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December 17, 2009

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re:

Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Select Services Inc., Verizon Global Networks, Inc., MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc.

v.

**Choice One Communications of Pennsylvania, Inc., CTC Communications Corp., and FiberNet Telecommunications of Pennsylvania, LLC,
Docket Nos. C-20077672, C-20077674 and C-20077676**


Dear Secretary McNulty:

Enclosed please find the Supplemental Brief of Choice One, CTC and FiberNet, including Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs (appended as Attachment 1). This Supplemental Brief was filed electronically today.

A copy has been served on all parties, in accordance with the enclosed certificate of service. If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania Inc., Verizon North	:	
Inc., Bell Atlantic Communications, Inc.	:	
d/b/a Verizon Long Distance, Verizon	:	
Select Services Inc., Verizon Global	:	
Networks, Inc., MCImetro Access	:	
Transmission Services, LLC d/b/a Verizon	:	
Access Transmission Services, and MCI	:	
Communications Services Inc.,	:	
	:	
Complainants	:	
	:	Docket No. C-20077672
v.	:	Docket No. C-20077674
	:	Docket No. C-20077676
Choice One Communications of	:	
Pennsylvania, Inc., CTC Communications	:	
Corp., and FiberNet Telecommunications	:	
of Pennsylvania, LLC,	:	
	:	
Respondents	:	

**SUPPLEMENTAL BRIEF OF
THE ONE COMMUNICATIONS COMPANIES**

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INTRODUCTION

By instruction issued December 3, 2009, Administrative Law Judge (“ALJ”) Louis Cocheres in the above-captioned matters directed the Parties to file supplemental briefs on the issue of whether One Communications’¹ cost of service study meets the applicable legal standards set forth in the Commission’s Orders in *Verizon Penn., Inc., et al v. CTSI, LLC*² and *Verizon Penn., Inc., et al v. Penn Telecom, Inc.*³ As described below, One Communications respectfully submits that its cost of service study in the above-captioned matters meets the applicable legal standards newly set forth by the Commission.⁴

BACKGROUND AND SUMMARY OF CASE

Section 3017(c) of Title 66 of the Public Utility Code⁵ allows competitive local exchange carriers (“CLECs”) to charge access rates above those of incumbent local exchange carriers if the higher rates are “cost justified.” One Communications has stipulated that its tariffed access charges are higher than similar (but perhaps not composite) Verizon access charges.⁶ In response to a complaint filed on April 25, 2007 by Verizon – which alleged that One Communications’ access rates contravened Section 3017(c) – One Communications submitted a cost justification in the form of a fully distributed cost study prepared by Donald Parrish, an outside consultant. Mr. Parrish’s analysis confirmed that One Communications’ access rates are cost justified.

¹ Choice One Communications of Pennsylvania Inc. d/b/a One Communications (“Choice One”), CTC Communications Corp. d/b/a One Communications (“CTC”) and FiberNet Telecommunications of Pennsylvania, LLC (“FiberNet”) (collectively, the “One Communications Companies” or “One Communications,” or the “Company”).

² Docket No. C-20077332, rel. Aug. 7, 2008 (hereinafter *CTSI*).

³ Docket No. C-20066987, rel. Aug. 7, 2008 (hereinafter *Penn Telecom*).

⁴ One Communications incorporates and adopts by reference the arguments proffered in its Main and Reply Briefs.

⁵ 66 Pa. C.S. § 3017(c).

⁶ Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc.

One Communications defended its cost study at an evidentiary hearing on January 16 2008, and demonstrated via cross examination of Verizon's panel of witnesses that Verizon's criticisms of Mr. Parrish's methodology were merely theoretical, and that many of Verizon's criticisms of Mr. Parrish's cost inputs were simply wrong (*i.e.*, Verizon attributed inputs or oversights to Mr. Parrish that simply did not happen).

After the close of the record and briefing in these consolidated cases the Commission released two decisions which adopted virtually identical legal standards by which CLECs' access charge cost studies are to be judged. Since the Parties have not been able to settle these cases, ALJ Cocheres directed that the Parties supplement the record with argument as to whether Mr. Parrish's cost study meets the newly adopted Commission standards, and submit Proposed Findings of Fact and Conclusions of Law. One Communications respectfully submits that its cost study meets the new Commission standards, and that Verizon's complaint should be dismissed in its entirety. One Communications' Proposed Findings of Fact and Conclusions of Law are appended hereto as Attachment 1.

ARGUMENT

The Applicable Legal Standards adopted in *Penn Telecom* and *CTSI* are summarized in six (6) statements which follow.⁷ One Communications will address each in turn.

1. **The "cost justified" standard of Section 3017(c), 66 Pa.CS. § 3017(c), equates with a "reasonable measure of costs" for a CLEC's intrastate switched access services.**
 - a. **One Communications' Cost Study Contains Inputs Directly and Causally Related to Switched Access Service.**

⁷ *Penn Telecom* at 16-17; *CTSI* at 12-13.

In order to assess what constitutes a “reasonable measure of costs” for its switched access service, it is essential, at the outset, to understand what that service actually consists of. According to 66 Pa. C.S. § 3012, “Switched access service” is defined as:

A service which provides for the use of common terminating, switching and trunking facilities of a local exchange telecommunications company's public switched network. The term includes, but is not limited to, the rates for local switching, common and dedicated transport and the carrier charge.

This definition identifies a number of distinct physical inputs to switched access service, including “common terminating, switching and trunking facilities,” as well as “local switching and common and dedicated transport.”⁸ So, a “reasonable measure of costs” for this service would have to include an assessment of the costs of those functions. In addition, by stating that switched access service includes a rate for “the carrier charge” – which is a flat fee designed to recover a portion of the cost of the local loop – the General Assembly has made clear that a reasonable portion of loop costs may be included when determining a “reasonable measure of costs” for switched access service. In sum, the first Applicable Legal Standard, using Section 3012’s definition of switched access service, contemplates three types of switched access costs: facilities, functionalities and a carrier charge.⁹

Mr. Parrish explained in his Direct Testimony that he used “actual cost data” in his fully-distributed cost methodology,¹⁰ as derived from “the operating expenses and plant investment as

⁸ These facilities and functionalities cost inputs are very similar to the Federal Communications Commission’s (“FCC”) Part 69 itemization of switched access costs, which Mr. Parrish used as a guide. *See* 47 C.F.R. § 69.1, *et seq.*

⁹ One Communications assesses a Carrier Common Line (or “CCL”) charge to recover a portion of its local loop costs, which Mr. Parrish factored into his cost study. One Communications also assesses a subscriber line charge (“SLC,” also known as an End User Common Line Charge or “EUCL”) against its end user customers to recover the *local* service portion of loop costs; as such, the revenues are treated as local service revenues in the Companies’ financial books of account. Parrish Rebuttal at 7. Mr. Parrish’s treatment of EUCL revenues comports with Pennsylvania tax policy. *See* One Communications Reply Brief at 31-32. Thus, except for Verizon’s misplaced suggestion that One Communications repurpose the EUCL (*see* One Communications Main Brief at 7-8; One Communications Reply Brief at 32-33), One Communications’ flat fees are not before the Commission.

¹⁰ Parrish Direct at 7.

compiled from the [One Communications] Companies' records."¹¹ Every cost input is based on a real, verifiable accounting entry in the One Communications Companies' charts of account. Section II of Schedule 2¹² of Mr. Parrish's cost study presents the direct assignment and/or allocation of the following expense items: "Network Costs," including collocation rent, Inter-office facilities costs, Inter-city Backbone Facilities costs, Trunking costs, Installation costs, loop costs, leased facilities costs, local usage costs, long distance usage costs and miscellaneous facilities and services costs.¹³ Mr. Parrish also identified in Schedule 7 Corporate Support Expenses, to the extent corporate activities and functions "support . . . access services, not only operationally, but also whether the functions support the implementation and maintenance of the customer base that generates toll services and the associated traffic."¹⁴

It is clear that One Communications' Network Costs comport with the first Applicable Legal Standard by tracking Section 3012's enumerated facilities and functionalities costs for switched access service. Collocation rent, Inter-office facilities costs, Inter-city Backbone Facilities costs, Trunking costs, Installation costs, loop costs, leased facilities costs and miscellaneous facilities costs arise from "the use of common terminating, switching and trunking facilities." Local usage costs, long distance usage costs and miscellaneous services costs arise from the use of functionalities for "local switching and common and dedicated transport." One Communications' Corporate Support Expenses comport with the first Applicable Legal Standard as an indirect cost of common facilities and functionalities (acceptable under Section 3012's "not

¹¹ *Id.* at 12.

¹² Mr. Parrish produced a cost study for each of the One Communications Companies. Each cost study follows the same chronology, and thus each company Schedule contains the same inputs and allocations.

¹³ Parrish Direct at 17; Schedule 2, Sec. II. Leased facilities include Unbundled Network Elements, or "UNEs," of ILECs (like Verizon) that One Communications uses. Mr. Parrish points out that the One Communications' UNE expenses account for a "significant" portion of One Communications' overall switched access costs. Specifically, the UNE expenditures account for 46%, 85% and 58% of the total switched access costs of Choice One, FiberNet and CTC, respectively. Parrish Rebuttal at 16. These actual expenses are based on TELRIC pricing required of ILECs. *Id.*

¹⁴ Parrish Direct at 19.

limited to” clause), verified by Mr. Parrish as supporting the implementation and maintenance of the customer base that generates toll services and the associated traffic.

In addition to the aforementioned expense items, Mr. Parrish identified capital costs incurred by One Communications. Schedule 3 of Mr. Parrish’s cost study identifies these capital costs in detail. They include switching equipment costs, fiber IRUs, Plant Assets (such as vehicles, furniture and fixtures, office equipment, leasehold improvements, computer equipment and customer premise equipment) and depreciation expenses. One Communications’ capital costs also comport with the first Applicable Legal Standard by tracking Section 3012’s facilities and functionalities costs. These include (but are not limited to) use of common terminating, switching and trunking facilities, and/or the use of functionalities for local switching and common and dedicated transport.

Thus, each and every cost (whether an expense item or a capital item) identified and used by Mr. Parrish is based on a real accounting entry in One Communications’ books, and is properly included in a “reasonable measure of costs” incurred by One Communications to provide switched access service, because each cost input can be “mapped” to Section 3012’s enumerated facilities and functionalities costs. Since One Communications’ cost study is based on real inputs that track Section 3012 (along with FCC Parts 32 and 69), the study constitutes a reasonable measure of One Communications’ switched access costs.

b. One Communications’ Cost Allocations Further Assure a Reasonable Measure of Costs.

Mr. Parrish explained that, in certain circumstances, he reasonably relied upon and applied agency guidelines and industry accepted allocation formulas to assign costs to One Communications’ switched access services. The actual cost inputs are as described above, and are taken directly from One Communications’ charts of account, *i.e.*, accounting entries. While

many costs are directly assignable, certain of the costs are indirect or arise from common facilities and functionalities, and thus the costs must be rationally allocated. Mr. Parrish testified that he used a three-step allocation process: Step 1 – direct assignment based on directly related costs; Step 2 – assignment based on relative usage or similar measures of cost causation; and Step 3 – allocation of general and administrative costs in direct proportion to directly and relatively assigned costs.¹⁵

Schedule 2 of Mr. Parrish’s cost study presents the allocation factors for operating expenses. Section II of Schedule 2 presents the allocation factors used to allocate Network Costs and Market Expenses. Sections III and IV of Schedule 2 present the allocations of Corporate Support costs and expenses, including Pennsylvania-specific general and administrative costs. Schedule 3 presents the allocations for capital costs. Schedule 7 presents Corporate Support expense allocations.

Mr. Parrish explained in detail his allocation process for each cost input. For example, beginning at page 15 of his Surrebuttal Testimony, he described how he allocated One Communications’ Network Costs pursuant to Parts 36 and 69 of the FCC’s rules, which require that “each component of the network is analyzed and allocated to specific service categories using allocation parameters reflective of cost causation.”¹⁶ Collocation rents, inter-office facilities and leased facilities are allocated based on the relation of data lines to all lines and relative usage.¹⁷ Inter-city facilities and local and long distance trunks are allocated based on the relation of data lines to all lines and traffic sensitivity.¹⁸ Loop costs are allocated first based on the relation between data lines and all lines, then further allocated based on relative use by all

¹⁵ Parrish Direct at 5-6.

¹⁶ Parrish Surrebuttal at 15; *see also* 47 C.F.R. §§ 36.2(a), 69.301, *et seq.*

¹⁷ *Id.* at 15-16. Mr. Parrish also explained how he used inter-company allocation proxies when company-specific allocators were not available. Parrish Direct at 7-8.

¹⁸ *Id.* at 16.

switched services.¹⁹ Local and long distance usage expenses are allocated on a traffic sensitive basis, because they are based on the number of network minutes handled.²⁰ Mr. Parrish took a similar approach to wholesale market expenses.²¹ He also excluded the costs of unregulated and ancillary services,²² retail-related costs such as sales and marketing expenses²³ and reciprocal compensation expenses.²⁴

Mr. Parrish's step-wise approach – first, identifying cost inputs consistent with Section 3012 and second, employing a three-step allocation of those cost inputs based on regulatory principles of cost causation – further assures that One Communications' cost study led to an accurate calculation of service-specific costs. One Communications' rules-based cost and industry convention-based allocations provide assurance that the Company derived a “reasonable measure” of its switched access costs.²⁵

2. A reasonable measure of the CLEC's local loop plant can be included in the CLEC cost study performed for establishing the reasonable measure of costs for its intrastate access services.

One of the more significant disputes between One Communications and Verizon in the above-captioned cases was whether One Communications could include a portion of its local loop costs in the calculation of its switched access costs. Verizon argued vehemently that *no*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 18.

²² *Id.*

²³ *Id.* at 19. *See also* Tr. at 199-200.

²⁴ Tr. at 219 (“Maziotti Reciprocal compensation payments were excluded, yes.”)

²⁵ The steps Mr. Parrish took bear a great resemblance to what Verizon's witness indicated he would do if asked to perform a “bottoms-up” cost study. Tr. at 191-195.

local loop costs should be included in One Communications' cost study.²⁶ The Commission's recent orders show that the Verizon is simply wrong:

Traditionally, the Commission has treated local loop costs as joint costs. Although Verizon argues that CLECs should be prevented from recovering any portion of their local loop costs in intrastate access charges, Verizon PA currently recovers a portion of its own local loop costs through its intrastate access rates. It therefore follows that CLECs should be permitted to do the same. This holding maintains parity between the various types of regulated telecommunications service providers and is consistent with current Commission policy.

The Commission has consistently adopted the position that the fixed costs associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop, including the ILECs' intrastate carrier access services.²⁷

Relying on the Commission's long-standing policy of treating local loop costs as joint costs, One Communications included a reasonable measure of its local loop plant in its switched access cost study. *Penn Telecom* and *CTSI* confirm that One Communications was reasonable in doing so. Following long-standing FCC policy²⁸ and this Commission's acknowledgement of the validity of relative use measurements,²⁹ Mr. Parrish used a relative use allocator to determine how much of the local loop's costs should be assigned to switched access service:

[A]s shown in Schedule 2 of the cost studies, loop-related costs are allocated on the basis of originating and terminating network minutes exclusive of the terminating minutes related to local traffic received from interconnecting carriers.³⁰

²⁶ Verizon Panel Surrebuttal at 9 ("there is absolutely no causative link between the provision of a loop to any customer (and the corresponding amount of investment a company makes in its loop plant), and the provision of switched access service to other carriers.").

²⁷ *CTSI* at 8-9.

²⁸ Parrish Surrebuttal at 22. See also 47 C.F.R. §§ 36.124(b), 36.125(i), 36.155(a).

²⁹ *In Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172, *19-20 (1999); 196 P.U.R. 4th 172, aff'd sub nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlt. 2000), alloc. granted (hereinafter *Global Order*).

³⁰ Parrish Direct at 14.

Mr. Parrish excluded terminating local minutes from the minutes-of-use (“MOU”) formula because the FCC precludes recovery of local loop costs from local termination services.³¹ The effect of this FCC policy is that no loop costs may be recovered from this type of service, or, conversely, that all loop costs must be recovered from the *other* services that make use of the loop. Excluding these minutes from the calculation, therefore, properly allocates total loop costs among the set of services that may lawfully be called upon to recover those costs through rates. Had Mr. Parrish included terminating local minutes in his allocations, he would have improperly assigned costs to a service from which they, by law, may not be recovered, which obviously would have made no sense. The exclusion also mirrors the exclusion of reciprocal compensation expenses from switched access costs.

The use of actual MOU data to allocate fixed loop costs, One Communications contends, is reasonable *per se*. The FCC, for example, uses a “unit basis” approach in Part 36 of its rules: “Separations are made on the ‘actual use’ basis, which gives consideration to relative occupancy and relative time measurements.”³² While there may be other methods to assign loop costs, none have the merit of using actual, rational data like MOU. For example, one could not reasonably use the length of a facility or its age or any other physical characteristic, for none provide any reasonable way to divide up the totality of the costs of a loop among the different services that make use of that loop. Forward-looking methodologies require use of *hypothetical* data, which may be appropriate in some situations, but which is necessarily less reliable than actual data. Other allocators likely involve value judgments, as well, such as why a toll carrier customer needs or wants a facility or service, or that carrier’s ability to pay. Only relative use of

³¹ See *First Report and Order*, CC Docket Nos. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* and 95-185, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, ¶ 1057.

³² 47 C.F.R. § 36.2(a)(3)(1)-(2)

the loop can be objectively quantified and verified, and it was for these reasons that Mr. Parrish selected the MOU approach.³³

Mr. Parrish's results relating to assignment of One Communications' loop costs using his MOU formula also fare well under a federal perspective. FCC separations rules assign 25% of local loop costs to the interstate jurisdiction.³⁴ The FCC's decision to cap CLECs' interstate access rates at ILEC levels essentially extends this federal policy to CLECs' access costs.³⁵ Consequently, to conform to the FCC's separations policy, a reasonable switched access cost study for a CLEC should not assign more than 25% of local loop costs to interstate services. Mr. Parrish's MOU formula – which relies on actual data – assigns less than 25% of local loop costs to the interstate jurisdiction: Choice One 19%, FiberNet 22% and CTC 9%.³⁶ Consistent with the federal perspective, therefore, Mr. Parrish's local loop allocations produce rational results.

3. **Although FDC embedded accounting-revenue requirement cost studies by the CLEC are generally acceptable, consideration should be given to forward-looking economic cost studies that treat the CLEC's loop costs as joint costs. In ascertaining the joint loop costs of a CLEC, consideration should be given to whether the CLEC's loop costs can, in part, be derived from the UNE-Loop (UNE-L) rates that the CLEC pays for leasing loops to its end-user customers from an ILEC or multiple ILECs. Similarly, in any CLEC cost study, there must be a clear and well documented demonstration of how the CLEC recovers joint loop costs from services other than intrastate switched access.**

- a. **One Communications Submitted an Acceptable FDC Cost Study.**

While inclusion of local loop costs in One Communications' cost study was the first big dispute between it and Verizon, the second big dispute involved the type of cost study that One

³³ Parrish Surrebuttal at 34.

³⁴ 47 C.F.R. § 36.2(b)(3)(iv).

³⁵ *Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, (2001) (hereinafter *Seventh R&O*); see also 47 C.F.R. § 61.26.

³⁶ Parrish Rebuttal at 8.

Communications chose to submit. Verizon insisted that Section 3017(c) did not admit to the use of a fully-distributed cost (“FDC”) study such as Mr. Parrish employed, and favored a so-called forward-looking cost study.³⁷ The Commission disagrees with Verizon:

[T]he use of FDC and embedded cost revenue requirement standards and methods should be available to a CLEC for deriving this reasonable measure of underlying cost in order to cost justify its rates in the ILEC’s “same service territory.”³⁸

In deciding to consider FDC studies, like Mr. Parrish’s, to be reasonable, the Commission relied on the historical use and accuracy of such studies:

Other methods that rely on historical embedded accounting data, such as fully distributed cost (FDC), when combined with revenue requirement studies, can provide a measure of cost for a grouping of telecommunications services.³⁹

Mr. Parrish testified that his method relied on embedded accounting data to provide a measure of cost for a grouping of One Communications’ telecommunications services:

The cost methodology uses the [One Communications] Companies’ actual 2006 costs and operating parameters to develop allocations to specific services and service categories, including access services.

* * *

This approach reflects a fully-distributed (“FDC”) methodology, by which the total actual costs of a telecommunications carrier’s operations are allocated to the carrier’s services.⁴⁰

Mr. Parrish also testified:

[T]he methodology identifies the *actual* costs related to this [access] service in a manner that does not require the use of assumptions regarding network deployment, projections of demand or hypothetical levels of operating expenses. The step-wise approach for specific cost categories embodied in the Companies’ cost studies enables the identification of and appropriate allocation of the actual costs incurred by the Companies in the provision of [their] intrastate switched

³⁷ See, e.g., Verizon Panel Rebuttal at 14; Verizon Main Brief at 22.

³⁸ *Penn Telecom* at 15. One Communications understands the third Applicable Legal Standard also to permit forward-looking cost studies so long as they “that treat the CLEC’s loop costs as joint costs.” This perspective also overrules Verizon’s position, that a forward-looking cost study must be used, and must exclude loop costs.

³⁹ *Id.* at 12.

⁴⁰ Parrish Direct at 5.

access services. By using this approach the Companies produce genuine service-specific costs.⁴¹

Examination of the Schedules and Sections in Mr. Parrish's cost study (appended to his Direct Testimony) confirms that his FDC study is completely acceptable under the third Applicable Legal Standard adopted by the Commission. It bears reiteration, too, that Mr. Parrish's use of the term "revenue requirements" is consistent with the Commission's newly articulated standards. Mr. Parrish explained that he did not *forecast* One Communications' cost of service (*e.g.*, using an adjusted test year), then match an assumed "total revenue" to such a forecasted total cost, presumably based on a forecast of the volume of service One Communications would provide.⁴² Such an exercise might be appropriate in a traditional rate-of-return ratemaking setting, but Mr. Parrish did not undertake it. Rather, Mr. Parrish started with an examination of One Communications' booked costs (in conformity with revenue requirements *standards*, as referenced in the third Applicable Legal Standard), and once he totaled those costs, he divided them by the annual access MOU handled by One Communications to determine a per minute cost of access.

Thus, Mr. Parrish conducted and One Communications submitted an acceptable FDC study pursuant to the third Applicable Legal Standard. The study simply sums up One Communications' annual intrastate access costs and divides those costs by the annual MOU of intrastate switched access traffic handled by One Communications. The result is One Communications' intrastate cost of access per minute, which is higher than its Pennsylvania tariffed rates. Consequently, One Communications FDC study demonstrates that its intrastate switched access service rates are "cost justified" under Section 3017(c).

⁴¹ Parrish Surrebuttal at 14 (emphasis in original).

⁴² *Id.* at 9.

b. One Communications' FDC Study Uses UNE-Loop (UNE-L) rates that the Company pays for leasing loops to its end-user customers from an ILEC or multiple ILECs.

Although the Commission clearly permits the use of an FDC study by a CLEC under Section 3017(c), the third Applicable Legal Standard expresses the concern that a CLEC not overstate its loop costs:

In ascertaining the joint loop costs of a CLEC, consideration should be given to whether the CLEC's loop costs can, in part, be derived from the UNE-Loop (UNE-L) rates that the CLEC pays for leasing loops to its end-user customers from an ILEC or multiple ILECs.⁴³

One Communications' FDC study is fully consistent with the third Applicable Legal Standard, in that it uses UNE-Loop (or "UNE-L") rates that the Company pays for leasing loops to its end-user customers. Mr. Parrish explicitly addressed this issue in his Rebuttal Testimony:

[A]s can be seen from the access cost studies that accompany my direct testimony, a significant portion of One Communications Companies' operating costs are payments to ILECs for UNEs and for the termination of local traffic under reciprocal compensation arrangements. The prices for unbundled network elements and for the transport and termination of local traffic are required to be priced at TELRIC levels under both federal and state regulations. As can be calculated from figures shown in the access cost studies that accompany my direct testimony as Exhibits A, B and C, the TELRIC-based charges paid by the Companies in their Pennsylvania operations in 2006 comprised over 46%, 85% and 58% of the total intrastate access revenue requirements of Choice One, FiberNet and CTC, respectively.⁴⁴ By definition, this portion of the Companies' costs conforms to the FCC's forward-looking economic cost standard for competitive market characteristics. As a result of the significant amount of UNE-based operating expenses, the deployment of advanced network technologies and the highly competitive nature of their respective markets, the use of the Companies' actual costs provide measures of costs that conform to the FCC's prevailing standard for wholesale pricing under competitive market conditions. The service-specific costs calculations that result from this approach produce genuine economic costs of providing switched access services as opposed to

⁴³ *Penn Telecom* at 16.

⁴⁴ Parrish Rebuttal at n. 15 ("The calculation is made as follows: Choice One - [Schedule 2, L.II.A.5, Col. (3) + Schedule 2, L.II.A.6, Col. (3) + Schedule 2, L.II.A.7, Col. (3)] divided by Schedule 4, L.III.E, Col. (2); FiberNet - [Schedule 2, L.II.A.5, Col. (3) + Schedule 2, L.II.A.6, Col. (3) + Schedule 2, L.II.A.7, Col. (3)] divided by Schedule 4, L.III.E, Col. (2); and CTC - [Schedule 2, L.II.A.5, Col. (3) divided by Schedule 4, L.III.E, Col. (2)].")

hypothetical costs, a much preferred result in any costing exercise that is designed to identify actual costs of service.⁴⁵

In sum, Mr. Parrish did not attempt to estimate One Communications' local loops costs as a joint and common cost input to his FDC study (what seems to be the implicit concern in the third Applicable Legal Standard). Rather, Mr. Parrish used actual UNE payments the Company made to ILECs to derive the local loop cost input. As a result, One Communications' FDC study fully addresses the implicit concern of the third Applicable Legal Standard that a CLEC might inflate its common local loop costs to prop up switched access charges. Mr. Parrish took exactly the opposite tack, using the *least cost* input represented by the ILECs' UNE charges, which are TELRIC-based charges.

c. One Communications Recovers Joint Loop costs from Services other than Intrastate Switched Access on a Residual Basis.

The final concern expressed in the third Applicable Legal Standard is that there must be a clear and well documented demonstration of how the CLEC recovers joint loop costs from services other than intrastate switched access. As noted in Section 2, above, Mr. Parrish used relative MOU to allocate joint loop costs to intrastate switched access. If, for example, X% of traffic over a One Communications Company's loop was intrastate switched access, X% of the joint loop costs were assigned to intrastate switched access. As a matter of mathematical certainty, Mr. Parrish's decision means that (i) only intrastate switched access costs are recovered from intrastate switched access rates, and (ii) the remainder of joint loop costs is recovered from other than intrastate switched access rates.

As a CLEC, One Communications is not required under Pennsylvania law to conduct cost of service studies for its telecommunications services (other than in response to a Section 3017(c) challenge). Indeed, CLECs are not required to keep their accounts in any particular

⁴⁵ *Id.* at 15-16.

manner.⁴⁶ Because Mr. Parrish assigned only a relative portion of joint loop costs to intrastate switched access, the remaining portion was automatically “assigned” to all other services, which other services bear the remaining loop costs on a residual basis. The prices of One Communications’ other services would be expected to cover the balance of joint loop costs so residually assigned.

* * *

In accordance with the third Applicable Legal Standard, One Communications submitted an FDC cost study whose cost inputs meet the revenue requirements standards articulated by the Commission. One Communications employed UNE-L payments for its determination of joint loop costs that the Company pays for leasing loops to its end-user customers from an ILEC. Mr. Parrish’s FDC method clearly and well documented how the Company recovers joint loop costs from services other than intrastate switched access on a residual basis. For all these reasons, One Communications’ FDC study comports with the third Applicable Legal Standard, and the Commission should dismiss Verizon’s Complaint in its entirety.

- 4. The cost justification of the ILEC’s intrastate access rates is immaterial in ascertaining the reasonable measure of costs for the CLEC’s intrastate switched carrier access services. However, ILEC and CLEC intrastate and interstate switched access rates may be used as proxy benchmarks for establishing an appropriate range of just and reasonable intrastate access rates for a particular CLEC. Rural ILEC intrastate and interstate access rates may play a role in establishing such a range if a particular CLEC operates in rural exchanges of a non-rural ILEC and/or in the service area of a rural ILEC.**

⁴⁶ *Accord*, Tr. at 159 (“(Price) MCImetro does not have any jurisdictional cost methodology. Unlike an ILEC, MCImetro doesn’t keep its books in accordance with the uniform system of accounts. MCImetro does not keep its books so that it has Pennsylvania-specific costs.”)

In the fourth Applicable Legal Standard the Commission determined that cost justification for an *ILEC's* intrastate access rates is immaterial in ascertaining the reasonable measure of costs for a *CLEC's* intrastate switched access services. One Communications agrees with this determination, because, *inter alia*, “a CLEC entering the territory of a non-rural ILEC likely would not enjoy economies of scope and scale that the ILEC does in the same territory.”⁴⁷ One Communications disagrees, however, that in this case ALJ Cocheres should use Verizon’s switched access rates as proxy benchmarks for establishing an appropriate range of just and reasonable intrastate access rates for One Communications.

First, as demonstrated above, One Communications conducted and submitted a verifiable FDC study which comports with the Applicable Legal Standards the Commission has announced. Second, Mr. Parrish testified that, as measured by access lines, Choice One, FiberNet and CTC in Pennsylvania are 2%, 0.02% and .07% the size of Verizon Pennsylvania’s operations, respectively.⁴⁸ This disparity demonstrates why Verizon’s operating unit costs would likely be significantly below those of Choice One, FiberNet and CTC, and why Verizon’s access rates are not competent proxies. Third, Mr. Parrish testified that not only do the One Communications Companies have far fewer lines than Verizon in Pennsylvania – one source of Verizon economies of scale – Verizon in Pennsylvania also enjoys a much higher level of per-line access usage than the Companies (more than two times higher, on average), which is yet another source of economies of scale.⁴⁹ Fourth, Verizon testified that its own access charges are not based on cost.⁵⁰ Since the point of this proceeding is to determine whether One Communications’ intrastate access rates are cost justified, and One Communications has cost

⁴⁷ *Seventh R&O* at ¶ 69.

⁴⁸ Parrish Rebuttal at 9.

⁴⁹ *Id.* at 9-10.

⁵⁰ Verizon Panel Rebuttal at 18.

justified its rates, it would represent a regulatory mismatch to compare those rates to ILEC rates that – admittedly – are not based on costs.

Finally, it would not appear appropriate to compare One Communications’ switched access rates to Rural ILEC rates in this case, for the simple reason that the record contains no reference to such rates. Upon information and belief One Communications believes that its intrastate access rates compare favorably to Pennsylvania’s Rural ILECs, and while the Company would not object to ALJ Cocheres taking administrative notice of the composite tariffed rates of the Rural ILECs (such material is readily available via the Rural ILECs’ published tariffs and likely in summary form in the on-going Access Charge Reform proceeding⁵¹), One Communications does not believe that exercise is necessary given the soundness of Mr. Parrish’s FDC study.

5. There must be appropriate consideration given to whether the CLEC’s interstate carrier access charges influence or interact in any fashion with the reasonable measure of cost and the setting of the CLEC’s intrastate carrier access charges.

Mr. Parrish separately calculated the cost of One Communications’ interstate and intrastate switched access services.⁵² During his examination of One Communications’ books of account – through the self-same rigorous methodology described above – Mr. Parrish determined that the Company’s *interstate* switched access costs – determined using a minutes-of-use allocator – exceed the Company’s *interstate* switched access rates, which are capped by the FCC to match Verizon’s interstate rates.⁵³ In essence, the FCC’s rate cap shifts certain otherwise properly interstate access costs to the intrastate jurisdiction for all CLECs, much as the FCC did

⁵¹ *Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105; *AT&T Communications of Pennsylvania, LLC, et al v. Armstrong Telephone Company – Pennsylvania, et al.*, Docket No. C-2009-2098380 *et al.*

⁵² Parrish Surrebuttal at 30.

⁵³ *Seventh R&O.*

for common loop plant.⁵⁴ Mr. Parrish determined that the related unit cost shortfall should be borne by the same intrastate toll carriers that purchase interstate access services. This is because, from a technical perspective, there is no difference between the provision of intrastate access and interstate access.⁵⁵ Moreover, shifting the shortfall to non-access customers contravenes notions of class of service equities.

Thus, the fifth Applicable Legal Standard *obligates* One Communications – or any CLEC – to consider the impact of the FCC’s decision to cap interstate CLEC rates at the corresponding ILEC rates, and the FCC’s decision to allow affected CLECs to recover any shortfall.⁵⁶ Put in the precise terms of the fifth Applicable Legal Standard, there is a considerable influence and impact from One Communications’ interstate access rates on the reasonable measure of cost and the setting of One Communications’ intrastate access charges. Given the magnitude of the influence and impact, One Communications recovers its interstate shortfall from its intrastate toll carrier customers, which companies are the same cost causers as for interstate access service.

It bears noting that Verizon has not questioned the accuracy of Mr. Parrish’s interstate residual calculations during this proceeding, except to suggest that One Communications repurpose its end user common line charge (“EUCL”) to offset the shortfall.⁵⁷ Rather, Verizon’s main opposition has been to the policy of recovering otherwise interstate shortfall access costs

⁵⁴ 47 C.F.R. § 36.2(b)(3)(iv) (capping interstate allocation at 25%).

⁵⁵ Parrish Direct at 24.

⁵⁶ *Seventh R&O* at ¶ 39 (“CLECs should be permitted to set the combined level of their access charges, for all the consumers of the service, as they please. If, as they contend, their per unit costs are higher than those of the ILECs, we will not stand in the way of their recovering those costs.”).

⁵⁷ One Communications has explained that it books the EUCL as local revenue to offset local costs, which qualifies the EUCL for favorable tax treatment in Pennsylvania. *See* note 8, *supra*. In addition, One Communications explained that if the EUCL were repurposed as Verizon proposes, such action would increase the amount of local loop costs to be recovered through service local rates by an identical amount, which would mean One Communications’ local customers would subsidize toll carriers like Verizon. One Communications Reply Brief at 32-33.

from intrastate toll carriers.⁵⁸ Given the new fifth Applicable Legal Standard allowing “appropriate consideration” of the interaction between intra and interstate charges, One Communications respectfully suggests that Verizon’s position has been overruled.

Mr. Parrish determined that One Communications experienced a significant interstate access cost recovery shortfall owing to artificially deflated interstate access rates, using the same FDC methodology he used to calculate One Communications’ intrastate access costs. Verizon has not questioned the accuracy of Mr. Parrish’s mathematical calculations in that regard. The Commission has determined that a CLEC must consider the influence and impact of its interstate access rates in determining the reasonable measure of cost and the setting of the CLEC’s intrastate carrier access charges. ALJ Cocheres should accept Mr. Parrish’s interstate shortfall conclusions as valid measures of a portion of One Communications’ intrastate switched access costs.

6. The issue of rate refunds, if any, shall be adjudicated under 66 Pa. C.S. § 1312 regarding the determination of unjust and unreasonable rates and the issuance of refunds together with interest at the legal rate.

The Commission was clear in issuing the sixth Applicable Legal Standard the novelty of Section 3017(c) issues does not preclude it from ordering refunds:

The fact that the Commission may not have put forward effective guidance regarding the substantive issues in these proceedings does not affect the parameters governing the finding that a particular rate or rates can be unlawful and subject to refund.⁵⁹

Section 1312 of the Public Utility Code⁶⁰ authorizes the Commission to order a public utility to issue refunds to patrons under certain limited circumstances. The Commission may

⁵⁸ Yet, Verizon agrees that there is no functional difference between provisioning interstate and intrastate access service, consistent with the cost causation principle discussed in this section. Tr. at 121.

⁵⁹ *Penn Telecom* at 16.

⁶⁰ 66 Pa. C.S. § 1312.

order a refund in proceedings involving rates only if the Commission determines that the rate received by the public utility: (i) was unjust or unreasonable; (ii) was in violation of any order or regulation of the Commission; or (iii) was in excess of the applicable rate contained in an existing and effective tariff of the public utility.⁶¹ One Communications respectfully submits that there is nothing in the record of the above-consolidated cases to suggest that One Communications' intrastate switched access rates were in excess of the relevant rates contained in its existing and effective tariff. Similarly, there is no suggestion that One Communications' access rates were in violation of any order or regulation of the Commission.⁶² The remaining question is whether One Communications' switched access rates were unjust or unreasonable. One Communications respectfully submits that the overwhelming evidence in these cases – as reiterated herein – demonstrates that its switched access rates are cost justified under Section 3017(c). Thus, there is no need to reach the issue of refunds.

If the Commission does decide to consider refunds (a circumstance not indicated by the law or facts of this case), One Communications respectfully requests that the Commission limit such refunds pursuant to Section 1309.⁶³ Section 1309 limits rate relief to nine (9) months from the date of the filing of a complaint, or approximately January 25, 2008 in these cases. This limitation would be appropriate for the reasons outlined in One Communications' Main Brief beginning at page 38. To wit, Verizon did not file its complaint for several years after paying One Communications' access rates, the rates were not in violation of any Commission order or regulation, and were charged pursuant to a lawfully filed tariff which governs One Communications until such time the rates are altered by the Commission. Further, until *CTSI* and *Penn Telecom* were released the Commission had issued no guidance on how CLECs might

⁶¹ *Id.*

⁶² Obviously, One Communications' FDC study is being evaluated on a *post hoc* basis.

⁶³ 66 Pa. C.S. § 1309.

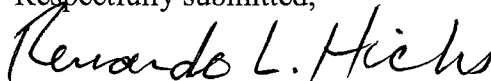
cost justify their rates, and it would be highly inequitable to punish One Communications for following Pennsylvania law to the best of its ability.

CONCLUSION

Since the close of the record and briefing in this case, the Commission has issued six Applicable Legal Standards by which ALJ Cocheres may evaluate One Communications' FDC cost study. One Communications' FDC study meets the first five, substantive Applicable Legal Standards squarely, and the results of One Communications' FDC study demonstrate that its intrastate switched access charges are cost justified under Section 3017(c) of the Public Utility Code. The sixth Applicable Legal Standard concerns refunds, which are not at issue here given One Communications' cost justification of its access rates.

WHEREFORE, for all the reasons enumerated herein and its Main and Reply Briefs, and based on its FDC study, One Communications respectfully requests that the Commission deny Verizon's Complaint in its entirety, adopt the Proposed Findings of Fact and Conclusions of Law appended hereto, and otherwise award the relief sought by One Communications.

Respectfully submitted,



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December 17, 2009

Counsel for the One Communications Companies

ATTACHMENT 1

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania Inc., Verizon North	:	
Inc., Bell Atlantic Communications, Inc.	:	
d/b/a Verizon Long Distance, Verizon	:	
Select Services Inc., Verizon Global	:	
Networks, Inc., MCImetro Access	:	
Transmission Services, LLC d/b/a Verizon	:	
Access Transmission Services, and MCI	:	
Communications Services Inc.,	:	
	:	
Complainants	:	
	:	Docket No. C-20077672
v.	:	Docket No. C-20077674
	:	Docket No. C-20077676
Choice One Communications of	:	
Pennsylvania, Inc., CTC Communications	:	
Corp., and FiberNet Telecommunications	:	
of Pennsylvania, LLC,	:	
	:	
Respondents	:	

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING
PARAGRAPHS OF
THE ONE COMMUNICATIONS COMPANIES**

Proposed Findings of Fact

1. Verizon¹ purchases “switched access service” from the One Communications Companies² pursuant to tariffs those companies file with the Commission.
2. With limited exceptions for certain individual access rate elements, One Communications has stipulated that its tariffed access rates are higher than Verizon’s tariffed access rates.

¹ Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc.

3. The One Communications Companies' access rates are set forth in the companies' tariffs, all of which define "switched access service" in the following terms:

"a two-point electrical communications path between a Customer's premises and an End User's premises . . . [which] provides for the use of common terminating, switching and trunking facilities, and for the use of common subscriber plant of the Company.³"

4. One Communications uses common facilities, including the local loop, to provide switched access service and its tariffs are constructed to recover the costs of such common facilities.⁴

5. The description of "switched access service" used by One Communications, and the common facilities supporting that service, have not changed since at least November 30, 2004 (for the applicable One Communications Companies that have been providing access services since that date) or when Verizon began buying service out of the tariffs.⁵

6. The switched access service that One Communications sells under its tariffs includes terminating, switching and trunking functions at the network level, and includes use of "common subscriber plant," *i.e.*, the local loop, to complete the communications path.⁶

7. As measured by access lines, Choice One, FiberNet and CTC in Pennsylvania are 2%, 0.02% and .07% the size of Verizon Pennsylvania's operations, respectively.⁷

8. Verizon testified that its own access charges are not based on cost.⁸

² Choice One Communications of Pennsylvania Inc. d/b/a One Communications ("Choice One"), CTC Communications Corp. d/b/a One Communications ("CTC") and FiberNet Telecommunications of Pennsylvania, LLC ("FiberNet") (collectively, the "One Communications Companies" or "One Communications").

³ See http://www.onecommunications.com/uploadedFiles/Choice1_PAPUC_2_Access_060927.pdf (Choice One tariff); http://www.onecommunications.com/uploadedFiles/CTC_PAPUC_No_5_060927.pdf (CTC tariff); http://www.wvfiber.net/pdf/pa_trf_swaccess_110101_fibernet_cur01.pdf (FiberNet tariff) (emphases added).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Parrish Rebuttal at 9.

⁸ Verizon Panel Rebuttal at 18.

9. One Communications submitted a service-specific cost study prepared by Donald E. Parrish of Parrish, Blessing & Associates that demonstrates the cost per minute incurred by One Communications to provide both intrastate and interstate access service.⁹
10. The cost study identifies One Communications' direct costs of providing access, along with costs causally and rationally related to access. The total of these costs, when divided by the annual minutes of intrastate switched access sold by the One Communications Companies, results in a cost per minute that is higher than the companies' composite tariffed access rates as calculated by Verizon.¹⁰
11. One Communications separately calculated the cost of One Communications' interstate and intrastate switched access services.¹¹ Mr. Parrish determined that the Company's interstate switched access costs exceed the Company's interstate switched access rates, which are capped by the FCC to match Verizon's interstate rates.¹²
12. One Communications' cost study used the Companies' actual 2006 costs and operating parameters to develop allocations to specific services and service categories, including access services. The bases for the allocations of costs to service categories follow the principles incorporated in the FCC's Separations and Access Charge Rules, as codified in 47 C.F.R. Parts 36 and 39.¹³
13. One Communications' cost study reflects a full-distributed cost ("FDC") methodology, by which the total actual costs of a telecommunications carrier's operations are allocated to the carrier's services. The first step is to directly assign costs to the services or service categories to which costs are directly related. The next step is to allocate cost that can be

⁹ See generally, Parrish Direct Testimony.

¹⁰ See generally, Parrish Direct Testimony.

¹¹ Parrish Surrebuttal at 30.

¹² *Seventh R&O*.

attributed to services on the basis of relative usage or other appropriate measures of cost causation. Finally, the FDC methodology allocates general and administrative costs in direct proportion to costs that previously are directly assigned or attributed to the services.¹⁴

14. The inputs to the cost study were the standard 2006 financial and operating data routinely maintained by each of the One Communications' Companies in the normal course of business.¹⁵

15. From a technical perspective, there is no difference between the provision of intrastate access and interstate access.¹⁶

16. One Communications' witness Mr. Parrish used "actual cost data" in his fully-distributed cost methodology,¹⁷ as derived from "the operating expenses and plant investment as compiled from the [One Communications] Companies' records."¹⁸

17. Each of the One Communications Companies incurs a "residual interstate revenue requirement" due to regulatory decisions of the FCC.¹⁹

18. The cost study submitted by One Communications demonstrates that the One Communications Companies' access rates are actually lower than what is required to recover all of the Companies' access costs.²⁰

19. Verizon submitted no independent cost study in response to the cost study submitted by One Communications.

¹³ Parrish Direct, at 5

¹⁴ *Id.*

¹⁵ Parrish Direct, at 6-7

¹⁶ Parrish Direct, at 24

¹⁷ Parrish Direct at 7.

¹⁸ *Id.* at 12.

¹⁹ Parrish Direct, at 3.

²⁰ *See generally*, Parrish Direct.

²² *Seventh Report and Order*, ¶ 37

Proposed Conclusions of Law

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. 66 Pa. C.S. §3017(c) allows CLECs like the One Communications Companies to charge access rates higher than an ILEC in the same service territory so long as the CLEC's rates are "cost justified."
3. The One Communications Companies – Choice One, CTC and FiberNet – have stipulated that their tariffed access rates are subject to § 3017(c).
4. A CLEC's access rate is not per se unreasonable merely because it exceeds the ILEC rate.²²
5. There is no single correct cost methodology.²³
6. One Communications' cost study qualifies as a "cost justification" method under 66 Pa. C.S. §3017(c).
7. One Communications' cost study meets the applicable legal standard set forth in the Commission Orders in *Verizon Penn., Inc., et al v. CTSI, LLC*²⁴ and *Verizon Penn., Inc., et al v. Penn Telecom, Inc.*²⁵
8. A utility's indicated cost of service to each customer classification is to be upheld if it is within an acceptable range of reasonableness, notwithstanding criticisms of the study.²⁶
9. One Communications' cost methodology, allocation factors, cost inputs, and ultimately its cost justification are clearly reasonable.
10. One Communications Local Loop Costs are valid components of switched access costs.

²³ *Mobilfone of Northeastern Pennsylvania, Inc v. Pennsylvania Pub. Util. Comm'n*, 467 A.2d 902, 903 (1983), citing *Executone of Philadelphia, Inc. v. Pennsylvania Pub. Util. Comm'n*, 52 Pa. Commonwealth Ct. 415 A.2d 445 (1980).

²⁴ Docket No. C-20077332, rel. Aug. 7, 2008 (hereinafter *CTSI*).

²⁵ Docket No. C-20066987, rel. Aug. 7, 2008 (hereinafter *Penn Telecom*).

²⁶ *People's Natural Gas Co. v. Pennsylvania Public Utility Commission*, 409 A.2d 446 (1979).

11. One Communications is entitled to recover its interstate costs shortfall in its intrastate access rates.
12. One Communications' costs study properly accounts for the End User Common Line Charge.
13. One Communications' cost study does not over-allocate expenses.
14. One Communications' cost study reasonably excluded local terminating minutes.
15. One Communications' cost study properly did not include local termination costs in switched access costs.
16. One Communications' cost study properly did not include excess retail service depreciation expense in switched access costs.
17. One Communications' cost study properly did not include retail client manager/technical consultant costs in switched access costs.
18. Verizon's theoretical criticisms of One Communications' cost study do not diminish the study's validity or the cost justification of One Communications' access rates.

Applicable Legal Standard No. 1 - The "cost justified" standard of Section 3017(c), 66 Pa.CS. § 3017(c), equates with a "reasonable measure of costs" for a CLEC's intrastate switched access services.

19. According to 66 Pa. C.S. § 3012, "Switched access service" is defined as "A service which provides for the use of common terminating, switching and trunking facilities of a local exchange telecommunications company's public switched network. The term includes, but is not limited to, the rates for local switching, common and dedicated transport and the carrier charge."

20. A “reasonable measure of costs” for “switched access service” should include cost inputs related to “the use of common terminating, switching and trunking facilities,” along with cost inputs related to – but not limited to – the functionalities for “local switching and common and dedicated transport.”²⁷
21. The “reasonable measure of costs” should also include a “carrier charge,” *i.e.*, a flat fee designed to recover a portion of the cost of the local loop.
22. The first Applicable Legal Standard, using Section 3012’s definition of switched access service, contemplates three types of switched access costs: facilities, functionalities and a carrier charge.
23. One Communications’ Network Costs track the first Applicable Legal Standard by tracking Section 3012’s enumerated facilities and functionalities costs for switched access service.
24. One Communications’ Corporate Support Expenses track the first Applicable Legal Standard as an indirect cost of common facilities and functionalities (acceptable under Section 3012’s “not limited to” clause), verified by Mr. Parrish as supporting the implementation and maintenance of the customer base that generates toll services and the associated traffic.
25. One Communications’ capital costs also track the first Applicable Legal Standard by tracking Section 3012’s facilities and functionalities costs.
26. One Communications’ cost study reasonably relied upon and applied agency guidelines and industry accepted allocation formulas to rationally allocate costs.

²⁷ These facilities and functionalities cost inputs are very similar to the Federal Communications Commission’s (“FCC”) Part 69 itemization of switched access costs, which Mr. Parrish used as a guide. *See* 47 C.F.R. § 69.1, *et seq.*

Applicable Legal Standard No. 2: A reasonable measure of the CLEC's local loop plant can be included in the CLEC cost study performed for establishing the reasonable measure of costs for its intrastate access services.

27. The Commission has consistently adopted the position that the fixed costs associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop, including the ILECs' intrastate carrier access services.²⁸

28. One Communications included a reasonable measure of its local loop plant in its switched access cost study.

29. The use of actual MOU data to allocate fixed loop costs is reasonable *per se*. The FCC uses a "unit basis" approach in Part 36 of its rules: "Separations are made on the 'actual use' basis, which gives consideration to relative occupancy and relative time measurements."²⁹

30. Parts 36 and 69 of the FCC's rules require that "each component of the network is analyzed and allocated to specific service categories using allocation parameters reflective of cost causation."³⁰

31. Based on the federal perspective, therefore, Mr. Parrish's local loop allocations produce rational results.

Applicable Legal Standard No. 3: Although FDC embedded accounting-revenue requirement cost studies by the CLEC are generally acceptable, consideration should be given to forward-looking economic cost studies that treat the CLEC's loop costs as joint costs. In ascertaining the joint loop costs of a CLEC, consideration should be given to whether the CLEC's loop costs can, in part, be derived from the UNE-Loop

²⁸ *CTSI* at 8-9.

²⁹ 47 C.F.R. § 36.2(a)(3)(1)-(2)

(UNE-L) rates that the CLEC pays for leasing loops to its end-user customers from an ILEC or multiple ILECs. Similarly, in any CLEC cost study, there must be a clear and well documented demonstration of how the CLEC recovers joint loop costs from services other than intrastate switched access.

32. [T]he use of FDC and embedded cost revenue requirement standards and methods should be available to a CLEC for deriving this reasonable measure of underlying cost in order to cost justify its rates in the ILEC's "same service territory."³¹

33. The third Applicable Legal Standard permits forward-looking cost studies so long as they "that treat the CLEC's loop costs as joint costs." This standard overrules Verizon's position, that a forward-looking cost study must be used, and must exclude loop costs.³²

34. The Schedules and Sections in Mr. Parrish's cost study (appended to his Direct Testimony) confirms that his is an acceptable FDC study under the third Applicable Legal Standard adopted by the Commission. Mr. Parrish did not *forecast* the Company's cost of service (e.g., using an adjusted test year), then match a revenue total One Communications would be authorized to collect for sales of a forecast volume of service.³³ Rather, Mr. Parrish started with an examination of One Communications' booked costs (in conformity with revenue requirements standards, as referenced in the third Applicable Legal Standard), and once he totaled those costs, he divided them by the annual access MOU handled by One Communications to determine a per minute cost of access.

³⁰ Parrish Surrebuttal at 15; *see also* 47 C.F.R. §§ 36.2(a), 69.301, *et seq.*

³¹ *Penn Telecom* at 15.

³² *Id.*

³³ *Id.* at 9.

35. One Communications' FDC study complies with the third Applicable Legal Standard, in that it uses UNE-Loop (or "UNE-L") rates that the Company pays for leasing loops to its end-user customers.

36. One Communications' cost study clearly demonstrates how it recovers joint loop costs from services other than intrastate switched access.

Applicable Legal Standard No. 4: The cost justification of the ILEC's intrastate access rates is immaterial in ascertaining the reasonable measure of costs for the CLEC's intrastate switched carrier access services. However, ILEC and CLEC intrastate and interstate switched access rates may be used as proxy benchmarks for establishing an appropriate range of just and reasonable intrastate access rates for a particular CLEC. Rural ILEC intrastate and interstate access rates may play a role in establishing such a range if a particular CLEC operates in rural exchanges of a non-rural ILEC and/or in the service area of a rural ILEC.

37. Cost justification for an *ILEC's* intrastate access rates is immaterial in ascertaining the reasonable measure of costs for a *CLEC's* intrastate switched access services

38. In this case, it is not appropriate to use Verizon's switched access rates as proxy benchmarks for establishing an appropriate range of just and reasonable intrastate access rates for One Communications.

39. As measured by access lines, Choice One, FiberNet and CTC in Pennsylvania are 2%, 0.02% and .07% the size of Verizon Pennsylvania's operations, respectively³⁴, therefore, Verizon's operating unit costs would likely be significantly below those of Choice One, FiberNet and CTC, and why Verizon's access rates are not competent proxies.

³⁴ Parrish Rebuttal at 9.

40. Verizon in Pennsylvania also enjoys a much higher level of per-line access usage than the Companies (more than two times higher, on average), which is yet another source of economies of scale.³⁵

Applicable Legal Standard No. 5: There must be appropriate consideration given to whether the CLEC's interstate carrier access charges influence or interact in any fashion with the reasonable measure of cost and the setting of the CLEC's intrastate carrier access charges.

41. There is a considerable influence and impact from One Communications' interstate access rates on the reasonable measure of cost and the setting of the Company's intrastate access charges.

42. It is appropriate for One Communications to recover its interstate access charge shortfall from its intrastate toll carrier customers, which companies are the same cost causers as for interstate access service.

Applicable Legal Standard No. 6: The issue of rate refunds, if any, shall be adjudicated under 66 Pa. C.S. § 1312 regarding the determination of unjust and unreasonable rates and the issuance of refunds together with interest at the legal rate.

43. Section 1312 of the Public Utility Code³⁶ authorizes the Commission to order a public utility to issue refunds in proceedings involving rates only if the Commission determines that the rate received by the public utility: (i) was unjust or unreasonable; (ii) was in violation of any order or regulation of the Commission; or (iii) was in excess of the applicable rate contained in an existing and effective tariff of the public utility.³⁷

³⁵ *Id.* at 9-10.

³⁶ 66 Pa. C.S. § 1312.

³⁷ *Id.*

44. One Communications' intrastate switched access rates were in clearly not in excess of the relevant rates contained in its existing and effective tariff.
45. One Communications' access rates were clearly not in violation of any order or regulation of the Commission.
46. The evidence in these cases demonstrates that One Communications' switched access rates are cost justified under Section 3017(c). Therefore, One Communications' switched access rates are not unjust or unreasonable, and refunds are not authorized under 66 Pa.C.S.A. §1312.

Proposed Ordering Paragraphs

1. One Communications' cost study meets the applicable legal standards set forth in the Commission Orders in *Verizon Penn., Inc., et al v. CTSI, LLC*, Docket No. C-20066987 (Order Entered August 7, 2008) and *Verizon Penn., Inc., et al v. Penn Telecom, Inc.*, Docket No. C-20066987 (Order Entered August 7, 2008).
2. One Communications' cost study demonstrates that One Communications' Pennsylvania intrastate switched access rates are cost-justified under 66 Pa.C.S.A. §3017(c)
3. The Complaint of Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. is dismissed.

4. The One Communications Companies are not required to refund or credit any amounts to Verizon under 66 Pa.C.S.A. §1312.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania Inc., Verizon North	:	
Inc., Bell Atlantic Communications, Inc.	:	
d/b/a Verizon Long Distance, Verizon	:	
Select Services Inc., Verizon Global	:	
Networks, Inc., MCI metro Access	:	
Transmission Services, LLC d/b/a	:	
Verizon Access Transmission	:	
Services, and MCI Communications	:	
Services Inc.,	:	Docket No. C-20077672
Complainants	:	
	:	Docket No. C-20077674
v	:	
	:	Docket No. C-20077676
	:	
CTC Communications Corp., FiberNet	:	
Telecommunications of	:	
Pennsylvania, LLC and Choice One	:	
Communications of Pennsylvania, Inc.,	:	
	:	
Respondents	:	

CERTIFICATE OF SERVICE

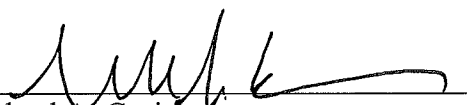
I hereby certify that I have this day served a copy of the foregoing document on behalf of CTC, FiberNet and Choice One in accordance with the requirements of 52 Pa. Code § 1.54 et. seq. (relating to service by a participant):

VIA E-MAIL AND FIRST CLASS MAIL

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Michael A. Gruin

DATED: December 17, 2009