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March 5, 2009

VIA ELECTRONIC FILING
James McNulty, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp. v. Verizon Pennsylvania Inc. and Verizon North Inc. Docket No. C-2008-2029477 and C-2008-2029479

Dear Secretary McNulty:

Enclosed please find the original of the Main Brief on behalf of Choice One and CTC Communications, in the above captioned matter. The Brief was filed electronically and a copy has been served on all parties of record in accordance with the enclosed certificate of service.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

STEVENS & LEE

Renardo L. Hicks

Enclosures
cc: Hon. Wayne L. Weismandel, Administrative Law Judge
Certificate of Service

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Choice One Communications of Pennsylvania Inc. and CTC Communications Corp.	)	
	)	**C-2008-2029477**
v.	)	**C-2008-2029479**
Verizon Pennsylvania Inc. and Verizon North Inc.	)	

JOINT OPENING BRIEF OF CHOICE ONE COMMUNICATIONS OF PENNSYLVANIA INC., AND CTC COMMUNICATIONS CORP.

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March 5, 2009

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Verizon Pennsylvania Inc. and Verizon North Inc.	)	

JOINT OPENING BRIEF OF
CHOICE ONE COMMUNICATIONS OF PENNSYLVANIA INC., AND
CTC COMMUNICATIONS CORP.

Complainants Choice One Communications of Pennsylvania Inc. ("Choice One") and CTC Communications Corp. ("CTC") (collectively, "One Communications") jointly submit this Opening Brief in support of their Complaint against Verizon Pennsylvania, Inc. and Verizon North Inc. (collectively, "Verizon").

I. STATEMENT OF THE CASE

CTC and Choice One, which are affiliated entities doing business as "One Communications," brought this Complaint seeking to restrain Verizon from unlawfully imposing charges for Access Toll Connecting ("ATC") Trunk Ports on One Communications.[1] One Communications initiated this proceeding on February 22, 2008 through its Complaint against Verizon.

[1] One Communications no longer seeks any relief with respect to 911/E911 Trunk Port charges.

A. Background

Verizon issued Industry Notices dated May 25, 2007 and August 20, 2007 informing all competitive local exchange carriers ("CLECs") operating in Pennsylvania, including One Communications, that it would bill them for "dedicated tandem trunk port" charges on all so-called "Access Toll Connecting Trunks." Verizon claimed that it had under-billed these charges previously, but that it would begin assessing them going forward and would impose a one-time charge to collect unbilled charges for the prior two years. Verizon's Notices specifically identified its intrastate switched access tariffs as the basis for assessing these charges.[2]

Verizon sent initial invoices for these services to the One Communications parties in August and September 2007, and has billed the Complainants for these charges every month since.[3] One Communications has disputed the charges and attempted to resolve the dispute pursuant to the dispute resolution provisions of the respective ICAs, but has not succeeded in reaching an agreement.[4]

B. Access Toll Connecting Trunks

An "Access Toll Connecting Trunk," in Verizon's jargon, is a dedicated transmission facility that carries interexchange carrier switched access traffic between a Verizon access tandem switch and a One Communications (or other CLEC) local dialtone switch. These facilities are also commonly known in the industry as "Meet Point Billing trunks."[5] The trunks are established to enable One Communications and Verizon jointly to provide switched access

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[2] One Comm. St. PLF-1 (Direct Testimony of Pamela L. Fownes), 2-3.

[3] One Comm. St. PLF-1, 3.

[4] One Comm. St. PLF-1, 3-4.

[5] One Comm. St. GJB-1 (Direct Testimony of Gary J. Ball), 7-8.

service to third-party interexchange carriers (IXCs). The issue in this case is whether Verizon is entitled to bill One Communications a dedicated trunk port charge for connecting these trunks to its tandems.

As the FCC has explained, a LEC "end office" is a switching office to which end user loops are connected.[6] In order to connect to their customers, and the end users that their customers call, IXCs must find a way to send and receive traffic to and from every end office switch operated by every local telephone company. While it might be theoretically possible to connect directly to every end office, in practice IXCs establish direct connections only where their customers originate or terminate high enough volumes of traffic to justify the expense of a direct connection.[7] For other end offices, IXCs connect indirectly through an access tandem switch.[8] In most situations, it is the IXC's choice whether to connect to a particular end office directly or indirectly.[9]

All the end office switches in a given area are connected to (in industry jargon, "subtend") an access tandem serving that area.[10] This tandem configuration allows an IXC to reach a large number of end user customers through a single interconnection point.[11] This service

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[6] *See, e.g., Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 ¶ 158 & n.215 (1997) ("*Access Reform Order*"); *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 ¶¶ 25-26 (1996) ("*Access Reform NPRM*").

[7] One Comm. St. GJB-1, 6.

[8] One Comm. St. GJB-1, 5.

[9] Transcript, 58 (line 10) - 59 (line 11); *see also*, One Comm. St. GJB-2 (Surrebuttal Testimony of Gary J. Ball), 15.

[10] One Comm. St. GJB-2, 21.

[11] One Comm. St. GJB-1, 5; One Comm. St. GJB-2, 23.

– connecting with an end office by means of a tandem switch – is called "tandem switched transport" service.

Verizon's Pennsylvania tariffs follow Federal Communications Commission ("FCC") rules prescribing how local exchange carriers ("LECs") such as Verizon will recover the costs of providing "tandem switched transport" access service to IXCs.[12] Tandem switched transport access service allows IXCs to route calls originated from, or terminated to, individual end users through Verizon's tandem switch, rather than by a direct connection to the end office that serves those end users.

The FCC's rules specify how a LEC may recover the costs of the elements that comprise tandem switched transport service, including "switch ports," which are the facilities on the switch to which transport circuits are connected to carry traffic to, or away from, the switch. The FCC has authorized LECs to recover the cost of the switch port connecting the transport circuit between the LEC tandem and the IXCs via a flat monthly charge to the specific IXC to which that port is "dedicated." LECs recover the cost of the port connecting the transport circuit between the tandem and the end office serving the end user customer, on the other hand, through per-minute of use ("MOU") tandem switching charges paid by all IXCs that send or receive

[12] Curiously, Verizon's expert witness, who is a switched access product manager, claimed at the hearing not to know whether Verizon's state tariffs actually follow the interstate model, but just a week after the hearing the same witness sponsored a discovery response admitting that Verizon was ordered by this Commission to conform its intrastate switched transport rates to the Federal structure. One Comm. Supp. Ex. 6.

access traffic through that port.[13] Verizon admits that it collects these MOU and dedicated charges from the IXCs through its tariffed access charges.[14]

C. Tandem Switched Transport and Jointly Provided Switched Access

In many cases, the end office serving the end user is operated by the same LEC that operates the access tandem. However, there have long been exceptions where the tandem switch and the end office serving the customer are owned by different LECs. In the early days, such arrangements usually involved so-called "independent" telephone companies – typically smaller, rural telephone companies – that operated one or a few end offices, but physically connected those end offices to a larger LEC's tandem. IXCs use Verizon's access tandems to connect to these smaller LECs. After the 1996 Act passed, CLECs, too, had end office switches that were configured to subtend the large ILECs' tandem switches, putting them in the same position as the rural LECs.[15]

When the end user making or receiving a long distance call is served by one LEC's end office that connects to a different LEC's tandem switch, the IXC obtains access services from both LECs: the LEC with the end office provides end office switching and related functions, while the LEC with the tandem provides tandem switching. This is known as "jointly provided" switched access, and billing for this arrangement is known as "meet point billing."[16] Meet point

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[13] Mr. D'Amico testified that, in the interstate jurisdiction, the tandem switching charge recovers costs of the "common" trunk port, but claimed not to know whether the same was true for Pennsylvania intrastate charges. Transcript, 64 (line 12) - 66 (line 6). His subsequent discovery response, however, admitted that the intrastate rate structure directly mirrors the interstate one. One Comm. Supp. Ex. 6.

[14] Transcript, 73 (lines 11-14).

[15] One Comm. St. GJB-1, 7.

[16] One Comm. St. GJB-1, 7-8.

billing arrangements for jointly provided switched access were established around the same time as the AT&T divestiture. As noted, they first arose when IXCs sought originating and terminating access to the end-user customers of independent LECs with which the IXCs were not interconnected directly.[17] When the 1996 Act permitted CLECs to operate in all 50 states, the meet point billing arrangements were extended to CLECs. CLECs stand in the same shoes, and have the same rights, as the independent LECs for whom the meet point billing arrangements were established in the first place.[18]

This arrangement is reflected in Diagram 1, which is taken from the Alliance of Telecommunications Industry Standards ("ATIS") Multiple Exchange Carrier Access Billing ("MECAB") Guidelines.[19]

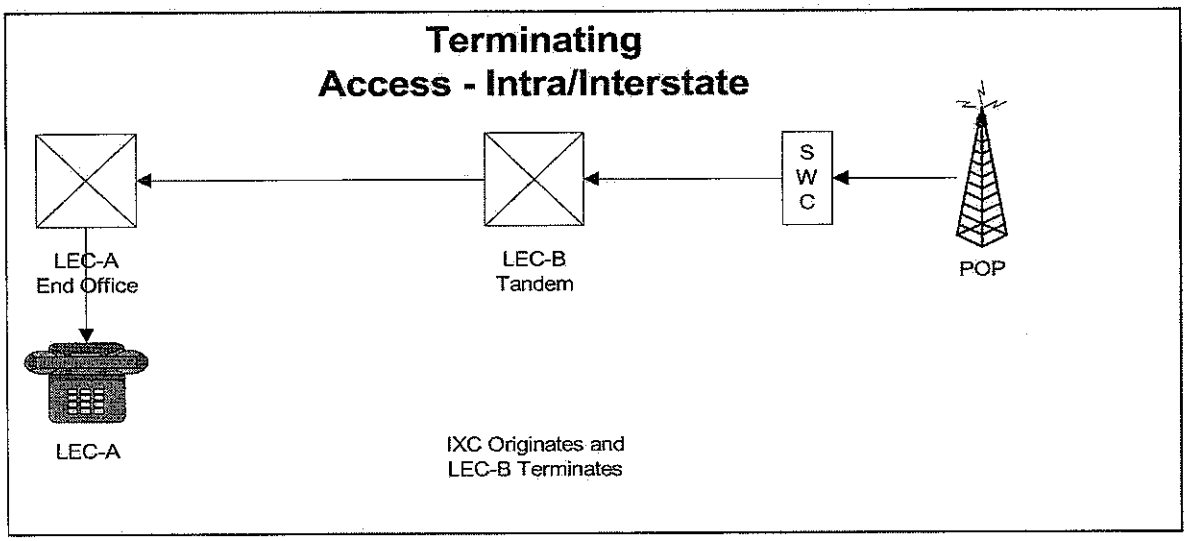

Diagram 1: MECAB Diagram[20]

[17] *See generally Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, DA 88-1544 (released Oct. 4, 1988) (*available at* 1988 WL 488227 (F.C.C.)).

[18] *See Access Charge Reform*, CC Docket No. 96-262, 8th Report & Order and 5th Order on Reconsideration, 19 FCC Rcd 9108, ¶ 16, n.54 (2004).

[19] One Comm. Cross Ex. 5.

As the note to this MECAB diagram explains, each LEC in this arrangement is responsible for billing the IXC for its "portion of access [provided] to the IXC." The MECAB Guidelines are expressly incorporated into the FCC's rules and the parties' interconnection agreements.[21]

D. The FCC's Access Charge Regime and the Disputed Port Charges

Although access charges date back to the 1980s, the current pricing regime traces its origin to FCC's 1997 *Access Reform Order*, which was directed at bringing LEC switched access service "rate structure[s] ... into line with the cost causation principles" reflected in the 1996 Act.[22] In general, the FCC required that non-traffic sensitive (NTS) costs incurred to serve particular switched access customers – that is, facilities "dedicated" to the service of individual IXC customers – should be recovered through flat fees on those customers.[23] The cost of facilities used to serve multiple switched access customers – "common" or "shared" facilities – the FCC ruled, should be recovered through usage-based rates. This rate structure assures that those who make the most use of the shared facilities pay an appropriate portion of the costs of those facilities.[24]

Applying these principles, the FCC identified the following network elements relevant to this case, the costs of which LECs were authorized to recover from IXCs through access charges:

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[20] One Comm. St. GJB-2, 26.

[21] One Comm. St. GJB-2, 19-20.

[22] *Access Reform Order* ¶ 35. There is no dispute that these basic principles, which the FCC established in 1997, remain in place today. *See* One Comm. St. GJB-2, 27.

[23] *See, e.g., Access Reform Order* ¶ 127 ("the costs of a dedicated trunk port (including the trunk card and DS1/voice-grade multiplexers, if needed) should be recovered on a flat-rated basis because these costs are also NTS in nature. These costs should be recovered from the carrier purchasing the dedicated trunk terminated by that port.")

[24] *Id.*

- "entrance facilities," which are dedicated transport facilities that IXCs lease to connect to the LEC network at the "LEC Serving Wire Center" (identified as (2) in Diagram 2, below);[25]

- dedicated transport facilities, which connect the LEC Serving Wire Center with the access tandem (identified as (7) in Diagram 2);[26] and

- common transport facilities, through which traffic is routed between the end office switch and the access tandem (identified as (5) in Diagram 2).[27]

This network architecture is reflected in Diagram 2, below, which comes from the *Access Reform NPRM*.[28]

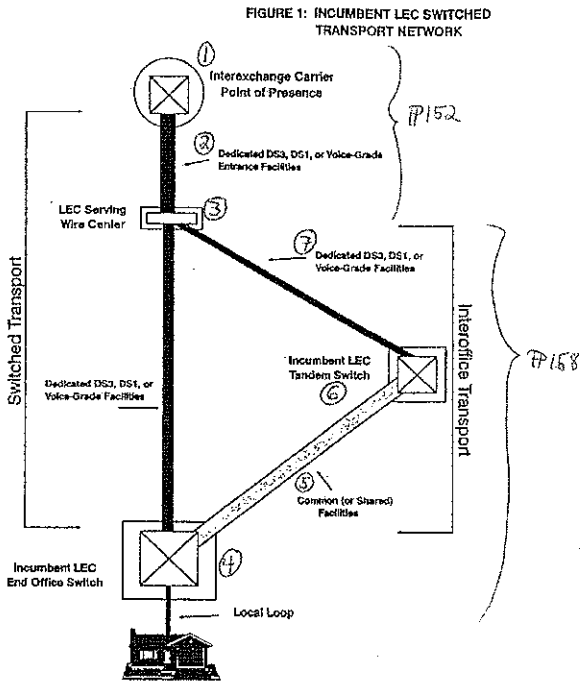

Diagram 2:
ILEC Switched Transport Network Depicted in NPRM

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[25] *Access Reform Order* ¶ 152; One Comm. St. GJB-2, 8.

[26] *Access Reform Order* ¶ 158; One Comm. St. GJB-2, 8.

[27] *Access Reform Order* ¶ 158; One Comm. St. GJB-2, 8.

[28] One Comm. St. GJB-2, 8.

The FCC described the call flow (outbound-from-the-end-user-caller) represented in Diagram 2 as follows:

> Tandem-switched transport uses trunks that are shared among many IXCs and the LEC itself to carry traffic between the end office and a tandem switch. The tandem switch routes IXC traffic onto an appropriate dedicated trunk that runs between the tandem switch and the serving wire center.[29]

The FCC authorized the imposition of access charges accordingly. IXCs pay flat rates for entrance facilities and dedicated transport from the Serving Wire Center to the tandem and per-minute-charges for shared facilities, *i.e.,* switching and common transport from the tandem to the end office.

The FCC also authorized the ILECs to establish "a flat-rated charge to recover the costs of dedicated trunk ports on the serving wire center side of the tandem."[30] This is the charge at issue in this proceeding. Verizon admits that it imposes this charge on IXCs pursuant to its tariff for the trunks connecting each IXC's POP to a Verizon access tandem. In addition to billing IXCs this dedicated tandem port charge, Verizon also seeks to impose an additional "dedicated" tandem port charge on CLECs for the access toll connecting ("ATC") trunks that connect CLEC end offices with Verizon's access tandem.

II. QUESTIONS INVOLVED

1) Is Verizon violating the terms of its tariffs and of 66 Pa. Cons. Stat. §§ 1302, 1303 by seeking to collect a dedicated tandem trunk port charge under its switched access tariff with respect to interconnection facilities established under Section 251(c)(2) of the

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[29] *Access Reform Order* ¶ 158 (emphasis added).

[30] *Id.* ¶ 167.

Communications Act of 1934, as amended, to connect One Communications' local switches to Verizon's access tandem switches?

2) Is Verizon violating the terms of its tariffs and of 66 Pa. Cons. Stat. §§ 1302, 1303 by seeking to collect a dedicated tandem trunk port charge under its switched access tariff for trunking facilities that connect to the end office side of its access tandem switch, where its tariff only permits the charge to be imposed on trunks that connect to the serving wire center side of the tandem?

III. ARGUMENT

A. Summary of Argument

Verizon's billing of Dedicated Tandem Trunk Port charges to One Communications is unlawful for two independent reasons, either of which alone would be sufficient to uphold One Communications' complaint.

First, One Communications is not purchasing switched access service from Verizon when it orders so-called Access Toll Connecting Trunks. Rather, it is establishing an interconnection facility pursuant to Section 251(c)(2) of the Communications Act of 1934, 47 U.S.C. § 251(c)(2), and Verizon has no authority to impose switched access charges on interconnection facilities. Contrary to Verizon's claim, the parties' interconnection agreements do not require One Communications to pay switched access charges on these interconnection facilities. In addition, the Access Toll Connecting Trunk does not meet the Verizon tariff's own definition of switched access; if it were (*arguendo*) an access service at all, it would be special access, because it is a dedicated point-to-point facility that does not provide the purchaser (One Communications) with

any access to end users. Either way, the rates, terms, and conditions for *switched* access cannot be applied to this facility.

Second, even if (*arguendo*) the Access Toll Connecting Trunk were a switched access service, the Dedicated Tandem Trunk Port charge still would not apply to it under the terms and conditions of the Verizon tariffs. Those tariffs authorize a Dedicated Tandem Trunk Port charge only for ports on the Serving Wire Center side of an access tandem. The Access Toll Connecting Trunk, however, is connected on the "end office side" of the access tandem, and therefore is not within the scope of the tariff provisions.

B. One Communications Is Not Purchasing Switched Access Service When It Orders Access Toll Connecting Trunks

The Dedicated Tandem Trunk Port charge that Verizon has billed to One Communications is an element of Verizon's switched access tariff. Verizon is entitled to bill that charge only to the extent it is provided for by the filed terms of its tariff. 66 Pa. Cons. Stat. §§ 1302, 1303. Under the facts of this case, however, One Communications clearly is not purchasing switched access service at all; therefore, it cannot be liable for a rate element, such as the Dedicated Tandem Trunk Port charge, that appears *only* in the switched access section of Verizon's tariffs.[31]

1. Access Toll Connecting Trunks are Interconnection Facilities, not Access Services

As discussed above, CLECs do not "purchase" ATC Trunks as such; an ATC Trunk is a circuit (or circuits) provisioned over a transmission facility, which the CLEC may construct

[31] Verizon ("VZ") St. 1.0 (D'Amico Rebuttal) at 11 (line 12) – 12 (line 22) and Exhibit D'Amico Rebuttal 3 identify only the switched access sections of Verizon-Pennsylvania's Tariff Pa. P.U.C. No. 302, Section 6, and Verizon-North's Tariff Pa. P.U.C. No. 9, Section 4, as the basis for the billed charges.

itself, lease from a third party, or order from Verizon. Even if the CLEC does order the facility from Verizon, it is not an access service, so charges in the switched access tariffs sections, including the dedicated tandem trunk port charge, do not apply. This conclusion is supported both by the Telecommunications Act of 1996 ("Act"), the FCC's implementing decisions, and by the terms of Verizon's own tariff.

Under Section 251(c)(2) of the Act, ILECs have an obligation to provide "interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service *and exchange access*" at cost-based rates in accordance with Section 252.[32] The provision of dedicated facilities to CLECs for use as ATC trunks is an interconnection service, not an access service; ILECs cannot unilaterally apply access charges to interconnection arrangements without violating this provision of the Act.

This was confirmed by the FCC Common Carrier Bureau in the *Worldcom Arbitration Order*.[33] In that case, in which Mr. D'Amico testified, the FCC rejected Verizon's position. The FCC found that:

> the [ATC Trunking] services in question constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs. Therefore, we agree with WorldCom that, when the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom. We further agree with WorldCom that it has the right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom's local exchange network. Therefore, Verizon may not

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[32] 47 U.S.C. § 251(c)(2) (emphasis supplied).

[33] *Petition of WorldCom, Inc. Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 (2002) ("*Worldcom Order*"). This order was adopted by the Bureau on delegated authority, and therefore has the same legal force and effect as a full FCC decision. 47 U.S.C. § 155(c)(3).

> require WorldCom to purchase trunks out of Verizon's access tariffs in order for WorldCom to provide such exchange access.[34]

In another case in which Mr. D'Amico also testified, the Maryland Commission articulated this even more succinctly:

> When two local exchange carriers jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant interexchange carrier, not upon the other local exchange carrier. ... By the same token, the service provided by Verizon to AT&T operating as a local exchange carrier, is interconnection for the purpose of providing exchange access, and interconnection must be priced at TELRIC rates, pursuant to Sections 251(c)(2)(D) and 252(d).[35]

Nonetheless, Mr. D'Amico insists, contrary to the conclusions of both the FCC and the Maryland Commission, that Verizon is entitled to impose switched access charges on the facilities ordered by CLECs (and, by implication, on the trunk ports terminating those facilities) "because One Communications *uses* these trunks solely *to provide* exchange access services."[36] But he later contradicts himself by arguing that the CLEC's transaction with Verizon is separate and distinct from the provision of switched access service to an IXC.[37] In other words, the use of a facility in the joint provision of switched access is, according to Verizon itself, a distinct transaction from the provisioning of the underlying facility. The fact that One Communications is *using* a particular facility to provide switched access has no bearing on whether One Communications is *purchasing* switched access from Verizon (any more than the fact that

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[34] *Worldcom Order* ¶ 177.

[35] *Petition of AT&T Communications of Maryland, Inc. for Arbitration*, Md. P.S.C. Case No. 8882, Order No. 79250 (Jul. 7, 2004) ("*Maryland Order*").

[36] VZ St. 1.0 at 3 (lines 5-6) (emphasis supplied).

[37] VZ St. 1.0 at 22 (lines 4-9).

Starbucks uses water to prepare coffee means that it is somehow *purchasing* coffee from the water company).

2. The Interconnection Agreement Provisions Cited by Verizon Do Not Require One Communications to Pay Switched Access Charges

Mr. D'Amico also relies on interconnection agreement provisions that, he says, obligate One Communications to pay switched access charges for Access Toll Connecting Trunks despite the clear language of the Communications Act to the contrary.[38] There are, however, multiple fatal flaws in this argument.

First, only two of the agreements that Mr. D'Amico cited mention "access tariffs" in connection with the establishment of Access Toll Connecting Trunks. The Choice One interconnection agreement with Verizon North does not mention Access Toll Connecting Trunks at all, and the Choice One agreement with Verizon Pennsylvania merely says that Choice One "shall establish" such trunks without any reference to access tariffs.

Second, even those agreements that do mention access tariffs do not refer to any specific tariff provision or rate, and cannot reasonably be interpreted as requiring One Communications to pay access charges for interconnection trunks. The CTC agreements with Verizon Pennsylvania and Verizon North state as follows:

> CTC shall establish Access Toll Connecting Trunks *pursuant to applicable access Tariffs by which it will provide Switched Exchange Access Services to Interexchange Carriers* to enable such Interexchange Carriers to originate and terminate traffic to and from CTC's Customers.[39]

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[38] VZ St. 1.0 at 19 (lines 6) – 20 (line 5).

[39] VZ St. 1.0 at 19 (lines 11-15), and Exhibit D'Amico Rebuttal 2-B and 2-D (emphasis supplied).

These agreements require CTC to "establish" trunks, not to "order" them from Verizon; in fact, as Mr. D'Amico admitted, CTC has provided its own trunk facilities connecting its local switches to collocation arrangements in each Verizon tandem office.[40] In context, the reference to "applicable access Tariffs by which [CTC] will provide Switched Exchange Access Service to Interexchange Carriers" must mean CTC's own tariffs, along with the meet-point billing provisions of Verizon's access tariffs, as those are the "tariffs by which" the two companies will provide switched access to the IXCs.

Third, even if (as Verizon wishes) the agreements actually identified Verizon's tariffs and lacked the "by which" clause (neither of which is true) and simply said that CTC shall establish these trunks "pursuant to [Verizon's] applicable access Tariffs," the agreements still do not refer to any specific tariff section or specific rate. Verizon's tariffs do not even contain the words "Access Toll Connecting Trunks," much less any terms or conditions imposing particular charges on such trunks. And *none* of the interconnection agreements makes any reference at all to trunk *ports*. At most, this hypothetical contract language would have to be interpreted as requiring CTC to pay whatever charges might be applicable under the terms and conditions of Verizon's access tariff to the types of facilities it uses to "establish Access Toll Connecting Trunks[.]" As we show in the following section, whatever these facilities are, they are not switched access service, so the applicable charges could not be found in the switched access section of the Verizon tariff.

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[40] VZ St. 1.0 at 6 (lines 16-20).

3. Access Toll Connecting Trunks Are Not Switched Access Facilities

Even assuming, hypothetically, that One Communications was required to order so-called Access Toll Connecting Trunks pursuant to Verizon's access tariffs, it would still be necessary to review those tariffs to determine precisely what terms and conditions apply to a facility of this nature. As discussed in section III.B.1 above, the fact that One Communications *uses* these trunks as part of providing its switched access service is irrelevant to the analysis. Rather, the relevant question would be, what is One Communications purchasing from Verizon? In this hypothetical, it would be purchasing a fixed, non-switched, point-to-point transport facility that carries traffic between the One Communications local switch and the Verizon access tandem for delivery exclusively to (or from) interexchange carriers.

Even if that point-to-point transport facility were an access service, it would not be *switched* access as described in the relevant sections of Verizon's tariffs. Verizon Pennsylvania's Tariff No. 302, section 6.1, describes "Switched Access" as follows:

> Switched Access Service which is *available to customers for their use in furnishing their services to end users*, provides a two-point electrical communications path *between a customer's premises and an end user's end office.* ...
>
> Switched Access Service provides for the use of common terminating, switching and trunking facilities of the Telephone Company's public switched network by customers for their use in furnishing their services. ...
>
> Switched Access Service provides *end users* the ability to originate calls to a customer's premises, and to terminate calls from a customer's premises *to an end user* in the LATA associated with the specific service category provided.[41]

[41] Tariff Pa. P.U.C.-No. 302, Ninth Revised Sheet 152 (One Comm. Cross Ex. 2) (emphasis supplied). Verizon North Tariff Pa. P.U.C.-No. 9, Section 4.1, contains very similar provisions.

This tariff language aptly describes the service being provided by One Communications and Verizon, jointly, to IXCs – the switched access service provides the IXC a communications path between the IXC's premises (or POP) and the end user's end office. In this case, the portion of the communications path between the end office and the Verizon access tandem is provided to the IXC by One Communications, and the portion between the Verizon access tandem and the IXC's premises is provided by Verizon.[42]

By contrast, the Access Toll Connecting Trunk (treating it, *arguendo*, as a service provided by Verizon to One Communications) does *not* provide a communications path between One Communications' premises (its local switching office) and any end office serving any Verizon *end user*. It does not enable One Communications to provide any service to *end users*. Further, it does not provide Verizon *end users* the ability to originate calls on One Communications' network, or provide One Communications the ability to terminate calls to Verizon end users. Providing access to the end users served by a local switch is the very essence of switched access service, and it is clear that Verizon is not providing One Communications with that kind of access in this case. Rather, if this arrangement is to be treated as subject to any provision of the Verizon access tariffs, it would be the special access sections of the tariff, as those sections contain terms and conditions for non-switched point-to-point services that do not provide access to end-users through a local switch.[43]

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[42] VZ. St. 1.0 at 6 (line 7) – 7 (line 9).

[43] The fact that the switched access tariff includes rates for "dedicated transport" does not change this analysis. The "dedicated transport" provisions apply only to dedicated circuits that are being provided as a component of an end-to-end switched access service. If this were not the case, there would be no reason for Verizon to have separate tariffs for special access and private line services, which are also dedicated circuits.

Verizon's dedicated tandem trunk port charges appear only in the "Switched Access" sections of its tariffs. It cannot lawfully apply these charges to a service that is not switched access, even if (hypothetically) the service is offered under some other section of the access tariff.[44]

C. The Access Toll Connecting Trunks Are Not Connected on "The Serving Wire Center Side" of Verizon's Tandem

Even assuming for the sake of argument that One Communications were ordering the Access Toll Connecting Trunk facilities under Verizon's switched access tariffs, Verizon still would be violating the terms of the tariffs by seeking to impose dedicated tandem trunk port charges with respect to these facilities. By the tariffs' own terms, the dedicated tandem port element only applies to every activated Direct Trunked Transport trunk which terminates on *the serving wire center side* of the access tandem.[45] The port charge at issue here, however, is for the port that terminates a trunk connecting the CLEC to Verizon on the *end office* side of the access tandem.

Verizon tries to circumvent this problem by creatively reimagining the network, the FCC's rules and its own tariffs, setting aside nearly 25 years of access charge precedent. Verizon erroneously claims that there is a serving wire center somewhere in the path between its tandem

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[44] To be clear, One Communications does not concede that Access Toll Connecting Trunks are subject to special access charges. For purposes of this case, though, it does not matter, because there are no dedicated tandem trunk port charges in the special access tariffs.

[45] Verizon PA Tariff Pa. P.U.C. No. 302, §§ 6.1.3(B)(3), 6.8.1(F)(5); Verizon North Tariff Pa. P.U.C. No. 9, § 4.2.3(A)(1). Verizon North's tariff does not contain the words "serving wire center" in its description of the dedicated tandem trunk port charge. However, as noted earlier, the Commission required both Verizon companies in C-20027195 (One Comm. Supp. Ex. 6) to bring their intrastate switched access rate structure into alignment with the interstate structure, and the FCC *Access Reform Order* expressly permits dedicated trunk port charges only for trunks terminating on "the serving wire center side" of an access tandem. Therefore, Verizon North's tariff must be construed as imposing such charges only to the extent authorized by the FCC.

switch and a CLEC end office. But this ignores the FCC's network topology, in which there is only one "serving wire center" between an end user and an IXC's POP – and it is the LEC serving wire center to which the IXC connects. Indeed, Verizon's own tariffs conflict with its position in this proceeding, as the following diagram, which comes from Verizon's state access tariff, demonstrates:

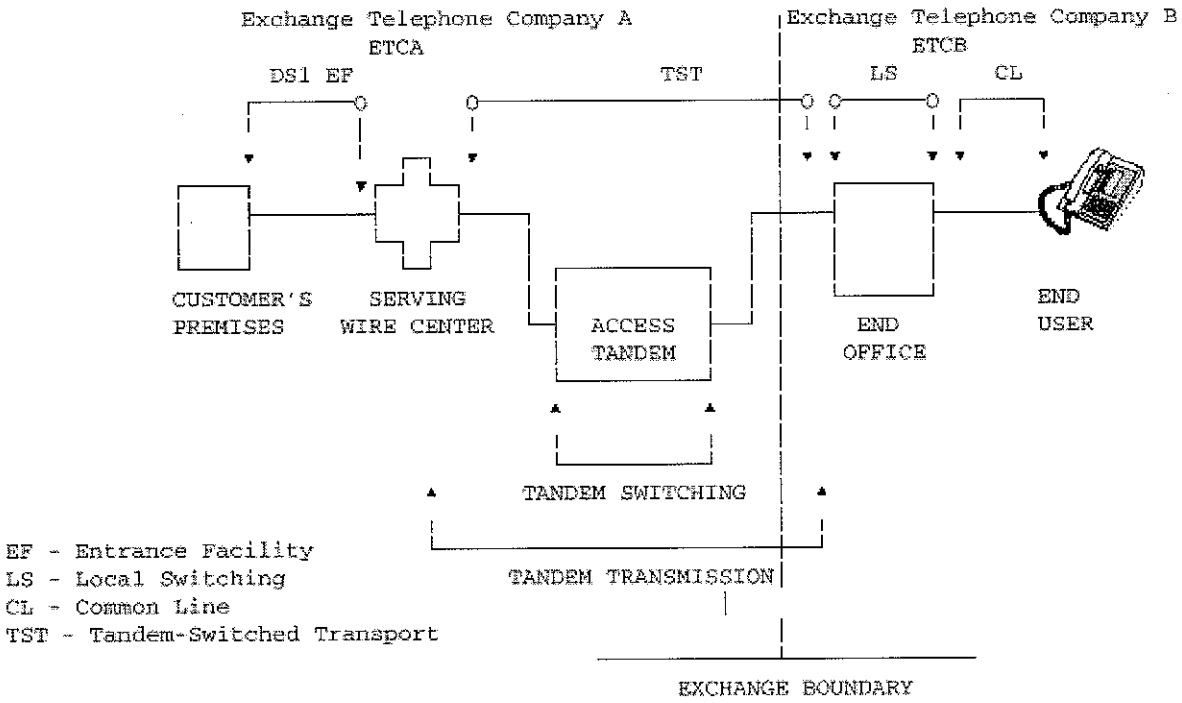

Diagram 3: Verizon PA Tariff No. 302[46]

Mr. D'Amico's contention that there are two serving wire centers – one on each "side" of the access tandem – disregards the nomenclature the FCC has used to describe the CLEC end office. Access service is provided to link an IXC with an end user, who is served by some

[46] One Comm. Cross Ex. 1.

LEC's end office. Only by ignoring the CLEC's end office – and thus, the end user – can Verizon suggest that the "end office" side of its tandem is somehow magically the "serving wire center" side as well. To the contrary, as the FCC's *Access Reform Order*[47] and Verizon's own tariffs make clear, (1) tandem switched access service arrangements are established to serve customers who are purchasing access services, *i.e.,* IXCs, and (2) the "end office" and the "serving wire center" are distinct network elements, and the call path contains only one of each.

To justify its "dual Serving Wire Center" theory – which it must advance because its tariff only authorizes it to impose the dedicated trunk port charge on trunks terminating on the serving wire center side of the access tandem[48] – Verizon claims that, "the term 'serving wire center side' is broader than the CLECs would have it, and includes any 'side' of the tandem connected to a carrier other than the ILEC, not just IXCs."[49]

This is certainly creative, but it has no support either in Verizon's tariffs or the FCC's rules and orders. No FCC ruling has ever referred to serving wire "sides" in the plural, or even used an indefinite term such as "a serving wire center side" to describe these arrangements. The FCC consistently uses the singular article "the" to describe the one serving wire center side in the relevant call path.[50] And Mr. D'Amico admitted that the diagrams in his prefiled testimony that show two serving wire centers were created from whole cloth for purposes of this case.[51]

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[47] *See Access Reform Order* ¶ 167.

[48] Verizon Tariff Pa. P.U.C.-No. 302, Section 6.1.3(B)(3).

[49] VZ. St. 1.0 at 16 (lines 11-13).

[50] *Access Reform Order.* ¶ 152. The FCC has referred to "*the* LEC serving wire center" in more than 250 orders addressing one component of its access charge regime. We have not identified a single such order that even suggests that the call path involves *two* such wire centers.

[51] Transcript, 55 (lines 10-11).

Verizon has not identified a single diagram in its own tariffs, the MECAB guidelines, or in any FCC order that supports the multiple serving wire center theory essential to its case.

The only support Verizon can muster is 47 C.F.R. § 69.2(rr), which defines the serving wire center as "the telephone company central office designated by the telephone company to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located."[52] Verizon claims that the "other person[]" referenced in the regulation includes CLECs.[53]

But even in this very definition, the FCC clearly defines the serving wire center as "*the* telephone company central office" at which an IXC connects. So, under the FCC's definition, Verizon has to pick *one single central office* in the call flow that is *"the"* serving wire center. Given the fact that it charges IXCs for entrance facilities and dedicated trunks to and from the wire center serving that IXC's POP, Verizon has irrevocably elected which central office that is – and it isn't one on the CLEC/end user side of the tandem.[54]

In fact, the very next definition in the FCC's rules after the one Verizon cites – 47 C.F.R. § 69.2(ss) – makes plain that Verizon is wrong. Rule 69.2(ss) defines "tandem-switched transport" service as follows:

> (ss) *Tandem-switched transport* means transport of traffic that is switched at a tandem switch—(1) Between the serving wire center and the end office, or (2) Between the telephone company office

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[52] Vz. St. 1.0 at 17; 47 C.F.R. § 69.2(rr).

[53] In context, it seems clear that the "other person" in the FCC regulations must be a person, other than an IXC, that is purchasing switched access service. As explained earlier, however, One Communications is providing, not purchasing, switched access service under the facts of this case.

[54] Mr. D'Amico's lay interpretation of the FCC regulation is also inconsistent with Verizon's own definition of "serving wire center" on its website, as explained by Mr. Ball. One St. GJB-2 at 27.

> containing the tandem switching equipment, as described in § 36.124 of this chapter, and the end office.
>
> Tandem-switched transport between a serving wire center and an end office consists of circuits dedicated to the use of a single interexchange carrier or other person from the serving wire center to the tandem (although this dedicated link will not exist if the serving wire center and the tandem are located in the same place) and circuits used in common by multiple interexchange carriers or other persons from the tandem to the end office.

47 C.F.R. § 69.2(ss). Numerous elements of this definition are fatal to Verizon's argument.

First, "tandem-switched transport" is traffic switched at a tandem that lies "*between the serving wire center and the end office.*" Verizon's mistaken view of what constitutes a "serving wire center," as evidenced by Mr. D'Amico's diagrams, envisions the "serving wire center" justifying the port charge as lying *between the end office and the tandem.* His network topology is at odds with this FCC definition.[55]

Second, in the second paragraph of the definition, the FCC refers to tandem-switched transport "between a serving wire center and an end office." In that case the FCC defines the service as "circuits dedicated to the use of a single [IXC] or other person *from the serving wire center to the tandem,* ... and circuits used in common by multiple [IXCs] or other persons *from the tandem to the end office.*" So, again, we have the tandem *between* the serving wire center and the end office, connected via two links: a *dedicated* link (used by only one access customer, whether an IXC or "other person"), that runs from "the" serving wire center to the tandem, and a *shared* link, "used in common by multiple" access customers, from the tandem to the end office. In other words, within the FCC's access charge regime, the link from the tandem to the end

[55] The second part of the definition applies when the IXC's POP is located near enough to the tandem location that there is no separate "serving wire center" at all.

office is a "common," shared facility. Yet Verizon's entire case is premised on its supposed ability to treat that link as "dedicated" for these purposes.

In these circumstances, it is plainly inconsistent with the FCC's access charge regime to view Verizon facilities on the end-office side of its tandem as "dedicated" for purposes of imposing access charges. The FCC's plain definition of the tandem-switched transport service at issue here makes clear that the facilities on the end-office side of the tandem are *shared.* As it has explained, end office side "trunks ... are shared among many IXCs and the LEC itself to carry traffic between the end office and a tandem switch,"[56] and distinguished such shared facilities from dedicated transport trunks that IXCs use to handle their own traffic on the serving wire center side of the access tandem.[57] And that is the arrangement that pertains here. The CLEC trunks route multiple IXCs' traffic from Verizon's tandem to the CLEC end offices, and thus constitute shared facilities under the FCC's network topology.

Thus, Verizon's characterization of end-office-side transport facilities as "dedicated" to a CLEC looks at the question from the wrong perspective. For purposes of access charges, the CLEC's use of those facilities is irrelevant. What makes the facility "shared" is the fact that multiple IXCs use it. At least in the terminology applicable to access charges, the fact that any given facility goes to a specific end office does not make the facility "dedicated" to that end office or to the entity that happens to own it. Furthermore, the fact that the FCC's rule recognizes that entities other than IXCs might buy access service in some circumstances does not in any way undercut this essential aspect of the FCC's access rate development. Verizon just wants to collect for the same facility twice – once from IXCs, and once from CLECs.

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[56] *Access Reform Order* ¶ 158.

[57] *See Access Reform Order* ¶ 152 and ¶ 158.

D. Verizon's Position Would Allow Double Recovery and is Discriminatory

Allowing Verizon to collect Dedicated Tandem Trunk Port charges on the facilities in dispute here would result in double recovery of Verizon's tandem switching costs, further demonstrating the unreasonableness of Verizon's interpretation of its tariffs. Verizon's tandem switching charge applies to all IXC switched access minutes of use, including those that originate or terminate at a CLEC end office.[58] As Verizon has admitted, this charge was designed to recover costs associated with "common" tandem switch ports; that is, those on the end-office side of the tandem.[59] Thus, whenever Verizon collects a tandem switching charge from the IXC on a minute of switched access usage, part of that revenue is covering the costs of end-office-side switch ports. If Verizon were permitted to collect a *dedicated* Tandem Trunk Port charge from CLECs, it would recover those costs twice – once from the IXC through the usage-sensitive tandem switching charge, and again from the CLEC through the fixed monthly port charge.

Further, Verizon's position seeks to legitimize unreasonable discrimination between the CLECs, on the one hand, and both Verizon and the other incumbent LECs in the Commonwealth, on the other. As Verizon has admitted, every switched access call that is routed through a tandem uses *two* tandem trunk ports; one for the trunk connecting the tandem to the IXC point of presence, and a second for the trunk connecting the tandem to the end office switch.[60] When the end office is operated by Verizon, or by another incumbent, Verizon only imposes an explicit charge for one of those trunk ports (the first one).[61] As noted above, the cost

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[58] Transcript, 73 (lines 11-17); One Comm. Supp. Ex. 2.

[59] Transcript, 64 (line 10) - 66 (line 6).

[60] Transcript, 63 (lines 1-7).

[61] Transcript, 64 (lines 6-9); One Comm. Supp. Ex. 7.

for the second trunk port is bundled into the tandem switching charge paid by the IXC. But, when the end office is operated by a CLEC, Verizon seeks to impose *two* explicit trunk port charges; one on the IXC and another on the CLEC.[62] This disparity, if permitted, would subject CLECs to unreasonable prejudice or disadvantage in violation of 66 Pa. Cons. Stat. § 1304.

Verizon's attempt to explain away this discrimination as being justified by the nature of its interconnection arrangements with other incumbents is unpersuasive. Verizon claims that interconnection trunks with the other incumbents are not used solely for switched access, but also for other services.[63] Even if this is so, Verizon does not deny that the trunk groups (and trunk ports) serving the incumbents are dedicated solely to their traffic.[64] At most, the fact that this traffic comprises additional services besides switched access would justify a different *form* of cost recovery for the other incumbents, such as a usage-sensitive charge; it could not justify exempting them entirely from a cost imposed on Verizon's competitors. The burden is on Verizon to justify its disparate treatment of One Communications,[65] which it has not even attempted to do.

One Communications acknowledges that this is not a rate reasonableness complaint, but rather a complaint for violation of the tariff's express terms. As shown in the preceding sections, the tariff cannot fairly be interpreted to impose a Dedicated Tandem Trunk Port charge on

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[62] Transcript, 63 (lines 1-12).

[63] Transcript, 71 (lines 16-25).

[64] *Id.*

[65] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 861 (1996) (FCC observing that it "would be unlawfully discriminatory, in violation of sections 251 and 252, if an incumbent LEC were to charge one class of interconnecting carriers ... higher rates for interconnection than it charges other carriers, unless the different rates could be *justified by differences in the costs* incurred by the incumbent LEC") (emphasis added); *see* Exh. One Comm – 2; One Comm. St. GJB-1, 11-12.

facilities used as ATC trunks. That Verizon's convoluted interpretation of the tariff to justify this charge would lead to an unjust double recovery of a charge that IXCs already pay,[66] and would discriminate against CLECs vis-à-vis independent LECs and Verizon itself, is simply further proof that Verizon is wrong, and that its position is contrary to the intent of the FCC in adopting the transport rate restructuring and of this Commission in ordering Verizon to mirror the FCC-imposed structure.

[66] *See, e.g., Local Exchange Carrier's Rates, Terms, and Conditions for Expanded Interconnection*, Second Report and Order, 12 FCC Rcd. 18730, ¶ 89 (1997) (disallowing proposed rate element as "unjust and unreasonable" because it would permit the carrier to "recover its investment twice"); *2004 Access Charge Tariff Filings*, Order Designating Issues for Investigation, 19 FCC Rcd. 18593, ¶ 29 (2004) (requiring carrier association to explain why proposed rate would "not over-recover costs").

IV. PROPOSED FINDINGS OF FACT

1. Complainants, Choice One Communications of Pennsylvania, Inc., and CTC Communications Corporation (jointly, "One Communications"), are certificated telecommunications carriers operating as competitive local exchange carriers ("CLECs") in Pennsylvania. (Complaint, paras. 5-6; Answer, paras. 5-6.)

2. Respondents, Verizon Pennsylvania Inc. and Verizon North Inc. (jointly, "Verizon") are certificated telecommunications carriers operating as incumbent local exchange carriers ("ILECs") in portions of Pennsylvania. (Complaint, paras. 7-8; Answer, paras. 7-8.)

3. Each of the One Communications operating companies in Pennsylvania has established an interconnection agreement with each of the Verizon operating companies, pursuant to 47 U.S.C. §§ 251 and 252. (One Comm. Ex. GJB-1 at 14.)

4. Among other things, the interconnection agreements between One Communications and Verizon contain terms for the joint provision of switched access by the two companies to interexchange carriers ("IXCs"). (One Comm. Ex. GJB-1 at 7-9 and 13-15.)

5. Switched access service "provides a two-point electrical communications path between a customer's premises and an end user's end office. ... Switched Access Service provides end users the ability to originate calls to a customer's premises, and to terminate calls from a cus-tomer's premises to an end user in the LATA associated with the specific service category provided." (One Comm. Cross Ex. 2.) In the context of the switched access tariff, the "customer" is the IXC that wishes to provide toll service to end users, and the "end user" is the person placing or receiving a toll call. (One Comm. Ex. GJB-2 at 13.)

6. An access tandem is a switch that connects local exchange carrier networks to IXC networks for the exchange of local exchange traffic. End-user customers do not connect

directly to an access tandem switch, but only telephone carrier networks connect to it. The switch allows toll traffic to be routed from IXCs to LEC end users and from LEC end users to IXCs. The LECs may include Verizon and other LECs such as One Communications. (Verizon Ex. 1.0 at 5-6.)

7. One Communications has established transport facilities, which Verizon refers to as "Access Toll Connecting Trunks," that connect each of its local switches in Pennsylvania to a Verizon access tandem switch in Pennsylvania. The facilities provided by One Communications terminate at a collocation node in the Verizon tandem wire center, from which point Verizon provides intra-building connections to the access tandem switch. (One Comm. Ex. GJB-1 at 3, 9; Verizon Ex. 1.0 at 6-7.)

8. Access Toll Connecting Trunks are used by One Communications to provide interstate and intrastate switched access services to interexchange carriers ("IXCs") in conjunction with Verizon. In this arrangement, Verizon provides transport from the IXC's premises to the access tandem, and tandem switching, while One Communications provides transport from the access tandem to the local switch (or "end office"), and local switching. (One Comm. Ex. GJB-1 at 7-9)

9. The dispute in this case arose when Verizon notified One Communications in 2007 that it would make an adjustment to its billing of "dedicated tandem trunk ports" associated with Access Toll Connecting Trunks. Verizon's notice stated that it had determined it had under-billed these charges previously, due to the erroneous application of a jurisdictional allocation factor, but that it would begin assessing them going forward and would impose a one-time charge to collect unbilled charges for the prior two years. (One Comm. Ex. PLF-1 at 2-3.)

10. One Communications disputed the back-billed dedicated tandem trunk port charges and the charges billed by Verizon after August 2007 on 14 trunk groups. (Verizon Ex. 1.0 at 3 fn. 2.) One Communications did pay dedicated tandem trunk port charges on two trunk groups comprising 360 trunks. (Verizon Ex. 1.0 at 4 fn. 3.) One Communications and Verizon have been unable to resolve their dispute. (One Comm. Ex. PLF-1 at 3-4.)

11. The "dedicated tandem trunk port" is a rate element specified in Verizon Pennsylvania's Tariff Pa. P.U.C. No. 302, §§ 6.1.3(B)(3), 6.8.1(F)(5), and Verizon North's Tariff Pa. P.U.C. No. 9, § 4.2.3(A)(1). In both tariffs, the rate element is $12.00 per voice grade trunk, and is assessed monthly. (Verizon Ex. 1.0 at 11-12.) These tariff provisions were filed in compliance with this Commission's Opinion and Order entered July 28, 2004, in C-20027195, P-00930715, and P-00001854, which directed the companies to align their intrastate switched access rate structures with their interstate rates. (One Comm. Cross Ex. 6.) In turn, the dedicated tandem trunk port charges were introduced into the Verizon interstate tariffs in compliance with the FCC's Access Reform order, *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997). (One Comm. Ex. GJB-1 at 11, 22; Verizon Ex. 1.0 at 15-16.)

12. The FCC Access Reform order required incumbent LECs to restructure their charges for switched access transport. Among other things, the FCC required LECs to phase out the "residual interconnection charge" that had previously been part of the transport rate structure, and to establish a new "flat-rated charge to recover the costs of dedicated trunk ports on the serving wire center side of the tandem." (One Comm. Ex. GJB-1 at 11, fn. 1, quoting 12 FCC Rcd 15982 para. 167.)

13. A trunk port is a physical facility that connects a trunk used for transport of telecommunications traffic to a switch. (Verizon Ex. 1.0 at 5.)

14. Because an access tandem switch is not connected to end-user customers, every long-distance call that is routed through such a switch must make use of two trunk ports: one for the connection between the IXC and the tandem switch, and one for the connection between the tandem switch and the end office (or local) switch. (Tr. 62-63.) The FCC's Access Reform order consistently refers to the first such connection as the "serving wire center side" of the tandem, and the second such connection as the "end office side" of the tandem. (One Comm. Ex. GJB-1 at 10-11, Ex. GJB-2 at 6-8.)

15. Under the transport rate structure adopted by the FCC in 1997, the LEC recovers the costs of dedicated trunk ports on the serving wire center side of the tandem through flat-rated monthly charges. The LEC recovers the costs of common trunk ports on the end office side of the tandem through the usage-sensitive tandem switching charge. (One Comm. Ex. GJB-1 at 11; Tr. 64-66; One Comm. Supp. Ex. 6.)

16. For interexchange calls that originate or terminate at a Verizon end office, Verizon treats the trunk that connects the Verizon end office to the Verizon tandem as a common trunk that is not subject to a dedicated tandem trunk port charge. (Tr. 63-64.)

17. For interexchange calls that originate or terminate at the end office of an independent (non-Verizon) ILEC subtending a Verizon access tandem, Verizon treats the trunk that connects the ILEC end office to the Verizon tandem as a common trunk that is not subject to a dedicated tandem trunk port charge. (Tr. 71-73.)

18. For interexchange calls that originate or terminate at a One Communications end office, Verizon treats the Access Toll Connecting Trunk as a dedicated trunk and has assessed dedicated tandem trunk port charges on such trunks. (Verizon Ex. 1.0 at 11-12.)

19. Verizon's tandem switching charge, which among other things recovers the costs of common trunk ports on the end office side of the tandem, is billed as a uniform amount on all minutes of use regardless of whether the call originates or terminates at a Verizon end office, an independent ILEC end office, or a One Communications end office. (Tr. 73.)

V. PROPOSED CONCLUSIONS OF LAW

1. Under 66 Pa. Cons. Stat. § 1302, Verizon is required to file tariffs with this Commission containing all rates, terms, and conditions of its intrastate services.

2. Under 66 Pa. Cons. Stat. § 1303, Verizon is permitted to charge customers for intrastate services solely in accordance with the terms of its filed tariffs. Any charge that is not contained in the tariff or is not consistent with the tariff terms and conditions is unlawful.

3. Facilities established for the purpose of connecting a CLEC's network to an ILEC's network for the "transmission and routing of ... exchange access" traffic are interconnection facilities subject to 47 U.S.C. § 251(c)(2), and the rates, terms, and conditions for such access must be determined by a § 252 interconnection agreement. Access Toll Connecting Trunks fall within this class of interconnection facilities. Interconnection facilities are not switched access services and are not subject to switched access tariffs. *Petition of WorldCom, Inc. Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 para. 177 (Comm. Carr. Bur. 2002); *Petition of AT&T Communications of Maryland, Inc. for Arbitration*, Md. P.S.C. Case No. 8882, Order No. 79250 at 22 (Jul. 7, 2004).

4. The interconnection agreements entered into between One Communications and Verizon do not contain any express agreement by One Communications to pay switched access charges in general, or dedicated tandem trunk port charges in particular, with respect to Access Toll Connecting Trunks. The two agreements between Choice One and Verizon do not refer to access tariffs at all in connection with the establishment of Access Toll Connecting Trunks. By contrast, the two agreements between CTC and Verizon both contain the following language:

> CTC shall establish Access Toll Connecting Trunks pursuant to applicable access Tariffs by which it will provide Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from CTC's Customers.

This provision does not expressly or implicitly require CTC to pay switched access charges for interconnection facilities. Rather, it refers to the "applicable access Tariffs by which it [CTC] will provide Switched Exchange Access Services to Interexchange Carriers[.]" This language refers to CTC's own switched access tariffs, which contain the terms governing the provision of switched access service over the Access Toll Connecting Trunks (which, as we have found, are CTC's own facilities) to IXC access customers.

5. However, even assuming *arguendo* that the interconnection agreements could properly be interpreted to require One Communications to obtain interconnection facilities "pursuant to applicable access Tariffs," these agreements do not reference any specific provision of the access tariffs, so we would still have to examine the tariff provisions to determine which rates, terms, and conditions would be "applicable." In this case, One Communications is not purchasing switched access service from Verizon; it is purchasing a dedicated, point-to-point circuit that does not provide any access to end users. One Communications cannot use an Access Toll Connecting Trunk to originate calls from, or terminate calls to, Verizon end users, which is

the essence of switched access service. Therefore, even if some provision of the access tariff did apply, the switched access section (which contains the dedicated tandem trunk port charge) would not be applicable.

6. Further, the dedicated tandem trunk port charges are not applicable to Access Toll Connecting Trunks by the terms of the Verizon tariffs themselves. The tariffs were filed in compliance with this Commission's order to align the intrastate rate structure with the interstate rate structure, and the interstate rate structure in turn was dictated by the FCC's 1997 Access Reform Order, which calls for the dedicated tandem trunk port charge to be applied to trunks on the "serving wire center side" of the tandem. It is clear from the FCC's order, as a whole, that the FCC consistently used the "serving wire center side" to designate the connection between the IXC's premises and the access tandem, while it used the "end office side" to designate the connection between the tandem and the end office switch. Access Toll Connecting Trunks connect to the end office side of the access tandem, and therefore are not subject to dedicated tandem trunk port charges.

VI. PROPOSED ORDERING PARAGRAPHS

1. That the Complaint of Choice One Communications of Pennsylvania Inc. and CTC Communications Corporation against Verizon Pennsylvania Inc., Docket No. C-2008-2029477, is granted.

2. That the Complaint of Choice One Communications of Pennsylvania Inc. and CTC Communications Corporation against Verizon North Inc., Docket No. C-2008-2029479, is granted.

3. That Verizon shall cease and desist billing dedicated tandem trunk port charges associated with facilities that have been designated as Access Toll Connecting Trunks.

4. That Verizon shall refund to the Complainants, within sixty (60) days of the entry of this Order, all amounts paid for dedicated tandem trunk port charges associated with Access Toll Connecting Trunks since February 1, 2005, with interest at the legal rate from the date of each payment.

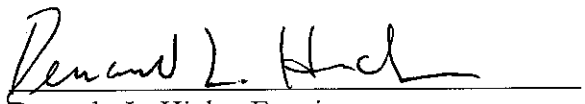
5. That Verizon shall credit the Complainants' accounts, within sixty (60) days of the entry of this Order, for all billed but unpaid dedicated tandem trunk port charges associated with Access Toll Connecting Trunks.

6. That the record at Docket Number C-2008-2029477 and Docket No. C-2008-2029479 be marked closed.

VII. CONCLUSION

For the foregoing reasons, One Communications requests that the Commission grant its complaint and enter an order prohibiting Verizon from billing dedicated tandem trunk port charges with respect to Access Toll Connecting Trunks; and requiring Verizon to refund any such charges paid by One Communications, with interest, and to credit any billed but unpaid charges.

Respectfully submitted,



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Dated: March 5, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Choice One Communications of Pennsylvania Inc. and CTC Communications Corp.	:	
v.	:	Docket Nos. C-2008-2029477
	:	C-2008-2029479
Verizon Pennsylvania Inc. and Verizon North Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the Main Brief on behalf of Choice One Communications of Pennsylvania, Inc. and CTC Communications Corp, upon the following persons in the manner indicated:

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