

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**Petition of Choice One Communications of )  
Massachusetts Inc., Conversent Communications )  
Massachusetts Inc., CTC Communications Corp. )  
and Lightship Telecom, LLC (collectively, “One ) D.T.C. 10-2  
Communications”), For Exemption from Price Cap on )  
Intrastate Switched Access Rates as Established )  
in D.T.C. 07-9 )**

**POST-HEARING REPLY BRIEF OF  
AT&T COMMUNICATIONS, INC.**

**\*\*\* PUBLIC VERSION \*\*\***

## TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
ARGUMENT .....	5
I. ONECOMM HAS NOT MET THE STANDARD FOR AN EXEMPTION .....	5
II. THE NUCA METHODOLOGY IS NOT INDUSTRY STANDARD.....	7
III. IF THE NUCA STUDY WERE CONSIDERED AT ALL, NECESSARY COST ADJUSTMENTS SHOW THAT ONECOMM’S COSTS DO NOT EXCEED THE RATE CAP.....	14
A. Loop Costs Do Not Belong in Switched Access Costs (OneComm Br. at 68-77).....	14
B. Loop-Related Costs Do Not Belong in Switched Access Costs (OneComm Br. at 53-61).....	17
C. Non-Traffic-Sensitive Costs Should Be Excluded From End Office Switching Costs in a Switched Access Cost Study (OneComm Br. at 42- 49) .....	21
D. OneComm’s Switch Trunk Costs Are Overstated (OneComm Br. at 33-42).....	23
E. OneComm Overallocates Facilities to Voice Service (OneComm Br. at 49- 53) .....	28
F. Common Costs Are Not Relevant for Purposes of Determining the TSLRIC Costs, But Rather Relate Only to Pricing or Rate Design (OneComm Br. at 24-26, 65-68).....	29
IV. THERE SHOULD BE NO TRUE-UP, NOR WOULD A TRUE UP BE LAWFUL.....	30
CONCLUSION.....	32

## INTRODUCTION

Despite OneComm's 86-page brief, several hundred pages of testimony, and attempts to deflect attention from its non-industry-standard cost study, this remains a straightforward case. The Department has been a pioneer and national leader in the reform of intrastate switched access rates. Its CLEC rate-cap requirement is a sound rule that puts all CLECs on the same level playing field when selling service to captive interexchange carrier ("IXC") customers, while leaving CLECs free to compete on price and merit in markets where customers have a choice of provider. This parity is pro-competitive and pro-consumer. It puts all carriers on the same equal footing in Massachusetts as they are across the nation with regard to interstate switched access rates under the FCC's analogous rate cap, and the same equal footing as they are with regard to intrastate charges in many other states. *See* AT&T Init. Br., Att. 1. There is no evidence that the rate cap has harmed consumers or competition in Massachusetts since its inception in 2009 and implementation in 2010, and no evidence of any changed circumstances since the *Rate Cap Order*. Final Order, DTC 07-9 (2009) ("*Rate Cap Order*").

The pro-consumer and pro-competitive benefits of the switched access rate-cap policy are undisputed. The burden of proof on a carrier seeking a special exemption from the rate cap therefore should be very high, and that carrier ought to have extremely good reasons and support. Yet OneComm has nothing but a badly flawed cost study. Indeed, the elephant in the room that OneComm keeps ignoring is this: How could OneComm's costs of providing the identical switched access service as Verizon and every other CLEC actually be **[BEGIN CONFIDENTIAL \*\*\* \*\*\*\*\* END CONFIDENTIAL]** higher than the rate cap, yet still be justifiable and prudent? Either OneComm is extremely inefficient (in which case a rate-cap exemption would only encourage and reward inefficiency) or its costs are extremely overstated. Either way, its Petition should be denied.

OneComm's Petition leaves other unanswered questions as well. How could OneComm's costs get so high when it has been subject to the same cap on interstate switched access charges (which is effectively the same service) since 2001? If, as OneComm argues, "a minute is a minute" for all voice services, why does OneComm price its retail services at or below its competitors' rates, yet seek a price **[BEGIN CONFIDENTIAL \*\*\* \*\*\*\*\* END CONFIDENTIAL]** higher than its competitors' rates for switched access? The only difference – and the reason for OneComm's Petition – is that retail services are competitive and consumers have choice, meaning they can leave OneComm if its prices were higher than its competitors, whereas IXCs using monopoly switched access service have no choice and are stuck with whatever the Department lets OneComm charge.

In addition, OneComm's view that the standard for an exemption is merely "cost-plus" is fundamentally wrong. It is not sufficient to merely record imprudent costs and then say IXCs must pay them even though no other switched access provider has rates that high (or even a quarter that high). Moreover, alleged costs cannot be the sole factor to consider, for the rate cap is driven by sensible and serious policies regarding the switched access market and competition as a whole. *See Rate Cap Order* at 18-27. In the end, the rate cap is about protecting consumers and preventing abuse of market power, not protecting unfit competitors. And as the intervenors have shown, OneComm's cost study is flawed and overstated in any event. Simply put, OneComm has not shown it is entitled to the nation's first-ever exemption from the switched access rate cap, and its Petition should be denied and the rate cap kept in place for both originating and terminating switched access service. As the record shows, carriers paying for originating access service are captive and therefore equally at risk for abusive rates as carriers that only use terminating access. Tr. 339-40.

AT&T responds to OneComm's initial brief in detail in this reply brief, but a few things are worth noting at the outset. One is that OneComm conspicuously ignores the relevant FCC authority on switched access rates and costs, which is cited throughout AT&T's testimony and Initial Brief, and instead relies on misguided and misleading references to unbundling decisions. Another is that OneComm engages in disingenuous wordplay and mislabeling. For example, OneComm claims its loop facilities should be treated "as if" they were interoffice transport, simply by mislabeling them "transport" instead of loops, even though they do not connect two switches. It also asks the Department to pretend that the Digital Loop Carriers ("DLCs") in its collocations are end office switches, even though it does not (and legally cannot) have any collocated switches. OneComm then builds on that mislabeling to claim that its end office switches should be treated "as if" they were the second point of switching (that is, as if they were tandem switches), even though they are not. A third recurring theme is OneComm's misrepresentation of how AT&T Connecticut or other AT&T affiliates do cost studies. These misrepresentations are simply wrong, as we demonstrate below. If anything, the differences between AT&T Connecticut's cost studies and NUCA show where NUCA went wrong.

Finally, OneComm argues that it must recover all its alleged costs exclusively from IXCs or else its intrastate access rates will be "confiscatory." That is nonsense. The "confiscation" concept applies to all of a company's services taken together, not just one rate. Furthermore, nothing stops OneComm from ultimately recovering all its alleged costs of switched access – it just cannot foist them entirely on captive IXCs. The FCC has addressed this point dispositively. Recognizing that both end-users and IXCs benefit from switched access service, the FCC found it proper to apply a uniform cap to the interstate switched access rates charged to IXCs (because

they are captive customers in a non-competitive market) but still allow CLECs to recover any *additional* costs from end-users:

In analyzing the problems surrounding CLEC access charges, it is important to recognize that, in their provision of access services, competitive carriers actually serve two distinct customer groups. The first is the IXCs, which purchase access service as an input for the long distance service that they provide to their end-user customers. As we discuss above, IXCs are subject to the monopoly power that CLECs wield over access to their end users. However, an equally important group of customers for access services is the end users who benefit from the ability, provided by access service, to place and receive long distance calls. In regulating ILEC access rates, this Commission has recognized the benefit that end users receive from access service and has concluded that it justifies the ILECs' imposition of the subscriber line charge (SLC) on end users. *The noteworthy aspect of this second group of access consumers, or beneficiaries, is that, unlike IXCs, they have competitive alternatives in the market in which they purchase CLEC access service: In any market where a CLEC operates, there is, by definition, at least one alternative provider – the ILEC.*

The notion of these two, parallel markets for access service sheds light on the dilemma presented by CLEC access charges. It leads us to conclude that, in keeping with their competitive, unregulated character, 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. Given the unique nature of the market in which the IXCs purchase CLEC access, however, *we conclude that it is necessary to constrain the extent to which CLECs can exercise their monopoly power and recover an excessive share of their costs from their IXC access customers – and, through them, the long distance market generally.* On the other hand, we continue to abstain entirely from regulating the market in which end-user customers purchase access service. Accordingly, CLECs remain free to recover from their end users any greater costs that they incur in providing either originating or terminating access services. *When a CLEC attempts to recover additional amounts from its own end user, that customer receives correct price signals and can decide whether he should find an alternative provider for access (and likely local exchange) service. This approach brings market discipline and accurate price signals to bear on the end user's choice of access providers.*

*CLEC Access Charge Reform Order*, ¶¶ 38-39<sup>1</sup> (footnotes omitted; emphasis added). OneComm can do the same, so its “confiscation” theory is legally and factually baseless.

---

<sup>1</sup> Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd. 9923 (rel. Apr. 26, 2001). The FCC very

## ARGUMENT

### **I. ONECOMM HAS NOT MET THE STANDARD FOR AN EXEMPTION**

As discussed in AT&T's testimony and Initial Brief (at 6-14), the standard and burden of proof on a CLEC seeking a special exemption from the switched access rate cap must be high. The Department had solid reasons for imposing the cap just a short time ago, and nothing about the switched access market has changed. Thus, if allowing CLECs to charge intrastate switched access rates above the rate cap was market-distorting, anticompetitive, and anti-consumer in 2009 (*Rate Cap Order* at 1, 6, 9-18, 22-27), it would be equally so today. The cap would quickly become meaningless, and its benefits would be lost, if a CLEC could simply tote up the average cost for any voice minute of use on its network and then seek an exemption with no proof of materially changed, unforeseeable, or exogenous circumstances. That would be a step backward.

OneComm criticizes AT&T's discussion of the rationales for and purposes of the rate cap as an attempt to "relitigate" the *Rate Cap Order*. OneComm Br. at 2. AT&T is not relitigating anything. If OneComm wants a special exemption from the cap, it bears the burden of showing special circumstances that warrant abandoning the benefits of the cap in order to help OneComm, despite the undisputed burden that would place on IXCs and consumers. In evaluating that request, the Department naturally can, and should, consider all factors, not merely look at alleged LEC costs in a vacuum. The FCC recognizes that any carrier seeking an exemption from the switched access rate cap "bears a heavy burden" and that an exemption

---

recently reiterated the point the end-users also benefit from and should bear part of the costs of switched access service:

*Cost Causation.* Underlying historical pricing policies for termination of traffic was the assumption that the calling party was the sole beneficiary and sole cost-causer of a call. *More recent analyses, however, have recognized that both parties generally benefit from participating in a call, and therefore, that both parties should share the cost of the call.*

Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90, *et al.*, at ¶ 525, 2011 WL 466775 (FCC, rel. Feb. 9, 2011) (emphasis added; footnotes omitted).

might be warranted “only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.” *PrairieWave Waiver Denial*, ¶ 12.<sup>2</sup>

According to OneComm, however, the test for an exemption is simply a “cost-plus” adding exercise: “[I]f a CLEC’s cost of providing service exceeds the D.T.C. 07-9 rate cap, the CLEC should be exempted from that rate cap and be allowed to charge its cost” to captive IXC customers. OneComm Br. at 2. In other words, OneComm says it can just total up the alleged cost of any voice minute of use (in whatever way makes it seem highest), compare that to Verizon’s rates, and if it is higher an exemption *must* be granted. That would not make sound regulatory policy. In fact, it would be no policy at all. As the FCC put it, “[i]f the mere filing of a document outlining a competitive LEC’s preferred method of determining access charges constituted ‘good cause’ to justify a waiver [of the rate cap], every competitive LEC would file such a document and the resulting waivers would swallow the applicable rules.” *PrairieWave Waiver Denial*, ¶ 13. Even worse, OneComm contends that its alleged costs are *ipso facto* “prudent” and “justifiable” as long as it has receipts and invoices that are not plainly fraudulent – regardless of how many multiples higher those alleged costs are than the current rate cap. OneComm Br. at 9-10. That cannot be the test. If it were, every CLEC in the state could easily find some way to support an exemption. Not only would that destroy the rate cap and its benefits, it also would unleash a flood of new petitions on the Department, with each carrier submitting its own analysis of alleged costs.<sup>3</sup>

---

<sup>2</sup> *Access Charge Reform: PrairieWave Comms., Inc. Petition for Waiver*, 23 FCC Rcd. 2556 (rel. Feb. 14, 2008).

<sup>3</sup> See Tr. 199-203 (Dr. Ankum asserting that every carrier’s costs would have to be looked at separately and that “other carriers [can] take care of themselves”). Dr. Ankum’s testimony not only shows the administrative problems of allowing “cost-plus” exemptions, but also proves that OneComm is merely seeking a special competitive advantage, since it rejected the notion that any rate approved for it could also serve as the cap for other carriers. *Id.* In other words, OneComm opposes rate parity in any form.

The bottom line is that there should be a strong presumption against exemptions. That is the only way to retain all the benefits of the rate cap unless and until some truly extraordinary situation arises. OneComm has not come close to justifying an exemption here. It points to no changed circumstances, no unforeseen developments, and no exogenous forces that compel a departure from the *Rate Cap Order*.

## II. THE NUCA METHODOLOGY IS NOT INDUSTRY STANDARD

As a threshold matter, the Department does not need to reach the issue of adjustments to OneComm's cost study, for the study is fundamentally flawed on its face and does not meet industry standards. OneComm claims the NUCA study is a TSLRIC study. OneComm Br. at 13. AT&T agrees that TSLRIC is the proper standard, but NUCA is not a TSLRIC study. OneComm does not (and cannot) point to a single contested case where a NUCA cost study has been accepted. *See, e.g., New Jersey BPU Order* at 29 (rejecting NUCA as being flawed, overstating costs, and not being forward looking) (AT&T Panel Rebuttal, Ex. 1).<sup>4</sup>

The first clue that NUCA is flawed is the per-minute-of-use ("MOU") cost it produces, which is about [BEGIN CONFIDENTIAL \*\*\* \*\*\*\*\* END CONFIDENTIAL] higher than the rate cap. (OneComm has claimed the rate cap equates to 0.375 cents per minute). *See Webber Rebuttal* at 13. That is unrealistic and unsustainable, given that OneComm has been subject to an identical rate cap on interstate switched access service since 2001 and continues to operate

---

<sup>4</sup> The *New Jersey BPU Order* is a thorough rejection of NUCA, so OneComm tries to discount it by saying that the decision is on appeal. Tr. 383. Although the decision is on appeal, it is a binding final order today and its reasoning remains sound – which helps explain why the New Jersey BPU rejected the request for a stay pending appeal. Order on Motion to Stay, *In the Matter of the Board's Investigation of Local Exchange Carrier Intrastate Exchange Access Rates – Emergent Application*, Docket No. TX08090830, at 10 (N.J. B.P.U., Feb. 18, 2010) (noting that parties seeking stay had not shown a reasonable probability of success on appeal, and that a stay would harm the public interest). OneComm likewise tries to ignore an adverse recommended decision in Pennsylvania, arguing that it did not consider NUCA. Tr. 383. The recommended ruling may not have considered NUCA *per se*, but it did consider, and reject, a OneComm cost study with the same "a minute is a minute" character as NUCA. Recommended Decision, *Verizon Pennsylvania, Inc. v. CTC Comm. Corp., et al.*, Penn. P.U.C. Docket No. C-20077672, at 17-18 (June 3, 2010) ("the studies were fundamentally flawed and unreliable"; "the One Communications Companies had failed to meet the 'cost justified' standard").

under that cap. Either OneComm's alleged costs are very overstated (as a result of a flawed cost study) or OneComm is very inefficient. If the costs are overstated then an exemption naturally must be denied, and if OneComm is simply inefficient there is no rationale that would justify allowing it to shift its inefficient costs to captive IXC customers.

Moreover, if OneComm's costs truly were as high as it claims, and were incurred in the manner it claims (*i.e.*, all costs on a traffic-sensitive, per-MOU basis) then one would expect to see OneComm charging that same high rate and applying a usage-only rate structure for all competitive voice services where it has pricing freedom. AT&T Panel Rebuttal at 6-7. But of course OneComm does not do that, and instead includes non-recurring and monthly recurring flat charges in those rates, even though NUCA denies the existence of such fixed costs. *See* Tr. 106-07. OneComm thus says one thing and does another. This shows that NUCA is not based on industry standards, but rather on producing a particular result. NUCA treats all costs as usage costs not because they actually are usage costs, but rather because switched access rates are MOU-based and OneComm wanted to create the highest per-MOU "cost."

In any event, there is no reason to believe that OneComm has accurately stated its TSLRIC costs, because NUCA does not follow TSLRIC methodology. A TSLRIC study measures the *incremental* cost of a specific service. Here that would be the difference between the carrier's costs of providing all services and the costs of providing all services except intrastate switched access. Tr. 302-03, 367-68; Verizon Panel Rebuttal at 19-20. NUCA, by contrast, just takes all OneComm's alleged costs for all voice services and divides that by the total minutes of use, resulting in a single per-MOU cost for any and all voice traffic, regardless of type of service. OneComm Br. at 13-14. OneComm's rationale is that "a minute is a minute," so the particular type of voice service does not matter. *Id.* That, however, is a pure *average* cost

study, for it merely computes the average cost for any voice minute of use on OneComm's network, not the *incremental* cost caused by switched access service (or by any one service). All intervenors agree that this violates TSLRIC. Tr. 302-04, 367-68.

The FCC recently discussed the problems that arise from this approach of using pure "average" costs and setting intercarrier compensation rates above incremental cost:

*A number of problems arise from intercarrier compensation rates set above incremental cost and predicated on the recovery of average costs on a traffic sensitive, per-minute basis.* Under average cost pricing, a network can invest in facilities to attract subscribers and recover some of those costs from subscribers of other, potentially competing, networks. *As competition has increased, the ability to shift the recovery of costs to competitors through intercarrier charges increasingly distorts the competitive process. This also creates arbitrage opportunities and other marketplace distortions.* These problems arise from a combination of intercarrier compensation rates set above incremental cost *and the terminating access monopoly that exists today, which allows LECs to recover revenues through charges that cannot be disciplined by competition.* For example, the ability of companies to design business plans driven almost entirely by the profits from access charges or reciprocal compensation suggest just how far above incremental cost those rates can be. In addition, the varying regulatory regimes that apply to different providers, and different types of traffic, can lead to efforts to evade compliance with the existing system. The long-term endpoint for reform should address the flaws in the current system of intercarrier compensation.<sup>5</sup>

OneComm tries to claim that TSLRIC is an average-cost methodology, but relies on distortions and misrepresentations. OneComm Br. at 14-18. OneComm begins by citing paragraph 682 of the FCC's *Local Competition Order* – an unbundling order, not an access order – which deals with the TELRIC methodology (not TSLRIC). OneComm asserts that "the FCC prescribed that unit cost be calculated . . . by dividing total costs by total usage." OneComm Br. at 16. But the FCC was not saying to divide total costs for *all* services. Rather, it was referring only to the total costs *for the particular network element being studied, i.e., the total incremental*

---

<sup>5</sup> Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90, *et al.*, at ¶ 524, 2011 WL 466775 (FCC, rel. Feb. 9, 2011) (emphasis added; footnotes omitted).

costs caused by providing that particular element. *See Local Competition Order*,<sup>6</sup> ¶ 682 (TELRIC computes costs “directly attributable to the specified element”) and ¶ 691 (“Costs must be attributed on a cost-causative-basis. Costs are causally related to the network element being provided if the costs are incurred as a direct result of providing the network elements ...”).

Incremental cost studies do not simply divide total network costs by total network usage. If they did, they wouldn’t need all the letters in TSLRIC, they could just be Average Cost “AC.” Rather, TSLRIC (and TELRIC) cost studies divide some *sub-total* amount of costs by the appropriate demand, but *only after* determining that sub-total by applying the principles of cost allocation and cost causation to determine which costs are actually incremental to and properly allocated to that particular element or service. In the TSLRIC context, that means one must analyze the incremental costs for switched access alone, not all voice services together. *See* Tr. 302-04, 367-68. NUCA, however, skipped the prerequisite steps to separate incremental costs under the principles of cost allocation and cost causation, for it did not assign costs only to the service that caused those costs in the first place, nor did it assign costs to recognize the manner in which they are incurred (*i.e.*, traffic-sensitive or non-traffic-sensitive, recurring or non-recurring). *See 2008 NPRM*, Appendix A, ¶ 169<sup>7</sup>; *1997 Access Reform Order*, ¶ 24.<sup>8</sup>

OneComm next purports to cite AT&T Inc. as “acknowledg[ing]” that TSLRIC is an average cost methodology and permits all costs for tandem and end office switching and interoffice transport to be recovered via usage-based charges. OneComm Br. at 16. That is false

---

<sup>6</sup> First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) (subsequent history omitted).

<sup>7</sup> Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*, 24 FCC Rcd. 6475 (rel. Nov. 5, 2008).

<sup>8</sup> First Report and Order, *Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers et al.*, 12 FCC Rcd. 15982 (rel. May 16, 1997).

on multiple levels. The quoted language comes from the FCC, not AT&T Inc., and concerns TELRIC, not TSLRIC.<sup>9</sup> Furthermore, the FCC document that OneComm cites goes on to distinguish TELRIC from traditional incremental cost analysis like that used by TSLRIC. *2008 NPRM*, Appendix C Draft Order, ¶ 246 (“The TELRIC methodology thus differs significantly from the definition of incremental cost for multiproduct firms proposed by Faulhaber and others. . . . As should be obvious, the incremental cost of call termination should be significantly lower than that calculated under a TELRIC methodology.”).

OneComm also is wrong in claiming (at 16) that “all costs” for AT&T ILECs’ “end office switching” under TELRIC are “recovered via usage-based charges.” As Dr. Ankum well knows, since he urged this result many times, a large part of AT&T ILECs’ UNE switching costs (when UNE switching existed) were recovered in fixed, flat-rate port charges because they were deemed non-traffic-sensitive. *See* AT&T Panel Rebuttal at 31 n.57; *see also* DTC 01-20 at 308-11 (assigning 80% of Verizon end office switching costs to flat rate).

OneComm next argues that its cost study methodology is consistent with how AT&T ILECs do their cost studies, asserting that AT&T ILECs treat all end office switching costs as traffic-sensitive by “divid[ing] total investments of trunk ports by total usage to derive a measure of average, unit cost,” and that this is like what NUCA does. OneComm Br. at 16-18. That is patently false. The investment in “trunk ports” in an AT&T ILEC switching cost study reflects *only* the traffic-sensitive costs of an end office switch. The *non*-traffic-sensitive costs of an end office switch, which comprise a significant portion of total costs, are accounted for separately, and in cost studies for intercarrier compensation (*e.g.*, reciprocal compensation or switched access) those non-traffic-sensitive costs are *entirely excluded* when computing costs and rates

---

<sup>9</sup> *See* Comments of AT&T Inc. in WC Docket No. 05-337, *et al.*, at 10 n.6 (Nov. 26, 2008). The language in that footnote 6 is all OneComm quotes, and it comes entirely from the FCC and OneComm has taken it out of context.

because they are assigned to end-users as the cost-causers. OneComm is well aware of this, having noted this fact in its supplemental response to Verizon-OneComm 1-4<sup>10</sup> and having quoted AT&T ILEC testimony in its brief (at 17) that expressly says switched access costs are based on “usage costs” only. Unlike the AT&T ILEC cost studies, of course, NUCA ignores the principles of cost causation and cost allocation, in that it (i) does not treat any end office switching costs as non-traffic-sensitive costs, and (ii) includes *all* costs of the end office switch in its switched access rate to IXCs. *See* OneComm Br. at 27.

Finally, perhaps recognizing that NUCA’s methodology is untenable, OneComm stoops to *ad hominem* attacks on AT&T’s witnesses. As with so much of its brief, OneComm misrepresents the facts. While OneComm claims that AT&T’s witnesses have no engineering knowledge or experience (something it conspicuously avoided asking the AT&T witnesses about on cross-examination, although it asked both Comcast and Verizon’s witnesses), it fails to mention that the QSI consultants it hired have no professional engineering license in any state, no engineering degrees from any university, no engineering experience with any telecommunications company, and no telecommunications engineering experience in the engineering department of any regulatory commission. Those outside consultants simply relied

---

<sup>10</sup> In its supplemental response to Verizon-OneComm 1-4, OneComm admitted that in the AT&T Connecticut reciprocal compensation cost study, AT&T Connecticut excluded all “Line Side Cost” and included only the “Trunk Port” cost. *See also* AT&T Supp. Response to OneComm-AT&T 2-1 (the SICAT model shows “End Office Cost Components” as including “Line Side Costs,” “Trunk Port (per DS0)” costs, and “CCS Cost Per Line,” but in the actual reciprocal compensation cost study, the Inputs page shows that *only* the Trunk Port and CCS per Line costs were imported to the cost study to compute reciprocal compensation costs for pricing purposes). OneComm and NUCA, by contrast, did not exclude any non-traffic-sensitive end office switching costs; instead, they treat all costs for all voice service as usage-sensitive (under the “minute is a minute” theory) and seek to recover all such costs in a per-MOU rate.

on alleged hearsay statements by OneComm employees – none of whom testified – who naturally would have a personal incentive to claim OneComm’s network design was efficient.<sup>11</sup>

The Department can of course evaluate witnesses’ experience and credibility for itself, but AT&T’s witnesses are no newcomers to switched access cost studies. Mr. Nurse has 30 years’ experience in telecommunications, including seven years as a telecommunications analyst for the New Hampshire Public Utilities Commission, where he worked in the engineering department, and 13 years with AT&T, and has submitted over 100 pieces of testimony in 15 states and before the FCC, the majority on operational or cost issues – including a large number of cases involving intrastate switched access costs. AT&T Panel Rebuttal at 9-10 & Ex. C. Dr. Oyefusi is a Ph.D economist and is in his 12th year with AT&T after spending nine years on staff at the District of Columbia Public Service Commission, and he too has testified on cost issues in many cases in many states, including a large number of cases involving intrastate switched access costs. *Id.* at 7-9 & Ex. B. Mr. Nurse and Dr. Oyefusi both testified before the Department in DTC 07-9 and in the recent New Jersey switched access docket (New Jersey BPU No. TX08090830) where NUCA was thoroughly rejected (AT&T Panel Rebuttal, Ex. 1 at 29).

OneComm’s claim (at 11-12) that AT&T’s witnesses do not understand the evaluation of switching costs in cost studies relies on patent distortions. OneComm pretends that the AT&T witnesses could not answer questions on AT&T Connecticut cost studies (studies that they did not rely on in analyzing NUCA, and which they were not involved in preparing or presenting, and that are not the subject of this case), yet fails to point to a single substantive question they

---

<sup>11</sup> OneComm goes so far as to claim that “the presumption should be that OneComm’s engineers are running efficient operations.” OneComm Br. at 29. There is no support for such a presumption. OneComm’s embedded network design is the result of various corporate mergers, not any coherent long-term plan or prudent evolution. One can hardly “presume[]” that an architecture that puts seven switches in locations 40 and 90 from most of its customers in the Boston metro market, or that keeping switches to provide outdated ISDN-BRI service to a few select customers, is the most efficient architecture that could have been designed. *See* AT&T Init. Br. at 22-23.

could not answer. Indeed, while OneComm claims that one answer was so incorrect as to be “*very disturbing*” (OneComm Br. at 12 n.31 (OneComm’s italics)), the record proves OneComm wrong. Specifically, OneComm claims that AT&T’s witness misread a line in the AT&T Connecticut transiting cost study as referring to a 1AESS analog Lucent switch when, according to OneComm’s brief, it actually referred to a 5ESS Lucent switch. OneComm Br. at 12 n.31.

The actual exchange, however, went as follows:

A. [NURSE] And the first line of the section is end office switch, and then *we’re talking about analog switch, is the next line?*

Q. [ONECOMM’S COUNSEL] *Right.*

Tr. 433 (emphasis added). OneComm thus confirmed that the cost study line at issue referred to analog switching and that the AT&T witness was correct. Moreover, Dr. Oyefusi then explained, in testimony OneComm’s brief ignores, that “if you look at this page, the first line is saying analog switch, 1AESS replacement” and that the cited page appeared to be referring to a 1AESS analog switch being replaced by a 5ESS switch. Tr. 434.

OneComm’s discussion on this point exemplifies its approach to the AT&T Connecticut cost studies throughout its brief. Unable to defend NUCA, OneComm repeatedly mischaracterizes and misrepresents what AT&T Connecticut actually did. Without belaboring the point, AT&T urges the Department to focus on the cost study that is actually at issue here, NUCA, and not OneComm’s diversionary tactics and false claims about AT&T ILECs.

### **III. IF THE NUCA STUDY WERE CONSIDERED AT ALL, NECESSARY COST ADJUSTMENTS SHOW THAT ONECOMM’S COSTS DO NOT EXCEED THE RATE CAP**

#### **A. Loop Costs Do Not Belong in Switched Access Costs (OneComm Br. at 68-77)**

OneComm’s inclusion of loops and loop-related costs in its switched access cost study sticks out like a sore thumb. In its orders reforming switched access charges since 1997, the

FCC has worked consistently to reduce and eliminate recovery of loop costs from captive IXCs and have such costs be recovered directly from the cost-causer, *i.e.*, the end-user, through the Subscriber Line Charge (“SLC”). *1997 Access Reform Order*, ¶¶ 6, 36-37; AT&T Panel Rebuttal at 14-15. OneComm ignores this inconvenient FCC authority and precedent.

OneComm also tries but fails to distinguish the Department’s 1989 holding in D.P.U. 86-33-G (at 455) that loop costs are caused by the end-user obtaining local service. OneComm calls that ruling “outdated” and based on a “regulatory contrivance,” arguing that its customers “buy ‘telecommunications services’ and not jurisdictionally categorized minutes,” and that the Department should not assume that end-users buy loops for the purpose of local service. OneComm Br. at 76. It is indisputable, however, that OneComm charges switched access customers for precisely “jurisdictionally categorized minutes.” In fact, the goal of OneComm’s Petition is to discriminatorily charge IXCs several times more for certain minutes based purely on how those minutes are “jurisdictionally categorized.”

OneComm’s argument that end-users buying local service do not cause loop costs is similarly baseless. Loop costs are caused by the end-user obtaining local service because local service is the *sine qua non* of all other services built atop it. Without the loop and local service the end-user cannot get any other voice services, and therefore it is the end-user that causes loop costs by establishing that local exchange connection to the network. AT&T Panel Rebuttal at 25; Verizon Panel Rebuttal at 31-32; AT&T Init. Br. at 17-18. OneComm does not offer switched access minutes on a stand-alone basis. Switched access is now, and has always been, built on the underlying local exchange service. It matters not whether the underlying service is stand-alone local, or local with features, or local with voicemail, or local with broadband, or local with a long-distance bundle – OneComm does not sell switched access unless the end-user first

purchases an underlying service that includes local connectivity. In fact, OneComm's authority to levy the interstate SLC is premised on OneComm providing local exchange service. As Mr. Vasington said, "[w]hether or not the company provided switched access service, it would have the loop costs. Therefore, the loop costs are not incremental to the costs of switched access service. . . . [L]oop costs are a direct cost of basic network access." Tr. 304-05.

This also refutes OneComm's claim that, because today many customers buy bundles of service, loop costs are not caused by the end-user. OneComm Br. at 74. Selling bundles of services is a marketing development made popular by elimination of line-of-service restrictions, but it does not change the economic and industry-standard principles of cost-causation. Every CLEC's voice bundle will include local service, and if an end-user buys a bundle she needs the loop (and must bear the loop costs) regardless of what non-local services may be in the bundle.

OneComm further contends that the obsolete concept of including loop costs in switched access rates is "efficient" because it shifts costs on to customers of the "least elastic/least competitive" service. OneComm Br. at 71-72. That is a bizarre argument. It has nothing to do with cost-causation, which is the main issue here, and it also defies common sense: Why would one shift costs onto IXC's with no choice of provider, when there are other customers benefitting from the same service (and who actually cause the costs) that do have a choice of provider and therefore can react to price signals that their provider is inefficient?

In short, loop costs have long been eliminated from interstate and intrastate switched access rates (*1997 Access Reform Order*, ¶ 6; Tr. 318; AT&T Panel Rebuttal at 14-15), are not included in AT&T or Verizon switched access rates (Tr. 317-18, 326), and were recently roundly rejected by the New Jersey BPU (AT&T Panel Rebuttal, Ex. 1 at 29 ("loop costs . . . should not be included")). These facts refute OneComm's bald claim that recovering loop costs in switched

access rates is “industry standard.” OneComm Br. at 75-76. As Mr. Vasington observed, “[e]limination of loop costs has only gone in one direction. It’s gone to having loop costs eliminated from access rates. I’m not aware of it ever going in the other direction . . . .” Tr. 332; AT&T Panel Rebuttal at 14-15. There is no reason to reverse course now.

**B. Loop-Related Costs Do Not Belong in Switched Access Costs (OneComm Br. at 53-61)**

OneComm also seeks to include loop-related costs in its switched access costs, namely for collocation, aggregation, and the pathway between OneComm’s collocations at Verizon end offices and the first OneComm switch. OneComm Br. at 53-56. AT&T and Verizon excluded most of<sup>12</sup> these costs from the switched access cost calculation because they are part of loop costs and, as explained above, loop costs are not part of switched access costs.<sup>13</sup> OneComm, discusses this issue at length, but ultimately its position depends on the theory that these costs are actually “transport” costs and that “AT&T and Verizon are wrong in seeking to re-characterize OneComm’s transport facilities as loops.” OneComm Br. at 53-61.

AT&T is not “recharacterizing” anything. To the contrary, OneComm is using intentionally imprecise language to hide the facts and obscure the issues. OneComm purportedly views “transport” as anything that carries a call “from location A to location B, . . . [no] matter where or what those locations are.” OneComm Br. at 58. That is so vague as to be meaningless.

---

<sup>12</sup> As noted in AT&T’s Initial Brief (at 23-24), AT&T did not exclude costs for transmission between the collocation and OneComm’s switch because OneComm did not provide sufficient data to do so and separating out the small amount of costs that might not be directly loop-related would be too burdensome and was unnecessary because AT&T had already shown OneComm’s costs were below the cap. Had AT&T been provided the data to do that analysis, the reduction to OneComm’s alleged costs would have been even greater.

<sup>13</sup> To be clear, AT&T is not disputing the existence of such costs. Rather, AT&T argues that loop and loop-related costs should be excluded from switched access cost calculations because they should be included in other cost calculations, such as for local services. The fact that the Department does not regulate or have a need to review the costs of OneComm local services (as OneComm alleges) is irrelevant. *See* DTC-AT&T 1-4. OneComm should consider those costs when setting its retail local rates under the unlimited pricing flexibility it possesses for local service.

The relevant question is whether the costs OneComm is talking about are actually for *interoffice* transport facilities (*i.e.*, the pathway connecting two switches, *see* 47 C.F.R. § 51.319(e)(1)) or, instead, are part of loop costs, connecting a collocated DLC to the first point of switching.<sup>14</sup> The answer to that question is straightforward, because OneComm admits (as it must) that these costs are *not* for a pathway between two switches, since OneComm does not (and legally cannot) have any switches in its collocation cages. OneComm Br. at 58; Ankum Rebuttal at 63; *Local Competition Order*, ¶ 576. There is no reason why OneComm should be treated for costing purposes “as if” it had collocated switching when it legally cannot have collocated switching. (Moreover, OneComm’s witness said it would not collocate switching even if it could. Tr. 235).

Rather, all of the collocation/aggregation costs are for the facilities on the *customer-facing* side of OneComm’s switch. AT&T Panel Reply at 9. That means that those costs are loop costs, for they are all part of creating the dedicated circuit to connect the end-user to the serving carrier’s first point of switching. “[T]he function of OneComm’s aggregation equipment is to connect an end user to a switch, providing access to the public switched telephone network. Thus, OneComm would incur the costs of its aggregation equipment even if it did not offer switched access service, so those costs are attributable solely to local exchange service, not to switched access.” Verizon Panel Supp. Test. at 7.

OneComm nonetheless claims that a loop leaving its end-user’s premise must be deemed to end at OneComm’s collocation in the Verizon end office because that is how the FCC defined a UNE loop. OneComm Br. at 59. That argument fails, because the definition of an ILEC’s UNE loop is not dispositive of the definition of local loops. In defining a UNE loop in the *Local Competition Order* the FCC was, of course, only considering an *ILEC*’s typical network

---

<sup>14</sup> Of course, Verizon employs DLCs across the state as part of its loop plant, locating them variously in roadside weatherized cabinets, or in telephone closets in high rise buildings and campuses. Nothing about the nature of DLC-derived loops changes simply because the DLC is located outside or inside. Both are commonplace.

architecture. The FCC therefore defined a UNE loop as “a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at the end-user customer premises.” 47 C.F.R. § 51.319(a). In OneComm’s network architecture, the UNE loop is an input into OneComm’s production of a local loop. OneComm combines UNE loops with loop aggregation equipment such as DLCs, multiplexers, and fiber to reach the local switch. This is simply OneComm’s recipe for providing local exchange service, but that does not change the fact that a local loop is the pathway that connects a local exchange customer premise to a local exchange carrier’s local switch.

Indeed, even if, as OneComm recommends, one were to rely on the definition of a UNE loop in this case, one would have to adjust the definition to consider *OneComm’s* network rather than an *ILEC’s* network. Doing that, the definition of a loop would be “a transmission facility between a distribution frame (or its equivalent) in [*OneComm’s*] central office, and the loop demarcation point at the end-user customer premises.” That is the correct, established interpretation of “local loop” – everything between the end-user and *OneComm’s* first switch.

OneComm also claims that the pathway between its collocation (at a Verizon end office) and its switch, and the pathway between a Verizon remote switch and host switch, involve “the same type of facilities.” OneComm Br. at 57. That is incorrect. The facilities between a Verizon remote switch and host switch are indisputably *interoffice* transport facilities, for they connect *two switches*. Verizon Panel Supp. Test. at 7; *see* AT&T Panel Reply at 8 n.15. By contrast, the facilities between a OneComm collocation cage (which has no switching) and a OneComm switch indisputably are not interoffice transport because they involve only one switch.<sup>15</sup> Verizon Panel Supp. Test. at 7.

---

<sup>15</sup> OneComm’s insistence on calling the facilities between its end users and the first point of switching “transport” is inconsistent with its tariff, which describes transport as “a two-way voice frequency transmission path composed of

This distinction is crucial. As Verizon's witnesses explained, OneComm must address costs incurred for switched access service in *its* network; it cannot simply ask the Department to act "as if" OneComm has a materially different network and base costs on that non-existent network. Tr. 311-13. In other words,

Each carrier has a different network architecture, for various reasons. . . . When you're doing an access cost study, you're doing a cost study for the network you're analyzing, not of somebody else's network. . . . It's not relevant what Verizon's network is designed like. What's relevant is what OneComm's network is designed like.

Tr. 311-13.<sup>16</sup>

Finally, OneComm argues that Verizon assesses interoffice transport costs when there is a "Great Distance Between the IXC and the Starting Point of an End-User Loop," so OneComm should be able to assess interoffice transport charges for its relatively long loops. OneComm Br. at 60-61. This fails for all the reasons discussed above. The fact that OneComm's loops are long is a result of OneComm's own network design, not a reason to treat the loops for costing purposes "as if" they were something different. In addition, Verizon recovers interoffice transport costs in per-MOU switched access rates when actual interoffice transport is involved between two Verizon switches (whether between an end office switch and a tandem switch or between a host switch and a remote switch). OneComm is free to do the same: for transmission between two switches (a tandem switch and OneComm's local switch), OneComm could charge

---

facilities determined by the Company. The two-way voice frequency transmission path permits the transport of calls in the originating direction (from the [IXC] designated premise [or POP] to the end office switch), but not simultaneously. Choice One – Massachusetts M.D.T.E. Tariff No. 2, Original Sheet 61, § 3.2.2.

<sup>16</sup> "You can't just relabel loop plant and line-side facilities as switching facilities because two companies have different network architectures." Tr. 327. "Costs that are associated that connect[] an end user to the switch [are] not part of switched access, so those costs should not be in OneComm's rate element for switched access." Tr. 326; Tr. 329 ("What you're not free to do is then conduct a cost study . . . as if your network looked like a different network."); Tr. 312-13; Verizon Panel Supp. Test. at 6-7; cf. *PrairieWave Waiver Denial*, ¶ 26 (in switched access rates a LEC can only charge for switching functions that it actually performs).

for interoffice transport. But for the pathway on the *customer-facing* side of OneComm's switch, between the switch and OneComm's collocation, the costs are loop-related.

**C. Non-Traffic-Sensitive Costs Should Be Excluded From End Office Switching Costs in a Switched Access Cost Study (OneComm Br. at 42-49)**

NUCA treats OneComm's switching costs as 100% traffic-sensitive. This is indisputably wrong. AT&T showed this in its rebuttal testimony, noting that end office switches always have a material amount of *non*-traffic-sensitive costs, which cannot be assigned to an MOU rate in the switched access context. Rather, they would have to be recovered in the way they are incurred, through a fixed, per-line rate and assigned to end-users. AT&T Panel Rebuttal at 31-32. In its reply testimony and oral testimony, OneComm defended its 100% traffic-sensitive approach by contending that its switches perform a "trunk-to-trunk" function and therefore should be treated "as if" they were *tandem* switches, which, unlike end office switches, are treated as 100% usage-sensitive. Ankum Rebuttal at 45-52; Tr. 109-10.

AT&T refuted that concept in its Initial Brief (at 24-26).<sup>17</sup> It now appears that was unnecessary, because OneComm's brief abandons the "treat end office switches like tandems" theory for a new approach. OneComm's new, internally inconsistent theory is that its end office switches have no non-traffic-sensitive costs (OneComm Br. at 43, 45-47) and that IXCs have to pay those costs. OneComm Br. at 43-44, 47-48. Neither argument has any merit.

AT&T has already shown that OneComm's end office switches do have non-traffic-sensitive costs that OneComm erroneously treated as traffic-sensitive. AT&T Init. Br. at 25-26. Nevertheless, OneComm now contends (at 46-47) that, unlike the end office switches in the Verizon UNE case (and every other ILEC UNE switching case), its end office switches have no

---

<sup>17</sup> OneComm's response to Record Request No. 1 also showed that none of the OneComm switches is listed as a "tandem" switch in the LERG (Local Exchange Routing Guide), which is the database the industry and other carriers use to identify switches and switch types. Tr. 116-17; Response to Record Request No. 1. OneComm's switches therefore are end office switches and have non-traffic-sensitive costs.

non-traffic-sensitive costs because in the Verizon UNE case the Department (i) did not evaluate softswitches (a few of which are included in the NUCA study), and (ii) relied on the presence of Lucent AIUs. Both assertions are wrong. Softswitches are, if anything, likely to have *more* non-traffic-sensitive costs than the switches evaluated in the Verizon UNE case (not less, and not zero), as Dr. Oyefusi explained. Tr. 429-30. And as for AIUs, end office switches do not have non-traffic-sensitive costs because they have AIUs. Rather, most of the non-traffic-sensitive costs come from central processor and memory costs and right-to-use fees. *Virginia Arbitration Order*, ¶¶ 463-65; AT&T Panel Rebuttal at 29-30; Verizon UNE Order, DTC 01-20, at 308-11. OneComm does not (and cannot) claim that its switches do not have costs for central processing, memory, and right-to-use fees.

OneComm's alternative theory is that its end office switches do have non-traffic-sensitive costs, but that IXCs must pay them. This theory relies on the FCC Wireline Competition Bureau's *Virginia Arbitration Order*, 18 FCC Rcd. 17722, ¶¶ 378, 463-64 (2003). That reliance is misplaced because that decision actually supports AT&T's position here regarding the nature of end office switching costs. The *Virginia Arbitration Order* recognized that, as AT&T has explained, local switching involves both traffic-sensitive and non-traffic-sensitive costs, and that the non-traffic-sensitive costs should be recovered through a flat, fixed rate on a per-line (*i.e.*, per end-user) basis. *Virginia Arbitration Order*, ¶¶ 463-65. In the UNE switching context, the CLEC pays both a flat charge per line port and a per-MOU charge for usage of the switching matrix (*id.*), then passes those costs along to its local exchange service end-user. The same principle applies here, namely that non-traffic-sensitive end office switching costs do exist and should be recovered on a per-line, per-end-user basis in a fixed rate. The only difference is that in the UNE context the CLEC leasing UNE switching pays both the flat and usage-sensitive

charge because it has exclusive use of the line port, whereas in the switched access context the IXC pays only the usage-sensitive rate and the end-user bears the other costs. Mr. Nurse, who testified in the *Virginia Arbitration* case (AT&T Panel Rebuttal, Ex. C), refuted OneComm's theory and explained the distinction between UNE switching and switched access rate structures in detail at the hearing here. Tr. 424-29.

Lastly, OneComm contends that AT&T Connecticut includes non-traffic-sensitive costs in its own end office switching cost studies. OneComm Br. at 44-45. That is false. When AT&T ILECs do a cost study for switched access (or other intercarrier compensation, as opposed to UNEs)) they do *not* include non-traffic-sensitive costs for end office switching. To the contrary, they recognize those costs exist (which OneComm did not do) but then exclude them from the cost study because they are included in local exchange service costs. The AT&T Connecticut cost study that OneComm insisted on dragging into this case proves this. The AT&T Connecticut reciprocal compensation cost study, which involves intercarrier compensation and end office switching costs, excluded all non-traffic sensitive costs from its computation of end office switching costs. *See supra* n.11. OneComm's claim is simply wrong, as is virtually everything it says about the AT&T Connecticut cost studies.<sup>18</sup>

**D. OneComm's Switch Trunk Costs Are Overstated (OneComm Br. at 33-42)**

OneComm spends by far the most briefing effort on what is by far AT&T's smallest recommended cost adjustment, namely AT&T's observation that OneComm's trunk costs

---

<sup>18</sup> In another *non sequitur*, OneComm cites a Comcast witness as an alleged expert on AT&T cost practices, for the proposition that AT&T includes "non-traffic-sensitive" costs for things like land and buildings in its switching cost studies. OneComm Br. at 27, 44. The Land, Building, and other costs that the Comcast witness referred to, however, are not switching costs, nor are they included as direct costs of anything. Rather, such costs are included in Annual Charge Factors ("ACFs") as an overhead depreciation expense that is applied after direct costs are determined. Decision, *Conn. Dept. of Pub. Util. Control*, Docket No. 09-04-21, at 30-31 (Apr. 14, 2010). Those costs have nothing to do with the non-traffic-sensitive portion of end office switching costs, or with any of the direct costs of end office switching.

associated with switched access are overstated, and its recommendation that OneComm reduce those costs by assuming an industry-standard 9000 MOU per DS0 per month interoffice traffic between an end office switch and tandem (or other carrier's) switch. OneComm Br. at 33-43. OneComm still has never affirmatively said what MOU figure it did use, or should use, for this purpose, but nevertheless claims that the 9000 MOU figure is improper because (i) it is inconsistent with how AT&T Connecticut did its transiting cost study, (ii) reducing the number of OneComm trunks this much would paralyze OneComm's network, (iii) OneComm's trunks already carry a lot of traffic, and (iv) the 80% cost reduction is based on a math error. All four arguments fail.

*First*, OneComm's claim (at 36-37) that AT&T's position "conflicts with AT&T's position taken elsewhere" is demonstrably false. While OneComm claims that AT&T Connecticut assumed just [BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL] MOU per DS0 per month in its cost studies (Supp. Response to Verizon-OneComm 1-4), AT&T Connecticut actually used [BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL] MOU per DS0 per month.<sup>19</sup> AT&T Init. Br. at 28-29. Had AT&T applied that figure here, rather than 9000 MOU, the resulting cost reduction would have been even larger.

*Second*, OneComm's claim (at 38) that under AT&T's proposal it would not have enough trunks to meet its intercarrier obligations is likewise unsupported. OneComm states that the bulk of the trunk groups and usage in its Traffic Module relate to intercarrier trunks, and that OneComm has little control over those traffic volumes and the sizing on those trunks. OneComm Br. at 40-41. But there is no evidence that the trunk groups and usage in the Traffic Module relate only to switched access service.

---

<sup>19</sup> The FCC requires Verizon New England to use 10,044 MOU in similar circumstances. *See* FCC's MA\_New England Tel-MA\_Default Scenario\_WC.xls, Input Tab, Cell C43 and C34.

In fact, a review of OneComm's trunk inventory data (provided in discovery after OneComm's rebuttal testimony) reveals serious problems. To begin with, the number of trunks included by OneComm is highly inflated because it includes a large number of trunks that are not used in or incremental to the provision of switched access service and therefore should never have been included in the first place. Feature Group D ("FG D") are the trunks used for switched access service, yet OneComm's trunk inventory included numerous non-FG D trunks. See Attachment 1 hereto, Tables 2 and 4. In fact, FG D trunks comprise only **[BEGIN CONFIDENTIAL \*\* END CONFIDENTIAL]** of the total trunks relied on by OneComm. In addition, many of these trunks (even more than the total number of FG D trunks, *see id.*, Table 3) reflected unusually light usage, as low as *zero* busy hour usage.<sup>20</sup> Were AT&T to adjust for all these improperly included trunks the adjustment likely would be larger than the 80% reduction it recommended.<sup>21</sup> The following table (and supporting tables in Attachment 1 hereto) summarizes key findings from OneComm's trunk inventory data.

---

<sup>20</sup> OneComm's major error is including its entire trunk inventory, whether or not the trunks are related to switched access. However, OneComm's public tariffs for switched access appear to indicate that the FG D trunks carry the switched access traffic to which the Department's cap will apply. See CTC Communications, M.D.T.E. tariff No. 4, Original page 3, § 6.1.3; Choice One M.D.T.E. tariff No. 2, Original Sheet 62, § 3.2.3. There are only **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** FG D trunks in service out of a total of **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** trunks in OneComm's latest trunk inventory data. In other words, only about 5% of the trunks in the inventory appear to be used for intrastate switched access. That means the 20% left in the OneComm cost study after AT&T's adjustment is quite conservative.

The following are examples of the questionable trunk group names: 911, Operator Services and Directory Assistance, local, Direct Connect, VM DID (voice mail direct inward dialing), and DEOT (direct end office trunk). See Attachment 1 hereto, Table 2.

<sup>21</sup> It is difficult to understand how OneComm can claim it could not improve the efficiency of or increase the MOUs on its trunks when it has **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** trunks with zero usage.

**[BEGIN CONFIDENTIAL**

**END CONFIDENTIAL]**

Trunk groups and associated costs that are designed or dedicated for other non-switched access functions are not *incremental* costs of switched access and therefore should have been excluded from the cost study in the first place.

*Third*, OneComm contends that its end office-to-tandem trunk usage (measured in CCS (Centum Call Seconds)) is as efficient as that of other carriers. OneComm misses the point. If OneComm's actual average busy hour CCS for all carrier type trunks included in its Traffic Module is **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** per busy hour, as it claims<sup>22</sup> (at 42), then it should have nothing to worry about and its prior claim that AT&T's

---

<sup>22</sup> The figure which OneComm represents as "average busy hour CCS for its switches in Massachusetts for January 2010, toward the very end of its usage study" was based on the late filed trunk inventory data, which appear flawed. The data show about 43 trunk groups with more than 36 CCS busy hour usage on average. That is impossible: there are a maximum of 36 CCS available during a busy hour (1 hour = 60 minutes = 3600 seconds or 36 CCS). One particular trunk shows that OneComm reports more than **[BEGIN CONFIDENTIAL \*\*\*\*\* END**

adjustment would hamper its ability to process calls (Webber Rebuttal at 40) is false.

OneComm's claimed actual CCS figure is below the CCS assumption (busy hour CCS) that corresponds to the trunk sizing standards that AT&T proposed in its adjustment.<sup>23</sup> Thus, regardless of what it claims the "actual" CCS figures are, the fact is that busy hour CCS is a measure used by engineers to size trunks, and OneComm's average busy hour CCS for all carrier type trunks included in its traffic module is not even close to the trunk usage criteria above which trunk blockage could occur in an efficiently designed network.<sup>24</sup>

*Fourth*, OneComm argues that the 9000 MOU figure proposed by AT&T should not result in an 80% cost reduction for trunk ports. OneComm Br. at 34-36. Essentially, OneComm contends that the cost reduction would be closer to 40%, not 80%, because there are two ports on every trunk. What OneComm forgets, however, is that AT&T was not trying to precisely adjust OneComm's alleged costs to the last fraction of a penny, but rather to demonstrate the most obvious adjustments that would have to be made, and how even those reduce OneComm's alleged costs below the rate cap. AT&T Panel Rebuttal at 22-24. On this issue, for example, AT&T's trunk resizing adjustment would have reduced the costs for other trunk-related items as well (*e.g.*, transport and termination equipment), but AT&T did not make those adjustments because it was not necessary to demonstrate that OneComm's costs are below the cap. AT&T Init. Br. at 29 n.5. Had AT&T made all the other necessary cost adjustments, then, the total

---

**CONFIDENTIAL]** CCS busy hour usage per DS0 trunk, or well over 100 times the physical limit. Something is obviously wrong with OneComm's data, so its alleged CCS figure is unreliable.

<sup>23</sup> 9000 MOU per month per DS0 corresponds to a busy-hour CCS of 19.76.

<sup>24</sup> See FCC's MA\_New England Tel-MA\_Default Scenario\_WC.xls, Input Tab, Cell C43 and C34. The 10,044 MOU per DS0 figure here is based on the 27.5 CCS, which in turn is based on an assumption of 30% trunk utilization, which should eliminate any concern for call blockage.

reduction to OneComm's alleged costs might still have been as large (or larger), even if OneComm were correct about the alleged math error.<sup>25</sup>

**E. OneComm Overallocates Facilities to Voice Service (OneComm Br. at 49-53)**

AT&T recomputed OneComm's voice/data allocator by using a proxy, assuming that all DS0 and DS1 lines were used for voice only, and all DS3 lines were used for data only. AT&T Panel Reply at 11-12. OneComm responds by contending that its DS0 and DS1 lines carry both voice and data, so AT&T's assumption was wrong. OneComm Br. at 53. But all this would mean is that AT&T was conservative.

AT&T's witnesses acknowledged that it is preferable to base such a calculation on a measure of actual resource capacity used by each type of service, but also recognized that OneComm never supplied adequate data to calculate the exact allocation factor. Since OneComm claimed in the related discovery dispute that the data was irrelevant, it can hardly be heard now to assert that in fact it was. In the absence of actual network usage by voice and data services, AT&T's assumption is an attempt to produce a conservative estimate, and the results still allocate more cost than necessary to voice services. As the AT&T witnesses explained, when data and voice share the same facilities, data service – multimegabit broadband – uses more resources than narrowband voice. AT&T Panel Reply at 11-12. For example, a voice grade equivalent (VGE) service translated in terms of data equals 64 kbps, while the capacity of

---

<sup>25</sup> OneComm's claim of an alleged math error by AT&T boils down to an irreparable flaw in the NUCA cost study. For example, OneComm has more than **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** trunks in service according to its latest trunk inventory data, and **[BEGIN CONFIDENTIAL \*\*\*\*\* END CONFIDENTIAL]** lines (Ankum Rebuttal at 33), and it claims that entire inventory of trunks is needed for (*i.e.*, incremental to) switched access service. In other words, OneComm inefficiently has earmarked the costs of every trunk for every end-user line to which it provides switched access, including both the trunks used for switched access and those used exclusively for other services or functions (local, 911, voicemail, operator services and directory assistance, etc.) or dedicated to specific consumers like third party LECs such as Level 3, Global Crossing, Neutral Tandem, or those used in OneComm's operation to provide long distance directly to its end users (and not through any IXC). This is not credible, and OneComm has put itself in this conundrum because it failed to prepare a TSLRIC cost study as industry standard requires.

a data service can be at least 1.54 mbps. An end-user that purchases the 64 kbps voice service only uses 4% of the total capacity of the 1.54 mbps data service. However, AT&T's conservative estimate assigns 54% of the network costs to voice. OneComm, by contrast, argues that voice should be assigned [BEGIN CONFIDENTIAL \*\*\*\* END CONFIDENTIAL] of all network costs. OneComm arrives at this erroneous conclusion because it allocates cost by treating the narrowband voice ports the same as the broadband data ports, as if they had the same capacity and therefore put the same strain on network costs. OneComm treats a penny the same as a quarter, because it makes change by counting the number of coins instead of counting the value of each coin. That was improper.<sup>26</sup>

**F. Common Costs Are Not Relevant for Purposes of Determining the TSLRIC Costs, But Rather Relate Only to Pricing or Rate Design (OneComm Br. at 24-26, 65-68)**

As AT&T has explained, Common costs should not be included as part of OneComm's incremental costs when analyzing whether those incremental costs exceed the current rate cap. AT&T Panel Rebuttal at 35; AT&T Br. at 30-31. OneComm protests, but its arguments miss the point. AT&T does not contend that OneComm can never recover common costs in the actual *rates* it charges for switched access. Rather, the point is that those costs are irrelevant for purposes of comparing OneComm's alleged TSLRIC costs to the rate cap, which would be the relevant comparison here (if OneComm had submitted a proper TSLRIC cost study). AT&T Init. Br. at 31; *Rate Cap Order* at 27 (to be eligible for an exemption, a CLEC would have to "demonstrate justifiable *costs* in excess of the proposed rate cap") (emphasis added). Once

---

<sup>26</sup> OneComm also claims that AT&T's assumption regarding DS3s was incorrect because DS3s "carry the same percentage of voice and data services" as DS0s and DS1s. OneComm Br. at 53. There is no evidence of that. The testimony OneComm cites (Webber Rebuttal at 8) does not say that. To the contrary, the testimony seems to say that the voice/data allocator was based on an analysis of DS0s alone. See Webber Rebuttal at 7-8. Thus, there is no reason to view AT&T's recalculated allocation as unreasonable.

OneComm's alleged costs are adjusted they fall well below the rate cap, leaving ample margin for OneComm to recover common costs if it set its rates equal to the cap. AT&T Init. Br. at 31.<sup>27</sup>

OneComm contends that "recovery of common overhead costs is an accepted industry practice." OneComm Br. at 66. But, again, recovery of common costs in *final rates* is not the issue. The issue is what *costs* to use for comparing to the rate cap. The costs to compare to the rate cap are OneComm's incremental costs, and the FCC has stated that "the traditional economic approach for determining the incremental cost of a single service *excludes all common costs.*" 2008 NPRM, Appendix C Draft Order at ¶ 246 (emphasis added). This is how AT&T ILECs do their TSLRIC studies. OneComm Ex. 8 at 11 (Currie Direct Testimony in Mich. Pub. Serv. Comm'n Docket No. U-13531) ("Common overheads are not part of a long run incremental cost study. Recovery of those costs is a *pricing* issue.") (emphasis added). Indeed, the quote in OneComm's brief (at 25) exposes the fallacy in its position that TSLRIC includes common cost. If the TSLRIC (or incremental cost) must include common overhead, then it would be mathematically incorrect to state that the proposed rate or price would equal TSLRIC *plus common.*<sup>28</sup>

#### IV. THERE SHOULD BE NO TRUE-UP, NOR WOULD A TRUE UP BE LAWFUL

As demonstrated in all the intervenors' testimony and briefs, OneComm is not entitled to an exemption from the intrastate rate cap for numerous reasons. The Department therefore does

---

<sup>27</sup> Based on AT&T's calculation and OneComm's claim that the cap translates into a rate of 0.375 cents per minute, the margin between the properly calculated TSLRIC incremental cost and the Department's cap is at least [BEGIN CONFIDENTIAL \*\*\* END CONFIDENTIAL]. AT&T Panel Reply, Ex. 2.

<sup>28</sup> AT&T also notes that OneComm misrepresents the shared and common markup used by AT&T Connecticut. OneComm claims (at 68) that AT&T Connecticut proposed a [BEGIN CONFIDENTIAL \*\*\*\* END CONFIDENTIAL] markup for transit service. It did, but only based on its position that transit rates were unregulated and not subject to TELRIC. For reciprocal compensation rates, which were being subjected to TELRIC in that case, AT&T Connecticut's proposed markup for shared and common costs together was only [BEGIN CONFIDENTIAL \*\*\*\* END CONFIDENTIAL]. By contrast, under AT&T's recalculation of OneComm's costs here, OneComm would still be able to charge a shared and common markup of [BEGIN CONFIDENTIAL \*\*\*\* END CONFIDENTIAL] and remain below the rate cap. AT&T Panel Reply, Ex. 2.

not even need to consider OneComm's request for a "true-up." If the Department were to consider it, however, that request should be rejected for multiple reasons.

*First*, as shown above, OneComm's properly adjusted costs do not exceed the cap, so holding OneComm to the cap could not be "confiscatory" even if one looked at switched access service in isolation. Furthermore, OneComm fails to explain how an in-state switched access rate cap could be confiscatory when OneComm has been subject to an identical interstate switched access rate cap for the same functional service for ten years. If OneComm's confiscation theory were true, then it would have been suffering confiscation by the FCC rates in Massachusetts for the last decade, yet OneComm has never petitioned the FCC for a waiver from the interstate cap. The only logical conclusion is that OneComm does not, in reality, view the cap as non-compensatory. Indeed, Dr. Ankum said that when carriers do not seek a waiver from a rate cap it "may be because [they] may feel that the rates are compensatory." Tr. 201.<sup>29</sup>

*Second*, the test for "confiscation" looks at a company's *entire* business operation, *not* one service in isolation. *E.g.*, *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310-12 (1989) (confiscation claim required showing that rate order "jeopardize[d][ the financial integrity of the companies" as a whole); *Baltimore & Ohio. R. Co. v. United States*, 345 U.S. 146, 148 (1953) "[s]o long as a railroad is not caused by such regulations to lose money on its over-all business," it cannot make out a takings/confiscation claim). This is particularly relevant here, where the FCC has made plain that CLECs that are limited by the switched access rate cap on what they

---

<sup>29</sup> In response to Record Request No. 2, OneComm purported to provide information on switched access rates in other states. Dr. Ankum did not provide current data, however; he merely referred back to data his firm, QSI, provided in the *Rate Cap Order* proceeding in a failed attempt to show CLECs have higher switched access costs than Verizon. In the *Rate Cap Order* the Department found that this very data "is insufficient because it is not representative of Massachusetts CLEC costs" and "is not a reliable indicator of CLEC's costs and cannot be used to determine, on a cost basis, the reasonableness of CLEC switched access rates in Massachusetts." *Rate Cap Order* at 19-20. That finding still applies. Moreover, the data OneComm provided is highly misleading, for it ignores that many states have intrastate rate caps, so even if rates in a given state are higher than in Massachusetts, all carriers are kept on the same level footing. OneComm, by contrast, wants special treatment, not parity.

charge IXCs can recover any additional costs of switched access service from end-users (or through other unregulated services). *CLEC Access Reform Order*, ¶¶ 38-39.

*Third*, there has been no prior notice by the Department that IXCs could be forced to pay a “true-up” if a carrier were exempted from the rate cap. Nothing in the *Rate Cap Order* says a true-up would occur. With no prior notice (and thus no opportunity to plan ahead), imposing a true-up would violate due process. For example, under OneComm’s theory a CLEC could win an exemption ten years from now and impose a true-up all the way back to the start of the rate cap. That makes no sense. OneComm alone decided to wait as long as it did before seeking an exemption, and it should not be allowed to make its captive IXC customers pay for that delay.<sup>30</sup>

### **CONCLUSION**

For all of the reasons stated by AT&T, the Department should deny OneComm’s Petition.

Respectfully submitted,

By: /s/ J. Tyson Covey  
J. Tyson Covey  
Demetrios G. Metropoulos  
Mayer Brown LLP  
71 S. Wacker Dr.  
Chicago, IL 60606  
(312) 701-8600

Mary Burgess  
AT&T Communications, Inc.  
111 Washington Avenue Rm. 706  
Albany, New York 12210

---

<sup>30</sup> OneComm’s apparent theory that it can make its own rates subject to true-up by itself, simply by calling them “interim rates” in a tariff filing (OneComm Br. at 81), makes no sense. Carriers cannot simply apply their own tariffs retroactively without Department authorization. Any attempt to do so would violate the filed rate doctrine.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing document to be served upon all parties of record in this proceeding, as listed on the attached Service List, by email and overnight mail, with all charges paid, this 11th day of March 2011.

/s/ J. Tyson Covey