ML 238414

ORDER NO. 90023

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: January 3, 2022

SECOND ORDER ON ARBITRATION APPEALS

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

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I. INTRODUCTION

1. On July 29, 2021, Core Communications, Inc. ("Core") filed a Notice of Appeal of the July 2, 2021 Proposed Order of Arbitrator ("Proposed Order II") issued by Chief Public Utility Law Judge ("PULJ") Ryan C. McLean. In Proposed Order II, the Arbitrator adjudicated new issues raised by the Parties in connection with a filing on June 19, 2020, described by Core as the Joint Draft Interconnection Agreement (or "ICA") with Verizon Maryland LLC ("Verizon").[1] This case, however, dates back to 2004, when Verizon petitioned for arbitration of the Parties' Interconnection Agreement. PULJ Robert H. McGowan adjudicated the Parties' initial disputes in Proposed Order I, which was issued in February 2006.[2]

2. While appeals and cross appeals from the Proposed Order I remained pending for some time, the Commission—in 2014 and again in 2019—directed the Parties to refresh the record, noting that changes in law may have altered the Parties' positions on some issues. In response, Verizon suggested that the Parties should consider pursuing a new/replacement ICA reflecting up-to-date terms and conditions. Core, however, rejected Verizon's suggestion and pursued—as it had a right to—resolution of the Parties' unresolved disputes by the Commission.

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[1] "Parties" herein refer to Verizon and Core, parties to the 2004 ICA.

[2] The arbitration proceedings in this case are authorized pursuant to section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified throughout Title 47 of the U.S. Code (the "1996 Telecom Act," or "the Act"). This case was consolidated with Case No. 9011*, In the Matter of the Petition of Interconnection Rates, Terms and Conditions With New Frontiers Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996* ("New Frontiers") and Case No. 9012, *In the Matter of the Petition of Interconnection Rates, Terms and Conditions With Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Maryland Pursuant to Section 252(b) of the Telecommunications Act of 1996* ("Xspedius"). Order No. 89168 adjudicated appeals filed by Xspedius, Core and Verizon and noted that New Frontiers was no longer actively participating in this proceeding. (Order No. 89168 at 2, n. 7.). Since the issuance of Order No. 89168, Xspedius has taken no further part in this matter. Noting no further participation by New Frontiers and Xspedius, consolidation of this matter is no longer required.

3. With this second appeal by Core, the proceeding has persisted over 15 years, while the telecommunications industry landscape has transformed itself in some ways that the Parties' maintenance of this ICA still fails to recognize. Nonetheless, the Commission's duties and authority under the 1996 Telecom Act are not unlimited, and the Commission cannot broadly foist upon the Parties terms and conditions that have not been voluntarily negotiated, no matter the advancements in law. Insisting that the Parties negotiate in good faith, however, as required by the Act and by the Parties' ICA, is a must in this case.

4. Except as discussed herein, the Arbitrator's findings in Proposed Order II are affirmed. The Commission, however, grants in part Core's Request for Clarification of the Commission's June 21, 2019 Order (Order No. 89168), thus reinstating Arbitrator McGowan's finding in Proposed Order I regarding pricing for Access Toll Connecting Trunks.[3]

5. In granting reconsideration of Order No. 89168 on this issue, the Commission sets aside the Arbitrator's finding in Proposed Order II at 20-21, regarding Trunk Types and reinstates Arbitrator McGowan's finding in Proposed Order I regarding Access Toll Connecting Trunks. The Commission also reverses the Arbitrator's denial of Core's request in Proposed Order II to include a definition of "VOIP-PSTN Traffic" in the Parties' ICA.

II. BACKGROUND

6. On June 21, 2019, the Commission issued Order No. 89168 affirming in part, reversing, modifying and clarifying in part, Proposed Order I entered in this matter on February 24, 2006 by Arbitrator Robert H. McGowan. Among other things, the

[3] In Order No. 89168, consistent with the Parties' description of the issue, this was addressed under the heading: Rates for Access Toll Connecting Trunks and Transport, at pages 16-21.

Commission affirmed the Arbitrator's determination that special notice should be given whenever substantive tariff changes are proposed, reversed the Arbitrator's determination that access toll connecting trunks should be subject to total element long run incremental cost ("TELRIC") pricing, clarified that the Parties' Interconnection Agreement ("ICA") should include contract language specifying that the Competitive Local Exchange Carrier ("CLEC") will obtain direct end office trunks when it reaches the 1-DS1-equivalent volume threshold at the tandem, affirmed in part that standard commercial terms not voluntarily negotiated by the Parties are not arbitrable, and clarified that the Parties' ICA should include Verizon's proposed section 2.3—permitting the ICA to remain in effect until the earlier of (i) the effective date of a successor ICA, or (ii) the date one year after the proposed termination of the existing ICA.

7. Pursuant to Order No. 89168, findings and conclusions by the Arbitrator that were not expressly reversed, modified, or clarified by the Commission were affirmed. The Commission directed Verizon and Core to file an updated Interconnection Agreement reflecting provisions consistent with Proposed Order I and Order No. 89168 within 60 days of the Order.

8. Beginning in August 2019 and continuing through January 2020, Core and Verizon jointly requested a number of extensions to file their updated ICA. Also, on September 19, 2019, Core filed what is referred to in the docket as a Request for Clarification and Approval of a Proposed Interconnection Agreement.[4] In response, Verizon requested that the Commission dismiss or defer Core's September 19, 2019 filing and grant the Parties a further extension in order to narrow or eliminate remaining issues.[5] The Parties' requests

[4] Maillog No. 226909.
[5] Maillog No. 226942.

for extension were granted.

9. Subsequently, on April 17, 2020, Core and Verizon filed a request with the Commission to establish a procedural schedule to resolve remaining Interconnection Agreement Issues. The Commission approved the Parties' proposed procedural schedule on April 20, 2020, providing for the filing of a draft ICA followed by briefs and reply briefs in support of positions on any remaining issues.

10. The Draft Joint ICA was filed by Core and Verizon on June 19, 2020.[6] Initial and Reply Briefs supporting positions on remaining issues were filed by the Parties respectively on July 20, 2020 and August 28, 2020.

A. Delegation Order Directing Arbitration Regarding New Issues

11. Upon reviewing the Joint Draft ICA and the Parties' briefs and reply briefs, the Commission found that the filings raised new issues not previously raised by the Parties and not addressed either in Proposed Order I or in Order No. 89168. The Commission delegated to the PULJ Division, for arbitration, the issues raised by the Parties that were not previously adjudicated in this case.

12. In delegating the matter, the Commission directed that the PULJ apply the decisions previously adopted by the Commission—where applicable—consistent with Order No. 89168. The new issues delegated for arbitration included, but were not limited to (1) the definition of Voice-Over-Internet Protocol Public Switched Telephone Network ("VOIP-PSTN")[7] Traffic, (2) Interconnection Intervals, (3) Tandem Transit Traffic, and (4)

[6] The Draft ICA included redline showing agreed-upon language and disputed language in redline form (the "ICA Redline"); and (2) a table listing open issues and each Party's respective proposed language for each issue.

[7] "VOIP" or "VoIP" refers to Voice-Over-Internet Protocol. "PSTN" refers to the Public Switched Telephone Network.

Robocall Mitigation.[8] On November 13, 2020, Core and Verizon filed a Table of Open Issues showing each Party's alternative language as reflected in the Draft ICA.[9]

13. The issues delegated for arbitration (or further arbitration) by the Commission and the issues identified by the Parties—in some but not all instances—overlap. In addition to the issues specifically delegated by the Commission, the Parties identified the following also as additional "open" issues: Assurance of Payment; Point of Interconnection (POI) Trunk Types; Trunk Types; Pricing Attachment; and Pricing Schedule.[10]

B. Proposed Order II

14. The Parties filed direct and reply testimony on the *new* issues on January 22, 2021 and February 19, 2021 respectively. An evidentiary hearing was conducted before the Arbitrator on March 16, 2021, followed by initial and reply briefs filed respectively on April 16, 2021 and May 7, 2021. The Maryland Office of People's Counsel ("OPC") also filed written comments on April 16, 2021 supporting Core's analysis regarding the robocalls issue, and recommending that the Arbitrator adopt Core's request to implement technology to prevent such calls.[11]

15. On July 2, 2021, the Arbitrator issued Proposed Order II, adjudicating the *newly* negotiated issues in this case.

16. With respect to the Table of Open Issues, the Arbitrator: (i) accepted Verizon's proposed Assurance of Payment language as reasonable; (ii) agreed with Verizon's position, declining to arbitrate Core's request to add a definition for VOIP-PSTN to the

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[8] September 15, 2020 Delegation Order at 2.
[9] Maillog No. 232592.
[10] Maillog No. 232592, Table of Open Issues; Bench Ex. 1.
[11] Maillog No. 234838, OPC Comments, filed April 16, 2021. Proposed Order II notes the appearance of the Commission's Staff Counsel. However, Commission Staff did not file testimony or otherwise actively participate, either in this arbitration or in the arbitration that resulted in the February 24, 2006 Proposed Order. On December 3, 2021, Staff withdrew its appearance in the matter. (Maillog No. 238065)

ICA Glossary; (iii) applied the Commission's decision in Order No. 89168 regarding the Point of Interconnection ("POI") – noting that "Core is only required to interconnect at a single POI, at its option"; (iv) declined to include Core's requested language in sections 2.2.1.1, and 2.2.1.2 relating to Trunk Types – finding Core's requested language for section 2.2.1.2 "unnecessarily restrictive", but accepted Core's proposed language for section 2.2.4; (v) agreed with Verizon "that [Verizon,] or a CLEC, 'could charge a rate equal to the rate for unbundled dedicated transport anytime either Party transported the other Party's originating traffic between the POI and the terminating carrier's switch'"; (vi) agreed with Core's language for Interconnection Attachment, Section 4.2(b) relating to Interconnection Intervals; (vii) accepted Core's language with regard to Interconnection Attachment, Section 4.4, regarding requests for interconnection over existing facilities in a new LATA; (viii) accepted Verizon's proposed definition of Tandem Transit Traffic – as encompassing the FCC's inclusion of traffic that originates on another carrier's network; (ix) declined Core and OPC's request to require and amendment to the ICA that would implement "STIR/SHAKEN" technical standards and operating procedures[12] to enable authentication of all traffic passing between the Parties; (x) rejected Core's proposal with regard to the Pricing Attachment issue that would require that charges established pursuant to a Party's traffic would be applicable only to the extent that the tariff is specifically referenced in an appendix to the ICA or other principal document, noting that "applicable tariffed services are already addressed in agreed-upon language" and that "the proposed section 2 is contradictory, not complimentary"; (xi) declined Core's request that Verizon's proposed

[12] "STIR/SHAKEN" refers to Secure Telephony Identity Revisited/ Signature-based Handling of Asserted information using toKENs, which is a suite of protocols and procedures intended to combat caller identification spoofing on public telephone networks.

language for footnote 3 be excluded from Appendix A to the Pricing Attachment; (xii) accepted the Parties agreement on TELRIC rates for unbundled dedicated transport interconnection facilities, and that all references to unbundled network elements (UNEs) in the ICA should be eliminated, and the Parties agreement to the incorporation of the TELRIC rates from Verizon's January 28, 2005 compliance filing as the rates for unbundled transport; (xiii) declined Core's request to "clarify" Verizon's existing tariff – as the issue had not been previously negotiated or arbitrated, and is therefore outside the scope of this arbitration; and (xiv) accepted Verizon's proposal for the Transit Service Fee as applied in its tariff, noting that the Transit Billing Service fee (previously associated NY Access Billing) is acknowledged by Core as moot.

C. Core Appeal

17. On appeal, Core challenges the Arbitrator's findings with regard to the following issues: Assurance of Payment; the Definition of "VOIP-PSTN Traffic"; Point of Interconnection; Trunk Types; Tandem Transit Traffic; Robocalls; Tariff Charges; Pricing Attachment, Appendix A–Footnote 3; Pricing of Entrance Facilities; Rates for Exchange Access Service; and Rates for Tandem Transit Service. Despite the Commission's characterization of several of these issues in its Delegation Order, Core argues that these issues were "by and large not so much 'new' as merely later iterations of the original issues first raised in 2004."[13]

18. Core further argues that by characterizing several of these issues as "new" and not resolving them, the Arbitrator failed to execute the Commission's Delegation Order directing arbitration of issues not previously adjudicated in this case. Additionally, Core

[13] Core Memorandum on Appeal at 4.

argues that the Arbitrator failed to apply—or misapplied—the Federal Communications Commission's ("FCC") decision *CAF Order*[14] to several of the issues listed in the Commission's Delegation Order, as well as several additional issues listed in the Parties' Table of Open Issues.[15]

19. Core characterized this proceeding—from 2004 to date—as "dysfunctional," arguing further that the Arbitrator's failure to resolve its "new" issues compounded the Commission's 13-year delay in resolving the appeals from Proposed Order I. Finally, Core threatens that if the Commission fails to "correct course" and resolve these issues, Core will request a "change of law amendment on [these] issues that will be back in front of the Commission for decision (again) in a mere matter of months."[16]

D. Verizon Reply

20. In its reply memorandum, Verizon argues that the Commission should reject Core's appeal, adopt Proposed Order II, require that a conforming interconnection agreement be filed for final approval, and close the case. In response to Core's complaint—alleging that Core has been injured by the multi-year duration of this "dysfunctional" case—Verizon notes that some of the blame for this rests on Core, noting that in its filings in 2015 and again in 2019, Verizon advised that Core should endeavor to adopt a newer interconnection agreement or launch new negotiations using a more modern template to better reflect the intervening decades of legal and technical developments.[17] Verizon argues that Core demands "unreasonable and/or unsupported terms" and repeatedly challenges every

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[14] *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*").
[15] Core Memorandum on Appeal at 4. Core notes for example that "the parties stipulated that intercarrier compensation will be governed by the *CAF Order*," citing the Parties' Joint Stipulation at 12.
[16] Core Memorandum on Appeal at 5.
[17] Verizon Reply Memorandum on Appeal at 2.

decision made against it.[18]

III. DISCUSSION

A. Assurance of Payment

1. Core

21. In its first issue on appeal, Core claims that the Commission's ruling in Order No. 89168 that "standard commercial terms that were negotiated by the Parties are arbitrable" – based on the fact that the matter was before the arbitrator – was "incorrect" as it applied to the Assurance of Payment terms. Core argues that: (1) it did not negotiate this provision with Verizon during the "pre-petition negotiation phase of the arbitration;" (2) it agreed to provide and brief a counterproposal only to avoid the need for a preliminary ruling on the "*CoServ*"[19] issue; (3) in its briefs, it specifically reserved its right to contest inclusion of Assurance of Payment as an issue properly before the Commission; and (4) Verizon acknowledged that Core objected to inclusion of the assurance of payment issue in this arbitration.[20] Thus, Core argues that "Assurance of Payment" was never negotiated and "is not within the scope of the Commission's jurisdiction to arbitrate."[21] Core argues the Commission should either bar "Assurance of Payment" language altogether or "at the very least" exclude Verizon's proposed subsection 6.3, relating to bankruptcy, because—it argues—"bankruptcy is a subject matter which Order 89168 specifically identifies as not properly within the scope of this case."[22]

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[18] *Id*.
[19] *CoServ, LLC v. Southwestern Bell Tel. Co*. 350 F.3d 482 (2003).
[20] Core Memorandum on Appeal at 6-7.
[21] *Id*. at 7.
[22] *Id*., citing Order No. 89168 at 8 and 10.

2. Verizon

22. Verizon argues that Core's position on this issue is unsupported and unreasonable. Verizon notes that in Order No. 89168, the Commission stated that "the Arbitrator adjudicated the Parties' dispute with regard to 'assurance of payment' provisions," and noted further that the Commission went on to decide the merits of the argument raised about what the assurance of payment section should require.[23] Verizon also argues that the Arbitrator correctly rejected Core's alternative that, even if assurance of payment is included, the Commission should exclude Verizon's proposed Subsection 6.3,[24] adding that Core did not oppose Verizon's proposed Subsection 6.3 in its original appeal and did not seek reconsideration of Order No. 89168 when the Commission recognized this language was unopposed.[25]

Commission Decision

23. The Commission is not persuaded by Core's assertion that it did not negotiate the assurance of payment provision with Verizon during the pre-petition negotiation phase of the arbitration, and that it only put forth its counter-proposal on brief to avoid the need for a preliminary ruling on the '*CoServ*' issue. This argument is contradicted by Core's offer of the alternative language to Verizon's proposed section 6.4.

24. While Verizon's section 6.3 begins "*Assurance of payment may be requested if ...,*" Core's proposed section 6.4 begins "*Unless otherwise agreed by the Parties, the assurance of payment shall consist of an unconditional, irrevocable standby letter of credit naming the requesting Party as the beneficiary thereof* … ." Both provisions—however—assume

[23] Verizon Reply Memorandum on Appeal at 3, citing Order No. 89168 at 25.
[24] Verizon Reply Memorandum on Appeal at 3.
[25] *Id*. at 3-4.

an assurance of payment requirement, thereby manifesting an attempt by the Parties to negotiate the terms of this requirement.

25. Under the Fifth Circuit Court of Appeals ruling in *CoServ*, Parties may refuse to negotiate any issues other than those that they have a duty to negotiate under the Act; however, where the Parties have "voluntarily" engaged in negotiations—as they have done here with regard to the Assurance of Payment issue—their negotiation is subject to state commission arbitration under § 252(b)(1) of the Act.[26] Therefore, the Commission affirms the Arbitrator's determination accepting Verizon's proposed Assurance of Payment as reasonable, based on Verizon's conformance of its proposed language with Proposed Order I and Order No. 89168.

B. Definition of "VOIP-PSTN Traffic"

1. Core

26. Core appeals the Arbitrator's decision denying Core's request to include a definition for VOIP-PSTN in the Parties' ICA. Core argues that including "VOIP-PSTN Traffic" in the Glossary section of the ICA will ensure that the Interconnection Attachment of the ICA, which it argues governs interconnection facilities, and encompasses VOIP-PSTN traffic as—it argues—the FCC intended.[27] Core also states that "the parties' stipulated that intercarrier compensation will be governed by the FCC's *CAF Order* and the definition of VoIP-PSTN is one of the keystone requirements of that Order."[28]

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[26] *See*, *CoServ* refers to *CoServ, LLC v. Southwestern Bell Tel. Co*. 350 F.3d 482, 488 (2003).
[27] Core Memorandum on Appeal at 9.
[28] *Id*. at 8. In the Table of Open Issues – (Core) Glossary § 2.105, Core states the definition of VOIP-PSTN "Shall have the meaning set forth in the FCC's 2011 *ICC Transformation Order, In re Connect Am. Fund*, 2011 FCC LEXIS 4859, * 1, 26 FCC Rcd 17663 (F.C.C. November 18, 2011) and its progeny and implementing regulations."

2. Verizon

27. Verizon states that this is an issue that was not arbitrated or briefed by the Parties originally and was not addressed in either Proposed Order I or in Order No. 89168.[29] It claims that this is "new language" that Core proposed for the first time when the Parties set out to draft an agreement to comply with those decisions. Verizon submits, however, that even if the Commission agreed with Core that a definition for VOIP-PSTN Traffic should be considered at this stage of the proceeding, the definition proposed by Core should be rejected.[30]

28. Verizon argues that the only purpose for which Core proposes the "VOIP-PSTN Traffic" definition is to use it in subsection 2.2.1 of the ICA "because Core proposes that the Parties exchange VOIP-PSTN traffic over Interconnection Trunks," and Verizon claims that the use of the definition for that purpose is "too broad and over-inclusive."[31] Verizon submits that Core's proposed VOIP-PSTN traffic definition, and its use in subsection 2.2.1 of the ICA "is an attempt to avoid the results of the Supreme Court's *Talk America*[32] decision" and therefore should be rejected.

Commission Decision

29. Under section 251(c), incumbent local exchange carriers ("ILECs") have an affirmative duty to negotiate in good faith: interconnection, to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network; unbundled access, to any requesting telecommunications

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[29] Verizon Reply Memorandum at 4.
[30] *Id*. In the Table of Open Issues – (Verizon) Glossary § 2.105, Verizon states that "VOIP-PSTN Traffic was never an issue in this proceeding; its treatment was not briefed by the parties nor decided by the Commission. This term is not used and a definition should not be included."
[31] Verizon Reply Memorandum at 4.
[32] *Talk America, Inc. v. Michigan Bell Telephone Co. dba AT&T Michigan*, ("*Talk America*") 564 U.S. 50 (2011).

carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions; resale, to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; notice of changes, to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and, collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

30. While the jurisdiction of the state commission as arbitrator is not limited by the terms of § 251(b) and (c), it is limited by the actions of the parties in conducting voluntary negotiations.

> [The state commission] may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations. If the voluntary negotiations result in only a partial agreement, or in no agreement at all, either party can petition for compulsory arbitration of any open issue.[33]

31. This proceeding was initiated based on Verizon's petition for arbitrations under section 252.[34] The partial agreement submitted for arbitration by Verizon includes a

[33] *CoServ* refers to *CoServ, LLC v. Southwestern Bell Tel. Co*. 350 F.3d 482, 487 (2003).
[34] Maillog No. 93478.

change of law provision, GTC Section 4.6, requiring that "the Parties shall promptly renegotiate in good faith" in response to legislative, regulatory or other governmental decisions.[35]

32. The *CAF Order* was issued by the FCC in 2011, and was modified in 2012.[36] Paragraph 972 of the *CAF Order* allows for a more expanded use of interconnection facilities, and abandoned the "calling-party-network-pays" model in favor of "bill and keep" for intercarrier compensation. The *CAF Order* also includes a definition for VOIP-PSTN traffic, as "traffic exchanged over PSTN facilities that originates and/or terminates in IP format."[37] In their respective Access Service Tariffs, both Core and Verizon each

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[35] GTC Section 4.6 provides:

> If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement. (Emphasis added).

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

[37] *CAF Order* at Para. 940. Under Para. 933, the *CAF Order* states:

> Under the new intercarrier compensation regime, all traffic--including VoIP-PSTN traffic--ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic;" adding that, "Under this transitional framework:
>
> · We bring all VoIP-PSTN traffic within the section 251(b)(5) framework;
>
> · Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates;
>
> · Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
>
> · Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.

include a definition of and provision for identifying and rating VOIP-PSTN traffic;[38] however, thus far, the Parties have failed to "renegotiate in good faith" to add this definition to their ICA.

33. Core proposed that VOIP-PSTN traffic "Shall have the meaning set forth in the FCC's 2011 *ICC Transformation Order, In re Connect Am. Fund*, 2011 FCC LEXIS 4859, *1, 26 FCC Rcd 17663 (F.C.C. November 18, 2011) and its progeny and implementing regulations."[39] Verizon on the other hand would have no definition for "VOIP-PSTN Traffic" added to the ICA. The Arbitrator denied Core's request to add Core's VOIP-PSTN definition to the ICA "given how long this case has been ongoing and the type of ICA (TDM) that has been the subject of negotiation and litigation."[40]

34. The Commission finds that Verizon's argument that there is no purpose for a VOIP-PSTN definition because—as Verizon asserts—the term/definition is not used elsewhere in the ICA, is not sustainable. Contrary to Verizon's assertion, *at the very least* VOIP is referenced in the Parties' existing ICA, albeit not in the context proposed by Core. Section 15.3 of the ICA states:

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[38] *See*, Verizon Access Tariff, Section 2.3.16(A) and Core Access Tariff, Section 7.1. Under Verizon Access Service Tariff, P.S.C.-Md.-No. 217, Section 2.3.16(A), VoIP-PSTN Traffic is defined as traffic exchanged between a Verizon end user and the customer in time division multiplexing ("TDM") format that originates and/or terminates in Internet protocol ("IP") format. Under Core's Tariff VOIP-PSTN Traffic is defined as Traffic that is (1) exchanged in time division multiplexing (TDM) format that originates and/or terminates in IP format (as delineated in FCC Item 11-161, ¶¶ 933-975 and 47 C.F.R. § 51.913), and (2) would be rated (if it originated and terminated in purely TDM format) as interstate toll based on a comparison of the NPA-NXX of the calling and called parties.

[39] Core Request for Clarification and Approval of Proposed Interconnection Agreement at 15.

[40] Proposed Order at 10.

> Each Party shall confirm the identity of new commercial **VoIP** customers or other customers that deliver traffic to such Party pursuant to contract or commercial agreement that is destined for the other Party, by collecting information such as physical business location, contact person(s), state or country of incorporation, federal tax ID, and the nature of the customer's business.[41]

35. The Parties' longstanding recognition of "VoIP" customers suggests that both Verizon and Core acknowledge the exchange of traffic potentially involving VOIP-PSTN technology.[42]

36. The absence of any functional usage of a VOIP-PSTN definition in the ICA, however, is due to Verizon's failure to meaningfully negotiate its functionality in identifying and rating such traffic notwithstanding the fact that the term is both defined and used in Verizon's Access Service Tariff. Therefore, the Commission reverses the Arbitrator's finding that a definition for VOIP-PSTN should not be added to the Parties' ICA. Instead, the Commission finds that such a definition should be added to the ICA, as a "change of law" required under General Terms and Conditions ("GTC"), Section 4.6. The Commission also finds, however, that until negotiated otherwise by the Parties, the applicable VOIP-PSTN definition should be the definition provided by the FCC in the *CAF Order*; *i.e.,* **"traffic exchanged over PSTN facilities that originates and/or terminates in IP format."**

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[41] MD. ANN. CODE, Pub. Util. Art., § 8-601 states that:

> (1) [V]oice over Internet protocol service" or "VoIP service" means any service that: (i) enables real-time two-way voice communications that originate from or terminate to the subscriber end user's location requiring Internet protocol or any successor protocol to Internet protocol," and (2) "voice over Internet protocol service" or "VoIP service" includes any such service that permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

[42] PSTN is the traditional circuit-switched telephone network, *i.e.,* the ubiquitous platform used by ILECs such as Verizon to provide telephone service to end-user customers. VoIP customers terminate calls both to other VoIP customers and ILEC network customers.

37. In requiring the *CAF Order* definition for VOIP-PSTN, the Commission does not require the use of this definition as proposed by Core, which utilizes its VOIP-PSTN definition in its proposed revisions to the ICA--as a provision for identifying and rating VOIP-PSTN traffic--in accordance with sections 5 through 15 of the ICA. Nonetheless, the Commission also will not allow Verizon to persist in failing to propose any functionality at all for a VOIP-PSTN definition in the Parties' ICA; that is, unless after further negotiation the Parties agree to remove any discussion of VOIP-PSTN altogether. Therefore, for VOIP-PSTN to remain a defined term in the Parties' ICA, Core and Verizon must reach agreement as to the functionality of the definition with regard to the content and mutual exchange of such traffic on their respective networks, pursuant to the ICA.

38. In accordance with the *CAF Order* definition required by this Commission, or a mutually agreed upon definition of VOIP-PSTN, functionality provisions utilizing a VOIP-PSTN definition must be negotiated in good faith by the Parties. Since both Core and Verizon have Access Tariff provisions defining, identifying, and rating VOIP-PSTN traffic, reaching mutually agreeable functionality provisions for the ICA should not be beyond the Parties ability to achieve.[43]

C. Point of Interconnection

1. Core

39. Core appeals sub-issues 2 and 3 of the Arbitrator's decision regarding Point of Interconnection, arguing that the decision on sub-issue 2 leaves open the possibility that Core must bring its traffic to multiple Verizon POIs within the same Local Access and Transport Area ("LATA") and that the decision on sub-issue 3 allows for Verizon's

[43] "[T]to address concerns about identifying VoIP-PSTN traffic, [the FCC] allow[s] LECs to include tariff language addressing that issue." *CAF Order* at Para. 960.

proposed language that—it asserts—paves the way for future disputes and costly, time-consuming litigation.[44] Core does not object to the Arbitrator's finding that Verizon's TELRIC rates from its January 28, 2005 compliance filing in Case No. 8879 to be appropriate rates; however, Core finds those rates acceptable "if and only if the Commission clarifies that the accompanying language from the same compliance filing is not adopted."[45]

2. Verizon

40. Verizon argues that Core's dispute regarding sub-issue 2 is null based on the Arbitrator's rejection of Verizon's proposed language that would have required Core to deliver its traffic to each Verizon tandem switch – thus possibly having multiple POIs in some LATAs. However, Verizon notes that the finding in Proposed Order I and in Order No. 89168 established Core's right—at its own option—to interconnect at a single POI in each LATA. Since Verizon did not appeal the Arbitrator's decision on this issue, Verizon acknowledges that this issue is no longer in dispute.[46]

41. With regard to sub-issue 3, Verizon disputes that any issue exists at all since Core accepts (and finds acceptable) Verizon's TELRIC rates from its January 28, 2005 compliance filing in Case No. 8879 to be the appropriate rates, and the Arbitrator did not mention adopting other language from the compliance filing.[47]

Commission Decision

42. The Commission affirms the Arbitrator's finding relating to Core sub-issues 2 and 3. With to regard sub-issue 2, the Arbitrator applied the Commission's decision in Order

[44] Core Memorandum on Appeal at 12.
[45] *Id*. at 12-13.
[46] Verizon Reply Memorandum at 4.
[47] *Id*. at 6.

No. 89168 noting that Core is only required to interconnect at a single POI, at its option– accepting Core's proposed language for sections 2.1.1, 2.1.2, and 2.1.5 of the ICA.[48] The Commission rejected Verizon's proposal, which would have required Core to deliver its traffic to each Verizon tandem switch.

43. The Commission also affirms the Arbitrator's finding with regard to Core's sub-issue 3, pertaining to the rates applicable as the "rate equal to the rate for unbundled dedicated transport, or using third party facilities."[49] Core's proposal specifies that the rates set forth in the ICA's pricing schedule will apply if either party leases facilities from the other party for interconnection. Core accepts the appropriate rates as Verizon's TELRIC rates from its January 28, 2005 compliance filing in Case No. 8879, "but only if the Commission clarifies that the accompanying language from that same compliance filing is not adopted in the ICA."[50]

44. In the Table of Open Issues, Core's section 2.1.4 proposal references section A.II. of Appendix A to the Pricing Attachment. However, other than the reference to "Entrance Facilities Interconnection …" this portion of the section A.II. is completely stricken; therefore, the "unspecified" language that Core objects to is not present. Accordingly, neither Proposed Order II nor this Order assumes the applicable rates for unbundled transport or using third party facilities to be any rate other than Verizon's rates from its January 28, 2005 compliance filing in Case No. 8879. Core's appeal of Proposed Order II with regard to this issue is denied.

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[48] Proposed Order II at 15.
[49] *See,* Table of Open Issues – (Verizon) POI & Trunk Types Interconnection § 2.1.4.
[50] Core Memorandum on Appeal at 13.

D. Trunk Types

1. Core

45. Core appeals the Arbitrator's findings rejecting its proposed language regarding Trunk Types. Despite the Commission's finding in Order No. 89168 that access toll connecting trunks are not interconnection facilities subject to § 251(c)(2) because they carry only interexchange (long distance) traffic, not local traffic between the ILEC and the CLEC,[51] Core argues that is not "relitigation" of the same issue.[52] Characterizing Order No. 89168 as a "mid-course decision" by the Commission, Core argues that it is entitled to ensure that it is not denied the benefit of the *CAF Order*.[53]

46. Core argues that—contrary to the Arbitrator's finding—it does exchange "telephone exchange service" or "exchange access" traffic, either of which it argues would allow it to also include interexchange traffic on the same interconnection trunks.[54] It states that Core need not have its own end users to carry either category of traffic because Core is a wholesale provider and both types of traffic are generated by Core's customers and exchanged with Verizon.[55]

47. Core notes further that it proposed language in subsection 2.2.1 to establish that

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[51] Order No. 89168 at 21.

[52] Core Memorandum on Appeal at 14.

[53] The Arbitrator declined to include Core's requested language in sections 2.2.1.1, and 2.2.1.2 – finding Core's requested language for section 2.2.1.2 "unnecessarily restrictive". Here, Core argues that a "mid-course" decision by the FCC, suggesting that "access toll connecting trunks" are not classified as interconnection trunks, warrants reconsideration of this Commission's decision in Order No. 89168 as it applies to exchange of traffic between Core and Verizon and the rates that should apply.

[54] Core Memorandum on Appeal at 14.

[55] Core argues that in the *CAF Order*, the FCC determined that as long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well. According to Core, the *CAF Order* distinguishes between interconnection arrangements used "solely" for the transmission of interexchange traffic and where a mixture of traffic is exchanged at the ILEC/CLEC interconnection point, suggesting that the Commission's reliance on the Supreme Court's decision in the *Talk America* case applied only where IXC traffic was transported by the CLEC.

VOIP-PSTN traffic may be exchanged on the ICA's Interconnection Trunks, which it argues is consistent with the *CAF Order*. The *CAF Order*—Core argues—clearly supports the commingling of VoIP-PSTN and interexchange traffic over interconnecting trunks.[56]

48. Additionally, Core proposed language to subsection 2.2.1.2 "to confirm that Access Toll Connecting Trunks are only appropriate 'where Core elects to subtend a Verizon Access Tandem' in the local exchange routing guide ("LERG"), which [it argues] is consistent with other, agreed to language Verizon proposed."[57] Core argues that were the Commission to reject these arguments "[it] would place Core at a debilitating disadvantage *vis à vis* its competitors, saddling it with an anachronistic ICA which [it argues] was not the intent of the PSC Order."[58]

2. <u>Verizon</u>

49. Verizon asserts that Core's *new* argument on this issue is essentially re-argument against the *Talk America* holding -- arguments rejected by the Supreme Court and the Commission in Order No. 89168.[59] Verizon submits that—contrary to Core's assertions—the Supreme Court's *Talk America* decision applies to traffic "exchanged" between Core and the incumbent LEC. Instead, according to Verizon, in Core's view the *Talk America* holding means that Core can send any traffic originated by any carrier and destined to any carrier to Verizon over the local interconnection trunks and expect to pay TELRIC rates for the trunks and require Verizon to bear the cost of getting the traffic to its destination.[60]

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[56] Core Memorandum on Appeal at 15-16. In his direct testimony, Core witness Bret Mingo noted that "From a technical point of view, there is no barrier to exchanging VOIP-PSTN traffic: it behaves exactly like traditional TDM traffic at the point of interconnection." Core Direct Testimony at 5. He added that "Indeed, the parties are exchanging VOIP-PSTN traffic today over the current interconnections in Maryland …" *Id.*
[57] Core Memorandum on Appeal at 16.
[58] *Id.*
[59] Verizon Reply Memorandum at 6-7.
[60] *Id.* at 7-8.

Based on the record, Verizon asserts that most if not "all" of Core's traffic originates from third parties and not from Core itself and that "it is likely that there is no traffic actually 'exchanged' between Core and Verizon."[61]

50. Additionally, Verizon objects to an assumption by Core that if it sends any telephone exchange service or exchange access traffic to Verizon over these trunks, it can also send traffic destined to interexchange carriers over these TELRIC-rated trunks. Verizon, however, insists that under the *Talk America* decision, the Supreme Court required such IXC traffic to use "market-priced" access toll connecting trunks.[62] Finally, Verizon argues that the Arbitrator correctly rejected Core's limitation that access toll connecting trunks are only appropriate "where Core elects to subtend a Verizon Access Tandem."[63]

Commission Decision

51. Notably, the *Talk America* decision, which weighed heavily in the Commission's decision on this issue in Order No. 89168 was decided by the Supreme Court in June 2011, whereas the FCC's *CAF Order* was issued in November 2011,[64] and has not been the subject of any federal appeals. Core witness Mingo testified that it is his understanding "that ICA TELRIC rates apply to all forms of 251(c)(2) Interconnection and traffic, which includes Exchange Access and VOIP-PSTN traffic."[65]

52. Rather than rebutting Core's assertion that the *CAF Order* reflects a change of

[61] Verizon Reply Memorandum at 8. In his reply testimony, Verizon witness Peter D'Amico argued that what Core is seeking to do is "to deliver interexchange (access) traffic to Verizon over local trunks." *Id*. at 2.
[62] Verizon Reply Memorandum at 9.
[63] *Id*. at 10. Verizon submits that its proposed language for subsection 2.2.1.1 is the same language that it proposed in the draft ICA attached to its 2004 arbitration petition, which it argues was never challenged or disputed, and that it should not be disputed now. However, despite Verizon's argument, this issue has been challenged and disputed by Verizon throughout these arbitration proceedings.
[64] The *Second Order on Reconsideration* was issued in 2012.
[65] Core Direct at 13. (Emphasis added).

law—by the FCC—regarding the functionality of interconnection trunks, Verizon argues that Core's language on this issue would let it send most or all of its third-party traffic over the TELRIC-rated local interconnection trunks to obtain a competitive advantage over other aggregators and foist its costs upon Verizon.[66] However, the FCC's "mid-course" decision (the *CAF Order*) in this case is undeniable, and the Commission agrees with Core that it should not be denied the benefit of the FCC's *CAF Order*. Those benefits must, however, be achieved by negotiation--not through arbitration with regard to issues that have not been voluntarily negotiated.[67]

53. Moreover, Core's request here is dependent upon the definition (and *use* of this definition) in the identification of and rating for VOIP-PSTN traffic. While, in the absence of a negotiated definition, the Commission will require that the FCC's *CAF Order* definition for VOIP-PSTN ("traffic exchanged over PSTN facilities that originates and/or terminates in IP format") be added to the ICA Glossary, the Commission will not require that the use of this definition comport with Core's request to redefine Interconnection Trunks, or require pricing of such traffic carried over Verizon's Interconnection Trunks at TELRIC rates, as Core requests.

54. The problem for Verizon (and Core) is that the Parties have resisted effective negotiation with regard to their 2004 ICA, and this resistance has little or nothing to do with the timeliness of the Commission's arbitration of these issues. While the Commission can—upon request of either party—subject the Parties to compulsory arbitration under

[66] Verizon Reply Memorandum at 7.

[67] Core witness Mingo is correct that the FCC has defined VOIP-PSTN traffic. He is incorrect, however, in asserting that the FCC has "ordered that [VOIP-PSTN] be included in interconnection agreements and that Core's proposal is consistent with FCC directives." *See* Core Reply Testimony at 1.

section 252,[68] the specific application of the *CAF Order* is still subject to meaningful good faith negotiation by the Parties. The *CAF Order* expressly states that the FCC's 2011 reforms "do not abrogate existing commercial contracts or interconnection agreements."[69] In other words, the *CAF Order* and the *Second Order on Reconsideration* are not so prescriptive as to require the identification and rating of VOIP-PSTN traffic that Core suggests,[70] or require automatic inclusion in the ICA by Verizon in the manner in which Core requests.[71]

55. While the *CAF Order* supports Core's argument that Interconnection Trunks *may* carry traffic other than telephone voice exchange traffic, as the Commission concluded in Order No. 89168, any benefits of the *CAF Order* inuring to the CLEC with regard to its VOIP-PSTN traffic may not be realized under *this* ICA, until the Parties negotiate terms and conditions for identifying and rating VOIP-PSTN traffic in accordance with the FCC's CAF Order definition of the term VOIP-PSTN. Therefore, the Arbitrator's finding on this issue is affirmed and Core's request for clarification is denied.

56. Core is correct that there is no clear evidence in the record that its traffic does not

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[68] *See, CoServ*, 350 F.3 at 484.

[69] *See also*, CAF Order at P 815.

[70] For example, the *Second Order on Reconsideration* by the FCC notes that "to the extent [VoIP] traffic is not 'toll' traffic, it is subject to the preexisting reciprocal compensation regime under section 251(b)(5) rather than the transitional framework for toll [VoIP] traffic that we adopt in this Order." *Second Order on Reconsideration*, Para. 38, n. 114. However, there is a great deal more discussion in the *Second Order on Reconsideration* regarding VOIP that the Parties must consider as they endeavor to resolve the exchange of VOIP-PSTN traffic under the terms to their ICA.

[71] In its September 19, 2019 filing, which the Commission designated as a Request for Clarification and Approval of a Proposed Interconnection Agreement, Core requested that the Commission clarify (1) that "Exchange Access" traffic may be passed over the Interconnection Trunks, and (2) that VOIP-PSTN traffic be included on the ICA's Interconnection Trunks – consistent with the FCC's *CAF Order*. *See Core Request for Clarification and Approval of a Proposed Interconnection Agreement*, Maillog No. 226909, September 19, 2019 at 14-15. There, Core argues that its requested treatment of Exchange Access and VOIP-PSTN would be consistent with the definition of "interconnection" set forth in section 251(c)(2) of the Act, the FCC's 1996 *Local Competition Order*, the FCC's implementing rules, Order 89168, *Talk America* and the FCC's 2011 *CAF Order*.

include *some* "telephone exchange service" or "exchange access" traffic, traffic which could be included in VOIP-PSTN traffic.[72] However, as discussed above, although the Commission is requiring the addition of the *CAF Order* definition of VOIP-PSTN in the ICA Glossary, it is incumbent upon the Parties to negotiate in good faith the identification and rating of VOIP-PSTN traffic for purpose of their ICA. Therefore, *without prejudice* to the adoption of negotiated terms applicable thereto, Core's request that "Exchange Access" traffic, including VOIP-PSTN traffic, may be passed over the Interconnection Trunks also is denied.[73]

57. In reviewing the *CAF Order*, the Commission 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*. However, the Commission is also not convinced that Core's proposal is completely infeasible. Verizon witness D'Amico suggested that additional facts support Verizon's position—resisting Core's request, however, these so-called "additional facts" were not presented or discussed.[74]

58. Again, Verizon and Core's Access Service Tariffs each include definitions for VOIP-PSTN and provisions for identifying and rating VOIP-PSTN traffic. While the

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[72] Quoting the *CAF Order*, the Arbitrator noted "With respect to the broader use of section 251(c)(2) interconnection agreements, however, it will be necessary for the interconnection agreement to specifically address such usage …" Proposed Order II at 37.

[73] Verizon witness D'Amico argues that "[i]t would be inappropriate to deliver Exchange Access Traffic over local interconnection trunks, as this is interexchange switched access traffic that should be exchanged over access toll connecting trunks or Feature Group D trunks." Verizon Direct Testimony at 7. In his reply testimony, Mr. D'Amico also argues that Core's proposal to exchange IP traffic is "infeasible" arguing that "[t]he network and processes described in this interconnection agreement are totally incompatible with the exchange of traffic in IP format." *Id*. at 3.

[74] Mr. D'Amico's statement that "Verizon does allow terminating access traffic … from a CLEC to Verizon end offices over local interconnection trunks though that traffic is subject to the applicable charges from Verizon's access tariffs" (Verizon Direct at 8), does not address the issue at hand. It doesn't address "feasibility," which is the issue the Parties must address--and attempt to resolve.

record in this case does not discuss how each Party handles VOIP-PSTN on its own network, it also does not discuss--at least not clearly--how each Party treats VOIP-PSTN traffic delivered by one Party to the other. These terms must either be negotiated using the *CAF Order* VOIP-PSTN definition and other applicable provisions, or the Parties are free to exclude this Commission's-required definition of VOIP-PSTN from the ICA altogether.[75]

59. Finally, requiring the Parties to add the *CAF Order* definition of VOIP-PSTN to the ICA Glossary, but forbearing requiring the functionalization of this definition until the Parties negotiate mutually acceptable terms and conditions is not inconsistent with the Commission's reliance upon the Supreme Court's *Talk America* decision in Order No. 89168. In Order No. 89168, the Commission held: "Based on the Supreme Court's decision in *Talk America*, the Commission concludes that a facility is not an interconnection facility subject to TELRIC pricing if it is used solely for the purposes of originating or terminating interexchange traffic, and not for the mutual exchange of traffic between the CLEC and the ILEC."[76]

60. In the *Talk America* holding, the Supreme Court expressly noted that it was deferring to the view of the FCC as to its interpretation of its regulations.[77] Because the

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[75] As noted in Paragraph 940 of the *CAF Order,* any revision of the ICA to include identification and rating of VOIP-PSTN traffic--if successfully negotiated by the Parties--will be subject to a "*prospective intercarrier compensation framework*." (Emphasis added).

[76] Order No. 89168 at 21.

[77] *Talk America*, 564 U.S. at 67. While much of the case law applying the *Talk America* decision focuses on "deference" given to agencies responsible for interpreting its regulations, *see, e.g., Dominion Ambulance, L.L.C. v. Aza*r, 968 F.3d 429, 2020 U.S. App. LEXIS 24399, 2020 WL 4382779, appellate decisions–addressing the application of *Talk America* to the scope of interconnection–note that Supreme Court's decision in *Talk America* observed that "the FCC has not closed the door on considerations of reasonableness in determining certain aspects of an incumbent LEC's interconnection duties." *See, e.g., Western Radio Servs. Co. v. Qwest Corp*., 678 F.3d 970, 981. The Ninth Circuit Court of Appeals' observation appears to have manifested in the *CAF Order*, which was issued only a matter of months after the *Talk America* decision was rendered.

Talk America decision predated the FCC's adoption of the *CAF Order*—allowing for a more expanded use of interconnection facilities, it is only logical that the Commission harmonize its consideration of the appropriate composition and rating of interconnection traffic with the latter *CAF Order*, since the import of the *Talk America* decision is that deference must be given to the FCC's interpretation of its regulations.[78]

61. In Case No. 8882, the Commission held that interconnection should be priced at TELRIC rates. There, the Commission concluded that "[i]f the terminating carrier provides interconnection service to the other carrier (*i.e.,* service before its switch, dedicated transport, in effect) it is entitled to compensation (in addition to reciprocal compensation) at [TELRIC] rates, pursuant to ¶ 1062 of the Local Competition Order."[79]

62. The Commission notes that its 2019 Restatement of Positions, Core stated that since the FCC's issuance of what Core referred to then as the *ICC Transformation Order*, *i.e*., the *CAF Order*), "[a]s a technical matter, the parties now interconnect using signaling system 7 ("SS7"), **which moots multiple arbitration issues involving the parties**'

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[78] The state commission decision (a Core Communications, Inc. v. Verizon Pennsylvania case) cited in Order No. 891678 at 20, n.78, which should have been attributed to Verizon's Restatement of Position, rather than Core's, appears to be a 2013 case rather than a 2017 case decided by the Pennsylvania Public Utility Commission ("PAPUC"), in Docket Nos.C-2011-2253750 and C-2011-2253787, 2013 Pa. PUC LEXIS 410. In that case, the PAPUC noted that in the *Talk America* decision, the Supreme Court ruled that "that **some (but not all)** entrance facilities qualify as interconnection facilities under § 251(c)(2), which a CLEC such as Core can buy at TELRIC rates, provided its ICA so allows." 2013 Pa. PUC LEXIS 410 at 91. There, the PAPUC explained that "'[b]ecause the *Talk America* decision was issued in 2011, as a matter of law, it [could not] justify Core's unilateral refusal to pay before that time, in violation of the ICA." It noted further that "[t]he express terms of Section 2.2 of the Verizon PA ICA Adoption Agreement allow[ed] Verizon to implement certain types of changes in law without an amendment to the ICA, upon notice, but do not allow Core to do so … ." Therefore, Core cannot unilaterally refuse to pay based on the *Talk America* decision and must instead follow the change of law provisions of the ICA." *Id.* at 91-92. (Emphasis added). Unlike the Verizon PA ICA, in the Verizon Maryland ICA, neither Party can effect changes to the ICA through the GTC Section 4.6 "change of law" provision without negotiation. Therefore, any change in the pricing applicable to interconnection facilities pursuant to the *CAF Order* shall be through good faith negotiation between the Parties.

[79] *In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms And Conditions*, Case No. 8882, Order No. 79250 slip op. at 12 (Jul. 7, 2004).

previous, now superseded, use of multi-frequency ("MF") signaling."[80] Core added that in its view, these developments render both parties' "targeted" change of law provisions moot."[81] When it comes to this issue, however, it appears that that view does not apply.

63. The Arbitrator's finding in Proposed Order II was based on the Commission's initial reading of the *Talk America* decision, without the benefit of the latter *CAF Order* issued by the FCC.[82] In granting Verizon's appeal of Proposed Order I in Order No. 89168 on the issue of TELRIC pricing, and setting aside the Arbitrator finding regarding Trunk Types, the Commission failed to recognize that its treatment of the issue in Case No. 8882 needed no qualification. This decision corrects that finding and reaffirms the Commission's holding in Case No. 8882, that interconnection should be priced at TELRIC rates. The finding in Order No. 89168 overruling the arbitrator's decision on this issue under Proposed Order I is therefore reversed. Therefore, where by negotiation the Parties agree upon "a more expanded use of interconnection facilities," as reflected in the *CAF Order*, TELRIC pricing shall apply to such facilities.

E. Tandem Transit Traffic

1. Core

64. Core appeals the Arbitrator's rejection of its proposed language for subsection 10.1 – "Tandem Transit Traffic," arguing that the Arbitrator overlooked its objections to Verizon's proposed language.[83] Core objected that Verizon's *new* language on this issue

[80] Core 2015 Restatement of Positions, Maillog No. 164023 at 2. (Emphasis added).
[81] *Id*. at 13.
[82] This is an issue that was raised on appeal by Verizon, seeking to overturn the finding by Arbitrator McGowan in Core's favor. In response to Verizon's appeal, however, Core did not reassert the importance of the FCC's 2011 *CAF Order* in its 2019 Restatement of Issues, and—to the Commission's dismay—Verizon also chose not to mention the *CAF Order* in its reply, instead relying solely on the *Talk America* decision.
[83] Core Memorandum on Appeal at 16.

did not arise out of any ruling by the Commission in Order No. 89168, Proposed Order I, any other legal authority, nor from an evidentiary basis in the record.[84] Core acknowledges that disputing Verizon's language on this issue as *new* runs counter to its objection to other findings by the Arbitrator in this case. However, Core insists that where the standard for deciding issues turns on whether the language is new or existing, the rule should apply equally to language presented by both Parties.[85]

2. Verizon

65. Verizon argues that Core's proposed Tandem Transit Traffic language was properly rejected by the Arbitrator and that if such language were accepted it would allow Core to send third party traffic to Verizon but expect Verizon to transit it to other local and wireless carriers for free.[86] Verizon adds that this would not be a fair or reasonable result for Verizon, and it also would give Core an anti-competitive advantage in the vibrant wholesale market for least cost routing services.[87]

Commission Decision

66. Core's and Verizon's section 10.1 language differ in that Verizon's language defines Tandem Transit Traffic as Telephone Exchange Service that originates on Core's or a third party's network.[88] On this issue, the Arbitrator found that Verizon's proposed definition encompasses the FCC's inclusion of traffic that originates on another carrier's network, and that section 10.5 of the ICA requiring Core to pay for traffic that it delivers to Verizon, not just traffic that Core originates, is consistent with the FCC's "Tandem

[84] *Id*.
[85] *Id*. at 17.
[86] Verizon Reply Memorandum at 10.
[87] *Id*.
[88] Table of Open Issues – Tandem Transit Traffic (Interconnection § 10.1).

Transit Traffic" definition.[89]

67. The Commission affirms the Arbitrator's finding accepting Verizon's language. The Commission rejects Core's assertion that characterizes Verizon's language as "new" and therefore should not be arbitrable. Unlike the definition of VOIP-PSTN, which the Parties have not previously negotiated, the definition of "Tandem Transit Traffic" has been at issue in the Parties' negotiations since 2004. As the Arbitrator noted "Core's position is based on its current business model and [if accepted] its proposed definition would effectively exclude all of Core's traffic because it would not be originating any traffic."[90]

68. Since this fundamental issue has been inherent to the Parties' negotiations, the Parties' dispute on this issue is subject to the Commission's arbitration proceedings in this case. In resolving this issue, the Commission finds that the Arbitrator properly relied upon the FCC's inclusion in Tandem Transit Traffic, "traffic that originates on another carrier's network." Core's appeal on this issue is denied.

F. <u>Robocalls</u>

1. <u>Core</u>

69. Core appeals the Arbitrator's denial of its request to include proposed language in the ICA addressing the implementation of STIR/SHAKEN for dealing with robocalls. Core argues that "[c]urbing unlawful robocalls has become the greatest public policy challenge in telecommunications today."[91] Core notes that Verizon proposed modest provisions that deal with how parties should cooperate to attempt to prevent illegal robocalls, but argues that Verizon's proposals do not go far enough.[92] Finally, Core

[89] Proposed Order II at 26.
[90] *Id*.
[91] Core Memorandum on Appeal at 17.
[92] *Id*. at 18.

submits that its proposal is fully consistent with, and designed to reinforce, the TRACED Act.[93]

2. OPC

70. OPC supports Core's proposal to implement STIR/SHAKEN.[94] In its comments, OPC notes that while the Arbitrator may have been restrained in ordering the requested negotiation between Core and Verizon on the STIR/SHAKEN framework, the Commission should not be dissuaded from taking action.[95] OPC adds that "[a]s evidence of the breadth of the concern by policymakers regarding the consumer aggravation with robocalls, all of the attorneys general in the United States recently requested the FCC to shorten the deadline for the implementation of the STIR/SHAKEN framework for small telecommunications companies to address what [Maryland] Attorney General [Brian] Frosh described as "… the scourge of illegal robocalls …"[96]

3. Verizon

71. Verizon agrees that combatting robocalls is an important issue. However, Verizon argues that the Arbitrator properly rejected Core's request for direct IP interconnection into the ICA in this case.[97] Verizon notes that the "entire industry" is involved in the FCC's robocall mitigation efforts, but argues that no other CLEC has asked this Commission to involve itself in direct IP interconnection with regard to this issue. Verizon adds that by Core's own admission the relief it seeks will not solve the robocall problem.[98] Verizon also argues that Core's proposed language is not necessary for compliance with the FCC's

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[93] *Id*.
[94] OPC Comments at 1.
[95] *Id*. at 2.
[96] *Id*.
[97] Verizon Reply Memorandum at 12.
[98] *Id*.

directives to implement STIR/SHAKEN, and that Core has other options available to it to avoid passing on illegal robocalls before it transmits its traffic to Verizon.[99]

Commission Decision

72. The Commission affirms the Arbitrator's rejection of Core's request to require an amendment to the ICA that would implement STIR/SHAKEN technical standards and operating procedures in the Parties' current ICA. While this is an important issue that both Parties should pursue, the better—and most efficient—approach to this issue is through collaboration among industry participants and the FCC staff. However, if the Parties pursue a new/replacement ICA, the Parties are encouraged to include STIR/SHAKEN standards and procedures in their negotiations.

G. Tariff Charges – Pricing Attachment

1. Core

73. Core appeals the Arbitrator's rejection of its proposed section 2 Price Attachment language. Core argues that its proposed section 2 language needs to be added to the ICA to reflect the Commission's ruling that tariff pricing may only be for services specified as tariffed under the agreement itself.[100] It argues that if its proposal is not reflected in section 2, Verizon could bypass the ICA pricing and apply much higher tariff pricing.[101]

2. Verizon

74. In response to Core's assertion, Verizon states that "[t]he interconnection agreement will already contain a provision (not disputed by the parties) that makes clear

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[99] *Id*. at 13.
[100] Core Memorandum on Appeal at 21, citing Order No. 89168 at 13.
[101] Core Memorandum on Appeal at 21. *See also*, Core Direct Testimony at 13. Core's position is that section 2 should be included in the ICA to prevent application of tariff rates to ICA services, unless the tariff asserted is specifically identified in the ICA as applicable to the subject service.

that rates set forth in the ICA take precedence over tariff rates for the same service."[102]

Commission Decision

75. The Commission finds that the exception language in GTC § 1.2 gives rise to an ambiguity that Core's language seeks to resolve. While the exception is not unreasonable, unless specific tariff references governing charges – other than the charges listed in the Pricing Attachment itself are stated, disputes could arise with respect to Verizon's selection of the applicable tariff charges that apply to some services. In order to eliminate this ambiguity, Proposed Order II is modified to accept Core's requested language and the Commission directs the Parties to reflect this language at Pricing Attachment, Section 2. In modifying Proposed Order II, the Commission finds Core's proposed section 2 is not contradictory, but complementary.[103]

H. Pricing Attachment, Verizon Footnote 3

1. Core

76. Core also contests the Arbitrator's refusal to delete Verizon footnote 3 from Appendix A to the Pricing Attachment, arguing that footnote 3 is inconsistent with Order No. 89168 and also does not serve any useful purpose. In arguing that footnote 3 conflicts with Order No. 89168, Core asserts that it unlawfully limits the purposes for which Verizon is required to provide services at the rates set forth in the ICA Pricing Schedule.[104] Core further argues that Verizon will take advantage of this footnote to change rates unilaterally

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[102] Verizon Reply Memorandum at 14, referencing GTC, Subsection 1.2. GTC § 1.2 reads: "Charges for Services shall be as stated in Appendix A of this Pricing Attachment, except where the providing Party has an effective Tariff for the subject Service, in which case the price for such Service shall be the price set forth in the Tariff (including as such tariff may be modified from time to time)."

[103] This modification to section 2 of the Pricing Attachment, however, does not extend to rating for VOIP-PSTN traffic--as the rating and pricing for VOIP-PSTN traffic is not as yet subject to the ICA.

[104] Core Memorandum on Appeal at 21.

in a manner that the Commission has prohibited.[105]

2. Verizon

77. Verizon argues that the Arbitrator correctly rejected Core's opposition to Verizon's proposed footnote 3, explaining that the first paragraph of the footnote is necessary to make clear that Verizon is entitled to be appropriately compensated for any broader use of its local exchange trunks, and the second paragraph simply states that the Appendix A rates are applicable until new rates are approved or allowed to go into effect by the Commission pursuant to FCC regulations.[106]

Commission Decision

78. Like adopting Core's language for Pricing Attachment, Section 2, the Commission finds – as alluded to by the Arbitrator – that footnote 3 adds greater specificity to the pricing regime, potentially avoiding future disputes. In Order No. 89168, the Commission rejected language proposed by Verizon that would have automatically incorporated new rates set by the Commission or the FCC, without intervening negotiation by the Parties.[107] As the Arbitrator noted, footnote 3 is not the same as the language the Commission previously rejected. Core's appeal on this issue is denied, and the Arbitrator's finding is affirmed.

I. Pricing for Entrance Facilities

1. Core

79. Core appealed the Arbitrator's ruling that TELRIC rates from Verizon's January 28, 2005 compliance filing in Case No. 8879 be used for unbundled transport and that all UNE references therein be eliminated. Core prefers to keep Verizon's 2004 rates, or in the

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[105] *Id*. at 22.
[106] Verizon Reply Memorandum at 14.
[107] *See* Order No. 89168 at 21.

alternative – it could accept the 2005 compliance filing rates, provided that only the rates—and not the other terms and conditions—apply.[108]

2. Verizon

80. In response, Verizon restates the Arbitrator's finding and notes that Proposed Order II does not reference any "other" terms and conditions from the 2005 compliance filing.[109]

Commission Decision

81. The Commission affirms the Arbitrator's finding that "there is no evidence to support any other rates." Core's appeal of Proposed Order II on this issue is denied.

J. Rates for Exchange Access Service

1. Core

82. Core also challenges the Arbitrator's refusal to adopt language that—it argues—makes completely clear that the per minute usage rate applicable to intrastate and interstate access traffic exchanged by the parties should be $0.0000,[110] whereas the Arbitrator found no reason to "clarify" Verizon's existing tariffs.

2. Verizon

83. Verizon argues that the Arbitrator correctly found no reason to clarify its tariffs with respect to Core's request, agreeing with the Arbitrator that this issue had not been negotiated or previously arbitrated.[111] Verizon also argues that its *existing* tariffs were written to comply with the FCC's *CAF Order*; therefore, it submits there is no need to change the language.[112]

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[108] Core Memorandum on Appeal at 22.
[109] Verizon Reply Memorandum at 14.
[110] Core Memorandum on Appeal at 23.
[111] Verizon Reply Memorandum at 14-15.
[112] *Id*. at 15.

Commission Decision

84. The Commission affirms the Arbitrator's finding that Verizon's exchange access tariff rate provisions comply with the FCC's *CAF Order*, and that Core's request for clarification here is outside the scope of this arbitration proceeding.

K. Tandem Transit Trunking Charge

1. Core

85. Finally, Core appeals the Arbitrator's refusal to remove the Transit Service Trunking Charge from Verizon's Appendix A to the Pricing Attachment, describing this provision as "equivalent to a flat-rate Dedicated Tandem Trunk Port Charge" which Core argues runs afoul of FCC rulings.[113]

2. Verizon

86. Verizon states that the FCC order that Core relies upon relates to "shared trunk ports," which are not the same as a "dedicated trunk port" and does not apply to price cap carriers such as Verizon.[114] Verizon argues the Arbitrator correctly denied Core's request, noting that the language has existed in Verizon's tariff at least since 2005.[115]

Commission Decision

87. The Commission affirms the Arbitrator's finding that the transit service billing fee issue is moot, as Core acknowledges that Verizon no longer uses NY Access Billing as a vendor. Additionally, the Commission finds no error in the Arbitrator's rejection of Core's request to remove Tandem Service Trunking Charge language from Appendix A to the Pricing Attachment.

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[113] Core Memorandum on Appeal at 23.
[114] Verizon Reply Memorandum at 15.
[115] *Id*.

IV. CONCLUSION

88. Upon consideration of Core's Appeal, the Commission hereby affirms in part Proposed Order II in this matter, reversing the Arbitrator's denial of Core's request to add a definition for VOIP-PSTN to the ICA Glossary, and modifying the Arbitrator's finding regarding Tariff Charges – Pricing Attachment, Section 2. The Commission also grants in part Core's Request for Clarification, seeking clarification that "Exchange Access" traffic may be passed over the Interconnection Trunks, consistent with the definition of "interconnection" set forth in Section 251(c)(2) of the Act, as articulated by the FCC in the *CAF Order*.

89. In granting Core's appeal of the Arbitrator's denial of its request to add a definition of VOIP-PSTN to the Parties ICA Glossary, the Commission finds that GTC Section 4.6 of the ICA requires the Parties to negotiate in good faith changes in law applicable to the ICA. In this instance, in light of the FCC's 2011 *CAF Order,* allowing for a more expanded use of interconnection facilities, and abandoning the "calling-party-network-pays" model in favor of "bill and keep" for intercarrier compensation, GTC Section 4.6 requires at a minimum the addition of FCC's *CAF Order* VOIP-PSTN definition to the Parties' existing ICA. However, without negotiation by the Parties with regard to identifying and rating VOIP-PSTN traffic, the Commission does not at this time grant Core's request for clarification that VOIP-PSTN traffic be included in the ICA's Interconnection Trunks, and will not extend the application of this definition, as requested by Core, but will leave the application of this (or a negotiated VOIP-PSTN definition) to negotiation by the Parties.[116]

[116] In negotiating, the Parties are also free to substitute a "mutually agreed upon" alternate definition for VOIP-PSTN, different than the definition set forth by the FCC in the *CAF Order*, or--if the Parties agree to cease discussion of VOIP-PSTN altogether--they are free to eliminate this definition from the ICA Glossary.

90. While the landscape of the telecommunications industry has changed significantly since Verizon first petitioned the Commission for arbitration on the Parties' 2004 ICA in 2004, with the exception of the established FCC definition for VOIP-PSTN, at this stage of the proceedings, the Commission will not force upon the Parties—and inject into the ICA—terms and conditions the Parties have not attempted to negotiate. In light of the FCC's *CAF Order*, arguably a more up-to-date ICA could allow for an expanded definition of Interconnection Trunks. However, to force the Parties to accommodate these changes is beyond the Commission's authority under section 252 of the Act.

91. These issues do, however, strongly suggest the potential need for negotiation of a new ICA, as Verizon has suggested. Verizon must be mindful; however, that just as the *CAF Order* does not abrogate the Parties' existing ICA,[117] Core is not required to totally abandon its interconnection agreement with Verizon in order to have the ICA updated to reflect material changes in federal telecommunications law.

92. If the Parties agree to retain the 2004 ICA, they must engage in meaningful and effective negotiation before requesting approval of an updated ICA, or before requesting any further arbitration of their Interconnection Agreement in this case.

IT IS, THEREFORE, this 3rd day of January, in the year Two Thousand Twenty-Two by the Public Service Commission of Maryland,

ORDERED: (1) That Proposed Order II is hereby affirmed in part, reversed in part, and modified in part. Except as discussed herein, Core Communications, Inc.'s appeal of Proposed Order II is denied;

(2) That the Arbitrator's denial of Core's request to include a definition of VOIP-

[117] *See, CAF Order* at P 815.

PSTN in the Parties Interconnection Agreement is reversed. The Parties shall instead include the definition of VOIP-PSTN set forth in the FCC's *CAF Order.* The Commission also finds, however, that until negotiated otherwise by the Parties, the applicable "VOIP-PSTN definition" should be the definition provided by the FCC in the *CAF Order—i.e.,* **"traffic exchanged over PSTN facilities that originates and/or terminates in IP format**;"

(3) That the Commission reconsiders and reverses its decision in Order No. 89168 granting Verizon's appeal of Proposed Order I regarding Access Toll Connecting Trunk Traffic, and reinstates the finding by the Arbitrator in Proposed Order I on that issue in favor of Core;

(4) That, within 60 days of this Order Verizon Maryland LLC and Core shall file an updated Interconnection Agreement reflecting provisions consistent with the Proposed Order II, and this Order, as discussed herein. Alternatively, the Parties may negotiate a new Interconnection Agreement reflecting the Commission decisions relating to Proposed Order I and II, and reflecting changes in law pursuant to more recent Federal Communications Commission and applicable appellate telecommunications case decisions; and

(5) That the consolidation of Case Nos. 9011, 9012 and 9013 is vacated, and Case Nos. 9011 and 9012 are hereby closed.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners