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VIA FEDERAL EXPRESS

Catrice C. Williams
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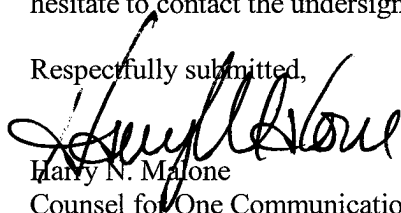
**Re: DTC 08-03; Complaint of Choice One Communications of
Massachusetts, Inc., et al.**

Dear Ms. Williams:

Enclosed please find the Joint Reply Brief of Comcast Phone of Massachusetts, Inc. and One Communications Corp. This filing has also been filed using the Department's electronic filing system. Additionally, one copy of this filing has been served on all parties contained in the Service List.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, stamped envelope provided. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



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

**Complaint of Choice One Communications of)
Massachusetts Inc., Conversent Communications)
Massachusetts, LLC, CTC Communications Corp.)
And Lightship Telecom, LLC (collectively, “One) D.T.C. 08-3
Communications”), Concerning the Unlawful)
Charges Imposed by Verizon New England Inc.,)
d/b/a Verizon Massachusetts)**

**JOINT REPLY BRIEF OF
CHOICE ONE COMMUNICATIONS OF MASSACHUSETTS INC.,
CONVERSENT COMMUNICATIONS MASSACHUSETTS, LLC,
CTC COMMUNICATIONS CORP.,
LIGHTSHIP TELECOM, LLC, AND
COMCAST PHONE OF MASSACHUSETTS, INC.**

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Dated: November 12, 2008

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Complainants Choice One Communications of Massachusetts Inc., Conversent Communications Massachusetts, LLC, CTC Communications Corp., and Lightship Telecom, LLC (collectively, “One Communications”), and Intervenor Comcast Phone of Massachusetts, Inc. (“Comcast”) (together, the “CLEC Parties”), jointly submit this Reply Brief in support of the Complaint filed by One Communications against Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”).

I. INTRODUCTION AND SUMMARY

Verizon has failed to demonstrate any entitlement to the dedicated tandem trunk port charges it seeks to impose on the CLEC Parties. Verizon’s Initial Brief, like Verizon’s position in general, seeks to avoid the plain meaning of its own tariffs and interconnection agreements and the FCC access charge rules on which they are based, by relying on implications, assumptions, and strained interpretations of those documents, none of which justify Verizon’s actions. Although not clearly stated, the essence of Verizon’s position is that it can charge the CLEC

Parties for dedicated tandem trunk ports because nothing says it cannot. The proper standard under Massachusetts law, however, is quite different.

Verizon must show that it has express and unambiguous authority to charge the CLEC Parties for any facility or service for which Verizon bills. Verizon has no such authority with respect to its tariffed dedicated tandem trunk port rates. Even Verizon does not claim that the parties' interconnection agreements specifically authorize these charges – the agreements never refer to dedicated tandem trunk ports, much less obligate the CLEC Parties to pay Verizon for such ports. Rather, Verizon interprets the requirement in the parties' interconnection agreements that the CLEC must “establish Access Toll Connecting Trunks” as equivalent to an obligation to purchase specific services offered in Verizon's switched access tariff, including dedicated tandem trunk ports. Verizon proposes a series of convoluted inferences, arguing that the word “establish” is the equivalent of “purchase”; that Access Toll Connecting (“ATC”) Trunks are synonymous with Direct Trunked Transport; and that FCC rules and Verizon's tariff, as well as the interconnection agreements, necessarily require a CLEC to pay Verizon for these ports. None of Verizon's analysis withstands scrutiny.

ATC Trunks are designated channels on a transport facility, distinct from “Direct Trunked Transport” or any other facility used to interconnect the parties' networks. When CLEC Parties establish ATC Trunks (and separate trunk groups for other types of traffic) they are performing a traffic control function on existing facilities, not purchasing distinct facilities or services from Verizon.

FCC rules and Verizon's tariff, as well as the interconnection agreements and Verizon's arrangements with the independent telephone companies (“ITCs”), all provide that Verizon will recover the costs of the ATC Trunk ports on the end office side of the tandem switch from the

interexchange carriers (“IXCs”) who purchase jointly provided switched access services from Verizon and other local exchange carriers (“LECs”) (including the CLEC Parties), not from those other LECs. And, in fact, Verizon does recover these costs from IXCs through its usage sensitive per-minute tandem switching rate. Verizon’s position, therefore, is nothing less than an attempt to double recover the same tandem port costs from both IXCs and the CLEC Parties, which the Department should reject.

To accept Verizon’s position in this case would require the Department to ignore the plain meaning of FCC orders, tariffs, industry guidelines, and interconnection agreements and to conclude that the FCC’s *Access Reform Order* means less than what it says; tariffs mean more than what they say; the MECAB guidelines are not exhaustive; and the interconnection agreements incorporate unspecified portions of Verizon’s tariff. Verizon also assumes the truth of unproven “facts” that form the premises of its argument: the CLEC Parties are switched access customers; ATC trunks are “dedicated;” the serving wire center is on the end office side of the tandem; “applicable access tariffs” are Verizon tariffs; and ITCs arrangements are “different” than a CLEC’s. None of these positions is sustainable.

All of these governing documents must be interpreted by what they say, not what Verizon wants them to say. The Department should decide this case based on the evidence presented and should conclude that applicable law does not authorize or permit Verizon to impose dedicated tandem trunk port charges on CLECs in connection with the joint provision of switched access services.

II. ARGUMENT

A. Verizon Wrongly Confuses ATC Trunks with “Direct Trunked Transport” Under Verizon’s Access Tariff.

Verizon concedes that the interconnection agreements between Verizon and the CLEC Parties are “the proper starting point of any analysis of the terms on which a CLEC may purchase services from Verizon,”¹ even though Verizon does not begin its own analysis with those agreements. Rather, Verizon starts with the invalid premise that the CLEC Parties are ordering actual “access trunks and associated tandem trunk ports”² from Verizon and must pay for what Verizon claims they are purchasing. Verizon erroneously assumes that because the CLEC Parties use facilities they ordered from Verizon to provide exchange access service over those facilities, the facilities themselves must be switched access services.³ This argument is a *non sequitur* – using an input to *provide* a service is not the same as *purchasing* that service. It is Verizon’s burden to establish that CLECs are switched access customers, and thus order services out of the access tariff. Verizon has not even tried – let alone succeeded – to make the necessary showing. Instead, Verizon has simply assumed that the CLEC Parties are switched access “customers” and built its case on that invalid premise.

Verizon claims in reliance on this false premise that the CLEC Parties “confuse two different transactions:” an IXC’s purchase of jointly provided switched access service and “the different and separate transaction in which a CLEC obtains services and facilities from Verizon.”⁴ It is Verizon, not the CLEC Parties, that confuses two very different transactions.

¹ Verizon Initial Brief (hereinafter, “Verizon”) at 19.

² *Id.* at 7.

³ *Id.* at 5.

⁴ *Id.* at 8.

The CLEC Parties are quite clear on the distinction between the two transactions. With respect to configuring their respective networks to jointly provide switched access services to IXCs, Verizon and the CLEC Parties have two responsibilities to each other. First, they must establish the actual physical interconnection, either by each agreeing to construct their own facilities to a negotiated meet point, or by one or the other constructing – or purchasing from a third party – the necessary facilities between the CLEC switch and one or more Verizon switches.⁵ Second, the parties must group channels on those interconnection facilities into trunk groups so that each type of traffic the parties deliver to each other will be routed over an assigned set of trunks, to facilitate traffic identification, measurement, and billing.⁶

The manner in which the parties establish the interconnection facilities is not at issue in this proceeding. The dispute here concerns the different and separate “transaction” in which the CLEC establishes trunk groups on those interconnection facilities, specifically ATC Trunks, for the benefit of IXCs. In coordination with Verizon the CLEC configures these facilities into discrete channels – a DS1 circuit, for example, contains up to 24 channels – so the CLEC determines which channels will be used as ATC Trunks on a specific interconnection facility.⁷ The CLEC submits an Access Service Request (“ASR”) to Verizon to inform Verizon of the designation of those channels as ATC Trunks and to advise it to configure its network to ensure that jointly provided switched access traffic is routed over those trunks.⁸ *Neither of these activities*

⁵ *E.g.*, Comcast/Verizon Interconnection Agreement Section 4.3 (Physical Architectures).

⁶ *E.g.*, *id.* Section 4.2.1 (Trunk Types) (“Section 4 describes the architecture for Interconnection of the Parties’ facilities and equipment over which the Parties shall configure the following separate and distinct trunk group”); Munoz Rebuttal at 3:1-7.

⁷ *See* Tr. at 90:21 – 91:20(Ball); Munoz Rebuttal at 3:1-9.

⁸ Munoz Rebuttal at 5:11-14; Tr. at 99:12 - 100:16 (Ball); Tr. at 133 & 167:2-7 (Case).

*includes the purchase of any Verizon switched access service – including trunk ports -- by the CLEC.*⁹

Verizon produced no credible evidence to the contrary. The testimony of Mr. D’Amico incorrectly conflates establishing ATC Trunks with purchasing Direct Trunked Transport. The record evidence unambiguously establishes that CLECs do not – and cannot – purchase “ATC Trunks” out of Verizon’s tariff.¹⁰ Not only are these trunks not physical facilities that can be purchased, but Verizon’s tariff makes no mention of ATC Trunks. Verizon dismisses this explanation as mere semantics, claiming that ATC Trunks and Direct Trunked Transport are synonymous.¹¹ As discussed above, however, this claim is erroneous. Direct Trunked Transport under Verizon’s tariff provides a basic DS1 or DS3 facility between two Verizon wire centers,¹² used exclusively to provide switched access to an IXC, and thus is fundamentally different than the ATC Trunks established under the interconnection agreements, which segregate interconnec-

⁹ *Id.*; Comcast Responses to Department Request Requests; One Communications Responses to Department Record Requests; XO Responses to Department Record Requests.

¹⁰ *E.g.*, Munoz Rebuttal at 5:11-14.

¹¹ Verizon argues that “ATC Trunks” can refer to a tariff that uses an entirely different term because interconnection agreements and Verizon’s tariffs use different terms to mean the same thing. Specifically, Verizon claims that interconnection agreements use the term “reciprocal compensation” while Verizon’s interconnection tariff provisions do not “but instead describe Verizon MA’s applicable rates as ‘End Office – MOU’ and ‘Access Tandem – MOU’ rates.” Verizon Initial Brief at 18. “Reciprocal compensation,” however, is a term used to describe a general concept, not specific rates. The tariff rate terms of “End Office – MOU” and “Access Tandem – MOU” are virtually identical to the corresponding terms in the interconnection agreements, which expressly establish “per minute of use” (MOU) rates for “End office termination” and “Tandem termination.” *E.g.*, Comcast Interconnection Agreement, Exhibit A Pricing Appendix at Section A.1. Not only is there no discrepancy between the tariff and the interconnection agreements in Verizon’s example, but this example demonstrates that the interconnection agreements specifically identify the rates that one party may charge the other for facilities and services provided under the agreement, in sharp contrast to the dedicated tandem trunk ports for which Verizon is attempting to charge CLECs.

¹² Tariff 15 § 6.2.2.B.5.

tion facilities for traffic routing purposes. The language in the interconnection agreements and Verizon's tariffs means what it says and should not be interpreted otherwise.

Verizon nevertheless contends that some of the interconnection agreements require the CLEC to establish ATC Trunks "pursuant to applicable access Tariffs," which, Verizon asserts, can only mean that the CLEC must purchase facilities out of those tariffs. Had the parties intended that meaning, the agreement would have stated that the CLEC is required "to purchase Direct Trunked Transport and associated dedicated trunk ports out of Verizon's access tariffs." The actual language, however, is very different and obligates the CLEC "to establish Access Toll Connecting Trunks [pursuant to applicable access Tariffs]¹³ ... by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from [the CLEC's] customers." This language cannot have the meaning Verizon ascribes to it because the CLEC obviously cannot order ATC Trunks out of Verizon's tariff when no provision of that tariff provides for such trunks, much less a mechanism for establishing them.

The only plausible reason the phrase "pursuant to applicable access Tariffs" is included in this contract language is to refer to the terms and conditions under which the CLEC and Verizon jointly provide switched access services to IXCs. This interpretation is bolstered by the remainder of the sentence: "applicable access Tariffs ... by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers" The "tariffs by which" the CLEC provides switched access services to IXCs are necessarily the CLEC's own

¹³ Not all of the CLEC Parties' agreements include this phrase.

tariffs.¹⁴ Even if the phrase were interpreted more expansively, the reference to access Tariffs would include *both* Verizon and CLEC tariffs and require that the ATC Trunks be established to enable both parties to provide their respective portions of the jointly provided switched access service to IXCs. Neither party can provide switched access services to IXCs serving CLEC customers unless Verizon routes traffic between IXCs and the CLEC switch. The interconnection agreement, therefore, requires the CLEC to enable such routing by establishing ATC Trunks over the interconnection facilities the CLEC provides between its switch and Verizon's tandem – not to purchase any facilities out of Verizon's access tariff.

Thus there is nothing “patently unreasonable,” as Verizon claims, about Mr. Ball's opinion that “applicable tariffs” could be a reference to the meet point billing provisions of the parties' access tariffs.¹⁵ To the contrary, Mr. Ball's view is the most natural reading of this provision of the interconnection agreements, which deals exclusively with the parties' meet point billing obligations to jointly provide switched access services. Similarly, Verizon puts words in Ms. Fownes' mouth when it ridicules as absurd her purported testimony that the interconnection agreement “presume[s] that the parties to the ICA somehow intended for Lightship to purchase access trunks out of its own tariff.”¹⁶ Verizon is being deliberately obtuse, as Ms. Fownes said or implied nothing of the sort. In the testimony that Verizon referenced but did not quote, Ms. Fownes testified, consistent with Mr. Ball, that the “applicable tariff” could most reasonably

¹⁴ Indeed, “Tariff” is a defined term under the interconnection agreements and refers to either party's tariff, not just Verizon's tariffs. *E.g.*, Comcast/Verizon Interconnection Agreement Section 1.84.

¹⁵ Verizon at 21.

¹⁶ *Id.*

refer to those provisions of the CLEC's tariffs that commit it to jointly provide switched access service.¹⁷ This is certainly more reasonable than Verizon's tortured interpretation.

Accordingly, nothing in the parties' interconnection agreement authorizes Verizon to charge the CLEC Parties for dedicated tandem trunk ports. Verizon, however, claims that CLECs order Direct Trunked Transport out of Verizon's access tariff and that the tariff requires CLECs to obtain – and pay for – dedicated tandem trunk ports as part of that order. Again, CLECs place no such orders when establishing ATC Trunks. While some CLECs may purchase transport from Verizon, they do so as a means of obtaining the interconnection facilities that the parties use to exchange all types of traffic, not to establish the ATC Trunks that the CLEC and Verizon jointly provision over those facilities.¹⁸ Other CLECs provision their own transport from their switch either to a meet point or to a collocation in the Verizon wire center and thus do not order transport from Verizon.¹⁹ Regardless of how CLECs fulfill their obligation to establish interconnection facilities on their side of the point of interconnection, no CLEC expressly or impliedly orders dedicated tandem trunk ports from Verizon, and thus Verizon has no basis for charging CLECs for such ports.

¹⁷ Hintz Rebuttal at 1:20 -2:2.

¹⁸ E.g., Munoz Rebuttal at 2:18 – 3:7; Tr. at 186-87 (Munoz). Verizon mischaracterizes this testimony as admitting that “Comcast can buy out of Verizon MA's access tariff the trunks that Comcast's ICA describes as Access Toll Connecting Trunks.” Verizon Initial Brief at 18. Mr. Munoz testified that Comcast can buy the *transmission facilities* out of Verizon's access tariff but explained that those facilities are distinct from the ATC Trunks established under the interconnection agreement.

¹⁹ Comcast, for example, has established physical interconnection with Verizon through mid-span fiber meet arrangements, Munoz Rebuttal at 2:4-7.

B. Verizon Has Not Established that the ATC Trunks Are on the “Serving Wire Center” Side of the Access Tandem

The CLEC Parties explained in their Opening Brief that the FCC required Verizon to recover all of its tandem switching costs, including the use of shared tandem switch ports on the end office side of the tandem, through its tandem switching rate, and Verizon’s compliance filings indicate that they have complied with this directive.²⁰ Verizon, however, ignores these facts by claiming that the ATC Trunks and associated tandem switch ports are on the “serving wire center” side of the access tandem, and thus are subject to a dedicated tandem trunk port charge. Verizon relies particularly heavily on the *Access Reform Order*²¹ to support its argument, but it erroneously draws inferences from what the *Access Reform Order* did not say, rather than what it did say.

1. Access Reform Order

Verizon has lifted snippets of the *Access Reform Order* out of context while at the same time ignoring the explicitly described IXC-to-end user call flow scenario. This call flow, as described frequently throughout the proceeding and in the CLEC Parties’ Opening Brief,²² consists of an IXC entrance facility to a serving wire center, dedicated transport from the serving wire center to the access tandem, and shared transport from the access tandem to the end office.

Verizon insists, however, that the end office link is only “shared” when it connects to a Verizon or ITC end office, but not a CLEC end office. As a practical matter, of course, this

²⁰ CLEC Parties Opening Brief (hereinafter “CLEC Parties”) at 17-24. The CLEC Parties will not repeat that discussion here but will address only the positions that Verizon raises in its Initial Brief that the CLEC Parties did not fully discuss in their opening brief.

²¹ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (“*Access Reform Order*”).

²² CLEC Parties at 8.

distinction makes no sense. The end users to whom the IXC is trying to connect are served by *some* carrier's end office, whether that end office belongs to Verizon, a CLEC or an ITC. There is no logical reason why the link between Verizon's tandem and the applicable end office should be viewed as IXC "shared" transport for Verizon and the ITCs, but not for the CLECs.

To support its odd assertion, Verizon has taken liberties in lifting a passage from the *Access Reform Order* and *altering it* to suit Verizon's purposes. Verizon quotes the FCC as stating that "trunks that are shared ... carry traffic between the [ILEC] end office and a tandem switch."²³ Verizon, not the FCC, self-servingly inserted the bracketed "ILEC," which is inconsistent with the Order. Read in context, the unaltered statement is part of a paragraph that plainly refers not only to ILECs, as Verizon would have the Department believe, but to all LECs generally. The FCC understood that trunks to *any* LEC end office (including CLECs) are shared, not dedicated. This is because the trunks carry traffic for multiple IXCs, who may originate and terminate that traffic at any LEC end office. Thus, paragraph 158 of the *Access Reform Order* actually means exactly the opposite of what Verizon claims.

Building on the incorrect premise that ATC trunks are dedicated access trunks, Verizon then references the *Access Reform Order* for the dubious assertion that "dedicated trunks are always on the serving wire center of the tandem."²⁴ This is a false conclusion from a false premise. First, as previously discussed, ATC trunks are not "dedicated," but even if they were, there is no support at all in the FCC order for this argument. The *Access Reform Order* merely states that "[t]he tandem switch routes [a carrier's] traffic onto an appropriate dedicated trunk that runs between the tandem switch and the serving wire center." The most reasonable reading

²³ Verizon at 10-11 (quoting *Access Reform Order* ¶ 158) (insertion by Verizon).

²⁴ Verizon at 11.

of this statement is that there are dedicated trunks on the serving wire center side of the tandem. However, it simply cannot logically be construed as an FCC pronouncement that *all* dedicated trunks are on the serving wire center side of the tandem.

Verizon, moreover, has offered no authority for its interpretation of the *Access Reform Order* other than the testimony of Mr. D'Amico. There is no citation to subsequent FCC orders, court cases or secondary authority that interprets that Order consistent with Mr. D'Amico's opinion. Particularly when that opinion conflicts with the plain language of the Order, as well as the practice of other ILECs who have implemented its requirements consistent with the CLEC Parties' interpretation,²⁵ the Department should discredit his testimony as self-serving opinion and entitled to no weight whatsoever.

2. Tariffs and MECAB Guidelines

Verizon's attempt to find implied support in sources that do not actually contain any support also extends to formal documents that govern the parties' relationships. For example, Verizon argues that the meet point billing diagrams in its tariffs are merely "examples,"²⁶ even though they mirror the arrangements as they exist between the parties, as well as the MECAB Guidelines. As for the MECAB guidelines themselves, Verizon calls them "even less relevant" than its tariffs,²⁷ and describes them as inexhaustive in their treatment of the issue at hand.²⁸

²⁵ See, e.g., Tr. at 131:24 – 132:5 (Case) (testifying that AT&T and Qwest do not charge XO for dedicated tandem trunk ports on meet-point billing trunks); XO Supp. Response to DTC-RR-3 (same).

²⁶ Verizon at 14.

²⁷ *Id.* at 14-15.

²⁸ *Id.* at 15.

Verizon's contentions would surprise anyone familiar with those guidelines, which are expressly incorporated by reference into the parties' interconnection agreements.²⁹ There are 52 diagrams that comprise a significant part of the MECAB Guidelines. These diagrams depict every possible combination of joint providers – but *not* the one configuration that Verizon has imagined, and the only one that would support its argument.

The reality is that the governing documents must be interpreted by what they say, not what they do not say. As the CLEC Parties explained in their Opening Brief, Verizon must bill in accordance with its interconnection agreements and, when applicable, its tariffs.³⁰ If a charge is not set forth in the interconnection agreement or filed tariff, Verizon has no right to bill or collect it. The Department must apply the interconnection agreements and tariffs as written, in their entirety, and must construe any ambiguities in the tariff against Verizon, not “fill in the blanks” to enable Verizon to bill whatever charges it wants.

C. The Worldcom Order is Authoritative on this Issue

In its Initial Brief, Verizon also takes another swing at the *Worldcom Order*, attacking it as “no longer good law.”³¹ Verizon is vague about the exact circumstances pertaining to this development, except to say that “the FCC revised its interpretation of § 251(c)(3) ... eliminating the former obligation on ILECs to provide CLECs with the kind of trunking at issue here.”³² This is misleading and incorrect; section 251(c)(3) has nothing to do with either the relevant portion

²⁹ Ball Direct at 15:11-15; Comcast/Verizon Interconnection Agreement Section 6.3.1 (Comcast and “Verizon will establish Meet-Point Billing (“MPB”) arrangements in order to provide a common transport option to Switched Access Services Customers via a Tandem Switch in accordance with the Meet-Point Billing guidelines contained in the OBF’s MECAB and MECOD documents”).

³⁰ CLEC Parties at 10, 12.

³¹ Verizon at 26 n.16.

³² *Id.*

of the *Worldcom* arbitration or this case, both of which involve interconnection facilities provided under § 251(c)(2). The rule that Verizon references is 47 C.F.R. § 51.319(e)(2)(i), which relieved ILECs of providing entrance facilities as *unbundled network elements*. It did not relieve them of the obligation to provide facilities for interconnection and exchange access at cost-based (*i.e.*, non-access) rates. The FCC held that “our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to Section 251(c)(2) for the transmission and routing of telephone and *exchange access* service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.”³³ The Department itself has confirmed this, stating that “for the transmission and routing of telephone exchange service and exchange access service pursuant to § 251(c)(2) ... entrance facilities ... remain available to CLECs at TELRIC rates for interconnection under § 251(c)(2).”³⁴ Thus, the *Worldcom Order* still applies, as does the *Maryland Order*.

As a backup, Verizon suggests that even if the *Worldcom Order* still applies, the “applicable access tariff” provisions discussed above constitute a “voluntary” waiver by CLECs of their rights to be exempted from switched access charges under the *Worldcom Order*.³⁵ As discussed above, however, the phrase “applicable access tariff” has no such meaning and must collapse in exhaustion from the overwhelming burden imposed on its three lonely words. They certainly do not, and cannot, support Verizon’s position.

³³ *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 ¶ 140 (2005) (emphasis supplied).

³⁴ *Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration*, D.T.E. 04-33, Order at 7 (July 7, 2006).

³⁵ Verizon at 27.

D. Verizon's Arrangements with ITCs Demonstrate that Verizon Seeks to Double Recover Its Tandem Port Charges from CLECs and IXCs.

Verizon maintains arrangements with two independent telephone companies ("ITCs") with which it jointly provides switched access service to IXCs using facilities that each party has constructed to a meet point and for which neither party charges the other, including for dedicated tandem trunk ports.³⁶ This arrangement is fully consistent with FCC requirements and MECAB guidelines. Verizon's attempt to charge CLECs for dedicated tandem trunk ports is not only inconsistent with applicable legal requirements, including nondiscrimination duties, but it demonstrates that Verizon is seeking to double recover its costs.

Verizon is recovering from IXCs the costs of the tandem ports used when jointly providing switched access service with ITCs, just as Verizon recovers those costs from IXCs when it provides switched access services entirely over its own network.³⁷ Verizon produced no evidence to demonstrate that the rates it charges IXCs for the components of switched access service it provides when jointly providing such service with another LEC are any lower than the rates Verizon charges for those same components when it provides the entirety of the switched access service. To the contrary, Mr. D'Amico confirmed that those charges are identical.³⁸ By seeking to impose dedicated tandem trunk port charges on CLECs, Verizon is therefore attempting to double recover those costs – once from the IXCs through per minute of use charge for tandem switching and a second time from CLECs through a flat monthly recurring charge.³⁹

³⁶ *E.g.*, Munoz Rebuttal at 4:14-18 (quoting Verizon Response to D.T.C.-Verizon 1-6).

³⁷ *E.g.*, Tr. at 259-61 (D'Amico).

³⁸ Tr. at 238:4-16 (D'Amico).

³⁹ *E.g.*, Ball Rebuttal at 8:13-14.

Verizon does not even attempt to explain the cost recovery discrepancy between its ITC arrangements and its imposition of dedicated tandem trunk port charges on CLECs.⁴⁰ Rather, Verizon purports to justify these arrangements as “fundamentally” different than jointly provisioning switched access services with CLECs. None of Verizon’s proffered “fundamental differences” withstand scrutiny, much less justify Verizon’s position.

Verizon first contends that ITCs do not order access trunks from Verizon. As explained above, however, neither do CLECs. Verizon then observes that unlike CLECs, ITCs do not compete with Verizon. If Verizon admits that it discriminates in the terms it offers for interconnection based on whether the interconnecting carrier is a competitor, then Verizon is confessing to violating the law. The FCC specifically held in the *Local Competition Order*, “incumbent LECs may not discriminate against parties based upon the identity of the carrier (i.e., whether the carrier is a CMRS provider, a CAP, or a competitive LEC). As long as a carrier meets the statutory requirements, as discussed in this section, it has a right to obtain interconnection with the incumbent LEC pursuant to section 251(c)(2).”⁴¹

Verizon nevertheless contends that it is not discriminating against CLECs in charging them for dedicated tandem trunk ports while imposing no such charge on the ITCs because

⁴⁰ Verizon contends that it “filed a compliance cost study with the FCC in which it did separate out the revenue requirement associated with dedicated tandem trunk ports (many of which were used by CLECs, see Ball Reb. 21) from the revenue requirement for other tandem switching components, such as the shared port.” Verizon Initial Brief at 31-32. That statement fails to substantiate how Verizon designated ports as “dedicated” and removed them from the revenue requirement. Verizon produced no evidence to demonstrate that the costs of the tandem ports it uses to jointly provide switched access service with ITCs were included in the revenue requirement for tandem switching while the costs of the tandem ports it uses to jointly provide such service with CLECs were excluded. Verizon’s witness had no knowledge of relevant costing and pricing of Verizon’s switched access services, Tr. at 304-08 (D’Amico), and Verizon did not even produce the “compliance cost study” on which it now relies, and which is not in the evidentiary record.

⁴¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 ¶ 218 (1996).

Verizon's contractual and physical arrangements with the ITCs predate the Act. Verizon misses the point. The Act does not "grandfather" discrimination. Regardless of whether Verizon is required to seek Department approval of its agreements with the ITCs, the Act requires Verizon to provide interconnection that is not discriminatory,⁴² and Verizon is undeniably discriminating against the CLECs. Nor, as Verizon proposes, is the appropriate remedy for Verizon to start charging the ITCs for dedicated tandem trunk ports. Verizon should not impose such charges on *any* LEC – ITC or CLEC – with which Verizon jointly provides switched access services to IXCs. Just as the FCC rules, MECAB guidelines, and Verizon's contract do not authorize Verizon to charge ITCs for dedicated tandem trunk ports, applicable law precludes Verizon from imposing such charges on CLECs.

Verizon also claims that, unlike its arrangements with CLECs, Verizon and the ITCs have each constructed facilities to a meet point and do not charge each other for those facilities. That statement is not true for all CLECs,⁴³ but even when CLECs interconnect with Verizon other than through meet point arrangements, this is still a distinction without a difference. Regardless of how CLECs establish interconnection facilities between their switches and Verizon's tandem, CLECs do not charge Verizon for the portion of those facilities that is used to carry jointly provided switched access traffic. The CLECs charge the IXCs for this transport.⁴⁴ Contrary to Verizon's claims, therefore, Verizon receives no greater "value" from its meet point arrangement with ITCs than it receives from the various forms of interconnection established between Verizon and CLECs.

⁴² 47 U.S.C. 251(c)(2)(D).

⁴³ Comcast, for example, has established mid-span fiber meet arrangements with Verizon in Massachusetts. Munoz Rebuttal at 2:4-7.

⁴⁴ *E.g.*, Ball Direct at 6:10 – 7:11.

Finally, Verizon asserts that allegedly unlike the “access trunks purchased by the CLECs” “that exist solely to transport a CLEC’s customers’ long-distance calls,” the meet point facilities with the ITCs are used to exchange “all manner of traffic.”⁴⁵ This asserted distinction is patently false. The interconnection facilities between Verizon and the CLEC Parties, like the meet point facilities between Verizon and the ITCs, carry “all manner of traffic,” including local, toll, and jointly provided switched access traffic.⁴⁶ The facilities constructed between Verizon’s tandem and the ITCs’ switches are used for exactly the same purposes as the interconnection facilities between Verizon’s and the CLECs’ switches. The only difference is that the CLECs primarily provide the entirety of those facilities, rather than constructing a portion of the facilities up to a meet point outside of the Verizon wire center.⁴⁷ That difference, where it exists, does not explain, much less justify, charging only CLECs for dedicated tandem trunk ports.

⁴⁵ Verizon at 29.

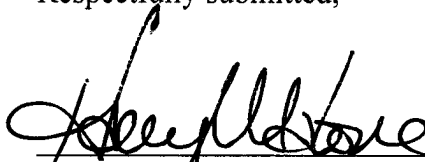
⁴⁶ *E.g.*, Munoz Rebuttal at 2:18 – 3:7; Comcast/Verizon Interconnection Agreement Section 4.2.1. Verizon cites Mr. D’Amico’s testimony during the hearing that a single DS0 trunk is used to route various types of traffic between Verizon and the ITCs, which is fundamentally inconsistent with the requirement in the interconnection agreements that the parties establish separate trunk groups for each type of traffic. Mr. D’Amico offers no explanation for this discrepancy in how interconnected carriers route traffic between their networks, and because Mr. D’Amico is not an engineer and has no apparent background or experience with network traffic management, the Department should not credit this testimony. In any event, the interconnection facilities between CLECs and Verizon, like the facilities between the ITCs and Verizon, carry multiple types of traffic.

⁴⁷ Verizon recognizes that it has a meet point arrangement with Comcast but claims that this is distinguishable from Verizon’s arrangement with the ITCs because under the interconnection agreement, Verizon constructs the facilities only from the meet point to the terminating electronics, leaving the link between the terminating electronics and Verizon’s tandem to be provided by Comcast. Verizon Initial Brief at 29, n.18. Verizon fails to point out, however, that Section 4.4.2 of the parties’ interconnection agreement provides that Comcast may obtain the link between the terminating electronics and the interconnection point as unbundled transport under Section 11.5 of the agreement, which includes no requirement to purchase a dedicated switch port. Nothing in Section 4.4.2 or any other provision of Section 4.4 governing mid-span fiber meet arrangements refers to Verizon’s access tariff or any other requirement that Comcast obtain any facilities or services from that tariff to implement the meet point arrangement. Again, this distinction between Verizon’s arrangements with the ITCs and interconnection with CLECs neither explains nor justifies Verizon’s attempts to charge CLECs alone for dedicated tandem trunk ports.

III. CONCLUSION

For the foregoing reasons, CLEC Parties ask the Department to determine (1) that Verizon's tariffs do not authorize it to bill or collect a Dedicated Tandem Trunk Port charge with respect to the ATC Trunk facilities leased by the CLEC Parties, (2) that Verizon violated M.G.L. ch. 159 § 19 by billing and collecting such charges, (3) that Verizon is obligated to refund, with interest, all amounts unlawfully collected by it from the CLEC Parties, and (4) that Verizon is obligated to credit any billed but unpaid charges for such trunk ports, and to cease and desist from billing such charges in the future.

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