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April 2, 2009

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Joint Reply Brief of Choice One Communications of Pennsylvania, Inc., and CTC
Communications Corp. – Docket Nos. C-2008-2029477 and C-2008-2029479

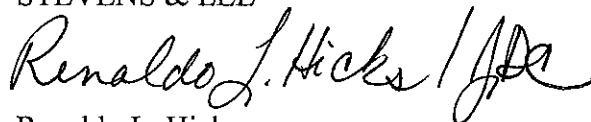
Dear Secretary McNulty:

Enclosed for filing on behalf of Choice One Communications of Pennsylvania, Inc., and CTC Communications Corp., is an original of the Joint Reply Brief of Choice One Communications of Pennsylvania, Inc., and CTC Communications Corp., in the above-referenced matter. This Joint Reply Brief has been e-filed at the Pennsylvania Public Utility Commission's website. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Renaldo L. Hicks

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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

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

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April 2, 2009

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JOINT REPLY 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 Reply Brief in support of their Complaint against Verizon Pennsylvania, Inc. and Verizon North Inc. (collectively, “Verizon”).

I. INTRODUCTION AND SUMMARY

Verizon reveals the central error of its theory of this case in the third word of its Main Brief, when it says, “One Communications *uses* Verizon’s dedicated tandem trunk ports”¹ Verizon is wrong. Interexchange carriers use Verizon’s tandem trunk ports, which are shared, not dedicated, facilities, as part of the tandem switching service they purchase from Verizon. The IXCs pay for the use of these ports through the tandem switching charge. Verizon claims that it can unilaterally declare these shared facilities as dedicated and recover their costs twice, thereby both enriching itself unjustly and imposing a cost disadvantage on its local exchange service competitors.

¹ Verizon Main Brief (“Vz. Br.”) at 1, emphasis supplied.

Verizon's efforts to justify double-recovery and discrimination are based on various false premises. First, it misconstrues the parties' interconnection agreements in an effort to read in provisions that simply aren't there, requiring One Communications to pay switched access charges for something that isn't switched access services. Second, it distorts and misstates One Communications' arguments on meet-point billing. Verizon ignores the fact that meet-point billing is premised on the existence of a meet-point, and that Verizon must bill IXCs, not interconnecting local carriers, for any facilities on Verizon's side of that meet-point, including the tandem switch and its trunk ports. Third, Verizon takes the FCC's words out of context and distorts their meaning to argue that end office-side trunks and trunk ports are "dedicated" although the FCC plainly considered them "shared"; and to argue that these trunk ports are on the "serving wire center side" of the tandem when the FCC clearly considered them otherwise. Fourth, Verizon tries to justify why it is discriminating against CLECs (and by implication, their customers) as against other incumbent LECs and itself, by charging a dedicated trunk port charge on end office trunks only when they connect to a CLEC end office; but its justifications are patently inadequate, both factually and legally.

The Commission should reject Verizon's attempt to charge twice for the same service, and should grant One Communications' complaint.

II. ARGUMENT

A. **The Parties' Interconnection Agreements Do Not Create Any Obligations Relevant to this Case**

Verizon claims that One Communications is obligated under its interconnection agreements to pay for end office-side trunk ports.² Verizon is wrong for many reasons.

² Vz. Br. 11-12.

First, although Verizon tries to avoid facing it, nothing in the interconnection agreements between Choice One and either Verizon Pennsylvania or Verizon North can even plausibly be construed as imposing such an obligation. The Choice One-Verizon Pennsylvania Agreement only provides that Choice One “shall establish Access Toll Connecting Trunks” but contains no rates, terms, or conditions for such trunks nor any reference to access tariffs in connection with them. Verizon tries to remedy this omission by quoting, out of context a sentence from the Choice One-Verizon Pennsylvania agreement³ – “BA rates and services for use by CHOICE ONE in the carriage of Toll Traffic shall be subject to BA’s tariffs for Exchange Access Service.”⁴ This sentence is irrelevant to this case because Choice One does not use Access Toll Connecting Trunks “in the carriage of Toll Traffic” – as Verizon itself admits, Choice One uses these facilities in the carriage of switched access service. In fact, the Choice One agreement states clearly that Access Toll Connecting Trunks are used “for the transmission and routing of Exchange Access Traffic,” in contrast to “Traffic Exchange Trunks” that are used for the transmission and routing of “Toll Traffic” among other things.⁵

The Choice One-Verizon North Agreement is even less helpful to Verizon, as it merely states that Choice One may route traffic through a Verizon access tandem over “separate trunk groups[.]”⁶ Even Verizon does not claim to find any provision in this document requiring the payment of access charges for these trunk groups.⁷

³ Vz. Br. 8, 11-12.

⁴ Vz. St. 1.0, Exhibit 2-A, Appendix 2 (Pricing Attachment, Exhibit A, page 6, footnote 1).

⁵ Section 4.1.1 of the Agreement, Verizon Ex. 1.0, Exhibit A, pages 12-13,

⁶ Vz. Br. at 11 n.10,

⁷ Verizon also cites a provision of the Choice One-Verizon North Agreement that refers to pricing of interconnection facilities, Vz. Br. 8 n.7 (citing Vz. St. 1.0, Exhibit 2C, § 4.2.3), but omits to mention that this provision does not apply to collocation (charges for which are stated in § 4.2.2), and that it refers

At most, these contract terms only require Choice One to *provision* the facilities used for Access Toll Connecting Trunks, which it has done by establishing its own transport routes terminating at collocation nodes in each Verizon access tandem office.⁸ Verizon conveniently glosses over this fact by arguing from a counter-factual hypothetical: “*If* One Communications leases facilities from Verizon in order to establish this path [from its network to the Verizon access tandem], *then* it must pay Verizon for those facilities[.]”⁹ But One Communications is under no obligation to pay Verizon for facilities it provisions itself.

Neither of the interconnection agreements either expressly or implicitly obligates Choice One to pay access charges for facilities that would otherwise be provided at TELRIC-based prices as interconnection facilities. Despite trying to bury the relevant contract language in footnotes, Verizon effectively admits this, because, in the section of its Brief where it argues that specific contract language referencing a tariff can override the general obligations of 47 U.S.C. § 251(c)(2), it cites *only* the CTC agreements.¹⁰ And this omission is devastating to Verizon’s position, because Choice One has borne by far the lion’s share of the disputed port charges in this proceeding. Choice One accounts for over 94%, or \$1,118,235 out of the total of \$1,198,875, that was in dispute as of October 2008.¹¹

to “special access and/or switched access rates,” although special access services are not subject to a dedicated tandem trunk charge.

⁸ Vz. Ex. 1.0 at 6-7; Vz. Br. 8.

⁹ Vz. Br. at 11, emphasis supplied.

¹⁰ Vz. Br. 16-17.

¹¹ One Comm. St. RGP-1, Exhibit RGP-1. Choice One is shown as “C1” in the first column, and CTC as “CTC”.

Second, even as to CTC, Verizon's argument fails, because the language of the CTC agreements does not specifically obligate CTC to pay access charges to Verizon for interconnection facilities. Rather, it requires CTC to provide access *service* to IXCs over these facilities in accordance with CTC's access tariffs.¹² Further, the interconnection agreements do not make any specific reference to dedicated trunk port charges. The only things they require CTC to "establish" are "Access Toll Connecting Trunks," and no rate element by that name appears in any Verizon tariff.

Third, even if any of the interconnection agreements could be interpreted as requiring One Communications to purchase Access Toll Connecting Trunks out of Verizon's access tariff, that would only mean that charges that are *applicable under the terms of the tariffs themselves* could be billed to One Communications. As we will address in Section II.C, below, the dedicated tandem trunk port charges are not applicable to ports terminating Access Toll Connecting Trunks, even assuming the tariff governs.

B. The Shared Trunk Port is Part of the Tandem Switching Service Provided to IXCs, and for Which Verizon Already Charges the IXCs

Verizon attempts to confuse and obscure the actual nature of the service arrangements at issue here, by obfuscating the differences between shared and dedicated trunk ports, between serving wire centers and end offices, and between IXC customers and LEC providers of switched access service. The crucial facts that Verizon seeks to hide are that the trunk ports at the center of this dispute are part of the tandem switch, and that the use of these trunk ports is part of the tandem switching charge that Verizon bills to its IXC customers.

¹² See One Comm. Br. at 14-15.

The FCC explained the origin of the current tandem-switched-transport rate structure in some detail in its 1997 *Access Reform Order*:

158. 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. An IXC may use tandem-switched transport either as its primary form of transport in lieu of direct-trunked transport, or to carry traffic that overflows from its direct-trunked transport facilities at peak periods. ...

159. The Commission [adopted] in 1993 ... an interim rate structure for tandem-switched transport. This interim structure allows IXCs to choose between two rate structures for the purchase of tandem-switched transport. Both options provide for a per-minute tandem switching charge. Under the first option, an IXC may elect to pay "unitary" per-minute charge for transmission of traffic from the end office, through the tandem switching office, to the serving wire center. ... Under the second option, the "three-part rate structure," in addition to the charge for the tandem switch, an IXC may elect to purchase transmission on a bifurcated basis, with the end office-to-tandem portion charged on a per-minute basis, and the tandem-to-serving wire center portion charged as direct-trunked transport facilities, *i.e.*, on a flat-rated basis. ...

161. Under the interim rate structure, whether a tandem-switched transport customer elects to purchase tandem-switched transport under the unitary or the three-part rate structure, the LEC imposes a separate, per-minute charge on the tandem-switched transport customer for use of the tandem switch. The Commission set this charge initially to recover only twenty percent of the tandem revenue requirement[.] ...

162. As part of the interim rate structure, the Commission also created the [Transport Interconnection Charge, or TIC] to recover on a per-minute basis from all switched access customers the difference between the Part 69 transport revenue requirement and the revenues projected to be recovered under the interim rate structure. The TIC was explicitly intended to make the transition to the interim rate structure revenue neutral. Among other possible costs, the TIC recovers the remaining 80 percent of the tandem-switching revenue requirement.

164. In the [Notice of Proposed Rulemaking], we sought comment on several alternative rate structures for tandem-switched transport service facilities We also sought comment on whether, in conjunction with any of these pricing options, ... we should establish separate flat-rated charges for the dedicated ports on the serving wire center side of the tandem or other NTS components of the tandem switch

165. ... We conclude that we should require incumbent LECs to implement a cost-based rate structure for tandem-switched transport in four stages over a two year transition period. ...

167. The first step will occur in incumbent LEC access tariffs to become effective on January 1, 1998. In those tariffs, incumbent price cap LECs must establish new rate elements for recovery of the costs of DS3/DS1 and DS1/voice-grade multiplexers used in conjunction with the tandem switch. The rate element for the dedicated multiplexers on the serving wire center side of the tandem will recover these costs on a flat-rated basis, while the rate element for the multiplexers on the end office side of the tandem will be assessed per minute of use. In addition, incumbent price cap LECs must establish in those tariffs a flat-rated charge to recover the costs of dedicated trunk ports on the serving wire center side of the tandem. None of our existing rate elements currently recovers the costs of either these multiplexers or these dedicated trunk ports. Accordingly, we conclude that those costs are currently recovered through the TIC, and that incumbent price cap LECs must reduce the TIC to reflect the recovery of these costs through the new rate elements. Also on January 1, 1998, all incumbent LECs must take the first of three annual steps to reallocate to the tandem-switching rate element tandem switching revenues currently being recovered through the TIC. In tariffs filed to be effective on that date, we require incumbent LECs to reallocate one third of the portion of the tandem switching revenue requirement that they currently recover through the TIC, excluding signalling and dedicated port costs that we reallocate elsewhere, to the tandem switching rate element. ...

174. *Dedicated Tandem Switch Trunk Port Costs.* Price cap incumbent LECs must establish a separate rate element for dedicated trunk ports used to terminate dedicated trunks on the serving wire center side of the tandem switch. LECs incur the costs of these ports on an NTS basis, but currently must recover their costs through per-minute charges for the tandem switch. Because we have allocated 80 percent of tandem-switching costs to the TIC, these port costs may currently be recovered through either per-minute tandem-switching charges, or the per-minute TIC. We now take this opportunity to establish a separate rate element for these

costs. Price cap LECs must establish a flat-rated element for dedicated trunk ports on the serving wire center side of the tandem, assessed on the purchaser of the dedicated trunk terminated at that port. This rate element shall be a flat-rated charge assessed on the carrier purchasing the dedicated trunk terminated at that port[.]

175. *Three-Part Rate Structure.* We also direct all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport, effective July 1, 1998. In their access tariffs that take effect on July 1, 1998, incumbent LECs will be required to provide tandem-switched transport under a three-part rate structure as follows: (1) a per-minute charge for transport of traffic over common transport facilities between the LEC end office and the tandem office; (2) a per-minute tandem switching charge; and (3) a flat-rated charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office. This three part rate structure reflects the manner in which the incumbent LEC incurs the costs of providing each component of tandem-switched transport. By establishing a per-minute, traffic-sensitive rate for the shared common transport trunks and the tandem switch, incumbent LECs will recover these costs from each IXC in proportion to its use. The incumbent LEC, in contrast, incurs the costs of the dedicated serving wire center-to-tandem trunk on an NTS basis because, like other dedicated trunks, the LEC must provision the trunk for the exclusive use of one IXC. Once this capacity is dedicated, the cost of the trunk does not vary with the amount of traffic transmitted by the IXC.¹³

This discussion confirms that the FCC considered the trunk ports part of the tandem switch (at least for ratemaking purposes) – in paragraph 164, it describes asking for comments on whether to establish rate elements for “dedicated ports on the serving wire center side of the tandem or other NTS [non-traffic-sensitive] components of the tandem switch,” showing that it considered the trunk ports to be components of the switch; and in paragraph 167, it directs how incumbent LECs are to recover the “tandem switching revenue requirement that they currently recover through the TIC, excluding signalling and dedicated port costs that we reallocate elsewhere,”

¹³ *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997), footnotes omitted.

showing that it considered dedicated port costs to be part of the tandem switching revenue requirement before the reallocation. Paragraph 174 also unambiguously characterizes port costs as part of “tandem-switching costs[.]”

Because ports are part of the tandem switch, it necessarily follows that Verizon has to recover the cost of these ports through charges it bills to the user of its tandem switching service, which is the IXC. From the FCC’s 1997 analysis, it is clear that the costs of both ports (one on the end office side, one on the serving wire center side) were recovered through usage-sensitive charges, namely the tandem switching and transport interconnection (TIC) charges, before the transport rate restructuring took effect in 1998.¹⁴ As part of the restructuring, the cost of the dedicated port on the serving wire side was moved into a separate flat-rated rate element, but the cost of the shared port on the end office side was unaffected and continued to be recovered through the tandem switching charge (after the TIC was phased out). And, as noted in our Opening Brief, Verizon admits that it continues to recover the costs of shared ports from IXCs, through the tandem switching charge, *except* (in Verizon’s view) when a call originates or terminates at a CLEC’s end office.¹⁵

Verizon tries to confuse the issue by misstating One Communications’ argument. Verizon incorrectly claims that, “[a]ccording to One Communications, the concept of ‘meet point billing’ would require *Verizon* to bill the IXCs directly for *any* Verizon facility that is used to provide joint switched access service to the IXCs”¹⁶ This statement is wrong because it ignores the

¹⁴ Verizon’s (then Bell Atlantic’s) compliance tariff filing to the FCC in 1997 acknowledged this: “As the costs of tandem dedicated trunk ports were included in the tandem switching revenue requirement when the TIC was first established, 80% of the tandem port costs are in the TIC and 20% are in the Tandem Switching (TSW) rate.” One Comm. Cross Ex. 7, p. 23.

¹⁵ See One Comm. Br. 4 & n.13, and 23-24.

¹⁶ Vz. Br. 12, emphasis in original.

key concept of the “point of interconnection.” Verizon is, in fact, responsible for billing the IXCs directly for all switched access facilities on its side of the point of interconnection, and One Communications is responsible for those on its side.¹⁷ In this case, One Communications has deployed its own (or leased) facilities connecting its switches to the meet-point at the Verizon tandem switching office.¹⁸ One Communications could have chosen to lease some facilities from Verizon to reach the tandem office. If it had done so, contrary to the facts in the record here, and contrary to Verizon’s self-serving strawman argument, it would have had to pay Verizon for those leased facilities.¹⁹ But One Communications is not liable for any services or facilities that Verizon provisions on its side of the meet-point for use by IXCs.²⁰

The tandem switch is on Verizon’s side of the interconnection point, as Verizon itself admits.²¹ Accordingly, Verizon is required to bill the IXCs, not the CLEC, for use of the tandem switch, including the use of *both* switch ports involved in routing a call through the switch. And, as we have already shown, Verizon actually does bill them for the end-office-side port costs, through the usage-sensitive tandem switching charge.

¹⁷ One Comm. St. GJB-1 at 7-8.

¹⁸ Vz. Br. 8.

¹⁹ Vz. Br. 13.

²⁰ Indeed, even if Verizon were correct that One Communications had contractually bound itself to pay switched access charges for Access Toll Connecting Trunks, as argued in Vz. Br. 15-17, those contracts would only apply to the trunk facilities on One Communications’ side of the meet-point. But, as discussed in the Opening Brief, Verizon’s contractual argument is wrong.

²¹ “... Verizon is responsible for that portion of the jointly-provided access service from the IXC’s network to Verizon’s access tandem, and Verizon bills the IXCs for *tandem switching* and any transport from the IXC’s network to the tandem.” Vz. Br. 13, emphasis supplied.

C. Verizon's Access Tariffs Do Not Apply to End Office-Side Trunk Ports by Their Own Terms

Verizon argues at length that the terms of its Pennsylvania switched access tariffs allow it to impose the dedicated tandem trunk port charge on Access Toll Connecting Trunks, but each of its points is either wrong or simply irrelevant.

1. One Communications is Not Purchasing Switched Access Service

Once again, Verizon attacks an “argument” that One Communications never made, when it claims, “One Communications argues that the access tariffs can only be used to assess charges on IXCs, and cannot apply to services provided to another LEC.”²² One Communications made no such argument, and the testimony Verizon cites says no such thing. Rather, Mr. Ball testified that the access tariffs apply only to entities (usually IXCs) that are purchasing switched access service to originate or terminate calls *to end users*.²³ An entity that is not an IXC can purchase switched access service if it wants to originate or terminate calls to end users, and in that case it would be obligated to pay the tariffed rates, as Verizon says; but, once again, this hypothetical has nothing to do with the facts of this case. As shown in our Opening Brief, Access Toll Connecting Trunks do not provide One Communications with the ability to originate or terminate any calls to any end users, either in isolation or in combination with other facilities and services, and so they do not fall within the scope of the switched access tariff.²⁴

²² Vz. Br. 18, citing One Comm. St. GJB-1 at 16.

²³ One. Comm. St. GJB-1 at 15:19 – 16:3.

²⁴ One Comm. Br. 16-18.

2. End Office-Side Trunk Ports Are Shared, Not Dedicated

Verizon's argument that tandem trunk ports connecting to a One Communications "switch" are "dedicated" to One Communications is based on a complete misstatement of how jointly provided switched access works.²⁵ As already shown above, the trunk port is part of the tandem switch, which Verizon admittedly uses to provide tandem switching service to IXCs as part of the switched transport service falling on Verizon's side of the point of interconnection.²⁶

The FCC's *Access Reform Order*, read in its entirety, leaves no doubt that the "dedicated" trunk ports to which the charge applies are those connecting an *access customer's* interexchange network to a local exchange carrier's tandem switch. Paragraph 158 establishes the terminology used in the *Order* by distinguishing between "trunks that are shared among many IXCs and the LEC itself to carry traffic between the end office and a tandem switch" and "dedicated trunk[s] that run[] between the tandem switch and the serving wire center."²⁷ The FCC added, also in para. 158, "An IXC may use tandem-switched transport either as its primary form of transport in lieu of direct-trunked transport, or to carry traffic that overflows from its direct-trunked transport facilities at peak periods." This recognizes that it is the choice of the access customer, not of any local carrier, to decide whether to route its traffic through an access tandem switch, or alternatively over direct end-office trunks.²⁸ Thus, costs associated with the tandem switch and the connections between the tandem and end offices are common to those IXCs that have chosen to route their traffic through the tandem.

²⁵ Vz. Br. 19-20.

²⁶ Vz. Br. 13.

²⁷ See portions of the *Access Reform Order* quoted at pages 6-8 above.

²⁸ One Comm. St. GJB-2 at 14-16.

Further, paragraphs 164 and 167 both refer to “the dedicated ports on the serving wire center side of the tandem,” and paragraph 174 refers to “dedicated trunk ports used to terminate dedicated trunks on the serving wire center side of the tandem switch.” The FCC based its rate structure decisions on the function of the facilities in providing switched access service, in which the facts that the ports are “dedicated” and are “on the serving wire center side” were inherently related to each other and to their role in the end-to-end service, not taken in isolation as Verizon would wish.

The central error in Verizon’s “dedicated” argument is its assertion that “[t]he whole benefit of connecting the One Communications’ network to the Verizon tandem switch is to enable One Communications to realize the cost savings and efficiencies of utilizing a single trunk to connect with multiple IXCs, rather than interconnecting its network directly with each and every IXC.”²⁹ This is clearly wrong, since it is the decision of the IXC, not of One Communications, to route switched access traffic through the tandem. Any IXC could choose to interconnect its network directly with One Communications’ switches, if it wanted to bear the cost of doing so.³⁰ The “cost savings and efficiencies” of routing traffic through the tandem, therefore, accrue to the benefit of the IXC, not of One Communications. Verizon is barking up the wrong tree.

3. The Ports are Not on the “Serving Wire Center” Side of the Tandem

In attempting to argue that the ports at issue in this case are within the scope of its tariff, which only imposes charges on ports on “the serving wire center side” of the tandem, Verizon

²⁹ Vz. Br. 20.

³⁰ One Comm. St. GJB-2 at 15-16.

distorts the FCC's words beyond recognition. Verizon claims that the FCC *Access Reform Order* allowed it to impose a port charge on any port that it can somehow identify as being "dedicated" to a carrier for any purpose at all.³¹ We have quoted from the *Order* at unusual length above because the full context is essential to demonstrating just how badly Verizon misconstrues the FCC's meaning.

The FCC did not refer to "dedicated" trunks or to "the serving wire center side" in isolation; it did so *in the context* of its discussion of all the functionalities that combine to make up the transport element of switched access service. As discussed above, it started by distinguishing clearly between "trunks that are shared among many IXCs and the LEC itself to carry traffic between the end office and a tandem switch" and "dedicated trunk[s] that run[] between the tandem switch and the serving wire center." When the FCC subsequently referred to "dedicated trunks" and "the serving wire center side" of the tandem in its discussion, it was clearly relating back to this initial dichotomy. A trunk, in other words, is on "the serving wire center side" for purposes of this discussion only if it is functionally in the IXC-to-tandem portion of the overall transport path, as opposed to the tandem-to-end office portion.

Verizon, by taking snippets out of context and creatively parsing definitions, tries to turn the FCC's reasoning on its head and establish that shared trunks can be dedicated and that the tandem can have more than one "serving wire center side."³² We have already addressed these issues in our Opening Brief and will not repeat those points here.³³ However, we do note that when Verizon (then Bell Atlantic) filed its compliance tariff with the FCC in 1997, it understood

³¹ Vz. Br. 22-23.

³² Vz. Br. 23-25.

³³ One Comm. Opening Br. 18-23.

quite well what “the serving wire center side” was. To compute the demand base for its new port charge, it determined “the quantity of Switched Access transmission path pairs (TPPs), which equates to the total number of DS0 equivalent trunks ordered by and provided from *an IXC’s POP* to Bell Atlantic Access Tandems.”³⁴ Thus, Verizon knew in 1997 that only trunks to IXC POPs were on “the serving wire center side” of its tandem; its contention otherwise now is contrary to its own (and the entire industry’s) contemporary understanding of the FCC order.

D. Verizon Has No Justification for Discriminating Against Its Competitors

Verizon claims that its discriminatory treatment of One Communications and other local exchange competitors is not “unreasonable” and therefore does not contravene state law.³⁵ In making this argument, Verizon implicitly admits that it *is* discriminating against CLECs by charging them for “dedicated” tandem ports while not imposing such charges on trunks connecting its tandems to independent ILEC end offices, nor on trunks connecting its tandems to its own end offices. Verizon’s attempt to justify this discrimination fails for two reasons: first, because its claim of “reasonableness” is transparently false; and second, because Federal law prohibits *any* discrimination in the terms of interconnection, without regard to alleged reasonableness.

Verizon claims that, unlike its arrangements with CLECs, Verizon and the independent ILECs have each constructed facilities to a meet point and do not charge each other for those facilities. But the record shows that One Communications bears *all* the costs of the facilities connecting its switches to Verizon’s tandem, while Verizon bears the cost of building facilities to its exchange boundaries with independent LECs, so this difference cannot justify treating CLECs

³⁴ One Comm. Cross Ex. 7 at 45, emphasis supplied.

³⁵ Vz. Br. 25-26.

less favorably when they impose less cost on Verizon. Further, regardless of how CLECs establish interconnection facilities between their switches and Verizon's tandem, CLECs do not charge Verizon for facilities used to carry jointly provided switched access traffic. The CLECs charge the IXCs for this transport.³⁶ Contrary to Verizon's claims, therefore, Verizon receives no greater "value" from its meet point arrangements with independent ILECs than it receives from the various forms of interconnection established between Verizon and CLECs.

Verizon also asserts that allegedly unlike the "specialized trunks" used by CLECs "dedicated to carrying only long-distance calls," the meet point facilities with the ITCs are used to exchange "all kinds of traffic."³⁷ Even if true, this is a distinction without a difference, because the issue in this case is how Verizon recovers its costs for providing switched access service. Any costs relating to other services would be recovered through other charges, and would not affect how Verizon may (or may not) recover those costs allocated to switched access.

Verizon nevertheless contends that it is not discriminating against CLECs in charging them for dedicated tandem trunk ports while imposing no such charge on the independent ILECs because Verizon's contractual and physical arrangements with the latter predate the Telecommunications Act of 1996 (the "Act").³⁸ Verizon misses the point. The Act does not "grandfather" discrimination. Regardless of whether Verizon is required to seek Commission approval of its agreements with independent ILECs, the Act requires Verizon to provide interconnection that is not discriminatory,³⁹ and Verizon is undeniably discriminating against CLECs.⁴⁰

³⁶ One Comm. St. GJB-1 at 7-8.

³⁷ Vz. Br. 26.

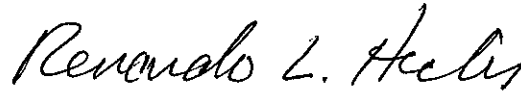
³⁸ Vz. Br. 27-28.

³⁹ 47 U.S.C. § 251(c)(2)(D). The FCC has held specifically that this provision is not limited to prohibiting "unreasonable" discrimination. *Implementation of the Local Competition Provisions in the*

III. CONCLUSION

For the foregoing reasons, the Commission should grant the Complaint and enter an order in the form proposed in One Communications' opening brief.

Respectfully submitted,



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Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶ 217, 218 (1996) (“*Local Competition Order*”) (for purposes of Section 251, the FCC “reject[s]” its “historical interpretation of ‘nondiscriminatory’”; “Congress did not intend that the term ‘nondiscriminatory’ in the 1996 Act be synonymous with ‘unjust and unreasonable discrimination’ used in the 1934 Act, but rather, intended a more stringent standard”).

⁴⁰ *Local Competition Order*, ¶ 861 (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). Here, as we have shown, the costs to Verizon of interconnecting with One Communications are actually lower than those of interconnecting with the independent LECs, so Verizon cannot possibly cost-justify its discriminatory practice.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

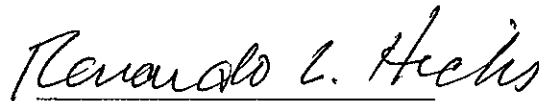
Choice One Communications of Pennsylvania Inc. and CTC Communications Corp.	:	
	:	
	:	
v.	:	Docket Nos. C-2008-2029477
	:	C-2008-2029479
Verizon Pennsylvania Inc. and Verizon North Inc.	:	
	:	

CERTIFICATE OF SERVICE

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

FEDERAL EXPRESS

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