

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

Complaint of Choice One Communications of)	
Massachusetts Inc., Conversent Communications of)	
Massachusetts, LLC, CTC Communications Corp. and)	DTC No. 08-3
Lightship Telecom, LLC, Collectively, One)	
Communications, Concerning the Unlawful Charges)	
Imposed by Verizon New England Inc., d/b/a)	
Verizon Massachusetts)	

POST-HEARING BRIEF OF BAYRING COMMUNICATIONS

Freedom Ring Communications, LLC d/b/a/ BayRing Communications ("BayRing"), through its attorney, hereby submits this post-hearing brief in this proceeding.

I. FACTS

1. BayRing is authorized to provide local exchange and intrastate toll services within the Commonwealth of Massachusetts. BayRing provides telecommunications services predominantly through the use of unbundled network elements and interconnection services obtained through its interconnection agreement with Verizon.
2. On or about January 19, 2001 BayRing opted into the interconnection agreement that was previously negotiated by and between MCImetro Transmission Services and Verizon (the "BayRing ICA").¹ This agreement was also opted into by XO Communications ("XO")² and two of the One Communications entities that filed the instant complaint against Verizon, Conversent Communications of Massachusetts, LLC ("Conversent") and CTC Communications Corp. ("CTC").³

¹ Exh. DTC-BayRing 1-1.

² Exh. XO-1 at page 7, lines 4-8.

³ Exh. One Comm-1 at page 13, lines 20-22; page 14, lines 1-2.

3. The term “interconnection” is defined in Part B, section 1.65, of the BayRing ICA as “[a]s described in the Act and refers to the connection of a network, equipment, or facilities, of one carrier with the network, equipment or facilities, of another for the purpose of transmission and routing of Telephone Exchange Service traffic and exchange access traffic.”⁴ Section 251(c)(2)(A) of the Act, in turn, creates a duty on ILECs, such as Verizon, to provide, for the facilities and equipment of requesting telecommunications carriers, interconnection with the local exchange carrier’s network ... for the transmission and routing of telephone exchange service and exchange access.”
4. Part B, section 1.55, of the BayRing ICA defines “exchange access” as “[a]s defined in the Act.” Section 3(a)(41) of the Act, in turn, defines the term as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.”
5. The local interconnection trunk arrangement provisions of the BayRing ICA state, in pertinent part, that “[t]he parties shall make available to each other separate two-way trunks for the exchange of equal access interLATA or intraLATA interexchange traffic that transits [Verizon’s] network.”⁵
6. The “Business Process Requirements” Attachment to the BayRing ICA describes billing and recording requirements, including billing and recording for MPB arrangements.⁶ It expressly

⁴ Exh. DTC-BayRing 1-1; *See also* Exh. DTC-One Comm 1-1, MCImetro Agreement.

⁵ Exh. DTC BayRing 1-1; *See also*, Exh. DTC-BayRing 1-1 and 1-5; Exh. XO-1, Attachment D, MCImetro Agreement, Attachment IV, section 1.12; Exh. DTC-One Comm 1-1, MCImetro Agreement.

⁶ Exh. DTC BayRing 1-1; *See also*, Exh. DTC-BayRing 1-5; Exh. XO-1, Attachment D, MCImetro Agreement, Attachment VIII; Exh. DTC-One Comm 1-1, MCImetro Agreement.

provides that the parties will “jointly provide switched access” to interexchange providers in accordance with the Multiple Exchange Carrier Access Billing (“MECAB”) and the Multiple Exchange Carriers Ordering and Design (“MECOD”) Guidelines for jointly provided switched access service⁷. The ICA provides, in pertinent part, as follows:

4.1.22.1 [BayRing] and [Verizon] will establish MPB arrangements⁸ for jointly provided switched access to an IEC in accordance with the MPB guidelines adopted by and contained in the OBF’s MECAB and MECOD documents, except as modified herein. Both Parties will use their best reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the NECA Tariff No. 4, or any successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.

4.1.22.2 [BayRing] and [Verizon] will implement the “Multiple Bill/Single Tariff” option, except as otherwise mutually agreed to by the Parties, in order to bill the IEC for that portion of the network elements provided by [BayRing] or [Verizon]. For all traffic carried over the MPB arrangement, [BayRing] and [Verizon] shall each bill for its own portion of applicable rate elements.

4.1.22.4 ... The Parties further agree that in those MPB situations where one Party sub-tends the other Party’s access tandem, the Party providing the access tandem is only entitled to bill the access tandem fee, and their appropriate share of local transport charges and their entrance facilities between the IEC Point of Presence and tandem. The Parties also agree that the Party who provides the end office switching is entitled to bill end office

⁷ Exh. DTC-BayRing 1-1; Exh. DTC-One Comm 1, MCIIm Interconnection Agreement, Part B, section 1.78, Attachment VIII, section 4.1.22; Exh. XO-1, Attachment D.

⁸ The ICA defines MPB in Part B, section 1.78. It states: “Meet-Point Billing” means the process whereby each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service as agreed to in the agreement for Switched Access Meet Point Billing. See, Exh. XO-1, Attachment D; Exh. DTC-One Comm 1-1, MCImetro Agreement.

switching fees, their appropriate share of local transport charges, RIC and CCL charges, as appropriate, and such other applicable charges. The Parties agree to renegotiate this section in the event of an FCC or Department decision regarding access charges.

4.1.22.10 Neither [BayRing] nor [Verizon] will charge the other for the services rendered, or for information provided pursuant to Subsection 4.1.22 of this Section, except for a per message processing delivery charge as set forth in Attachment I of this Agreement. The Parties agree that this charge will be applied to originating messages and to terminating messages. Both Parties will provide the other an SPOC to handle any MPB questions. (Emphasis added.)

7. Notwithstanding the language in Section 4.1.22 of the BayRing ICA referenced above, in notices dated May 25, 2007 and August 23, 2007, Verizon asserted that it had underbilled CLECs “intrastate access charges” on “switched access dedicated tandem trunk ports” associated with the MPB trunks (which Verizon referred to as Access Toll Connecting Trunks) and would begin billing these trunk ports on a monthly basis and would impose a one-time charge to collect unbilled charges for the prior two years. Verizon explained in the notices that Verizon had been charging CLECs intrastate access charges for dedicated tandem trunk port charges, but that Verizon had been “underbilling” these, because Verizon had been applying the Percentage Local Usage (“PLU”) factor to the dedicated tandem trunk port charges, thereby billing less than the full amount of the dedicated tandem trunk port charges.⁹
8. The dedicated tandem trunk port charge referenced in the Verizon notices is a switched access service.¹⁰ It is purchased by an interexchange carrier and not by a LEC that is jointly providing switched access under a meet point billing arrangement.¹¹

⁹ Exh. XO-1 at page 4, lines 7-16; Exh. One Comm-2 at page 3, lines 2-10.

¹⁰ Exh. One Comm-1 at page 3, lines 11-12.

9. As of July 10, 2008, Verizon had billed BayRing in the amount of \$51,143.04 for tandem trunk port charges.¹² BayRing disputed these charges. By mistake, BayRing paid Verizon \$7,902.72 for dedicated tandem trunk ports associated with MPB trunks that were billed for the period October 19, 2005 through July 18, 2007. When it learned of its mistake, BayRing disputed these charges. BayRing also paid Verizon \$403.20 on Verizon's 8/19/07 invoice due to an error in calculating the disputed amount. BayRing subsequently disputed this charge as well. The dispute remains unresolved.¹³

II. ARGUMENT

A. BAYRING'S INTERCONNECTION AGREEMENT WITH VERIZON CONTROLS THE INSTANT DISPUTE AND DOES NOT AUTHORIZE VERIZON TO CHARGE BAYRING FOR ATC TRUNK PORTS.

BayRing's interconnection arrangements with Verizon, including its interconnection arrangements for exchange access, are governed by its interconnection agreement, which expressly deals with "MPB arrangements for jointly provided switched access service" to interexchange customers. Like XO, Conversent, and CTC, BayRing opted into the MCImetro Transmission Services agreement, which provides in pertinent part as follows:

¹¹ Exh. One Comm-1 at page 7, lines 10-12; Exh. XO-1 at page 4, lines 18-20.

¹² Exh. DTC-BayRing 1-3.

¹³ Exh. DTC-BayRing 1-3.

4.1.22.1 *[BayRing] and [Verizon] will establish MPB arrangements for jointly provided switched access to an IEC in accordance with the MPB guidelines adopted by and contained in the OBF's MECAB and MECOD documents, except as modified herein.* Both Parties will use their best reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the NECA Tariff No. 4, or any successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD. (Emphasis added.)

The above ICA language expressly directs the parties to establish MPB arrangements to provide “jointly provided switched access” to the benefit of an “IEC,” which is defined in Part B, section 1.67 of the ICA, as an interexchange carrier. Despite Verizon’s attempts to cast BayRing as a switched access customer in situations involving MPB, the ICA specifically treats BayRing as a “joint provider of switched access” rather than as a switched access customer and properly treats the interexchange carrier as the switched access customer. In an arbitration proceeding before the FCC’s Common Carrier Bureau, Verizon’s interpretation that ATC trunking as a switched access service offered to the CLEC (and not to the interexchange carrier) was rejected on the following grounds:

*The [ATC Trunking] services in question constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs. Therefore, we agree with WorldCom that, when the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom. We further agree with WorldCom that it has the right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom’s local exchange network. Therefore, Verizon may not require WorldCom to purchase trunks out of Verizon’s access tariffs in order for WorldCom to provide such exchange access. (Emphasis added.)*¹⁴

Additionally, as One Communications and Comcast witness Ball points out, the entire function of the MECAB billing guidelines referenced in the ICA language above is to describe in detail how LECs

¹⁴ *Petition of WorldCom, Inc. Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*; CC Docket No. 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 para 177 (2002).

are to bill IXCs for access services. There is no mention or reference to any type of scenario in which one LEC would bill another.¹⁵

Rather than containing provisions that would permit the parties to bill *each other* access charges in connection with MPB, the interconnection agreement contemplates that the parties will bill *interexchange carriers* “for that portion of the network elements provided” by each respective carrier as follows:

4.1.22.2 [BayRing] and [Verizon] will implement the “Multiple Bill/Single Tariff” option, except as otherwise mutually agreed to by the Parties, *in order to bill the IEC for that portion of the network elements provided by [BayRing] or [Verizon]. For all traffic carried over the MPB arrangement, [BayRing] and [Verizon] shall bill for its own portion of applicable rate elements* (Emphasis added).

The interconnection agreement further clarifies that, for purposes of MPB, Verizon and BayRing are to bill the interexchange carrier for the rate elements that each actually provides:

4.1.22.4 . . . The Parties further agree that in those MPB situations where one Party sub-tends the other Party’s access tandem, *the Party providing the access tandem is only entitled to bill the access tandem fee, and their appropriate share of local transport charges and their entrance facilities between the IEC Point of Presence and tandem.* The Parties also agree that the Party who provides the end office switching is entitled to bill end office switching fees, their appropriate share of local transport charges, RIC and CCL charges, as appropriate, and such other applicable charges. The Parties agree to renegotiate this section in the event of an FCC or Department decision regarding access charges.

Under the above ICA language, Verizon is the Party providing the access tandem and the CLEC is sub-tending Verizon’s access tandem.¹⁶ Accordingly, Verizon is “only entitled to bill the access tandem fee and [its] share of local transport charges and [its] entrance facilities

¹⁵ Exh. One Comm-1, page 16, lines 4-7.

¹⁶ Exh. XO-2 at page 11, lines 28-29.

between the [interexchange carrier's] Point of Presence and the tandem." The dedicated tandem port charge that Verizon is attempting to impose on BayRing is not between the interexchange carrier POP and the tandem and is not authorized. As Verizon admits, the port that it is charging CLECs for is between the access tandem and the CLEC end office.¹⁷ Thus, the dedicated port charge that Verizon is attempting to impose on CLECs is prohibited by the BayRing ICA.

Finally, section 4.1.22.10 of the BayRing ICA prohibits Verizon from charging BayRing access charges associated with MPB arrangements as follows:

*4.1.22.10 Neither [BayRing] nor [Verizon] will charge the other for the services rendered, or for information provided pursuant to Subsection 4.1.22 of this Section, except for a per message processing delivery charge as set forth in Attachment I of this Agreement. The Parties agree that this charge will be applied to originating messages and to terminating messages. Both Parties will provide the other an SPOC to handle any MPB questions. (Emphasis added.)*¹⁸

The above language states emphatically that "[n]either [BayRing] nor [Verizon] will charge each other for the services rendered, or for information provided pursuant to Subsection 4.1.22 of this Section, except for a per message processing delivery charge as set forth in Attachment I of this Agreement." It is a violation of the BayRing ICA for Verizon to impose the ATC trunk port charges at issue in this docket.

Wherefore, for all of the reasons stated above, BayRing prays for such relief as the Department may find and requests that the Department enter an Order which states: i) that Verizon's charges for ATC trunk ports are improper and unlawful, ii) that Verizon credit

¹⁷ Exh. XO-2 at page 12, lines 2-3.

¹⁸ Exh. DTC-BayRing 1-1; Exh. XO-1, Attachment D, MCImetro ICA, Attachment VIII; Exh. DTC-One Comm 1-1, MCImetro ICA.

BayRing's account for all such improper charges; iii) that Verizon cease all collection efforts against BayRing for ATC trunk port charges; and iv) refund BayRing in the amount of \$8,305.92 for erroneous payments it made in connection with such ATC trunk port charges, plus interest.

Respectfully submitted,

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