

****THIS TRANSCRIPT CONTAINS PROPRIETARY INFORMATION****

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

----- X
CORE COMMUNICATIONS, INC. :
 :
VS. :
VERIZON PENNSYLVANIA, INC. & :
VERIZON NORTH, INC. :
 :
Petition for Emergency Relief :
----- X

Docket No.
P-2011-2253650

Pages 1 through 182

Hearing Room 2
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, Pennsylvania

Friday, July 29, 2011

Met, pursuant to notice, at 9:28 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE SUSAN D.

1
2
3 COLWELL: Let's go on the record. It is almost 9:30
4 at the place set for the hearing required by 52 Pa.
5 Code Section 3.6(a) following the filing of a petition
6 for interim emergency relief on July 22nd, 2011,
7 triggering a ten-day period for holding the hearing in
8 the case captioned Core Communications, Inc., versus
9 Verizon Pennsylvania, Inc., and Verizon North, Inc.,
10 at Docket Number P-2011-2254650 [sic]. I am
11 Administrative Law Judge Susan Colwell, appointed by
12 the Commission to preside in this matter.

13 Interim emergency relief was requested
14 because Core filed complaints at the same time as the
15 petition, creating an underlying proceeding against
16 Verizon PA at Docket Number C-2011-2253650 and against
17 Verizon North at Docket Number C-2011-2253787.

18 I note for the record the attendance of
19 the following counsel: On behalf of Verizon, Joseph
20 Ruggiero and William Lehman. On behalf of Core
21 Communications, Michael Gruin.

22 And you did not sign the sheet.

23 MR. GRUIN: Chris is not going to enter
24 his appearance. He's actually going to be a witness
25 in the proceeding.

1 JUDGE COLWELL: I see. All right.

2 Thank you.

3 All right. So this brings me to the
4 first order of business, which is a motion for
5 admission pro hac vice filed by Mr. Lehman seeking the
6 admission of Mr. Ruggiero.

7 Are there any objections to his motion?

8 MR. GRUIN: No objection.

9 JUDGE COLWELL: It is granted. Welcome
10 to Pennsylvania. It will be memorialized in the order
11 following -- that I will issue following the hearing.

12 Any other preliminary matters that we
13 need to address before we get started?

14 (No response.)

15 JUDGE COLWELL: All right. For the
16 court reporter, we have talked about needing to go on
17 the proprietary record during the course of this.
18 Have you ever done that before?

19 (Discussion off the record.)

20 JUDGE COLWELL: Let's get started. Mr.
21 Gruin.

22 MR. GRUIN: Thank you, Your Honor. I'd
23 like to call Bret Mingo to the stand.

24 JUDGE COLWELL: Will you raise your
25 right hand, please.

1 Whereupon,

2 BRET MINGO,

3 having been duly sworn, testified as follows:

4 JUDGE COLWELL: Please be seated.

5 Go ahead, Mr. Gruin.

6 DIRECT EXAMINATION

7 BY MR. GRUIN:

8 Q Good morning, Mr. Mingo.

9 JUDGE COLWELL: Please use the
10 microphone.

11 BY MR. GRUIN:

12 Q Could you please state your name and business
13 address for the record?

14 A My name is Bret Mingo. My business address is
15 209 West Street, Suite 302, Annapolis, Maryland,
16 21401.

17 Q Can you spell your name for the record?

18 JUDGE COLWELL: Is the microphone on? I
19 didn't check that.

20 THE WITNESS: Is this working?

21 THE COURT REPORTER: No.

22 THE WITNESS: Now it's on.

23 BY MR. GRUIN:

24 Q Could you spell your name for the record?

25 A Bret, B-r-e-t, Mingo, M-i-n-g-o.

1 Q By whom are you employed and in what capacity?

2 A I'm employed by Core Communications, Inc. I'm
3 the president.

4 Q Could you please give us a brief description of
5 what Core does?

6 A Core is a certified public -- certified CLEC,
7 competitive local exchange carrier.

8 JUDGE COLWELL: I have to ask you to
9 slow down.

10 THE WITNESS: Okay. It's a certified
11 CLEC. It's a competitive local exchange carrier.
12 We're certified in Maryland and Pennsylvania.

13 BY MR. GRUIN:

14 Q And the acronym you used, CLEC, what does that
15 stand for?

16 A Competitive local exchange carrier.

17 Q That's C-L-E-C, correct?

18 A Correct.

19 Q And you'll be using that term throughout your
20 testimony, I presume?

21 A Correct.

22 Q Okay. You mentioned you were licensed in
23 Pennsylvania and Maryland. Please describe your
24 Pennsylvania operation briefly.

25 A Core is the only CLEC licensed in every rural

1 territory as well as Verizon and - - -

2 Q You have to speak up.

3 A I'm sorry. Core is licensed in every rural
4 territory as well as Verizon, Verizon North, Century.

5 Q In Pennsylvania, how many LATAs does Core operate
6 from?

7 A Core operates in all six Pennsylvania LATAs.

8 Q How many employees does Core have in
9 Pennsylvania?

10 A Core has four employees in Pennsylvania.

11 Q How many employees does Core have in total?

12 A Core has 12 total employees.

13 Q Could you please summarize, describe the
14 facilities that Core maintains in Pennsylvania?

15 A Core is a facilities based CLEC. It maintains
16 physical locations where we have our switching
17 equipment and in some cases customer location.

18 Q Could you give us a list of where those
19 facilities are located?

20 A Our -- we have facilities in -- we have two
21 facilities in Philadelphia; Harrisburg; Wilkes-Barre;
22 Dallas, Pennsylvania; Altoona; Pittsburgh; and Erie.

23 Q Okay. Thank you. Can you briefly summarize your
24 job responsibilities as president of Core?

25 A In a small business, I oversee -- I oversee most

1 of the operations directly, some indirectly. But I
2 run the billing systems and the operations primarily.

3 Q Are you responsible for network operations?

4 A Yes.

5 Q Do you participate in the preparation of
6 regulatory reports and the financial information
7 submitted to the Commission?

8 A Yes, I do.

9 Q Are you familiar with Core's finances, assets,
10 liabilities, et cetera?

11 A Yes. Very well.

12 Q Do you participate actively in Core's accounts
13 payable and accounts receivable process?

14 A Yes.

15 Q Can you tell us your educational background?

16 A I have a B.A. in economics from the University of
17 Maryland. Before that I had done some work with a
18 number of folks involving some computer programming
19 exercises.

20 Q Did you get a master -- I'm sorry, a Bachelor's?

21 A Bachelor's in economics.

22 Q Okay. Thank you.

23 MR. GRUIN: Your Honor, let the record
24 reflect I'm passing out a document that's been marked
25 Core Exhibit 1. There is both a confidential and a

1 public version of the document. This document is the
2 affidavit of Bret Mingo. It's the same affidavit that
3 was attached to Core's pleadings in this matter, with
4 one small exception, which Mr. Mingo will talk about
5 on the record. The affidavit also contains the Tabs A
6 through J, two of which are confidential. That's G
7 and H are confidential. I'm prepared to submit this
8 affidavit as an exhibit and I will walk Mr. Mingo
9 through all of the attachments to the affidavit to
10 authenticate the document.

11 JUDGE COLWELL: Okay.

12 (Whereupon, the document was marked
13 as Core Exhibit No. 1 for
14 identification.)

15 BY MR. GRUIN:

16 Q Now, Bret, do you have in front of you the
17 affidavit of Bret Mingo?

18 A Yes, I do.

19 Q And did you execute this affidavit on July 22nd,
20 2011?

21 A Yes.

22 Q Did you subsequently make a correction to the
23 affidavit?

24 A Yes, I did.

25 Q Could you point out what that correction is?

1 A We had a typo in a date. And we had on -- in
2 question -- or in Paragraph 33, we had put January 1,
3 2001, and it was January 1, 2011, what we meant to
4 put.

5 Q In the version you're looking at there, have you
6 stricken out the 2001 and replaced it with a 2011?

7 A Yes. And I initialed as well.

8 Q Did you inform the Commission of the
9 typographical error and the correction?

10 A If I haven't, I'm doing it now.

11 Q Okay. Are the statements made in this affidavit
12 still true and correct to the best of your knowledge,
13 information and belief?

14 A Yes.

15 Q And do you adopt all the statements that you made
16 in this affidavit under oath here today?

17 A Yes.

18 Q Okay. Now, set this aside for just a moment. I
19 want you to describe your history of dealings with
20 Verizon, just to get the background here. When did
21 Core first become interconnected with Verizon in
22 Pennsylvania?

23 A Core became interconnected with Verizon
24 Pennsylvania in late March of 2001. In fact, I
25 believe it was the last week of March of 2001. And I

1 know that very specifically because the ISP remand
2 order came out on April 27th, 2001, and used as the
3 baseline the first quarter of 2001. And we had barely
4 been interconnected.

5 Q So you're talking about the physical
6 interconnection?

7 A Yes.

8 Q Was the interconnection agreement with Verizon
9 signed before that interconnection took place?

10 A Yes. Verizon doesn't begin to start
11 interconnection until they have an interconnection
12 agreement. And so it was signed the year before.

13 Q Now, was there a separate interconnection
14 agreement for Verizon North?

15 A Yes. We signed with Verizon North in 2005.

16 Q Did you negotiate these agreements from scratch
17 or how did that process transpire?

18 A We availed ourselves of the ability to opt into
19 other agreements from other competitors.

20 Q You said opt in?

21 A Yes.

22 Q You said you began physical interconnection in
23 2001, I believe. When did you begin exchanging actual
24 telecommunications traffic with Verizon?

25 A We had a few minutes in -- in March of 2001. I

1 believe it was the 28th or 29th, somewhere right
2 around there.

3 Q Okay. Was there any -- was there a period of
4 time after that where you stopped delivering -- or
5 exchanging telecommunications traffic with Verizon?

6 A We've been continuously operating since then.

7 Q Okay. Once you began exchanging telecom traffic
8 with Verizon, did Core issue invoices to Verizon for
9 intercarrier compensation?

10 A Absolutely. As I recall we did not issue an
11 invoice for March of 2001 because the number of
12 minutes was immaterial. But we did issue one for
13 April and for May, June and continuously since then.
14 The ISP remand order came effective in early June
15 2001, which changed the nature of the compensation
16 mechanisms.

17 Q Did you say ISP what order?

18 A ISP remand order. The FCC decided to preempt
19 certain kinds of local calls from states -- restrict
20 state jurisdiction and applied a scheme that leaves us
21 with the rate of .0007 now.

22 Q We'll get to that in a moment. So because of
23 this ISP remand order, you did not collect any
24 intercarrier compensation from Verizon until
25 approximately when?

1 A We actually did collect from -- in April and May
2 of 2001.

3 Q Okay.

4 MR. RUGGIERO: Your Honor, I object on
5 relevance. I'm not sure where we're going here. If
6 we're going someplace, that's okay, we can be patient.
7 But this doesn't seem to have anything to do with this
8 petition.

9 MR. GRUIN: We're just continuing the
10 background conditions on the stream of payment of
11 Verizon which happened continuously from 2005 or 2006
12 up until July 1 of this year.

13 JUDGE COLWELL: Can you stipulate to
14 that?

15 MR. RUGGIERO: We'll stipulate to that.

16 MR. GRUIN: Okay.

17 JUDGE COLWELL: There you go.

18 MR. GRUIN: Thank you, Your Honor.

19 BY MR. GRUIN:

20 Q So now we've established that Core has issued
21 invoices to Verizon for intercarrier compensation
22 continuously since the end of the ISP remand order's
23 prohibition on doing that. How does Core create these
24 invoices to Verizon? Tell us briefly about that
25 process, how you generate these invoices.

1 A We look at our switch records, we look at the
2 call -- the calls from the Verizon local switches and
3 we count the minutes and send them a bill.

4 Q Okay.

5 A Because the ISP remand order has some complex
6 mechanisms, the way we do it is we send them a bill at
7 our contracted rate. So that way Verizon -- when
8 Verizon generates our outbound minutes -- we bill them
9 for minutes from -- from Verizon to us. They should
10 be billing us for minutes from us to them. In October
11 2004, the ISP remand order with the growth cap and new
12 market bars -- there was two parts of the complex
13 mechanism in the ISP remand order. And the way we
14 agreed in 2004 with Verizon was we would continue to
15 invoice them at the contracted rate, which in Verizon
16 North -- sorry, Verizon is .002814. And what Verizon
17 would do is calculate our outbound minutes and pay
18 under the three-to-one ratio, which is another
19 mechanism of the ISP remand order. They would pay the
20 contracted rate. And we've been doing that ever
21 since.

22 Q Okay. So these invoices are generated. The type
23 of invoices that are issued in this -- that are at
24 issue in this case, is this for local traffic, is this
25 for long distance, a mix of both? Please explain what

1 kind of traffic is at issue with those invoices.

2 A Well, we exclude the traffic that comes from
3 Verizon's access tandems and we only include from
4 Verizon's local switches.

5 Q Okay. So again, this is all traffic coming from
6 Verizon's network to your network?

7 A Correct.

8 Q Okay. Do you personally oversee this billing
9 process with Verizon?

10 A Yes.

11 Q Okay. The procedure you just talked about where
12 you calculate your minutes, you calculate your
13 outbound minutes and Verizon does a credit under the
14 three-to-one ratio rule, when was that implemented?

15 A In October 2004.

16 Q Okay. What is the net result of that process?
17 What I mean by that is what amount are you receiving
18 for the traffic that Verizon sends to your network?

19 A For many, many, many years the amount of outbound
20 minutes was de minimis. Not -- trivial. So
21 essentially what happened was that we would receive at
22 the rate of .0007 and receive essentially, you know,
23 miniscule amounts at the contract rate of .002814 for
24 Verizon or .0079 something for Verizon North. So we
25 became dependent on understanding we'd be collecting

1 as a practical matter .0007.

2 Q Is .0007 a low rate for termination of telecom
3 traffic?

4 A .0007 is a rate that even the FCC acknowledges is
5 not based on cost. The Pennsylvania Commission has
6 called it confiscatory; a rate so low as to be -- as
7 to not compensate our network.

8 MR. RUGGIERO: Objection, Your Honor.
9 This case is certainly not about the ISP remand order
10 and revisiting the FCC's rules.

11 MR. GRUIN: I didn't say it was. I'm
12 just trying to explain what the factual basis is for
13 the right to relief.

14 MR. RUGGIERO: I mean, the rate is the
15 rate. I would move to strike that testimony. He
16 doesn't have any basis to say that.

17 MR. GRUIN: I see no basis for it to be
18 stricken. He's talking about what rate Core receives
19 for the traffic that Verizon tends -- it's one of the
20 key elements in the case.

21 MR. RUGGIERO: You asked him if it was a
22 low rate.

23 MR. GRUIN: He's just putting it in
24 context. I mean, he can characterize it in relation
25 to other rates for termination of service. It goes to

1 the hardship they suffer, it goes to why the relief
2 they need.

3 MR. RUGGIERO: No, because the issue
4 isn't what rate you're getting paid at. If the issue
5 was we should be getting paid at a higher rate, then
6 that would be an issue. I don't want to make more of
7 it than it is. I just don't think it has anything to
8 do with this petition.

9 JUDGE COLWELL: I think you make a good
10 point, Mr. Ruggiero.

11 Mr. Gruin, I would tread lightly.

12 MR. GRUIN: Thank you, Your Honor.

13 BY MR. GRUIN:

14 Q Has Core come to rely on Verizon's payment of
15 intercarrier compensation at the rate of .0007?

16 A Yes. The vast majority of our business is still
17 dial-up Internet traffic. The nature of an ISP is
18 they receive a whole bunch of phone calls. That's
19 what they do. .0007 is a rate that the FCC has
20 applied that, you know, is reduced from the state set
21 rate of .002814 compensation .0007. It still matters
22 to us because in -- for our numbers in June we still
23 had north of 140 million network-wide minutes. I
24 believe it was 102 million minutes to dial-up ISPs in
25 -- to -- 102 million minutes between Verizon and

1 Verizon North. And so if you -- the vast majority of
2 our network is built to support this. This is an
3 essential piece of our cash flow.

4 Q Okay. Why is this cash flow important to you?

5 A I think that comes to the heart of the matter.
6 The question -- you know, if you think about it
7 abstractly, the question is how many months -- how
8 many months is the appropriate amount to provide free
9 service to the 90 percent market share company.
10 Essentially -- essentially - - -

11 MR. RUGGIERO: Move to strike, Your
12 Honor. We have no basis for that.

13 MR. GRUIN: Yeah, I withdraw the
14 question.

15 BY MR. GRUIN:

16 Q I was looking for you to talk about the costs
17 that you have to sustain with these -- this cash flow.

18 A I mean, you know, we have -- we have a total of
19 eight facilities in Pennsylvania at -- in six LATAs.
20 We have payroll, we have rent, we have circuits,
21 costs, some of which are to Verizon, some of which are
22 to other carriers. We try -- but we have real costs.
23 And we have real cash flow. And obviously revenue
24 pays -- is what pays for that. So when you have a 90
25 percent market share competitor say we're not going to

1 pay you anything, that is all -- all that becomes
2 threatening very quickly.

3 Q Let's get into that. Let's bring it up to the
4 current dispute. So I believe you testified before
5 that for several years Verizon has consistently paid
6 Core's intercarrier compensation invoices, correct?

7 A Correct.

8 Q And I think you said that they paid for nearly
9 all the minutes at the rate of .0007?

10 A That's correct.

11 Q Which is decimal point 0007?

12 A Seven one-hundredths of a percent, to be precise.

13 Q Okay. And a small portion of the minutes they
14 paid at the higher ICA rate; is that correct?

15 A That's correct.

16 Q Okay. But again, the overwhelming majority of
17 the minutes was paid at the .0007 rate?

18 A That is correct.

19 Q What happened on July 1st of this year to change
20 that?

21 A The way it always happened was we would get the
22 dispute letters from Verizon in the last couple --
23 last ten days or so of the month. So for -- you know,
24 on June 1 we issued invoices for the May bills. On --
25 they become due 30 days later. Sometime in the latter

1 part of June we would receive -- normally receive a
2 dispute letter saying we're not going to pay you the
3 .002814 rate, we're going to pay you the .0007 rate.
4 And at that point we would -- you know, we know
5 approximately what that rate should be, and we know
6 that we're going to get it wired in about -- sometime
7 the 28th, 29th, 30th of the month. Only a couple
8 times since 2004 was it later than that. One time it
9 was because Ken Roos was on vacation and it came on
10 the 2nd or 3rd. We know that we -- we know that this
11 is essential -- this money is something we can rely
12 on. It is, after all, a special rate, a special
13 discounted rate.

14 Q Okay. Could you turn to Tab A to your affidavit.
15 Do you have that in front of you?

16 A Yes.

17 Q Could you identify and describe the documents at
18 Tab A?

19 A Yes. These are the invoices we generated for the
20 May usage.

21 Q Okay. Why are they two separate invoices?

22 A One is for Verizon and one is for Verizon North.

23 Q Did you review these documents before they were
24 issued to Verizon?

25 A Yes.

1 Q And are these documents maintained as part of
2 Core's business records?

3 A Yes.

4 Q Is the format of these invoices consistent with
5 Core's standard invoices to Verizon?

6 A Yes.

7 Q Okay. Could you just briefly explain the columns
8 and what information is reflected in each column of
9 that invoice?

10 A Yes. The first column is quantity, the number of
11 minutes. The second column is for the location, a
12 description explaining the period and the location.
13 And the third column is the rate, which is what's in
14 our contracts. And then tabulating -- the amount of
15 the fourth column tabulating the quantity times the
16 rate equals the amount.

17 Q And this quantity of minutes, does this reflect
18 just calls coming from Verizon to Core?

19 A Yes.

20 Q Okay. And after issuing this invoice, what kind
21 of payment did Core legitimately expect to receive?
22 You don't have to be precise, but just give us a
23 summary of what you expected to receive.

24 A What we expected to receive from the process that
25 we were working for seven years or just about seven

1 years was they would take this and take the quantity
2 and multiply it times .0007 after they do -- after
3 they calculate the number of outbound minutes, and
4 they would apply those minutes. Then it would filter
5 back, you know, apply that three-to-one ratio. The
6 three-to-one ratio is -- you know, so largely we
7 expect the minimum to be the quantity times .0007.
8 That would be the minimum of what we would see.

9 Q Thank you. Okay. Please turn to Tab B of your
10 affidavit. What are the documents there at Tab B?
11 Could you please identify and describe those for us?

12 A These are the dispute letters we received at
13 miscellaneous times for the May invoices.

14 Q Okay. And are there separate letters for Verizon
15 and Verizon North?

16 A Yes.

17 Q And were these mailed to your attention?

18 A Some were, some were mailed to Chris Van de
19 Verg's attention.

20 Q What did you do upon receiving these letters?

21 A We sent Verizon letters back, trying to
22 understand what the basis for the fact that this is no
23 longer compensable traffic.

24 Q Okay. Did these letters worry you?

25 A Yes.

1 Q Why?

2 A Well, for starters, there's a cash impact. We no
3 longer -- we now had to find the money to pay our
4 bills to pay this period. So we had an immediate cash
5 flow problem. The second thing is, suddenly after a
6 well-litigated ISP remand order and implementation of
7 it, which favors Verizon in the first place, they
8 suddenly now say, As a threshold matter, review of the
9 facts available to Verizon indicates that the traffic
10 billed by Core to Verizon at reciprocal compensation
11 rates is not in fact compensable to Core as reciprocal
12 compensation traffic. As such, the entire amount of
13 reciprocal compensation billed by Core for such
14 traffic is invalid.

15 Q Had Verizon ever before claimed that an entire
16 Core invoice was invalid for this kind of local
17 exchange traffic?

18 A Never.

19 Q Okay. So this July 1st letter was the very first
20 time ever?

21 A That's correct.

22 Q Okay. Please turn now to Tab C. Do you have
23 that in front of you?

24 A Yes.

25 Q Okay. Please identify and describe the documents

1 there at Tab C.

2 A These are the letters we sent back to Verizon in
3 response to the letters they sent us.

4 Q Did you review these letters personally before
5 they were issued?

6 A Yes.

7 Q Did you approve the contents of those letters?

8 A Yes.

9 Q Do you maintain these letters in a file related
10 to the Verizon accounts at Core Communication?

11 A Yes.

12 Q Okay. Could you briefly summarize what the July
13 8th letter says?

14 A Well, basically what we do is we reject the
15 dispute. How suddenly does traffic become not
16 compensable? They went from an already low rate of
17 .0007 and, editorializing aside, it is still a rate,
18 it is still a substantial amount of money, to a rate
19 of zero. They have now engaged in self-help.

20 MR. RUGGIERO: Objection, Your Honor.
21 There is no foundation for Mr. Mingo to accuse Verizon
22 of self-help.

23 MR. GRUIN: If I could have a follow-up,
24 I could have him explain what he means by self-help.

25 JUDGE COLWELL: Go ahead.

1 BY MR. GRUIN:

2 Q When you said self-help, what did you mean by
3 that phrase?

4 A Verizon is now -- it's fairly -- Verizon has a
5 history with us of breaching interconnection
6 agreements.

7 MR. RUGGIERO: Objection, Your Honor.

8 JUDGE COLWELL: Sustained.

9 BY MR. GRUIN:

10 Q Yeah, I didn't ask you about that. What did you
11 mean by self-help?

12 A What I mean by self-help is they're now taking
13 action, putting themselves as sole arbiter of all
14 disputes, and are putting -- just coming up with a
15 vague dispute in order to put pressure on us to some
16 term we don't know yet.

17 MR. RUGGIERO: Objection, Your Honor.
18 He's a fact witness.

19 JUDGE COLWELL: He's a fact witness.

20 MR. GRUIN: And he's talking about the -

21 - -

22 MR. RUGGIERO: That's not a fact.

23 MR. GRUIN: He's talking about his
24 impression, his interpretation of the Verizon letter
25 and what they were doing and why Core responded as

1 they did.

2 MR. RUGGIERO: He's asserting that
3 Verizon is doing things and he has no basis for that
4 assertion. He has no basis for that assertion. He's
5 just saying his opinion.

6 MR. GRUIN: He's expressing how he
7 interpreted Verizon's dispute letters and why Core
8 reacted as they did.

9 JUDGE COLWELL: Okay. With all due
10 respect, the letters speak for themselves.

11 MR. GRUIN: Okay. Thank you, Your
12 Honor.

13 BY MR. GRUIN:

14 Q Did you believe that Verizon had a valid basis to
15 dispute your May invoices?

16 A No.

17 Q Why not?

18 A For starters, we've been doing the same
19 methodology that was discussed with them on a couple
20 occasions, the first time being all the way back in
21 2000 when we sent our first invoice, the second one
22 being in October of 2004 when the ISP remand order was
23 no longer -- no longer -- the growth cap and new
24 market bars of the ISP remand order were no longer
25 valid. So it's been a system that's been in place for

1 -- in part for ten years. The methodology of how we
2 count, how we -- was first discussed all the way back
3 in spring of 2000. How we rate was discussed -- was
4 changed in 2004. So suddenly now, and -- suddenly
5 now, despite a contract, these minutes became
6 non-compensable.

7 Q Did you understand exactly why Verizon was
8 disputing it from reading their letters?

9 A No.

10 Q Did you ask them to clarify why they were not
11 paying your invoices?

12 A We -- we asked them -- we asked them for -- for
13 what is the basis of why these minutes are not
14 compensable. We asked them what - - -

15 MR. RUGGIERO: Objection, Your Honor.
16 Hearsay.

17 JUDGE COLWELL: I don't see how it's
18 hearsay.

19 MR. RUGGIERO: He didn't ask us.

20 JUDGE COLWELL: He just said he did.

21 MR. GRUIN: He's stating a fact.

22 JUDGE COLWELL: He can say what he said.
23 He can't say what you said.

24 MR. RUGGIERO: Fair enough.

25 JUDGE COLWELL: Okay. Go ahead.

1 BY MR. GRUIN:

2 Q How did you effectuate these requests for further
3 information?

4 A We had -- we had -- with these letters, and we
5 had a conversation, we had -- and I guess Chris had a
6 conversation with -- with one of their attorneys.

7 Q Okay.

8 MR. RUGGIERO: Objection, Your Honor.

9 MR. GRUIN: He didn't speak to the
10 content of the conversation. He just indicated that a
11 conversation happened.

12 MR. RUGGIERO: His testimony was that he
13 spoke with Verizon to ask us what happened. But he
14 didn't speak with Verizon to ask us what happened, so
15 the truth of the matter asserted is that they spoke
16 with Verizon. But he's not competent to testify to
17 that.

18 MR. GRUIN: The fact that he spoke to
19 Verizon is just an incident that happened, it's an
20 event. If he would - - -

21 JUDGE COLWELL: Verizon is a
22 corporation. If you spoke with a person, tell me who
23 it was.

24 THE WITNESS: Well, we had sent letters
25 to -- to William Carnell and cc'd a bunch of people,

1 including Ken Roos. I don't believe Joe was on the
2 list.

3 JUDGE COLWELL: So when you say spoke
4 with, you meant wrote letters to?

5 THE WITNESS: Correct.

6 JUDGE COLWELL: Okay.

7 BY MR. GRUIN:

8 Q Did you also have a verbal conversation or did
9 one of Core's representatives have a verbal
10 conversation with a Verizon representative?

11 A Yes.

12 Q Okay.

13 MR. RUGGIERO: Objection, Your Honor.
14 To the extent it's not Mr. Mingo having that
15 conversation, I just don't -- I don't want to slow
16 down the proceeding but he can't talk about things
17 that he didn't do.

18 JUDGE COLWELL: That's true.

19 MR. GRUIN: We have no intention to talk
20 about the details of the conversation, but an
21 individual can be aware that another individual had a
22 phone conversation with a third individual. And
23 that's all he testified to right there.

24 JUDGE COLWELL: How did he become aware
25 of that? Did he hear it or did somebody tell him?

1 That's important.

2 BY MR. GRUIN:

3 Q How do you know that Chris Van de Verg had a
4 conversation with a Verizon representative about these
5 disputed invoices?

6 A Because I had a conversation with Chris where - -
7 -

8 JUDGE COLWELL: Okay. Then it is
9 sustained.

10 MR. GRUIN: Okay. Thank you. We have
11 Chris here. That's fine. That's fine.

12 BY MR. GRUIN:

13 Q Please turn to Tab D to your affidavit. Do you
14 have it?

15 A Yes, I do.

16 Q Could you please identify and describe the
17 document at Tab D?

18 A Yes. This is William Carnell's response to our
19 letters.

20 Q Okay. And did Core maintain this as part of
21 their business records, in the files associated with
22 the Verizon issues, correct?

23 A Yes.

24 Q Okay. And the letter speaks for itself. After
25 receiving this letter -- did you read this letter

1 after it was received by Core?

2 A Yes.

3 Q After reading this letter did you have any better
4 understanding of why Verizon was disputing your bills?

5 A No.

6 Q Did this letter cite any portions of the
7 interconnection agreement?

8 A No.

9 Q Did it cite to any federal or state law to
10 justify their position?

11 A No.

12 Q Okay. If you turn to Tab E. Do you have the
13 documents behind E in front of you?

14 A Yes, I do.

15 Q Could you identify and describe these documents
16 for us?

17 A These are a new round of dispute letters from
18 Charles Bando that were forwarded by Ken Roos to us.

19 Q What was the date of those letters?

20 A July 18th.

21 Q And why are there two letters?

22 A I'm sorry, what was that?

23 Q Why are there two separate letters?

24 A One is for Verizon North. One is for Verizon.

25 Q And did you read this letter upon receipt?

1 A Yes.

2 Q After reading this letter, did you have any
3 better understanding of why Verizon was disputing your
4 May invoices?

5 A No. They still are saying that this traffic is
6 not compensable as reciprocal compensation traffic.

7 Q Since the receipt of that letter on July 18th,
8 have you gotten any further clarification or
9 understanding of why Verizon has not paid your May
10 invoices?

11 A No.

12 Q Okay. Could you turn to Tab F. Do you have it
13 in front of you?

14 A Yes, I do.

15 Q What are the two documents there at Tab F?

16 A These are usage bills for June of 2011.

17 Q Issued to?

18 A Verizon. One is to Verizon and one is Verizon
19 North.

20 Q Are they in the same format as the May invoices
21 that we went over earlier?

22 A Yes.

23 Q The quantity column again, is that simply
24 referring to traffic -- telecommunication minutes sent
25 from Verizon to Core?

1 A Yes.

2 Q Okay. And are these minutes sent over -- I think
3 you said before a certain kind of trunk?

4 A Yes. They're the minutes that come from
5 Verizon's local facilities.

6 Q As opposed to what kind of other facilities?

7 A The access facilities.

8 Q Okay. Has Verizon made payment on the -- these
9 June invoices that are at Tab F?

10 A No.

11 Q When is payment due on those invoices?

12 A Payment is due, I believe, Monday.

13 Q Okay. Did you ever see -- did you review these
14 invoices before they were issued?

15 A Yes.

16 Q And these documents are maintained as part of
17 Core's business records?

18 A Yes.

19 Q Do you expect to issue another round of invoices
20 in the near future to Verizon?

21 A Yes. We'll be issuing some on Monday.

22 Q What time period will be covered by those
23 invoices?

24 A It will be the July time period.

25 Q Thank you, Bret. I'm going to skip forward a

1 little bit in your affidavit in order to condense all
2 the confidential information at the end of the direct
3 examination. Could you turn to Tab I, please.

4 A Yes.

5 Q Can you identify and describe the document there
6 at Tab I?

7 A These are the Pennsylvania employees, the
8 description of our Pennsylvania employees' jobs and
9 salary levels.

10 Q Was this document prepared by you or under your
11 direct supervision?

12 A Yes.

13 Q Okay. In addition to these employees, are there
14 other Core employees that contribute to its
15 Pennsylvania operations?

16 A Yes. We have Chris and myself, our accountant
17 and a billing -- a billing person, all in Maryland, as
18 well as several tech folks who live in Maryland.

19 Q Okay. Do those Maryland tech folks also do work
20 on your Pennsylvania portion of your network?

21 A Yes.

22 Q Could you turn to Tab J in your affidavit?

23 A I'm at Tab J.

24 Q Okay. What is this document?

25 A This is a list of our Pennsylvania points of

1 presence and addresses where we maintain facilities,
2 were we have space power -- where we have space power
3 and where we have installed equipment. And over the
4 years millions of dollars in investment in
5 telecommunications equipment.

6 Q Was this document prepared by you or under your
7 direct supervision?

8 A Yes.

9 Q I'd like you now to go back to Tab G, please.

10 MR. GRUIN: And we will be going on the
11 confidential record at this point.

12 (Whereupon, the following pages 38
13 through 45 were sealed and bound separately.)
14
15
16
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25

1 BY MR. RUGGIERO:

2 Q Now, do those -- do Core's employees also do work
3 for Core in New York and Virginia?

4 A Yes. There is -- they do some network facilities
5 at all the Core affiliates.

6 Q Okay. And are there other Core companies besides
7 New York and Virginia and Maryland and Pennsylvania?

8 A The only -- the operational Core affiliates are
9 -- that are not Core Communications, Inc., are Cortel
10 New York, Coretel Virginia, Coretel Delaware and
11 Cortel West Virginia.

12 Q I see. And this -- and this won't be
13 confidential. But the profit and loss statement that
14 is confidential, Tab H, that doesn't include New York
15 or Virginia?

16 A No, it does not.

17 Q Or West Virginia?

18 A No.

19 Q Or Delaware?

20 A No.

21 Q But it does include Maryland?

22 A Yes.

23 Q Okay. Now, you testified that there are two
24 interconnection agreements in Pennsylvania?

25 A Correct.

1 Q And you're familiar with those, according to your
2 affidavit?

3 A Yes.

4 MR. RUGGIERO: Your Honor, I'd like to
5 introduce Verizon Cross Exhibit Number 1.

6 JUDGE COLWELL: Okay.

7 (Whereupon, the document was marked
8 as Verizon Cross Exhibit No. 1 for
9 identification.)

10 MR. RUGGIERO: Your Honor, I'll read
11 this for the record, and if Core counsel has any
12 objections they can let me know. The ICAs in these
13 proceedings are several hundred pages long. What we
14 have -- they're filed with the Commission. We have
15 copies if anybody wants the entire copy. What we have
16 done is taken excerpts from the ICA and entered them
17 as an exhibit. But if -- again, if we want to file
18 the entire thing, we can file the entire thing.

19 MR. GRUIN: I have no objection. In
20 fact, we have some exhibits that we prepared the same
21 way for Mr. Van de Verg. So I think that's the
22 appropriate way to proceed.

23 JUDGE COLWELL: Okay.

24 BY MR. RUGGIERO:

25 Q In your testimony, Mr. Mingo, today, and in your

1 affidavit you say that in -- well, in your affidavit
2 you say 2003. In your testimony you say 2004. You
3 and Verizon agreed upon a specific billing procedure
4 to implement the ISP remand order's three-to-one ratio
5 rule. That's at Paragraph 11 of your affidavit. Do
6 you remember testifying about that?

7 A Yes.

8 Q Now, before we get into the specifics of the ICA,
9 is that agreement that you're describing there
10 recorded anywhere? Is there an amendment to this
11 agreement?

12 A The 2004 was a conversation about how to
13 implement -- how to implement the growth cap and new
14 market bar. And it was a conversation - - -

15 Q It was a conversation that you had?

16 A We had with -- and I'm not sure exactly the
17 person anymore. But it was the billing department in
18 Massachusetts.

19 Q But when you say we, do you mean you?

20 A Yes.

21 Q And you don't remember who you had that
22 conversation with?

23 A It was seven years ago. No.

24 Q Could you turn, Mr. Mingo, in this Cross Exhibit

25 1 -- and let me state for the record that these are

1 excerpts of the MCIMetro/Bell Atlantic Interconnection
2 Agreement 1997.

3 And, Mr. Mingo, you agree that this is
4 the agreement that Core chose to execute with Verizon
5 for Pennsylvania?

6 A Yes.

7 Q This is the agreement, I think you said in your
8 affidavit, that governs the relationship between the
9 parties?

10 A Yes.

11 Q And could you turn to Part A, Page 33 of the
12 cross exhibit that I gave you, Section 36?

13 A I don't have a copy of that. Mine stops at 26.

14 MR. GRUIN: Actually if you go back two
15 pages, I believe 33 is in front of 26.

16 BY MR. RUGGIERO:

17 Q Oh, I'm sorry, the attachment's taken out of
18 order. The third page from the end.

19 A Section 36.

20 Q Do you see Section 36 there entitled Amendments
21 and Modifications?

22 A Yes.

23 Q And that provision provides that no provision of
24 this agreement shall be deemed waived, amended or
25 modified by either party unless such a waiver,

1 amendment or modification is in writing, dated and
2 signed by both parties; is that correct?

3 A Correct.

4 Q So when you say agreement, you don't mean
5 agreement when you're talking about a procedure for
6 billing?

7 A By any normal definition of agreement I would say
8 since you told us how to do it and we accepted it, I
9 would say that was an agreement.

10 Q And when you say you, who was it again?

11 A I was -- I was on that phone call, yes.

12 Q Who was on the phone for Verizon?

13 A I don't remember the person. I might have some
14 notes in my files, but I don't remember the person.

15 Q And do you remember whether it was 2003 or 2004?

16 A It was 2004.

17 Q Okay. But in your affidavit you say 2003.

18 A The growth cap and new market bar ended October
19 2004, so I must have a typo in the affidavit.

20 JUDGE COLWELL: I don't know what you're
21 saying.

22 THE WITNESS: I said the order and
23 remand and the growth cap and new market bar ended
24 October - - -

25 JUDGE COLWELL: Okay. That one phrase,

1 I'm not getting anything. You're talking too fast.

2 THE WITNESS: The ISP order and remand.

3 JUDGE COLWELL: The next part.

4 THE WITNESS: The growth cap and new
5 market bar.

6 JUDGE COLWELL: That part.

7 THE WITNESS: And new market bar.

8 JUDGE COLWELL: Okay. Thank you.

9 BY MR. RUGGIERO:

10 Q So you're sure it was in 2003, 2004?

11 A I'm sure it's 2004.

12 Q But you don't have any recollection of who it was
13 you spoke to?

14 A That's correct.

15 Q You didn't bother writing it down?

16 A I -- like I said, I might have an e-mail with
17 notes about the call, who it was with. But no, I
18 don't -- I haven't met the Verizon billing folks in
19 person for this issue. So I don't -- it's hard,
20 sometimes I forget names.

21 Q Did you ever bother writing down the terms of the
22 agreement?

23 A We took notes about it, yes.

24 Q Do you have those notes?

25 A Not with me.

1 Q Do you have them someplace else?

2 A I suspect we do, yeah. I suspect we can get
3 them.

4 Q Let's turn to Part B-11 of the agreement. Do you
5 see the definition of local traffic there?

6 A I'm trying to find Part B-11.

7 Q It's the -- I apologize. It's Page 3 of the
8 attachment. The third page of the attachment.

9 A Okay.

10 Q Do you see the definition of local traffic?

11 A Yes.

12 Q Are you -- do you recall that definition of local
13 traffic from your familiarity with this agreement?

14 A Yes, I do.

15 Q All right. And if you could turn one page
16 backwards to the second page of the attachment, it's
17 Part B-14. Do you see the definition of reciprocal
18 compensation?

19 A Yes.

20 Q And you know what the word reciprocal
21 compensation means?

22 A Yes.

23 Q As it's defined here?

24 A Yes.

25 Q And you understand what the definition of local

1 traffic is?

2 A Yes.

3 Q Mr. Mingo, did you or any of your representatives
4 discuss this dispute with anyone at the Commission
5 before this emergency petition was filed?

6 MR. GRUIN: Objection, Your Honor.
7 Calls for hearsay.

8 JUDGE COLWELL: It does not. He asked
9 if he talked to someone. He can tell me if he talked
10 to someone.

11 MR. GRUIN: Okay. Withdrawn.

12 THE WITNESS: Yes. We did discuss it
13 with some folks at the Commission, yes.

14 BY MR. RUGGIERO:

15 Q Who did you discuss it with?

16 A We met with the advisors to all five of the
17 Commissioners.

18 Q What are their names?

19 A Alphonse, Lois, Labros, Rick, and Matt.

20 Q Did you meet with them personally?

21 A Yes.

22 Q And who else met with them?

23 A Chris met with them, and another Pennsylvania
24 counsel for us.

25 Q What's that counsel's name?

1 A Rick Hicks.

2 Q Sir, was that Rick Hicks?

3 A Yes.

4 Q And what was the nature of those conversations?

5 A The nature was -- described the industry-wide
6 self-help pandemic and how it's -- the battle for
7 competition is right now. The fact is, is that
8 Verizon is the single biggest player in the self-help
9 pandemic. Not a single minute from Verizon Wireless,
10 Verizon IXC and now Verizon BOC, that Verizon Wireless
11 has an excuse for not paying us because they don't
12 have an agreement, but Verizon BOC is not paying us
13 despite an agreement.

14 Q Did you say this to the advisors to the
15 Commissioners?

16 A Yes. I made -- I said that -- that I made an --
17 made an appeal of the public policies rules of this
18 Commission are being thwarted by Verizon's actions.

19 Q And that included the fact that Verizon was
20 disputing your reciprocal compensation payments for
21 June and May?

22 A Yes. We showed them that famous sentence.

23 Q The famous sentence?

24 A The non-compensable. Suddenly described it as
25 non-compensable.

1 Q I see. You showed them the letter from Verizon,
2 the dispute letter?

3 A Yes, we did.

4 Q And what else did you talk about with those
5 advisors to the Commissioners?

6 A That was it. With those folks.

7 Q That's all you said to them?

8 A That was -- that's the content of the
9 conversation, was about the self-help pandemic and
10 Verizon's the biggest party in that.

11 Q Did you show them anything else besides that
12 letter?

13 A Not that I recall.

14 Q Now, what did they say to you in response?

15 MR. GRUIN: Now this is calling for
16 hearsay, Your Honor.

17 MR. RUGGIERO: Well, no, he heard what
18 they said to him.

19 MR. GRUIN: Yeah, but you're asking to -
20 - -

21 MR. RUGGIERO: I'm not asking him for
22 the truth of what they said. I'm asking him what they
23 said to him.

24 MR. GRUIN: Yeah, but it's being entered
25 for the truth of the matter that's asserted. It's a

1 third -- he's asking for the -- what was said by a
2 third party not present today in the hearing room
3 under cross-examination.

4 MR. RUGGIERO: I'm asking what he heard.

5 MR. GRUIN: Right. But the content of
6 what you heard would be communicated by another party
7 who's not here.

8 MR. RUGGIERO: I'm asking what Mr. Mingo
9 heard from the advisors to the Commissioners.

10 MR. GRUIN: How is that any different
11 than him saying Joe Smith said A, B, C?

12 MR. RUGGIERO: Because I'm not - - -

13 MR. GRUIN: That's hearsay.

14 MR. RUGGIERO: Because I'm not asking
15 whether A, B, C is true.

16 MR. GRUIN: It doesn't matter if you
17 phrase it as what did you hear or what did he say.
18 It's the same effect. It's hearsay. It's classic
19 hearsay.

20 JUDGE COLWELL: The purpose is
21 different. Go ahead.

22 BY MR. RUGGIERO:

23 Q What did the advisors to the Commissioners say to
24 you?

25 A They mostly asked questions actually. For

1 example, one question that stuck out was, So you're
2 billing the same way you always have for the last --
3 you know, over the several years of the relationship,
4 and we said yes.

5 Q Let's look at Paragraph 23 of your affidavit, Mr.
6 Mingo.

7 MR. GRUIN: I'm sorry, what page was
8 that?

9 MR. RUGGIERO: Well, you don't have
10 pages on your affidavit. It's Paragraph 23.

11 THE WITNESS: Which Paragraph?

12 MR. RUGGIERO: Paragraph 23.

13 THE WITNESS: Okay.

14 BY MR. RUGGIERO:

15 Q You say that you were puzzled because Verizon's
16 notices of non-payment also requested preliminary data
17 that will assist the resolution.

18 A Yes.

19 Q And you say you were puzzled because Core had
20 previously offered to exchange certain switch records
21 with Verizon on a reciprocal basis to confirm the
22 amount of traffic being sent in both directions
23 between the parties.

24 A That's correct.

25 Q But it's a little disingenuous, isn't it?

1 A Not at all.

2 MR. RUGGIERO: Your Honor, I would like
3 to enter into the record Verizon Cross Exhibit 3.

4 (Whereupon, the document was marked
5 as Verizon Cross Exhibit No. 3 for
6 identification.)

7 BY MR. RUGGIERO:

8 Q Mr. Mingo, what I'd like you to do is go to the
9 final page of that document and identify the --
10 identify the document for me if you can and tell me
11 what the final page is.

12 A This is an e-mail trail between myself and Ken
13 Roos.

14 Q Do you recognize this e-mail trail?

15 A Yes.

16 Q All right. Can you look at the final page. And
17 that's the beginning of the e-mail string, isn't it?

18 A Yes.

19 Q All right. And it's from Ken Roos, who's an
20 employee of Verizon as far as you know?

21 A Yes.

22 Q And it's to you?

23 A Correct.

24 Q And it asks you for one day of call detail
25 records for the calls you were terminating for and

1 billing to Verizon PA?

2 A That's correct.

3 Q Now, real quickly, so that we have a frame of
4 reference, let's take a look at your bill at Tab A of
5 your affidavit. This was again Core's invoices to
6 Verizon.

7 A Okay.

8 Q And those invoices have -- the first line has
9 20,945,829.97 minutes.

10 A Correct.

11 Q And multiply that by a rate, and you get an
12 amount.

13 A Correct.

14 Q Right? Now, we've agreed that the rates aren't
15 really the rates. Right? You're not claiming that
16 you do .002814?

17 A Some of the minutes we are using that. Yes, we
18 are. But most of them are .0007, that's correct.

19 Q So when Ken Roos asked you for one day of call
20 detail records for the calls you were terminating for,
21 he's talking about the minutes that are on this
22 invoice, correct?

23 A That's what I suspect, yes.

24 Q What he's asking you for is, if you know, he's
25 asking you for the -- I think you testified that you

1 generate switch records at your switch - - -

2 A Correct.

3 Q - - - in order to know what to bill Verizon?

4 A Correct.

5 Q In order to determine whether it's local traffic
6 or ISP bound traffic, traffic you're terminating for
7 Verizon?

8 A Correct.

9 Q And so you have those switch records?

10 A Yes, we do.

11 Q You have those today?

12 A Yes.

13 Q Do you generate them in real time?

14 A Yes.

15 Q Okay. And he asked you for them on June 14th?

16 A Correct.

17 Q Okay. Now, let's turn to the third page of the
18 document, and at the very bottom of the page you'll
19 see another e-mail from Ken Roos to you on Friday,
20 June 24th. Do you see that?

21 A (No response.)

22 Q Have you had a chance to procure the CDRs for PA?
23 Please let me know when we can expect them.

24 A I see that, and I responded I'm not sure what new
25 information I can give you that you don't already

1 have. what are you looking for in this data?

2 Q That's correct. So -- and just to make sure that
3 we have the timeline correct, he asked you for them on
4 June 14th. You didn't respond, did you, in between?

5 A I - - -

6 Q I'm asking for your recollection.

7 A I don't recollect.

8 Q Okay. So then he asked again on Friday, June
9 24th?

10 A I see that on the 24th, yes.

11 Q And then you said you weren't sure what new
12 information that you could give that we don't already
13 have?

14 A Right. That's correct.

15 Q But you're not under the impression we have the
16 switch records you testified to earlier?

17 A I'm sorry, what was that question?

18 Q You generate switch records in order to bill
19 Verizon.

20 A Correct.

21 Q You're not under the impression that we have your
22 switch records?

23 A We are under the impression that you -- since
24 your switch sends us the traffic, you have your own
25 data set.

1 Q So you believe that to be true, but you don't
2 know that?

3 A I can't imagine you guys not having that.

4 Q Okay.

5 A It's not -- just not realistic.

6 Q I just want to make sure that -- I'm not arguing
7 with you. I'm not arguing with you about the truth of
8 it. I want to make sure that you're not claiming in
9 this e-mail from June 25th that you believed we had
10 your call detail records that we were asking for.

11 A (No response.)

12 Q You knew we didn't have your call detail records?

13 A That's right. And I'm wondering why you need
14 them, though. You have your records.

15 Q And then June 27th, Mr. Roos makes sure that you
16 understand -- well, the e-mail speaks for itself.
17 He's asking you for the CDRs again. And when I say
18 CDRs, that's short for call detail records, right?

19 A He says to me -- do you want me to read it?

20 Q Sure.

21 A He says to me the information you provided
22 previously was for your outgoing traffic to Verizon.
23 I am now looking for CDRs for traffic that you are
24 terminating for VZ. And I replied I know, but since
25 Verizon originates all the calls we bill to you, we

1 only have data VZ provides in the call flow. So I'm
2 not sure how any copies of Verizon -- I'm not sure how
3 getting copies of data VZ sends to us would help you.

4 Q So in other words, although the ICA requires you
5 to generate records, - - -

6 A Which we do.

7 Q - - - and you claim that you generate records, -
8 - - -

9 A Correct.

10 Q - - - and Verizon is entitled to see those
11 records under the ICA - - -

12 A I'm not sure whether they're entitled to see
13 them.

14 Q Okay. Let's take a look at that.

15 MR. RUGGIERO: Your Honor, I'd like to
16 introduce Verizon Cross Exhibit 2.

17 JUDGE COLWELL: Okay.

18 (Whereupon, the document was marked
19 as Verizon Cross Exhibit No. 2 for
20 identification.)

21 BY MR. RUGGIERO:

22 Q If you turn to Page 155 - - -

23 MR. RUGGIERO: First of all, Your Honor,
24 I would like to represent that Verizon Cross Exhibit
25 Number 2 are excerpts from the interconnection

1 agreement between Verizon North and Core. It's
2 entitled agreement between Verizon North, Inc., and
3 Sprint Communications Company LP and it was agreed to
4 between Core and Verizon.

5 Any objection to that?

6 THE WITNESS: Verizon North, Inc.

7 MR. RUGGIERO: Yes.

8 MR. GRUIN: I don't object to you
9 marking this exhibit, no.

10 BY MR. RUGGIERO:

11 Q If I could ask you, Mr. Mingo, to turn to Page
12 155 of that agreement. It's the second page from the
13 end.

14 A Okay.

15 Q And do you see Section 2.7 -- 2.7.4?

16 A Yes.

17 Q Okay. And the agreement speaks for itself. And
18 so I don't want to characterize it. Do you have any
19 disagreement with the fact that the provision applies
20 to what we're talking about here?

21 A No.

22 Q Okay. So you would agree that Verizon has the
23 right to audit the traffic?

24 A Verizon North does.

25 Q What's that?

1 A Apparently Verizon North does.

2 Q Verizon North does. And in fact, it says each
3 party agrees to provide the necessary traffic data in
4 conjunction with any such audit in a timely manner.

5 A Apparently Verizon North has that right.

6 Q Okay. Now, -- and I think you're trying to stick
7 with Verizon Pennsylvania. We'll get to Verizon
8 Pennsylvania next.

9 And then if you go down to the final
10 paragraph of Section 2.7.5 on the same page, it says,
11 In addition to those audit rights provided in Section
12 2.7.4 above, Verizon may conduct audits of the traffic
13 billed by Sprint -- and here we should substitute
14 Core, right, because Core adopted this. Is that
15 correct?

16 A Correct.

17 Q - - - as reciprocal compensation traffic to
18 determine whether such traffic is reciprocal
19 compensation traffic and therefore subject to
20 reciprocal compensation. If any such traffic is
21 determined not to be reciprocal compensation traffic,
22 Verizon shall not pay reciprocal compensation for that
23 portion which is determined not to be reciprocal
24 compensation traffic. Are you familiar with that?

25 A I'm -- well, I have to say -- I have to say that

1 I haven't reviewed this section of the Verizon North
2 in some time and I think perhaps in a constructive --
3 in a constructive dispute, perhaps you would cite to
4 this or explain that you're looking for this data
5 rather than simply stonewalling and say it's not
6 compensable.

7 Q I agree. I agree that if -- what the parties
8 should be doing is trying to resolve the dispute. So
9 let's look at another section of the same exhibit.
10 And I believe it is Page 21 of Verizon Cross Exhibit
11 2. The section is titled 17.0, dispute resolution. I
12 believe you cited this in your emergency petition.
13 The section holds that any dispute between the parties
14 shall be addressed by good faith negotiations between
15 the parties in the first instance. Do you see that?

16 A How does saying that our traffic that was
17 compensable for years is suddenly not good faith? You
18 know, that's -- that's the question I'm immediately
19 coming to mind. We don't view your dispute, when you
20 say it's not compensable, as good faith.

21 MR. RUGGIERO: I move to strike that,
22 Your Honor.

23 JUDGE COLWELL: Sustained.

24 Answer the question, please.

25 THE WITNESS: I'm sorry, what was the

1 question?

2 BY MR. RUGGIERO:

3 Q You see the section that says, and I'm quoting,
4 Any dispute between the parties, open paren, close
5 paren, shall be addressed by good faith negotiations
6 between the parties in the first instance?

7 A I see that, yes.

8 Q Okay. And then it says should such negotiations
9 fail to resolve the dispute in a reasonable time,
10 either party may initiate an appropriate action in the
11 regulatory or judicial - - -

12 A If you're asking me to read this and not react to
13 it, yes, that's what it says.

14 Q Now, let's turn back to Tab D of your affidavit,
15 which you claim to have read, and which was a letter
16 from Verizon to Core. Do you see that?

17 A Yes.

18 Q And the letter offers in the spirit of good faith
19 dispute resolution to treat your letters as an
20 invocation of the dispute resolution processes in
21 various ICAs and as a designation of Mr. Van de Verg
22 as Core's representative. Did you undertake any
23 negotiations after that?

24 A You put a gun to our heads when you put
25 non-payment. There is nothing about non-payment that

1 makes good faith negotiations. Calling it after the
2 fact, asking for good faith isn't good faith.

3 Q And that is because it's your position that
4 Verizon isn't allowed to withhold payments that it
5 doesn't believe are valid?

6 A Suddenly all of the -- you're saying none of the
7 traffic is compensable. I'd like to repeat the fact
8 that from May of 2011 none of our Verizon divisions
9 have paid us a single penny, not a single minute, in
10 the universe -- in the universe of telecommunications
11 is compensable. That's what your letters say. You
12 have not explained why. You've simply said this
13 traffic is not compensable. Today I'm hoping for the
14 first time to hear why you think it's not.

15 Q The question that I'm asking you is whether or
16 not you partook of the dispute resolution processes in
17 the ICA.

18 A I see this agreement. I mean, if that's what
19 you're asking. If you're asking me to read words off
20 a page.

21 Q Let me ask you a question. Is the issue that you
22 don't believe Verizon is allowed to dispute and
23 withhold payments to Core?

24 A I think if Verizon were to say our switch records
25 are off by 2 percent so we're withholding 2 percent, I

1 think we have a conversation about that 2 percent. I
2 think that the way we did it with the outbound traffic
3 where you -- we noticed that you weren't picking up
4 two-thirds of our outbound traffic, and we wondered
5 why you weren't, we sent you CDRs and you stopped
6 responding to us. I think that's a dispute that is
7 not -- that does not require expedition. I think a
8 dispute where you summarily say all traffic is not
9 compensable requires immediate action.

10 Q Okay. Let's - - -

11 A We have not engaged in a conversation. You have
12 not asserted a reason why there's a dispute. You
13 simply say we acknowledge - - -

14 MR. RUGGIERO: Your Honor, I think he
15 answered the question I asked.

16 JUDGE COLWELL: Thank you.

17 BY MR. RUGGIERO:

18 Q Let's take a look. On July 1, could you turn to
19 Tab B. And I'm talking about the letter from Charles
20 Bando to you. Do you see that dated July 1, 2011?

21 A Tab B or -- what tab were you on?

22 Q We're on Tab B of your affidavit.

23 A Tab B. Okay.

24 Q All right. And in Tab B, Verizon says, among
25 other things, that the traffic billed by Core to

1 Verizon at reciprocal compensation rates is not in
2 fact compensable to Core as reciprocal compensation
3 traffic. Right? That was your issue that you paraded
4 around to the Commission, right?

5 A That's correct.

6 Q But you know what reciprocal compensation means
7 in the ICA because you claim to be familiar with the
8 ICA and I asked you under oath.

9 A That's right.

10 Q And I asked you what local traffic means and you
11 claimed to be familiar with it under oath.

12 A That's correct.

13 Q And you claim to recognize now that we have a
14 right to audit your records. True?

15 A Verizon North America does.

16 Q Oh, is the issue Verizon Pennsylvania?

17 A I do believe you are looking for -- looking for
18 better reasons why you have a dispute now. Yeah, I do
19 believe that.

20 Q Let's look at -- well, you know what, before we
21 go there, I'd like you to turn back to Verizon Cross
22 Exhibit Number 3. Now, you'll recall testifying that
23 you remember Ken Roos asking you on June 14th and
24 asking you on June 24th, and then on June 27th. If
25 you look at the second page of Verizon Cross Exhibit

1 Number 3, Mr. Roos explains at the bottom of the page,
2 it says on Monday, June 27th, he says Bret, I need the
3 data to verify that you are billing Verizon correctly,
4 for just the calls terminated by Core, for Verizon
5 customers. The data I see has volumes that are much
6 less than Core is billing. We need just one day's
7 worth of data and we can extrapolate from there.

8 Do you recall getting that e-mail?

9 A Yes, I did.

10 Q All right. And then you don't provide it. And
11 you give an answer on June 30th, three days later.
12 And immediately after that, Mr. Roos asks you again on
13 June 30th. Do you see that? He says let's start with
14 a one-day sample and see where that takes us. He
15 tells you Verizon is concerned that Core is billing
16 for calls that are not compensable. The way to
17 address this concern is to review Verizon -- Core's
18 call records. Do you see that?

19 A Yes. I see that.

20 Q He also informs you, which is -- which is in
21 contrast to what you said earlier, that for
22 local-dialed (flat-rated) calls Verizon does not
23 generate switch records. Do you now recall him
24 telling you that we don't have the call detail
25 records?

1 A I don't believe that.

2 Q Okay. You don't believe it?

3 A I just don't believe that.

4 Q But do you recall him telling you that?

5 A Yes, I do.

6 Q Okay. But you still didn't give him the call
7 records?

8 A We still have not seen your outbound call
9 records. So if you -- if we're entitled to audit --
10 if audit rights apply to us, it also applies to you.
11 And you're still stonewalling us in the outbound call
12 records and you still are ignoring our categorizations
13 between voice and ISP. These record disputes with you
14 guys never goes anywhere.

15 MR. RUGGIERO: Your Honor, for the
16 record, I don't know that this dispute has anything to
17 do with outbound records. But if there are any
18 outbound records that Core would like to see, they can
19 ask me for them and I'll make sure they get them
20 personally. I don't think such a thing exists. But I
21 want to keep that to the side. I want to keep to the
22 - - -

23 THE WITNESS: Then we have a broken
24 system.

25 JUDGE COLWELL: Excuse me. We can only

1 talk one at a time. She's having a hard day as it is.

2 MR. RUGGIERO: I guess what I'm trying
3 to do is not strike all of Mr. Mingo's testimony.
4 This issue of some other call records that aren't
5 related to this -- this specific proceeding aren't --
6 they're not relevant, but I would like to resolve as
7 many issues between the parties as I can. So I'm
8 happy to make sure that that occurs, but I don't think
9 it has anything to do the records that we're asking
10 for.

11 BY MR. RUGGIERO:

12 Q Well, let me ask you. Do the -- whatever records
13 you're talking about have anything to do with the
14 records that Mr. Roos is asking you for here?

15 A I would -- I would say the relationship -- the
16 relationship between us matters a whole lot for how
17 this dispute -- how this is coming about, yes. I
18 would say in the abstract, the fact that the -- the
19 fact that you stonewall us at every turn, the Fourth
20 Circuit itself described the incentives that you have
21 - - -

22 MR. RUGGIERO: Your Honor, I move to
23 strike.

24 THE WITNESS: It all does matter.

25 JUDGE COLWELL: Okay. Really, so what

1 you're trying to say is, we're using things outside of
2 the facts of this particular record because we need
3 more of a hammer. What he's asking you is, is it
4 relevant to what you filed here today. That's what I
5 want a yes or no to.

6 THE WITNESS: Okay. Is what relevant?

7 BY MR. RUGGIERO:

8 Q Is whatever you mentioned about outgoing records
9 that you asked for of Verizon, does that have anything
10 to do with the call detail records that we have been
11 asking you for for some time now?

12 A What we know is that the lowest rate -- the
13 lowest rate out there is .0007. Establishing that you
14 might owe us more for other kinds of records doesn't
15 help you with not paying .0007. So even if we give
16 you the records, we fully realize that you're going to
17 not -- you're going to stonewall us, whatever you view
18 of them. We understand that because of history. And
19 what we're going to give you are records that in --
20 that then may be in fact rated higher. Perhaps. I
21 don't know. But the floor of all intercarrier
22 compensation is .0007. That's the dispute in front of
23 us. The dispute in front of us is the fact that you
24 go from .0007 to not paying.

25 MR. RUGGIERO: Your Honor, I don't mind

1 asking -- I don't need to strike it. I still don't
2 think he gave me an answer.

3 JUDGE COLWELL: I agree with you.

4 MR. GRUIN: I don't know what you're
5 trying to get to. What is your point? Clarify it.

6 MR. RUGGIERO: Sure.

7 MR. GRUIN: There's a conversation
8 between Ken and Bret - - -

9 MR. RUGGIERO: I am trying to understand
10 why Mr. Mingo refuses to provide the call records.

11 MR. GRUIN: I think it's reflected in
12 the document.

13 MR. RUGGIERO: Well, Mr. Mingo is here.
14 And I'm trying to ask him why Core hasn't provided the
15 call records, and it seemed to me that in response, he
16 was talking about something else that had nothing to
17 do with Verizon originated, Core terminated calls for
18 which they were billing us reciprocal compensation.
19 And I -- personally I don't think it's relevant but I
20 wanted to ask -- give him a chance to explain the
21 relevance.

22 THE WITNESS: Here's how -- here's --
23 here's how -- why -- why -- I mean, if you want our
24 records, we should be able to get yours too. And
25 we've had outstanding requests for records for months.

1 Right. So if you want our records -- first of all,
2 when he says things like extrapolate, what is he
3 extrapolating? What's the methodology? If you have
4 data -- if you have data that says these numbers might
5 be wrong, maybe they're off by one percent and we
6 could all go through this. But you're not explaining
7 any of this. All you're simply saying is take our
8 data, and I -- again, I still don't understand what
9 our data gets you. You already have copies of it.
10 And if you want - - -

11 BY MR. RUGGIERO:

12 Q Wait a minute, wait a minute.

13 A If you want me to explain it - - -

14 Q I don't want to argue.

15 JUDGE COLWELL: All right. Mr. Mingo,
16 - - -

17 THE WITNESS: - - - I'll be happy to -
18 - -

19 JUDGE COLWELL: Stop. Here's what I'm
20 hearing. Mr. Ruggiero has just established that his
21 client was entitled to ask for records that you didn't
22 give him and that you've come in looking for some kind
23 of enforcement before you've done what you're supposed
24 to do. That's what he's just established. So you can
25 say, well, some other time I asked for something and

1 you didn't give it to me, but that doesn't have any
2 bearing on what's here in front of me today.

3 THE WITNESS: Okay.

4 JUDGE COLWELL: Okay?

5 THE WITNESS: For Verizon North he has
6 that right.

7 JUDGE COLWELL: There you go.

8 BY MR. RUGGIERO:

9 Q I should be able to move quickly. On Friday,
10 July 1, at the top of the -- of Verizon Cross Exhibit
11 Number 3, Mr. Roos asked you for that again; isn't
12 that correct?

13 A Which page are you on?

14 Q The top of the first page of Verizon Cross
15 Exhibit Number 3.

16 A (No response.)

17 Q And in the middle of that page, on Friday, July
18 1, Mr. Roos asked you for the sixth time.

19 A Yes.

20 Q And your response is above there?

21 A Correct.

22 Q Thank you. So when you say I have proposed -- at
23 Paragraph 27 of your affidavit, when you say I have
24 proposed a two-way exchange of switch records, i.e.
25 both parties provide the other with a sample of

1 records, but Verizon has not agreed to this proposal,
2 that's a little disingenuous, isn't it?

3 A No. We asked for data for years -- for months,
4 and you haven't provided that. And we asked again for
5 data and you haven't provided it. We would -- we
6 stand willing and ready to send you switch records if
7 you agree to the same.

8 Q That's not what your e-mail says though, is it?

9 A Seems to me that's what it says.

10 Q Okay. In other words, you believe that your
11 e-mail from Cross Exhibit Number 3 is your offer to
12 exchange -- is your offer to a two-way exchange of
13 switch records?

14 A I believe we also say it in some of the letters
15 we have with William Carnell.

16 Q Okay.

17 A I mean, we are still willing and we've always
18 been -- we've always asked you for data. And so, I
19 mean, this is a two-way street here. That's the
20 nature of the interconnection problem, is we don't
21 view it as a two-way street.

22 MR. RUGGIERO: Your Honor, let me say on
23 the record because this is an ongoing petition. We
24 would be happy to exchange records with Core so that
25 we can resolve this complaint and resolve the dispute

1 between the parties pursuant to the ICA. So on behalf
2 of Verizon we're willing to do that. We still need
3 their call data records but we're not placing a
4 condition on it.

5 MR. GRUIN: I'm glad to hear that.
6 That's the first we've heard the agreement to exchange
7 of records. If it would have been done 30 days ago,
8 maybe we could have averted the emergency. But we're
9 in an emergency situation now. The only way to avert
10 that would be for Verizon to resume payment.

11 JUDGE COLWELL: Mr. Gruin, this really
12 isn't the time for argument.

13 MR. GRUIN: Thank you.

14 BY MR. RUGGIERO:

15 Q Sorry. I got a little bit off the order here.
16 Can I ask you to go back, Mr. Mingo, to Verizon Cross
17 Exhibit Number 1.

18 A Which one is that?

19 Q That is the agreement -- the MCI Metro/Bell
20 Atlantic Interconnection Agreement 1997 which applies
21 between Verizon Pennsylvania and Core Communications.
22 And I would ask you to turn to Part A-16, and take a
23 look at Section 21.3 titled billing disputes.

24 A Okay.

25 Q Okay. And do you see 21.3.1?

1 A Yes.

2 Q Okay. And it says that payments withheld or paid
3 pending settlement of dispute shall be subject to
4 interest at the rates set forth in Bell Atlantic's
5 interstate access tariff. Do you see that?

6 A Yes.

7 Q And do you also see the reference to Attachment
8 VIII, Section 3.1.9 in the billing dispute section?

9 A Section -- can you repeat that?

10 Q Yeah. If you look at 21.3.2.

11 A Yes.

12 Q It points you to Attachment VIII, Section 3.1.9.
13 Is that correct?

14 A Section 3.1.9? I don't - - -

15 Q I can do it a better way. I apologize. Take a
16 look at Part A-17, which is the very next page.

17 A Okay.

18 Q All right. 21.3.3 says if the purchasing party
19 withholds payment on the bill, in full or in part, and
20 initiates a billing dispute pursuant to Attachment
21 VIII, Section 3.1.9, interest will apply as follows.
22 Do you see that?

23 A Yes.

24 Q Okay. Why don't we turn to Section 3.1.9, which
25 is all the way in the back, the second to last page at

1 the back. Do you see that?

2 A Yes.

3 Q And it says, in the first sentence, the final
4 clause it says each party agrees to -- it says subject
5 to and without waiver, each party agrees to notify the
6 other party upon the discovery of a billing dispute.
7 Do you see that?

8 A 3.1. -- Section 3.1.9? Which one are you looking
9 - - -

10 Q 3.1.9.1. At the bottom of the page.

11 A Right. Page 25?

12 Q Yes.

13 A Okay. I see that now.

14 Q And it says subject to and without waiver, each
15 party agrees to notify the other party upon the
16 discovery of a billing dispute. Do you agree with
17 that?

18 A Yes.

19 Q All right. And then it says in the event of a
20 billing dispute, the parties will endeavor to resolve
21 the dispute within 60 days of bill date in which such
22 disputed charges appear. Do you see that?

23 A Yes.

24 Q All right. And it was your testimony that you
25 got this dispute letter from Verizon on July 5th,

1 wasn't it?

2 A That's correct.

3 Q All right. Turn to the next page, which is
4 Attachment VIII-26.

5 A Okay.

6 Q Now, are you familiar with this dispute
7 resolution process, Mr. Mingo?

8 A I haven't read it in a while.

9 Q You haven't read it in a while? Okay. Are you
10 currently utilizing the dispute resolution process of
11 the ICA?

12 A I'm not sure either party is.

13 Q Okay. Well, can you turn to Tab D of your
14 affidavit? Are you there?

15 A Yes.

16 Q All right. And you earlier characterized this
17 letter from Mr. Carnell to Mr. Van de Verg, and says
18 in the spirit of good faith dispute resolution Verizon
19 will treat those letters as an invocation of the
20 dispute resolution processes in our various ICAs and
21 as a designation of you as Core's representative in
22 negotiations. Do you see that?

23 A You're in Tab B or D?

24 MR. GRUIN: D.

25 MR. RUGGIERO: I'll withdraw the

1 question.

2 BY MR. RUGGIERO:

3 Q Mr. Mingo, this dispute resolution process that
4 we're looking at in Verizon Cross Exhibit 1, Section
5 3.1.9.1, after the first level of the dispute and if
6 the dispute isn't resolve within 60 days, it gets
7 escalated to a second level of management, doesn't it,
8 under 3.1.9.1?

9 A Yes.

10 Q That's -- this is the agreement you agreed to,
11 right?

12 A That's correct.

13 Q You could have -- you could have negotiated a
14 different agreement under Section 252?

15 A Yes, I could have.

16 Q You could have chosen to opt into any agreement
17 that was available in Pennsylvania?

18 A It's a pretty -- I wouldn't say that we have that
19 broad a right, given how much you fight adoptions.
20 But I would say we could have fought it for a
21 different agreement.

22 Q Okay. You're not claiming that this dispute
23 resolution process doesn't apply to this dispute, are
24 you?

25 A I would say you still have to make a dispute that

1 makes some kind of sense. Simply asserting that all
2 traffic is not compensable doesn't really strike me as
3 a good faith dispute. So what is this, what would
4 this mean? I mean, you're not trying, is the point.

5 Q Well, we asked you six times for the call detail
6 records, didn't we?

7 A And you -- and in that process, you showed that
8 -- that you had some data internally. Didn't
9 volunteer to us. And maybe it comes to a couple
10 percent difference, and you're withholding the other
11 98 percent regardless? I mean, that would be a normal
12 dispute. A normal dispute would be we're showing
13 we're off by, you know, this percentage. But you're
14 not doing that. You're using a draconian self-help
15 mechanism of withholding all payment. That doesn't
16 strike me as a good faith dispute.

17 Q Self-help would be, for example, if you owed us
18 money and so we terminated you. That would be
19 self-help, right?

20 A I suppose that would be another form of
21 self-help.

22 Q Or if you owed us money and we set off monies
23 that you owed us against the money we owed you. That
24 would be self-help?

25 A That would be another form of self-help, yes.

1 Q But it's not your position that disputing a bill
2 pursuant to the contract and seeking validation of a
3 bill pursuant to the contract, isn't it the opposite
4 of self-help, Mr. Mingo?

5 A Well, I think that's what this Commission is
6 going to decide, is going to be whether or not
7 disputing all of the bill for -- as non-compensable
8 traffic is a dispute under this process. I mean, I
9 could see a dispute -- I can see the dispute under the
10 outbound issue, all right. That's an example of a
11 dispute. We showed some different records, we gave
12 you records. 60 days have long gone on that, we still
13 haven't raised the issue because it's a small fraction
14 of an edge around the piece of the whole. This is the
15 whole.

16 Q Mr. Mingo, let me ask you a question. If you
17 believed that the traffic that somebody was sending
18 you was fraudulent, would you pay it?

19 A No.

20 Q Would you ask them to validate it?

21 A Yes.

22 Q Okay. Now, under Section 3.1.9.1.2, after 60
23 days passes it gets escalated to the second level of
24 management, after 90 days it goes to the third level
25 of management, doesn't it?

1 A I think -- again, if it was 2 percent, I could
2 see how this would make a lot of sense.

3 Q And then it goes to 120 days?

4 A Yes.

5 Q Okay. But we're nowhere close to 120 days?

6 A That's correct.

7 Q But when you claim that you're short cash, you
8 fight that knowing the dispute resolution process you
9 agreed to?

10 A Again, it's hard to imagine how suddenly all
11 hundred percent of all minutes under all situations
12 from Verizon has become non-compensable. That's --
13 that -- that I don't see as how -- see how the dispute
14 mechanism would work in that case. I would see how it
15 would work for the 2 percent or the 3 percent or
16 you're categorizing as X or Y. I would see how that
17 would work. But no way would we plan that suddenly
18 all telecommunications exchange from us -- exchange
19 from us is no longer telecommunications. Never in a
20 million years would I have felt that would be what it
21 was.

22 Q Mr. Mingo, if you get a bill from your cable
23 company that has 75 pay per view movies on them,
24 wouldn't you call them and say, look, what are these
25 movies, can you send me some details?

1 A I probably would. But that's entirely - - -

2 Q And they said no. Nope. What would you do?

3 A (No response.)

4 Q Would you pay them?

5 A Again, if I -- if they had been sending us those
6 bills and we've been paying them for eight years, we
7 think we would have caught it before then. Or ten
8 years, I guess. I mean, that's the thing. That's the
9 thing.

10 Q In other words, there's a time limit on when you
11 can catch a fraud?

12 A It's not that. You're trying to conflate an
13 obviously -- you're trying to conflate an obvious
14 fraud with one -- with one where -- with one where
15 there's clearly legitimate businesses. Let's be clear
16 about this. Verizon is not paying a single minute,
17 not Verizon -- not Verizon Wireless, not Verizon BOC
18 and not Verizon IXC. You're trying to leverage a 2
19 percent problem or a small percent problem, into a --
20 into the whole dispute. And that's why it's a bogus
21 dispute.

22 Q Why do you believe there's a 2 percent problem?

23 A I'm just saying. It's a hypothetical number.

24 Q Are you -- are you familiar with a -- with a
25 problem with your switches?

1 A It's a hypothetical number. What you are
2 disputing is a whole. I could see if it was a small
3 percentage. If you were saying we're miscalculating
4 X, Y or Z, we could go through the dispute process.
5 What you are now saying and claiming is we aren't in
6 the dial-up ISP business and all of our minutes are
7 fraud, and we both know that's not true.

8 Q Nobody's made that claim.

9 A Then why aren't you paying us?

10 Q Would you take a look at Section 23, Mr. Mingo.
11 Earlier you limited Verizon's -- I'm sorry, Section
12 24. Part A-22, dispute resolution procedures.

13 A Okay.

14 Q All right. And do you see where it says the
15 parties agree that any dispute arising out of or
16 relating to this agreement that the parties themselves
17 cannot resolve may be submitted to the Commission for
18 resolution?

19 A I see that.

20 Q All right. And the parties agree to seek
21 expedited resolution?

22 A Yes, I see that.

23 Q But you're not of the opinion that we've
24 completed the dispute resolution procedure necessary
25 to believe that the parties themselves cannot resolve

1 this?

2 A I don't -- I don't believe -- I believe that
3 we're going to hear more today, because we're under
4 the light of the Commission, than they ever would have
5 told us or have told us without it.

6 Q Right. So you came to the Commission with this
7 emergency petition because you wanted answers?

8 A We want payment.

9 Q And you didn't want to go through the dispute
10 resolution procedures of the agreement?

11 A For all of our traffic, that's absurd.

12 Q Mr. Mingo, does Core have any 911 trunks in
13 Pennsylvania?

14 A No, we do not.

15 Q And that's because Core doesn't have any
16 residential customers?

17 A Core -- Core sells -- we actually -- Core sells
18 to ISPs, which are obviously one way. We also sell to
19 miscellaneous over the top voiceover IP customers.
20 Any kind of -- any kind of customer that would want a
21 convergent technology, so - - -

22 Q Do you have any residential customers was the
23 question.

24 A Some of our customers do have residential
25 customers, is the long answer.

1 Q Maybe I misunderstood. Do you have any
2 residential customers?

3 A We don't sell directly to -- to retail -- retail
4 retail. So no. We have customers who service them.
5 We're part of the value chain, not the complete value
6 chain.

7 Q Okay. And you don't provide dial tone voice
8 services?

9 A Super port service is an inbound service that
10 allows people to receive phone calls. So does our --
11 those -- does our -- does the component we provide go
12 to provide dial tone? Yes, it does.

13 Q No. Do you provide dial tone voice service to
14 your customers?

15 A In the -- in the sense that they could plug --
16 they could plug in -- plug-in device to a super port,
17 yes, they could. I don't know entirely what they do
18 with it. But in many cases they are using that. They
19 are using our service to provide a dial-up -- I mean a
20 dial tone service.

21 Q Let me make one more run at this, Mr. Mingo.
22 Nope, I'm not going to.

23 You testified that you have an
24 accountant?

25 A Yes.

1 Q And he created the profit and loss statements?

2 A Yes.

3 Q He created the profit and loss statements that
4 are Confidential Tab H; is that right?

5 A Yes.

6 Q You didn't create these?

7 A No.

8 Q Did he create these at your request?

9 A Did he create this?

10 Q Did he create these at your request?

11 A Yes.

12 Q For the purpose of this proceeding?

13 A Yes.

14 Q They weren't just sitting out there as a business
15 record?

16 A They are a business record. We just took the
17 Quick Books profit and loss and put it into cash
18 amount, yes.

19 Q You asked somebody to create this for the purpose
20 of this proceeding?

21 A Yes. But they're a part of our books. So yes,
22 it is something that we have, something that we put
23 for this -- to be created for this proceeding, but
24 it's something that's -- that it also is a normal
25 business record.

1 MR. RUGGIERO: Your Honor, I would move
2 to strike the profit and loss statements.

3 JUDGE COLWELL: You would move to strike
4 what?

5 MR. RUGGIERO: I would move to strike
6 the profit and loss statements from the record.

7 JUDGE COLWELL: Because?

8 MR. RUGGIERO: Because he didn't create
9 them and they're not a business record. They were
10 created just for this litigation.

11 MR. GRUIN: Your Honor, I believe he
12 testified that these are -- it's -- the data exists in
13 the Quick Books files on the computer. Yes, the print
14 button is hit for this proceeding. They didn't drag
15 the computers in. But the data that the profit and
16 loss record shows is a business -- it's business
17 records. It's maintained like any other small
18 business would maintain it on a computer.

19 MR. RUGGIERO: These documents aren't
20 business records.

21 JUDGE COLWELL: He did just say they
22 weren't business records.

23 MR. GRUIN: All right. Well, they're
24 financial reports prepared in the normal course of
25 business. I'll put Mr. Mingo back up on the stand and

1 testify to every single line if you prefer to do it
2 that way. That's fine by me. I have all day. That's
3 fine.

4 MR. RUGGIERO: He can do what he wants
5 on redirect, Your Honor, but I don't know -- I don't
6 know how Mr. Mingo knows these numbers. He just said
7 an accountant prepared them.

8 MR. GRUIN: He testified - - -

9 JUDGE COLWELL: Mr. Gruin, you can't
10 talk over each other.

11 MR. RUGGIERO: He doesn't have the
12 numbers memorized. He didn't create it himself. It's
13 not a business record. Now, if he pulled it out of a
14 -- you know, a file and it's sitting there and he says
15 here's the profit and loss statement, but by his own
16 admission somebody created this for this litigation.
17 Well, I can't cross that person. I don't know -- he
18 doesn't know if these numbers are right or not.

19 MR. GRUIN: He - - -

20 MR. RUGGIERO: And it's not an ordinary
21 business record.

22 MR. GRUIN: Are you done?

23 MR. RUGGIERO: Yes, I'm done.

24 MR. GRUIN: He testified that they were
25 prepared under his direct supervision. That's in the

1 record from before. He currently just testified that
2 the data is contained in their Quick Books files. He
3 instructed the accountant to print out the profit and
4 loss statement. He testified to the authenticity of
5 the numbers. He reviewed them with the accountant.
6 He approved them. That's in the record.

7 JUDGE COLWELL: This can go either way.
8 I need you to develop that he is sure that these
9 numbers are right and why he believes that.

10 MR. GRUIN: I can do that, Your Honor.

11 JUDGE COLWELL: I'm going to give him a
12 few minutes to do that.

13 Go.

14 REDIRECT EXAMINATION

15 BY MR. GRUIN:

16 Q Mr. Mingo, how does Core track its financial
17 information?

18 A When invoices come in, they're put in the Quick
19 Books. Invoices are generated out of Quick Books.
20 When checks come in, they're recorded.

21 Q And Quick Books is a software program that's
22 installed - - -

23 A Quick Books is the accounting program on our
24 computer that the accountant - - -

25 Q Do you have access to the Quick Books program?

1 A Yes.

2 Q Do you personally supervise the accountant who
3 operates your Quick Books programs?

4 A Yes.

5 Q What's his name?

6 A Jonathan.

7 Q Okay. Do you periodically request reports
8 showing the current financial picture of the
9 organization?

10 A Yes.

11 Q How often do you do that?

12 A I don't -- as-needed basis. I'm -- you know, the
13 records are behind us. The thing I'm most interested
14 in is cash flow on a day-to-day basis, and
15 unfortunately nowadays it's a day-to-day basis issue.
16 So I'm very intimate with the cash elements of this.
17 I am intimate with the expenses. I -- you know, these
18 numbers look like a summation of what I know goes on
19 in our business.

20 Q On any given day did you tell Jonathan to print
21 me out a profit-and-loss report through today?

22 A We've done it for other purposes in the past.
23 One time we tried to get a bank loan, many years ago.
24 We've done -- we've done -- do things like that. We
25 also -- you know, I don't -- I'm not an accountant so

1 I tend to look at the cash elements of the business
2 rather than P and L report of the business, P and L
3 report generated by the normal course of business.

4 Q After Jonathan prepared this report, did you
5 review it with him and review it for accuracy?

6 A Yes. For example, we verify that we've -- you
7 know, I verify resip comp usage categories were
8 correct according to the invoices that we generated
9 and the cash we received. Did that in some detail.

10 Q Do you have any reason to believe that the
11 numbers reflected on the P and L report are not
12 accurate?

13 A No, no reason at all.

14 Q Are you willing to state today under oath that
15 the profit and loss report is an accurate depiction of
16 Core's profit and loss from June -- from January 1,
17 2011, through June 30th, 2011?

18 A Yes.

19 MR. GRUIN: Do you need anything
20 further, Your Honor, to authenticate the document?

21 MR. RUGGIERO: Your Honor, he can -- I
22 mean, it's not about Mr. Mingo. He can jump up and
23 down and testify to it. He didn't create it. He
24 testified that these documents aren't working
25 documents that he pulled in the ordinary course of

1 business. He requested that somebody generate these
2 for him. I can't cross-examine that person. Whether
3 he personally supervised the accountant isn't the same
4 thing as personally supervising this thing. He didn't
5 -- he wasn't involved in that. I'm not making it
6 about Mr. Mingo. I don't have the ability to pierce
7 these numbers because the person who made them isn't
8 here. Mr. Mingo can be very happy to testify that,
9 yes, that's what it says. But he doesn't know if it's
10 right or not.

11 JUDGE COLWELL: I'm afraid I have to
12 agree. We're going to strike the profit and loss
13 statement.

14 RE-CROSS-EXAMINATION

15 BY MR. RUGGIERO:

16 Q Mr. Mingo, your New York and Virginia
17 subsidiaries, - - -

18 A Yes.

19 Q - - - can you explain what happens to the revenue
20 from those subsidiaries?

21 A They're not part of Core Communications, Inc.

22 Q Are they owned by Core Communications, Inc.?

23 A No, they're not.

24 Q They're independent?

25 A They're all subsidiaries of Coretel

1 Communications, Inc.

2 Q They are all subsidiaries of Coretel
3 Communications, Inc.?

4 A So Core and Cortel Virginia are siblings.

5 Q I see. And Coretel Communications, Inc., are you
6 the president of Coretel Communications, Inc.?

7 A Yes.

8 Q Do you manage New York and Virginia separately
9 from Maryland and Pennsylvania?

10 A We maintain separate sets of books, separate
11 accounts.

12 Q Operations, do you manage it differently than - -
13 -

14 A Operationly we maintain -- we maintain and
15 allocate between the companies, yes.

16 Q I understand.

17 A It's also important to note that company wide we
18 did -- we billed Verizon and all of its -- across all
19 of our footprints 105 million minutes, of which 102
20 million were Pennsylvania. So Pennsylvania alone is
21 two-thirds of our total network-wide operations.

22 Q Mr. Mingo, you didn't provide your cash reserves
23 as evidence in this proceeding, did you?

24 A I guess not.

25 Q All right. And you didn't explain to the

1 Commission how much money you have in your bank
2 accounts today?

3 A I guess we did not.

4 Q And you haven't described to the Commission any
5 access to capital that you have?

6 A I can explain it now if you wish.

7 Q No. I'm asking you if you did.

8 A No. I'm not sure we did.

9 Q Did you share with the Commission your access to
10 credit or any lines of credit you might have?

11 A We didn't share any because we don't have any.

12 Q Do you have any shareholders?

13 A Chris and myself. If you want a little more
14 information, I can tell you that a year, year and a
15 half ago - - -

16 Q No, I don't.

17 MR. RUGGIERO: Your Honor, if you don't
18 mind, I'd like to go on the confidential record.

19 JUDGE COLWELL: All right.

20 (Whereupon, the following pages 100
21 through 103 were sealed and bound separately.)

22

23

24

25

1 BY MR. RUGGIERO:

2 Q If you look at Tab A of your affidavit and you
3 look at that total down at the bottom, that \$263,218,
4 if you wouldn't mind just explaining the difference
5 between that \$263,218 and the amount that you describe
6 on Paragraph 28 of your affidavit.

7 A Hold on.

8 Q Okay.

9 A All right. Tab A?

10 Q I guess I have a better way of asking this. It's
11 not your position that the contract requires Verizon
12 to pay 263,218.25, right?

13 A That's correct.

14 Q Okay. It's actually -- it's actually someplace
15 less than 25 percent of that; is that right?

16 A For dial-up minutes, .0007 would be slightly less
17 than one-quarter of .002814.

18 Q And your stated basis for billing us the wrong
19 rates is because you claim that there was an agreement
20 between you and somebody in Massachusetts in 2003?

21 A That's correct. It was how they come up with the
22 three-to-one ratio.

23 MR. RUGGIERO: One second, Your Honor.

24 (Brief pause.)

25 MR. RUGGIERO: Your Honor, I have no

1 further questions.

2 JUDGE COLWELL: Mr. Gruin.

3 MR. GRUIN: Yes, Your Honor. The amount
4 of my recross will depend on my next -- my upcoming
5 request to actually revisit your ruling on the P and L
6 statement. I've had the chance to look through the
7 Pennsylvania Rules of Evidence, the committee's
8 comments on those rules and some case law on it. I'll
9 also note at the outset that the Commission's rules
10 allow for more flexibility in terms of evidence.

11 Under the hearsay exception related to
12 records of the regularly conducted business activity,
13 regularly conducted activity I should say, all that's
14 required is a foundation provided by witness under
15 oath that the record was made and kept in the course
16 of regular business activity, which I believe Mr.
17 Mingo's testified to.

18 JUDGE COLWELL: But it wasn't. The
19 record here wasn't. The numbers underlying it may be.
20 I don't know that. But the records that you presented
21 doesn't meet that definition.

22 MR. GRUIN: And it also -- if I can
23 continue, the rule goes on to provide a great amount
24 of flexibility, including if there's no reason to
25 doubt the trustworthiness of the document, the judge

1 is permitted to let it in. There's also the rule was
2 allowed -- allows businesses to provide documents such
3 as these reports via certification to avoid the need
4 to bring needless foundation witnesses.

5 I mean, I think this is a very draconian
6 ruling in the context of emergency hearing involving a
7 financial -- alleged financial harm. I could have Mr.
8 Mingo go line by line and say to the best of your
9 understanding and belief based on your review of
10 Core's financial records what is the financial
11 outlook. If you would prefer me to do that I can do
12 that. It's going to make for a very cumbersome
13 transcript, but if that's the ruling, I'll comply with
14 it. And my recross would be significantly longer, I
15 would say.

16 JUDGE COLWELL: Mr. Ruggiero would
17 object to each and every one of those questions for
18 the same reasons.

19 MR. GRUIN: If he can -- he's objected
20 to the document. But if Mr. Mingo can testify about
21 his knowledge of the company's finances, how is that
22 objectionable? Based on his review of the records.
23 Yes, the document can be excluded under his theory.

24 JUDGE COLWELL: Mr. Guin, what you have
25 given us is a document in need of a proper sponsor.

1 You did not give us that. My ruling stands.

2 MR. GRUIN: Okay.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. GRUIN:

5 Q Mr. Mingo, after receiving Verizon's non-payment
6 letters, were you concerned about Core's financial
7 viability?

8 A Put -- to call it extremely stressed out would be
9 an understatement.

10 Q Okay. Did you - - -

11 MR. RUGGIERO: Your Honor, - - -

12 JUDGE COLWELL: Yes.

13 MR. RUGGIERO: That's outside the scope
14 of my cross. This is redirect.

15 JUDGE COLWELL: Sustained.

16 BY MR. GRUIN:

17 Q Mr. Mingo, you heard -- you recall Mr. Ruggiero
18 questioning you about the right to, quote, audit
19 records. Do you remember that?

20 A Yes.

21 Q Okay. From the letters you've received from
22 Verizon, did the word audit appear in any of those
23 letters?

24 A No.

25 Q Did those letters reference any section of the

1 interconnection agreement that would trigger any
2 rights?

3 A No. No, they did not.

4 Q Okay. Mr. Ruggiero walked you through various
5 sections of the ICA. Do you recall that?

6 A Yes.

7 Q In any of those sections, are you aware of the
8 agreement allowing either party to withhold payment
9 pending the resolution of a dispute?

10 A No, I am not.

11 JUDGE COLWELL: I did. I saw it. When
12 he asked him if he saw it, he said no. But he agreed
13 he saw it when Mr. Ruggiero asked him.

14 Go ahead.

15 BY MR. GRUIN:

16 Q You recall the discussion about the dispute
17 process and the 120 days?

18 A Yes.

19 Q what would have happened to Core if they would
20 not have gotten any relief for 120 days? By relief I
21 mean payment from Verizon on their May and June
22 invoices.

23 MR. RUGGIERO: Objection. Speculation.

24 THE WITNESS: It's not speculation.

25 JUDGE COLWELL: what would have happened

1 to what party or whom in particular?

2 MR. GRUIN: To Core.

3 JUDGE COLWELL: Okay. That's what you
4 need to ask.

5 BY MR. GRUIN:

6 Q What would the impact of Core have been, having
7 to wait 120 days to get a resolution?

8 A If this self-help is permitted, my August will be
9 filled with figuring out which part of the network and
10 which salary -- which employees to lay off. That's
11 what we'll be doing in August. It's not speculation.
12 We will be out of cash.

13 Q How do you know that?

14 A This morning after receiving One Communication's
15 money, we were -- and settling that, we were able to
16 thwart a cutoff notice for power in one of our
17 facilities. The reality is -- the reality is,
18 self-help is killing competition. Reality is we are
19 running out of cash. We have -- we have -- we
20 regularly now get notices for cutoff and we have to
21 cure them and work with our creditors. And that
22 involves cash. We will not have it.

23 MR. GRUIN: Can we go off the record for
24 one moment because I want to make sure that we don't
25 cross into improper territory here. Can we have a

1 discussion off the record?

2 JUDGE COLWELL: All right. I'll indulge
3 you here.

4 (Discussion off the record.)

5 JUDGE COLWELL: Back on the record.

6 BY MR. GRUIN:

7 Q Mr. Mingo, could you please refer to Verizon
8 Cross Exhibit 3.

9 A Okay.

10 Q Do you remember Mr. Ruggiero walking you through
11 this document from back page to front page?

12 A Yes.

13 Q He appears to have skipped your correspondence --
14 your reply on June 30th at the bottom of the first
15 page. Do you see that section?

16 A (No response.)

17 Q The first page of the exhibit.

18 A Yes.

19 Q Your message from Bret at Coretel, Thursday, June
20 30th to Roos, Kenneth.

21 A Yes.

22 Q I won't read the description -- or I won't read
23 it in its entirety, but does that passage there
24 provide an explanation of why Core was questioning the
25 need to provide Verizon documents?

1 A Yes.

2 Q Do you agree with everything contained in that
3 passage?

4 A Yes.

5 Q Okay. Thank you. You and Mr. Ruggiero were --
6 had some exchange when he was questioning you about
7 why you did not invoke the dispute process. Did you
8 believe that Verizon's letters were valid invocations
9 of the dispute procedures of the ICAs?

10 A No.

11 Q Did you believe Verizon had a good faith basis to
12 withhold payment on your bills?

13 A For a hundred percent of the traffic? That's
14 ridiculous.

15 Q Is that a no?

16 A That's a no.

17 MR. RUGGIERO: Your Honor, I'm hard
18 pressed to understand the relevance of Mr. Mingo's
19 belief about whether Verizon was acting in good faith.

20 MR. GRUIN: The use of the word good
21 faith is right from the dispute resolution process.

22 MR. RUGGIERO: But what does it matter
23 what Mr. Mingo believes? He's not a fact witness on
24 whether or not Verizon is acting in good faith.

25 MR. GRUIN: I wasn't asking him to make

1 the ultimate conclusion. I was asking him what he
2 believed, as the president of Core, whether it was in
3 good faith.

4 MR. RUGGIERO: And if that's relevant to
5 something - - -

6 MR. GRUIN: Well, you were questioning
7 why didn't you use the dispute process, and that's one
8 of his answers.

9 JUDGE COLWELL: I'll allow it.

10 MR. GRUIN: Thank you, Your Honor.

11 BY MR. GRUIN:

12 Q Did you, Bret, believe that the parties, Verizon
13 and Core, could resolve this dispute amongst
14 themselves, upon receiving the Verizon July 1, July 12
15 and July 18th letters?

16 A Verizon dictates, doesn't negotiate.

17 MR. RUGGIERO: Your Honor, I object to
18 the question and I move to strike the answer. What
19 Mr. Mingo believes about whether or not we could
20 resolve this dispute together between the parties is
21 not probative. It doesn't tend to make the question
22 of whether the dispute resolution procedures apply
23 even one iota more true than not. It's not a fact in
24 evidence.

25 MR. GRUIN: Section 24 of the ICA, as

1 Mr. Ruggiero had Mr. Mingo walk through, says if the
2 parties cannot resolve a dispute or disagreement, they
3 may submit it to the Commission for resolution. I was
4 asking him if he -- at the time of receiving the
5 letters, did he believe that the parties could resolve
6 the dispute among themselves. It goes to why he
7 didn't follow the dispute process that you chastised
8 him for not following.

9 MR. RUGGIERO: I'm not -- okay. Your
10 Honor, I don't think it's relevant to the question.

11 JUDGE COLWELL: I agree with you, but
12 I'll allow it.

13 BY MR. GRUIN:

14 Q Did you believe that the parties could resolve
15 the dispute amongst themselves?

16 A We -- no, I do not. Because we have a long track
17 record of not resolving things. The voice issue. We
18 first -- 18 -- maybe 18 months ago, maybe 15 months
19 ago, something like that, identified some of our
20 traffic were voice and not ISP bound. That was
21 ignored. They said we will do a three-to-one ratio.
22 Started generating some outbound business. They're
23 undercounting our outbound minutes. That isn't
24 resolved. They simply stonewall. This is -- this was
25 an attempt to ask -- ask us for data that we don't

1 understand -- still don't understand why they need.
2 If they have a basis for this, they should say so once
3 and for all. Say what is the basis for why a hundred
4 percent of our minutes are not compensable. Or what
5 any percentage. I don't -- I don't believe, you know,
6 -- we've already -- we've already proven on the Fourth
7 Circuit that -- that the Verizon has -- does breach,
8 does not want us to exist, does not want us to be
9 operational. And in Maryland, in the underlying case
10 in Maryland, they found bad faith on it.

11 MR. RUGGIERO: Your Honor, - - -

12 JUDGE COLWELL: Excuse me. Even I
13 object to that.

14 MR. GRUIN: All right.

15 MR. RUGGIERO: I'm trying not to be - -
16 -

17 MR. GRUIN: I'm almost done here, Your
18 Honor. Almost done.

19 BY MR. GRUIN:

20 Q Do you recall Mr. Ruggiero asking you several
21 questions about whether or not fraudulent traffic
22 should be compensated?

23 A Yes.

24 Q I believe you answered that three or four times.

25 A That's right.

1 Q Has Verizon ever indicated or alleged that any of
2 Core's traffic is, quote, fraudulent?

3 A No.

4 MR. GRUIN: Okay. Your Honor, I have
5 nothing further from Mr. Mingo. I do have one
6 additional witness, Mr. Van de Verg. He should be
7 nowhere near as long as Mr. Mingo I'm thinking ten
8 minutes of direct. The reason I'm saying this, it's
9 approaching noon.

10 JUDGE COLWELL: Understood. I think Mr.
11 Ruggiero has another shot at Mr. Mingo first as long
12 as he wants it. Let's find that out.

13 MR. RUGGIERO: I'm good.

14 JUDGE COLWELL: You don't have anymore?

15 MR. RUGGIERO: I'm good.

16 JUDGE COLWELL: Then go ahead. You have
17 one more witness?

18 MR. GRUIN: One more witness. I guess I
19 need to ask for a ruling on the admissibility of the
20 affidavit and the associated tabs at this point.

21 JUDGE COLWELL: As I understand it, it's
22 admitted without G -- wait. Without -- which ones?
23 What are the numbers?

24 MR. RUGGIERO: Without Tab H, Your
25 Honor.

1 JUDGE COLWELL: Without Tab H. Right.
2 Without Tab H.

3 MR. GRUIN: Okay.

4 JUDGE COLWELL: So Tab H needs to be
5 removed from the two copies that the court reporter
6 has. And it is admitted as such. Okay.

7 MR. GRUIN: Thank you.

8 (Whereupon, the document marked
9 as Core Exhibit No. 1 was
10 received in evidence.)

11 JUDGE COLWELL: All right. So you have
12 one more witness.

13 Mr. Ruggiero, do you have a witness?

14 MR. RUGGIERO: Beg your pardon?

15 JUDGE COLWELL: Do you have a witness?

16 MR. RUGGIERO: I'm not sure if I'm going
17 to have a witness or not, Your Honor. I may.

18 JUDGE COLWELL: Well, the reason I'm
19 asking is I need to know whether we're stopping for a
20 quick break or we're stopping for lunch.

21 MR. RUGGIERO: If you wouldn't mind, why
22 don't we stop for lunch.

23 JUDGE COLWELL: That's fine. All right.
24 Then I have 5 to 12. Be back here at 1 o'clock.
25 We're off the record.

1 (Recess declared from 11:55 a.m. until
2 1:00 p.m.)

3 JUDGE COLWELL: Let's go back on the
4 record.

5 Mr. Gruin.

6 MR. GRUIN: Thank you, Your Honor. I'd
7 like to call Christopher Van de Verg.

8 JUDGE COLWELL: Can you raise your right
9 hand, please.
10 whereupon,

11 CHRISTOPHER VAN DE VERG,
12 having been duly sworn, testified as follows:

13 JUDGE COLWELL: Thank you. Please be
14 seated.

15 THE WITNESS: Thank you.

16 JUDGE COLWELL: Use the microphone.

17 DIRECT EXAMINATION

18 BY MR. GRUIN:

19 Q Mr. Van de Verg, could you please state your name
20 and business address for the record?

21 A Yes. My name is Christopher Van de Verg. And my
22 business address is 209 West Street, Suite 302,
23 Annapolis, Maryland, 21401.

24 Q And by whom are you employed and in what
25 capacity?

1 A Core Communications. I am the general counsel.

2 Q And what is your educational background?

3 A I have a J.D. from the University of Maryland
4 School of Law and a B.A. from the University of
5 Virginia.

6 Q Are you licensed to practice law in any
7 jurisdiction?

8 A I am licensed to practice law in the states of
9 Maryland and New York.

10 JUDGE COLWELL: Is the light on on your
11 mic?

12 THE WITNESS: It is on but - - -

13 JUDGE COLWELL: Not working, is it?

14 THE WITNESS: No. Should I push or - -

15 -

16 MR. GRUIN: Try to go on and off
17 perhaps.

18 THE WITNESS: Okay.

19 JUDGE COLWELL: There you go. Thank
20 you.

21 BY MR. GRUIN:

22 Q How long have you been licensed in Maryland?

23 A Approximately 1997.

24 Q Okay. Have you -- do you have expertise in legal
25 issues related to the telecommunications industry?

1 A Yes, I do. I've studied the Acts and its
2 implementation in interconnection agreements and
3 regulations since roughly 1999.

4 Q Have you testified in any proceedings before?

5 A Yes.

6 Q Could you name those proceedings for us?

7 A Each one, probably not. I testified in Core's
8 world certification case here at the Pennsylvania
9 Commission in 2005. I believe that may be my most
10 recent testimony. I've also testified before the
11 Maryland Public Service Commission in
12 telecommunications disputes between Core and Verizon.

13 Q Okay. And could you explain your
14 responsibilities in your current position?

15 A It's a 13 person company. I'm the only person
16 employed as an attorney within the company, although
17 we do use outside counsel, obviously. And my duties
18 generally range from everything from commercial
19 matters to telecommunications regulatory compliance
20 responsibilities, negotiation, enforcement of
21 interconnection agreements with Verizon, primarily,
22 disputes with other telecommunications carriers. I
23 think that covers it.

24 Q Okay. Are you the person -- the employee of Core
25 who is responsible for enforcing the interconnection

1 agreement with Verizon in Pennsylvania?

2 A Yes, I am.

3 Q And just to clarify, how many total
4 interconnection agreements does Core have in place in
5 Pennsylvania today?

6 A We have two interconnection agreements in place
7 and on file with the Commission. One with Verizon
8 North, Inc., of Pennsylvania and one with Verizon
9 Pennsylvania, Inc.

10 Q I think previously Mr. Mingo mentioned that Core
11 opted into these agreements. Can you explain a little
12 bit more about that process, please?

13 A Yes. Opting in is a procedure that comes out of
14 section 252(i) of the Act wherein - - -

15 MR. RUGGIERO: Objection, Your Honor.

16 THE WITNESS: Sorry.

17 MR. RUGGIERO: I object to the question.
18 I'm not sure how it's relevant to this proceeding.

19 MR. GRUIN: This goes to the right to
20 Core's relief. He's going to explain our basis for
21 the conclusion that at a minimum .0007 is the
22 compensable rates for this kind of traffic. To do
23 that he's going to have to refer to specific sections
24 of the ICA, which he'll get to, including the adoption
25 letter which is incorporated into the ICA. That's the

1 purpose of this line of testimony.

2 MR. RUGGIERO: I don't have any
3 objection with him doing that, Your Honor. I just
4 don't understand what the point of the question was.

5 MR. GRUIN: The question was what's the
6 process for how you opt into an agreement.

7 THE WITNESS: It shouldn't take long.

8 JUDGE COLWELL: It would explain why
9 they're in it.

10 MR. RUGGIERO: Okay.

11 JUDGE COLWELL: Okay. Go ahead.

12 THE WITNESS: Okay. So Section 252(i)
13 permits competitive LECs like Core to request to opt
14 in or adopt the terms of previously established
15 agreements between another CLEC and Verizon. And we
16 have availed ourselves of that provision in both the
17 case of Verizon PA agreement and Verizon North
18 agreement.

19 BY MR. GRUIN:

20 Q How is that effectuated? Is it an e-mail you
21 send? How is that done?

22 A We correspond with Verizon. We make it known
23 that we want to opt into a particular ICA. In the
24 case of Verizon PA we designated the previous
25 agreement between Verizon and MCI Metro. And in the

1 Verizon North area we designated the Verizon
2 North/Sprint ICA. Once you do that, the paperwork is
3 exchanged and an adoption letter is signed simply, I
4 guess, memorializing the opt-in, and then the entire
5 opt-in -- the entire agreement and opt-in letter are
6 filed with the Commission.

7 (Whereupon, the document was marked
8 as Core Exhibit No. 2 for
9 identification.)

10 BY MR. GRUIN:

11 Q While you were speaking I rudely began passing
12 out a document to everyone else in the room, including
13 two for the court reporter and one for Your Honor.

14 Could you identify this document for us?

15 A Yes. This is the adoption letter between Core
16 and Bell Atlantic Pennsylvania, now Verizon
17 Pennsylvania, for the Verizon Pennsylvania service
18 territories. And it's dated as of March 31, 2000.

19 Q Okay. So this is the adoption letter you were
20 referring to a few minutes ago?

21 A Correct.

22 Q And you undertook a similar process for Verizon
23 North, I assume?

24 A Correct.

25 (Whereupon, the document was marked

1 as Core Exhibit No. 4 for
2 identification.)

3 BY MR. GRUIN:

4 Q Passing out another document, it's been marked as
5 Core Exhibit 4. Can you identify this document?

6 A Yes. This is the opt-in letter between Core and
7 Verizon North wherein Core opted into a previously
8 existing agreement between Verizon North and Sprint.

9 Q Okay. Now, I believe you said earlier that you
10 are also responsible for handling disputes with other
11 carriers regarding billing and payment; is that
12 correct?

13 A Correct.

14 Q Has -- strike that. I want to focus on the
15 dispute that's before us here today between Core and
16 Verizon. Based on your review of the interconnection
17 agreements, the adoption letters, and any amendments
18 to the interconnection agreements, has Verizon agreed
19 to pay Core for the termination of local ISP bound
20 traffic?

21 A Yes. Verizon has agreed essentially to abide by
22 the terms of the ISP agreement and order which require
23 compensation for Core's termination of Verizon's ISP
24 bound traffic.

25 MR. RUGGIERO: Objection, Your Honor.

1 That's a legal conclusion.

2 JUDGE COLWELL: I believe he's qualified
3 to make that. At least his opinion of it.

4 MR. RUGGIERO: Okay. All right.

5 JUDGE COLWELL: Go ahead.

6 MR. GRUIN: Thank you, Your Honor.

7 BY MR. GRUIN:

8 Q What is the basis for that conclusion?

9 A Well, there's two different agreements, but if
10 you start with the two adoption letters that we just
11 looked at, and I'll start with Verizon PA, Page 4 of
12 the adoption letter, there's a section called 2.1, and
13 the gist -- sorry.

14 Q I'm sorry. Go ahead.

15 A The gist of this provision is that at the time
16 Core opted into the MCI agreement, BA is essentially
17 stating here -- or Verizon is essentially stating here
18 that it disputes the need to pay the Commission's
19 TELRIC reciprocal compensation rate for the
20 termination of ISP bound traffic. And the Commission
21 had required Verizon to do that in its 1999 global
22 order. However, it says, and I'll quote, However, BA
23 acknowledges that the Commission, in Docket
24 P-00991648, directed that the reciprocal compensation
25 shall be applied on Internet traffic. Verizon will

1 comply with applicable law with respect to this
2 disputed issue.

3 So following execution of this
4 agreement, the FCC promulgated the ISP remand order in
5 2001. And Verizon argued vociferously that this ISP
6 remand order was a change in applicable law and that
7 they wanted to follow the ISP remand order from here
8 on out.

9 We actually disputed that it was a
10 change of law that invoked this paragraph, but the
11 Commission agreed with Verizon. They said applicable
12 law to change the ISP remand order governs here,
13 pursuant to the Core/Verizon PA agreement. That
14 decision came down from the Commission in 2003.

15 (Whereupon, the document was marked
16 as Core Exhibit No. 3 for
17 identification.)

18 BY MR. GRUIN:

19 Q I'm passing out what's been marked as Exhibit 3.
20 What is this document, Chris?

21 A This is the Commission's final order, although
22 there was a subsequent order on recon. But this is
23 the final order disposing of our claim and agreeing
24 with Verizon that Section 2.1 of our ICA, the proceed
25 -- the adoption letter, the provision we were just

1 Looking at, the ISP remand order constitutes
2 applicable law under this provision and Verizon was
3 entitled to implement the ISP remand order as it
4 pertained to the Core/Verizon interconnection
5 agreement.

6 Q Okay. Did you participate in that proceeding?

7 A Yes, I did. As general counsel. Not as -- not
8 as a practicing counsel.

9 Q So simply put, did Core win or lose that
10 proceeding?

11 A We lost.

12 Q So did Verizon get the relief they were seeking
13 with that order?

14 A Correct.

15 Q And that relief to -- if I am correct, was the
16 payment of Internet bound traffic at a rate of .0007
17 per minute?

18 A That's correct. In a nutshell, the consequence
19 -- the meaningful consequence of this order is that
20 Verizon was permitted to pay Core at a rate of .0007
21 per minute instead of the reciprocal compensation rate
22 that was set forth in the agreement, the Commission's
23 TELRIC rate of .002814 cents.

24 Q Okay. Does the .0007 rate also apply to traffic
25 that Verizon North sends to Core?

1 A Yes.

2 Q What is the basis for that conclusion?

3 A Well, if we start again with the adoption letter,
4 the adoption letter between Core and Verizon North at
5 Page 5, Paragraph 6, roughly midway through the
6 paragraph, it states, quote, accordingly any
7 compensation to be paid for Internet traffic will be
8 handled pursuant to the terms of the FCC Internet
9 order.

10 Q Okay.

11 A There's other provisions in the body of the
12 agreement that further amplify that.

13 (Whereupon, the document was marked
14 as Core Exhibit No. 6 for
15 identification.)

16 BY MR. GRUIN:

17 Q I'm going to pass out another exhibit here. This
18 has been marked Core Exhibit 6. Could you identify
19 that document for us?

20 A Yes. This is an Amendment Number 2 to the
21 interconnection agreement between Verizon PA and
22 Sprint, so it's an amendment to the ICA that we opted
23 into. And it was concluded before we opted into the
24 Sprint agreement.

25 Q Okay. And are there any sections of this

1 amendment that are relevant for purposes of
2 determining the rate for Internet bound traffic?

3 A Yes.

4 Q What provision specifically?

5 A Section 1.1.6 on Page 3 states the parties rights
6 and obligations with respect to any intercarrier
7 compensation that may be due in connection with their
8 exchange of Internet traffic shall be governed by the
9 terms of the order, meaning the ISP remand order, and
10 other applicable FCC orders.

11 Q Okay. Thank you.

12 MR. GRUIN: I guess I might as well just
13 do one more exhibit. And I'm sorry I went out of
14 order here, but this is Exhibit 5. It's been marked
15 as Exhibit 5.

16 (Whereupon, the document was marked
17 as Core Exhibit No. 5 for
18 identification.)

19 BY MR. GRUIN:

20 Q Can you identify that document for us?

21 A Yes. This is an excerpt from the Verizon
22 PA/Sprint agreement that we opted into.

23 Q And are there any -- which section of the
24 agreement reflected here on the page relates to
25 compensation for Internet traffic?

1 A Section 2.7.5, the second paragraph, states that
2 the parties rights and obligations with respect to any
3 intercarrier compensation that may be due in
4 connection with their exchange of Internet traffic
5 shall be governed by the terms of the FCC Internet
6 order.

7 Q Okay. Thank you, Chris.

8 Are you familiar with the nature of the
9 telecommunications traffic that Verizon delivers to
10 Core?

11 A Yes, I am.

12 Q How do you have that knowledge?

13 A Through conversations with Bret and just my
14 general understanding of how the company operates. I
15 know some of our customers personally, so that's
16 another indication of what they do.

17 Q Okay. What is the minimum amount of compensation
18 that Verizon must pay to Core for traffic that Verizon
19 delivers to Core over local interconnection trunks?

20 A The lowest possible rate out there in
21 telecommunications is .0007 per minute of use. And
22 that comes out of the ISP remand order. And that
23 applies to the traffic you just described. ISP bound
24 traffic that comes in over local trunk groups.

25 Q Isn't it possible that some traffic between a

1 CLEC and an ILEC can be non-compensable?

2 A Yes. There are -- there are bill and keep
3 arrangements that are generally codified in
4 interconnection agreements for carriers with roughly
5 balanced traffic. So carriers can agree to net out
6 their payments and not actually exchange money, but
7 Core has not done that.

8 Q So absent that kind of agreement that you call a
9 bill and keep agreement, what is the absolute minimum?

10 A Absolute minimum positive rate that applies to
11 telecommunications is .0007 per minute of use.

12 Q Is there any - - -

13 MR. RUGGIERO: Objection, Your Honor. I
14 object to him making that legal conclusion. I mean,
15 he -- he might have an opinion on it, but that's a
16 legal issue. For the record, Verizon doesn't dispute
17 that these ICAs are applicable or the rate for
18 Internet traffic is .0007. We don't dispute that. So
19 they're going down a road that they don't need to go
20 down in this dispute. But he can't keep making legal
21 conclusions. And that's what the - - -

22 MR. GRUIN: He is an attorney. He
23 negotiated the ICA. He's very familiar with them.

24 MR. RUGGIERO: But he's not an expert.
25 I mean, they're not offering him as an expert on the

1 Law.

2 MR. GRUIN: Well, - - -

3 MR. RUGGIERO: He's a fact witness.

4 MR. GRUIN: He's a fact witness, but, if
5 you put it like that we are offering him for his
6 interpretation of the ICA and the right to receive
7 compensation and the legal basis for that right.
8 That's part of our burden here, is we must prove a
9 clear right to relief.

10 MR. RUGGIERO: Well, I guess that's
11 precisely what I'm saying, Your Honor, is that you
12 can't have somebody argue the law as a witness. They
13 can argue the facts that lead the lawyer to argue the
14 law. But he can't argue the law.

15 MR. GRUIN: We -- Your Honor, I believe
16 we've all been in telecommunications cases, and the
17 lie between fact and law is always murky in these
18 cases. I think we're trying to keep a very tight and
19 narrow focus here. We're presenting the testimony of
20 an attorney who's very familiar with the ICA and its
21 adoption and the compensation regime. I think he's
22 entitled to make a conclusion as to why he believes
23 this rate applies.

24 MR. RUGGIERO: Your Honor, they filed
25 the petition. I mean, they filed the petition, they

1 made their argument. It's great that they have
2 witnesses, but it's got to be a fact witness or an
3 expert witness. And you can't have experts on the
4 law.

5 JUDGE COLWELL: He makes a good point,
6 Mr. Gruin.

7 THE WITNESS: Can I try to state it
8 another way? In my -- to my knowledge, I've -- having
9 read many, many FCC and state commission orders, I've
10 never seen a regulatory commission in the United
11 States approve a rate for the exchange of traffic
12 that's lower than .0007 per minute of use.

13 MR. GRUIN: Thank you.

14 THE WITNESS: I haven't.

15 JUDGE COLWELL: That's really not the
16 point of the petition though. So go ahead.

17 MR. GRUIN: Okay. Thank you.

18 BY MR. GRUIN:

19 Q Has Verizon provided you with a reason for its
20 belief that the traffic it sends you is not
21 compensable?

22 A No.

23 Q Have you asked them to do that?

24 A Yes.

25 Q How did you go about asking them to do that?

1 A When I received the letters on July 6th -- and by
2 the way, I received six letters on July 6th, not just
3 about Verizon PA, Verizon North, but in the four other
4 interconnection agreements we had with Verizon in
5 three other states, I got the exact same letter, which
6 is this is not compensable traffic.

7 Q Okay.

8 A On July 8th I wrote a letter, and I demanded that
9 they resume their payments and - - -

10 MR. RUGGIERO: Your Honor, I apologize.
11 I need to cut in there for a reason. Because I don't
12 want to go down a bad road. If we could -- I need to
13 make a motion. Verizon Cross Exhibit Number 2, Page
14 17 - - -

15 MR. GRUIN: This is a motion relevant to
16 Mr. Van de Verg's testimony?

17 MR. RUGGIERO: Well, I'm -- I don't want
18 you -- really what it is is I didn't want Core to go
19 down the wrong road, so I'll - - -

20 MR. GRUIN: Okay. Go ahead.

21 MR. RUGGIERO: I'd like to call the --
22 your attention to Page 17, it's Subsection D. It says
23 the parties agree that all negotiations pursuant to
24 this section, which is billing dispute resolution
25 section, shall remain confidential and be shall be

1 treated as compromise and settlement negotiations for
2 purposes of federal and state rules of evidence.

3 Now, I bring that up because we disputed
4 it on July 1. Now, they included a couple letters in
5 their petition and didn't seem like the thing to do
6 with three days notice was fight about this provision.
7 But the provision's in there for a reason. And so
8 these negotiations and the dispute resolution can go
9 on without having to go out in a court and he said/she
10 said. There's a reason for settlement negotiations.
11 And so I bring it up in case we're running into that
12 area.

13 MR. GRUIN: I don't believe we intend --
14 I know we don't intend to disclose the content of any
15 negotiations. We may indicate that negotiations took
16 place. I don't think that will be barred by this
17 provision.

18 JUDGE COLWELL: Well, the problem is
19 that we've already discussed in some detail some of
20 the correspondence that went back and forth between
21 your two clients.

22 MR. GRUIN: Yeah, I - - -

23 JUDGE COLWELL: It could technically be
24 barred by this if, as you say, this is what applies.

25 MR. RUGGIERO: Yes. And like I said,

1 Your Honor, what I'm -- I didn't -- I mean, they put
2 it in their petition. I didn't want it to -- I didn't
3 want to be overly lawyerly about keeping -- you know,
4 keeping things out of the record when we're in a hurry
5 and this is supposed to be an emergency. But I don't
6 -- and so, if what I need to do to maintain a lack of
7 waiver on this is object to - - -

8 MR. GRUIN: Your Honor, - - -

9 MR. RUGGIERO: - - - those letters and I
10 will, what I'm asking is that now that -- now that
11 I've called the attention to it, that we not do
12 anything more than those two letters that they've put
13 into the record themselves.

14 MR. GRUIN: I have to say, I mean, to
15 call the July 1, July 8, July 12th and July 18th
16 letters negotiations is really stretching. In fact,
17 it's not even close to negotiations. The July 1st
18 letters are a notice. It's a notice from Verizon. The
19 July 8th response is a response to that notice. The
20 July 12th letter is a clarification of the notice.
21 And so is the July 18th letter. They're not
22 settlement negotiations.

23 MR. RUGGIERO: The most -- I mean, the
24 most reasonable way to look at this, Your Honor, is
25 when a party starts a dispute, right, you start the

1 dispute, at this point this section kicks in.

2 MR. GRUIN: That's a conclusion of law
3 right there.

4 MR. RUGGIERO: Well, - - -

5 MR. GRUIN: We don't believe - - -

6 JUDGE COLWELL: Gentlemen, gentlemen.

7 MR. RUGGIERO: But I'm not -- I'm not a
8 fact witness. I'm raising this issue because I think
9 that what we can have here is a breach of contract and
10 I'm trying to avoid it. I'm making the argument to
11 the judge rather than stating it as a conclusion that
12 this is -- this is the way that I read the language in
13 there. That it precludes discussions between Mr. Van
14 de Verg, who is obviously the representative for Core,
15 and Mr. Monsel, who is the representative for -- Mr.
16 Carnell, who's the representative for Verizon, and
17 they're talking about how they can resolve this
18 dispute.

19 THE WITNESS: But those provisions
20 weren't invoked until - - -

21 JUDGE COLWELL: Excuse me.

22 THE WITNESS: - - - July - - -

23 JUDGE COLWELL: Excuse me.

24 MR. GRUIN: I think this is highly
25 improper, this whole derailment of this proceeding at

1 this point in time.

2 MR. RUGGIERO: I'm - - -

3 JUDGE COLWELL: Whoa, whoa, whoa, whoa.

4 MR. GRUIN: These - - -

5 JUDGE COLWELL: Wait, wait.

6 MR. GRUIN: - - - were introduced - - -

7 JUDGE COLWELL: Mr. Gruin. Judge here
8 talking.

9 MR. GRUIN: I'm sorry, Your Honor. I am
10 sorry.

11 JUDGE COLWELL: All right. Now, there's
12 nothing improper about bringing up what he did and
13 making the motion that he did. What we need to do now
14 is figure out how we can best streamline what you're
15 presenting so that it -- there -- do you agree -- do
16 you - - -

17 MR. GRUIN: I - - -

18 JUDGE COLWELL: Excuse me. Do you as
19 the attorney for Core agree that this applies?

20 MR. GRUIN: I definitely do not agree
21 that that section applies to those letters.

22 JUDGE COLWELL: Well, isn't this part of
23 the interconnection agreement?

24 MR. GRUIN: Yes, it's part of the
25 interconnection agreement but this says all

1 negotiations pursuant to 11.3 shall remain
2 confidential. We have not gotten any -- any questions
3 about the contents of negotiations.

4 JUDGE COLWELL: And that's his point.

5 MR. GRUIN: Okay. Then he starts
6 raising questions about exhibits previously introduced
7 and admitted into the record.

8 JUDGE COLWELL: You're skirting the edge
9 of danger here. I think it is wise to point that out.
10 I don't have any problem with that at all. So watch
11 where you're going.

12 MR. GRUIN: Thank you. Thank you, Your
13 Honor.

14 Could you read my last question back to
15 me?

16 (Whereupon, the Reporter read back the
17 referred-to testimony.)

18 BY MR. GRUIN:

19 Q Mr. Van de Verg, I believe I asked you whether
20 Verizon's notice letter explained why the traffic was
21 non-compensable.

22 A No. Not in my view.

23 Q Did you ask Verizon to explain why they believed
24 it was non-compensable?

25 A I did.

1 Q To this day have you gotten any answer as to why
2 Verizon believed it is not compensable?

3 A No. Not in my view.

4 Q Without revealing the substance of any
5 discussions you had with Verizon, did you make an
6 inquiry to Verizon directly -- a Verizon
7 representative directly, other than your July 8th
8 letter?

9 A Yes, I did. I made a phone call.

10 Q Who did that phone call go to?

11 A An attorney named William Carnell, who I believe
12 is based in Massachusetts.

13 Q Okay. Was that a negotiation conversation?

14 A It was my attempt to understand the nature of the
15 dispute that was being raised.

16 Q Okay.

17 A And his view of the dispute resolution process
18 that he had invoked.

19 Q Okay. Did his initial July 1st letter
20 specifically reference the ICA dispute resolution
21 process?

22 A Well, the letter dated July 1 and we got on July
23 6 is actually from Charles Bando.

24 Q Okay.

25 A But no, it does not cite any interconnection

1 agreement provision.

2 Q Does it cite any legal authority whatsoever for
3 the conclusion that the traffic is not compensable?

4 A No.

5 Q Okay.

6 MR. RUGGIERO: Objection, Your Honor.
7 Letter speaks for itself.

8 MR. GRUIN: Okay.

9 JUDGE COLWELL: Sustained.

10 BY MR. GRUIN:

11 Q Then you wrote back on July 8th, correct?

12 A Yes.

13 Q Did you acknowledge that a dispute under the ICA
14 had been initiated?

15 A No. In fact, I said I could not recognize the
16 July 1 letter as raising any bona fide dispute.

17 Q Okay. Do you agree with Mr. Ruggiero's assertion
18 that what we have here today as documented by the July
19 1 through July 18th letters, is that a dispute under
20 the ICA that requires utilization of the dispute
21 resolution process?

22 A No.

23 Q Why is that?

24 A It turns the dispute resolution process on its
25 end. What we see in these letters is a conclusion

1 that they're not going to compensate us for the
2 traffic. But there's no meaningful explanation of why
3 and the invocation of the dispute resolution process
4 is a means for them to delay payment - - -

5 MR. RUGGIERO: Objection.

6 THE WITNESS: - - - for at least 120
7 days.

8 JUDGE COLWELL: Wait. When there's an
9 objection, you know you stop.

10 THE WITNESS: Sorry.

11 MR. RUGGIERO: Objection, Your Honor.
12 What he was about to testify to was Verizon's
13 motivation, and he has no basis to make that
14 assertion.

15 JUDGE COLWELL: That's true.

16 MR. GRUIN: I don't know what he was
17 about to testify to.

18 MR. RUGGIERO: He started it. So the
19 court reporter could read it back.

20 JUDGE COLWELL: Or perhaps you can just
21 reword the question.

22 MR. GRUIN: I think I asked him why he
23 believed that the dispute resolution process had not
24 been initiated under the ICA.

25 THE WITNESS: Well, ordinarily if you're

1 going to write a dispute letter, you list the reason.
2 You're going to say you charged me the wrong rate,
3 here's the rate you should be charging me, here's the
4 difference, you know. Here's how we think you
5 overbilled us or, you know, something concrete that
6 the other party can then say, okay, well, maybe I
7 don't agree with you, we should look at this. Simply
8 saying that a hundred percent of your minutes across
9 six agreements in four states is not compensable, that
10 -- there can't be - - -

11 MR. RUGGIERO: Objection, Your Honor.

12 THE WITNESS: - - - a legitimate dispute
13 -- sorry.

14 MR. RUGGIERO: Objection, Your Honor.
15 He's testifying to facts not in evidence. He's
16 talking about other states and other companies. He
17 can talk about Verizon Pennsylvania, Verizon North all
18 he wants.

19 JUDGE COLWELL: Sustained.

20 MR. GRUIN: That's fine.

21 BY MR. GRUIN:

22 Q Could you limit your discussion to Pennsylvania,
23 please.

24 A Yes.

25 Q Did you in fact engage in settlement negotiations

1 with Mr. Carnell?

2 A No. I had a phone call with him and I attempted
3 to understand what the dispute was. At the end of
4 that phone call I was no more clear than before I made
5 the call.

6 Q Do you know what date that phone call was?

7 A It was a Monday. It was Monday, July 18.

8 Q Did you -- after that phone call, did you
9 continue any attempts to request clarification of the
10 grounds for the non-payment?

11 MR. RUGGIERO: Your Honor, I think it's
12 time for me to move to strike this as barred by 11(d)
13 as not subject to the federal rules of evidence, state
14 rules of evidence on the parties' contract. I mean,
15 at some point the dispute resolution provisions have
16 kicked in.

17 MR. GRUIN: So let me understand this.
18 Verizon sends Core notices saying we're not paying,
19 we're not going to tell you why we're not paying, we
20 refuse to in three separate letters. Requiring Core
21 to have no choice but to go to the Commission and
22 invoke its right. Then when we get here, Verizon
23 still doesn't explain why they're not paying us. When
24 we attempt to talk about our attempts to get more
25 information from them, that's excludable too? I mean,

1 are we through the looking glass here or what?

2 MR. RUGGIERO: Your Honor, - - -

3 JUDGE COLWELL: Okay. How is that
4 responsive to this particular objection?

5 MR. GRUIN: I mean, I think the
6 objection's completely meritless. I mean, can we read
7 this Section D? Is that what you're referring to,
8 subparagraph D?

9 MR. RUGGIERO: Subparagraph D.

10 MR. GRUIN: What's the definition of the
11 word negotiations? I mean, that is -- that implies
12 that parties are negotiating over a bill dispute. Mr.
13 Van de Verg is testifying about requests for
14 clarification of a notice that they received.

15 MR. RUGGIERO: The - - -

16 MR. GRUIN: I mean, I think let it into
17 the record, let the Commission decide.

18 MR. RUGGIERO: You can speak more loudly
19 than me if you want, Mr. Gruin, but 11.3 talks about
20 disputes. In 11.3(d) it says that all negotiations
21 pursuant to this Section 11.3. Now, to me, Section
22 11.3 clock starts to run when the party disputes it.
23 We disputed it. I presume that because it's -- it's
24 subject to the dispute resolution procedures the two
25 parties are supposed to talk to resolve the issues.

1 MR. GRUIN: Your Honor, first of all - -

2 -

3 MR. RUGGIERO: Now, you're
4 characterizing Verizon's discussions in a -- in a way
5 that I disagree with, but nevertheless the point is
6 that that's what this Section D is intended to be for.

7 MR. GRUIN: That's the - - -

8 MR. RUGGIERO: Well, - - -

9 MR. GRUIN: This is completely improper.

10 MR. RUGGIERO: It is certainly the way
11 that I read these words on the page, which is why that
12 I'm moving -- which is why that I'm moving for a
13 ruling. I don't think it's fair to disclose stuff
14 that, when you talk about the stuff, you're reading
15 the contract and it says this is confidential. And
16 then -- because you're in a settlement negotiation.
17 But -- but then you walk out of the settlement
18 negotiation, oh it wasn't a negotiation, it was just
19 clarification.

20 MR. GRUIN: We disagree that there's
21 even been a dispute under the ICA. That's an issue of
22 law or fact, I guess, for Your Honor and the
23 Commission to make, and the Commission's entitled to
24 make that decision. We don't agree that what Mr. Van
25 de Verg is talking about would violate this provision

1 even if there was a valid dispute. He's -- there was
2 no -- factually there were no negotiations that were
3 undertaken. And even if there were, the questions I'm
4 asking him, the responses he's giving do not reveal
5 any compromise and settlement negotiations. These are
6 him requesting clarifications. I -- I really do not
7 see any -- certainly prejudicial error with those --
8 with allowing you to make those statements.

9 JUDGE COLWELL: I think it would be wise
10 to leave the content of whatever contact was between
11 the two parties, whether or not you term it as a
12 negotiation, as what is already in front of you.
13 Unless you have additional facts that are particularly
14 important that might cross that line, I would
15 recommend staying away from the line because then I
16 look forward to your telling me at the end what
17 procedure does apply if the ICA does not.

18 MR. GRUIN: Okay. Thank you, Your
19 Honor.

20 BY MR. GRUIN:

21 Q So I believe you said you didn't believe there
22 was a valid dispute triggered by the ICA; is that
23 correct, Chris?

24 A Correct.

25 Q I'm going to use the word dispute, not in -- not

1 in the -- meaning a formal dispute of the ICA, but did
2 you believe the controversy between Verizon could be
3 resolved between the parties?

4 A No.

5 Q And because of that, what is your understanding
6 of what the ICA allowed you to do?

7 A Well, the ICA states that if the parties are
8 unable to agree on a resolution of their dispute, they
9 can go to the Commission and seek expedited relief.

10 Q Okay. Why did you do that in this case?

11 A Well, I mean, this -- this non-payment or latest
12 form of non-payment, is existential crisis for Core,
13 the company I've worked at since 1999. We're a
14 facilities based CLEC. Yes, we're small. We have a
15 big footprint. We provide a lot of value to a lot of
16 people. And frankly, today, we can't -- we're having
17 a real hard time paying our bills, and in a month, as
18 I understand, we're not going to be able to do that.
19 And we have vendors, suppliers, we have landlords,
20 consultants who are going unpaid today. That
21 situation is just going to get worse as this, quote,
22 unquote, dispute resolution process drags on if
23 Verizon is allowed to have its way here.

24 Q You said the dispute resolution process dragging
25 on. What were you referring to?

1 A Well, the provisions Joe was looking at -- or Joe
2 was reviewing with Bret earlier talked about 30, 60,
3 90, 120 days, and then I guess maybe go to the
4 Commission. We can't afford to do that here. There's
5 a crisis.

6 Q Okay. If Verizon says this traffic is not
7 compensable as of July 1, was that the first time
8 you've ever heard them say that before?

9 A Yes.

10 Q Are you aware of how traffic could even
11 theoretically be non-compensable?

12 A If they're sending traffic to us down their local
13 Internet connection trunk groups that we've had up for
14 -- in Pennsylvania since, I believe, 2001 and they've
15 been paying since 2004, no, I can't imagine a type of
16 traffic they're sending us that's not compensable.

17 Q Did your - - -

18 MR. RUGGIERO: Objection, Your Honor. I
19 don't think he's an expert on the traffic. I don't
20 think he's proven that he's an engineer or telecom
21 operations expert.

22 MR. GRUIN: He doesn't need to be. He's
23 testifying about the compensability of traffic under
24 the intercarrier compensation regime.

25 MR. RUGGIERO: We - - -

1 MR. GRUIN: He's - - -

2 JUDGE COLWELL: I think this one is
3 sustainable. Sustained.

4 BY MR. GRUIN:

5 Q Have you been provided with any information or
6 rationale that calls into question Core's entitlement
7 to receive compensation from this traffic, besides the
8 self-conclusory statement that it's not compensable?

9 A No.

10 Q Have you -- has Verizon informed Core that any
11 portion, subset of the traffic referenced in the May
12 and June invoices was in fact inflated or overbilled?

13 A No. No specific allegation.

14 Q I want you to talk about some of the public
15 interest ramifications, which is one of our criteria
16 here today. Are you -- how long have you worked in
17 the telecom industry?

18 A Since 1999.

19 Q Have you always worked as -- for a competitive
20 carrier?

21 A Yes, I have.

22 Q Are you -- you're a shareholder in Core
23 Communications, right?

24 A I have a stake in Core Communications, yes.

25 Q Are you an officer in the company?

1 A I'm general counsel.

2 Q Are you -- do you participate in industry events
3 that involve other competitive carriers?

4 A Yes. I attend Comptel, NARUC and MACRUC
5 conferences on a regular basis.

6 Q Okay. Do you participate in panel discussions
7 and workshops and the like on issues affecting the
8 telecom industry?

9 A Yes. At the invitation of NARUC and MACRUC I've
10 -- I've spoken on panels at both conferences.

11 Q Okay. Would you consider yourself an expert in
12 the area of intercarrier compensation and telephone
13 competition?

14 A Yes.

15 Q What would it mean to a telecom industry,
16 telecommunications industry, and competitive carriers
17 in particular, if Verizon is permitted to simply stop
18 paying intercarrier compensation bills?

19 A Well, I think the public policy that's at stake
20 here is whether Verizon can be allowed to essentially
21 usurp the Commission's -- this Commission's authority
22 to arbitrate the ICAs. I'm sympathetic when Joe says
23 we should follow the procedures in the ICAs. We need
24 those procedures most of the time just to survive or
25 to have any chance against Verizon. But they're not

1 using the procedure correctly. They're stating a
2 conclusion, they're cutting off payment, and they're
3 essentially usurping the role of the state Commission.
4 This undermines -- we've seen the entire world of
5 access charges, intrastate and interstate has become
6 just overloaded with this non-payer epidemic.

7 Q Okay.

8 A And now what I see is it's spreading into -- even
9 into local interconnection agreement obligations.

10 Q From where you sit as general counsel of a small
11 competitive carrier, would it cause uncertainty to you
12 if Verizon -- I'm saying if -- strike that. If you're
13 sitting as an officer of another small telephone
14 company, not Core, and you see Verizon be permitted to
15 stop their intercarrier compensation payments to Core,
16 would that cause uncertainty for you or worry?

17 A Yes, of course. And we've been worried because
18 we've heard from other carriers that stuff like this
19 is starting to happen more and more frequently. And I
20 got to tell you, what -- you know, rhetorical
21 question. What sane person would enter the CLEC
22 business at this point knowing that Verizon can cut
23 off your biggest revenue stream with a one-page form
24 letter that says little or nothing. I mean, it's -- I
25 think the people in this business are people that have

1 been in this business and we're just trying to
2 survive.

3 Q If this behavior is permitted to -- or is
4 permitted, period, would that be harmful for the
5 competition?

6 A Yes.

7 MR. RUGGIERO: Objection. Objection. I
8 don't know what that question is.

9 MR. GRUIN: I'll restate the question.

10 BY MR. GRUIN:

11 Q If a large ILEC such as Verizon is permitted to
12 terminate intercarrier compensation payments to a
13 small competitor without providing any basis, would
14 that be harmful to competition?

15 A Yes, of course. Small competitive carriers, just
16 like small ILECs, rely to a degree on intercarrier
17 compensation, and to see cut off funding without real
18 explanation is devastating.

19 Q Do you have anything else to add to your
20 testimony either on the public interest ramifications
21 of this situation or regarding Core's right to relief?

22 A No, I don't.

23 MR. GRUIN: Okay. No further questions,
24 Your Honor. I would just like to move for the
25 admission of the Core Exhibits 2 through 6 subject to

1 cross.

2 JUDGE COLWELL: Any objection?

3 MR. RUGGIERO: No objection.

4 JUDGE COLWELL: They are admitted.

5 (Whereupon, the documents marked
6 as Core Exhibit Nos. 2 through 6 were
7 received in evidence.)

8 MR. RUGGIERO: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. RUGGIERO:

11 Q Mr. Van de Verg, - - -

12 A Yes.

13 Q Are you under the impression that Verizon
14 disagrees with the applicability of Core Exhibit 4 or
15 Core Exhibit 6?

16 A I don't have those right in front of me.

17 Q All right. I thought your - - -

18 MR. GRUIN: I passed those out. It
19 would be the Verizon adoption letter, I believe, and -
20 - -

21 THE WITNESS: Oh. Okay.

22 BY MR. RUGGIERO:

23 Q I just - - -

24 A That you disagree with us?

25 Q I just want to make sure that -- that we're not

1 creating the impression of a dispute where there isn't
2 one. Are you under the impression that we don't
3 believe that Exhibit 5 or Exhibit 6 or Exhibit 2 are
4 part of the interconnection agreement between the
5 parties?

6 A I don't think you contest that they're part of
7 the agreement.

8 Q Beg your pardon?

9 A I don't think you contest that they're part of
10 the agreement.

11 Q Now, I know that you've -- you said a number of
12 times that you feel like our responses were
13 non-specific. I'd like to point you to the July 18th
14 letter.

15 A Okay.

16 Q Or maybe we'd be better with the July 1st letter.
17 Let's stick with the July 1st letter. We state that
18 we don't consider it to be reciprocal compensation
19 traffic. We state that you've overstated the quantity
20 of traffic. And we state that you've billed in
21 excess. Now, I can imagine you saying, gosh, now I
22 understand why you're disputing it. I'd like to have
23 more details. But isn't the point of -- and I guess
24 this is also argumentative. If we are supposed to be
25 paying you reciprocal compensation, aren't we supposed

1 to tell you that we don't think it's compensable as
2 reciprocal compensation under the terms of the ICA?

3 A I'm not sure I understand that question.

4 Q What level of specificity do you view the ICA is
5 requiring in order for you not to say this doesn't
6 count as a dispute under the ICA?

7 A Well, I guess we would like an explanation of why
8 after six years of paying these bills without dispute
9 you say that the traffic billed is non-compensable.

10 Q What does - - -

11 A Is not in fact compensable to Core.

12 Q What does the fact that -- and Mr. Mingo keeps
13 saying this now too. You know that we requested call
14 detail records from you, right? Are you aware of
15 that?

16 A I'm well aware that both parties have a lot of
17 requests out there, yeah. Including your request for
18 certain records, yes.

19 Q And you know that we requested call detail
20 records -- I understand you've got other things to
21 say. But you know that we requested call detail
22 records that are specific to Tab -- specific to Tab A
23 of Mr. Mingo's affidavit, the invoices that are the
24 subject of your emergency petition. The invoices that
25 are the subject of the emergency petition give one a

1 quantity of minutes -- of local minutes from each
2 LATA, and then they say an amount. And you're aware
3 -- I guess this is a question. Are you aware that the
4 ICA between the parties requires you to generate AMA
5 records and keep track of the call details?

6 A Yes. I'm aware of that provision.

7 Q And you're aware that Mr. Mingo says you do in
8 fact keep those records?

9 A Yeah.

10 Q Okay. Now, Mr. Van de Verg, when we talk about
11 the dispute resolution procedures in the ICA and you
12 say that you're familiar with them and you recognize
13 there's a 60 day period for us to dispute it and a 90
14 day -- another 30 days for escalation, when you avoid
15 that, I mean, aren't you breaching the contract?

16 A No. Not at all. We are -- we stand here willing
17 -- and I think we've both come to the conclusion that
18 we're going to exchange records. And you can -- you
19 can call that part of the billing dispute resolution
20 process. So no, it's ongoing.

21 Q Then why did you go to the Commission?

22 A Nothing in the agreement says you have to wait
23 until all of this is over before you go to the
24 Commission. Especially when your -- when your company
25 is in a financial crisis and the agreement also says

1 you can seek expedited resolution at the Commission.

2 Q Well, let's take a look so that we don't have a
3 disagreement about that.

4 A Okay.

5 Q 17.0 of the -- I'm sorry, Verizon Cross Exhibit
6 Number 2.

7 A I'm not sure that I have that.

8 Q You don't have a copy of that?

9 A What provision of the agreement? I have the
10 agreement.

11 Q 17.0. It is Page 21 of the Sprint/Verizon North
12 agreement.

13 A Okay.

14 Q Let me know when you have that.

15 A Yes.

16 Q Okay. Now, look, it says any dispute between the
17 parties shall be addressed by good faith negotiations
18 between the parties in the first instance. Should
19 such negotiations fail to resolve the dispute in a
20 reasonable time, and I'm sticking in an editorial,
21 then either party may initiate an appropriate action
22 to -- now, here's what I don't understand. You don't
23 have any dispute that that language is in the
24 contract?

25 A Nope.

1 Q What I don't understand is, how do you claim that
2 no negotiations occurred between the time that we
3 disputed it on July 1 and today and yet you claim to
4 be here? Negotiations couldn't have failed if you
5 weren't even willing to begin them.

6 A We tried -- I tried to begin a conversation. It
7 went nowhere.

8 Q Let's ask you to look at the -- this is Verizon
9 Cross Exhibit Number 1.

10 A Section?

11 Q Section 3.1.9.

12 A I'm sorry, are we on the Verizon PA agreement?

13 Q Yes, we are. We're on Attachment VIII, Page 25.

14 A Oh, Attachment VIII.

15 Q Section 3.1.9.1.

16 A Yes.

17 Q Okay. And that applies, right?

18 A It applies to what?

19 Q Applies to this dispute.

20 A If it is presumed that there's a legitimate
21 dispute out there somewhere, this provision would
22 apply. That's what we're contesting. It says each
23 party agrees to notify the other party upon the
24 discovery of a billing dispute. I don't think we
25 received a notification that you discovered anything.

1 MR. RUGGIERO: Okay. All right. No
2 further questions, Your Honor.

3 MR. GRUIN: Short recross, Your Honor.

4 JUDGE COLWELL: Go ahead.

5 REDIRECT EXAMINATION

6 BY MR. GRUIN:

7 Q Mr. Van de Verg, Mr. Ruggiero just had you look
8 at some of the dispute proceedings -- dispute sections
9 from the Core/Verizon North agreement. Could you turn
10 to the Core/Verizon PA agreement, which is Verizon
11 Cross Exhibit Number 1, Section 24.

12 A Okay.

13 Q Now, that section differs slightly from the
14 dispute resolution process in the Verizon North
15 agreement, Section 17. Do you agree?

16 A Yes.

17 Q How so?

18 A Well, this one specifies that during the
19 Commission proceeding each party shall continue to
20 perform its obligations under this agreement.

21 Q Okay. Does it differ in terms of the steps
22 needed to be taken before action to be initiated
23 before a regulatory body?

24 MR. RUGGIERO: Your Honor, we'll
25 stipulate that Section 24.1 says what it says.

1 MR. GRUIN: Okay. Thank you. I
2 withdraw the question.

3 BY MR. GRUIN:

4 Q Mr. Ruggiero just pointed out to you Section
5 3.1.9 of Attachment VIII to the Verizon ICA.

6 A Yes.

7 Q Could you flip back to that section? Are you
8 there?

9 A Okay.

10 Q Under the heading billing dispute.

11 A Uh-huh.

12 Q This is the one that Mr. Ruggiero was talking
13 about with the 60 day, 90 day, 120 day process before
14 you go to the Commission.

15 A Correct.

16 Q Under this provision, is the disputing party
17 required to still perform under the contract during
18 the pendency of the dispute?

19 A Under 3.1.9?

20 Q Yes.

21 A I don't believe there's any specific reference to
22 continuing to abide by your obligations here.

23 Q Does the ICA speak to that point directly?

24 A Yes. In Section 24. And that's the passage I
25 just read.

1 MR. GRUIN: All right. I have no
2 further questions, Your Honor.

3 JUDGE COLWELL: Mr. Ruggiero?

4 MR. RUGGIERO: Your Honor, at this time
5 Verizon would like to move to dismiss the petition.
6 It's Core's burden to prove all of those prongs. They
7 have got the burden of proof and the burden of
8 persuasion. They need to have presented substantial
9 evidence, and what we have here, Your Honor, is a
10 simple billing dispute. The ICA governs that billing
11 dispute. There are billing dispute provisions in the
12 ICAs, both ICAs. Separate from the billing dispute
13 provisions, there's dispute resolution provisions.
14 The parties, under contracts approved by the
15 Commission, as -- as consistent with public policy,
16 that Core admits in their complaint govern the
17 relationship between the parties, have already laid
18 out, have already bargained for the way we fix these
19 things or the way we work to fix these things before
20 we run to the Commission.

21 It's actually a breach in my view, but
22 it doesn't raise a substantial legal question because
23 it's not ripe. They haven't gone through the dispute
24 resolution process. They haven't gone through the
25 billing dispute process.

1 But more than that, they have unclean
2 hands here, Your Honor. They come to you in equity
3 but the evidence is clear from what we provided today
4 that we asked them time and again to see the call
5 detail records. That's it. They give us a bill,
6 there's a a big number on there, and we want to know
7 what the detail is. So we ask them. We ask them
8 consistent with the contract which entitles us to ask.
9 Okay, give us the call detail records. You're
10 obligated to generate them and you're obligated to
11 share them with us if and in we can validate the bills
12 -- and even today, Your Honor, if they come to us and
13 give us the call detail records that we're requesting
14 so we can validate the bills, the portion of the bill
15 that's valid we'll pay.

16 So it's their fault they're in this
17 situation. Whatever they call this situation, it's
18 their fault. Because we can't validate their bills
19 and we're entitled to validate the bills.

20 We're not talking about self-help.
21 We're not talking about, oh, we terminated a company
22 because they didn't pay our bills. Core owes Verizon.
23 Core owes Verizon Pennsylvania \$3 million in a
24 different direction. We've never acted to terminate.

25 MR. GRUIN: I move to strike that last

1 reference from the record about monies that Core owes
2 to Verizon. There's no evidence in the record of
3 that. There's no evidence in the record. You're in
4 summation.

5 MR. RUGGIERO: Fair enough. If - - -

6 MR. GRUIN: So can I make sure that it's
7 stricken from the record, the reference to how much
8 money Core owes Verizon?

9 JUDGE COLWELL: You already put that on.
10 It makes - - -

11 MR. GRUIN: That's not part of the
12 record.

13 JUDGE COLWELL: Do you think for a
14 minute that that reference is not going to be part of
15 what the Commission looks at?

16 MR. GRUIN: It's not part of the record.

17 JUDGE COLWELL: Do you think that the
18 Commissioners are going to see that, and their staff?

19 MR. GRUIN: They may see it. Will they
20 reference it? Who knows, but it's not part of the
21 record.

22 JUDGE COLWELL: I agree.

23 MR. GRUIN: So it can't be addressed in
24 summation.

25 JUDGE COLWELL: We can strike it.

1 MR. GRUIN: Thank you.

2 MR. RUGGIERO: If someone owed Verizon
3 money and Verizon terminated them rather than go
4 through the channels of the contract, without going
5 through the channels of the contract, without using
6 the contract, and went around the jurisdiction of the
7 Commission, or set off monies that a company owed
8 inconsistent with the contract rather than pay them,
9 that's self-help. If you do what you're supposed to
10 be doing under the contract, that's not self-help.

11 We haven't taken any unilateral action.
12 We're disputing bills because we don't think they're
13 valid. And so while there's a hard and fast rule in
14 this Commission, and I completely understand it, that
15 if you dispute a portion of a bill, you need to be
16 paying the undisputed portion of the bill while you
17 dispute that portion, and Verizon isn't contesting
18 that. The problem here is that Verizon is contesting
19 the entire bill, and whenever we ask for evidence that
20 would validate any portion of that bill, they won't
21 give it to us.

22 So I think -- I think their unclean
23 hands bar the -- I mean, we're here, Your Honor,
24 because it's supposed to be a clear and present danger
25 to life or property. Not, gosh, I hate this dispute

1 resolution procedure that I bargained for and these
2 guys won't pay me. If that was the test, every breach
3 of contract, you'd have to prepay. Every tort you'd
4 have to prepay because everybody could use the money.
5 That's not the test.

6 This is a good faith dispute that
7 Verizon put forth. There's a clear -- there's a very
8 clear Commission order, LTV -- let me get the cite for
9 you. That holds that a commercial company doesn't
10 have to pay disputed amounts during the pendency of
11 the dispute. It also holds that you have to pay
12 undisputed amounts. It's LTV Steel Company Inc.
13 versus Duquesne Light Company, C-850288 and C-5850289,
14 January 23rd, 1986.

15 And the answer is clear that -- the
16 answer -- an industrial customer is under no duty to
17 pay a disputed portion of a bill. Verizon has
18 disputed it. Or we think that the ICA provides an
19 avenue for the parties to resolve it. I've stated
20 several times on Verizon's behalf, and I'm -- and I
21 recognize that it's me saying it, that we -- if we had
22 those call detail records, we can try to validate
23 their bills. The -- the -- this is not a dispute
24 about the rate. This is not a dispute about -- and so
25 there's no important legal issue raised about the rate

1 of traffic. The FCC has already decided that
2 question. So that's not an important legal question
3 that justifies their right to relief. Verizon has a
4 right to audit. Core has an obligation to provide it.
5 So that's why they don't have -- they haven't
6 established a right to relief, Your Honor.

7 (Whereupon, the following pages 167
8 through 168 were sealed and bound separately.)
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1 MR. RUGGIERO: Verizon doesn't owe them
2 a fiduciary duty. Verizon owes them a contractual
3 obligation to comply with the contract. And Verizon
4 hasn't done anything in equity that would require a
5 mandatory -- this injunction wouldn't be a prohibitory
6 injunction, don't shut somebody down, don't take this
7 action. This would be a mandatory action. Pay them.
8 Pay them even though you don't believe that it's
9 valid. And you think about the public policy problems
10 inherent in that. Now what you have is any time
11 somebody has a breach of contract, they say I really
12 need the money, you need to pay me now, even though
13 you've disputed it. More than that, once we get that
14 order, gosh, we've got a real moral hazard because
15 they just bill us this number, it's a big number. And
16 they won't give us the details. And now they've got a
17 Commission order that says, yeah, Verizon, you just --
18 you just keep paying it.

19 I don't think that we should reward Core
20 for ignoring the ICA. I don't think that, with all
21 due respect, Your Honor, that the Commission should
22 ignore the provisions of the ICA and eviscerate the
23 provisions of the ICA.

24 And finally, on the irreparable aspects
25 of it, that they have not explained in any way why all

1 of the cases that -- that describe why -- why damages,
2 why economic harm that can be ascertainable bars
3 preliminary relief. They haven't even touched that
4 subject. I think the case law is clear on that. And
5 they haven't described any harm that would overcome
6 that clear case line.

7 Now, in conclusion, Your Honor, I would
8 like to move to dismiss their petition immediately
9 because I don't believe that they've established their
10 case. I don't think that we need to respond because
11 they haven't proven their case. And they've had two
12 witnesses up there, they filed a complaint, they filed
13 an affidavit. We ought to be done.

14 And I also move, in the interest of the
15 efficiency of the underlying complaint, that you order
16 Core to give us one day of call detail records from
17 all six LATAs. Just one day, and then we can actually
18 move forward on -- if there's any valid minutes, we'll
19 know, that's what gives one the answer. It's
20 consistent with the contract. And then then you don't
21 have to have six months of a litigation. You can have
22 an answer.

23 Thank you, Your Honor.

24 JUDGE COLWELL: Okay. Two things.

25 First of all, unless you're really comfortable there,

1 you're excused and may step down.

2 THE WITNESS: I didn't want to
3 interrupt. Sorry.

4 JUDGE COLWELL: Second thing is, I don't
5 believe I have the ability to dismiss it now. I
6 believe my actions are limited to either grant or
7 denying. So I have to go forward with a complete
8 analysis which I then send to the Commission for their
9 analysis.

10 MR. RUGGIERO: Okay.

11 JUDGE COLWELL: And I'm sure Mr. Gruin
12 would like a chance to respond.

13 MR. GRUIN: I would, Your Honor.
14 There's so much in there I don't know where to begin.
15 First of all, on the issue of precedent for emergency
16 relief. There are at least three cases that I'm aware
17 of where the Commission has granted interim emergency
18 relief from intercarrier compensation disputes.
19 There's the Level 3 versus Marianna and Scenery Hill
20 case, Buffalo Lake Erie Wireless case, and most
21 recently there's the Palmerton Global NAPs case. The
22 facts of each are different. But all of them, the
23 same thing, it was a underlying intercarrier
24 compensation dispute and the Commission granted
25 emergency relief.

1 The Palmerton case is most illustrative,
2 I think. In that case you had a carrier, Global NAPS,
3 who was sending high volumes of traffic to another
4 carrier, Palmerton, refusing to pay any bills and
5 giving vague or no legal justification for that.
6 The Commission chastised Global NAPS harshly for doing
7 that. They treated it with disdain and they made it
8 as clear as clear can be that they will not tolerate
9 this kind of behavior from anyone, much less the
10 largest ILEC in Pennsylvania.

11 Verizon, what they're doing here is
12 nearly identical to what Global NAPS did. They're
13 saying this traffic is non-compensable. They don't
14 provide any legal citations, any factual citation.
15 When Core asked for it, they get nothing in response.
16 We hoped that we would get an answer today at the
17 hearing. They don't even bother to bring a witness to
18 even put a minimal basis for their conclusion that
19 it's non-compensable. It's disrespectful to everyone
20 involved. Most importantly, to the Commission, I
21 think.

22 You know, Core filed this emergency
23 petition. As we all know, everyone juggled their
24 schedule to be here. Simply seeking a simple
25 response. Why would this traffic be non-compensable?

1 Our witnesses, Core witnesses went through each of the
2 four criteria for the petition. On right to relief,
3 we have talked about how the ICA controls this
4 traffic, we talked about how the absolute possible
5 theoretical minimum that this traffic could be
6 compensated at is .0007.

7 It seems that Verizon has acknowledged
8 that. They put in no evidence whatsoever which would
9 undermine or in any way question the volume of the
10 traffic. Their only argument seems to be a nuanced
11 procedural argument that Core did not follow the
12 lengthy steps of the dispute process. That's their
13 idea of breach.

14 I guess only in Verizon's world can they
15 come out of the blue suddenly after six years of
16 sending the same traffic and say we're not paying you
17 anymore and turn that around to say the other party
18 has unclean hands and the other party breached the
19 ICA. I mean, let's look at Verizon's breach of the
20 ICA. Again, they have put in zero evidence here
21 today.

22 Core has made a prima facie case of its
23 right to relief through Mr. Van de Verg. They have
24 made a prima facie case that the need for relief is
25 immediate, both through the testimony of Bret Mingo,

1 the affidavit of Bret Mingo, and the testimony of
2 Chris Van de Verg, who said repeatedly, I believe,
3 that there was urgency here, that if they did not get
4 this money they would go out of business. That's
5 discussed by Mr. Mingo in his testimony and his
6 affidavit.

7 The injury would be irreparable if
8 relief is not granted. If Core goes out of business,
9 Mr. Mingo testified to the fact that they will never
10 get back into business. Their employees will lose
11 wages and paychecks. Facilities in Pennsylvania will
12 be shut forever. That relief -- that injury is
13 irreparable.

14 The fourth criteria, the public interest
15 standard. Mr. Van de Verg talked about that. Again,
16 we made a prima facie case. Verizon has done nothing
17 to rebut it, put in no evidence whatsoever.

18 So based on that and the evidence in the
19 record, we believe that the criteria have been met for
20 the granting of the interim emergency relief.

21 MR. RUGGIERO: Your Honor, couple small
22 things. First, with respect to Palmerton, there was
23 no interconnection agreement between those two
24 parties. Second, the money that was disputed, was
25 under dispute, was placed into an escrow account. It

1 wasn't given to the parties. Now, Mr. Gruin said
2 that, kind of is conclusory, that Core made its prima
3 facie case, and it's not my job to argue, but I would
4 point out, Your Honor, that the test requires
5 substantial evidence. It's more than the burden of
6 proof. It's also the burden of persuasion. And
7 nothing more than, you know, in a couple months, we're
8 going to have to -- you know, there might be a crisis.
9 We might have to, you know, get smaller, without any
10 evidence. I mean, without any evidence, without any
11 way to validate that, without any way to test that, I
12 don't think constitutes substantial evidence.

13 So that's all that I had, Your Honor.
14 Thank you.

15 JUDGE COLWELL: All right. In terms of
16 housekeeping, Mr. Ruggiero, are you going to move your
17 cross exhibits?

18 MR. RUGGIERO: Yes, Your Honor. Thank
19 you. I would like to move my cross exhibits into
20 evidence.

21 JUDGE COLWELL: Any objection?

22 MR. GRUIN: Well, Mr. Ruggiero raised
23 the issue of negotiations being excludable under the
24 ICA. So that raises a question about one of the cross
25 exhibits. But no, Your Honor, I have no objection.

1 JUDGE COLWELL: All right. Then they
2 are admitted.

3 (Whereupon, the documents marked
4 as Verizon Cross Exhibit Nos. 1, 2 and
5 3 were received in evidence.)

6 JUDGE COLWELL: All right. What happens
7 next?

8 MR. RUGGIERO: Well, Your Honor, - - -

9 MR. GRUIN: Is the record closed, Your
10 Honor? As of now?

11 JUDGE COLWELL: No. If you have
12 something else, speak up.

13 MR. GRUIN: I have nothing further, no.

14 MR. RUGGIERO: Well, Your Honor, we owe
15 you a response to the petition on Monday.

16 JUDGE COLWELL: You do.

17 MR. GRUIN: And that is not part of the
18 record.

19 JUDGE COLWELL: But I can read it.

20 MR. GRUIN: You can read it. I just
21 want to make it clear it's not part of the record.
22 Because we knew this is what they were going to do.
23 Not bring a witness, go to the hearing, submit a
24 pleading with all kinds of allegations of God knows
25 what, no ability to cross. But the reg's very clear,

1 a pleading is not part of the record other than for
2 the fact that it was filed.

3 JUDGE COLWELL: Mr. Gruin, nobody is
4 saying otherwise. You're correct. It's not part of
5 the record. That means that it isn't something that's
6 sent up on appeal. But it's going to be in the red
7 folder. It's going to be in the electronic filing
8 system that all the Commissioners and their assistants
9 can access when they look at this.

10 MR. GRUIN: Right. But for all
11 practical purposes, you have no even reason to read
12 it, frankly, if you can't rely on it to make your
13 decision.

14 MR. RUGGIERO: Your Honor, I mean, the
15 rule allows us to respond.

16 JUDGE COLWELL: It certainly does.

17 MR. GRUIN: It certainly can't allow for
18 an ALJ or Commission to rely on what's stated in that
19 pleading to be used for the basis of a decision.

20 JUDGE COLWELL: He can't add facts to it
21 that he's not going to support in any way, but he's
22 still entitled to follow the rules of -- civil --
23 well, the Commission's own rules. He can put in an
24 answer what's allowed to be in an answer. He can put
25 in whatever he wants.

1 MR. GRUIN: For emergency petitions,
2 it's clear that you don't even need to file an answer
3 to a petition.

4 JUDGE COLWELL: Yes, but he's allowed
5 to.

6 MR. GRUIN: Okay. I guess I'm confused
7 because it sounds like you're going to consider the
8 pleadings as part of your decision. That is not the
9 proper course of action. The record is - - -

10 JUDGE COLWELL: That means I shouldn't
11 look at what you filed either.

12 MR. GRUIN: You can look at it,
13 certainly, but you can't rely on the pleadings for any
14 conclusions, legal or factual conclusions.

15 JUDGE COLWELL: And what makes you think
16 I have done that?

17 MR. GRUIN: I'm not -- I'm not saying
18 you have done it.

19 JUDGE COLWELL: Or will do that. Why
20 are you assuming that his filing something that he's
21 entitled to file will result in something that's
22 unacceptable?

23 MR. GRUIN: Because -- maybe because it
24 goes back to the statement you made about I'm going to
25 read it and everyone else is going to read it as well,

1 and I just wanted to clarify, I think there might be a
2 misunderstanding that the pleading is part -- is a
3 valid part of the record that can be considered.

4 JUDGE COLWELL: It is what it is.

5 MR. GRUIN: Okay.

6 JUDGE COLWELL: It's filed out of the
7 normal chronology of events here, but that's your
8 doing. Not his. You decided to go the petition for
9 emergency interim relief. This is what you get. It's
10 all part and parcel. It's right there in the rules.
11 If you see something in his pleading that you don't
12 like, I am certain you will let me know. But in the
13 meantime, he is entitled to file it.

14 MR. GRUIN: He is entitled to file it.

15 Yes.

16 JUDGE COLWELL: There you go.

17 MR. GRUIN: I'm just going to read the
18 rule real quickly. Just to make sure that - - -

19 JUDGE COLWELL: Go ahead.

20 MR. GRUIN: Effective pleadings.

21 MR. RUGGIERO: Section 3.6(c).

22 MR. GRUIN: 3.6(c)?

23 MR. RUGGIERO: Yeah. Second sentence.
24 Which sends you to 5.61.

25 MR. GRUIN: I was thinking about 5.405.

1 A pleading or any part thereof may not be considered
2 as evidence of fact other than that of filing unless
3 offered and received into evidence.

4 JUDGE COLWELL: I'm aware of the
5 section.

6 MR. GRUIN: Okay. That's all I have,
7 Your Honor.

8 JUDGE COLWELL: I'm sure Mr. Ruggiero
9 will behave himself and will put the appropriate items
10 into the pleading.

11 MR. RUGGIERO: I will.

12 JUDGE COLWELL: If he still feels that
13 it's necessary to do so.

14 All right. So anything else before we
15 wrap this up?

16 MR. GRUIN: Not from Core.

17 JUDGE COLWELL: You may or may not file
18 a pleading on Monday. Send me an electronic copy.

19 MR. RUGGIERO: Yes.

20 JUDGE COLWELL: All right.

21 MR. RUGGIERO: In Word?

22 JUDGE COLWELL: It doesn't matter.

23 Usually I -- he said that because he knows I usually
24 ask for briefs in Word so I can cut and paste. But as
25 you know, I can't do that with this. So it does not

1 matter.

2 MR. GRUIN: Your Honor, realizing that
3 you're under a short timeline, I could send you the
4 affidavit in word, the Core's pleadings in word if
5 that would make a difference.

6 JUDGE COLWELL: Thank you. It probably
7 would not.

8 MR. GRUIN: Okay.

9 JUDGE COLWELL: I appreciate the offer.
10 This will be out next week. And then you will have an
11 opportunity to let the Commission know exactly what
12 you think all over again. They are required -- now,
13 when I say required, there are two ways to interpret
14 the rules. As you, I'm sure, have been reading the
15 Commission orders, you see that sometimes they say we
16 have to look it over at the next public meeting and
17 otherwise they say unless it's the certification of
18 question in which case we have a little bit longer.
19 But either way, it will be considered at a public
20 meeting in August. Okay.

21 MR. GRUIN: Yes.

22 JUDGE COLWELL: All right. Then anybody
23 have anything else?

24 (No response.)

25 JUDGE COLWELL: All right. We're off

1 the record.

2 MR. GRUIN: Thank you.

3 MR. RUGGIERO: Thank you, Your Honor.

4 (Whereupon, at 2:28 p.m., the proceeding
5 was concluded.)
6

7 C E R T I F I C A T E

8 I hereby certify, as the stenographic reporter,
9 that the foregoing proceedings were taken
10 stenographically by me, and thereafter reduced to
11 typewriting by me or under my direction; and that this
12 transcript is a true and accurate record to the best
13 of my ability.
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