

ORDER NO. 90118

IN THE MATTER OF THE PETITION FOR
ARBITRATION OF INTERCONNECTION
RATES, TERMS AND CONDITIONS WITH
CORE COMMUNICATIONS, INC.
PURSUANT TO 47 U.S.C. SECTION 252(B).

*
*
*
*
*
*
*
*
*
*
*

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9013

Issue Date: March 23, 2022

ORDER DENYING REHEARING

Before: Jason M. Stanek, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Mindy L. Herman, Commissioner

A. Background

1. On February 2, 2022, pursuant to the *Annotated Code of Maryland*, Public Utilities Article (“PUA”) § 3-114, and Code of Maryland Regulations (“COMAR”) 20.07.02.08, Core Communications, Inc. (“Core”) filed a Petition for Rehearing and Clarification of the Second Order on Arbitration Appeals in this matter, which the Commission issued on January 3, 2022—Order No. 90023 (or “the Order”).¹ Verizon Maryland LLC (“Verizon”) opposes Core’s Petition.²

2. Following Core’s Petition and Verizon’s Opposition, the Parties filed a Joint Request for Extension to file the updated Interconnection Agreement (or “ICA”) directed by the Commission in Order No. 90023.³ In their request, Core and Verizon requested a 60-day extension of the March 4, 2022 deadline, in order to file an updated ICA by May 3, 2022. The Commission denied the request for a full 60-day extension, and instead granted the Parties a 30-day extension – with the requirement to file a joint status report within 10 business days showing how the requested 60-day extension would result in the filing of a mutually-acceptable updated ICA.⁴

3. On March 14, 2022, the Parties filed their Joint Status Report describing their efforts to either negotiate a new ICA consistent with Order No. 90023 and current law, or complete this arbitration by filing within 60 days of the Order an updated ICA reflecting provisions consistent with Proposed Order II⁵ and Order No. 90023. In the Joint Status Report, the Parties state that Verizon has provided Core with its initial draft updated ICA,

¹ Maillog No. 238935, “Core Petition”.

² Maillog No. 239285, “Verizon Opposition”.

³ Maillog No. 239252. “Joint Status Report”.

⁴ Letter Order dated February 28, 2022 directing the Parties to file a joint status report. (Maillog No. 239369).

⁵ Proposed Order of Arbitrator issued by Chief Public Utility Law Judge Ryan C. McLean, dated July 2, 2021.

reflecting Verizon’s efforts to incorporate the language ordered by the Commission and that Core intends to review and respond to Verizon’s draft. The Joint Status Report further states that “[t]he Parties intend to draft a revised ICA that both Parties agree reflects the Commission’s order in this proceeding.”⁶

4. Based on their current efforts, the Parties renewed their request that the Commission grant the full 60-day extension previously requested, allowing the Parties to file their updated ICA by May 3, 2022. In requesting the 60-day extension, the Parties state that the purpose of the extension was to incorporate the result of the Commission’s orders, including potentially any Commission decision on the Petition in the ICA and engage in the further negotiations alluded to in the Order.⁷

5. For the reasons discussed herein, Core’s Petition for Rehearing and Clarification is denied. The Parties’ renewed request for a full 60-day extension from the issuance of Order No. 90023 to May 3, 2022 to file an updated Interconnection Agreement consistent with the Order is granted.

B. Core Petition

6. In its Petition, Core insists that in this arbitration proceeding involving Verizon, the Commission must “fully implement” the rules and regulations of the Federal Communications Commission (“FCC”) relating to the rating and exchange of section 251(b)(5) VoIP-PSTN Traffic and the commingling of VoIP-PSTN traffic with interexchange traffic over interconnection trunks.⁸ Core argues that Order No. 90023

⁶ Joint Status Report at 2.

⁷ *Id.* The Parties do not believe that this can be achieved within the 30-day extension granted by the Commission to April 4.

⁸ Core Petition at 1.

does not comply with sections 251 and 252 of the Telecommunications Act of 1996,⁹ arguing that the Order does not ensure resolution of the open issues and conditions imposed upon the parties under section 252, does not establish rates for interconnection and other services according to subsection 252(d), and does not provide a firm schedule for implementation of the terms and conditions by the Parties. Core insists that the Commission “adopt [its] language as to every issue” in a manner consistent with federal law, “particularly with respect to the definition and exchange of VoIP-PSTN traffic and the commingling of VoIP-PSTN with other traffic.”¹⁰

7. According to Core, the FCC’s 2011 *CAF Order*¹¹ is “prescriptive” and that it created new section 251 rules and regulations that this Commission must implement.¹² Therefore, Core argues that the changes adopted by the FCC in the *CAF Order* makes this a “compulsory arbitration under section 252”—adding that it has throughout this arbitration process been asking the Commission to issue a compulsory decision.¹³

8. Core argues that the Commission’s requirement in the Order directing the Parties to adopt a mechanism to identify VoIP-PSTN traffic is inconsistent with the requirements of the *CAF Order*, and will allow Verizon to “stonewall” and resist Interconnection Agreement terms and conditions consistent with the language Core seeks to have adopted. More importantly—Core argues—“it will force Core to negotiate an entire[ly] new interconnection agreement in order to implement the *CAF Order*.”¹⁴ Core argues

⁹ Pub. L. No. 104-104, 110 Stat. 56, codified throughout Title 47 of the U.S. Code (the “1996 Telecom Act,” or “the Act”).

¹⁰ Core Petition at 4.

¹¹ *In re Connect Am. Fund*, 2011 FCC LEXIS 4859, *93, 26 FCC Rcd 17663 ¶ 940, 54 Comm. Reg. (P & F) 637 (F.C.C. Nov. 18, 2011) (“*CAF Order*”).

¹² Core Petition at 8.

¹³ *Id.*

¹⁴ *Id.*

that negotiation regarding the “functionality provisions utilizing a VoIP-PSTN definition” as the Order requires is moot and was necessary only for purposes of complying with the FCC’s “transitional intercarrier compensation regime” under the *CAF Order*.¹⁵

9. Core argues further that Verizon is barred from objecting to implementation of the *CAF Order* in the Parties’ ICA—because the Parties stipulated that intercarrier compensation in the Interconnection Agreement will be governed by the FCC’s *CAF Order*.¹⁶ Finally, Core states that throughout this arbitration process it has been asking for a compulsory decision on the issues.¹⁷

C. Verizon Opposition

10. Verizon notes that section 252 of the 1996 Telecom Act requires the Commission to arbitrate issues properly presented to it, but the parties are the ones that must draft the conforming contract language and present it to the Commission for approval.¹⁸ Additionally, Verizon notes that under section 252(b)(4) the Commission must limit its consideration of any petition to the issues set forth in the petition and in the response, if any.¹⁹

11. Reiterating that the petition and answer filed by the Parties in this case were submitted to the Commission in 2004, years before VoIP-PSTN traffic was an issue, and before both the Supreme Court’s *Talk America*²⁰ decision and the FCC’s *CAF Order*

¹⁵ *Id.* Core insists that only its proposed interconnection language will permit the exchange of traffic pursuant to currently effective section 251 rates, rules and regulations. *Id.* at 9.

¹⁶ *Id.* at 12, citing Joint Stipulation at 12.

¹⁷ Core Petition at 8.

¹⁸ Verizon Opposition at 5.

¹⁹ *Id.*

²⁰ *Talk America, Inc. v. Michigan Bell Telephone Co. dba AT&T Michigan*, (“*Talk America*”) 564 U.S. 50 (2011).

addressed the scope of TELRIC (total element long run incremental cost)-rated interconnection trunks, Verizon submits that the Commission is correct—“it cannot broadly foist upon the Parties terms and conditions that have not been voluntarily negotiated” but that it can insist that the Parties negotiate in good faith as required by the Act.²¹ Therefore, Verizon argues that Core’s Petition is premature and that the Parties must first engage in good faith negotiations before requesting any further arbitration by the Commission.

12. Verizon further argues that Core’s reading of the *CAF Order* regarding local interconnection trunks is too “expansive” and argues that its reading of the *CAF Order* is “wrong.”²²

13. Verizon submits that Core’s Petition is an attempt to short circuit good faith negotiations and have the Commission direct the Parties to use Core’s proposed language—rearguing an issue regarding language that the Commission specifically rejected. It also notes that the Commission found that “the *CAF Order* and the *Second Order on Reconsideration*^[23] are not so prescriptive as to require the identification and rating of VOIP-PSTN traffic that Core suggests, or require automatic inclusion in the ICA by Verizon in the manner in which Core requests.”²⁴

14. With regard to Core’s request for clarification, Verizon argues that Core’s Petition does not clearly state what Core believes the current law is regarding the routing of traffic over TELRIC-rated local interconnection trunks “or what unacceptable proposal it

²¹ Verizon Opposition at 6, quoting Order No. 90023, para. 3.

²² Verizon Opposition at 7.

²³ *Second Order on Reconsideration*, FCC Release No. 12-47 (Apr. 25, 2012)

²⁴ Verizon Opposition at 7-8, quoting Order No. 90023, para. 54. The Commission stated further that it is “not convinced that the composition of VOIP-PSTN traffic, as proposed by Core, is unequivocally adapted to the identification and rating of VOIP-PSTN traffic as discussed in the *CAF Order*. (Order No. 90023, para. 55-57.)

believes Verizon will make,”²⁵ adding that Core does not specify what traffic it believes federal law requires Verizon to allow over the local interconnection trunks.²⁶

15. Verizon further states that it has not taken the position that Core cannot route VoIP-PSTN traffic over the local interconnection trunks, but maintains that “[i]f traffic is VOIP-PSTN and also fits within one of the categories that can properly be sent over the local interconnection trunks ... such as Tandem Transit Traffic (not defined per the Order to include third-party originated traffic) ... then it can be sent over those trunks and there is no need to further specify that it is VOIP-PSTN.”²⁷ Verizon continues to argue, however, that “if it does not fall into one of the qualified categories, ... such as traffic to be exchanged with an interexchange carrier ... then it cannot be sent over those trunks.”²⁸

16. Verizon submits that given the Commission’s guidance in the Order, Verizon is “willing to make a good faith attempt to negotiate language that defines VoIP-PSTN traffic and explicitly state how it will be handled, in keeping with current law on the issue.”²⁹ Verizon maintains that “it has not refused to permit qualifying VoIP-PSTN traffic to be sent over local interconnection trunks.”³⁰ Verizon also maintains, however, that the language Core proposed “does not eliminate traffic exchanged with IXCs or properly carve out Transit Traffic,” which Verizon argues would require payment of a transiting fee.³¹

²⁵ Verizon Opposition at 8.

²⁶ *Id.*

²⁷ *Id.* at 9; VZ Reply Brief at 5.

²⁸ *Id.*

²⁹ Verizon Opposition at 9.

³⁰ *Id.* at 11.

³¹ *Id.*

Commission Decision

17. A petition seeking to reverse or modify an order of the Commission shall allege the facts and circumstances which have arisen after the hearing or order which justify the reversal or modification; or the consequences resulting from compliance with the order which justify or entitle the applicant to the reversal or modification. COMAR 20.07.02.08D(2). Upon consideration of this matter, the Commission denies Core's Petition. However, based on the Parties' March 14, 2022 Joint Status Report showing progress toward the filing of an updated (or new) Interconnection Agreement as directed by the Commission, the Commission grants the Parties' renewed request for a full 60-day extension to May 3, 2022 to file a mutually agreed-upon ICA consistent with Order No. 90023.

18. In Order No. 90023, the Commission reconsidered and reversed its decision in Order No. 89168 granting Verizon's appeal of Proposed Order I regarding Access Toll Connecting Trunk Traffic, thereby reinstating the finding by the Arbitrator in Proposed Order I on that issue in favor of Core. There, the Commission noted that during the prolonged evolution of this case, Core—in its response to Verizon's appeal of Proposed Order I—failed to reassert the importance of the FCC's 2011 *CAF Order* in its 2019 Restatement of Issues, and that Verizon chose not to mention the *CAF Order* in its reply.³² Indeed, the 2011 *CAF Order*, and the timing of that decision—following the Supreme Court's opinion in the *Talk America* decision played a significant role in the Commission's decision to reconsider and reinstate the Arbitrator's finding in Proposed Order I applying TELRIC-pricing in accordance with Case No. 8882. However, as noted

³² Order No. 90023 at 28, para. 64 n.82.

in numerous Commission and Maryland appellate decisions, a request for rehearing is not a vehicle to rehash or repeat arguments made in testimony or briefing.³³ Here, Core fails to allege any facts or circumstances that have arisen since the issuance of Order No. 90023 that justifies reversal or modification of the Order.

19. Core’s arguments also fail to demonstrate consequences resulting from compliance with Order No. 90023 that justify or entitle Core to reversal or modification of the Order. While Core argues that the Order will “hobble” the Parties efforts to negotiate a final ICA,³⁴ and that Verizon will use the Order to “stonewall” and “resist”³⁵ terms and conditions consistent with the language Core seeks to have adopted, these assertions are all speculative and suggest a lack of faith in the Parties’ ability to engage in “good faith” negotiations. On the other hand, Verizon expressly states that it has not taken the position that Core cannot route VoIP-PSTN traffic over the local interconnection trunks,³⁶ stating that it is willing to make a good faith attempt to negotiate language that defines VoIP-PSTN traffic and explicitly state how it will be handled, in keeping with current law on the issue.³⁷

20. Compulsory arbitration under section 252(b) of the Act requires the petitioning party (Verizon) to provide to the state commission all relevant documentation concerning—(i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties. The non-

³³ See, e.g., *Giant Foods, Inc. v. Baltimore Gas & Elec. Co.*, 92 Md. P.S.C. 73 (Feb. 27, 2001); Case No. 9651, *In the Matter of Washington Gas Light Company’s Application for Authority to Increase its Rates and Charges*, Order No. 89893 (July 29, 2021); *Cinque v. Montgomery County Planning Bd.*, 173 Md. App. 349,918 A.2d 1254 (2007). See also, *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 246 Md. App. 388, 409 (2020).

³⁴ Core Petition at 8.

³⁵ *Id.* at 4.

³⁶ Verizon Opposition at 9; VZ Reply Brief at 5.

³⁷ Verizon Opposition at 9.

petitioning party (Core) may respond to the other party's petition and provide such additional information as it wishes.³⁸ The state commission must limit its consideration of any petition (and any response thereto) to the issues set forth in the petition and in the response, if any.

21. The various decisions in this docket detail that the Commission has in fact resolved the Parties' disputed issues in this matter in a compulsory fashion—including *most recently*, requiring the Parties to include the FCC *CAF Order* definition of "VoIP-PSTN" in any updated ICA they file, or negotiate an alternative mutually agreeable definition.³⁹ Contrary to Core's suggestion, the Commission's directives are compulsory requirements which in some cases favor positions taken by Verizon and in other instances favor positions taken by Core. These decisions are binding on both parties, and the Parties' compliance with the Commission's directives is required unless they are either set aside by the Commission after renegotiation by the Parties, or by order of a Federal district court.

22. In reconsidering a portion of Order No. 89168—regarding Trunk Types (specifically, Access Toll Connecting Trunks) and the eligibility of certain interconnection traffic to TELRIC-pricing as prescribed by the Commission in Case No. 8882—Order No. 90023 compels Verizon to accommodate a portion of VoIP-PSTN traffic as interconnection traffic, subject to TELRIC-pricing in a manner consistent with the FCC's 2011 *CAF Order* and the FCC's *Second Order on Reconsideration*.

Notwithstanding its opposition to Core's Petition, it appears that Verizon has nonetheless

³⁸ The Table of Open Issues filed by Core and Verizon on November 13, 2020 (Maillog No. 232592) as well as the Parties' other previous filings satisfy these section 252(b) requirements.

³⁹ See Order No. 90023 at 23-24, para. 54. While the Commission can—upon request of either party—subject the Parties to compulsory arbitration under section 252, the specific application of the *CAF Order* is still subject to meaningful good faith negotiation by the Parties.

embarked upon at least partial compliance with the Order by stating that it is willing to make a good faith attempt to negotiate language that defines VoIP-PSTN traffic and explicitly state how it will be handled, in keeping with current law on the issue.⁴⁰

23. The application of the FCC's 2011 *CAF Order* to the issues raised in Core's Petition in this case is still however subject to meaningful good faith negotiation by the Parties, with specific terms and conditions being reduced to writing in the form of either an updated (or new) Interconnection Agreement that is then filed with the Commission for approval.

24. Therefore, Core's Petition for Rehearing and Clarification is denied. However, the Parties' renewed request for a full 60-day extension from the March 4, 2022 due date for filing an updated (or new) Interconnection Agreement is granted.

IT IS, THEREFORE, this 23rd day of March, in the year Two Thousand Twenty Two by the Public Service Commission of Maryland,

ORDERED: (1) That Core Communication, Inc.'s Petition for Rehearing and Clarification of the Commission's *Second Order on Arbitration Appeals* (Order No. 90023) is hereby denied;

(2) That the portion of the Commission's February 28, 2022 Letter Order limiting the Parties' extension to 30 days is rescinded; and

(3) That the Parties' renewed request for a 60-day extension from the issuance of Order No. 90023 to file an updated Interconnection Agreement on or

⁴⁰ Verizon has cited a number of federal appellate court and district court cases that it argues support the assertion that its position is consistent with the FCC's 2011 *CAF Order*. These (and other cases, such as cases supporting Core's alternative position) are matters for negotiation by the Parties as they prepare to file an updated ICA as directed by the Commission. Where Verizon's cases are not supported, or where opposing authorities cannot be cited, the Parties' must in good faith apply the most relevant federal appellate law in reaching mutually agreeable terms and conditions in the updated ICA submitted to the Commission for approval.

before May 3, 2022 reflecting provisions consistent with the Commission’s *Second Order on Arbitration Appeals*, and reflecting changes in law pursuant to more recent Federal Communications Commission and applicable appellate telecommunications case decisions, is hereby granted.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O’Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners