calls placed to ISPs located in the same local calling area as the caller. The Commission itself has not addressed application of the *ISP Remand Order* to ISP-bound calls outside a local calling area. Nor has the Commission decided the implications of using VNXX numbers for intercarrier compensation more generally. ***In this situation, the Commission's litigation staff is unable to advise the Court how the Commission would answer the first question posed by the Court.***[19]

Since that time, the FCC issued its *ISP Mandamus Order* in 2008 (superseding the *ISP Remand Order*), and the Third Circuit issued its opinion in *AT&T* in 2015. Core's argument –

[19] Brief for Amicus Curiae Federal Communications Commission, *Global NAPS, Inc. v. Verizon New England, Inc.*, 2006 WL 2415737, ** 10-11 (1st Cir., March 13, 2006) (emphasis added).

based on an out-of-context paragraph from the FCC's 2006 GNAPs amicus brief that ignored other language in the brief itself, as well as all of these more recent authorities – borders on the dishonest.[20]

The Commission should deny Core's petition for reconsideration relating to the application of the $0.0007 to "non-local" ISP-bound traffic because Core is wrong on all fronts: Core never proved as a factual matter that any of the subject traffic was non-local; its argument is neither "new or novel" nor "overlooked"; and it is wrong as a matter of law because it cites outdated authorities and the Commission also rejected Core's switched access bills on multiple alternative grounds.

3. The Commission Correctly Required Core to Refund Amounts Billed to Verizon for Terminating Other Carriers' Transit Traffic (Core Issue 3; ¶¶ 1; 24-28 of Petition).

The Order found that Core improperly billed Verizon for termination of traffic originated by third parties and merely transited by Verizon, and that Core must refund those over-collected amounts. Core's Petition does not challenge significant parts of the Commission's findings relating to Core's improper billing for third party-originated traffic. For example, the Petition challenges neither the Commission's conclusion that no interconnection agreement provisions allow Core to bill Verizon for third party traffic transited through Verizon's tandems, nor the Commission's rejection of Core's arguments that certain provisions of those agreements allowed such billing. Order at 124. Nor does the Petition challenge the Commission's factual conclusion "that Core double-billed Verizon and other carriers for the same traffic." Order at 127, 129.

[20] Nor is the Order inconsistent with the CenturyLink and Windstream arbitration decisions Core cites at pages 9 and 10 of the Petition. In both cases, the Commission ruled that the compensation for such calls would be bill-and-keep, which is below the FCC's $0.0007 rate cap. Moreover, the Commission issued those two arbitration decisions in 2014, prior to the Third Circuit's 2015 decision in *AT&T*.

Core's Petition also does not take issue with the calculation of the amount of refund (bill credit) ordered for third-party traffic, the method by which the Commission directed Verizon to calculate the refund for periods after the close of the record, the application of a four-year statute of limitations to the refund claim, or the inclusion of six percent per annum interest. Order at 149-150; 154-55.

Instead, the Petition seeks "clarification" only of the Commission's conclusion that "our 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." Order at 124. As the Commission explained, under the interconnection agreements, Core may 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*.[21] 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." *See* VZ IB at 30-31 (with interconnection agreement citations).

Core questions whether the interconnection agreements' definitions describing when "Reciprocal Compensation" is due for terminating "Local Traffic" could apply to ISP-bound traffic when the FCC has determined that this traffic is "interstate in nature" and "not subject to reciprocal compensation." Petition at ¶ 26. But Core has argued throughout this case that it is

[21] *See* ID at 56 (COL 17); "Verizon's Initial Post-Hearing Brief" (January 23, 2013) ("VZ IB") at 30-31; "Verizon's Post-Hearing Reply Brief" (March 18, 2013) ("VZ RB") at 31-32; "Verizon's Replies to Core's Exceptions" (September 16, 2013) ("VZ REX") at 5-10.

entitled to bill Verizon "reciprocal compensation" on this traffic.[22] It cannot suddenly change its story now and argue that these provisions do not apply.

But in any event, Core's request that the Commission "clarify" which interconnection agreement provisions subject ISP-bound traffic to these definitions would be meaningless make-work for the Commission. Even if the Commission found that ISP-bound traffic is not "Local Traffic" or "Reciprocal Compensation Traffic" under the definitions in the interconnection agreements, that would not change the result of the Order. The Commission simply found that those definitions "provide support" for Verizon's argument that the parties' interconnection agreements do not permit Core to bill Verizon for third-party transit traffic. Order at 124. The Commission further found that there are *no other provisions* in the interconnection agreements that permit Core to bill Verizon for third-party traffic (Order at 124-25), and Core did not challenge that holding. If these definitions do not apply, then the interconnection agreements are silent on how ISP-bound third-party transit traffic is to be billed. In that case, the Commission has already held that, in the absence of a contract specifying otherwise, the originating party, not the transit provider, pays. Indeed, Core invoked this principle to collect payment from AT&T[23] and XO[24] for the very same third party-originated transit traffic that Verizon also paid for

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22 *See, e.g.*, "Main Brief of Core Communications, Inc." (January 23, 2013) at 9-10 ("Core's reciprocal compensation invoices are fully supported by the ICAs and the extensive factual record in these proceedings."); "Exceptions of Core Communications, Inc." (August 16, 2013) at 7-17 (Core's Exception 2, entitled "Core's Reciprocal Compensation Bills Are Fully Supported by the ICAs and Relevant Call Records").

23 *See Core Communications, Inc. v. AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc.*, Pa. PUC Dockets C-2009-2108186 and C-2009-2108239 (Opinion and Order on Reconsideration entered August 15, 2013) ("*Core v. AT&T*").

24 *See Core Communications, Inc. v. XO Communications Services, Inc.*, Pa. PUC Docket C-2009-2133609 (Opinion and Order entered November 23, 2016).

(amounts the Order directs Core to refund) based on the rule that the "originator pays," not the transit provider, as affirmed by the Third Circuit.[25]

Further, Core's attempt to parse the definitions of "Local Traffic" and "Reciprocal Compensation Traffic" is not a "new or novel" argument; it relies on FCC decisions from 2001 and 2008. Core Petition at ¶ 26. Core addressed these exact definitions in its exceptions to the Supplemental Initial Decision on Remand. *See* Core EX SID at 9. It is well-established that the Commission will not entertain a petition for reconsideration that is nothing but "an attempt to raise an argument that [the petitioner] failed to raise in its case in chief." [26]

The Commission should deny Core's request for clarification on this issue.

4. The Commission Correctly Held that Access Toll Connecting Trunks Are Not Subject to TELRIC Rates Under the ICA (Core Issue 4; ¶¶ 1; 29-36 of Petition).

The Order held that Core must pay Verizon for the use of trunks and other facilities leased by Core to carry traffic between itself and Verizon and other carriers, which Core has been using for many years without paying anything. According to the Commission, "we are of the opinion that Core's arguments for paying nothing are without merit" (Order at 99), and "[b]ecause Core has admitted to paying Verizon nothing for its use of Verizon's facilities, the record supports the ALJ's conclusion that Core is in violation of the ICAs." Order at 100. While the Commission directed Verizon PA to revise its bills for local interconnection trunk groups ("LITGs") to use the lower TELRIC rates, it held that Core must pay for Verizon PA's access toll connecting trunks ("ATCs") at the as-billed access rates. Due to different interconnection

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[25] *See AT&T, supra; see also Palmerton, supra* (requiring the originating party, GNAPS, not the transit provider, Verizon, to compensate Palmerton for terminating traffic).

[26] *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, R-00006042 etc., 2001 Pa. PUC LEXIS 107 (Opinion and Order entered December 6, 2001).

agreement language, it held that Core must pay for all of Verizon North's trunks (*both* LITGs *and* ATCs) at the access rates that Verizon billed.

Core's Petition does not challenge many of the holdings fundamental to the Commission's conclusion on this complicated issue. For example, Core does not challenge the Commission's holding that 47 U.S.C. § 251(c)(2) requires this type of trunk (referred to as "entrance facilities") to be made available at TELRIC prices ***only*** if used for the mutual exchange of traffic between a CLEC and an ILEC, but not if used for other purposes. Order at 95-96.[27] Nor does Core take issue with the Order's application of that legal principle to the facts presented here to conclude that only the LITGs were used for the "mutual exchange of traffic between Core and Verizon" and were thus Section 251(c)(2) facilities subject to TELRIC rates as a matter of law, but the ATCs were not. The Commission found that the ATCs were "not subject to TELRIC pricing under *Talk America* . . . [because] these facilities were not used for the mutual exchange of traffic between Core and Verizon, but were instead used by Core to exchange long distance traffic with IXCs." Order at 97.[28]

Because the federal Communications Act (as interpreted by *Talk America*) requires an incumbent local exchange carrier to offer entrance facilities used for the "mutual exchange of traffic" at TELRIC rates, the Commission examined the interconnection agreements between

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[27] *See Talk America Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011) ("*Talk America*").

[28] *Talk America* supports the Commission's decision that ATCs are not Section 251(c)(2) interconnection facilities and not legally required to be offered at TELRIC rates. As explained in the FCC's amicus brief (to which the Supreme Court in *Talk America* deferred), 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). Such facilities "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. All other types of dedicated transport that carry traffic between CLEC networks and ILEC switches, including the ATCs, are not "interconnection facilities," and thus not required to be provided at TELRIC rates. *FCC Amicus* at 18. *See* Verizon Statement 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*).

Core and Verizon to determine if they already incorporated this legal requirement, or if they would have to be amended to incorporate this principle. It reached different conclusions for Verizon PA and Verizon North. It found that the Verizon PA interconnection agreement should be read to require TELRIC-rated local interconnection facilities (LITGs) without amendment. But it concluded that the Verizon North agreement did not provide for TELRIC-rated LITGs and that Core must thus pay the billed access rates as required by the agreement, unless and until it is amended. Order at 96-97. Given that it did not challenge the decision to apply access rates to Verizon North's LITGs, Core also does not challenge the Commission's legal conclusion that "these provisions of *TA96* [requiring TELRIC rates for LITGs] apply only if the ICA incorporates them." Order at 93 (noting that the Fourth Circuit reached the same conclusion).

Core's Petition appears to argue that, even though the law does not require an ILEC to offer ATCs to a CLEC at TELRIC rates – a holding Core does not contest – the interconnection agreement nonetheless required Verizon PA to provide ATCs to Core at TELRIC rates. Core again attempts to manufacture an inconsistency in the Order that does not exist. The Commission found that Attachment IV, Section 1.1.2 of the Verizon PA agreement allows Core to purchase ATCs.[29] Order at 94-95. But that section is silent as to the price, stating as follows:

> 1.1.2 [Verizon PA] shall make available to [Core] two-way trunk group, to Bell Atlantic'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.

Section 1.1.1 is the section that allows Core to purchase LITGs, referring to "two-way trunks, to be used one-way, for the reciprocal exchange of combined Local Traffic, non-equal access

[29] Core is not required to purchase its trunks for exchanging traffic with IXCs from Verizon; it just has the option to do so. In fact the record shows "Core now has disconnected all ATCs with Verizon in Pennsylvania and has migrated to a competitive tandem provider." Order at 105.

intraLATA toll traffic, and local transit traffic to other ILECs." That section also is silent as to price.

The Commission then noted that Att. IV, Section 2.4.1 of the Verizon PA agreement addresses pricing for trunks used to deliver "Local Traffic" – the LITGs – from Core to Verizon. Order at 95. That section provides in part that "[w]hen Local Traffic from [Core] is terminating on [Verizon PA's] network through the [Verizon PA] access Tandem Office IP, [Core] will pay [Verizon PA] transport charges from the POI to the Tandem Office for Dedicated Transport." *Id*. Section 2.4.1 does not address pricing for the trunks used "for the exchange of equal access traffic between [Core] and purchasers of [Verizon PA's] switched Exchange Access Services" – the ATCs. Nothing else in Attachment IV of the agreement addresses the pricing of ATCs.

The Commission then looked to the Verizon PA interconnection Agreement's Pricing Attachment, Appendix II, Exhibit A, for the applicable prices. It found that the agreement contemplated that entrance facilities would be provided "as a UNE at specified rates," but now that entrance facilities are no longer required to be provided as UNEs, "it is unclear whether these specific ICA provisions envisioned Verizon PA's providing entrance facilities to Core for interconnection purposes [in other words, Section 251(c)(2) interconnection facilities, or LITGs] at TELRIC rates under Section 251(c)(2)." Order at 95. But because *Talk America* found that Section 251(c)(2) entrance facilities (the LITGs) are subject to TELRIC rates if the interconnection agreement so provides, the Commission determined to resolve this ambiguity by applying the Pricing Attachment's rate for unbundled network elements in Part II.c to the LITGs – which are the only trunks the Commission found were Section 251(c)(2) entrance facilities.[30]

[30] As discussed in Verizon's pleadings, in Verizon's view, the Verizon PA interconnection agreement does not provide for TELRIC-rated Section 251(c)(2) interconnection facilities and, just like Verizon North's agreement, would require amendment to incorporate TELRIC pricing. *See, e.g.*, VZ IB at 12-19; VZ RB at 8-

Core's Petition lumps all of this analysis together in an attempt to gloss over the material differences between LITGs and ATCs and to argue that the same pricing conclusion must follow for ATCs, or else the Order is internally "inconsistent." But Core is wrong. There are several good reasons why the Commission correctly interpreted these contract provisions differently for LITGs versus ATCs.

First, the Commission correctly held that ATCs are not Section 251(c)(2) entrance facilities and therefore are not required to be offered at TELRIC under the Telecommunications Act. Only an explicit contract provision could require Verizon to provide a price not required by law, and Core has pointed to none.

Second, Attachment IV, Section 2.4.1 of the Verizon PA interconnection agreement (which refers to the price of "Dedicated Transport") only applies to LITGs because it refers only to trunks carrying "Local Traffic." This provision does not apply to ATCs. So to the extent the reference to UNE Dedicated Transport or anything else in Section 2.4.1 supported the Commission's application of Section II.c of the Pricing Attachment to the LITGs, that same reasoning cannot apply to the ATCs.

Third, as the Commission rightly held, the only provision in the Verizon PA interconnection agreement that addresses pricing for ATCs is footnote 1 of the Pricing Attachment, which states that "[Verizon's] rates and services for use by CORE in the carriage of Toll Traffic shall be subject to [Verizon's] tariffs for Exchange Access Service." The footnote goes on to say that the UNE (TELRIC) rates in the body of the document (including section II.c) only "apply only to Local Traffic and local Ancillary Traffic." Therefore, while the Commission chose to give the benefit of the doubt to Core for LITGs and read the agreement to apply UNE

12; VZ REX at 18-23. But Verizon did not petition for reconsideration of the Commission's holding on this issue.

rates to those trunks carrying Local Traffic, there is nothing in the agreement that would allow the Commission to reach the same conclusion for ATCs.

In sum, both the law and the plain language of the Verizon PA interconnection agreement support the Commission's decision that the agreement does not provide for TELRIC-rated ATCs. Core's attempt to manufacture an inconsistency in the Order is illogical and misleading. Accordingly, the Commission should deny Core's request for reconsideration of the holding that access rates apply to Core's use of ATCs provided by Verizon PA.

5. The Commission Correctly Applied a Four-Year Statute Of Limitations to Verizon's Claim for Payment of its Unpaid Bills Pursuant to the Parties' Interconnection Agreements (Core Issue 5; ¶¶ 1; 37-42 of Petition).

Core seeks reconsideration of the Commission's conclusion that the four-year statute of limitations in 52 Pa. C.S. § 5525 applies to Verizon's claim for payment of unpaid interstate switched and special access charges, rather than the two-year period in 47 U.S.C. § 415(a).[31] Petition at ¶¶ 1; 37-42. Core does not even attempt to present this argument as a "new or novel issue," or to raise anything the Commission has not already considered. In fact, the Commission considered the very same argument Core makes now and rejected it in detail at pages 119-120 of the Order. Core's argument on reconsideration flows from misconstruing the Commission's holding.

Core repeatedly mischaracterizes Verizon's claim as one brought to enforce its federal tariffs.[32] But the Commission properly rejected Core's argument that 47 U.S.C. § 415(a) applies to Verizon's claims for payment of switched and special access charges because the Commission

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[31] Core does not challenge the application of a four-year statute of limitations to the refund claim.

[32] *See, e.g.*, Petition at ¶ 1 (referencing "Verizon federal tariff claims); p. 15, heading B. ("Statute of Limitations Applicable to Claims for Tariffed Interstate Charges"); ¶ 37 ("Verizon's claims for unpaid interstate switched and special access tariff charges); ¶ 42 ("Verizon's interstate federal access tariff claims").

found that the claims were brought pursuant the parties' *interconnection agreements*, not Verizon's federal tariffs. As the Order found:

> Turning to Verizon's counterclaims pertaining to the bills Core has failed to pay, we acknowledge that these claims do not fit squarely within Section 1312 of the Code which applies to refund situations. Here, Core and Verizon are Parties to two Pennsylvania ICAs. The ICAs govern the terms of interconnection and exchange of locally-dialed telephone traffic between the Parties, including the terms for the payment of intercarrier compensation for locally-dialed calls. Additionally, the ICAs provide specific methodologies for dispute resolution. I.D. at 22. In essence, the ICAs are contracts between the Parties and the interpretation of the terms are at the heart of this dispute. Therefore, we shall also apply a four-year limitation period of Section 5525 of the Judicial Code pertaining to contract claims to any surviving counterclaims related to timely-issued, but unpaid, bills. Order at 117-118.

In so holding, the Commission agreed that Verizon was pursuing a contract claim under its interconnection agreements, not a claim under its federal tariffs:

> Verizon argues that it is not seeking Commission enforcement of federal tariffs. Rather, Verizon has requested enforcement of Commission-approved [interconnection agreements] whose price schedules incorporate rates set forth in Verizon's state and federal tariffs for the facilities and access services Core obtained from Verizon pursuant to those [interconnection agreements]. Verizon Exc. at 8; Verizon R.B. at 19-20. Verizon argues that the two-year federal statute of limitations does not apply in this situation because the ICAs incorporate the rates set forth in Verizon's federal and state tariffs. *Id*. ***We agree***. Order at 119 (emphasis added).

So the very predicate for Core's reconsideration request – that Verizon's claim is an FCC tariff enforcement action – is incorrect. Core's request for reconsideration fails for this reason alone.

Core also fails to raise any requisite "new and novel arguments." It cites the *Castro*[33] and *Core v. AT&T*[34] decisions as grounds for reconsideration, but admits that the Order fully considered those decisions in rejecting its arguments. Petition at ¶ 37 (quoting Order's citation

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[33] *Castro v. Collecto, Inc.*, 634 F.3d 779 (5th Cir. 2011) ("*Castro*").

[34] *See Core v. AT&T, supra*.

to *Castro* and *Core v. AT&T*); *see also* Order at 119-120. Core does not dispute the Commission's finding that "Core does not cite to, nor can we identify, any case law which would disturb this finding [*Core v. AT&T*'s application of the four-year state statute of limitations, rather than 47 U.S.C. § 415(a)] or which would support Core's argument that Congress intended to preempt state statutes of limitations using 47 U.S.C. § 415(a)." Order at 120. Nor does Core deny the Commission's observation that in *Core v. AT&T*, Core itself argued that the four-year state statute of limitations governed, not 47 U.S.C. § 415(a). *Id*. And the Third Circuit subsequently upheld the Commission's application of the four-year state statute of limitations in *Core v. AT&T*. Order at 120, FN 72; *see also AT&T*, 806 F.3d 715 at 731.

Core's reliance on *Castro* and *Core v. AT&T* is also misplaced for a reason discussed in the Order and ignored in the Petition: 47 U.S.C. § 1658. The Commission noted that applying the four-year statute of limitations in 52 Pa. C.S. § 5525 is consistent with the four-year limitations period in 47 U.S.C. § 1658 for civil actions arising under federal laws enacted after December 1, 1990. *See* Order at 118. The Telecommunications Act of 1996 created the concepts of incumbent local exchange carriers, competitive local exchange carriers and the interconnection agreements between them. To the extent that any federal limitations period governs actions arising out of those agreements (rather than the applicable state limitations period for contracts), it would have to be the four-year period under 47 U.S.C. § 1658 – not the two-year period under 47 U.S.C. § 415(a) – as such actions "were not possible before 1990."[35] *AT&T* at 37. Core is familiar with 47 U.S.C. § 1658 given the Commission's extensive discussion thereof in *Core v. AT&T* (*see Core v. AT&T* at pp. 36-38), but chose not to discuss (or even mention) it in the Petition.

[35] Moreover, 47 U.S.C. § 414 confirms that "[n]othing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

The Commission should deny Core's request for reconsideration of the statute of limitations because the Order correctly applied the four-year statute of limitations in 52 Pa. C.S. § 5525 to Verizon's claim for payment for traffic exchanged pursuant to the parties' interconnection agreements.

CONCLUSION

For the foregoing reasons, the Commission should deny Core's Petition for reconsideration and clarification.

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Dated: January 19, 2017