

ORDER NO. 90394

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)

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9013

Issue Date: October 24, 2022

ORDER APPROVING UPDATED INTERCONNECTION AGREEMENT

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

A. Introduction and Procedural History

1. The long and extensive procedural history of this case—from 2004 to 2022—has been set forth many times, in Proposed Order of Arbitrator I,¹ Order No. 89168,² Proposed Order of Arbitrator II,³ Order No. 90023,⁴ and in Order No. 90310.⁵
2. On August 16, 2022, the Commission issued Order No. 90310 – its final order on Arbitration Appeals filed by Core and Verizon in this case. The Final Order directed the Parties within 30 days thereof to file an updated Interconnection Agreement (“ICA”) reflecting provisions consistent with the Final Order and the findings set forth in Order No. 90023 (the Second Order on Arbitration Appeals) encompassing the findings of Proposed Orders I and II and Order No. 90118. The Final Order further directed that any issues not raised previously in this proceeding were deemed time-barred and may only be raised in a new proceeding requesting arbitration of a new Interconnection Agreement.
3. In this Order the Commission approves the updated Interconnection Agreement (“ICA”) for Core Communications, Inc. (“Core”) and Verizon Maryland LLC (“Verizon”) based on the filings by each Party on September 22, 2022.

¹ *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”),* Case Nos. 9011, 9012 and 9013 (Consolidated) (Jun. 21, 2019) (*Order on Arbitration Appeals*), (Feb. 24, 2006) (*Proposed Order of Arbitrator I*).

² Order No. 89168, Case No. 9013 (Consolidated) (Jun. 21, 2019) (*Order on Arbitration Appeals*).

³ *Proposed Order of Arbitrator II* (Jul 2, 2021).

⁴ Order No. 90023, Case No. 9013 (Unconsolidated) (Jan. 3, 2022) (*Second Order on Arbitration Appeals*).

⁵ *Proposed Order of Arbitrator II* (Jul 2, 2021).

4. With the exception of a single issue relating to payment for further transport beyond the point of interconnection (POI), the Parties mutually agree on all other terms – as set forth in their respective filings. Verizon requests clarification of the Final Order as it relates to the Parties’ obligation to pay for further transport beyond the point of interconnection, recommending alternative proposed language for ICA Sections 2.1.2 and 2.1.6. Core disagrees with Verizon’s alternative proposals and recommends its own alternative proposed language for ICA Section 2.1.6, consistent with language that Verizon also proposes for this section as part of Option 1 of its proposed alternatives.

5. The Commission denies Verizon’s request for clarification of paragraphs 43 and 44 of the Final Order, and adopts the Parties mutually agreed-upon language for ICA Section 2.1.6.

B. Background

6. On September 14, 2022, the Parties filed a joint request for a one-week extension noting that the Parties had negotiated mutually acceptable language on four out of the five outstanding interconnection issues, but one remained unresolved.⁶ The Commission granted the Parties’ extension request on September 15, 2022.⁷ On September 22, 2022, the Parties each filed an updated ICA. In its filing, Core submits that its version of the updated ICA implements all requirements of the Final Order.⁸ On page two of its filing however, and also within its version of the updated ICA, Core proposed revised language that was agreed upon by Verizon for ICA Section 2.1.6.⁹

⁶ Maillog No. 242311.

⁷ Maillog No. 242323.

⁸ Maillog No. 242427 (“Core Updated ICA Filing”) at 1.

⁹ Core Updated ICA Filing at 2; *see, infra* at 7.

7. Verizon’s filing on the other hand states that the Parties were “generally” able to implement the Final Order and reach agreement on the terms of a conforming interconnection agreement; “[h]owever, the Parties did not agree on the implementing language for one final issue.”¹⁰ Verizon requests the Commission clarify that the Parties’ transport obligations “do not ‘actually’ operate in both directions,” and that Core cannot “unilaterally” designate a point of interconnection other than its switch, in order to charge for transport back to the switch, when Verizon already agreed to transport the traffic all the way to Core’s switch at no cost to Core.¹¹

C. Request for Clarification Regarding Payment Obligations for Further Transport Beyond the Point of Interconnection

1. Verizon’s Position

8. Verizon notes that the Final Order adopted its proposed language of ICA Section 2.1.6 relating to the question of “further transport” beyond the point of interconnection. However, it argues that the Commission’s requirement in paragraph 44 of the Final Order that “this provision must be modified to operate in both directions, both when Core delivers traffic to Verizon and when Verizon delivers traffic to Core” could prejudice Verizon because the language of ICA Section 2.1.6 – proposed by Verizon and approved by the Commission – “was written in terms of Verizon’s network architecture” and could be used by Core “to force Verizon inefficiently and arbitrarily to deliver traffic to a distant non-switch point for the sole reason of charging Verizon transport to bring the traffic back to Core’s switch.”¹²

¹⁰ Maillog No. 242428 (“Verizon Updated ICA Filing”) at 1.

¹¹ Verizon Updated ICA Filing at 1.

¹² *Id.* at 2. The extant version of Section 2.1.6 reads as follows:

9. In response to Core’s proposed revisions to ICA Section 2.1.6, Verizon argues that Core’s proposed language would “potentially” permit Core to “deliberately” designate a point of interconnection (POI) at a location “other than its actual switch, and then require Verizon to deliver its traffic to that distant point and pay Core for transport back to Core’s switch, even though Verizon already agreed that it would transport its own traffic all the way to Core’s switch (or other designated point of presence) at no cost to Core.”¹³ By contrast, Verizon argues, Core has the “discretion” to deliver traffic to one tandem switch and pay for transport to the terminating tandem, or deliver its traffic to the terminating tandem, “depending on which option is more efficient for Core.”¹⁴ This “discretion,” Verizon argues, does not operate further transport under ICA Section 2.1.6 “in both directions” as the Commission’s Final Order intended that it would.¹⁵

10. In order to resolve this so-called “lopsided” result, Verizon proposes two alternatives: (a) Option 1 – to amend language in ICA Section 2.1.2 that would clarify that just as the Verizon POI must be a switch, “likewise the Core POI must be a switch (if there is a switch in the LATA),” or alternatively; (b) Option 2 – to clarify within ICA Section 2.1.6 “that either party could fulfill its further transport obligation by “self-provisioning the transport or by purchasing from a third party (in addition to buying it from the other party).”¹⁶

11. According to Verizon, Option 2 (and presumably Option 1 as well) would eliminate any “perverse incentive” for Core to designate a POI other than its switch in

If Core delivers its traffic to a POI in a LATA other than the tandem switch that is subtended by the terminating end office, Core shall pay for the further transport of such traffic between the POI and the terminating switch, at a rate equal to the rate for unbundled dedicated transport.

¹³ Verizon Updated ICA Filing at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

order to charge for transport back to the switch, because (under Option 2) Verizon would have the option to self-transport or pay a third party to transport its traffic back to the switch.¹⁷ Verizon submits that under Option 2 Core also can avoid paying Verizon for further transport by self-transporting or paying a third party to transport its traffic to Verizon's terminating tandem switch. Option 1 proposes revisions to ICA Sections 2.1.2 and 2.1.6. Under Option 1, Verizon's proposed language for ICA Section 2.1.2 reads as follows:¹⁸

The Core POI shall be the switch **in a LATA**, or **if it has no switch in a LATA** another point of presence designated by Core in a LATA that is connected with Verizon's switches over Verizon-owned and operated fiber facilities. The Verizon POI shall be any Verizon tandem that is subtended by a terminating end office.

12. ICA Section 2.1.6 under Option 1 reads:

If ~~Core~~ **a Party** delivers its traffic to a POI in a LATA other than the tandem switch that is subtended by the terminating end office, **or in Core's case other than Core's terminating switch**, ~~Core then the Party~~ shall pay for the further transport of such traffic between the POI and the terminating switch in the LATA, at a rate equal to the rate for unbundled dedicated transport.

13. Under Option 2, only ICA Section 2.1.6 is revised to read as follows:

If ~~Core~~ a Party delivers its traffic to a POI in a LATA other than the tandem switch that is subtended by the terminating end office, **or in Core's case other than Core's terminating switch**, ~~Core then the Party shall, at its option, (a) pay for the further transport of such traffic between the POI and the terminating switch in the LATA ("Further Transport")~~, at a rate equal to the rate for unbundled dedicated transport, **(b) provide such Further Transport over its own facilities, or (c) provide such Further Transport over third-party facilities.**

¹⁷ *Id.*

¹⁸ Legislative formatting has been added for illustrative purposes.

2. Core's Position

14. Core maintains there is no need for clarification of ICA Section 2.1.6—at least to the extent requested by Verizon—and that further transport charges should be paid and collected by both Parties as directed in the Final Order.¹⁹ According to Core, the Final Order provided a “clear resolution” of the Payment for Transport Issue.²⁰ Core argues that the two proposals offered by Verizon provide “new language” opening up unrelated, settled issues, and most importantly do not implement the requirements of the Final Order.²¹

15. With regard to Verizon's Option 1 – Verizon's proposal to modify ICA Section 2.1.2 to clarify that the Core POI must be a switch (if there is a switch in the LATA); Core objects, arguing that this proposal is unacceptable because it is an attempt by Verizon to dictate to Core that its POI must be at Core's switch in a manner inconsistent with prior decisions in this proceeding, the already settled language of section 2.1.2 and federal law.²² Core reiterates that pursuant to the requirements of federal law a Competitive Local Exchange Carrier (CLEC), such as Core, is entitled to establish a single POI per LATA “at any technically feasible Point(s) of Interconnection in a LATA.”²³ It argues further that Verizon's Option 1 is one-sided and eliminates the mutuality requirement of the Final Order, by eliminating Verizon's transport obligation beyond the POI while retaining Core's obligation.²⁴

¹⁹ See, Core Updated ICA Filing at 4.

²⁰ Core Updated ICA Filing at 2.

²¹ *Id.*

²² *Id.* at 2. See, e.g., Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified throughout Title 47 of the U.S. Code (*i.e.*, the “1996 Telecom Act” or “the Act”).

²³ Core Updated ICA Filing at 2.

²⁴ *Id.*

16. Core also objects to Verizon's request to clarify the Final Order through Verizon's Option 2 – to clarify within ICA Section 2.1.6 that either party could fulfill its further transport obligation by self-provisioning the transport by or purchasing it from a third party (in addition to buying it from the other party). Core argues that this proposal is also designed “simply” to avoid implementing the Commission's requirement that Verizon make payments to Core for transport provided by Core beyond the POI.²⁵ It argues that there is nothing in the Commission's Final Order that allows Verizon to propose revisions to ICA Section 2.1.6, and that allowing what Verizon proposes would allow Verizon to avoid its obligation to make payments to Core for transport beyond the POI. The version of ICA Section 2.1.6 acceptable to Core mirrors the version of section 2.1.6 presented by Verizon in its Option 1. In other words, Core and Verizon both agree to a version of ICA Section 2.1.6, which reads as follows:

If ~~Core~~ **a Party** delivers its traffic to a POI in a LATA other than the tandem switch that is subtended by the terminating end office, **or in Core's case other than Core's terminating switch**, ~~Core~~ **then the Party** shall pay for the further transport of such traffic between the POI and the terminating switch **in the LATA**, at a rate equal to the rate for unbundled dedicated transport.

Commission Decision

17. In considering Verizon's request for clarification and Core's response, the Commission notes that in addressing ICA Section 2.1.6 in its Final Order, the Commission approved Verizon's proposed language “as modified.”²⁶ “As modified”

²⁵ *Id.* at 3.

²⁶ Order No. 90310 at 22-23; para. 43-44. In its entirety, the relevant text in paragraph 44 of the Final Order states: “While Order No. 89128 gave Core the ability to elect a single point of interconnection, the Order did not absolve Core from paying for using Verizon's facilities further down the system, unless that was agreed to by the Parties. Therefore, the language proposed by Verizon for Interconnection Attachment § 2.1.6, as modified, is adopted.”

applies because this language was introduced by Verizon following what it argued was Core’s “refus[al] to accept language that would implement the Commission’s directive on sub-issue 2, that Core be responsible for the further transport of traffic to the terminating switch by paying for transport at a rate equal to the rate for unbundled dedicated transport.”²⁷ Verizon stated that its proposed ICA Section 2.1.6 language tracks the Arbitrator’s order (i.e., *Proposed Order of Arbitration II*).²⁸ In its Brief on Outstanding Issues, Verizon notes Core’s position on its proposed language as “Omit Verizon’s proposed new Section 2.1.6.”²⁹

18. However, in adopting Verizon’s proposed ICA Section 2.1.6, the Commission noted that:

To comport with Order No. 89168 (the Commission’s First Order on Arbitration Appeals in this case), this provision must be modified to operate in both directions, both when Core delivers traffic to Verizon and when Verizon delivers traffic to Core. Verizon also must pay for further transport of such traffic between the POI and the originating switch, at a rate equal to the rate for unbundled dedicated transport.³⁰

19. Verizon explains that its version of ICA Section 2.1.6—the version adopted by the Commission—was designed “in terms of [its own] network architecture” and “in terms of Core’s transport obligation.”³¹ This characterization of the matter by Verizon (the dominant carrier) does little to advance Verizon’s cause. The 1996 Telecom Act, Federal Communications Commission (“FCC”) and federal appellate decisions addressing the Act, make clear that the network architecture of incumbent local exchange

²⁷ Verizon Brief on Outstanding Issues (May 27, 2022), Maillog No. 240854 at 3.

²⁸ *Id.*

²⁹ Verizon Brief on Outstanding Issues, Exhibit A – Disputed Language on Open Issues.

³⁰ *Final Order* at 22-23, P 44.

³¹ Verizon Updated ICA Filing at 2.

carriers (ILECs) must accommodate interconnection by CLECs,³² and not interfere with their development.³³ On the other hand, the Commission’s mutual payment requirement for further transport by both Core and Verizon also was not intended to create opportunities for inefficient use of either Parties’ facilities.³⁴ The FCC continues to express concern with regard to arbitrage schemes – particularly as they relate to “terminating tandem switching and transport services that have not yet transitioned to bill-and-keep.”³⁵

20. The Commission-approved language of ICA Section 2.1.6 was Verizon’s previously proposed language. Verizon has since proposed revising that language to replace—in the first part “Core” with the word “Party,” to add “or in Core’s case other than Core’s terminating switch,” following that with again replacing “Core” with the word “Party,”—and in the last part adding the words “in the LATA” following traffic between the POI and the terminating switch. Those—and *only* those revisions—are also acceptable to Core.

21. Verizon now requests additional revisions to section 2.1.6 revisions and to section 2.1.2 (as proposed in Verizon’s Options 1 and 2). The Commission rejects Verizon’s

³² See, Order No. 79250, *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 (Jul. 7, 2004), n. 7, citing *In the Matter of Application by SBC Communications Inc. Pursuant to Section 271*, FCC 00-238, Released June 30, 2000 (Texas 271 Order) ¶ 78

³³ See also, *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.*, 17 FCC Red 27039; 2002 FCC LEXIS 3544 (“*Petition of Worldcom*”).

³⁴ *In the Matter of 8YY Access Charge Reform*, 35 FCC Red 11594; 2020 FCC LEXIS 3903.

³⁵ See, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 2022 FCC LEXIS 2313 at 3.

additional proposed revisions, and its proposed revision of section 2.1.2, and approves the Parties' agreed-upon language for ICA Section 2.1.6, as follows:

IF A PARTY DELIVERS ITS TRAFFIC TO A POI IN A LATA OTHER THAN THE TANDEM SWITCH THAT IS SUBTENDED BY THE TERMINATING END OFFICE, OR IN CORE'S CASE OTHER THAN CORE'S TERMINATING SWITCH, THEN THE PARTY SHALL PAY FOR THE FURTHER TRANSPORT OF SUCH TRAFFIC BETWEEN THE POI AND THE TERMINATING SWITCH IN THE LATA, AT A RATE EQUAL TO THE RATE FOR UNBUNDLED DEDICATED TRANSPORT.

22. In rejecting Verizon's proposed revisions, however, the Commission's decision should not be read to condone inefficient use of the ILEC's facilities or the arbitrary designation of points of interconnection that would force the collection of charges that could otherwise be avoided by efficient use of the ILEC's facilities.

23. While Core is entitled to flexibility with regard to its selection of the point of interconnection, some credence must also be given to Verizon's concern that it could be forced to inefficiently and arbitrarily deliver traffic to a distant non-switch point for the sole reason of charging Verizon transport fees to bring the traffic back to Core's switch. Therefore, in construing Core's proposed section 2.1.6 language (the now mutually agreed-upon language for this provision), the Commission will construe the language in the light most favorable to Verizon—that is—to discourage any inefficient or arbitrary POI selection by Core that would force Verizon to pay charges to Core for delivering back to Verizon traffic that was delivered to Core at no charge.

24. In the implementation of ICA Section 2.1.6, in the event Verizon identifies and demonstrates what it believes to be inefficient and arbitrary designation of points of interconnection that forces upon its unjust charges by Core, Verizon may pursue recourse

for any provable financial damages, by filing a formal complaint with the Commission, pursuant to *Annotated Code of Maryland*, Public Utilities Article § 3-102 and Code of Maryland Regulations, 20.07.03.³⁶

IT IS, THEREFORE, this 24th day of October, in the year Two Thousand Twenty-Two by the Public Service Commission of Maryland, **ORDERED** that:

(1) Consistent with Commission Order No. 90310, and the Commission's preceding Orders in this case, the mutually agreed-upon provisions of Core Communication, Inc.'s and Verizon Maryland LLC's Updated Interconnection Agreement as set forth in the Parties' respective September 22, 2022 filings, are approved;

(2) Verizon's request for clarification of paragraphs 43-44 of the Final Order is denied;

(a) Part one of Verizon's proposed Option 1, proposing revisions to ICA Section 2.1.2 is rejected;

(b) Part two of Verizon's proposed Option 1, proposing revisions to ICA Section 2.1.6 that are mutually agreeable to Core is accepted; and

(c) Verizon Option 2, proposing revisions to ICA Section 2.1.6 with subparts a, b and c is rejected.

³⁶ See, e.g., Order No. 80306; *In the Matter of the Petitions of ATt&T Communications of Maryland, Inc. and TCG Maryland, MCImetro Access Transmission Services, LLC and Lightwave Communications, LLC for Enforcement of Interconnection Agreements with Verizon Maryland Inc.*, Case No. 9041 (Sep. 29, 2005).

(3) In addition to the mutually agreed-upon provisions filed by Core and Verizon in their updated ICA filings, the agreed-upon language for ICA Section 2.1.6 as reflected in Core’s September 22, 2022 updated ICA filing, is adopted;

(4) Within 30 days of this Order, Core and Verizon are directed to jointly file a “final updated” Interconnection Agreement consistent with this Order and previous Orders of the Commission, and Core and Verizon shall also each respectively file revised access tariff provisions reflecting provisions of the Updated Interconnection Agreement as approved herein; and

(5) The compliance filings directed herein shall be reviewed by the Commission’s Technical Staff for approval by the Commission.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O’Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar

Commissioners