

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

ORIGINAL

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<u>Core Communications, Inc.</u>	: Docket Nos.
<u>v. Verizon Pennsylvania, Inc.</u>	: C-2011-2253750
<u>Core Communications, Inc.</u>	: C-2011-2253787
<u>v. Verizon North, Inc. Interconnection</u>	: P-2011-2253650
<u>Agreement Dispute.</u>	:

	:
Further Pre-Hearing Conference.	:
----- X	

Pages 183 through 232

Hearing Room 4  
Keystone Office Building  
Harrisburg, Pennsylvania

Wednesday, May 9, 2012

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

APPEARANCES:


MICHAEL A. GRUIN, Esquire  
Stevens & Lee  
17 North 2nd Street, 16th Floor  
Harrisburg, Pennsylvania 17101  
(For Core Communications)

SUSAN PAIVA, Esquire  
1717 Arch Street, 3rd Floor  
Philadelphia, Pennsylvania 19103  
(For Verizon Pennsylvania, Inc  
and Verizon North, Inc.)

ALSO PRESENT: Christopher Vandeverg

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WITNESS INDEX

WITNESSES

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- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

FORM 2

EXHIBIT INDEX

NUMBER

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1  
2  
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4  
5  
6  
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8  
9  
10  
11  
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17  
18  
19  
20  
21  
22  
23  
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FORM 2

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## P R O C E E D I N G S

1  
2 ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL: All  
3 right, let's go on the record.

4 This is the time and the place set for the pre-  
5 hearing conferences in the two cases captioned "Core  
6 Communications, Inc. versus Verizon Pennsylvania, Inc.," at  
7 Docket No. C-2011-2253750, and "Core Communications, Inc.,  
8 versus Verizon North, LLC," at Docket No. C-2011-2253777(Sic.)

9 I am Administrative Law Judge Susan Colwell,  
10 appointed to preside in this matter.

11 I note for the record this morning the appearance of  
12 the following Counsel.

13 (Judge Colwell, perusing documents.)

14 On behalf of Core Communication, Michael Gruin  
15 and --

16 Mr. Vandeverg, have you actually entered an  
17 appearance in this case?

18 MR. VANDEVERG: I have not. I believe I'm on the  
19 witness list.

20 JUDGE COLWELL: Oh, okay.

21 MR. VANDEVERG: I'm really just here to help Mike  
22 out.

23 JUDGE COLWELL: Okay. This is a Counsel Sheet.

24 (Judge Colwell indicating.)

25 MR. VANDEVERG: Okay. Sorry.

1 MR. GRUIN: So, we can just strike Mr. Vandeverg's  
2 name from the Counsel Sheet.

3 MR. VANDEVERG: I apologize.

4 MR. GRUIN: He will not be entering an appearance in  
5 this matter.

6 MR. VANDEVERG: Right.

7 JUDGE COLWELL: Okay.

8 MR. GRUIN: He's going to be a witness for the  
9 company.

10 JUDGE COLWELL: All right, very good.

11 And on behalf of Verizon, both entities, is Susan  
12 Paiva.

13 Good morning everybody.

14 MS. PAIVA: Good morning.

15 MR. GRUIN: Good morning, Your Honor.

16 MR. VANDEVERG: Good morning.

17 JUDGE COLWELL: All right. I got your pre-hearing  
18 conference memos, and I have to say that they probably  
19 raised more issues than they settled, but, then, you knew  
20 that?

21 MR. GRUIN: Right.

22 MS. PAIVA: Yes.

23 JUDGE COLWELL: All right. So, let's talk about a  
24 few things today.

25 We have a lot of pleadings.

1 (Judge Colwell perusing documents.)

2 JUDGE COLWELL: For a pre-hearing conference level  
3 case, we have a lot of pleadings; so, what is outstanding at  
4 this point -- we'll handle the easy one first -- the motion  
5 pro hoc viche for Deborah Koon seems to be unopposed, as  
6 nothing was filed against it; so, that is granted. Ms. Koon  
7 is entered.

8 Let me mark that.

9 (Judge Colwell perusing documents.)

10 JUDGE COLWELL: Okay. And we also have Verizon's  
11 motion for an order enclosing bilateral payment obligations.

12 I have not ruled on that one yet. I assume there's  
13 nothing else to be filed for that issue; is that correct?

14 MR. GRUIN: I believe the things are closed on that  
15 motion, yes.

16 MS. PAIVA: Yes, correct.

17 JUDGE COLWELL: All right. So, that one is  
18 outstanding. I don't know if you're prepared to argue it  
19 today?

20 (No response.)

21 JUDGE COLWELL: If you're not, you don't have to,  
22 because probably everything I need is in your filings, but  
23 you have that option if you want to?

24 (No response.)

25 JUDGE COLWELL: All right.

1 (Judge Colwell perusing documents.)

2 JUDGE COLWELL: I have an amended complaint by Core.

3 (Judge Colwell perusing documents.)

4 JUDGE COLWELL: I have amended pre-hearing memos.

5 MR. GRUIN: Further amended pre-hearing memos.

6 JUDGE COLWELL: Yes -- which would make an  
7 interesting law school comedy, I think, because this is just  
8 not normal.

9 MR. GRUIN: Yes.

10 JUDGE COLWELL: You have to know this is not normal,  
11 to have these kinds of pleadings in a case.

12 MR. GRUIN: Yes. I agree, Your Honor.

13 JUDGE COLWELL: Okay. So, the first thing we need  
14 to do is discuss not the schedule itself, but whether or not  
15 we should even have one.

16 As I understand it, the parties are anticipating  
17 filing preliminary objections against each other, which  
18 could take care of any number of the no less than 28 issues  
19 that were enumerated, at least in one of your pre-hearing  
20 memos.

21 It seems to me that probably the best thing to do is  
22 to go ahead and set a schedule anyway; that way, we'll have  
23 it in place.

24 Anybody have an opinion they'd like to share?

25 MR. GRUIN: Well, Your Honor, from Core's

1 perspective, we indicated in our pre-hearing memo, we were  
2 evaluating Verizon's proposal to -- not to a litigation  
3 schedule, at least build in some kind of a period for the  
4 resolution of the preliminary objections, and even possible  
5 material question appeals of those rulings.

6 After considering it and discussing briefly with Ms.  
7 Paiva, Core would be agreeable to Verizon's proposal to  
8 either not a full litigation schedule at this point in time,  
9 or, at least, incorporate periods into the schedule to  
10 account for, certainly, rulings on PO's, and possibly  
11 material questions on those rulings.

12 JUDGE COLWELL: Okay. Well, let me just clarify  
13 something for you.

14 If you're planning on appealing an interim order,  
15 you will be doing it on your own, unless the issue that  
16 comes up is something that I absolutely need in order to  
17 proceed.

18 There are procedures set out in the Rules for that,  
19 and it puts the onus on you; so, I'm not going to stop a  
20 schedule in case you're going to do that, okay?

21 MR. GRUIN: Okay.

22 JUDGE COLWELL: I'm also going to assume, for the  
23 purpose of setting a schedule, that whatever rulings I do  
24 end up making on your preliminary objections will not end  
25 the case. So, we'll go ahead and set -- it could, but, for

1 the purpose of setting a schedule, we'll assume that they  
2 won't, and at least one issue will remain, and we will set a  
3 schedule for that today.

4 MR. GRUIN: Okay.

5 JUDGE COLWELL: And we can build in the response --  
6 my decision time for the preliminary objections, and that's  
7 fine, but I think we need to set the schedule anyway, and  
8 that I believe is what Verizon's schedule anticipates,  
9 correct?

10 MS. PAIVA: Right.

11 JUDGE COLWELL: All right. So, what we're actually  
12 looking for here, then -- well, let me see where the right  
13 paper is.

14 (Judge Colwell perusing documents.)

15 JUDGE COLWELL: Okay.

16 MS. PAIVA: Page 2 of our pre-hearing memo.

17 JUDGE COLWELL: So, all the way up to ruling on PO's  
18 is something we don't need to put into a scheduling order,  
19 because those are your deadlines and your requirements.

20 MS. PAIVA: Correct.

21 JUDGE COLWELL: And then, of course, it triggers the  
22 one-month period for me to rule on those preliminary  
23 objections; so, that's all automatic anyway.

24 What we really need to start with is the direct  
25 testimony.

1 MS. PAIVA: Right.

2 JUDGE COLWELL: And you have suggested August 23rd,  
3 correct?

4 MS. PAIVA: Correct.

5 JUDGE COLWELL: Okay, very well.

6 Before we go any further on this, I do have to warn  
7 you that my fall schedule is a little bit on the busy side  
8 already, and that is because I have both PPL's rate case and  
9 their Default Service Provider case, and they're going back  
10 to back; so, from the middle of September until November  
11 16th, I'm not scheduling anything for any other case.

12 That's right in time for those two cases and for  
13 whatever else is already on my schedule.

14 So, you were talking about November.

15 MS. PAIVA: Yes, but --

16 JUDGE COLWELL: You've got your direct testimony  
17 August 23rd, your rebuttal, October 4th, surrebuttal,  
18 October 25th.

19 MS. PAIVA: Right.

20 JUDGE COLWELL: Those don't mean anything to me.  
21 Obviously, they're yours -- you know, they come in when they  
22 come in --

23 MS. PAIVA: Yes.

24 JUDGE COLWELL: -- but, for the evidentiary hearing,  
25 it can't be before the 19th.

1 MS. PAIVA: So, then, in light of that, maybe we  
2 could look at after Thanksgiving?

3 MR. GRUIN: Sure.

4 MS. PAIVA: I think we had said the 19th, not to  
5 have it the week of Thanksgiving, right?

6 JUDGE COLWELL: Okay.

7 MR. GRUIN: Right.

8 MS. PAIVA: We don't have a problem going past that.  
9 Sounds like it would be better.

10 JUDGE COLWELL: Yes.

11 MS. PAIVA: I mean, we don't want to come into this  
12 right after all that.

13 JUDGE COLWELL: Yes.

14 MR. GRUIN: I agree.

15 JUDGE COLWELL: All right. So, then, we're looking  
16 at --

17 (Judge Colwell perusing documents.)

18 JUDGE COLWELL: Well, at that point it's actually  
19 pretty open; so, if you have something on your own  
20 schedules, this would be the time to bring that up.

21 MS. PAIVA: The only thing I can say is I checked  
22 with the witnesses for November. If we can agree on a date  
23 in December, can I have like 24 hours to take it back and  
24 make sure there's no conflict?

25 JUDGE COLWELL: Absolutely.

1 MS. PAIVA: Thank you.

2 JUDGE COLWELL: Yes. I won't issue the scheduling  
3 order until I hear from both of you that your witnesses are  
4 available.

5 MS. PAIVA: All right.

6 MR. GRUIN: Okay.

7 MS. PAIVA: But, I'm also pretty open.

8 I don't know if you guys have any conflict.

9 MR. GRUIN: Well, we don't -- or, at least the  
10 testimony should be --

11 MS. PAIVA: I mean, we may want to -- if we end up  
12 the hearing in early December, you may want to bump up the  
13 testimony dates a little bit just to give us more time --

14 MR. GRUIN: Right.

15 MS. PAIVA: -- because we would have the time,  
16 right?

17 MR. VANDEVERG: Maybe the 2nd and 3rd, the rebuttal  
18 and surrebuttal?

19 MR. GRUIN: Right, yes. First of all, late November  
20 and early December is fine, at least for hearings.

21 JUDGE COLWELL: Okay.

22 MR. GRUIN: And I think August 23rd, maybe, for  
23 direct testimony is good.

24 JUDGE COLWELL: Okay.

25 MS. PAIVA: All right.

1 MR. GRUIN: And then we'll have at least a month or  
2 more for rulings on PO's.

3 MS. PAIVA: Right.

4 MR. GRUIN: And if, for some reason, those rulings  
5 take longer, perhaps they can be revisited and we might  
6 amend testimony, and so forth.

7 So, I'm comfortable with these testimony dates and  
8 the other large gap between the final testimony and the  
9 hearing, but, for whatever reason, it could be nice to have  
10 that extra time, you know, in case we do have to modify the  
11 schedule.

12 MS. PAIVA: I guess that's a good point. So, you  
13 want to just keep the dates that we proposed?

14 MR. GRUIN: I think that's appropriate.

15 MS. PAIVA: That would be fine with me, too.

16 JUDGE COLWELL: Okay.

17 MS. PAIVA: So, then, you want to look at dates the  
18 week of December 3rd?

19 MR. GRUIN: December 3rd, that will be fine at this  
20 point.

21 MS. PAIVA: Right. Well, we -- I think you said you  
22 thought we needed two days for the hearing, right?

23 MR. GRUIN: Well --

24 MS. PAIVA: If everything stays in?.

25 MR. GRUIN: Right. We'll have two witnesses, and

1 you'll have three, I think?

2 MS. PAIVA: Right.

3 MR. GRUIN: Probably, I think two days is about what  
4 it's going to take.

5 MS. PAIVA: Right. So, maybe the 4th and 5th, or  
6 the 5th and 6th?

7 MR. GRUIN: Well --

8 MS. PAIVA: I don't know if you have any --

9 MR. GRUIN: -- either is fine.

10 MS. PAIVA: Okay.

11 JUDGE COLWELL: Well, I think for the 4th and the  
12 5th, then.

13 MS. PAIVA: Fine.

14 MR. GRUIN: Okay.

15 JUDGE COLWELL: Chances are good the Hearing Rooms  
16 are available, because it's so early, but, I do need to  
17 check with that and my scheduling before I can set them down  
18 in stone.

19 MS. PAIVA: And if, by chance, some -- one of our  
20 witnesses has a conflict, are you free for the other days  
21 that week?

22 JUDGE COLWELL: Yes, I am.

23 MS. PAIVA: But, I will try to -- hopefully they  
24 will be clear.

25 JUDGE COLWELL: Yes.

1 MS. PAIVA: Like you said, it's so far in advance,  
2 hopefully nobody has planned anything for those dates.

3 JUDGE COLWELL: Right, okay.

4 (Judge Colwell perusing documents.)

5 JUDGE COLWELL: All right. Then, I will wait until  
6 tomorrow for you to confirm.

7 MS. PAIVA: Right.

8 JUDGE COLWELL: You can just drop an email that  
9 says, "These dates work fine for my witnesses," and that's  
10 fine.

11 MS. PAIVA: Okay.

12 MR. GRUIN: Sure.

13 JUDGE COLWELL: It doesn't have to be anything more  
14 formal than that.

15 MR. PAIVA: Right.

16 JUDGE COLWELL: If there is a problem, though, I  
17 would ask that you talk to each other and agree upon the  
18 alternatives before getting back to me, all right?

19 MR. GRUIN: Sure.

20 MS. PAIVA: Right.

21 JUDGE COLWELL: Okay. So, that takes care of the  
22 schedule.

23 (Judge Colwell perusing documents.)

24 JUDGE COLWELL: The usual due dates are in-hand.  
25 Service of discovery requests, testimony, exhibits and

1 briefs may be by electronic means on the due date if  
2 transmission occurs before 4:00 p.m. and hard copies follow,  
3 correct?

4 MS. PAIVA: Correct.

5 JUDGE COLWELL: Everybody agreeable to that?

6 MR. GRUIN: Agreeable.

7 JUDGE COLWELL: All right. Discoveries served after  
8 4:00 p.m. shall be deemed to be served the following  
9 business day.

10 Discovery disputes, I usually put in a little  
11 section that says that you can feel free to call me, and we  
12 can talk about it if you don't want to file a motion to  
13 compel -- but, you two have been so contentions that I  
14 hesitate to do anything off the record, quite honestly; so,  
15 I probably won't put that in my order.

16 MR. GRUIN: Sure.

17 JUDGE COLWELL: You probably need to just keep it  
18 formal, so that you can refer to it later when you appeal to  
19 the Commission.

20 (Judge Colwell perusing documents.)

21 JUDGE COLWELL: All right. I will ask that prior to  
22 the start of the evidentiary hearings I be provided a  
23 witness list and cross-examination grids -- well, you  
24 probably don't need to do that here, because there's just  
25 the two of you.

1 (Judge Colwell perusing documents.)

2 JUDGE COLWELL: Well, that's the usual. That's  
3 about all I add to the standard scheduling order.

4 Is there anything special that you need to let me  
5 know about?

6 MR. GRUIN: Well --

7 JUDGE COLWELL: I really don't like surprises.

8 MR. GRUIN: -- I just want to clarify.

9 JUDGE COLWELL: Sure.

10 MR. GRUIN: I believe your pre-hearing conference  
11 order indicated that you prefer to have objections to  
12 discovery in lieu of answers, and you'd prefer not to see  
13 the "We object," and "Here's our answer;" is that correct?

14 JUDGE COLWELL: Yes. That's not a preference; that  
15 is me waiving the Rule and saying, "Here's what it is" --

16 MR. GRUIN: Right.

17 JUDGE COLWELL: -- and it's a telephone case that  
18 made me do this -- because, otherwise, there's an ambiguity  
19 in the Rules that allows parties to jerk each other's chain,  
20 and I am taking that out.

21 MR. GRUIN: All right.

22 JUDGE COLWELL: Okay?

23 MR. GRUIN: So, it's either objection or answer;  
24 "Take your choice?"

25 JUDGE COLWELL: Yes.

1 MS. PAIVA: So, that means if we want to say the  
2 question is ambiguous, for example, we just object to them;  
3 we don't go on and try to answer it based on our  
4 understanding of the question, or, if we're going to do  
5 that, we just don't make the objection --

6 JUDGE COLWELL: Right.

7 MS. PAIVA: -- is that right?

8 JUDGE COLWELL: Yes.

9 MS. PAIVA: Okay.

10 JUDGE COLWELL: It has to be one or the other.

11 MS. PAIVA: All right.

12 JUDGE COLWELL: Because it used to be that you'd be  
13 able to give your answer on the day that the response to the  
14 objection is due, and it just wasn't fair.

15 MR. GRUIN: Right.

16 JUDGE COLWELL: It wasn't fair at all.

17 MS. PAIVA: Okay.

18 JUDGE COLWELL: And I don't think that was the  
19 intent of the Rule.

20 As a matter of fact, there is a rule making being  
21 prepared right now that will change it.

22 MR. GRUIN: Okay.

23 JUDGE COLWELL: So, we're going to play by those  
24 rules instead.

25 MS. PAIVA: All right.

1 JUDGE COLWELL: And that's what it is in civil law  
2 anyway; so, if you're familiar with that one, then you know  
3 how to do this.

4 MR. GRUIN: Right.

5 JUDGE COLWELL: So, yes, that is definitely one of  
6 the rules.

7 MS. PAIVA: Okay.

8 JUDGE COLWELL: And, as I understand it, you don't  
9 mind the rest of the discovery rules staying as they are;  
10 so, that is the only substantive change to the Commission's  
11 Discovery Regulations that will happen in my order.

12 MR. GRUIN: Right.

13 JUDGE COLWELL: Okay?

14 MS. PAIVA: Okay.

15 JUDGE COLWELL: All right. So, after we leave here  
16 today, I will wait to hear from you, and issue a scheduling  
17 order.

18 You are still preparing filings, which will result  
19 in preliminary objections that require me to rule during the  
20 month of June and over the Fourth of July holiday -- thank  
21 you very much -- and at that point we'll do what we need to  
22 do.

23 Is there anything else we need to talk about on the  
24 record today?

25 MS. PAIVA: Well, should we mention the protective

1 order?

2 MR. GRUIN: Yes, we should.

3 MS. PAIVA: I think we've come to agreement on the  
4 terms of a protective order, but we need to go back and put  
5 it on paper.

6 JUDGE COLWELL: Okay.

7 MS. PAIVA: So, one of us will submit the agreed  
8 upon form of protective order.

9 JUDGE COLWELL: Okay.

10 MR. GRUIN: Yes.

11 JUDGE COLWELL: I have no problem with that.

12 MS. PAIVA: Okay. And then I have just one minor  
13 technical issue.

14 I thought we had two Green Sheets here today. Do we  
15 need to move to consolidate the two cases, or will they  
16 always have --

17 JUDGE COLWELL: Well, that's a very good question.

18 Since they have different Docket Numbers, they have  
19 separate places in our electronic filing system, and that  
20 will happen no matter if they're consolidated or not. I  
21 don't know --

22 MS. PAIVA: So, it doesn't matter?

23 JUDGE COLWELL: I did not prepare those Green  
24 Sheets --

25 MS. PAIVA: Right.

1 JUDGE COLWELL: -- someone in my office did -- or I  
2 would have had them put together.

3 MS. PAIVA: I understand.

4 JUDGE COLWELL: I can officially consolidate, I  
5 assume --

6 MS. PAIVA: Okay.

7 JUDGE COLWELL: -- I suppose I haven't done that  
8 yet, I guess.

9 MS. PAIVA: I don't know, because I wasn't involved  
10 in the beginning.

11 JUDGE COLWELL: Right. It' been a while.

12 I can certainly put something in the ordering  
13 paragraph that will consolidate these two cases.

14 MS. PAIVA: Okay.

15 JUDGE COLWELL: And everything you file can have  
16 both Docket Numbers on it.

17 MS. PAIVA: Okay.

18 JUDGE COLWELL: You don't have to file them  
19 separately.

20 MS. PAIVA: That's what we've been doing.

21 JUDGE COLWELL: Yes.

22 MS. PAIVA: Hopefully, they've been accepting it.

23 JUDGE COLWELL: And I think that they do appear on  
24 both dockets that way. I don't think that's been a problem.

25 MS. PAIVA: Okay.

1 JUDGE COLWELL: But, I will make that official, so  
2 there will be no questions.

3 MS. PAIVA: And, I guess another minor issue, I did  
4 make a filing to try to correct the official service list to  
5 remove Mr. Rugiero and to have me added, so -- and I guess  
6 we have our service list; so, it doesn't mention it in the  
7 pre-hearing memo --

8 JUDGE COLWELL: Right.

9 MS. PAIVA: -- so, hopefully the Commission's  
10 service list will reflect that.

11 JUDGE COLWELL: All right. And that's something  
12 that usually does. How that happens is the Judge has to say  
13 to a scheduler, "Could you fix this, please?" and they look  
14 at you, and then they do it; so, yes, I will make sure that  
15 that happens.

16 MS. PAIVA: Okay. That's why I pointed it out,  
17 because I didn't know if just filing the piece of paper was  
18 sufficient.

19 JUDGE COLWELL: Sure.

20 MS. PAIVA: Because I'm the only one who receives e-  
21 service, I think; so --

22 JUDGE COLWELL: That makes sense.

23 MR. GRUIN: That's brings a good point.

24 As far as service of pleadings, discovery, et  
25 cetera, who should I send hard copies to, and who should

1 receive electronic copies?

2 MS. PAIVA: Oh.

3 MR. GRUIN: Will it be Mr. Sniscak and Lehman, also,  
4 to receive hard copies, or is it electronically filed with  
5 them, or --

6 MS. PAIVA: Yes --

7 MR. GRUIN: -- just you?

8 MS. PAIVA: Yes, you can send the hard copies to  
9 me --

10 MR. GRUIN: Okay.

11 MS. PAIVA: -- and just electronically to everyone  
12 else.

13 MR. GRUIN: Okay.

14 MS. PAIVA: We don't need to generate that much  
15 paper.

16 MR. GRUIN: Sure.

17 JUDGE COLWELL: All right.

18 MR. GRUIN: And I do expect Mr. Hicks will withdraw  
19 his appearance in this matter shortly.

20 JUDGE COLWELL: Okay.

21 MR. GRUIN: Since he has not participated in any of  
22 the proceedings for quite some time.

23 JUDGE COLWELL: Right.

24 MR. GRUIN: I will confirm that with him, and if he  
25 is going to withdraw, he'll submit the appropriate notice.

1 JUDGE COLWELL: Okay. I may not notice if the  
2 service list isn't fixed right away; so, you will need to  
3 keep an eye on that.

4 MR. GRUIN: Okay.

5 MS. PAIVA: Yes.

6 JUDGE COLWELL: Because usually they add those  
7 papers after it leaves my office.

8 MS. PAIVA: Right.

9 JUDGE COLWELL: So, I don't see them, and I won't  
10 think, "I'd better go back and check;" so, you go back and  
11 check, and let me know if there's a problem --

12 MS. PAIVA: Right.

13 JUDGE COLWELL: -- and I will address it, okay?

14 MR. GRUIN: Okay.

15 MS. PAIVA: Good.

16 JUDGE COLWELL: All right, then --

17 MR. GRUIN: Your Honor, just another thought.

18 I mean, I know earlier you mentioned briefly the  
19 motion for bilateral payment, and the more I thought about  
20 it, I figured, we're all here; this is the chance for you to  
21 ask questions of us of the motion; so, why don't we do a  
22 short informal argument on that motion?

23 JUDGE COLWELL: That's fine with me, if --

24 MS. PAIVA: Okay.

25 JUDGE COLWELL: -- that would be helpful.

1 MR. GRUIN: Sure.

2 JUDGE COLWELL: All right. I've got nothing on my  
3 schedule at this point; so, my time is yours.

4 MR. GRUIN: Traveling from Philadelphia, I mean --

5 JUDGE COLWELL: You need to earn your keep; is that  
6 it?

7 MR. GRUIN: Yes, that's it.

8 JUDGE COLWELL: All right.

9 JUDGE COLWELL: All right, very well.

10 Let me see where I put my copies.

11 (Judge Colwell perusing documents.)

12 JUDGE COLWELL: Here it is.

13 Are we going to need anything on the confidential  
14 record for this?

15 MR. GRUIN: No --

16 MS. PAIVA: No.

17 MR. GRUIN: -- I don't think so.

18 MS. PAIVA: We'll just keep it high level.

19 JUDGE COLWELL: Okay, all right.

20 Ms. Paiva, please go ahead?

21 MS. PAIVA: All right, thanks.

22 Well, I guess, to understand our motion for the  
23 bilateral payment arrangement, I guess we need to first  
24 revisit briefly how this case came to pass.

25 Core came to the Commission with the complaint and

1 the emergency -- the Court request for an emergency order  
2 seeking to have Verizon pay Core's bill, invoices, for  
3 traffic termination for traffic at Verizon that Verizon send  
4 to Core.

5 So, we had disputed those bills, ceased paying them,  
6 and it went up to the Commission, as you know, and the  
7 Commission ruled that we should pay pending the litigation  
8 at the rate that we had been paying, which was the .0007  
9 rate -- we had been disputing the bills down to that rate --  
10 and the Commission ruled that that was required by the  
11 spirit, if not the letter of the interconnection agreement.

12 So, since that time we have been paying and  
13 complying with that order.

14 At the same time, now, in response to the original  
15 complaint and, now again, in response to the amended  
16 complaint, we were going to assert certain counter claims,  
17 and one of the counter claims that Verizon is asserting is  
18 for invoices that have over the years been sent from Verizon  
19 to Core that haven't been paid, and those are mostly for, we  
20 call them, interconnection facilities, the pipes or trunks  
21 that carry their traffic for Verizon and, perhaps, through  
22 Verizon to other carriers, and also, to a lesser extent, for  
23 some directory listings and the traffic termination charges  
24 when the traffic is going the other way.

25 So, over the years, Core basically has not paid us

1 at all for these things.

2 When we file our amended answer and counter claims,  
3 we will tally up how much is past due as of this point, and  
4 it's about \$4.5 million.

5 Now, I know that there have been some disputes over  
6 these amounts, and I guess one of the primary concerns is  
7 what rate should be charged for these facilities.

8 We had over the years been charging special access  
9 rates, and Core has been taking the position with the  
10 facilities that these facilities, or some of them, at least,  
11 should be billed at what are called TELRIC rates -- are you  
12 familiar with TELRIC rates?

13 JUDGE COLWELL: Well --

14 THE WITNESS: Those are the Commission's rates --

15 JUDGE COLWELL: -- very familiar.

16 THE WITNESS: Okay. So, they're lower rates set by  
17 the Commission for unbundled network elements, basically,  
18 costs based under the FCC's formula.

19 So, Core didn't think those rates should apply.

20 The Commission -- the law before this Commission, I  
21 guess, in other cases that perhaps didn't involve Core, had  
22 been that TELRIC rates don't apply to those facilities.

23 There has been a recent Supreme Court case that goes  
24 the other way; so, there's an issue as to what rates apply  
25 to the facilities, but, our position is, you know, that

1 doesn't mean that you get the facilities for all these years  
2 for free; that you need to be paying something, and that if  
3 you dispute the rate, you should be paying the lower rate  
4 that you think applies.

5 So, our motion is basically that, you know, if we  
6 are being required to pay the disputed bills pending  
7 litigation at the .0007 rate, then at least Core should be  
8 required to pay our bills at the lower rate that it contends  
9 applies.

10 Now, I saw in Core's answer that they're also  
11 raising claims, "Well, okay, these facilities never really  
12 worked properly," or, you know, "We're not going to pay for  
13 them because we don't think they're exactly what we want,"  
14 essentially, like, "We ordered one kind of trunk and it  
15 didn't do what we wanted, and we switched to this other kind  
16 of trunk. We're still not happy with it."

17 But, again, we don't think that that's an excuse to  
18 not pay anything for these facilities that are actually  
19 carrying Core's traffic.

20 They wouldn't be able to bill us the termination  
21 charges if the traffic wasn't flowing across the facilities,  
22 because that's what they're used for.

23 So, you know, there may be disputes over  
24 technicalities that may need to be litigated or worked out,  
25 but, we don't think it's right that we be told that we need

1 to pay their bills pending litigation, while they're able to  
2 just not pay ours at all.

3 And that's the essence of our motion for bilateral  
4 payment arrangements, all of which would be subject to true-  
5 up and refund at the end of the case if, you know, amounts  
6 were held to be due, you know, different from what was paid  
7 either by us or by Core at the end of the day.

8 Thank you.

9 JUDGE COLWELL: Okay, very good.

10 Mr. Gruin?

11 MR. GRUIN: Thank you, Your Honor.

12 As we set forth in our motion, or, Verizon's motion,  
13 I should say, Verizon is essentially seeking interim relief  
14 here.

15 They're seeking a ruling during the pendency of the  
16 case, to some extent, on the merits of a claim, but they  
17 don't follow the correct procedure for seeking such relief;  
18 they don't even plead the four criteria for obtaining that  
19 relief, and they don't provide any back-up or support for  
20 their claims for any of those four criteria.

21 Contrast that with Core did follow the procedure for  
22 emergency interim relief, provided in the sworn statement,  
23 with voluminous background of paying at those four criteria  
24 for interim relief, which the Commission granted.

25 The circumstances that led to the Commission

1 ordering or granting Core's petition and the payment by  
2 Verizon pending litigation simply are not present with  
3 respect to Verizon.

4 Verizon claims that they have existed for years,  
5 dating back to 2003, I believe, as stated in Core's answer  
6 to Verizon's counter claim, Core has consistently disputed  
7 those claims for years and years and years.

8 There is nothing exigent about Verizon's need or  
9 claim for these monies, because if it was exigent, they  
10 wouldn't have sat on them for seven, eight, nine, ten years  
11 after.

12 They only raised this, from a litigation standpoint,  
13 after Core filed a complaint or petition for emergency  
14 relief.

15 Certainly, with respect to the impact of the non-  
16 payment of the bills, as set forth in Core's emergency  
17 petition, Verizon's sudden non-payment, after years and  
18 years of payments, had a hugely detrimental effect on Core,  
19 and that was one of the key points in the Commission's  
20 finding that the remedy should be granted to Core.

21 Verizon had made no such claim.

22 So, simply put, both procedurally and substantively,  
23 Verizon's version falls well short of the standard required  
24 to grant their request.

25 There was a nearly analogist motion filed in another

1 case actually involving Core Communications that resulted in  
2 a denial of a motion for interim relief. It was not a final  
3 Commission order; it was an interim order issued by the name  
4 of JLB Jones, at Docket No. C-2009-2108186.

5 In that case, Core filed a motion -- not a petition  
6 for interim relief, but, simply a motion to request payment  
7 from the respondent in that case pending litigation.

8 The Judge in that case applied the interim emergency  
9 relief standards to that motion and determined that the  
10 standards were not met, and, of course, relief was denied in  
11 that case, and I think that the circumstances of that motion  
12 in that case are nearly identical to Verizon's in this case;  
13 so, for those reasons, we believe Verizon's motion should be  
14 denied.

15 JUDGE COLWELL: All right, Mr. Gruin, let me ask you  
16 a question.

17 Are you claiming that no money is due to Verizon?

18 MR. GRUIN: Nearly all the bills, no money is due to  
19 Verizon, but one of the problems is that Verizon keeps  
20 invoicing for facilities, and the invoices don't correspond  
21 to the facilities provided; so, if a correct invoice was  
22 provided to Core for the correct facilities at the correct  
23 rate, Core would know what they had to pay, but --

24 JUDGE COLWELL: Well, what are those things?

25 MR. GRUIN: Well --

1 JUDGE COLWELL: Have you told Verizon what you think  
2 the correct facilities and the correct rate are?

3 MR. GRUIN: Maybe not. I believe Core has told them  
4 that the facilities at issue, first of all, at least some  
5 are owed by Core to Verizon. Facilities provisioned by  
6 Verizon for Verizon to send traffic to Core, Core is not  
7 responsible for paying those.

8 Second, to the extent that there are facilities that  
9 Core provisions for its use, it is crystal clear, a Supreme  
10 Court of the United States decision, that those must be  
11 provisioned pursuant to TELRIC rates and interconnection  
12 terms, not special access facilities provisioned pursuant to  
13 Verizon's special access tariff.

14 Verizon still is not competent, even after the  
15 Supreme Court has ruled on this precise issue.

16 There's functionality receptors with these subjects  
17 that the Court has raised for years, dating back to 2003.

18 Core is not able to utilize these facilities like  
19 they're intended to be utilized.

20 I was trying to think of an analogy for what we have  
21 here, and what I came up with is Core is seeking to rent a  
22 fleet of vehicles from Verizon, and they're ordering Honda  
23 Civics, but Verizon is billing them as if they were Jaguars.

24 The Honda Civics that Core does receive can't even  
25 be used, the way that Core receives them, or that Core

1 requested that they be provided.

2 That's the situation we're in.

3 If Verizon would issue bills with TELRIC elements in  
4 there, and that the circuits were functional, Core would pay  
5 the bills, but that simply is not happening.

6 JUDGE COLWELL: Well, Mr. Gruin, forgive me for  
7 playing this out, but, this sounds like self-help. It seems  
8 to me the Commission has made it clear that that's not okay.

9 MR. GRUIN: Well, the difference is that Core, from  
10 Day One, has disputed these bills, and discussions between  
11 the parties have gone on for eight or nine years.

12 I think the record referenced some of those  
13 discussions and meetings, but there were meetings between  
14 Core executives and Verizon executives in Boston.

15 There was various notes of escalation, multiple  
16 exchanges of correspondence. These were having open  
17 disputes never closed between the parties, and during the  
18 whole pendency of it, Verizon never took the matter to  
19 litigation.

20 In contrast, in the situation of Core's filing for  
21 emergency relief, there was a unilateral decision by Verizon  
22 to say, "We're not paying any more. These are a hundred  
23 percent non-compensable."

24 JUDGE COLWELL: I don't see a difference.

25 MR. GRUIN: Well --

1 JUDGE COLWELL: You're saying, "We're not paying,  
2 either," and you didn't.

3 THE WITNESS: Well, we dispute procedure, disputed  
4 the bills immediately.

5 JUDGE COLWELL: Okay. Now, you understand that  
6 there is something due; you've admitted that, right?

7 THE WITNESS: We admit there is likely something  
8 due, but we've never been invoiced for the proper amount  
9 due; so, I think it's definitely premature to pick a number  
10 out of thin air and say, "This amount is due on these  
11 bills."

12 JUDGE COLWELL: Well, should I have to pick a number  
13 out of thin air, as you have a business here, and you know  
14 you've been getting these bills for years and eventually  
15 you're going to have to pay something on it?

16 Weren't you setting the correct money, or what you  
17 thought was the correct money, aside, or at least making  
18 some kind of payment on it?

19 MR. GRUIN: Well --

20 JUDGE COLWELL: Because if you don't do that, that's  
21 self-help.

22 MR. GRUIN: Well, respectfully, it's not, but, we  
23 followed the dispute procedures to dispute those bills.

24 The reason the Commission was able to implement  
25 relief before was because there was a track record --

1 there's history of Verizon paying pursuant to a very precise  
2 order, and --

3 JUDGE COLWELL: So, if they paid nothing, then they  
4 would have -- then you would have lost?

5 MR. GRUIN: Well, I wasn't --

6 JUDGE COLWELL: Because that doesn't make any sense.

7 MR. GRUIN: It's possible that -- I mean, that's the  
8 difference in the situations.

9 In the Verizon situation, they were paying pursuant  
10 to an agreed upon formula for years and years, and years,  
11 and then suddenly, without warning or notice, just said,  
12 "We're ceasing payment a hundred percent, and none of this  
13 traffic is compensable."

14 JUDGE COLWELL: Well --

15 MR. GRUIN: They weren't disputing the bills. They  
16 just made a unilateral proclamation, "These are not  
17 compensable."

18 Contrast that with before, they never gave the  
19 bills, ever, from Day One.

20 JUDGE COLWELL: So, did you have a fund set aside  
21 somewhere for this?

22 MR. GRUIN: Well --

23 JUDGE COLWELL: Or, should we set up an escrow?

24 MR. GRUIN: -- I can't speak to that now. I'd have  
25 to speak to that now. I'd have to speak to the accountants

1 and the financial people, but I don't think that's relevant  
2 to this issue.

3 JUDGE COLWELL: Well --

4 MR. GRUIN: Because there's still real big disputes  
5 here that Verizon at any time had the ability to bring it to  
6 litigation.

7 JUDGE COLWELL: Which I believe they've done that  
8 now --

9 MR. GRUIN: Well, they --

10 JUDGE COLWELL: -- so, here we are.

11 MR. GRUIN: Well, they've done that, finally, but, I  
12 mean, how many of their claims are stale at this point? How  
13 many have fallen off the Statute of Limitations?

14 JUDGE COLWELL: Well --

15 MR. GRUIN: There are factual determinations that  
16 need to be made regarding the functionality of these  
17 circuits, the proper rates, who is in fact responsible for  
18 which trunks?

19 JUDGE COLWELL: I mean --

20 MR. GRUIN: Were they provisioned correctly in the  
21 first place? Were they ordered in the first place?

22 There's too many variable and factual issues that  
23 need to be worked out.

24 JUDGE COLWELL: Okay.

25 MR. GRUIN: And they have not met the four -- any of

1 the four prongs for emergency relief.

2 They've not shown elected succession of merits; they  
3 have not shown irreparable harm; they've not shown any of  
4 the other four -- there are four which the Commission found  
5 that they don't even plead that in their motion.

6 JUDGE COLWELL: Okay.

7 MR. GRUIN: I don't think this relief can be granted  
8 legally; and if it would be, it would be in the nature of an  
9 interim emergency relief, and we would automatically bring a  
10 material question. That would be the only way,  
11 theoretically, it could be granted, is to convert their  
12 motion into a petition for emergency relief.

13 JUDGE COLWELL: Do you have a response?

14 MS. PAIVA: I do.

15 JUDGE COLWELL: Go ahead?

16 MS. PAIVA: I guess what I'll start out with is the  
17 fleet of cars example.

18 What we're hearing is exactly that Core is leasing  
19 the fleet of cars; Verizon is providing the fleet of cars;  
20 Verizon is billing Core \$50 a car; Core says that the cars  
21 are only -- "Billing should be billed at \$10 a car; so,  
22 we're not going to pay," and then Core is saying, "Okay, the  
23 headlights don't work, and there's no spare time, so, we're  
24 not going to pay."

25 But, in the meantime, Core is driving the cars all

1 over the place for years and using the cars and getting the  
2 value of them, and they're not paying anything.

3 So, I agree with you; I don't see any difference  
4 between what the Commission didn't want Verizon to do in  
5 this case versus what Core has been doing for years, and the  
6 claims that we have brought for the past due bills are all  
7 within the Statute of Limitations; we have not gone back  
8 beyond that.

9 And then, as to that, the motions are different  
10 because they brought theirs at the emergency order, and we  
11 brought ours just as a motion, I don't see a difference.

12 It's the exact same contract, and it's the exact  
13 same contract provision. So, if the Commission found that  
14 those contract provisions required Verizon to be paying  
15 these bills paying the litigation of the dispute, then why  
16 don't they require the same thing going the other way.

17 What Core is saying is that, really, the only reason  
18 Verizon has to pay Core is because Core claimed that they  
19 needed Verizon's money in order to stay in business. So,  
20 that's really the only material difference, because,  
21 obviously, Verizon cannot claim that we need Core's money to  
22 stay in business.

23 We're not going to go out of business without being  
24 paid, but, nonetheless, it's not right to have the same  
25 contract to be interpreted to require us to pay any

1 litigation, but to allow them to continue to pay us, when  
2 they admit that something is due in these facilities.

3 JUDGE COLWELL: And that is a concern, because  
4 although the Commission is perfectly comfortable requiring  
5 Verizon to make payments because they know darn well that it  
6 is not going to break Verizon, and they realize that Core is  
7 a much smaller company, the other side of that coin is if  
8 you don't put some of this money into an escrow account or  
9 make some payments on it, there's no guarantee you'll be  
10 able to, because of the size of the company, and that  
11 concerns me.

12 What guarantee can you make to me that if Verizon  
13 wins these counter claims, your company can make these  
14 payments?

15 MR. GRUIN: I don't think anyone can make any  
16 guarantee of that nature.

17 I mean, this is a pandemic of industry, and,  
18 frankly, there's a lot of compensation and admission  
19 disputes, and that's the point me raising the motion in the  
20 Core Communications versus AT&T case. It's that,  
21 unfortunately, it's a problem.

22 For any relief to be at hand in this case is very  
23 unusual, and it was limited to a discrete set of  
24 circumstances, and we proved a need for immediate relief,  
25 irreparable harm, injury to public -- to the public

1 interest.

2 Typically, you know, the cases need to be resolved  
3 on a full-blown litigation. Merits of the case need to be  
4 determined, and factual issues and legal issues need to be  
5 resolved.

6 The relief of payment pending the litigation is  
7 highly unusual, and it was only granted in this case because  
8 Core satisfied the ongoing problems.

9 Verizon cannot -- and she's admitted that they  
10 cannot satisfy this problem.

11 To order Core to divert monies from its operations  
12 to set aside monies in escrow based on Verizon's -- well,  
13 not even sworn -- a variance to entitlement to these  
14 monies -- I think it is something like a verified  
15 statement -- would be highly unusual, and, like I said, you  
16 would have to consider the ruling on the petition for  
17 interim emergency relief, and it would immediately trigger  
18 interior questions, by the nature of the Commission's  
19 regulations.

20 JUDGE COLWELL: Okay. Now, let's get back to the  
21 question I actually asked you?

22 We have billings from Verizon to Core; we have Core  
23 saying, "Yes, we probably owe them something, but it isn't  
24 that," but you know there's got to be an amount that you  
25 admit you do owe to Verizon.

1 Can you go down the list of the billings that have  
2 not been paid and come up with an amount that you recognize  
3 is due to Verizon?

4 MR. GRUIN: I don't think so, unless we get  
5 testimony in discovery from them.

6 JUDGE COLWELL: Well --

7 MR. GRUIN: And it's also important to recognize  
8 that the tiny sliver of money that Verizon has been ordered  
9 in paying a penalty from the Commission is a tiny fraction  
10 of what Core has built, and not only in Pennsylvania, but in  
11 other states. I mean, I know we're here in Pennsylvania,  
12 but, I mean, there's unpaid access bills, unpaid facilities  
13 bills.

14 So, what we have here is a very unusual set of  
15 circumstances, a very tiny trickle of payments in  
16 compensation. The circumstance has certainly got merit,  
17 Verizon's relief in this case, and the answer to your most  
18 recent question, I don't know what we could agree to pay  
19 them at this point in time. We couldn't even understand  
20 their bills.

21 After multiple attempts at clarification, re-  
22 billings, simplified billing, billing of the ICA rather than  
23 special access billing, we still have not seen them.

24 Perhaps, at some point after discovery, we can get  
25 to that point, but we're not there now.

1 Our position has been, and always has been, since  
2 2003, as documented by voluminous correspondence, is that  
3 nothing is owed for these bills.

4 JUDGE COLWELL: You're being given a service, and  
5 nothing is owed for them?

6 MR. GRUIN: That's the thing. The service that  
7 we've received, the important -- the point of the Core  
8 analogy is that they're not functional. Core cannot use  
9 them.

10 JUDGE COLWELL: How does Core connect with anybody  
11 else if they're not using Verizon facilities?

12 MR. GRUIN: That's the thing. For most of Core's  
13 history, all of its traffic was inbound, or, most of the  
14 traffic was inbound. These facilities relate to traffic  
15 Core would send outbound to other carriers.

16 At this point in time, there are other carriers in  
17 the marketplace who can fill that role. For many years it  
18 was only Verizon you could buy trunks from, and now there  
19 are other carriers than one place to provide it, but still,  
20 to this day, Core only provides a very small amount of  
21 traffic outbound from it's network.

22 We would like it to provide more. We would like to  
23 have facilities that worked properly to allow them to do  
24 that at a reasonable and a lawful rate, but that was not  
25 what Verizon provided. They provided facilities that do not

1 work, at an unlawful rate, and it has, in fact, prohibited  
2 Core from fully implementing a different business plan.

3 So, that's why they don't feel that anything is owed  
4 to these facilities.

5 They would like to get them to work properly. They  
6 would like to work with Verizon to fix the problem, but  
7 they've been told repeatedly a fix can't be done. What Core  
8 is requesting from Verizon can't be provided. So --

9 JUDGE COLWELL: Well, you know, it would be a  
10 wonderful show of good faith for you to set up an escrow  
11 account and start putting the Verizon billing amounts in  
12 there every month during the course of this litigation. It  
13 might even calm Ms. Paiva's motion somewhat.

14 MR. GRUIN: You mean on the going forward bills?

15 I mean, the problem is, as set forth previously in  
16 this case, in the affidavit of Mr. Mingo, Core's cash flow  
17 is severely restricted, in part, because of repeated non-  
18 payment by Verizon's instabilities, not just Verizon Pa. and  
19 Verizon North, but, Verizon Wireless -- MCI went out of  
20 business, not just in Pennsylvania.

21 What you're seeing happened here in this  
22 Pennsylvania issue has been repeated in at least three other  
23 states with no similar relief from most State Commissions.

24 So, the Board is still being strangled by Verizon.

25 The relatively -- the trickle of money that the

1 Commission ordered Verizon to pay Core hasn't gotten them  
2 out of the financial woods yet, by any stretch. That needs  
3 to be recognized.

4 So, any monies that Core would have to pay Verizon  
5 for these long seeded bills would put Core right back in the  
6 position that the Commission sought to prevent.

7 JUDGE COLWELL: So, I'm seeing no clean hands, and  
8 I'm seeing self-help, and I'm seeing an unwillingness to  
9 compromise.

10 MR. GRUIN: Well, I don't know how you're seeing no  
11 clean hands and self-help.

12 As I said, self-help is when you say, "I'm not going  
13 to pay your bills. I don't want to pay them." That is not  
14 the case here.

15 Core has always disputed these bills.

16 I could provide you with documents of all the  
17 dispute letters.

18 And Verizon obviously thought Core's dispute had  
19 some merit, because they -- the Commission ruled on it.

20 JUDGE COLWELL: I wouldn't agree that that means  
21 that we thought they had merit --

22 MR. GRUIN: Well, I mean, that's what it seems  
23 like -- (Inaudible) -- because they've had this thing since  
24 2003.

25 The parties had discussions about it, face-to-face

1 conference calls. It was just never acted upon by Verizon.

2 So, I don't see where you see lack of clean hands or  
3 self-help.

4 Unwilling to compromise, we would consider it, but,  
5 like I said, there's just financial realities that prevent  
6 us from going as far as you suggested we should go. That is  
7 not easy -- unwilling to compromise.

8 You ask can we?

9 I mean, I could sit here and say, "Sure Core can do  
10 that," but, I mean, I don't know. I would need to confer  
11 with their -- I don't think -- I can tell you the answer is  
12 probably, no.

13 JUDGE COLWELL: Okay.

14 THE WITNESS: The grounds for that is Core --  
15 (Inaudible). Again, this company is still severely  
16 financially limited, and, again, it's due in large part to  
17 the actions of Verizon; so, it really would be a  
18 distorted -- a twisted and sick ruling to make Core set  
19 aside money to pay Verizon, and Verizon is the cause of the  
20 financial difficulty --

21 JUDGE COLWELL: Well, that isn't proven yet, either.

22 Ms. Paiva, I think at this point what you have is to  
23 make a choice.

24 You have to decide whether or not you want to  
25 proceed on your motion as if it were a petition for interim

1 emergency relief, and, if you do, we can proceed on that  
2 issue; we can set up the hearings; we can come up with a  
3 ruling on whether or not you're entitled to that.

4 MS. PAIVA: Well --

5 JUDGE COLWELL: You don't have to do it right now.

6 MS. PAIVA: Oh, okay.

7 JUDGE COLWELL: I'll give you some time to take it  
8 back to your office and mow it over.

9 MS. PAIVA: Okay.

10 JUDGE COLWELL: But, at this point, I believe I  
11 would need to have -- simply because there are so many edges  
12 and circumstances here, I would need to have proof that  
13 Verizon made these billing and offered services that were  
14 compensable, before I could direct Core to start paying the  
15 billings before we get through the entire litigation.

16 MS. PAIVA: And that would have to be filed, and  
17 could that go to the argument?

18 JUDGE COLWELL: Yes, yes. I mean, you have that  
19 option.

20 MS. PAIVA: Okay.

21 JUDGE COLWELL: You can always do that.

22 MS. PAIVA: I will take that back. We may do that.

23 JUDGE COLWELL: Okay.

24 MS. PAIVA: Okay, I understand that we should submit  
25 that and write that up -- (Inaudible).

1 JUDGE COLWELL: All right.

2 MS. PAIVA: And I had another thought as I was  
3 listening to Mr. Gruin, which is Core is now claiming that  
4 there are other carriers in the marketplace that provide  
5 services. They claim that they're not happy with Verizon's  
6 services, and that they don't work.

7 In the alternative of an order requiring them for  
8 the facilities pending the litigation, what about an order  
9 allowing us to disconnect all the facilities and let them go  
10 get them from someone else?

11 MR. GRUIN: Well, Verizon has already  
12 unilaterally -- talking about self-help -- disconnected  
13 Core's facilities in some jurisdictions, not Pennsylvania.

14 MS. PAIVA: Well --

15 MR. GRUIN: I did say there were other carriers in  
16 the marketplace. The problem is they don't have anywhere  
17 near the coverage.

18 I mean, there's some spots, certain places, certain  
19 states, where those -- there are multiple carriers providing  
20 services, but --

21 JUDGE COLWELL: Well, Mr. Gruin, either there are or  
22 there aren't.

23 MR. GRUIN: Well --

24 JUDGE COLWELL: You told us before that there are  
25 other carriers, and now you're waffling on that. Which way

1 is it?

2 MR. GRUIN: I'm not waffling at all. There are  
3 other carriers in the marketplace who will provide these  
4 facilities.

5 JUDGE COLWELL: Okay.

6 MR. GRUIN: For example, 60 Hudson Street, in York,  
7 is a major carrier, or maybe 401 Ross Street, in  
8 Philadelphia -- I don't know -- but certainly not in all of  
9 the locations for these around Pennsylvania, Wilkes-Barre,  
10 Harrisburg, Pittsburgh, Erie -- I don't even know about  
11 Philadelphia, but, yes.

12 Just because there's carriers in the marketplace who  
13 provide these services in some locations, it doesn't mean  
14 it's ubiquitous.

15 Wherever there are carriers who provide these trunks  
16 and services, Core has availed themselves of those services,  
17 but at the end of the day Verizon still are a monopoly for  
18 these services in many locations.

19 Core has no choice. If they want this in outbound  
20 traffic, they have to go through Verizon.

21 JUDGE COLWELL: Well, so much for that one.

22 MS. PAIVA: Well, I mean, I was just picking up on  
23 his suggestion that they didn't need Verizon.

24 JUDGE COLWELL: Yes.

25 MS. PAIVA: Apparently, that's not the case.

1 JUDGE COLWELL: Yes.

2 MS. PAIVA: They want these facilities, and they  
3 want to use them, and they are using them.

4 I still say they should be paying for them.

5 JUDGE COLWELL: Okay.

6 MS. PAIVA: But, your point about re-filing the  
7 motion is taken, and I will take that back.

8 JUDGE COLWELL: All right, good.

9 Is there anything else we need to put on the record  
10 today?

11 MR. GRUIN: I don't believe so.

12 JUDGE COLWELL: Ms. Paiva?

13 MS. PAIVA: No, Your Honor.

14 JUDGE COLWELL: All right, very good.

15 Thank you very much.

16 MR. GRUIN: Thank you, Your Honor.

17 MS. PAIVA: Thank you.

18 JUDGE COLWELL: We're off the record.

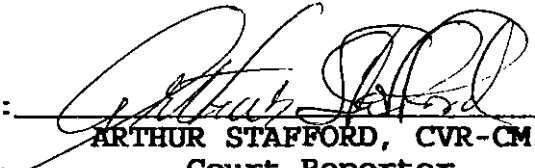
19 (Whereupon, at 10:54 a.m., the hearing was  
20 adjourned.)

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22 \* \* \*

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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BY:   
ARTHUR STAFFORD, CVR-CM  
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