

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

May 1, 2009

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

**Re: XO Communications Services, Inc. v. Verizon Pennsylvania Inc.**  
**Docket No. C-2008-2038195**

Dear Secretary McNulty:

Enclosed please find the Main Brief of XO Communications Services, Inc., which was electronically filed today. A copy has been served on all parties of record in accordance with the enclosed certificate of service.

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

Respectfully submitted,

STEVENS & LEE

  
Michael A. Gruin

Enclosures

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF XO COMMUNICATIONS SERVICES, INC.**

Michael A. Guin  
Stevens & Lee  
Attorney ID No. 78625  
17 N. 2nd St., 16th Floor  
Harrisburg, PA 17101  
Tel. (717) 255-7365  
Fax (610) 988-0852

Harry N. Malone  
Devine, Millimet & Branch, P.A.  
111 Amherst Street  
Manchester, NH 03101  
(Tel.): (603) 695-8532  
(Fax): (603) 669-8547

Dated: May 1, 2009

## Table of Contents

I.	INTRODUCTION .....	3
II.	STATEMENT OF THE CASE.....	5
A.	Background and Procedural History .....	5
B.	The Access Charge Regime .....	7
C.	Relevant Portions of the XO Interconnection Agreement with Verizon .....	10
III.	SUMMARY OF ARGUMENT .....	16
IV.	ARGUMENT.....	18
A.	Verizon is Seeking to Improperly Charge for Facilities Used in Jointly Provided Switched Access Service .....	18
B.	Verizon May Only Charge One Dedicated Port Charge; the Cost for the Second Tandem Port is Recovered Through the Tandem Switching Rate. ....	21
C.	Verizon Does Not Charge Independent LECs for MPB Trunk Ports, But Fails to Show Why its Charges to CLECs are not Discriminatory .....	23
D.	There is no Support for Verizon’s Claim that its Tariff 302 Justifies Charging the Port Charges.....	25
V.	PROPOSED FINDINGS OF FACT .....	31
VII.	PROPOSED ORDERING PARAGRAPHS .....	36
VIII.	CONCLUSION .....	37

## Table of Authorities

### Statutes

47 U.S.C. § 251 .....	4, 19, 36
66 Pa. Cons. Stat. § 1302 .....	35
66 Pa. Cons. Stat. § 1303 .....	26, 35
66 Pa. Cons. Stat. § 1304 .....	37

### Other Authorities

Verizon Tariff F.C.C. No. 1 .....	30
Verizon Tariff Pa. P.U.C. No. 302.....	passim

### Regulations

47 C.F.R. § 69.2 .....	31
47 C.F.R. § 69.2(rr).....	31
47 C.F.R. § 69.4(h) .....	18, 22, 31
47 C.F.R. § 69.5(b) .....	31

### F.C.C. Cases

<i>Access Charge Reform</i> , CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) .....	passim
<i>Access Charge Reform</i> , CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 (1996) .....	8, 9, 14, 15
<i>Petition of WorldCom, Inc.</i> , CC Docket No. 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 (2002).....	19, 20

### State Cases

<i>AT&amp;T Comm's of Md., Inc. Petition for Arbitration</i> , Md. PSC Case No. 8882, Order 79250 .....	19, 28
<i>Brockway Glass Co. v. Pa. Pub. Util. Comm'n.</i> , 63 Pa. Commw. 238, 437 A.2d 1067 (1981)...	26
<i>Complaint of Choice One Communications, et al.</i> , Ma. D.T.C. 08-3 (Apr. 9, 2009).....	20, 21, 23, 28
<i>Indiana Harbor Belt Railroad Co. v. The Budd Co.</i> , 441 NE 2d 1301, 1304 (Ill. App. 1982) .....	26
<i>Intrastate Access Charge Reform</i> , Pa. PUC Docket No. I-00960066, Recommended Decision (June 30, 1998).....	7
<i>Joint Petition of Nextlink Pennsylvania, Inc., et al.</i> , Pa. PUC Docket No. P-00991648; P-00991649, Opinion And Order (Sep. 30, 1999) .....	7

## I. INTRODUCTION

On April 18, 2008, XO Communications Services, Inc. ("XO") filed a Complaint against Verizon Pennsylvania Inc. ("Verizon") for unlawfully imposing dedicated tandem port charges on Meet Point Billing ("MPB") Trunks. These MPB trunks are established between Verizon and XO to enable XO and Verizon to jointly provide switched access service to third-party interexchange carriers (IXCs). The issue in this case is whether Verizon is entitled to bill XO a dedicated trunk port charge for these MPB trunks that connect XO's end office to Verizon's tandems. XO filed its complaint because Verizon's charges violate the Pennsylvania Public Utility Commission's (the "Commission") rules and regulations, Verizon's Tariff Pa. P.U.C. No. 302 ("Tariff 302") and the applicable interconnection agreement between XO and Verizon ("ICA" or the "XO ICA")<sup>1</sup>

As set forth in greater detail below, the charges are unlawful because the charges are being imposed on facilities XO and Verizon are using to jointly provide service to third party IXCs, thus, XO has neither subscribed or utilized the services itself for which Verizon is charging, nor is XO required to subscribe to or utilize these services in conjunction with switched access services that it provides jointly with Verizon. Such charges from Verizon lack any basis in the XO ICA or Verizon's tariffs or in industry practice with respect to the joint provisioning of access services. In fact, the XO ICA actually quite clearly prohibits the charges Verizon seeks to impose. The "dedicated tandem port charges" also violate clear FCC rules, including a specific FCC Order that denied Verizon's request to be permitted to assess charges from its access tariffs to CLECs. In addition, the Maryland Commission reached the same

---

<sup>1</sup> The XO interconnection agreement became effective on June 2, 2000. (XO's predecessor NEXTLINK Pennsylvania, Inc. adopted MCI Metro Access Transmission Services, Inc.'s Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., now Verizon.)

conclusion as the FCC when Verizon asked the Maryland Commission to permit Verizon to assess these charges.

Moreover, XO's position in this case has been fully validated (again) by a recent decision of the Massachusetts Department of Telecommunications and Cable ("DTC"). In a case involving the identical charges under nearly identical facts, the Massachusetts DTC found that Verizon was prohibited from imposing dedicated tandem port charges on XO and other CLECs. XO respectfully submits that the FCC, the Maryland Commission and the Massachusetts DTC reached the right conclusion regarding the applicability of this charge to CLECs. The same result should be reached in the present case.

In addition to being unlawful, the dedicated tandem port charges are improper for the following reasons: (1) in these circumstances, CLECs are not switched access customers of Verizon; (2) IXCs, not CLECs, cause and incur such costs, since they are the switched access customers and thus the parties benefiting from the access services being provided, (3) the Telecommunications Act of 1996 requires that Verizon as an incumbent local exchange carrier ("ILEC") provide § 251 interconnection to CLECs for the provision of exchange access services;<sup>2</sup> (4) industry guidelines regarding such charges require that the ILECs and the CLEC cooperate in provisioning the switched access services and that neither charges the other for any part of such service, and (5) the fact that such charges are not assessed by Verizon to any of the independent local exchange companies ("LECs").<sup>3</sup>

---

<sup>2</sup> Section 251(c)(2)(A) states that ILECs have the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access."

<sup>3</sup> It is important to note that there is another matter currently pending before the Commission regarding the lawfulness of Verizon's Dedicated Tandem Trunk Port charges, specifically, the

## II. STATEMENT OF THE CASE

### A. Background and Procedural History

This case involves the interconnection and network architecture with respect to the joint provisioning of exchange access services and the industry practice with respect to such, the access reform and cost recovery that the FCC implemented in its *Access Reform Order*,<sup>4</sup> the terms and conditions of the ICA, and the terms of Verizon's switched access tariff

The XO complaint was filed after Verizon invoiced multiple CLECs, including XO, for what Verizon calls "Access Toll Connecting Trunks." Specifically, in notices dated May 25, 2007 and August 23, 2007 ("Notices"), Verizon asserted that it had under-billed "intrastate access charges" on "switched access dedicated tandem trunk ports" associated with the MPB Trunks (which Verizon referred to in the Notices as "Access Toll Connecting Trunks") and would henceforth bill for these trunks on a current basis, as well as impose a one-time charge to collect underbilled charges for the prior two years.<sup>5</sup> Verizon stated in the Notices that Verizon had been charging CLECs intrastate access charges for dedicated tandem trunk port charges, but that Verizon had been "underbilling" these, because Verizon had been applying the Percent Local Usage factor to the port charges, thereby billing something less than 100% of the dedicated tandem trunk port charges on the Meet Point Billing trunks.<sup>6</sup> Verizon indicated that it now intended to impose the entire switched access dedicated tandem trunk port charge on the MPB Trunks.

---

case of *Choice One Communications of Pennsylvania, et al. v. Verizon Pennsylvania, Inc.* (PA PUC Docket Nos. C-2008-2029477 and C-2008-2029479).

<sup>4</sup> *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) ("*Access Reform Order*").

<sup>5</sup> XO Statement 1, Att. A.

<sup>6</sup> *Id.*

XO disputed the charges, noting that the dedicated tandem trunk port charge is a switched access service, not an interconnection service. It is a component of a dedicated tandem trunking arrangement *purchased by an IXC*, not by the CLEC that is jointly providing the switched access with another LEC.<sup>7</sup> The charges that Verizon had been assessing (and that it claims had been “underbilled”) for these switched access services are based on Verizon’s apparent conclusion that XO is a switched access services customer and has agreed to purchase these services from Verizon’s tariff, rather than a joint provider of switched access services under the MPB arrangements.

Verizon rendered its initial invoices for these services to XO in August 2007 and September 2007. During the month of September, Verizon also commenced back-billing XO for two years worth of these switched access charges and has billed XO for these charges every month since. At the time XO served its direct testimony in this proceeding, the monthly level of such charges was approaching \$60,000 per month.<sup>8</sup> XO complied with applicable procedures by making the necessary inquiries, appeals, and disputes and settlement meetings – all to no avail.<sup>9</sup>

XO initiated this proceeding by filing its Complaint against Verizon on April 18, 2008. Verizon filed its Answer and New Matter on May 19, 2008. XO filed its Answer to New Matter on June 16, 2008.

A Prehearing Conference was held before Administrative Law Judge Cocheres on September 4, 2008. A Prehearing Order was issued on October 10, 2008 setting forth the litigation and briefing schedule. Both parties exchanged written discovery.

---

<sup>7</sup> *Id.* at 4:17-18.

<sup>8</sup> XO Statement 1 Att. C.

<sup>9</sup> *Id.* at 5:13-6:18.

On October 17, 2008, XO served the Direct Testimony of Gary Case, Director of Carrier Management. On December 3, 2008, Verizon served the Rebuttal Testimony of Peter D'Amico. On February 10, 2009, XO served the Rebuttal Testimony of Gary Case. An in-person Evidentiary Hearing was held on March 4, 2009 before ALJ Cocheres. Due to the similarities in the issues presented, the parties and ALJ Cocheres agreed that the hearing transcript from the *Choice One Communications of Pennsylvania, et al. v. Verizon Pennsylvania, Inc.* case (Pa. PUC Docket Nos. C-2008-2029477 and C-2008-2029479) would be incorporated into the evidentiary record in this proceeding.

### **B. The Access Charge Regime**

The rate structure for Verizon's tariffed switched access services, in Pennsylvania, conforms to the scheme established by the FCC in the *Access Reform Order*.<sup>10</sup> Thus, an understanding of the FCC's access charge regime is important to understanding why Verizon's dedicated tandem trunk port charges are improper.

Although access charges date back to the 1980s, the current pricing regime originated with the FCC's 1997 *Access Reform Order*, which was directed at bringing LEC switched access service "rate structure[s] ... into line with the cost causation principles" reflected in the Telecommunications Act of 1996.<sup>11</sup> The FCC required that non-traffic sensitive ("NTS") costs dedicated to single IXC customers should be recovered through flat fees on those customers. On

---

<sup>10</sup> Verizon's charges "are consistent with the rate structure principles underlying the Access Charge Order [a/k/a *Access Reform Order*]," Verizon Statement No. 1.0, 17:7-8. See also Generic Investigation of Intrastate Access Charge Reform, Pa. PUC Docket No. I-00960066, Recommended Decision (June 30, 1998) (ordering that "[e]ach ILEC shall use the FCC's access rate elements adopted in its May 16, 1997, Order [*Access Reform Order*], except for the Presubscribed Interexchange Carrier Charge ("PICC")) (adopted in Joint Petition of Nextlink Pennsylvania, Inc., et al., Pa. PUC Docket No. P-00991648; P-00991649, Opinion And Order (Sep. 30, 1999).

<sup>11</sup> *Access Reform Order* para. 35.

the other hand, the FCC determined that the cost of facilities used to serve multiple IXCs -- "common" or "shared" facilities -- should be recovered through usage-based rates. This rate structure ensures that those who make the most use of the shared facilities pay an appropriate portion of the costs of those facilities.<sup>12</sup> Applying these principles, the FCC identified the following network elements relevant to this case, the costs of which LECs were authorized to recover from IXCs through access charges:

- "Entrance facilities," which are dedicated circuits that connect an access customer's (i.e. IXC's) Point of Presence ("POP") with the LEC's serving wire center. (Identified as Element B in the following diagram);<sup>13</sup>
- Dedicated transport facilities, which connect the IXC's traffic from the LEC serving wire center to the access tandem. (Identified as the link between Element C and Element D in the following diagram);<sup>14</sup> and
- Transport facilities that are shared among many IXCs, through which traffic is routed between the access tandem and the end office switch. (Identified as Element E in the following diagram).<sup>15</sup>

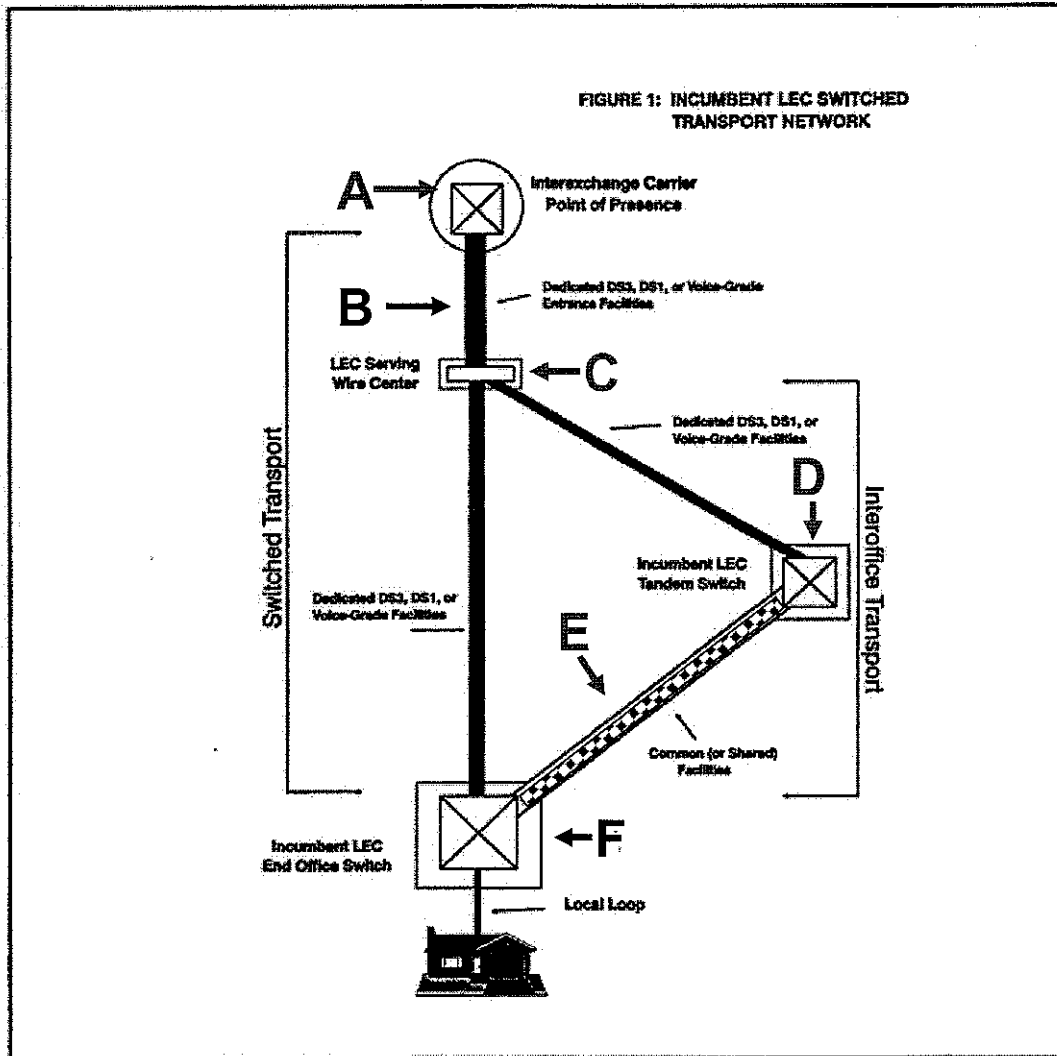
---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* para. 152. The diagram is from *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354, 21368 para. 24 (1996) ("*Access Reform NPRM*"). The notations and enhancements to Element E are added, and have been admitted as XO Exhibit 3.

<sup>14</sup> *Id.* para. 158

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



**Figure 1 – Access Reform NPRM Diagram<sup>16</sup>**

The FCC prescribed the rate structure for access charges accordingly. IXCs pay *flat* rates for entrance facilities and dedicated transport from the serving wire center to the tandem and *per-minute* rates for shared facilities, *i.e.*, common transport from the tandem to the end office and then switching at the end office.

In addition to the dedicated transport charge from the serving wire center to the tandem, the FCC also authorized ILECs to establish “a flat-rated charge to recover the costs of dedicated

<sup>16</sup> *Access Reform NPRM* para. 24.

trunk ports on the serving wire center side of the tandem.”<sup>17</sup> Referring to Figure 1, above, this trunk port would be at the tandem switch (Element D) at the point where the dedicated transport link (Element C-D) connects to it. This is the charge at issue in this proceeding. Verizon admits that it imposes this charge on IXCs pursuant to its tariff for the trunks connecting each IXC's POP to a Verizon access tandem. In addition to billing IXCs this dedicated tandem trunk port charge, however, Verizon also seeks to impose a second "dedicated" tandem trunk port charge on CLECs for the MPB trunks (referred to by Verizon as access toll connecting (“ATC”) trunks) that connect the other “side” of Verizon’s access tandem to CLEC end offices.

**C. Relevant Portions of the XO Interconnection Agreement with Verizon**

The terms of XO’s ICA with Verizon are also pertinent to this proceeding. XO’s ICA provides that the parties will jointly provide switched access services to IXCs in accordance with the Multiple Exchange Carrier Access Billing ("MECAB") Guidelines and the Multiple Exchange Carriers Ordering and Design (“MECOD”) Guidelines adopted by the Ordering and Billing Forum ("OBF") for jointly provided switched access service.<sup>18</sup> The relevant portions of the ICA are contained in XO Exhibit 1, Attachment D, Section VIII:

3.1.3.1 . . . . [XO]<sup>19</sup> and [Verizon] will utilize commercially reasonable efforts, individually and collectively, to establish meet-point billing ("MPB") arrangements" to provide a Common Transport option to switched Access Services subscribers via an access Tandem Switch in accordance with the Meet-Point Billing guidelines adopted by and contained in the OBF's MECAB and MECOD documents, except as modified herein and the Tandem Party’s Tariffs ...

3.1.3.2 In each LATA, the Parties shall establish MPB arrangements between the

---

<sup>17</sup> *Access Reform Order* para. 127 ("the costs of a dedicated trunk port (including the trunk card and DS1/voice-grade multiplexers, if needed) should be recovered on a flat-rated basis because these costs are also NTS in nature. These costs should be recovered from the carrier purchasing the dedicated trunk terminated by that port."). *See also id.* para. 167.

<sup>18</sup> *See e.g.*, XO ICA § B; Att. VIII § 3.1.3.

<sup>19</sup> As noted above, XO’s predecessor adopted the MCI Metro ICA, thus in the XO ICA, MCI is effectively replaced by XO. Similarly, BA is Bell Atlantic. Bell Atlantic is now Verizon.

applicable rating point/the Tandem Party local serving Wire Center combinations.

3.1.3.4 The Parties will use commercially reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access Tariffs, and/or provisions within the National Exchange Carrier Association ("NECA") Tariff No.4, or any successor Tariff, to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.

3.1.3.5 Each Party will implement the "multiple bill/single tariff" or "multiple bill/multiple tariff" option, as appropriate, in order to bill any IXC for the portion of the jointly provided Access Service provided by that Party. For all traffic carried over MPB arrangements using Network Elements or interconnection services provided under this Agreement, the Parties shall bill each other all applicable rates specified in this Agreement.

3.1.3.6 ... The actual rate values for each Party's affected Access Service rate element shall be the rates contained in that Party's own effective federal and state access Tariffs, or other document that contains the terms under which that Party's Access Services are offered. The MPB billing percentages for each rating point/Tandem Party local serving Wire Center Combination shall be calculated in accordance with the formula set forth in subsection 3.1.3.15 below.

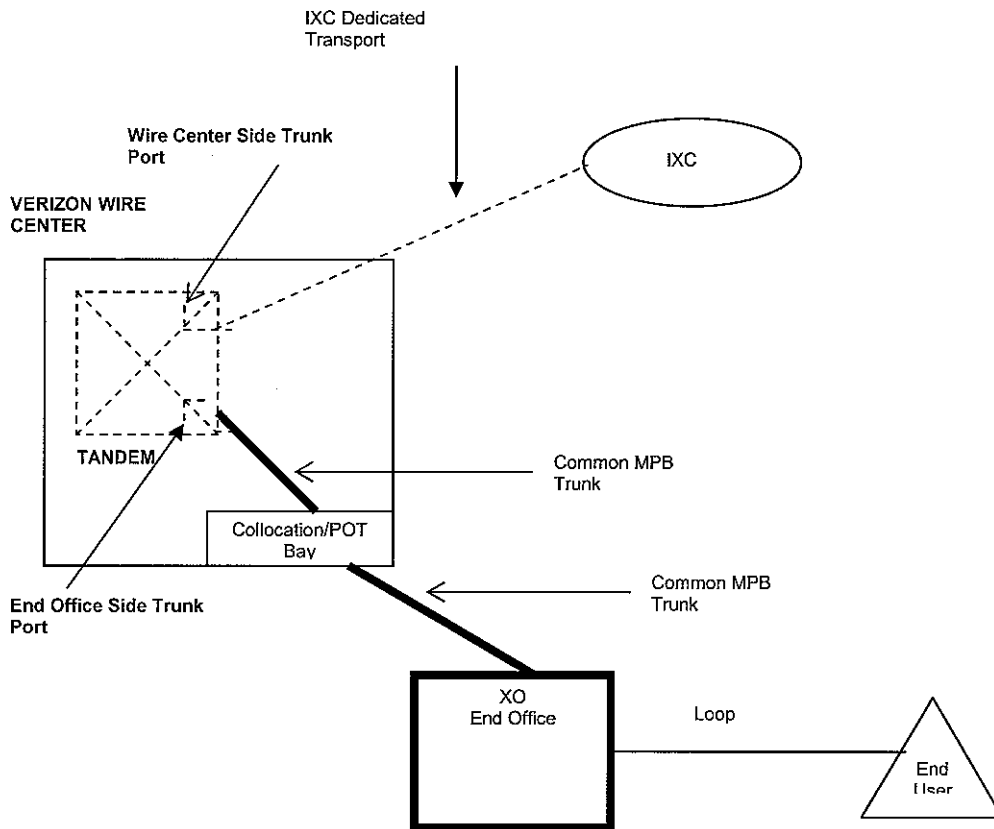
\*\*\*\*\*

3.1.3.12 *Neither Party will charge the other for the services rendered, or for information provided pursuant to this Section 3, except those MPB and other charge set forth herein. [emphasis supplied]*

Mr. Case's Direct Testimony displays the network structure of this arrangement:<sup>20</sup>

---

<sup>20</sup> XO Statement 1 at 10:6-10.



**Figure 2 – Illustration from XO Statement 1**

When an IXC desires to terminate a long-distance call to an XO local exchange customer, that call is routed through the Verizon tandem for routing to and from XO's end office. In this respect, XO's end office is like a Verizon end office that subtends a Verizon tandem. Further, in both cases, the end user that places and receives calls from the IXC under these arrangements receives its local dial tone from a local loop provided by the LEC – Verizon or XO. Thus, the trunks between the Verizon tandem and the end office of either XO or Verizon that are used to provide switched access services to an IXC so that long distance calls can be delivered to local exchange customers. Accordingly, the MPB Trunks that Verizon and XO provision in connection with their Section 251 local interconnection arrangements, enable XO and Verizon to jointly provide switched access to the IXC. Under these MPB arrangements, the companies bill the IXC their respective portion of the jointly provided access service pursuant to the MECAB

Guidelines adopted by the OBF.<sup>21</sup> This arrangement is reflected in the following diagrams, which are taken from the Alliance of Telecommunications Industry Standards ("ATIS") MECAB Guidelines.

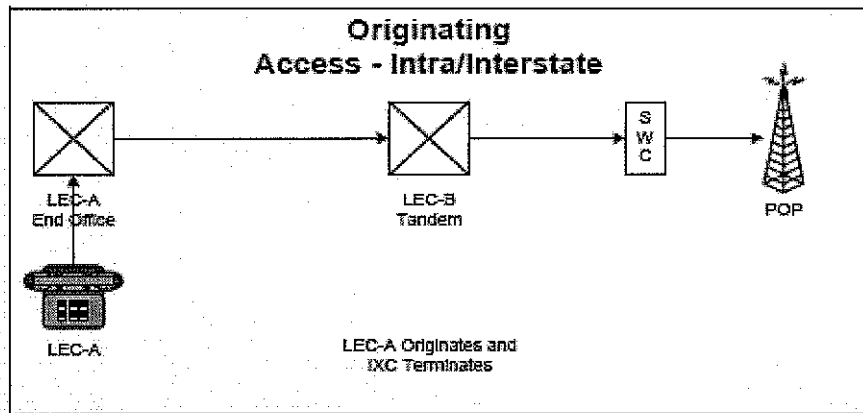


Figure 6-7 - Originating access from a LEC to an IXC through another LEC

Figure 3 – MECAB Diagram #1

<sup>21</sup> XO Statement 1 11:4-11.

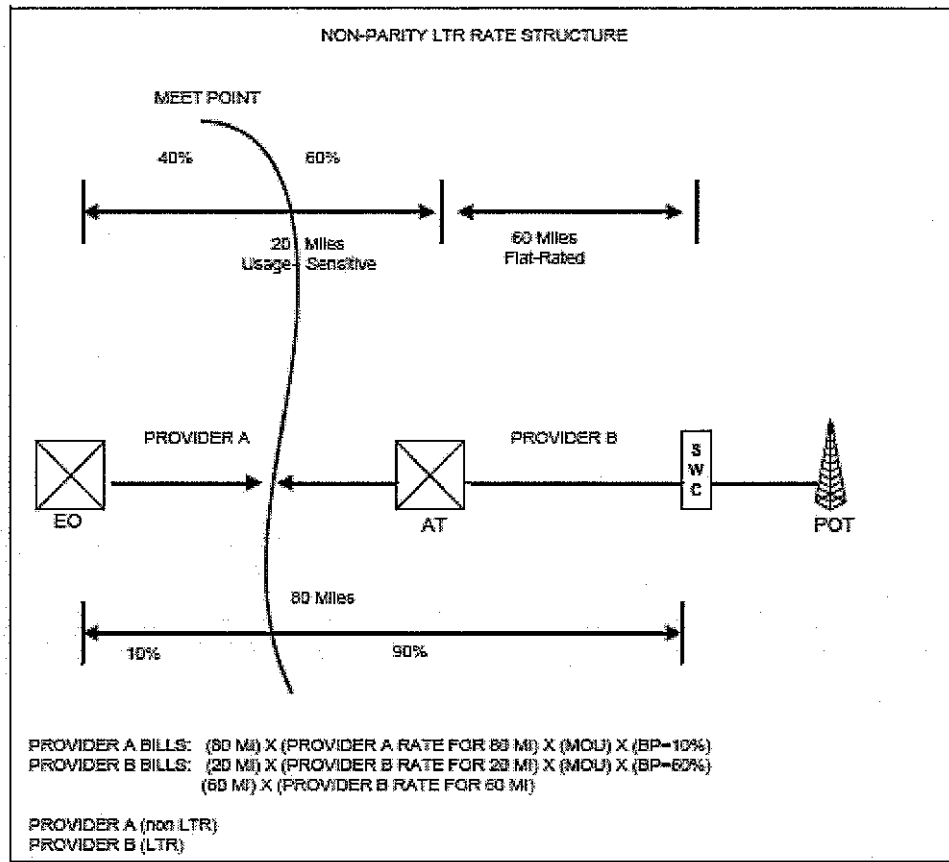
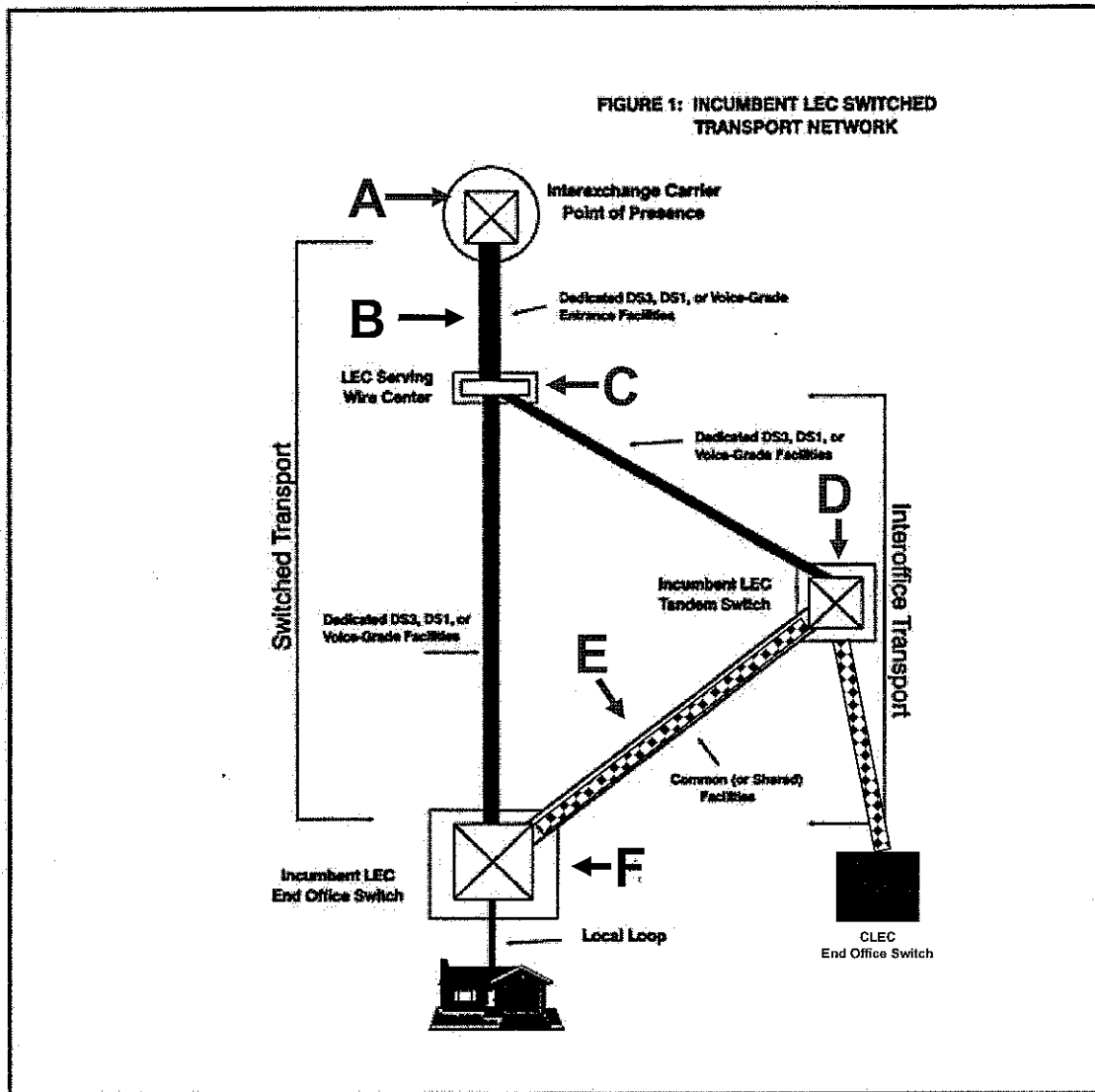


Figure 3-9 - Transport Mileage Charge Calculations for Providers with Non-Parity Rate Structures (with the meet-point between the EO and AT)

### Figure 4 – MECAB Diagram #2

Referring back to the FCC's diagram from the *Access Reform NPRM*, this arrangement is depicted in the following modification to that diagram.<sup>22</sup>

<sup>22</sup> XO Exh. 3.



**Figure 5 – Access Reform NPRM Diagram; XO Exh. 3.**

Verizon provides and bills the IXC with an entrance facility and/or dedicated transport (Element C-D), tandem switching (Element D) and, in some arrangements, some portion of the tandem transport element depending on the meet point arrangements. XO, for its part, provides and bills

the IXC for the remaining portion of the common transport, via its MPB Trunks<sup>23</sup> (Element D to the CLEC End Office Switch), and end office switching.

### III. SUMMARY OF ARGUMENT

Verizon has charged XO for a switched access rate element known as a “dedicated tandem trunk port” that XO neither uses nor ordered. XO is not purchasing switched access service from Verizon when MPB or so-called ATC trunks are established with Verizon. Rather, XO is establishing an interconnection facility pursuant to Section 251(c)(2) of the Communications Act of 1934, 47 U.S.C. § 251(c)(2), and Verizon has no authority to impose switched access charges on interconnection facilities. The facilities at issue are used by XO and Verizon to jointly provide switched access services to third party IXCs. As part of this joint provisioning, dedicated tandem trunk ports are in place exclusively to provide service to these third party IXCs. Accepted industry practice is for LECs to jointly provision MPB trunks for IXCs, with an agreement that this service is not being provided to or charged to either LEC. The dedicated tandem trunk port associated with the MPB trunks, therefore, is not the financial responsibility of either LEC, but is the responsibility of the third party IXC customer. As such, Verizon’s charges to CLECs are inconsistent with the industry practices. Moreover, Verizon’s treatment of independent LECs *is consistent* with industry practices, since Verizon does not assess independent LECs a dedicated tandem trunk port charge.

Contrary to Verizon’s claim, the ICA between Verizon and XO does not require XO to pay switched access charges on these interconnection facilities. Verizon and XO agreed in the

---

<sup>23</sup> In its Notices, Verizon refers to the MPB trunks as ATC trunks. However, this label is somewhat misleading, as it implies that these trunks are an access service. They are more appropriately labeled as MPB trunks, which are § 251 Local Interconnection Trunks that XO and Verizon provision and use to jointly provide switched access services to IXCs. The ICA does not use the term “ATC.” Rather, the ICA correctly refers to these trunks as MPB trunks, as does XO herein.

ICA to jointly provide switched access services to IXCs and to charge the IXC for the services that XO and Verizon provide. The ICA does not even refer to or mention an "Access Toll Connecting" trunks or "Access Toll Connecting" ports and does not permit Verizon to charge XO for "Access Toll Connecting" trunk ports. Consequently, it is not appropriate for Verizon to charge XO for these ports, either as a switched access service or on any other basis.

The trunks in question are local interconnection MPB trunks that are governed by the terms and conditions of the ICA in effect between XO and Verizon and are not governed by Verizon's switched access tariff. XO is not purchasing switched access services, nor is XO functioning as an IXC. The IXC traffic on these trunks is not XO's. Therefore, for the traffic on these trunks, XO is not purchasing or being provided any switched access services by Verizon. Instead, XO is acting as a LEC that is providing the switched access service.

In addition, the charge that Verizon is assessing is for a dedicated tandem trunk port that only applies to dedicated transport facilities, which are trunks used to carry only *one* carrier's traffic. Thus, that single carrier pays for both the dedicated transport and the dedicated tandem trunk port. The facilities at issue in this case are common transport facilities that are being used to carry multiple IXCs traffic, not including XO's. When common transport facilities are used a common port charge that is usage sensitive applies. A dedicated tandem trunk port charge is not applicable to a common transport trunk.

Moreover, even if the Verizon tariff was applicable, which it is not, and Verizon were allowed to apply monthly switched access charges to XO's local interconnection trunks, Verizon does not have a tariffed service element for tandem trunk port on the end office side of the access tandem. In fact, Verizon is actually prohibited from having such a rate element pursuant to FCC rules.<sup>24</sup>

---

<sup>24</sup> *Access Reform Order* paras. 167-168. See also 47 C.F.R. § 69.4(h) (listing permissible rate elements, which do not include a local-side trunk port).

Finally, Verizon is already receiving revenue for the rate element that it is attempting to recoup from XO through its charges to IXC, and thus would be double recovering if it were allowed to charge both the IXC and XO.

#### IV. ARGUMENT

##### A. Verizon is Seeking to Improperly Charge for Facilities Used in Jointly Provided Switched Access Service

This dispute should be rather simply resolved by reference to XO's ICA with Verizon. The ICA has provisions governing MPB arrangements for jointly provided switched access to an IXC.<sup>25</sup> It requires that MPB guidelines adopted by and contained in the OBF's MECAB and MECOD documents govern such matters. The relevant provisions of the ICA are set forth above, but in sum: (a) establish an obligation on each party to jointly provide switched access services to IXCs, (b) follow the MECAB/MECOD guidelines in such regard, (c) specify which party will charge the IXC for which parts of the service, and (d) establish that neither party (XO or Verizon) will charge the other for any of the MPB services.<sup>26</sup> This contractual provision should end the inquiry. Clearly, the XO-Verizon ICA does not authorize Verizon to impose these charges on XO.

Verizon has asserted that it is entitled to impose switched access charges on the facilities established between Verizon and "because XO *uses* these trunks solely *to provide* exchange access services."<sup>27</sup> However, the issue is the establishment of interconnection facilities for purposes of providing telephone exchange and exchange access service that too is governed by

---

<sup>25</sup> "Meet-Point Billing (MPB) means an arrangement whereby two or more LECs jointly provide to a third party the transport element of a switched access Local Exchange Service to one of the LECs' End Office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective Exchange Access tariffs." XO ICA Att. III § II.GG.

<sup>26</sup> XO Statement 1, Attachment D.

<sup>27</sup> Verizon St. 1.0, 2:20-3:1 (emphasis supplied).

the terms of the ICA. Under Section 251(c)(2) of the Act, ILECs have an obligation to provide "interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service *and exchange access*" at cost-based rates in accordance with Section 252.<sup>28</sup> The provision of facilities to CLECs for use as an interconnection service is not an access service; ILECs cannot unilaterally apply access charges to interconnection arrangements without violating this provision of the Act.

The FCC has determined that use of MPB trunks, as being discussed here, does not equate to a CLEC taking exchange access service from Verizon.<sup>29</sup> This is a fundamental flaw in Verizon's position, which cannot be overcome merely by Verizon saying it is so. The switched access services are provided to IXCs, not to XO. In rejecting Verizon's position, the FCC held that:

the [ATC Trunking] services in question constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs. Therefore, we agree with WorldCom that, when the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom. We further agree with WorldCom that it has the right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom's local exchange network. Therefore, Verizon may not require WorldCom to purchase trunks out of Verizon's access tariffs in order for WorldCom to provide such exchange access.<sup>30</sup>

---

<sup>28</sup> 47 U.S.C. § 251(c)(2) (emphasis supplied).

<sup>29</sup> *Petition of WorldCom, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 (2002) ("*WorldCom Order*"). It should be noted that the Maryland Public Service Commission later concurred, and added that the interconnection trunks should be provided under Section 251 at TELRIC rates. "When two local exchange carriers jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant interexchange carrier, not upon the other local exchange carrier. . . . By the same token, the service provided by Verizon to AT&T operating as a local exchange carrier, is interconnection for the purpose of providing exchange access, and interconnection must be priced at TELRIC rates, pursuant to Sections 251(c)(2)(D) and 252(d)." *AT&T Comm's of Md., Inc. Petition for Arbitration*, Md. PSC Case No. 8882, Order 79250 at 20-23. ("*Maryland Order*")

<sup>30</sup> *WorldCom Order* para. 177.

Notably, this was also the holding in the one decision that has been rendered so far expressly on the subject of trunk ports. In a proceeding grounded on facts and issues that are identical to those in this proceeding, the Massachusetts DTC found that “[i]n sum, in the context of this dispute, the Complaining Parties are not purchasing switched access from Verizon; instead, they are obtaining interconnection from Verizon in order to jointly provide switched access service to IXCs.”<sup>31</sup> The fact that XO is using a particular facility to provide switched access has no bearing on whether it is purchasing switched access from Verizon.

Further, Verizon’s characterization of the facility as being for the CLEC’s dedicated use is seriously misleading. Although the facility is in the path of the traffic from the IXC to the CLEC’s local exchange customers, it is these many third-party IXCs whose traffic is being carried there. More significantly, it is the IXCs who benefit from the transaction: the IXCs are thereby able to reach their customers and the IXCs are the only carriers to be paid by end users for that call.<sup>32</sup> For the purpose of long distance service that is routed through a Verizon access tandem, end users are neither the CLEC’s nor Verizon’s customers; they are the *IXC’s* customers. As the Massachusetts DTC stated, “[h]ere, the IXCs are the customers under [Verizon’s tariff] using the circuits and facilities to transport their exchange access traffic. Since the exchange access traffic of multiple IXCs is transported over the ATC trunks and associated ports, these facilities are shared, not dedicated, for purposes of [Verizon’s tariff].”<sup>33</sup> The sole retail customer-provider relationship is between the IXC and the end-user. The CLECs are required, by law, to facilitate this relationship and do so, with Verizon’s cooperation, by selling switched access service to the IXC. Were it not for the IXC’s desire to access the network on

---

<sup>31</sup> Complaint of Choice One Communications, *et al.*, Ma. D.T.C. 08-3, Final Order at 31 (Apr. 9, 2009) (“*Massachusetts Order*”) (quoting liberally from the *WorldCom Order*).

<sup>32</sup> XO Statement 2, 2:21-23

<sup>33</sup> *Massachusetts Order* at 38-39.

behalf of its end user customer, the access tandem would not be required, nor any tandem trunk ports and no switched access service would be provided. Thus, the IXC is the ultimate cost-causer, beneficiary and payor in this scenario.

**B. Verizon May Only Charge One Dedicated Port Charge; the Cost for the Second Tandem Port is Recovered Through the Tandem Switching Rate.**

In the *Access Reform Order*, the FCC adopted a “cost-based structure” for tandem-switched transport service, which means the FCC put in place a rate structure to recover Verizon’s costs of providing tandem-switched transport services. Under the FCC’s cost-based tandem-switched transport rate structure, which in Pennsylvania applies to both Verizon’s interstate and intrastate switched access services,<sup>34</sup> Verizon is not permitted to charge an IXC two port charges even though two ports are being used to carry the traffic from the IXC point of presence (“POP”) to Verizon’s access tandem and then to Verizon’s end office. Only one dedicated tandem port charge is permitted. That dedicated port charge is on the serving wire center side, which is the side closest to the IXC’s point of presence, as shown in Figure 1 above. The FCC allocated the costs and the recovery of the cost for the second “outgoing” port to the per minute tandem switching charge. This means, per the FCC’s Order, that Verizon’s costs for the second port – the “outgoing” port from the access tandem to the Verizon end office – are being recovered through the other tandem-switched transport rates that the FCC adopted.<sup>35</sup>

Verizon admits that when the traffic goes through its access tandem to a Verizon end office, Verizon does not charge for the second access tandem port, *i.e.* the port on the Verizon end office side of the access tandem. This admission was made by Verizon witness D’Amico during the evidentiary hearing:

---

<sup>34</sup> See *supra*, note 10.

<sup>35</sup> *Access Reform Order* paras. 167-168. See also 47 C.F.R. § 69.4(h) (listing permissible rate elements, which do not include a local-side trunk port).

Q. . . . when the IXC is accessing a Verizon end user, for instance, when Verizon is applying the switch access from end to end . . . it does not bill the IXC for a dedicated tandem port on the end office side of the tandem, the one that the shared transport connects to; correct?

A. Correct. It only bills the dedicated trunk port that the IXC orders and uses, I believe, for access by the exchange carriers.<sup>36</sup>

Furthermore, Mr. D'Amico admitted that any costs that Verizon incurs for providing that second port are allocated to its tandem switching charge, which is exactly the rate structure that the FCC adopted in its *Access Charge Order*. There is no separate charge for a second port used in switching interexchange traffic because, as Mr. D'Amico admitted, the tandem switching charge recoups both the switching costs and the costs of the second port between the tandem and the end office:

A. For interexchange traffic originating from a Verizon end user to an IXC or terminating from an IXC to a Verizon end user, the allocated cost of the shared trunk port on the Verizon end office side of the switch is part of the switched access tandem switching rate assessed to the IXC.<sup>37</sup>

The second port costs are recovered in the tandem switching charges that Verizon assesses IXCs. The fact that the traffic at issue in this case is being transmitted to a CLEC end office does not change this fact – the tandem switching charges that Verizon assesses the IXC recovers the costs of the second port and is the same regardless of whether the end user belongs to Verizon or a CLEC.<sup>38</sup> Thus, Verizon should not be charging CLECs a dedicated access tandem port charge for the port between the Verizon access tandem and the CLEC end office. Otherwise, it is *double recovering* for the end office port; once by charging the IXC the tandem switching charge, and again from CLECs through the dedicated port charges on the end office side of the switch. As the Massachusetts DTC also explained, “Verizon’s arguments conflict

---

<sup>36</sup> Tr. 65:22-66:7.

<sup>37</sup> Tr. 82:21-83:1.

<sup>38</sup> Tr. 85:8-22.

with the FCC's view of network architecture and cost recovery in the provision of switched access service to IXCs set forth in its Access Reform Order.<sup>39</sup> The Massachusetts DTC also went on to state:

There is no legitimate reason why the trunking facility between Verizon's tandem and a Verizon end office should be viewed as IXC shared or common transport in the case of Verizon alone providing switched access service, as the FCC states (and as Verizon effectively concedes), but not in the case of the Complaining Parties jointly providing switched access service with Verizon. Therefore, Verizon's assertion that these facilities are 'dedicated' merely because the switched access trunk groups or circuits are provisioned at the request of a single complaining party or CLEC is not persuasive and is also inconsistent with FCC precedent.<sup>40</sup>

**C. Verizon Does Not Charge Independent LECs for MPB Trunk Ports, But Fails to Show Why its Charges to CLECs Are Not Discriminatory**

The record is clear that Verizon's network arrangements with respect to handling of IXC traffic are essentially the same for independent LECs as they are for CLECs. Nonetheless, Verizon does not impose tandem trunk port charges upon the independent LECs, even while it does upon CLECs.<sup>41</sup> This is obviously discriminatory treatment that Verizon has failed to justify. Verizon's differential and discriminatory treatment should not be permitted.

IXC traffic must traverse the same network components whether the end-user customers are on a CLEC network or an independent LEC network. The traffic in both cases originates from the IXC and goes, via IXC dedicated transport to the Verizon wire center, through the wire center side dedicated trunk port to a Verizon tandem switch. Then, the traffic in *both* cases travels through an end office side trunk port over a common meet point billing trunk to the end office of the independent LEC or of the CLEC, as the case may be.<sup>42</sup> The only difference

---

<sup>39</sup> *Massachusetts Order* at 35.

<sup>40</sup> *Id.* at 39.

<sup>41</sup> Tr. 73:21.

<sup>42</sup> XO Exh. 3.

between the situation for the CLEC and independent LEC is the specific location of the meet point between Verizon and the other entity. In the case of the independent LEC, it is usually a mid-span meet somewhere between the Verizon tandem switch and the end office switch. In the case of the CLEC it is at a collocation/POT Bay within the Verizon wire center. In both cases, a tandem port is involved. The independent LECs' trunks (like the CLECs') connect to Verizon's tandem through a tandem switch port. Indeed, Verizon's witness testified that "[w]ithout the port, the trunks could not connect to the tandem and therefore would be useless."<sup>43</sup>

Consequently, the independent LECs' trunks must also be connected to the tandem by a port. However, Verizon has admitted that it does not charge the independent LEC for the tandem port.<sup>44</sup> Since Verizon claims the charge is a tariffed charge, Verizon should be applying its tariff uniformly. The fact that Verizon is assessing tariffed access charges on CLECs while not assessing the independent LECs is either an admission by Verizon that the access charges do not apply to LECs that are jointly provisioning switched access services to third party IXCs, or constitutes discrimination by Verizon in applying the terms and conditions of Verizon's access tariffs.<sup>45</sup> Either way, the charge cannot be allowed.

The impropriety and inconsistency of the Verizon position is further shown by an analysis of the XO ICA. The ICA provides that if XO were to use a mid-span meet (like the independent LECs), the only change in the MPB arrangement would be to the switched access billing, specifically, the relative percentage of the common transport rate element that XO and Verizon would charge the IXCs. This percentage would change to reflect the portion of the mid-span meet trunk owned by each. This change would be implemented through the "billing

---

<sup>43</sup> Verizon Statement 1, 4:19-20.

<sup>44</sup> Tr. 73:21.

<sup>45</sup> XO Statement 2, 21:16-21:22.

percentages,” as provided for in the ICA, that each entity would use in calculating its charges to the IXC.<sup>46</sup>

Verizon has sought to distinguish the situations of the independent LECs and CLECs by reference to the independent LECs’ agreements with Verizon to no avail. The agreements between the independent LECs and Verizon do not change the fact that the circumstance of the independents is the same as the CLECs. Where Verizon does not impose such charges on the independents, it should not be allowed to assess such charges on CLECs.

**D. There Is No Support for Verizon’s Claim that Its Tariff 302 Justifies Charging the Port Charges.**

Verizon asserts that the port charges that are the focus of this proceeding are required by its Tariff 302.<sup>47</sup> However, the law in Pennsylvania is clear: a common carrier must have tariffs on file with the Commission showing all their rates and charges and cannot charge anything that is not specified in the tariff.<sup>48</sup> Furthermore, the tariff must be interpreted in a manner that ambiguities are resolved against the entity drafting the tariff and that allows charges to be imposed on customers only where it is very clear that the charge is proper and applicable. This doctrine was ably explained by the Supreme Court of Illinois when it held that:

Where an ambiguous tariff is drafted by the carrier and its construction is in doubt, the tariff should be construed in favor of the shipper since the carrier is presumed to have used language necessary to protect its interest. Further, railroads which drafted tariffs and acquiesced in the shipper’s interpretation over a long period of time are deemed to have given the tariff the same interpretation as the shipper.<sup>49</sup>

---

<sup>46</sup> XO Statement 1, 8:23–30.

<sup>47</sup> Verizon Statement 1, 18:11-12.

<sup>48</sup> 66 Pa. Cons. Stat. § 1303. *See also* Brockway Glass Co. v. Pa. Pub. Util. Comm’n., 63 Pa. Commw. 238, 437 A.2d 1067 (1981) (Finding that there can be no lawful rate except the last tariff published as provided by law, and a public utility may not charge any rate for services other than that lawfully tariffed.)

<sup>49</sup> Indiana Harbor Belt Railroad Co. v. The Budd Co., 441 NE 2d 1301, 1304 (Ill. App. 1982). Although this decision is not by a Pennsylvania court, the concept is a bedrock of administrative

Indeed, the language of the tariff is consistent with the applicable framework as established by the FCC and discussed at length by XO in its testimony. For these reasons, it is clear that the tariff cannot apply and that the charges Verizon has imposed for the end office side ports are unsupported and improper.

To begin with, Verizon's tariff does not support a charge for ATC trunks for the simple reason that it contains no references to them. Verizon claims it is charging XO for ATC trunks and the associated ports that connect these trunks to Verizon's access tandem and that XO somehow ordered these facilities. However, Verizon's Tariff 302 does not contain any reference to ATC trunks or any reference to ATC trunk ports.

Verizon tries to make light of this discrepancy, but it is important. The tariff must be interpreted in a manner that ambiguities are resolved against the entity drafting the tariff and that allows charges to be imposed on customers only where it is very clear that the charge is proper and applicable. Once again, this construction makes sense because there should not be charges on facilities that are being jointly provisioned by Verizon and the CLEC to allow IXCs to connect to their customers. The tariff is consistent with that clear rule.

Second, Verizon's dedicated tandem trunk port charges appear only in the "Switched Access" sections of its tariffs. However, there is no way that MPB trunks in and of themselves could be construed as being a switched access service for which XO is the customer.

Verizon Pennsylvania's Tariff No. 302, section 6.1, describes "Switched Access" as follows:

---

law and is quite generally applied. This case has interesting parallels to the case at hand. There the carrier had provided services to the customer for several years and then decided to raise its rates, stating it had misapplied its own tariff in the past. The customer, who ultimately won, contended that the carrier was applying an interpretation of its tariff at odds with the actual language of the tariff.

[s]ervice which is available to customers for their use in furnishing their services *to end users*, provides a two-point electrical communications path between a customer's premises and *an end user's end office* . . . .<sup>50</sup>

This tariff language certainly describes the service being provided by XO and Verizon, jointly, to their access customers, the IXC's. The switched access service provides the IXC *customer* a communications path between the IXC's premises, i.e. point of presence, and the *end user's* end office. In this case, the portion of the communications path between the end office and the Verizon access tandem is provided to the IXC by XO, and the portion between the Verizon access tandem and the IXC's premises is provided by Verizon, consistent with the MPB provisions of their ICA.

By contrast, the MPB trunk does not provide a communications path between XO's premises (its local switching office) and any end office serving any Verizon end user. Further, it does not provide Verizon end users the ability to originate calls on XO's network, or provide XO the ability to terminate calls to Verizon end users. Providing access to the end users served by a local switch is the very essence of switched access service, and it is clear that Verizon is not providing XO with that kind of access in this case. This is the conclusion that the DTC came to, stating that "because the ATC trunks do not provide the Complaining Parties with access to end users or enable the Complaining Parties to originate or terminate calls to and from end users, the ATC trunks do not qualify as 'switched access service' as defined in [the tariff]."<sup>51</sup> As it further explained, "[a]lthough the Complaining Parties have submitted provisioning requests for trunk groups or traffic circuits for the transmission of switched access traffic for IXC's, in the context of this dispute, they are not IXC's, end users, cable TV companies, or other entities subscribing

---

<sup>50</sup> Verizon Tariff Pa. P.U.C. No. 302, Ninth Revised Sheet 152 (emphasis supplied).

<sup>51</sup> *Massachusetts Order* at 29.

to, using, or receiving the switched access service; rather, they are providing switched access service to IXCs.”<sup>52</sup>

The weakness of Verizon's argument is further demonstrated by taking things yet one step further. Even *if* Verizon's tariff applied, and even *if* the switched access provisions of that tariff applied, Verizon would still be violating the terms of the tariffs by seeking to impose dedicated tandem trunk port charges with respect to these facilities. By the tariffs' own terms, the dedicated tandem port element only applies to every activated direct trunked transport trunk which terminates “*on the serving wire center side of the access tandem.*”<sup>53</sup> However, as repeatedly stated throughout this proceeding, the port charge at issue here, is for the port that terminates a trunk connecting the CLEC to Verizon on the end office side of the access tandem.

Verizon tries to evade this issue by creatively reimagining the network, the FCC's rules and its own tariffs, setting aside nearly 25 years of access charge precedent. Verizon erroneously claims that there is a serving wire center somewhere in the path between its tandem and the end office.<sup>54</sup> However, this conflicts with the *Access Reform Order*, industry guidelines, and Verizon's tariffs.

Verizon's contention that there are two serving wire centers - one on each “side” of the access tandem - disregards the FCC's network topology, in which there is only one “serving wire center” between an end user and an IXC's POP, as well the FCC's the nomenclature. Verizon can point to no FCC ruling that has ever referred to serving wire “sides” in the plural, or even used an indefinite term such as “a serving wire center side” to describe these arrangements. The

---

<sup>52</sup> *Id.* at 32.

<sup>53</sup> Tariff 302 § 6.1.3(B)(3).

<sup>54</sup> Verizon Statement 1, 5:15-8:6; 15:12-15; 15:17-16:16.

FCC consistently uses the singular article “the” to describe the one serving wire center side in the relevant call path.<sup>55</sup>

There is no support in Verizon’s tariffs for a “dual serving wire center” arrangement either. Both its federal and state tariffs, when describing a jointly provided switched access arrangement, depict only one serving wire center:

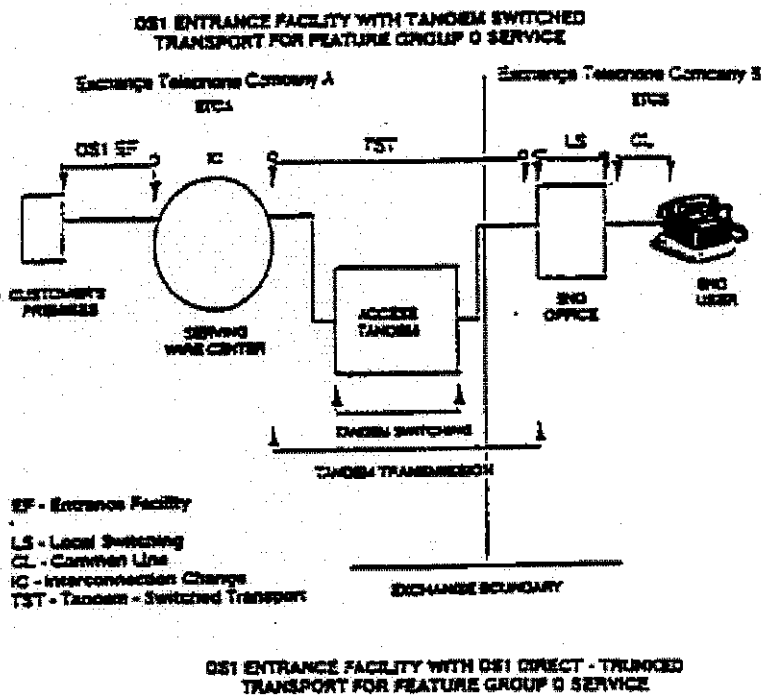
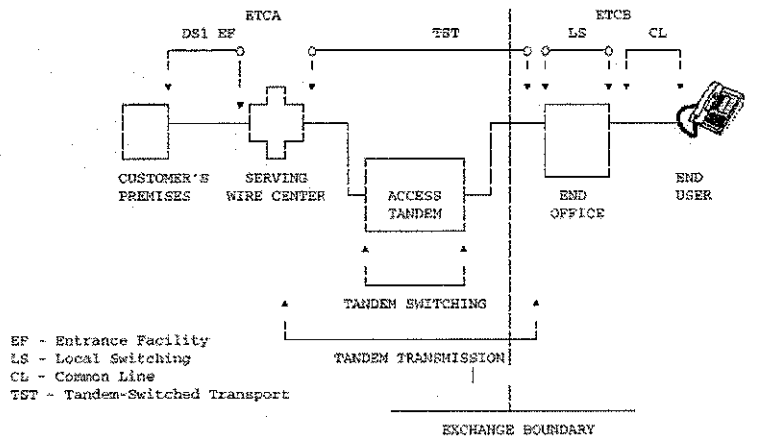


Figure 6 - Verizon Tariff Pa. P.U.C. No. 302 Sheet 53B<sup>56</sup>

<sup>55</sup> *Access Reform Order* para. 152. The FCC has referred to “the LEC serving wire center” in more than 250 orders addressing one component of its access charge regime. We have not identified a single such order that even suggests that the call path involves *two* such wire centers.

<sup>56</sup> XO Exh. 3.



**Figure 7 - Verizon Tariff F.C.C. No. 1 Page 2-52<sup>57</sup>**

Furthermore, the MECAB Guidelines have no depiction of a dual serving wire center arrangement.<sup>58</sup>

Verizon claims that, “the term ‘serving wire center side’ is broader than the CLECs would have it, and includes any ‘side’ of the tandem connected to a carrier other than the ILEC, not just IXCs.”<sup>59</sup> However, Verizon has offered no support for this other than the diagrams in Mr. D’Amico’s prefiled testimony, and Mr. D’Amico admitted that these diagrams were created for purposes of this case, are not in Verizon’s tariffs or the industry guidelines and are drawn from no other source than Mr. D’Amico himself.<sup>60</sup>

The only support that Verizon can muster is 47 C.F.R. § 69.2(rr), which defines the serving wire center as “the telephone company central office designated by the telephone company to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located.”<sup>61</sup> Verizon claims that the “other person[.]” referenced in the regulation includes CLECs. However, even this argument fails when viewed in the full context of Part 69. First, the definition of a serving wire center contained in Section 69.2 of the FCC

<sup>57</sup> XO Exh. 4.

<sup>58</sup> XO Statement 2, 14:2-9.

<sup>59</sup> Verizon Statement 1, 15:13-14.

<sup>60</sup> Tr. 89:12-17.

<sup>61</sup> 47 C.F.R. § 69.2(rr).

rules is not a general one, but instead is confined to access services.<sup>62</sup> The dedicated tandem trunk port is an access service, the charge for which is a "carrier's carrier charge"<sup>63</sup> that is assessed *only on IXCs*,<sup>64</sup> not CLECs like XO. Consequently, XO can not be an "other person" connecting to a serving wire center for purposes of Part 69.

In summary, there is simply no way that Verizon's tariff can be construed as applying to MPB trunks that XO and Verizon use to jointly provided switched access service.

## V. PROPOSED FINDINGS OF FACT

1. Complainant XO Communications Services, Inc. ("XO") is a certificated telecommunications carrier operating as competitive local exchange carriers ("CLEC") in Pennsylvania. (Complaint para. 3, Answer para. 3.)

2. Respondent Verizon Pennsylvania Inc. ("Verizon") is certificated telecommunications carrier operating as incumbent local exchange carrier ("ILEC") in portions of Pennsylvania. (Complaint para. 4, Answer para. 4.)

3. XO has established an interconnection agreement ("ICA") with Verizon, pursuant to 47 U.S.C. §§ 251 and 252. (Complaint para. 7, Answer para. 7)

4. Among other things, the ICA between XO and Verizon contain terms for the joint provision of switched access by the two companies to interexchange carriers ("IXCs"). (XO Statement 1 at 7:11-12.)

5. Switched access service "provides a two-point electrical communications path between a customer's premises and an end user's end office. ... Switched Access Service provides end

---

<sup>62</sup> 47 C.F.R. § 69.2; "For purposes of this part" precedes all definitions. Part 69 " establishes rules for access charges for interstate or foreign access services provided by telephone companies on or after January 1, 1984." 47 CFR § 69.1(a).

<sup>63</sup> 47 C.F.R. § 69.4(h)(5).

<sup>64</sup> 47 C.F.R. § 69.5(b).

users the ability to originate calls to a customer's premises, and to terminate calls from a customer's premises to an end user in the LATA associated with the specific service category provided.” (Verizon Tariff Pa. P.U.C. No. 302, Ninth Revised Sheet 152). In the context of the switched access tariff, the “customer” is the IXC that wishes to provide toll service to end users, and the “end user” is the person placing or receiving a toll call. (XO Statement 1, 2:7.)

6. An access tandem is a switch that connects local exchange carrier networks to IXC networks for the exchange of local exchange traffic. End-user customers do not connect directly to an access tandem switch, but only telephone carrier networks connect to it. The switch allows toll traffic to be routed from IXCs to LEC end users and from LEC end users to IXCs. The LECs may include Verizon and other LECs such as XO. (Verizon Statement 1.0, 5:1-7.)

7. XO has established transport facilities, which it refers to as “Meet Point Billing Trunks” and which Verizon refers to as “Access Toll Connecting Trunks,” that connect each of its local switches in Pennsylvania to a Verizon access tandem switch in Pennsylvania. (XO Statement 2, 24:20-21; Verizon Statement 1.0, 6:11-15, Tr. 21:9-17.)

8. Meet Point Billing Trunks are used by XO to provide interstate and intrastate switched access services to IXCs in conjunction with Verizon. In this arrangement, Verizon provides transport from the IXC’s premises to the access tandem, and tandem switching, while XO provides transport from the access tandem to the local switch (or “end office”), and local (end office) switching. (XO Statement 1, 18:8-13)

9. The dispute in this case arose when Verizon notified XO in 2007 that it would make an adjustment to its billing of “dedicated tandem trunk ports” associated with Access Toll Connecting Trunks. Verizon’s notice stated that it had determined it had under-billed these charges previously, due to the erroneous application of a jurisdictional allocation factor, but that

it would begin assessing them going forward and would impose a onetime charge to collect unbilled charges for the prior two years. (XO Statement 1, 4:5-16.)

10. XO disputed the back-billed dedicated tandem trunk port charges and the charges billed by Verizon after August 2007. (XO Statement 1, 5:13-14.) XO and Verizon have been unable to resolve their dispute. (XO Statement 1, 6:16-18.)

11. The “dedicated tandem trunk port” is a rate element specified in Verizon Pennsylvania's Tariff Pa. P.U.C. No. 302 (“Tariff 302”), §§ 6.1.3(B)(3), 6.8.1(F)(5). In both tariffs, the rate element is \$12.00 per voice grade trunk, and is assessed monthly. (Verizon Statement 1.0, 11:7-18.) The dedicated tandem trunk port charge did not appear in Tariff 302 prior to February 1, 2005. (Tr. 87:10-16.)

12. XO cannot use a Meet Point Billing Trunk to originate calls from, or terminate calls to, Verizon end users. (XO Statement 1, 19:13-19.)

13. The FCC's *Access Reform Order*, Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) required incumbent LECs to restructure their charges for switched access transport. Under the FCC's *Access Reform Order*, the only charge that the ILEC is permitted to assess between the tandem switch and the end office is a per-minute charge for transport of traffic over a common transport trunk. (XO Statement 2, 19:21-20:1.) The FCC rate structure was implemented in Pennsylvania.

14. A trunk port is a physical facility that connects a trunk used for transport of telecommunications traffic to a switch. (Verizon Statement 1.0, 4:8-9.)

15. Because an access tandem switch is not connected to end-user customers, every long-distance call that is routed through such a switch must make use of two trunk ports: one for the

connection between the IXC and the tandem switch, and one for the connection between the tandem switch and the end office (or local) switch. (XO Statement 2, 2:17-18.)

16. In a jointly provided switched access arrangements, there is only one "serving wire center," and that serving wire center is located between the Verizon tandem and the IXC's POP, and serves the IXC. (XO Statement 2, 14:2-19:2).

17. Under the transport rate structure adopted by the FCC in 1997, and which was adopted in Pennsylvania, the LEC recovers the costs of dedicated trunk ports on the serving wire center side of the tandem through flat-rated monthly charges. The LEC recovers the costs of common trunk ports on the end office side of the tandem through the usage-sensitive tandem switching charge. (Tr. 62:19-63:19.)

18. For interexchange calls that originate or terminate at a Verizon end office and are switched at Verizon's tandem, Verizon treats the trunk that connects the Verizon end office to the Verizon tandem as a common trunk that is not subject to a dedicated tandem trunk port charge. (Tr. 81:8-14.)

19. For interexchange calls that originate or terminate at the end office of an independent (non-Verizon) ILEC subtending a Verizon access tandem, Verizon treats the trunk that connects the ILEC end office to the Verizon tandem as a common trunk that is not subject to a dedicated tandem trunk port charge. (Tr. 66:2-7; 73:8-21.)

20. For interexchange calls that originate or terminate at an XO end office, Verizon treats the Meet Point Billing Trunk as a dedicated trunk and has assessed dedicated tandem trunk port charges on such trunks. (Tr. 74:18-22.)

21. Verizon's tandem switching charge, which among other things recovers the costs of common trunk ports on the end office side of the tandem, is billed at a uniform amount on all

minutes of use regardless of whether the call originates or terminates at a Verizon end office, an independent ILEC end office, or an XO end office. (Tr. 85:8-24.)

## **VI. PROPOSED CONCLUSIONS OF LAW**

1. Under 66 Pa. Cons. Stat. § 1302, Verizon is required to file tariffs with this Commission containing all rates, terms, and conditions of its intrastate services.
2. Under 66 Pa. Cons. Stat. § 1303, Verizon is permitted to charge customers for intrastate services solely in accordance with the terms of its filed tariffs. Any charge that is not contained in the tariff or is not consistent with the tariff terms and conditions is unlawful.
3. Facilities established for the purpose of connecting a CLEC's network to an ILEC's network for the "transmission and routing of . . . exchange access" traffic are interconnection facilities subject to 47 U.S.C. § 251(c)(2), and the rates, terms, and conditions for such access must be determined by a § 252 interconnection agreement.
4. Meet Point Billing Trunks are interconnection facilities.
5. The interconnection agreement between XO and Verizon does not contain any express agreement by XO to pay switched access charges in general, or dedicated tandem trunk port charges in particular, with respect to Meet Point Billing Trunks.
6. Because XO cannot use a Meet Point Billing Trunk to originate calls from, or terminate calls to, Verizon end users, even if some provision of the access tariff did apply, the Switched Access section (which contains the dedicated tandem trunk port charge) would not be applicable.
7. Further, the dedicated tandem trunk port charges are not applicable to Meet Point Billing Trunks by the terms of the Verizon tariffs themselves. The FCC's 1997 Access Reform Order calls for the dedicated tandem trunk port charge to be applied to trunks on the "serving

wire center side” of the tandem. It is clear from the FCC's Order, as a whole, that the FCC consistently used the “serving wire center side” to designate the connection between the IXC's premises and the access tandem, while it used the “end office side” to designate the connection between the tandem and the end office switch. Meet Point Billing Trunks connect to the end office side of the access tandem, and therefore are not subject to dedicated tandem trunk port charges.

8. By charging only CLECs for the dedicated tandem trunk port charge, and not independent LECs, Verizon is unreasonably and unlawfully discriminating against CLECs generally and XO specifically in violation of 66 Pa. Cons. Stat. § 1304.

## **VII. PROPOSED ORDERING PARAGRAPHS**

1. That the Complaint of XO Communications Services, Inc. against Verizon Pennsylvania Inc., Docket No. C-2008-2038195, is granted.

2. That Verizon shall cease and desist billing dedicated tandem trunk port charges associated with facilities that Verizon has designated as “Access Toll Connecting Trunks.”

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

4. That Verizon shall credit the Complainant’s account, within sixty (60) days of the entry of this Order, for all billed but unpaid dedicated tandem trunk port charges associated with Access Toll Connecting Trunks.

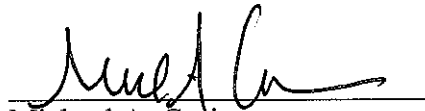
6. That the record at Docket Number C-2008-2038195 be marked closed.

## VIII. CONCLUSION

For all the reasons set forth in this Main Brief, Verizon's charges that are in dispute are not in conformance with the access charge regime, as established by the FCC, are not supportable by the language of either of the applicable tariffs or the ICA, and in fact are already being recovered from IXCs in Verizon's tandem switching charges. Further, Verizon's effort to impose such charges on the CLECs is wholly different from the approach that Verizon uses with Independent LECs without any justification, and is therefore unlawfully discriminatory.

Verizon's efforts to re-characterize what is widely recognized as joint provisioning of Meet Point Billing arrangements for allowing IXC access to CLEC end user customers is illogical and contrary to all applicable law. Therefore, for the reasons set forth above, XO respectfully requests that the Commission enter an Order disallowing Verizon's MPB Trunk port charges and all associated penalties, interest, fees, and associated charges, with prejudice, and further, barring Verizon from imposing such charges in the future.

Respectfully submitted,



Michael A. Gruin  
Stevens & Lee  
Attorney ID No. 78625  
17 N. 2nd St., 16th Floor  
Harrisburg, PA 17101  
Tel. (717)255-7365  
Fax (610) 988-0852

Harry N. Malone  
Devine, Millimet & Branch, P.A.  
111 Amherst Street  
Manchester, NH 03101  
(Tel.): (603) 695-8532  
(Fax): (603) 669-8547  
Counsel for XO Communications Services, Inc.

Dated: May 1, 2009

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

XO Communications Services, Inc.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2038195
	:	
Verizon Pennsylvania Inc.	:	
Respondent	:	


**CERTIFICATE OF SERVICE**

I hereby certify that I have this day the foregoing Main Brief in accordance with the requirements of 52 Pa. Code § 1.54 et. seq. (relating to service by a participant):

**VIA ELECTRONIC MAIL**

Susan S. Paiva, Esquire  
Assistant General Counsel  
Verizon Pennsylvania Inc.  
1717 Arch Street, 10W  
Philadelphia, PA 19103

Hon. Louis G. Cocheres  
Administrative Law Judge  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

  
\_\_\_\_\_  
Michael A. Gruin

DATED: May 1, 2009