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 Lightship Telecom, LLC (collectively "One Communications") Concerning Alleged Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Massachusetts for Access Toll Connecting Trunk Ports and E911/911 Dedicated End Office Trunk Ports.	)	D.T.C. No. 08-3

REPLY BRIEF OF VERIZON MASSACHUSETTS

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") demonstrated in its Initial Brief ("Verizon Br.") that it has lawfully assessed the dedicated tandem trunk port rate on the CLECs, and that the CLECs are required to pay it, pursuant to Verizon MA's access tariffs. The initial briefs submitted by XO Communications, Bayring Communications and jointly by the One Communications companies ("OneComm") and Comcast Phone of Massachusetts by and large reiterate the arguments the CLECs made in their pre-filed testimony and at hearing. Those arguments remain fatally flawed and offer no basis for the CLECs' request to be excused from paying for the dedicated tandem trunk ports they obtain from Verizon MA and use to provide exchange access services to their own customers.

I. Verizon MA's intrastate access tariff, DTE MA No. 15, governs the access trunks and dedicated tandem trunk ports, in light of the express terms of the Lightship and Comcast ICAs and failure of the other ICAs to provide rates, terms or conditions concerning such services and facilities.

OneComm and Comcast argue that "[i]nterconnection between Verizon and each of the CLEC Parties is governed by their respective interconnection agreements." Quixotically, they go

on to assert that their ICAs do not authorize Verizon MA to charge for access trunks or contain any pricing terms for such services. *See* Joint Opening Brief of One Communications and Comcast ("OneComm/Comcast") at 10. Likewise, XO states that its ICA does not reference access trunks, XO at 3, and asserts that Verizon MA is arguing that there is in XO's ICA an implied reference to Verizon MA's access tariffs. *Id*. at 11.

The CLECs misapprehend both Verizon MA's position and the relationship between their ICAs and Verizon MA's state tariffs. Verizon MA does not argue for any implied terms in the ICAs. To the contrary, Verizon MA has demonstrated that the ICA terms relied on by the CLECs – the Meet Point Billing terms – do not apply to the transaction at issue here. Verizon Br. at 18-19. Consequently, not only do the ICAs lack terms authorizing Verizon MA to charge the CLECs for access trunks and ports, the CLECs have failed to identify *any* provisions of their ICAs that provide the rates, terms or conditions under which they may obtain access trunks and ports from Verizon MA.[1]

The Department's predecessor has held that the terms of an ICA take precedence over the terms of a tariff concerning the same services, but where an ICA does not address a service, the CLEC may purchase that service pursuant to the terms of the tariff.[2] Here, the ICAs (other than those of Comcast and Lightship) do not provide the terms on which the CLECs may obtain access trunks from Verizon MA. However, Verizon MA's access tariff, DTE MA No. 15, does

---

[1] OneComm's Complaint did refer to §1.1.2 of Attachment IV of the Conversent and CTC ICA, which obligates Verizon MA to provide trunks for exchange access services. That section, however, does not provide the rates, terms or conditions on which the trunks will be made available. And as Comcast admitted at hearing, the fact that such a term is included in a section of an ICA entitled "Interconnection" does not mean that interconnection rates apply. *See* Verizon Br at 22.

[2] *See Investigation of the Department as to the Propriety of the Rates and Charges set forth in M.D.T.E. Nos. 14 and 17,* DTE Docket No. 98-57, Phase I Order dated March 24, 2000 ("*Interconnection Tariff Order*"), at 17, n.10.

contain such terms. *See* Verizon MA Br. at 16-18.[3] Accordingly, the CLECs (again, other than Lightship and Comcast) have been obtaining their access trunks pursuant to the terms of Tariff No. 15. Of course, Lightship and Comcast also obtain their access trunks under that tariff, but they do so pursuant to the express terms of §6.2.2 of their ICAs. The terms of Tariff No. 15 require the CLECs to pay a Dedicated Tandem Trunk Port rate for each of their activated access trunks. *Id.*

OneComm and Comcast argue that they do not in truth order access trunks but merely submit orders that allow Verizon MA to configure trunk groups to carry exchange access traffic to and from the CLECs' switches, and they theorize that these are not the kind of orders for which a rate can be charged. OneComm/Comcast at 11. Whether the CLECs ordered trunks or merely ordered Verizon MA to "configure" trunk groups for them, however, the CLECs admitted at hearing that they submitted orders to Verizon MA which caused trunks to be activated to carry exchange access traffic between the CLEC's switch and a Verizon MA tandem. *See* Tr. at 56 (Ball), 136 (Case), 183 (Munoz); Munoz Dir. At 3 ("Comcast has established connections – called ATC trunks in the ICA – between its switch and the Verizon access tandem switch. Comcast originally ordered, and Verizon provisioned, these facilities as special access circuits…."); Attachments DTC-Verizon 1-5 (Remarks in CLECs' ASRs seek to "[e]stablish …2-way interLATA trnks" and "SS7 2way interLATA trnks"). Under DTE MA No. 15, §6.6.5, the CLECs are required to pay a Dedicated Tandem Trunk Port rate for each such activated trunk.[4]

---

[3] Contrary to the claims of the CLECs, Verizon MA has demonstrated that its interconnection tariff, DTC MA No. 17, does not apply to the access trunks and dedicated ports but is limited in scope to intraLATA POTS traffic exchanged between Verizon MA and a CLEC. Verizon Br. at 22-27.

[4] In Verizon MA's view, whether other ILECs assess a dedicated tandem trunk port rate on access trunks is not germane to Verizon MA's right to assess such a charge under its access tariffs. Nevertheless, XO is off-base in claiming that it and Verizon MA do not pay such charges when acting

XO and Bayring continue to argue that the Meet Point Billing terms of their ICAs and the MECAB Guidelines preclude Verizon MA from charging them for their access trunks and ports. XO at 10; Bayring at 5-8. As Verizon MA pointed out in its Initial Brief, however, those terms apply only to the arrangements in which IXCs obtain "joint" switched access services from Verizon MA and a CLEC, and they are intended to make clear that each LEC will bill the IXC, not each other, *for the services rendered to the IXC*. They do not address the separate transaction, at issue here, in which a CLEC obtains services and facilities from Verizon MA in order to provide its portion of the "joint" access service to IXCs. *See* Verizon Br. at 18-19. Also as noted previously, XO and Bayring's argument is belied by their failure to dispute Verizon MA's charges for the facilities other than the dedicated ports, such as DS1 or DS3 transport, which they have purchased from Verizon MA in order to provide service to IXCs. Under XO and Bayring's theory, they should not have to pay for those facilities either. *Id*.

OneComm and Comcast attempt to circumvent the clear terms of the Lightship and Comcast ICAs by arguing that the clear statement in their ICAs that they "shall establish Access Toll Connecting Trunks pursuant to applicable access Tariffs …," is somehow insufficient to incorporate the terms of Verizon MA's tariffs. *See* OneComm/Comcast at 12. These CLECs fabricate a new rule of contract interpretation supposedly stating that ICA references to tariffs are unenforceable unless the parties "expressly identify the applicable provisions and agree to incorporate them." The CLECs cite no authority for their proposed rule because there is no such

---

as a LEC in the territory of other non-Verizon ILECs. *See* XO at 22. XO admits in its Supplemental Response to Record Request DTC-RR 3 that it pays Bell South (now AT&T) a flat-rated, monthly port charge of $7 for each of its "MPB trunks" in Bell South territory, apparently without protest. That Bell South allegedly undercharges XO for other services is immaterial; the fact remains that Bell South charges and XO pays a dedicated tandem trunk port rate. Also, Verizon MA demonstrated in its Response to Record Request DTC-VZ-4 that it too pays such a rate to AT&T in the former Bell South states. That this rate is smaller than Verizon MA's rate, *see* XO at 22, does not undermine the key fact that Verizon MA is not the only ILEC that charges other LECs for using its dedicated ports to connect access trunks to the ILEC's tandem switch.

thing. The Department's predecessor has held that parties have the ability to incorporate the terms of a tariff into their ICAs by stating that choice in the contract.[5] The parties did so here. In addition, the CLECs' claim that the requirement that they "establish" access trunks does not mean they must "purchase or lease" the trunks and ports. OneComm/Comcast at 12, takes that term out of context and ignore the rest of the provision, which requires that they "establish" access trunks "pursuant to applicable access Tariffs." As Verizon MA has demonstrated, Br. at 20-22, that can only mean *Verizon's* access tariffs. Whether "establish" is synonymous with "purchase or lease" is beside the point, because whatever it takes to "establish" the trunks, it is done pursuant to the terms Verizon MA's access tariff.

II. The CLECs' assertions that Verizon MA's access tariff does not apply to the access trunks and dedicated tandem trunk ports are without merit.

The CLECs' argue that the access trunks and associated dedicated ports are not access services under the FCC's interpretation of the 1996 Telecommunications Act in the *WorldCom*[6] decision and the terms of DTE MA No. 15 itself. *See* OneComm/Comcast at 14-17; XO at 23-27. Those authorities do not, however, support the CLECs' assertion. *WorldCom* does not apply here for the reasons set forth in Verizon MA's Initial Brief, namely because *WorldCom* did not preclude a CLEC from voluntarily purchasing or agreeing to purchase access trunks from Verizon MA's access tariffs, nor did it hold that CLECs are entitled to purchase trunks from state interconnection tariffs in order to provide exchange access service. *See* Verizon Br. at 26-27. While *WorldCom* did state that "Verizon should assess any charges for its access services upon

---

5 *Interconnection Tariff Order, supra,* at 17, n. 10.

6 Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039 (Wireline Comp. Bur. 2002) ("*WorldCom*").

the relevant IXC, not WorldCom,"[7] Verizon MA does in fact bill its IXC customers for the services they purchase from it, including tandem switching and any transport from the IXC's POP to the tandem provided by Verizon MA. *See* XO-VZ 1-2; Tr. at 233 (D'Amico). Verizon MA does not bill the CLEC for these services. Rather, Verizon MA bills the CLECs for the services they obtain from Verizon MA in order to provide their own services to IXCs (and for which they bill the IXCs). With the exception of the charges for the dedicated ports, the CLECs have not disputed these charges. *See* Tr. at 104 (Ball).

Moreover, as explained in Verizon MA's Initial Brief, the CLECs' interpretation of the general description of switched access service in §6.1.1.A of Tariff DTE MA No. 15 is unduly restrictive and unsupported by the terms of the tariff or actual practice. OneComm and Comcast read this provision as one of limitation, strictly excluding any service that does not provide a carrier with: (1) access to end users; (2) the use of common terminating, switching or trunking facilities; and (3) the ability to originate and terminate calls to and from end users. OneComm/Comcast at 17. The CLECs read too much into Section 6.1.1A, which provides a functional description of the basic service available under Section 6 of the tariff. Neither it nor any other provision of Section 6 purports to preclude carriers from purchasing individual elements or combinations of elements of switched access service that do not add up to the full service connecting a carrier's POP to an end-user. Indeed, as Verizon MA has pointed out, the CLEC's overly strict reading of the tariff would preclude Verizon MA from charging access rates to the IXCs where, as here, they purchase only transport from their POPs to the tandem and tandem switching, because those services alone do not make use of common facilities to connect

[7] *WorldCom*, ¶ 177.

the IXC to an end-user and allow it to originate or terminate calls. Verizon Br. at 24. The tariff has never before been read in such a restrictive way.

OneComm and Comcast assert that application of the access tariff to the transaction at issue here, in which CLECs obtain access trunks and associated dedicated tandem trunk ports from Verizon MA, is inconsistent with Verizon MA's position that this transaction is separate and distinct from the arrangements in which CLECs and Verizon MA provide "joint" switched access to IXCs. *See* OneComm/Comcast at 16. There is no inconsistency. Simply put, there are two separate transactions, each of which is governed by the access tariff. Also contrary to the CLECs' claims, the purpose to which they put the access trunks is relevant in determining which tariff applies here. The interconnection tariff, DTE MA No. 17, does not apply because it makes services available only for the purpose of carrying POTS traffic of a CLEC to a Verizon MA end user. *See* Verizon Br. at 22-27.

The CLECs also assert that ambiguities in Tariff No. 15 must be interpreted against Verizon MA. *See* OneComm/Comcast at 13; XO at 26. But a tariff is not ambiguous merely because a party asserts a claim of ambiguity. Rather, "Claimed ambiguities or doubts as to the meaning of a tariff must have a substantial basis in the light of the ordinary meaning of the words used and not a mere arguable basis."[8] Section 6 of Tariff No. 15 is clear and unambiguous. As noted above, Verizon MA has applied the tariffed rates for years and without dispute to components of switched access service purchased *ala carte*, even though they do not constitute the complete switched access service that connects an IXC all the way to an end user. Moreover,

[8] Associated Press *v.* Federal Communications Commission, 452 F.2nd 1290, 1299 (citations omitted) (DC Cir. 1971) (also noting that rules that tariff provisions are to be construed strictly against the carrier are "avenues of last resort, open only when the usual canons and techniques of interpretation leave real uncertainty as to the tariff standard").

§ 6.6.5(D) of DTE MA No. 15 clearly describes when a Dedicated Tandem Trunk Port rate is due, as follows:

> [A] Dedicated Tandem Trunk Port rate applies on a monthly basis for every activated Direct Trunked Transport trunk which terminates on the serving wire center side of the access tandem.

Id. § 6.6.5(D). Verizon MA has demonstrated that, by any name and by any ordering process, the trunks at issue here have been activated and that they ride on direct trunked transport. *See* Part I above and Verizon Br. at 16- 17. Because the access trunks are dedicated and terminate on the serving wire center side of the tandem, *see* Verizon Br. at 7-16, there is no reasonable reading of §6.6.5(D) under which the port rate does *not* apply. The tariff is unambiguous and must be enforced according to its terms.[9]

III. The access trunks and ports are dedicated, not common, facilities.

Verizon MA demonstrated in its Initial Brief, at 7-9, that the access trunks and ports are provided for the sole and exclusive use of a single customer of Verizon MA -- the CLEC that ordered them -- and are therefore dedicated facilities. Verizon MA also addressed in that brief the CLECs' claims (reiterated in their briefs, *see* XO at 11-12, 25; OneComm/Comcast at 9-10) that the access trunks are "common" facilities because the CLECs use them to service multiple IXCs, who benefit from that use and allegedly cause it. In summary, the ordering CLEC, not an IXC, is the customer of Verizon MA in this transaction. No IXC is a party to the transaction.

---

[9] *Indiana Harbor Belt Railroad Co. v. The Budd Co*., 441 NE 2nd 1301 (Ill. App. 1982), discussed by XO at 26-27, is poor precedent here. Unlike the railroad in that case (decided by an intermediate appellate court in Illinois), Verizon MA did not "acquiesce[] in the [CLECs] interpretation [of the tariff] over a long period of time," nor did it mis-apply its tariff. It is undisputed that Verizon MA has billed the Dedicated Tandem Trunk Port rate under Tariff No. 15 since it was introduced into the tariff. *See* Verizon Br. at 5; Tr. at 252-253 (D'Amico); DTC-Verizon 1-11; Responses to DTC-XO 1-5 and DTC-Bayring 1-2, 1-3 and 1-9 (admitting that Verizon MA had billed XO and Bayring for some years). Verizon MA erred here only by applying the PLU to reduce the amounts billed under the tariff. There is no evidence that Verizon MA ever conducted itself as if the tariff did not apply to the services it has provided to the CLECs.

Thus, whether the CLEC uses the access trunks and ports it obtains from Verizon MA to serve one or many customers of its own is immaterial. *See* Verizon Br. at 7-9.

OneComm and Comcast cite the *Access Charge Reform Order* and reproduce a diagram from the Access Charge Reform NPRM in support of their claim that the access trunks are "common" facilities. *See* OneComm/Comcast at 9; *see also id* at 23. But as Verizon MA has explained, Br. at 9-11, the *Access Charge Reform Order* addresses only the simple factual situation in which a single LEC provides switched access service to an IXC. The FCC did not address in that order the circumstances of this case, in which a CLEC obtains access trunks and dedicated tandem trunk ports from an ILEC in order to provide access services to IXCs. Thus, the FCC's statement that the access trunks between an ILEC's tandem switch and its end office are "shared among many IXCs and the LEC itself"[10] applies only where the LEC is providing service directly to multiple IXCs. It is not relevant here, where Verizon MA does not provide transport between its tandem and its end office to IXCs, but instead provides facilities and services to a single CLEC, which in turn uses those assets to provide its own service to its customers.[11] The Department cannot ignore the role of the CLEC here. The ordering CLEC is Verizon MA's customer. The IXCs are not.

---

[10] *Access Charge Reform Order*, ¶158.

[11] That the access trunks are used by multiple IXCs means, at most, that the facilities may be treated as shared or common *in the context of the arrangements between the CLEC and its IXC customers*. In that situation, the IXCs' use of the facilities is traffic-sensitive, and the CLEC appropriately charges a per minute rate to each of its customers. As between Verizon MA and the CLEC, however, which is the relationship at issue in this case, Verizon MA provides its trunks and ports to a single customer on a NTS basis. Neither Verizon MA nor any other customer of Verizon MA can use those facilities. The flat rates in the access tariff are appropriate in this transaction, and the facilities are dedicated to the CLEC.

IV. The access trunks and ports connect to the serving wire center side of Verizon MA's access tandem.

Verizon MA's Initial Brief demonstrated that, consistent with the policies and rationale underlying the *Access Charge Reform Order,* the dedicated ports that connect Verizon MA's access tandem switch to the facilities of other carriers are always on the serving wire center side of the tandem, whether the carriers are functioning as IXCs or CLECs. *See* Verizon Br. at 9-16. Verizon MA also addressed and refuted the CLECs' argument that there is only one serving wire center side of a tandem and it serves IXCs only. *See id.* The CLECs attempt to apply specific statements in the *Access Charge Reform Order* to this proceeding *verbatim, see* OneComm/Comcast at 19-21; XO at 17-18, but as noted above, that order does not directly address the joint provision of switched access services by multiple carriers, and the detailed holdings of that order do not apply here. Thus, the so-called "network topology" set forth in the *Order* and the FCC's use of the definite article in referring to "the serving wire center," *see* OneComm/Comcast at 18, 21, merely describe the circumstances addressed in the *Order*, in which a single LEC provides access service and there is in fact only one serving wire center. The *Access Charge Reform Order* does not purport to describe or define a single network configuration that must be used in all situations, such as where multiple carriers jointly provide switched access services, nor does it purport to hold that in all situations there is only one "serving wire center" side of a tandem, which serves an IXC only. To the contrary, the FCC's rule defining "serving wire center" imposes no such restrictions, *see* Verizon Br. at 10; 47 C.F.R. 69.2(rr), and the CLECs have not cited any decision of the FCC or any court expressly holding that a serving wire center can serve only an IXC and not a CLEC. The CLECs argue that no ruling of the FCC has referred to multiple serving wire center sides of a tandem,

OneComm/Comcast at 20, but by the same token, the FCC has never attempted to set forth all allowable network configurations for jointly provided switched access service.

OneComm and Comcast misread the definition of "serving wire center" in 47 C.F.R. 69.2(rr) in asserting that it requires Verizon MA to pick a single central office "in the call flow" to be the serving wire center. *See* OneComm/Comcast at 21. The rule makes no reference to "call flow" but defines the serving wire center as "the telephone company central office designated by the telephone company *to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located*." (Emphasis added.) Thus, the rule requires the ILEC to designate a single serving wire center for a given geographic area, not for the "flow" of calls, as the CLECs would have it. Under the rule, there is a serving wire center for the geographic area in which the CLEC's demarcation point is located and a serving wire center for each geographic area in which an IXC's demarcation point is located, so that there are two serving wire centers in the "call flow" where the CLEC and IXC use Verizon MA's tandem switch to route calls to each other.

The CLECs argue that the CLEC switch that subtends the tandem is an "end office" and that the access trunks that connect that switch to the tandem are therefore on the "end office" side of the tandem, not the serving wire center side. *See* XO at 3, 17; OneComm/Comcast at 4, 20 (alleging that Verizon MA is "ignoring the CLEC's end office"). But the FCC's rules define the term "end office' as "the telephone company office from which the end user receives exchange service," 47 C.F.R. 69.2(pp), and "telephone company" here means *the ILEC*. See 47 C.F.R. 69.2(hh). Thus, the CLEC switch is not an "end office," and the dedicated access trunks and ports are not on the "end office" side of the tandem.

OneComm and Comcast also offer a lengthy analysis of the definition of tandem-switched transport found in 47 C.F.R. 69.2(ss), but that analysis merely shows that "tandem-switched transport," as defined by the FCC, is not a service that is provided where two LECs jointly provide access services to a CLEC - a fact that is not in dispute. The network architecture used to provide tandem-switched transport clearly is not present here -- there is no "end office," and the circuits running between the tandem and the CLEC's switch (the access trunks) are dedicated, not common. The FCC did not purport to define the nature of access trunks in Rule 69.2(ss) but rather defined "tandem-switched transport" as a certain combination of services. That combination of services is not at issue here, and the CLECs' argument is irrelevant to the matter before the Department.

The Department should disregard the tariff diagrams the CLECs cite in support of their claim that there is no serving wire center on their side of the tandem. As Verizon MA explained in its Initial Brief, at 14-15, those diagrams are only examples of possible network configurations and are not exhaustive. Moreover, all but one of the diagrams in the record -- including the two diagrams in OneComm and Comcast's brief at 19 -- show switched access service provided by a single LEC and would not show a serving wire center for a CLEC in any event. The diagram XO offers as Appendix A to its brief (and touts as "one of the more accurate and detailed diagrams from the record," XO at 6) doesn't show any serving wire centers, on any side of the tandem.[12] Just as an IXC is connected to the serving wire center side of the tandem even in the absence of a separate serving wire center, so too is the CLEC switch on the serving wire center side of the tandem in the absence of a separate serving wire center.

[12] *See also* OneComm/Comcast at 22, n. 56, admitting that IXCs sometimes subtend an ILEC tandem without using a separate serving wire center.

In a variation on the CLECs' "no serving wire center" theme, XO insists that under the rate structure the FCC established in the *Access Charge Reform Order*, "only one dedicated tandem port charge is permitted." XO at 27; *see also id*. at 12, 26. But the FCC made no such ruling, and XO fails to cite any authority for its claim. To the contrary, the FCC's rule provides that an ILEC such as Verizon MA may recover its costs of a dedicated port only through flat-rate charges "assessed upon the purchaser of the dedicated trunk terminating at the port," 47 CFR §69.111(l)(3), and neither the Rule nor the *Order* states that there may be only one such port or purchaser on the path of an access toll call. While XO is correct that the FCC assigned a per-minute rate to "outgoing" tandem ports, XO at 27, the FCC did so not because the ports are "outgoing" but because in the circumstances then before it in which a single LEC provides switched access service, those ports are *shared* by multiple IXCs [and the ILEC for its own traffic] and are therefore traffic-sensitive. *See Access Charge Reform Order*, ¶36 (traffic-sensitive costs should be recovered through usage-based rates). In contrast, where a CLEC obtains a dedicated port from Verizon MA to carry its portion of jointly provided switched access service, that port is dedicated to the CLEC and is properly billed by Verizon MA at a flat, tariffed rate. *Id*. (NTS costs incurred to serve a particular customer should be recovered through flat fees).[13] XO's assertion that 47 C.F.R. 69.4(h), does not list "local-side trunk port" rate as a permissible charge for switched access services misses the point, because there is no "local side port" in the situation before the Department and, at any rate, Rule 69.4 does list a separate charge for each "dedicated tandem switching trunk port," which are the ports at issue here.

[13] Of course, in this situation, the *CLEC* would appropriately charge a usage-based rate to *its customers*, who share the use of the facility.

V. The CLECs' claim of double recovery is a red herring.

The CLECs continue to argue that Verizon MA would be double recovering if it is allowed to assess its tariffed Dedicated Tandem Trunk Port rate on the CLECs, on the grounds that the cost of shared ports is recovered through Verizon MA's tandem switching rate. *See* OneComm/Comcast at 23-24; XO at 13-15. Verizon MA has demonstrated, however, that the ports at issue in this case are dedicated ports, not shared ports, Verizon Br. at 7-9, and that the revenue requirement related to dedicated ports is excluded from the tandem switching rate and is recovered solely through the separate Dedicated Tandem Trunk Port rate in Verizon's state and federal access tariffs. *Id*. at 31-33.

In any event, OneComm and Comcast have effectively admitted that the entire "double recovery" argument is immaterial to the claims asserted in this proceeding. They concede that if the terms of Verizon MA's access tariff require them to pay the Dedicated Tandem Trunk Port rate, they must pay that rate even if doing so were to result in double recovery. *See* OneComm/Comcast at 25.[14] As demonstrated in Part I above and Verizon MA's Initial Brief, at 16-18, the clear and unambiguous terms of DTE MA No. 15, § 6.6.5(D), require the CLECs to pay the Dedicated Tandem Trunk Port rate for each access trunk connected to Verizon MA's tandem switch. Consequently, the CLECs must pay that rate for the ports without regard to any alleged double recovery by Verizon MA.

[14] Stating that, "[t]he CLEC Parties acknowledge that this is not a rate reasonableness complaint; if the tariff actually did permit double recovery or discrimination, by clear and unambiguous provisions, then CLECs would be required to pay the legally tariffed rate until the Department imposed a different one."

VI. Verizon MA's arrangements with the independent telephone companies are not discriminatory.

In response to the CLECs' claim of discrimination, *see* OneComm/Comcast at 24-25; XO at 18-21, Verizon MA demonstrated in its Initial Brief, at 27-30, that its arrangements with the two ITCs in Massachusetts for the exchange of traffic, including exchange access traffic, do not discriminate against the CLECs because: (1) the ITCs are not similarly situated to the CLECs (they do not order access trunks from Verizon MA, they do not compete with or share service territories with Verizon MA, they do not interconnect at the tandem, and their trunks carry many kinds of traffic, including Verizon MA's traffic); (2) their financial arrangements with Verizon MA differ from but are not necessarily more favorable overall than the CLEC's ICAs; and (3) their contracts with Verizon MA pre-date the 1996 Act and are not subject to the approval of the Department or the requirements of Section 251 or 252 of the Act. The CLECs offer no new arguments in their briefs that would excuse them from paying for the dedicated trunk ports they obtain from Verizon MA.[15]

OneComm and Comcast claim that under the 1996 Act, "CLECs stand in the same shoes, and have the same rights, as the independent LECs…." OneComm/Comcast at 6. The authority they cite for that proposition says nothing of the sort, however, but merely notes that the FCC has required carriers to follow the MECAB billing guidelines.[16] Moreover, the CLECs clearly do *not* have the same rights as the ITCs, at least the particular ITCs in Massachusetts, in that the

---

[15] OneComm and Comcast assert, at 25, that "[t]he burden is on Verizon to justify its [allegedly] disparate treatment of the CLEC Parties." The paragraph of the *Local Competition Order* they cite, however, does not purport to assign a burden of proof to any party. In any event, Verizon MA has demonstrated that its arrangements with the ITCs are justified by their special circumstances.

[16] *See Access Charge Reform*, CC Docket No. 96-262, 8th Report & Order and 5th Order on Reconsideration, 19 FCC Rcd 9108, ¶16, n. 54 (2004)

CLECs' ICAs with Verizon MA are subject to the strictures of the Act whereas the contracts of the ITCs are not. *See* Verizon Br. at 30 and *Iowa Utilities Board II.*[17]

OneComm and Comcast seem to argue that Verizon MA would discriminate against them by failing to charge IXCs a second Dedicated Tandem Trunk Port rate for ports used to route access traffic to Verizon MA end-users. *See* OneComm/Comcast at 24-25. Where Verizon alone provides switched access service to an IXC, however, it does not and cannot charge the IXC for *two* dedicated tandem trunk ports because in that situation, there is only one such port. The port on the IXC's side of the switch is dedicated to its use, but (unlike the case before the Department) the port on the other side of the tandem is not dedicated to a single customer of Verizon MA but carries the traffic of many such customers. It is therefore a shared port, not a dedicated port. To the extent these CLECs are suggesting that Verizon MA must charge *itself* a dedicated port charge for this port, *see id*. at 3, such a suggestion is nonsense; the CLECs cite no authority for the proposition that Verizon MA must pay itself to use its own facilities, and there is no such authority.

Moreover, OneComm and Comcast acknowledge that, in the case of traffic flowing between Verizon MA's tandem and an ITC, "the fact that this traffic comprises additional service besides switched access would justify a different *form* of cost recovery for the [ITCs]; it could not justify exempting them entirely…." OneComm/Comcast at 25 (emphasis in original). That is precisely the effect of Verizon MA's contracts with the ITCs. As Verizon MA explained in its Initial Brief, at 28, although Verizon MA does not charge the ITCs for its facilities from the meet point to Verizon MA's tandem, it receives compensation in another form, *i.e.* the ITCs' reciprocal agreement not to charge Verizon MA for the ITC facilities Verizon MA uses from the

[17] *Iowa Utilities Board v. Federal Communications Commission*, 301 F.3rd 957 (8th Cir. 2002).

meet point to the ITCs' respective switches. No similar arrangement is possible with the CLECs because the access trunks and ports they obtain from Verizon MA do not carry any Verizon MA traffic.

XO claims that because the Dedicated Tandem Trunk Port rate is tariffed, Verizon MA "cannot impose one access charge on CLECs, and no such access charge on independent LECs," XO at 18, and asserts that Verizon MA "does not have authority to deviate from the prices set forth in its switched access tariff." *Id*. at 20, n. 22. XO cites no authority for these claims, and they are incorrect. ILECs such as Verizon MA are free to provide off-tariff pricing, pursuant to contract. The most obvious examples of this are the ICAs Verizon MA enters into with CLECs, through which the parties are free to negotiate and agree on off-tariff pricing under restrictions imposed by Sections 251 and 252 of the Act. (Indeed, interconnection agreements frequently contain rates, terms and conditions that differ from those of other ICAs, putting the lie to the CLECs' simplistic claim that any differences across Verizon MA's contracts with other carriers are necessarily discriminatory and unlawful.) The contracts between Verizon MA and the ITCs provide further examples of allowable off-tariff pricing. In the 25 years that these contracts have been in force, neither the Department nor any of its predecessors has required them to conform to tariffed rates and terms. Of course, as noted in Verizon MA's Initial Brief, at 30, even if the Department were to find discrimination here, which it should not, the result would be revision of the ITC contracts to require the ITCs (and Verizon MA) to pay for the facilities they use. It would not relieve the CLECs of their obligations to pay the tariffed access rates for the services they purchase.

VII. Conclusion

For the reasons stated above, the Department should reject the CLECs' claims, find that Verizon MA has properly billed the CLECs for the dedicated tandem trunk ports pursuant to Verizon MA's intrastate access tariff and the CLECs' interconnection agreements, and order the CLECs to pay the amounts so billed.

Respectfully submitted,

VERIZON NEW ENGLAND INC., d/b/a
VERIZON MASSACHUSETTS

By its attorney,

/s/ Alexander W. Moore

Alexander W. Moore
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
(617) 743-2265

Dated: November 12, 2008