

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Core Communications, Inc., et al.	)	WC Docket No. 21-191
Tariff F.C.C. No. 3	)	
	)	Transmittal No. 17

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 4, 2023**

**Released: January 4, 2023**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we approve the plan submitted by Core Communications, Inc. (Core) to refund certain interstate access service charges Core assessed certain interexchange carriers (IXCs) pursuant to its unlawful tariff.<sup>1</sup> This Order follows the *Core Tariff Investigation Order* in which the Commission concluded the investigation into Core’s tariff revisions, directed Core to revise its tariff, and directed the Wireline Competition Bureau (Bureau) to determine any refunds that may be required once the newly revised tariff is effective.<sup>2</sup>

**II. BACKGROUND**

2. Core is a competitive local exchange carrier (LEC) that serves as an intermediate carrier, primarily for toll free calls. As a competitive LEC, Core is permitted, but not required, to file interstate switched access service tariffs with the Commission.<sup>3</sup> On April 22, 2021, Core filed Transmittal No. 17 (Revised Tariff), revising various provisions of its interstate access services Tariff F.C.C. No. 3, including provisions regarding billing disputes, late-payment fees, cancellation, and toll free (8YY) database query charges.<sup>4</sup> Core’s revisions included changes to section 2.10.5 of the tariff, which increased the monthly late-payment fee from a maximum of 1.5% to the lesser of 3.0% or “the highest rate permitted by applicable law,” if the “unpaid amount is not part of a good faith dispute as described in [the] tariff.”<sup>5</sup> On May 6, 2021, the Bureau adopted the *Suspension Order*, finding that substantial questions existed

<sup>1</sup> Letter from Carey Roesel, Consultant, Inteserra, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191, Attach., Refund Plan of Core Communications, Inc. (filed June 29, 2022) (Refund Plan).

<sup>2</sup> *Core Communications, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Memorandum Opinion and Order, 36 FCC Rcd 15128, 15150-52, 15157-58, paras. 52-57, 69-70, 73 (2021) (*Core Tariff Investigation Order*), *pet. for review dismissed per stipulation, CoreTel Delaware, Inc. v. FCC*, No. 21-3170 (3d Cir. Mar. 17, 2022).

<sup>3</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15129, para. 2 & n.3.

<sup>4</sup> Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191, Transmittal No. 17 (filed Apr. 22, 2021) (available via the Commission’s Electronic Tariff Filing System (ETFS), and in the Electronic Comment Filing System (ECFS) in WC Docket No. 21-191 (listed as received on May 6, 2021)); Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 17, 10th Rev. Page No. 28, § 2.10.4.A; 3rd Rev. Page No. 29, § 2.10.5; 3rd Rev. Page No. 33, § 2.13.3.H; 3d Rev. Page No. 40, § 2.21; 1st Rev. Page No. 43.1, § 3.3.5 (Apr. 22, 2021) (Transmittal No. 17) (available via ETFS, and in ECFS in WC Docket No. 21-191 (listed as received on May 6, 2021)).

<sup>5</sup> Core Tariff F.C.C. No. 3, 3rd Rev. Page No. 29, § 2.10.5 (filed Apr. 22, 2021).

regarding the lawfulness of Core's Revised Tariff that required further investigation.<sup>6</sup> The Bureau suspended the Revised Tariff for one day, thereby allowing it to go into effect without being deemed lawful, adopted an accounting order, and initiated an investigation into the lawfulness of the Revised Tariff.<sup>7</sup>

3. On June 23, 2021, the Bureau released a *Designation Order* directing Core to provide information that the Commission needed to determine whether the late-payment fee provision was just and reasonable.<sup>8</sup> Core then filed its Direct Case responding to the questions the Bureau asked in the *Designation Order*.<sup>9</sup> AT&T and Verizon filed oppositions to the Direct Case, arguing that Core's late-payment fee was unjust and unreasonable.<sup>10</sup>

4. In the *Core Tariff Investigation Order*, the Commission found, in relevant part, that Core failed to demonstrate that the late-payment fee provision in section 2.10.5 of the Revised Tariff was just and reasonable.<sup>11</sup> The Commission found that the 3% late-payment fee was unreasonable, and that the reference to the "highest rate permitted by applicable law" was unlawful because the provision was impermissibly ambiguous, in violation of section 61.2 of the Commission's rules.<sup>12</sup> Accordingly, the Commission found that the revisions to the tariff, including those to section 2.10.5, were not just and reasonable, as required by section 201(b) of the Communications Act of 1934, as amended (the Act).<sup>13</sup> The Commission, therefore, instructed Core to delete the revisions it made in Transmittal No. 17.<sup>14</sup> The Commission also instructed the Bureau to: (1) ensure that Core made the appropriate changes to its tariff to reflect the Commission's findings; and (2) determine the amount of any refunds Core owed to its customers.<sup>15</sup>

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<sup>6</sup> *Core Communication, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order, 36 FCC Rcd 8198, 8198, 8200, paras. 1, 6 (WCB 2021) (*Suspension Order*).

<sup>7</sup> *Id.* at 8200, para. 8.

<sup>8</sup> *Core Communications, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order Designating Issues for Investigation, 36 FCC Rcd 9997, 10010, para. 38 (WCB 2021) (*Designation Order*). The Bureau also directed Core to answer questions about its other tariff revisions, including revisions to the dispute resolution process, charges for services to customers to which it discontinues service, and charges for 8YY database queries when the underlying call is not completed. *Id.* at 10008-11, paras. 31-37, 39-41.

<sup>9</sup> Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17 (filed July 14, 2021) (Direct Case).

<sup>10</sup> AT&T Services, Inc.'s Opposition to Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17, at 25-26 (filed July 28, 2021) (AT&T Opposition to Direct Case); Verizon's Opposition to the Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17, at 20-21 (filed July 28, 2021) (Verizon Opposition to Direct Case). AT&T also asserted that Core's dispute resolution provisions and database query provisions are unlawful. AT&T Opposition to Direct Case at 10-24, 26-29. Verizon argued that Core failed to adequately respond to the *Designation Order* and violated Commission rules governing factual submissions. Verizon also argued that if the Commission addressed the tariff provisions on the merits, the Commission should reject each tariff provision as unlawful. Verizon Opposition to Direct Case at 7-23.

<sup>11</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15150-52, paras. 52-57.

<sup>12</sup> *Id.* at 15151-52, paras. 54-56; Core Tariff F.C.C. No. 3, 3rd Rev. Page No. 29, § 2.10.5 (filed Apr. 22, 2021); 47 CFR § 61.2.

<sup>13</sup> 47 U.S.C. § 201; *Core Tariff Investigation Order*, 36 FCC Rcd at 15152, para. 57.

<sup>14</sup> *Id.* at 15152, para. 70.

<sup>15</sup> *Id.*

5. On October 15, 2021, Core filed tariff Transmittal No. 21, deleting the unlawful revisions it made to its tariff in Transmittal No. 17. Transmittal No. 21 became effective on October 30, 2021.<sup>16</sup> The period during which the unlawful tariff was in effect (the Refund Period), therefore, is May 7, 2021 (the day after the *Suspension Order* was released) through October 29, 2021 (the day before Transmittal No. 21 became effective).

6. Core filed a proposed Refund Plan on June 29, 2022, which calculated the reductions Core would make to its late-payment fees during the Refund Period.<sup>17</sup> We sought comment on Core's proposed Refund Plan.<sup>18</sup> Verizon filed an Opposition asking the Commission to reject the Refund Plan and instead direct Core to submit a revised plan under which Core would collect no late-payment fees during the Refund Period.<sup>19</sup> Otherwise, it claimed, Core "would suffer no consequences for its unlawful tariff filing."<sup>20</sup> AT&T filed a comment urging the Commission "not to disturb any of the findings it made in its *Core Orders*, or otherwise address the specifics of any payment disputes between Core and AT&T."<sup>21</sup>

### III. DISCUSSION

7. We find that the refunds proposed in Core's Refund Plan are reasonable and properly reflect the findings in the *Core Tariff Investigation Order*.<sup>22</sup> We reject arguments made by Verizon in its Opposition, which seek relief inconsistent with section 204 of the Act, and address issues AT&T raised in its comment concerning the potential effect of this Order on pending disputes.<sup>23</sup>

8. In its Refund Plan and attached spreadsheet, Core calculates the specific amounts it will refund to individual customers as a result of having assessed an unlawfully high 3% monthly late-payment fee during the Refund Period<sup>24</sup> instead of the 1.5% monthly late-payment fee ceiling that had previously been in effect.<sup>25</sup> Core's spreadsheet provides the relevant invoice amounts necessary to support its calculations.<sup>26</sup>

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<sup>16</sup> Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 21, 11th Rev. Page No. 28, § 2.10.4.A; 4th Rev. Page No. 29, § 2.10.5; 4th Rev. Page No. 33, § 2.13.3.G; 4th Rev. Page No. 40, § 2.20.1; 2nd Rev. Page 43.1, § 3.3.5 (Oct. 15, 2021) (Transmittal No. 21) (available via ETFS).

<sup>17</sup> Refund Plan at 2.

<sup>18</sup> *Wireline Competition Bureau Seeks Comment on Refund Plan of Core Communications, Inc.*, WC Docket No. 21-191, Public Notice, DA 22-731 (WCB July 8, 2022).

<sup>19</sup> Verizon's Opposition to the Refund Plan of Core, WC Docket No. 21-191, Transmittal No. 17, at 2 (filed July 25, 2022) (Verizon Refund Plan Opposition).

<sup>20</sup> *Id.*

<sup>21</sup> AT&T Services, Inc.'s Comment on Refund Plan of Core, WC Docket No. 21-191, Transmittal No. 17, at 2 (filed July 25, 2022) (AT&T Refund Plan Comment).

<sup>22</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15152, 15157, paras. 57, 70.

<sup>23</sup> AT&T Refund Plan Comment; Verizon Refund Plan Opposition.

<sup>24</sup> Refund Plan at 2.

<sup>25</sup> Core Tariff F.C.C. No. 3, 2nd Rev. Page No. 29, § 2.10.5 (filed Apr. 6, 2021).

<sup>26</sup> Refund Plan, Attach. (Exhibit Core Late Fee Adjustment (Transmittal 17)) (Refund Plan Spreadsheet). We note that the Refund Plan Spreadsheet appears to contain certain typographical errors in the "Interest Rate Adjustment" worksheet that do not affect the calculation of the refunds. Commenting parties neither noted nor objected to these errors.

9. Core incorrectly argues that it is not making any refunds, and is only making downward adjustments to the outstanding balances of some of its customers.<sup>27</sup> Core’s attempt to distinguish between the term “refunds” and its planned “downward adjustments” is a distinction without substance and does not affect its refund obligations pursuant to the *Core Tariff Investigation Order*. Moreover, in a section 204 tariff investigation proceeding, “refunds” are not restricted to cash payments but may also include a variety of forms of non-cash payment. For example, in the South Dakota Network (SDN) tariff investigation, the Bureau directed SDN to make a refund in the form of a credit on the invoices of affected customers.<sup>28</sup> In this tariff investigation, the refunds Core is required to make take the form of reductions to customers’ late-payment fees, another form of non-cash payment. Put simply, those reductions *are* the refunds contemplated by the Commission in the *Core Tariff Investigation Order*.

10. Verizon asks the Commission to reject the Refund Plan, direct Core to submit a new plan, and bar Core from assessing any late-payment fees during the Refund Period.<sup>29</sup> Verizon argues that Core’s Revised Tariff “imposed substantial costs on other carriers and on the Commission,” and that Core “should face consequences that deter the filing of such unlawful tariffs in the first place.”<sup>30</sup> Verizon essentially is asking the Commission to award damages similar to punitive damages by requiring Core to forgo the 1.5% monthly late-payment fee that its tariff would otherwise allow during the Refund Period. Verizon does not contend that the 1.5% late-payment fee is unlawful, only that it and other customers should be granted other relief to dissuade Core from future unlawful tariff filings. But section 204 of the Act grants the Commission the authority to order refunds, not punitive damages.<sup>31</sup> Further, Verizon makes no argument that Core’s Refund Plan would not adequately compensate carriers for excessive charges they incurred as a result of Transmittal No. 17. We therefore deny Verizon’s request to direct Core to submit a revised refund plan that imposes no late-payment fees during the Refund Period.<sup>32</sup>

11. In its comment, AT&T raises concerns about the potential impact of this Order on prior Commission decisions concerning Core’s tariffs, and pending litigation between Core and AT&T.<sup>33</sup> We affirm that this Order neither modifies the Commission’s previous findings in this or any other related proceedings nor addresses pending litigation.

12. We find that the refunds proposed by Core are sufficient to implement the Commission’s decision in the *Core Tariff Investigation Order*. Core explains that it “made no other changes to its

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<sup>27</sup> Refund Plan at 2 (“[T]here is no refund—only a downward adjustment . . .”).

<sup>28</sup> *July 1, 2018 Annual Access Charge Tariff Filings; South Dakota Network, LLC, Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, Memorandum Opinion and Order, 34 FCC Rcd 3671, 3672, para. 5 (WCB 2019) (“issuing a credit on the invoices of affected customers”).

<sup>29</sup> Verizon Refund Plan Opposition at 1. Verizon’s position is a reversal from its prior request for an unspecified “lower, modern rate.” Verizon Opposition to Direct Case at 21. Verizon provides no explanation for its new request for what amounts to a 0% interest rate, other than its new request for punitive damages. Verizon Refund Plan Opposition at 1.

<sup>30</sup> Verizon Refund Plan Opposition at 1.

<sup>31</sup> 47 U.S.C. § 204; *see MCI Telecommunications Corp. v. Pacific Bell Tel. Co. et al.*, File No. E-88-46S et al., Memorandum Opinion and Order, 8 FCC Rcd 1517, 1521, para. 14 (1993) (“[R]efunds ordered under Section 204 of the Act are different from individual actions for damages under Section 208.”).

<sup>32</sup> Verizon attempts to bolster its request for punitive damages by claiming that without punitive damages, competitive LECs could slip unlawful tariffs through the 15-day review process and have the tariffs be deemed lawful, “knowing that there is no downside to that gamble.” Verizon Refund Plan Opposition at 2; 47 U.S.C. § 204(a)(3). But a rate that is deemed lawful can be evaluated as “to its future effect under sections 205 and 208 [of the Act,] and the Commission may prescribe a rate as to the future under section 205.” *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2183, para. 21 (1997).

<sup>33</sup> AT&T Refund Plan Comment at 1-2.

billing practices, dispute procedures, or any other customer-impacting issues as a result of Transmittal No. 17,<sup>34</sup> and no commenter claimed that other refunds were necessary. We, therefore, approve Core's proposal to lower the monthly late-payment fee from the 3% Core assessed during the Refund Period to 1.5% for the Refund Period, and direct Core to make those changes for the affected customers. This refund effectively eliminates any impact of the Revised Tariff on Core's customers<sup>35</sup> and restores the status quo that existed prior to Core's filing of its Revised Tariff.

#### IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 5, 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-205, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, and the *Core Tariff Investigation Order*,<sup>36</sup> that the Refund Plan filed by Core Communications, Inc., on June 29, 2022, is APPROVED.

14. IT IS ORDERED that Core Communications, Inc., must implement the revised rate for its assessed late-payment fee for the Refund Period in accordance with the Refund Plan within 45 days of the release date of this Memorandum Opinion and Order.

15. IT IS ORDERED pursuant to section 1.102(b) of the Commission's rules, 47 CFR § 1.102(b), that this Memorandum Opinion and Order shall be EFFECTIVE ON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>34</sup> Refund Plan at 2.

<sup>35</sup> There do not appear to be any customers that would have been affected by the higher late-payment fee that are no longer customers of Core and therefore would not benefit from the refunds required here. *See* Refund Plan at 2 (indicating that Core applied the new 3% late-payment fee only to two of its accounts).

<sup>36</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15157, para. 70.