BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

XO Communications Services, Inc.	:	
Complainant	:	C-2008-2038195
	:	
v.	:	
	:	
Verizon Pennsylvania Inc.	:	
Respondent	:	

MAIN BRIEF OF VERIZON PENNSYLVANIA INC.

Leigh A. Hyer (Atty ID No. 204714)
Suzan D. Paiva (Atty ID No. 53853)
Verizon
1717 Arch Street, 17W
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail:
Leigh.A.Hyer@verizon.com
Suzan.D.Paiva@verizon.com

Counsel for Verizon Pennsylvania Inc.

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INTRODUCTION

XO Communications Services, Inc. ("XO") uses Verizon Pennsylvania Inc.'s ("Verizon") dedicated tandem trunk ports to fulfill its own responsibility to enable its end-user customers to make and receive long-distance telephone calls. These ports – which provide an entry into Verizon's tandem switch dedicated only to XO – are essential for XO to establish a path to the Verizon tandem so that long distance traffic may flow indirectly between XO's own network and various interexchange carriers ("IXCs").

Under the parties' interconnection agreement ("ICA"), Verizon must permit XO to "subtend" Verizon's access tandem switch by connecting its own trunk to the tandem for the purpose of exchanging this traffic indirectly with IXCs. This type of trunk, which carries long distance traffic destined to or from customers on XO's network, is known in the industry as an "Access Toll Connecting" or "ATC" trunk, although XO also refers to it as a "meet point billing" or "MPB" trunk. (Tr. at 14).

XO concedes that, under the terms of the parties' ICA, XO is responsible to provide the entire ATC trunk from its own switch to the interconnection point at Verizon's tandem, and that XO in turn bills IXCs for 100% of the transport from the XO switch to the tandem for carrying traffic over this trunk. (Tr. at 25-26, 40). XO also acknowledges that it pays Verizon for facilities it leases from Verizon that make up the ATC trunks XO connects to the tandem. (Tr. at 20, 23). Yet with the same breath, XO denies any responsibility to pay for the dedicated trunk port on the tandem switch that is required to connect the ATC trunk. XO claims that it is entitled to use this dedicated port for free and seeks a Commission order absolving it of liability both for past dedicated

tandem port charges and for the port charges going forward. XO's arguments do not survive scrutiny and should be rejected.

First, XO contends that the ICA terms and industry standards for "meet point billing" contemplate that Verizon will bill the IXCs directly for ***any*** service Verizon provides to allow access traffic to flow between XO and the IXCs, rather than billing XO for any portion of these facilities. But this argument is directly contrary to the ICA and to XO's own acknowledgement that XO is "responsible" for providing the entire ATC trunk all the way to the tandem and for billing the IXCs for their use of that facility. (Tr. at 18). The port is necessary for XO to deliver traffic to the Verizon tandem and thus falls within the scope of XO's responsibility. Verizon is thus entitled to bill XO for that port.

Second, XO contends that facilities used to establish the path from its network to the Verizon tandem are "interconnection" facilities under 47 U.S.C. § 251(c)(2) rather than a "switched access" service and so cannot be subject to a charge in Verizon's switched access tariffs. But even if XO were correct in characterizing them as "interconnection" facilities, XO must still pay for them. Under 47 U.S.C. § 252(a) the parties are free to negotiate ICA rates for interconnection facilities, including agreeing to apply the terms of access tariffs to such facilities rather than specifying an exact rate in the ICA. Here, the ICA agreed that Verizon's access tariffs would govern those charges. In any event, even ***if*** the ICA did not specifically establish the rate that would apply to XO's use of Verizon facilities in this instance (which it does), that still would not mean that XO is entitled to use the ports for ***free***. Pennsylvania contract law requires XO to pay a reasonable rate for its use of the ports. And if the ports are found to be "interconnection facilities" under section 252(c)(2) as XO claims, the federal Act requires

XO to pay a cost-based rate for interconnection. The dedicated port rate Verizon charges IXCs and others under its access tariffs to connect a dedicated trunk to the tandem switch is a reasonable rate under either state or federal law.

Third, XO attempts to avoid the port charge by arguing that, if the access tariffs govern, then the tariffs do not allow Verizon to charge XO for the port. XO contends that under the tariff and applicable FCC orders Verizon is only permitted to charge ***IXCs*** for a dedicated port, while competitive local exchange carriers ("competitive LECs") are entitled to use the ports to connect their own trunks to the tandem for free. XO's self-serving interpretation is contrary to the plain language of the tariffs, which require the payment of a monthly "dedicated tandem trunk port rate" that is "assessed per activated trunk for ***every*** dedicated trunk terminating on the serving wire center side of the access tandem."[1] Contrary to XO's arguments, its ATC trunks are "dedicated" because the ***only*** traffic going through these trunks and ports is destined to or from XO's network, which is the essence of a "dedicated" facility. Moreover, XO's ATC trunks are on the "serving wire center side" of Verizon's tandem switch as that term was used by the FCC. The port charge is not limited only to IXCs, as XO argues, but under the FCC's rules applies to any "***purchaser*** of the dedicated trunk terminating at the port." 47 C.F.R. § 69.111(l)(3) (emphasis added). Thus, because XO is the "purchaser," it must pay the dedicated port charge.

Accordingly, the Commission should require XO to pay Verizon's tariffed charges for the dedicated tandem trunk ports that it uses and should dismiss XO's complaint.

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1 VZ St. 1.0, Exhibit 2 (VZ PA Tariff Pa. P.U.C. No. 302, § 6.8.1(f)(5)) (emphasis added). *See also* Verizon Tariff F.C.C. No. 1, § 6.8.1(D)(5)(e).

STATEMENT OF THE CASE

Verizon is an incumbent local exchange carrier ("incumbent LEC") in portions of Pennsylvania and provides (among other services) local telephone service to Pennsylvania residents and businesses in those areas. (Complaint ¶ 4; Answer ¶ 4; 47 U.S.C. § 251(h)(1)). Verizon also operates access tandem switches, which connect telephone carrier networks for the mutual exchange of long distance traffic among IXCs, local exchange carriers and wireless carriers. (VZ St. 1.0 at 5-6). An access tandem switch allows long distance traffic to be routed from IXCs to other carriers' local end users and from those end users to IXCs. Only telephone carrier networks directly connect to a tandem switch; end-user customers do not. (*Id.*)

XO is a competitive LEC also serving customers in areas of Pennsylvania. (Complaint ¶ 3; Answer ¶ 3). XO's local end-user customers — like all telephone customers — need to place long distance calls through their chosen long-distance carrier, and to receive long distance calls carried by any of a number of long-distance carriers. To allow its end user customers to send and receive those calls, XO's network must be connected in some fashion to the networks of those long-distance carriers, known as IXCs. While such traffic exchange could be accomplished by directly connecting XO's network to each IXC, XO chooses instead to exchange traffic with some IXCs indirectly through Verizon's access tandems. (VZ St. 1.0 at 3-4; Tr. at 42).

XO and Verizon have entered into an ICA that governs various aspects of the relationship between them, including requirements of the federal Telecommunications Act for interconnection of networks and use of Verizon's facilities.[2] The ICA between

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[2] XO's predecessor, Nextlink Pennsylvania, Inc. ("Nextlink"), adopted the ICA between Verizon and MCImetro Access Transmission Services, Inc. ("MCI"). Pertinent portions of the original 1997 ICA

Verizon and XO, among other things, requires Verizon to "permit and enable" XO to "subtend" Verizon's access tandem switches for the transmission and routing of long distance traffic. (XO St. 1.0, Attachment D, XO/Verizon PA ICA, Attachment VIII, § 3.1.3.14).

Where XO elects to exchange traffic with IXCs by subtending a Verizon tandem instead of interconnecting directly with the IXCs, the ICA requires XO to establish separate trunks dedicated to carrying only the traffic between XO and the IXCs. (VZ St. 1.0, Exhibit 3, XO/Verizon PA ICA, Appendix 2 at 4) ("[s]eparate trunks required for IXC subtending trunks"). These trunks carry only long distance traffic destined to or coming from XO's network to be exchanged with the IXCs and carry no local traffic. (Tr. at 15; VZ St. 1.0 at 5).

XO concedes that it is "responsible" for the ATC trunk from the XO switch to the Verizon access tandem, meaning that it must either supply the underlying facilities on which the ATC trunk rides or lease those facilities from another carrier, including Verizon, and pay for them. (XO St. 2 at 8; Tr. at 18). Under the XO ICA, "[i]nterconnection for the MPB arrangement shall occur at the applicable access tandem or functional equivalent in the LATA, unless otherwise agreed to by the Parties." (XO St. 1.0, Attachment D, XO/Verizon PA ICA, Attachment VIII, § 3.1.3.3). The ATC or MPB "trunk" therefore runs from XO's switch all the way to the point of interconnection at the tandem. (Tr. at 24-15). In other words, "unless otherwise agreed," the ATC trunk rides on XO's network to the access tandem. XO's witness verified that in all cases in Pennsylvania, XO's arrangements follow the default under the ICA – that is, the point of

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and the 2000 adoption agreement are attached as Attachment D to XO Statement 1.0 and Exhibit 3 to Verizon Statement 1.0.

interconnection is at the Verizon access tandem, XO is responsible for the facilities from the XO switch to the tandem, and XO bills the IXCs for 100% of the transport from its switch to the tandem. (Tr. at 25-26; XO St. 1.0 at 18).[3]

A competitive LEC may provision its ATC trunks connecting its network to the tandem over its own facilities or may obtain dedicated transport for that purpose from Verizon, or a combination of both. (VZ St. 1.0 at 3-4). In this case, for most of its ATC trunk groups in Pennsylvania, XO has self-provisioned the facility (or obtained transport from a carrier other than Verizon) up to XO's collocation arrangement at the access tandem building and then leased from Verizon the remainder of the facility on which the trunk rides from the collocation to the access tandem. For three of its trunk groups, XO has self-provisioned facilities from its switch to another Verizon wire center (other than the tandem wire center) and then leased transport from Verizon to carry the traffic from its collocation in that other wire center to the access tandem wire center. (VZ St. 1.0, Exhibit 1, XO Response to 1-2(b); Tr. at 21).

To deliver or receive traffic from the tandem, an ATC trunk must connect to a switch port that connects the trunk to the tandem switch. The tandem consists of a switch matrix to establish a connection between an incoming trunk and all of the other trunks connected to the tandem, in order to be able to complete a call. (VZ. St. 1.0 at 16; Tr. at 110-111).[4] Since the trunks will not function – i.e. carry traffic between the Verizon tandem switch and the competitive LEC's network – unless they are connected to the

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[3] While the ICA provides a process that would allow XO to be responsible for less than 100% of the trunk and for Verizon to assume some responsibility for a portion of the trunk, the parties have not followed that option. (XO St. 1.0, Attachment D, XO/Verizon PA ICA, Attachment VIII, § 3.1.3.14).

[4] IXCs typically connect to the Verizon access tandem switch in the same manner as competitive LECs like XO, by attaching transport facilities to a dedicated tandem trunk port on the access tandem switch. (VZ St. 1.0 at 6). The IXCs pay the same tariffed dedicated tandem trunk port charge that Verizon has billed to XO here. (XO Ex. 13 (One Communications Tr.) at 63, 83).

switch, pursuant to its tariffs Verizon provides the necessary dedicated tandem trunk ports to the competitive LEC whenever the competitive LEC orders ATC Trunks. (VZ St. 1.0 at 8).[5]

XO does not dispute the charges Verizon has assessed for the underlying Verizon facilities on which the access trunks ride from the collocation arrangements to the tandem, but only disputes Verizon's charges for the port.

ARGUMENT

I. THE ICA REQUIRES XO TO PAY VERIZON FOR USE OF ITS DEDICATED TANDEM TRUNK PORTS

The ICA between XO and Verizon makes clear that if XO elects to subtend Verizon's tandem, XO is responsible to establish the pathway between XO's network and Verizon's access tandem, so that long distance calls by or to XO's customers can get to or from the networks of various long distance carriers. And because XO is responsible for this pathway to the tandem, XO must compensate Verizon for any Verizon facilities it uses to fulfill this responsibility.

Specifically, the ICA explicitly requires Verizon to "permit and enable" XO to "subtend" Verizon's access tandem switch for the transmission and routing of long distance traffic. (XO St. 1.0, Attachment D, XO/Verizon PA ICA, Attachment VIII, § 3.1.3.14). As described above, because "[i]nterconnection for the MPB arrangement shall occur at the applicable access tandem,"[6] XO has conceded that it is "responsible" for the ATC trunks from its own switch all the way to the point of interconnection at the

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[5] The charge is apportioned between the interstate and intrastate rates based on percentage interstate use as reported by XO. (VZ St. 1.0 at 2, n. 1). The applicable access tariffs are Verizon PA Pa. P.U.C. No. 302 for intrastate traffic and Verizon PA, FCC No. 1, based on reported interstate jurisdictional use. (*Id.* at 11).

[6] XO St. 1.0, Attachment D, XO/Verizon PA ICA, Attachment VIII § 3.1.3.3.

access tandem. XO further concedes that it accordingly bills the IXCs for 100% of the transport from XO's own switch to the Verizon access tandem for all trunk groups in Pennsylvania. (Tr. at 18, 25-26, 49; XO St. 1.0 at 18). There can be no dispute, therefore, that it is XO's responsibility to establish the path for long distance traffic to flow from its network to the access tandem and that XO is free to – and does – bill the IXCs to recover its costs of providing them switched access over that route.

If XO leases facilities from Verizon in order to establish the path to the tandem, then it must pay Verizon for those facilities. XO concedes that it pays or should pay Verizon for any Verizon transport facilities that it uses to reach the tandem. (Tr. at 20, 23). This concession is consistent with the terms of the ICA, which states that the parties "shall bill each other" for "traffic carried over MPB arrangements using . . . interconnections services." (XO St. 1.0, Attachment D, XO/Verizon ICA, Attachment VIII, §3.1.3.5).

Having conceded that it is responsible for the trunk from its own switch all the way to the tandem and that it must pay for any underlying Verizon facilities used to establish that path, XO should not be heard to deny responsibility for the port required to connect its own trunk to the tandem. Not only does the ICA clearly contemplate that Verizon may "bill" XO for Verizon facilities used to provide XO's portion of the "MPB arrangements," but the ICA is clear that the applicable rates for those facilities are set forth in Verizon's access tariffs. While the ICA's updated pricing schedule provides specific rates for some enumerated items (mostly local call termination and unbundled network elements), for others it incorporates the rates and terms of tariffs under which Verizon generally offers service in Pennsylvania. In particular, the schedule states that

Verizon's "rates and services for use by [XO] in the carriage of Toll Traffic shall be subject to [Verizon's] tariffs for Exchange Access Service." (Verizon St. 1.0, Exhibit 3, Appendix 2 at 1, n. 1). The pricing schedule also specifies that Verizon's rates for "Exchange Access Service" provided to XO are subject to Verizon's "PA tariff 302, as amended from time to time" for intrastate service and subject to Verizon's "FCC tariff number 1, as amended from time to time" for interstate services. (*Id.* at 21).

The access tariffs are quite clear that where a dedicated trunk, such as an ATC Trunk, terminates to Verizon's access tandem, a dedicated tandem trunk port charge applies. The tariffs describe a monthly "dedicated tandem trunk port rate" that is "assessed per activated trunk for every dedicated trunk terminating on the serving wire center side of the access tandem."[7] Accordingly, by incorporating the tariffs, the ICAs require XO to pay this tariffed dedicated tandem trunk port rate to connect the ATC trunks for which XO is "responsible" to Verizon's access tandem.

But even if the Commission concluded that the ICA somehow was not precise enough in specifying that the "tariffs for Exchange Access Service" apply to XO's use of Verizon facilities in MPB arrangements, this does not mean that XO is entitled to use the trunk ports for free. In the absence of an agreed-upon contractual rate, XO would still be required to pay a just and reasonable rate for the trunks and ports. *See, e.g. Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alternatives, Inc.*, 2003 Pa. Super 332 (Pa. Super. Ct. 2003) ("Where, as here, there is no express agreement to pay, the law implies a promise to pay a reasonable fee," which should be measured by "what the services are ordinarily worth in the community.") It is well-settled that where a contract has been "made for

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[7] VZ St. 1.0, Exhibit 2 (VZ PA Tariff Pa PUC No. 302, § 6.8.1(f)(5)). *See also* Verizon PA Tariff F.C.C. No. 1, § 6.8.1(D)(5)(e).

purchase and sale without the fixing of a specific price," then "a reasonable price is presumed to have been intended." *United States v. Swift & Co.*, 270 U.S. 124, 141 (U.S. 1926). *See also Beech Aircraft Corp. v. Ross*, 155 F.2d 615, 617 (10th Cir. Kan. 1946) (where "the agreement makes no provision with reference to the price to be paid, the court may invoke the standard of reasonableness as a necessary implication of a policy to pay for services rendered, and the fair value of the services or property is the consideration."); *Rossmassler v. Spielberger*, 270 Pa. 30, 41-42 (Pa. 1921); *Greene v. Oliver Realty, Inc.*, 363 Pa. Super. 534, 539 (Pa. Super. Ct. 1987) ("if the parties do not specify price, a court will impose a reasonable price which will usually be the item's market value."). *Cf.* 13 Pa.C.S. § 2305 (under the Uniform Commercial Code, for transactions in "goods," if "nothing is said as to price" then "[i]n such a case the price is a reasonable price at the time for delivery.")

Further, in the absence of a specific agreement as to a rate in the ICA for the ports, Verizon's access tariffs by their plain terms would govern the facilities purchased to connect to Verizon's tandem for the transmission of long distance traffic. *See, e.g.*, 66 Pa. C.S. § 1303. Here, the reasonable rate, and the applicable rate under governing tariffs, for the dedicated tandem trunk port is the access rate that Verizon charges to any carrier for ports connecting a dedicated trunk to the serving wire side of the access tandem.

XO nevertheless advances various convoluted arguments to attempt to avoid paying Verizon for these dedicated tandem trunk ports even though it does not deny that they are necessary to attach its "activated trunk[s]" to the tandem and thus are part of the

path for which XO is solely responsible. None of those arguments survives scrutiny, for the reasons discussed below.

II. THE COMMISSION SHOULD REJECT XO'S ARGUMENTS ATTEMPTING TO AVOID PAYING FOR THE PORTS

A. The Meet Point Billing Provisions Of The ICA Do Not Require Verizon To Bill The IXCs For The Ports

XO attempts to confuse and obscure its own clear obligation to pay for the facilities necessary to establish the entire path to the tandem by arguing that paying Verizon for facilities used to provide "joint" switched access to IXCs is somehow inconsistent with the "meet point billing" terms of the parties' interconnection agreements and/or industry guidelines such as the MECAB Guidelines. According to XO's witness, 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, because "my experience over the years is that LECs bill IXCs, not other LECs." (XO St. 1.0 at 17; *see also id.* at 10).

XO presumes that "meet point billing" means that Verizon is responsible for billing the IXC for ***any*** service component or underlying facility that Verizon ultimately provides, but that is not the case. As XO concedes, Verizon is only responsible for that portion of the jointly-provided access service from the IXC's network to Verizon's access tandem, and as a result, Verizon only bills the IXCs for tandem switching and any transport from the IXC's network to the tandem. XO, on the other hand, is responsible for providing access to the IXCs from the tandem to XO's own switch, including the ATC trunks and the required trunk ports. Verizon appropriately bills XO for these facilities, since XO is its customer for these facilities, not the IXCs. (VZ St. 1.0 at 20-

21). XO is then entitled to bill the IXCs for this switched access service on its side of the tandem, including recovery of costs for the ports that it leases from Verizon. Indeed, XO admits that it ***already*** bills the IXCs 100% of the transport from its own switch all the way to the tandem. (Tr. at 25-26; XO St. 1.0 at 18). Yet here, XO is refusing to pay Verizon for a portion of the facilities that it leases from Verizon. Verizon appropriately bills XO for the dedicated tandem trunk port, since XO is its customer for these facilities, not the IXCs. (VZ St. 1.0 at 20-21).

The meet point billing provisions of the interconnection agreements, and the industry guidelines XO cites, have nothing to do with XO's obligation to compensate Verizon for facilities that it leases from Verizon to provide switched access service to IXCs. Instead, those provisions only govern the manner in which Verizon and XO will each bill an IXC for the switched access service they each provide to the IXC. These provisions say ***nothing*** about the separate transaction in which XO leases facilities, such as transport and dedicated tandem trunk ports, from Verizon to satisfy its own obligations in a meet-point billing arrangement. (VZ St. 1.0 at 20-21).

Indeed, XO recognizes that this is a wholly separate transaction when it concedes that it is responsible for 100% of the facilities on which the ATC trunks ride from XO's switch all the way to the access tandem. (Tr. at 25-26; XO St. 1.0 at 18). The port is a necessary component of those facilities, and as Verizon's access tariffs make clear, a "dedicated tandem trunk port" rate applies "for ***every*** dedicated trunk terminating on the serving wire center side of the access tandem." (Verizon PA Tariff Pa. P.U.C.-No. 302, § 6.8.1(F)(5)) (emphasis added). *See also* Verizon Tariff F.C.C. No. 1, § 6.1.2(A)(3); § 6.8.1(D)(5)). The fact that the parties are jointly providing switched access service to the

IXCs does not preclude Verizon from billing XO for Verizon facilities that XO uses to fulfill its own responsibilities under meet-point billing.

B. Whether Or Not These Ports Are "Interconnection" Facilities, XO Must Pay For Them

XO argues that, to the extent it leases facilities to carry long distance traffic from its network to the access tandem, it is not purchasing "switched access" service from Verizon, but rather is leasing those facilities as "interconnection facilities" pursuant to 47 U.S.C. § 251(c)(2).[8] (XO St. 2.0 at 24; XO St. 1.0 at 3 and 11, n. 4). XO suggests that, since it views these as Section 251(c)(2) interconnection facilities and not as switched access service, it cannot be required to pay for the trunk ports under the terms of Verizon's switched access tariffs. But whether or not the ports are characterized as "interconnection facilities" under Section 251(c)(2) does not alter the fact that XO must pay Verizon for their use. Either the ICA provides the means to calculate a rate for these ports (which it does by incorporating the access tariffs), or in the absence of a specific agreement, XO must pay a reasonable rate under Pennsylvania law (and the tariffed port rate is a reasonable rate). XO cannot claim that it may use these ports for free.

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[8] It is clear under this Commission's precedent that the underlying transport facilities over which the ATC trunks ride from the XO switch to the tandem are ***not*** Section 251(c)(2) interconnection facilities. Section 251(c)(2) only establishes a "duty" for Verizon to provide for ***the CLEC's*** facilities "interconnection" at a "point" within Verizon's network, not to provide the actual transport facilities running between the CLEC network and the Verizon network. In its February 21, 2006 Order in the consolidated arbitration relating to implementation of the FCC's new unbundling rules, this Commission held that "[s]ince the only facilities explicitly mentioned in Section 251(c)(2) are CLEC facilities," Section 251(c)(2) does not obligate Verizon "to provide or lease any Verizon 'facilities' for the CLEC to reach the interconnection point on Verizon's network." *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers,* No. P-00042092 (Opinion and Order entered February 21, 2006) ("2/21/06 Order") at 101. In its July 21, 2006 Order on Reconsideration, the Commission reiterated that "after the CLEC chooses the technically feasible point to which it requests interconnection, any other transport required by the CLEC may be presumed to be for 'non-interconnection' purposes." *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers*, No. P-00042092 (Opinion and Order entered July 21, 2006) ("7/21/06 Order") at 10.

1. Under The ICA, Access Tariff Rates Apply To The Ports

In this case, the ICA references and incorporates the rates in Verizon's access tariffs for dedicated tandem trunk ports. The ICA recognizes that the parties "shall bill each other" for "all traffic carried over MPB arrangements using Network Elements or interconnection services." (XO St. 1.0, Attachment D, XO/Verizon ICA, Attachment VII, §3.1.3.5). The ICA further contemplates that XO will pay Verizon for facilities used to establish XO's portion of the MPB arrangements.[9] Specifically, XO has agreed to pay for facilities used "in the carriage of Toll Traffic" at rates set forth in Verizon's access tariffs. (Verizon St. 1.0, Exhibit 3, Appendix 2 at 1, n. 1). Thus, because those ports are used to carry toll traffic, the ICA necessarily incorporates the rates in Verizon's access tariffs for these facilities.

Even if, as XO claims, the port is characterized as an "interconnection facility" subject to cost-based rates under the Act, the result under the ICA is no different. The Act specifically allows parties to voluntarily agree to incorporate rates and terms in an access tariff to govern the provisioning of interconnection facilities. Specifically, parties "may negotiate and enter into a binding agreement" for interconnection "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1) (including rates under section 251(c)(2)(D)), and it is well-settled that in doing so the

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[9] At the time of the original MCI agreement, and even in 2000 when XO's predecessor adopted that 1997 ICA, it may have been assumed that the MPB facilities could be ordered as unbundled network elements, and in fact the 2000 pricing schedule contains a rate entry for an unbundled tandem trunk port. (Verizon St. 1.0, Exhibit 3, Appendix 2 at 6). Facilities connecting a competitive LEC's network to Verizon's tandem are no longer available as unbundled network elements. *See* Order On Remand, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, 2005 FCC LEXIS 912 (Rel. Feb.4, 2005) ("TRRO") ¶ 138-139. But that does not mean that the obligation for XO to pay for such facilities has disappeared. In fact, the same ICA section containing the unbundled tandem trunk port rate recognizes that Verizon "may levy upon purchaser of such elements any access charges (or portion thereof) permitted by Applicable Law." (*Id.* at 4, n. 3).

parties may incorporate tariffs into their interconnection agreements. *U.S. West Communs., Inc. v. Sprint Communs. Co.*, 275 F.3d 1241 (10th Cir. 2002) (tariffs may be opted for as part of interconnection agreement). Indeed, as One Communications' witness Mr. Ball testified, in negotiating an interconnection agreement, the parties may "agree to whatever rates [they] wanted for the facilities," and could even agree to "pay rates out of" a specific tariff. (XO Ex. 13 (One Communications Tr.) at 31-33).

The April 9, 2009 order of the Massachusetts Department of Telecommunications and Cable ("DTC"), addressing a similar dispute between Verizon and several carriers including XO, does not alter this conclusion. The DTC held that Verizon's Massachusetts affiliate cannot charge certain carriers for the ports connecting ATC trunks to Verizon's tandem switches based on its interpretation of the specific ICAs at issue and its application of specific Massachusetts contract law. The DTC found that the ICAs failed to conform to the DTC's own previously-ordered ICA drafting requirements, which had "established a standard for the proper incorporation or cross-referencing of applicable rates or charges in an ICA."[10] But the DTC's drafting requirements do not apply in Pennsylvania, and this Commission has not imposed the same strict drafting requirements but instead accepts more general references to tariffs for the purpose of establishing applicable rates.[11] Federal courts also have upheld general tariff references

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10 *Complaint of Choice One Communications of Massachusetts Inc., etc., Concerning Alleged Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Massachusetts for Access Toll Connecting Trunk Ports*, DTC No. 08-3 (Order entered April 9, 2009) ("Mass. Order") at 23.

11 Specifically, the DTC found that the Massachusetts ICAs lacked particular language that the DTC determined was required by previous DTC orders and by Massachusetts contract law for the ICAs in question to incorporate tariff terms and conditions. (Mass. Order at 23-24, 26-27). No such language is required under Pennsylvania contract law, nor has this Commission ever directed carriers to include such language for a Pennsylvania ICA to incorporate tariff terms and conditions. To the contrary, the DTC's decision specifically relies on its own 2002 holding in the Global NAPs arbitration, in which it reaffirmed an earlier order setting forth specific language that must be used for an ICA to incorporate tariff provisions. (Mass. Order at 22) (citing *Petition of Global NAPs, Inc. for arbitration to establish*

and have not required the interconnection agreement to restate the specific rate and/or rate element. For example, in *U.S. West Communs.*, the Tenth Circuit approved an interconnection provision stating simply that the competitive LEC was entitled "to purchase services out of an effective tariff." 275 F.3d at 1245. Indeed, the purpose of referencing a tariff is to ***avoid*** having to amend the agreement every time the tariff changes, so the agreement would not – and should not – be expected to repeat the exact rates and terms in the tariff at a particular snapshot in time.

Here, the Commission should find that XO agreed to pay for the ports pursuant to Verizon's access tariffs. Whether or not these are "interconnection" facilities, the parties can and did agree to apply the rates, terms and conditions from Verizon's access tariffs to determine the payment due for such facilities.[12]

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an ICA with Verizon New England, Inc., D.T.E. 02-45, at 50, 53-54 (December 12, 2002)). But ***this*** Commission also arbitrated a Global NAPs ICA during the same time frame and reached a different conclusion on the same issue by approving Verizon's proposal to reference tariffs more generally, without imposing the additional specific requirements uniquely imposed by the DTC. *Petition of Global NAPs South, Inc. For Arbitration pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000 (Opinion and Order entered April 21, 2003) at 59 (adopting Recommended Decision of ALJ Smolen on Issue 8).

12 Because the issue in this case is the interpretation of an existing interconnection agreement – not arbitrating a new one – the *WorldCom Order* relied on by XO is inapposite. (XO St. 1.0 at 19-20) (citing Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039 (Wireline Comp. Bur. 2002) ("*WorldCom Order*")). Applying the law in effect at the time, the FCC's staff held in *WorldCom* that "Verizon may not ***require*** WorldCom to purchase trunks out of Verizon's access tariffs" (emphasis added) in arbitrating the disputed terms of a new agreement, and that WorldCom could instead lease those trunks pursuant to Verizon Virginia's obligations under 47 U.S.C. § 251(c)(3) as unbundled network elements. *Id.* ¶ 177. As discussed above, however, following the FCC's new unbundling rules, the trunking at issue here is no longer available as an unbundled network element under § 251(c)(3), and so this decision is irrelevant. Like the *WorldCom Order*, the decision of the Public Service Commission of Maryland in *In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b)*, Case No 8882 (*Maryland Arbitration Order*"), addressed whether Verizon could compel a CLEC to agree in an ICA to purchase these trunks from the access tariffs, not whether a CLEC – having ***already*** agreed to purchase from the access tariff – is bound by its contract. Further, neither of these decisions addressed the issue of what a reasonable rate would be for those facilities under an existing ICA if the ICA was found not to be sufficiently specific – a question that must be addressed under Pennsylvania contract law.

2. Even If The ICA Does Not Specify A Rate, XO Must Still Pay For The Use Of The Ports

Even if the Commission concluded that the interconnection agreement somehow was not precise enough in specifying that the "tariffs for Exchange Access Service" apply to XO's use of Verizon facilities in MPB arrangements, this does not mean that XO is entitled to use the facilities for free. As discussed in more detail above, in the absence of a contractual rate, Pennsylvania law requires XO to pay a just and reasonable rate for the facilities it uses. *Temple Univ. Hosp.*, 2003 Pa. Super 332; *Greene*, 363 Pa. Super at 539.[13] Further, if the ICA does not specify a different rate, then Verizon's access tariffs by their plain terms would govern the facilities purchased to connect to Verizon's tandem for the transmission of long distance traffic. *See, e.g.*, 66 Pa. C.S. § 1303 ("The rates specified in such tariffs shall be the lawful rates of such public utility.") Here, the reasonable rate, and the applicable rate under governing tariffs, for the dedicated tandem trunk port is the tariffed access rate that Verizon charges to any other carrier for ports connecting a dedicated trunk to the serving wire side of the access tandem.[14]

If one views the ports as "interconnection facilities" under 47 U.S.C. § 251(c)(2) – as XO asserts they are – then above and beyond the requirements of Pennsylvania

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[13] *See* Verizon/XO ICA, Part A, § 7.1 ("The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties, shall be governed by the Act and the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws rules.")

[14] In this respect, too, the Massachusetts Order has no precedential value because it does not reflect the requirements of Pennsylvania law. The DTC relied on its own prior ICA drafting standards to hold that if Massachusetts ICAs "do not identify a charge" for the ATC trunk ports or "cross-reference an applicable charge," then "no charge can be imposed for these ports." (Mass. Order at 42). But this holding is directly contrary to Pennsylvania contract law and thus does not apply to Pennsylvania ICAs because, as discussed above, under Pennsylvania law in the absence of an agreed-upon contractual rate, XO is required to pay a just and reasonable rate for the use of these ports. It cannot obtain these ports for free in the absence of an express statement in the contract that those ports will be provided at no charge – a term that is wholly absent from the ICA. Further, if the ports are viewed as interconnection facilities, federal law also requires XO to pay for those facilities. 47 U.S.C. §§ 251(c)(2), 252. The Act does not allow competitive LECs to use an incumbent LEC network for free.

contract law, the federal Telecommunications Act ***requires*** XO to pay for them. Section 251(c)(2)(D) requires interconnection facilities to be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." 47 U.S.C. § 251(c)(2). This Commission has recognized this standard to mean that interconnection facilities must be provided at "cost-based rates," which "need not be TELRIC." (2/21/06 Order at 102) (making "no determination" as to whether a tariffed rate could satisfy that statutory standard). Therefore, if the ports were interconnection facilities and if the interconnection agreement did not already establish that the applicable rates are those set forth in the access tariffs, that still would not mean that XO is entitled to use the dedicated tandem trunk ports for free. Instead, XO must pay a reasonable rate – and a facially reasonable rate is Verizon's tariffed rate that applies to any other carrier attaching a dedicated trunk to Verizon's access tariff. XO has not advanced any alternative rate nor does it even attempt to claim that the generally applicable rates in Verizon's access tariffs are somehow unreasonable.

C. Under The Terms Of The Access Tariffs, XO Must Pay For The Ports

XO next argues that even if the access tariffs apply generally to the MPB arrangements, the tariffs do not require XO to pay for the trunk ports. XO is wrong.

1. The Access Tariffs Are Not Limited To IXCs

XO argues that switched access service is "provided to an IXC access customer by a LEC (or LECs) to allow the IXC to connect to an end-user" and thus the access tariff cannot apply to services provided to another LEC. (XO St. 1.0 at 19). This reading of the tariff is too restrictive. Verizon's access tariffs apply to any "Customer" of access

services, which term is not limited to IXCs, but rather includes any "entity which subscribes to the services offered under this tariff." (VZ St. 1.0 at 18; Exhibit 2). Competitive LECs such as XO ***regularly*** subscribe to services out of Verizon's access tariffs. Indeed, XO's own ICA presumes that it will purchase services out of those tariffs. (*See, e.g.*, VZ St. 1.0, Exhibit 3, Appendix 2, Footnote 1 and p. 21). Therefore, XO is clearly a "Customer" of access services, even if it is operating as a LEC rather than an "IXC."

2. The Ports Are "Dedicated"

XO asserts that Verizon's tariffed rate for "dedicated" tandem trunk ports does not apply because the trunk ports at issue here are not dedicated but rather are shared or common facilities. (XO St. 1.0 at 3). XO argues that the trunks and ports are "common" because they carry traffic destined to or coming from multiple IXCs, even though XO concedes that all of the traffic carried over these trunks and ports is destined to or coming from XO's own network.

The term "dedicated" generally refers to a facility dedicated to the use of a single customer.[15] As the FCC has noted, "[c]ompeting carriers generally use interoffice transport as a means to aggregate end-user traffic to achieve economies of scale. They do so by using ***dedicated*** transport to carry traffic from their end user's loops...."[16] Thus, the FCC has recognized that trunks are still "dedicated" even if the customer uses them to aggregate traffic from multiple sources. The ATC Trunks and associated tandem trunk

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[15] *See, e.g.*, Verizon PA Tariff Pa. P.U.C. No. 302, § 6.1.3(B)(2); Verizon Tariff F.C.C. No. 1, § 6.1.2(A)(2). *See also* 47 C.F.R. § 69.2(nn) and (oo).

[16] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*") (subsequent history omitted), ¶361.

ports at issue here are dedicated exclusively to the use of XO, the competitive LEC that ordered them. Thus, the single "customer" with respect to a given set of access trunks is XO. The ATC Trunks connect Verizon's tandem switch to XO's network and to no other carrier. XO uses the ATC trunks and tandem ports solely for its own purposes – to provide access services to IXCs. (VZ St. 1.0 at 12-14). XO concedes that the only traffic carried over the ports terminates or originates with XO's end users. (VZ St. 1.0 at 12 and Exhibit 1). Accordingly, the leased ATC trunks and associated tandem ports are used "by a single customer" of Verizon – XO – and thus are dedicated facilities under the tariff.[17]

3. The Ports Are On The "Serving Wire Center" Side Of The Tandem

Verizon PA's intrastate access tariff provides for a "dedicated tandem trunk port" rate defined as a "monthly rate assessed per activated trunk for every dedicated trunk terminating on the ***serving wire center side*** of the access tandem." (Verizon PA Tariff Pa. P.U.C.-No. 302, § 6.8.1(F)(5)) (emphasis added). Verizon PA's interstate tariff similarly defines the "dedicated tandem trunk port" as being on the "serving wire center side" of the tandem. (Verizon Tariff F.C.C. No. 1, § 6.1.2(A)(3); § 6.8.1(D)(5)). XO contends that the dedicated tandem trunk port charge does not apply to its ATC trunks because they are not on the "serving wire center side" of the tandem. (XO St. 1.0 at 14). This

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[17] That the traffic that is switched and routed out of the tandem to or from XO is also carried by multiple IXCs on part of its journey does not mean that the ports are not dedicated exclusively to XO's use. The whole benefit of connecting the XO network to the Verizon tandem switch is to enable XO to realize the cost savings and efficiencies of utilizing a single trunk to exchange traffic with multiple IXCs, rather than interconnecting its network directly with each and every IXC. (VZ St. 1.0 at 13-14). Physically and functionally these switch ports are no different than the dedicated tandem switch ports provided to an IXC. Just as the port that connects an IXC's network to the tandem is dedicated to that IXC because all of the traffic over it is going to or from that IXC's network, even though the traffic may have originated from the end-users of many LECs, the reverse situation is also true – the port that connects the CLEC's network to the tandem is dedicated to that CLEC because all of the traffic over it is going to or from that CLEC's network, even though the traffic may have originated from (or is destined for) customers of many IXCs. (*Id.*).

argument is simply another version of the previous one – XO contends that the port charge can only apply to IXCs because only IXC trunks and networks are on the "serving wire center side" of the tandem. XO is wrong again.

The concept of the "serving wire center side" of the tandem originates from the FCC's 1997 *Access Charge Order*.[18] This order and its resulting regulations required price-cap LECs – a category that includes Verizon – to adopt a new switched access rate structure that imposed a separate dedicated tandem trunk port rate on a flat rate basis to any carrier to which a port was dedicated. To align with this federal rate structure, this Commission later adopted a separate dedicated tandem trunk port charge for Verizon's intrastate tariffs in 2005.[19]

The FCC in its *Access Charge Order* generally "concluded . . . that . . . costs of interstate access should be recovered in the same way that they are incurred, consistent with principles of cost-causation," so that costs that are determined not to be "traffic-sensitive" "should be recovered through fixed, flat-rated fees." *Access Charge Order* ¶ 24. With regard specifically to the dedicated ports connecting trunks dedicated to other carriers to Verizon's access tandem, the FCC determined that the cost causer for the ports is "the carrier purchasing the dedicated trunk terminated at the port." *Access Charge Order*, ¶ 174. To achieve its goal of charging the cost-causer for dedicated ports, the FCC directed that "incumbent price cap LECs must establish . . . a flat-rated charge to recover the costs of dedicated trunk ports on the ***serving wire center side*** of the tandem."

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[18] *In the Matter of Access Charge Reform, CC Docket No. 96-262 and Transport Rate Structure and Pricing CC Docket No. 91-213*, First Report and Order, 12 FCC Rcd 15882 (Rel. May 16, 1997) ("*Access Charge Order*").

[19] *See AT&T Communications of Pa., Inc. v. Verizon North Inc.*, No. 20027195, 2004 WL 2208514, Order ¶ 3(d) (Pa. P.U.C. July 28, 2004) ("Verizon Pennsylvania Inc . . . will implement changes in rate structure to align with the interstate structure.").

Access Charge Order ¶ 167 (emphasis added). There would be no separate rate for ports in the "end office" side of the tandem, which is the port that connects a trunk from Verizon's own end-office switch to the tandem. XO attempts to use this distinction to argue that Verizon was only permitted to charge an IXC for a dedicated port because only an IXC's network is on the "serving wire center side" of the tandem, and thus Verizon cannot charge a competitive LEC for the port connecting its dedicated trunk to the tandem. But XO's limited reading is not supported by the FCC's order or its regulations.

The FCC's regulations make clear that the dedicated trunk port charge is not limited to IXCs. Under the FCC's rules, "[p]rice cap local exchange carriers may recover the costs of dedicated trunk ports on the serving wire center side of the tandem switch only through flat-rated charges expressed in dollars and cents per trunk port and assessed upon ***the purchaser*** of the dedicated trunk terminating at the port." 47 C.F.R. § 69.111(l)(3) (emphasis added). The FCC found that the costs of the trunks and the ports do "not vary with the amount of traffic transmitted" over them; instead, those costs are incurred as soon as the "LEC must provision the trunk for the exclusive use" of the purchaser. *Access Charge Order* ¶ 175. Here, XO is the "purchaser" of dedicated trunks – the ATC Trunks – between its network and Verizon's access tandem. Therefore, it must also pay for the ports at which those trunks terminate.

The FCC's rules and orders make clear that the trunks and ports that XO purchases are on the "serving wire center side" of the access tandem for purposes of assessing a separate dedicated tandem trunk port charge. In the *Access Charge Order*, the FCC used the terms "serving wire center side" and "end office side" as shorthand for the type of trunks that terminate there. As the FCC explained, "trunks that are shared . . .

carry traffic between the end office and a tandem switch." *Access Charge Order* ¶ 158 (emphasis added). By contrast, "[t]he tandem switch routes [a carrier's] traffic onto an appropriate dedicated trunk that runs between the tandem switch and the serving wire center." (Id. (emphasis added). Thus, dedicated trunks (and associated trunk ports) are always on the "serving wire center side" of the tandem as that terminology was used in the order. Because XO purchases ***dedicated*** – not ***shared*** – ports and trunks, the ports in question are clearly on the "serving wire center side" of Verizon's access tandems.

XO nevertheless argues that the "serving wire center side" refers only to trunks that connect IXC facilities to the tandem. XO's reading of the applicable FCC order and rules is much too restrictive. The FCC defined 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," making clear that purchasers of dedicated ports can be carriers other than "interexchange carrier[s]." 47 C.F.R. § 69.2(rr) (emphasis added). There would have been no need for the FCC to specify "or other person" if it intended to limit this definition to IXCs. Similarly, the FCC's rules refute XO's contention that its own network is on the "end office" side of the tandem. The FCC's rules define the term "end office" as "the telephone company office from which the end user receives exchange service," 47 C.F.R. 69.2(pp), and "telephone company" is defined as ***the ILEC***, not the carrier purchasing the port from the ILEC. *See* 47 C.F.R. 69.2(hh). Thus, a competitive LEC's switch is not an "end office," and the dedicated access trunks and ports are not on the "end office" side of the tandem. To the contrary, just like an IXC, a competitive LEC

has a ***Verizon*** wire center that is its "serving wire center," and its trunks are on the "serving wire center" side of the tandem.[20]

XO's arguments are also wrong with regard to the physical functionality of the tandem switch. XO implies that the tandems have clearly defined "sides," with IXC facilities connected to one "side" and LEC facilities connected to the other, so that one could look at the tandem switch and plainly observe that only the IXC side is the "serving wire center" side, while Verizon's and XO's facilities are on the "end office" side. But that is not the case. An access tandem is a matrix for connecting an incoming trunk through a port to an outgoing trunk through a port, much like a flat telephone switchboard. As a result, the various ports may be right next to each other rather than on opposite physical "sides" of the tandem, even though the traffic flowing over those ports may proceed in different directions away from the tandem. (*See* VZ St. 1.0 at 17; Tr. at 110-111). In other words, the terms "serving wire center side" or the "end office side" of the tandem are ***functional,*** not a description of a physical location of the ports on the tandem switch. ***Dedicated*** ports are on the "serving wire center side," while ***shared*** ports — that is, ports that can carry multiple types of traffic as well as traffic bound to (or sent by) multiple carriers — are not. Whether that port is dedicated to an IXC or to an "other person," like XO, it is on the "serving wire center" side of the tandem and subject to the dedicated tandem trunk port charge.

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[20] In XO's case, where it is collocated at the tandem the tandem wire center is the serving wire center and where it is collocated at another Verizon wire center and leases Verizon transport to reach the tandem that other wire center is the serving wire center. (*See* VZ St. 1.0 at 6-8).

4. Verizon Does Not Discriminate Against XO By Charging For These Ports

XO asserts that Verizon discriminates against it by failing to charge independent LECs for dedicated tandem trunk ports. (*See* XO St. 2.0 at 1, 21). The Public Utility Code, however, prohibits only "unreasonable" differences in charges to customer classes. 66 Pa. C.S. § 1304. "Reasonable classification of service of rates is not prohibited," and "[c]ustomer classifications and attending rate differences may be justified by a variety of considerations including the quantity of service used, the nature of the use, the time of the use, the pattern of the use, differences of conditions of service or cost of service." *Zucker v. PUC*, 401 A.2d 1377, 1382, 43 Pa. Commw. 207, 215 (Pa. Commw. Ct. 1979).

The record establishes that there are very real and fundamental differences between Verizon's relations with the independent LECs and its relations with the competitive LECs like XO, both in terms of network configuration and the terms of their respective contracts, financial arrangements and legal obligations. These differences make it reasonable for Verizon to charge XO the dedicated tandem trunk port rate as required by its ICA and the tariff, even though this is a rate that does not apply to and is not charged to independent LECs.

As described in Verizon Statement 1.1, the independent LECs and Verizon connect their networks by ***each*** building out its ***own*** facilities to the "exchange boundary" dividing them, where they connect trunks that carry all kinds of traffic, not just access toll traffic. Verizon then carries all of this traffic from the independent LEC's network within Verizon's service territory and the independent LEC likewise carries all of the traffic from Verizon's network within its own service territory. (VZ St. 1.1 at 2-5). Each company is responsible for the costs of provisioning the facilities within its own service

area, and they do not bill each other for the facilities on their respective sides of the meet point. (VZ St. 1.1 at 4).[21] While Verizon does not charge the independent LECs for Verizon's facilities from the meet point to Verizon's tandem, Verizon also obtains substantial value in return since the independent LECs do not charge Verizon for carrying Verizon's traffic on their facilities running from the meet point to the independent LECs' respective switches. No similar arrangement is possible with the competitive LECs because the ATC Trunks and ports they obtain from Verizon do not carry any Verizon traffic, and here XO is responsible for carrying the traffic all the way to the tandem in any event, and thus XO does not provide any in-kind consideration to Verizon in exchange for its use of Verizon's facilities. (VZ St. 1.1 at 5). In short, the independent LECs are not similarly situated to the competitive LECs and the differences in their agreements and physical interconnection with Verizon are reasonable.

5. Verizon Is Not Required To Recover Its Costs For XO's Dedicated Ports From IXCs

XO claims that the *Access Charge Order* required Verizon "to recover[] its costs of tandem switching, including the dedicated tandem trunk port charges at issue here, through its access charges imposed on IXCs." (XO St. 1.0 at 22). Based on this FCC requirement, XO presumes that Verizon is already recovering the costs of providing dedicated tandem trunk ports that connect competitive LEC ATC Trunks to the access tandem switch by way of the tandem switching rate it charges the IXCs, or that it "should be" doing so. Based on this assumption, XO alleges that "it would be a pure windfall for

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[21] While the ICA provides an option for the parties to select an interconnection point other than the tandem, XO has not done so and has instead taken advantage of its ability to bill the IXCs for switched access over the ATC trunks all the way from its own switch to the tandem, in contrast to an independent LEC that only bills access on its own side of the meet point.

Verizon if it were allowed to receive additional revenues from the CLECs for services provided and charged to the IXCs." (XO St. 1.0 at 22).

But XO's reasoning is circular. Neither the *Access Charge Order* nor any FCC rule requires Verizon to recover the revenue requirement for ***dedicated*** tandem trunk ports from its tandem switching rate. Indeed, as explained above, the FCC specifically required price cap carriers such as Verizon to establish a separate rate for dedicated tandem trunk ports so that those costs would ***not*** be included in the tandem switching rate for IXCs, and only the revenue requirement for the shared ports on the end office side would be included in that rate. *Access Charge Order* ¶174; *see also* 47 CFR §69.111(l)(3). The FCC assumed that "dedicated port costs" would be "reallocate[d] elsewhere," and would not be recovered through tandem switching charges. *Access Charge Order* ¶ 167. XO has produced no cost studies or other evidence to show what specific "costs" are actually being recovered through particular rate elements. Instead, as ALJ Weismandel recognized at the One Communications hearing, XO is simply making a policy argument that these costs "should" be recovered from IXCs through the tandem switching rate rather than being charged directly to XO. (XO Ex. 13 (One Comm. Tr.) at 44). In other words, XO is arguing that if these ports are not dedicated and are not on the "serving wire center side" of the tandem, then their costs "should" be recovered through the tandem switching rate charged to IXCs. But since these are in fact "dedicated" ports on the "serving wire center side" of the tandem, the rates "should" be charged to XO.

In fact, the ICA contemplates that XO – not Verizon – would bill the IXCs for the rate that recovers the cost of the dedicated trunk ports. According to the FCC's 1997 *Access Charge Order*, the cost of dedicated tandem trunk ports "are currently recovered

through the TIC" – or "Transport Interconnection Charge." *Access Charge Order,* ¶ 167; *see also id.* ¶ 41 (definition of "TIC"). The XO/Verizon ICA – the text of which also dates back to 1997 – specifies the general rate categories that XO and Verizon, respectively, would bill to the IXCs. It is not Verizon (the "Tandem Party") but rather XO (the "End Office Party") that is responsible for billing the "Interconnection Charge" to the IXCs. (XO St. 1.0, Attachment D, XO/Verizon ICA, § 3.1.3.6.1).

CONCLUSION

For the forgoing reasons, the Commission should dismiss XO's complaint and should hold that XO is required to pay Verizon's tariffed dedicated tandem trunk port charge for the ports connecting its ATC Trunks to Verizon's access tandem switch.

Respectfully submitted,

Leigh A. Hyer (Atty ID No. 204714)
Suzan D. Paiva (Atty ID No. 53853)
Verizon
1717 Arch Street, 17W
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail:
Leigh.A.Hyer@verizon.com
Suzan.D.Paiva@verizon.com

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Counsel for Verizon Pennsylvania Inc.