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	**)**	

PREFILED TESTIMONY OF GARY CASE ON BEHALF OF XO COMMUNICATIONS SERVICES, INC.

June 13, 2008

TABLE OF CONTENTS

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PREFILED TESTIMONY OF GARY CASE
ON BEHALF OF XO COMMUNICATIONS SERVICES, INC.

Q1. What is your name and address?

Al. My name is Gary Case. My address is 13865 Sunrise Valley Drive, Room 3063, Herndon, Virginia 20171.

Q2. What is your occupation?

A2. I am employed by XO Communications Services, Inc. ("XO") as Director of Carrier Management.

Q3. Please describe your qualifications.

A3. I am a telecommunications professional with a Bachelor's degree in Mathematics from Louisiana State University and a Master's degree in Business Administration from the University of Alabama-Birmingham. I began my telecommunications career in 1988 with BellSouth and held a variety of positions in Finance, Pricing and Economics and Strategic Management over 9.5 years. Specifically, I was involved in supporting rate filings and pricing analyses for access services. I have spent the last ten years with two CLECs in intercarrier compensation positions. First, I directed Carrier Billing operations for MCI/Worldcom and then with XO Communications.

In my current position at XO, Director of Carrier Management, I manage the operational

and dispute relationship and negotiations with each of the LECs with which XO does business.

Q4. What is the purpose of your testimony?

A4. I will describe the nature and amount of the charges that Verizon has improperly billed to XO, why such billing is improper under applicable arrangements between XO and Verizon and how the billing is inconsistent with established industry practice. In that context, I will describe how local exchange carriers ("LECs") jointly provided switched access services to interexchange carriers ("IXCs") over meet-point billing ("MPB") trunks and why XO, acting in its capacity as a LEC, is not responsible for these switched access charges.

I. Summary

Q5. Please summarize your testimony.

A5. Verizon has charged XO for a switched access rate element known as a dedicated tandem trunk port that XO neither uses nor ordered. Rather, the facilities at issue are used in the joint provision of switched access to third party IXCs. As part of this joint provisioning, dedicated tandem trunk ports are in place exclusively to provide service to these third party IXCs. Accepted industry practice is for LECs to jointly provision MPB trunks for s IXCs and also establish that this service is not being provided to either LEC. The dedicated tandem trunk port associated with the MPB trunsk, therefore, are not the financial responsibility of the LEC. As such, Verizon's charges are inconsistent with the industry practices and its position is also inconsistent with the terms and conditions of the Interconnection Agreement ("ICA") between Verizon and XO. Verizon and XO agreed

in the ICA to jointly provide switched access services to IXCs, so it is not appropriate for Verizon to charge XO for dedicated tandem trunk ports, either as a switched access service or on any other basis.

Q6. Why are Verizon's charges inappropriate?

A6. The trunks in question are local interconnection trunks MPB trunks that are governed by the terms and conditions of the ICA in effect between XO and Verizon and are not governed by Verizon's switched access tariff XO is not purchasing any switched access services nor is XO providing interexchange services. The IXC traffic on these trunks is not XO's. Therefore, for the traffic on these trunks, XO is not purchasing or being provided any switched access services by Verizon. Instead, XO is acting as a LEC.

In addition, the charge that Verizon is assessing is for a dedicated tandem trunk port that only applies to dedicated transport facilities, which are trunks used to carry only *one* carrier's traffic. Thus, that one carrier pays for both the dedicated transport and the dedicated tandem trunk port. The facilities at issue in this case are common transport facilities that are being used to carry multiple IXCs traffic, not including XO's traffic. When common transport facilities are used a common port charge that is usage sensitive applies. A dedicated tandem trunk port charge is not applicable to a common transport trunk.

Moreover, even if the Verizon tariff was applicable, which it is not, and Verizon were allowed to apply monthly switched access charges to XO's local interconnection trunks, Verizon does not have a tariffed service element for tandem trunk port on the end office side of the access tandem. In fact, Verizon is actually prohibited from having such a rate

element pursuant to FCC rules.[1] Finally, Verizon is already receiving revenue for the rate element that it is attempting to recoup from XO through its charges to IXCs, and thus would be double recovering if it were allowed to charge both the IXC and XO.

II. History of the Dispute

Q7. Please describe how this dispute between XO and Verizon led to the complaint filed by XO with the Massachusetts Department of Telecommunications and Cable.

A7. In notices dated May 25, 2007 and August 23, 2007 ("Notices"), Verizon asserted that it had under-billed "intrastate access charges" on "switched access dedicated tandem trunk ports" associated with the MPB Trunks (that Verizon referred to as Access Toll Connecting Trunks) and would henceforth bill for these trunks on a current basis, as well as impose a one-time charge to collect unbilled charges for the prior two years.[2] 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 Percent Local Usage (“PLU”) factor to the dedicated tandem trunk port charges; thereby, billing something less than 100% of the dedicated tandem trunk port charges. Verizon indicated that it intended to impose on CLECs the entire switched access dedicated tandem trunk port charge on the MPB Trunks. As I previously described, however, the dedicated tandem trunk port charge is a switched access service. It is a component of a dedicated tandem trunking arrangement purchased by an IXC and not by the LEC that is jointly providing the switched access.

[1] *Access Reform Order*, Paras. 167-168. *See also* 47 C.F.R. § 69.4(h) (listing permissible rate elements, which do not include a local-side trunk port).

[2] See Notices, attached hereto as Attachment A.

The charges that Verizon had been assessing (and that it claims had been "underbilled") for these switched access services are based on Verizon's apparent conclusion that XO is a switched access services customer, rather than a LEC jointly providing switched access services under a MPB arrangements.

A chronology of this dispute, summarizing the relevant communications between Verizon and XO is attached hereto as Attachment B.

Q8. What are the amounts in dispute?

A8. Verizon rendered its initial invoices for these services to XO in August 2007 and September 2007. During the month of September, Verizon also commenced back-billing XO for two years worth of these switched access charges and has billed XO for these charges every month since. As of the date of this filing, the total that Verizon has billed for the dedicated tandem trunk port charges on local interconnection MPB trunks is $1,802,248.20.

Q9. Has XO communicated with Verizon about this dispute?

A9. Yes, XO responded to Verizon's notices and invoices by disputing those invoices by emails and letters dated August 27, October 16 and October 23, 2007. On November 9, 2007, XO sent Verizon a letter asking Verizon to provide the following:

> Please explain in detail why Verizon believes it is permissible to charge XO Communications dedicated tandem trunk port for MPB facilities that Verizon and XO use to jointly provision switched access services to IXCs?

> Please provide the specific tariff section or sections that Verizon is relying upon to justify the imposition of these charges.[3]
>
> In the event that Verizon is basing its claims, in whole or in part, on the terms of any of the Verizon/XO ICAs, please identify for each ICA, the specific sections of the interconnection agreements that support Verizon assessment of this charge. We ask that Verizon be clear here; and limit its answer for the time being to identifying the sections of the ICA and/or the tariff that Verizon believes create the obligation to pay. See Exhibit B hereto.

Verizon responded by referring back to its Notices, which clearly did not provide the detail that XO had requested. Verizon also denied XO's dispute and continued to charge XO.

To date, XO has received no substantive response to its inquiry orits appeal and escalation of the dispute. Verizon has continued billing the same amounts, and XO filed another appeal of such charges on March 9, 2008.

Since the Notices and the billing began, the parties have had two (2) discussions and several email exchanges in an effort to settle this matter. At this point, it does not appear that the parties will be able to reach an agreement in this matter.

Copies of the relevant Verizon invoices were attached to XO's Initial Complaint and are summarized in Attachment C hereto.

[3] While XO did not believe the tariff was applicable, Verizon's notice indicated that this was its position. Therefore, XO asked in order to understand Verizon's stance.

III. Contractual Context of the Dispute

Q10. Please identify the contract document that governs the interrelationship between XO and Verizon.

A10. The XO ICA was approved by the Department and is dated June 22, 2000 (XO predecessor NEXTLINK Massachusetts, Inc. adopted MCImetro Access Transmission Service, Inc.'s Interconnection Agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("XO ICA")) . Pertinent pages of the XO ICA are attached hereto as Attachment D.

Q11. What does that ICA say about joint provisioning of IXC switched access and meet point billing trunks?

A11. XO's ICA provides that the parties will jointly provide switched access services to IXCs 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 service[4]. The ICA provides:

> 4.1.22.1 [XO][5] and BA will establish MPB arrangements[6] 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

[4] *See e.g.,* XO ICA §§B.1.78; IV.8.5.

[5] As noted above, XO's predecessor adopted the MCI Metro ICA, thus in the XO ICA, MCI is effectively replaced by XO. Similarly, BA is Bell Atlantic. Bell Atlantic is now Verizon.

[6] The ICA defines MPB. 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.

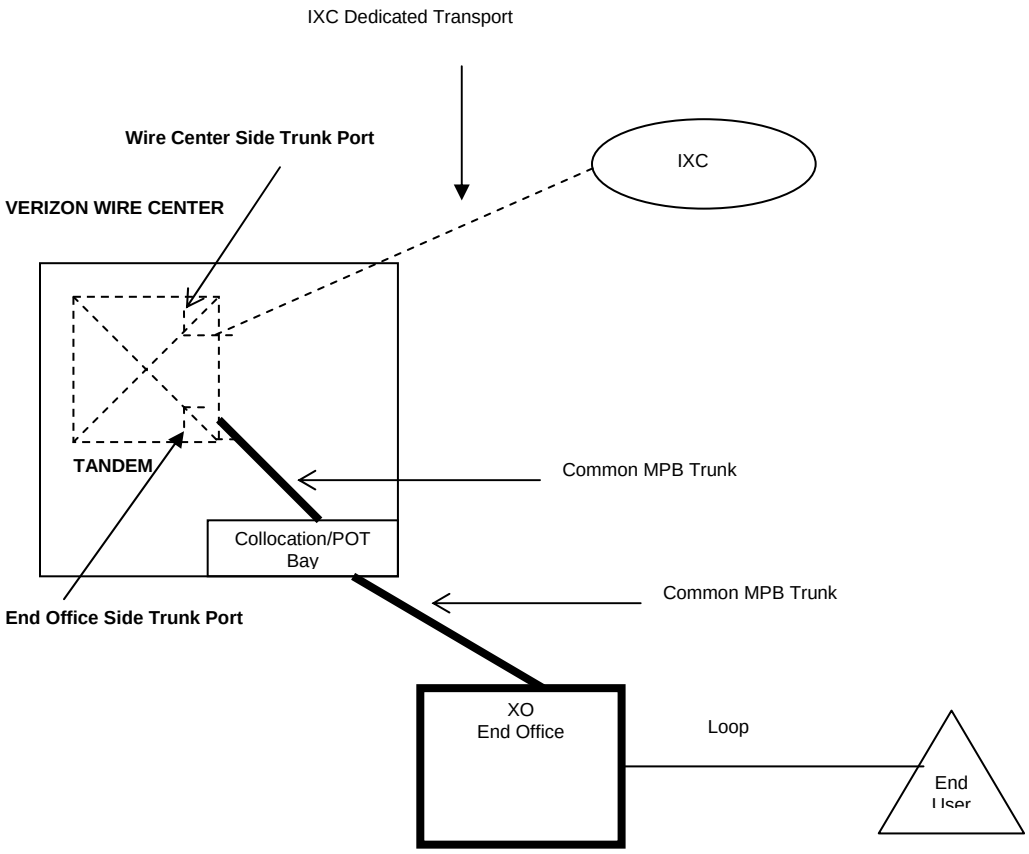
> successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.
>
> 4.1.22.2 [XO] and BA will implement the "Multiple Bill/Single Tariff" option, except as otherwise mutually agreed to by the Parties, in order to bill the IEC for that portion of the network elements provided by [XO] or BA. For all traffic carried over the MPB arrangement, [XO] and BA shall each bill for its own portion of applicable rate elements.
>
> ******
>
> 4.1.22.4 BA and [XO] agree that in a MPB arrangement where one Party provides local transport and the other Party provides the end office switching, the Party who provides the end office switching is entitled to bill any RIC and CCL charges associated with the traffic. 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
>
> ******
>
> 4.1.22.10 Neither [XO] nor BA 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.[7]

In these regards, this ICA is quite standard in the industry; each LEC bills and collects for its service to IXC and does not charge the other LEC.

[7] XO ICA, Attachment VIII, Business Process Requirements at 31.

Q12. Please explain how the joint provisioning of IXC access services and MPB trunks works in terms of what the various carriers do?

A12. The following diagram shows the structure of this transaction generally:



An IXC terminating a long-distance call to an XO customer would have its call routed through the Verizon tandem for routing to and from the respective end office. In this context, XO's end office is like a Verizon end office that subtends a Verizon tandem. Further, the end user that places and receives an IXC's calls in this scenario receives XO's dial tone. Thus, the MPB Trunks between the Verizon tandem and the end office

of XO, which are installed and provisioned under the terms of the ICA, enable XO and Verizon to jointly provide switched access to the IXC. Under these MPB arrangements, the companies bill their respective portion of the jointly provided access service pursuant to the MECAB guidelines adopted by the Ordering and Billing Forum ("OBF"). Specifically, Verizon provides and bills the IXC with an entrance facility, dedicated transport (if dedicated transport is provided) , some portion of the tandem transport element depending on the meet point arrangements, and tandem switching, while XO provides and bills the IXC for the remaining portion of the MPB tandem-switched transport[8] and end office switching.

IV. Industry Practices Regarding Joint Provisioning

Q13. What Is Jointly Provided Switched Access?

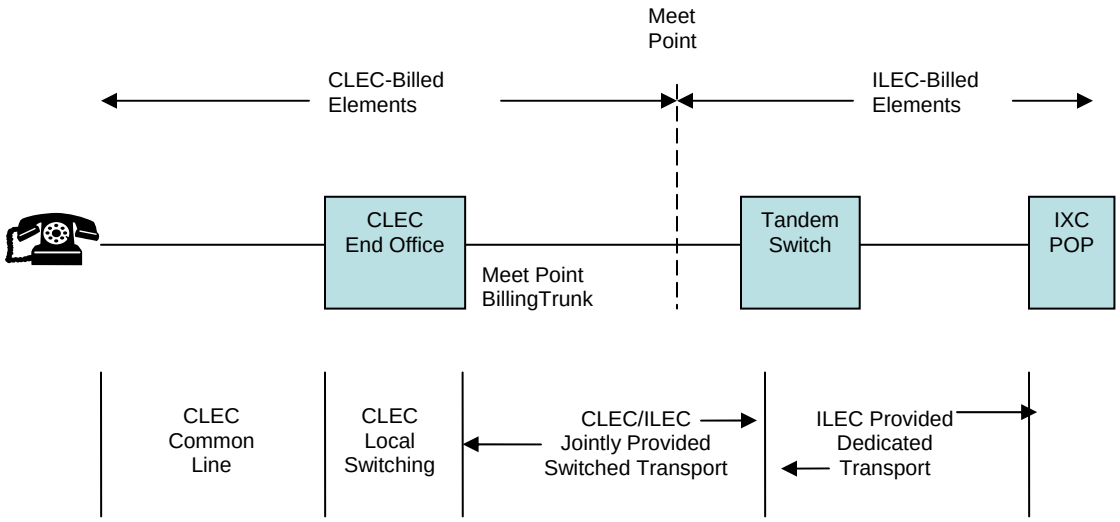
A13. Jointly provided switched access is where several LECs provide switched access to a single IXC. Typically, competitive local exchange carriers ("CLECs") will interconnect their networks with the ILEC by establishing facilities between their respective end offices, which may be a Point of Interconnection ("POI") or a physical switch at the ILEC's access tandem.

As shown below, the CLEC provides the end office component of the switched access service (and sometimes the shared/ common local transport) and the ILEC provides the dedicated transport component between its tandem switch and the IXC Point of Presence

[8] In its Notices, Verizon refers to the MPB trunks as Access Toll Connecting Trunks ("ATC"). However, Verizon is incorrect. ATCs are access services that are purchased by IXCs for their switched access traffic. MPB trunks are §251 Local Interconnection Trunks that XO and Verizon provision and use to jointly provide switched access services to IXCs. Moreover, the terminology is really not relevant. What is relevant, indeed pivotal, is the use and purpose of the trunks. Here, these trunks are being used by two LECs to jointly provide switched access services to third party IXCs.

("POP"). The ILEC and the CLEC each bills the IXC for the service elements that it actually provides. This is known as "meet point billing," because each LEC bills the IXCs for those switched access components located on its side of the "meet point." The meet point simply is the point at which the two LECs' networks are connected to each other.

Jointly Provided Switched Access



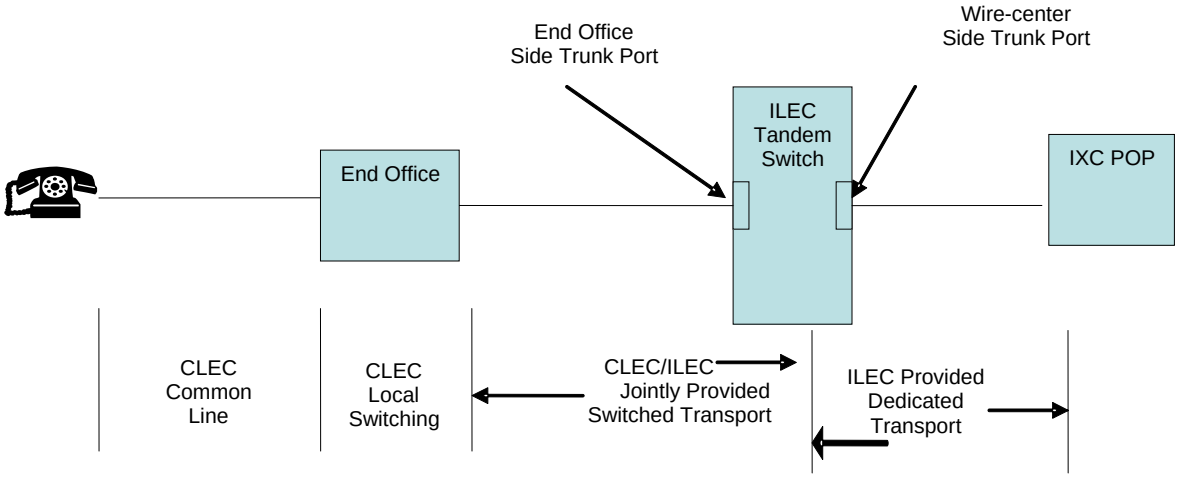
An IXC that wants to terminate traffic to XO's end users operating in Verizon's territory would purchase an Entrance Facility from Verizon's access tariff for purposes of connecting its POP to Verizon's Serving Wire Center for that location. Assuming that the Serving Wire Center is not the Access Tandem, the IXC also purchases Dedicated Transport and a Dedicated Transport Tandem Trunk Port from the Verizon access tariff from the Serving Wire Center to the Access Tandem, as well as Access Tandem Switching services to switch traffic onto trunks, referred to in the industry and the ICA as

MPB trunks, that connect the XO local end office switch or POI to the Verizon tandem switch. From that point, the IXC purchases transport and end office switching from XO who carries the call to local switch where it is switched to the line assigned to an end user.

Q14. Please describe a tandem trunk port?

A14. A tandem trunk port is simply the physical connection into a tandem switch. Tandem switches will be connected to the network on two sides: the side connecting to the IXC switch ("wire center side") and the side connecting to the MPB facilities connecting to the CLECs ("end office side").

Tandem Trunk Ports



Q15. Do LECs typically charge IXCs separately for the "wire center side" trunk port?

A15. Yes. In its 1997 Access Charge Order, the FCC defined the dedicated tandem trunk port charge as a separate rate element, based upon the dedicated and non traffic-sensitive nature of the port to the IXC.[9]

Q16. What is normal in the industry for charging for the "end office side" trunk port?

A16. The ILEC recovers the “end office side” trunk port from its tandem switching rate element. The ILEC is not permitted to assess a second port charge for the end office side trunk port. Pursuant to the same Access Charge Order, LECs must recover all tandem switching costs, except for the "wire center side" trunk port for which the FCC established a separate rate element, through their tandem switching rate element.[10]

Q17. Are the charges that XO is disputing for "wire center side" trunk ports that you state Verizon is allowed to bill?

A17. No. The charges that XO is disputing are for end office side trunk ports, which is clear, because these ports are on the opposite side of the tandem switch (as shown in the diagram). The wire center side trunk ports, on the other hand, are on the side of the tandem that connects the IXC POP to the tandem via an entrance facility or dedicated transport. As I indicated, Verizon may bill the wire center side trunk port charges to IXCs, not to CLECs that are jointly providing access services. Moreover, even if Verizon were entitled to charge XO wire center side trunk ports in this scenario (which it

[9] *In the Matter of Access Charge Reform*, CC Docket No. 06-262, First Report and Order, 12 FCC Rcd 15982 para. 167 (‘[I]incumbent price cap LECs must establish… a flat-rated charge to recover the costs of dedicated trunk ports on the serving wire center side of the tandem”)(“*Access Reform Order*”).

[10] *Id.* Para. 168 (“[I}incumbent LECs will be required to provide tandem-switched transport under a three-part rate structure as follows: (1) a per-minute charge for transport of traffic over common transport facilities between the LEC end office and the tandem office; (2) a per-minute tandem switching charge; and (3) a flat-rated charge for transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office.”)

is not), that is not what these disputed charges are.

Q18. What is the normal process for LECs charging each other when they are jointly providing switched access to IXCs?

A18. In my experience LECs do not bill other LECs (including CLECs) for services that should be billed to an IXC. Notably the other large ILEC, AT&T does not bill, and has never attempted to bill, CLECs for these dedicated tandem trunk ports.

Q19. Is there a basis in Verizon's Intrastate Access Tariff for one LEC charging another for jointly provided switched access?

A19. No. Section 3.4.1 Of Verizon's Massachusetts Tariff No. 15 provides a detailed description of jointly provided switched access service, but it doesn't provide for the charging of a dedicated tandem trunk port by Verizon to another LEC for jointly provided access service

Q20. What is the basis for LEC switched access service charges?

A20. ILEC switched access service rates and terms are contained in tariffs on file with the FCC (for interstate access services) and the state commissions (for intrastate access services).

Q21. What is the process for IXCs to order switched access service?

A21. lXCs would use an Access Service Request ("ASR"), an industry standard form that was developed by the Ordering and Billing Forum. The IXC would submit the ASR to the LEC, either Verizon or XO.

Q22. What is the process for billing IXCs access charges?

A22. Switched access charges are billed through the LEC's Carrier Access Billing System. Access charges for dedicated facilities are billed in the form of monthly recurring charges, while traffic sensitive common transport charges are billed in the form of per minute rates.

Q23. What is the industry norm?

A23. Usually, each LEC bills and collects from the IXC for its portion of the services to the IXC. The collaborating LECs do not bill each other for these services.

Q24. The ICA refers to the MECOD and MECAB Guidelines. What are they?

A24. The MECOD Guidelines for Access Service describe the ordering and design guidelines for establishing a jointly provided switched access service within a LATA. These guidelines were developed by the Ordering and Billing Forum of the Alliance for Telecommunications Industry Solutions, a United States industry supported group that develops and promotes technical and operations standards for the communications and related information technologies industry, which is accredited by the American National Standards Institute.

The MECAB Guidelines contain the recommended guidelines for the billing of jointly provided access services within a single LATA. These guidelines also were developed by the ATIS Ordering and Billing Forum.

Q25. Have XO and Verizon in this case agreed to conform to the MECAB guidelines?

A25. Yes, pursuant to Section 4.1.22.1 in Attachment VIII of the ICA.

Q26. Do the MECAB Guidelines help define who does what in providing jointly provides switched access service?

A26. Yes. MECAB Guidelines set forth the process for exchange of usage data and generation of bills to IXCs for jointly provided switched access service.

Q27. Would LECs ever bill each other for elements of the network instead of, or in addition to, billing the IXCs under the MECAB Guidelines?

A27. No. There is no discussion of one LEC billing another. Indeed, the primary purpose of the MECAB guidelines is to describe in detail how LECs are to bill IXCs for access services. Again, my experience over the years is that LECs bill IXCs, not other LECs, until Verizon's new approach that led to this case.

Q28. Are the MECAB Guidelines instructive in other ways relevant to this case?

A28. Yes. The MECAB guidelines reference Billing Percentages. Billing Percentages ("BP") apply to dedicated transport circuits connecting the switches or POIs of two different LECs; for example, a circuit between the Verizon access tandem switch and the XO end office switch. The ICA in this case refers to these facilities as MPB trunks. The BP indicates how much of this dedicated circuit is provided by each company. For example, if Verizon provided the MPB trunk as part of its network, it would have a BP of 100 and XO would have a BP of 0 for this route. Conversely, if XO provided the trunk, it would have a BP of 100 and Verizon would have a BP of 0. Or the parties could agree on a mid-span meet, in which case they would both have BP between 1and 99. The two companies can agree to divide responsibility for these transport routes in any way, as long as the percentages total to 100.

Q29. What determines the responsibility for different elements?

A29. Ultimately, the architecture of the interconnection of CLEC with the ILEC will determine responsibility for providing the specific elements.

Q30. Please discuss the respective responsibilities of XO and Verizon.

A30. XO is responsible for providing end office switching and the local loop facility between the end office switch and the customer. Verizon is responsible for providing the connection to the IXC (the entrance facility) and tandem switching. With respect to the local transport component of the service when the point of interconnection for these trunks is at Verizon's access tandem, XO is providing 100% of the MPB trunking, and thus is entitled to bill the IXC 100% of the common transport rate element.

V. Provision of Switched Access Elements

Q31. Whose network are the dedicated tandem trunk ports on?

A31. The dedicated tandem trunk ports are part of Verizon's tandem switch, which Verizon bills to IXCs as part of its tandem switching rate element.

Q32. Does XO's procurement of the interconnection trunks used for jointly provided access service have any bearing here?

A32. No, trunk procurement and responsibility for port charges are two separate issues. Pursuant its ICA, XO can implement its local exchange network in several ways, including utilizing its own facilities, leasing facilities from another carrier, or leasing facilities from Verizon to implement its local exchange network. The extent to which it has ordered facilities from Verizon has no bearing on whether Verizon has the right to charge XO for access services.

Q33. What governs XO's lease of the MPB trunks from Verizon?

A33. Under the Communications Act, ILECs are required to provide interconnection facilities at cost-based rates pursuant to 47 USC 251(c)(2) to requesting carriers for purposes of local interconnection. XO leases the MPB trunks from Verizon under its ICA. Those MPB trunks are used for providing exchange access service (switched access service to IXCs).

Q34. But, what about Verizon's assertion that MPB trunks are provided under the terms of its access tariffs?

A34. Verizon is incorrect, because a MPB trunk that is leased to a requesting LEC in connection with that LEC's local interconnection arrangements is not a component of switched access service. When XO orders these trunks XO specifies that these are local interconnection trunks that will be used for MPB. As I explained earlier, switched access service is provided to an IXC access customer by a LEC (or LECs) to allow the IXC to connect to an end-user. In this situation, XO is not an IXC trying to connect to an end user; it is a LEC jointly providing an IXC connection between the IXC's POP and its end users. Not only does the ICA and industry practice show that MPB trunk provisioning is not an exchange access service to CLECs, but the Common Carrier Bureau of the Federal Communications Commission has so ruled. In a § 252 ICA arbitration of this issue -- in which a Verizon affiliate was a party -- the Bureau rejected Verizon's assertion that MPB trunking was an exchange access service offered to the CLEC, and instead found that:

> the [MPB 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.[11]

Q35. Even if XO were acting as an IXC, which it is not, are you aware of other authority barring Verizon's port charges here?

A35. Yes, there is authority and Verizon may not assess this port charge even to an IXC. As I have already discussed, LEC's are prohibited by the FCC from imposing additional switched access rate elements on tandem switching beyond the tandem switching rate element and the "wire center side" dedicated trunk port element. For switched access purposes, the "end office side" trunk port is included in the tandem switching rate element.[12]

Q36. Why do you say XO's ICA bars Verizon billing a dedicated tandem trunk port charge to XO?

A36. XO's ICA neither describes, nor sets rates for MPB trunk ports. The ICA specifies two rate elements for the interoffice facilities that XO leases: a variable CLEC mileage charge and a fixed CLEC facility charge. Any other costs are either recovered in these charges or they are Verizon's responsibility.

[11] *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)

[12] *Access Reform Order*, Paras. 167-168. *See also* 47 C.F.R. § 69.4(h) (listing permissible rate elements, which do not include a local-side trunk port).

Q37. Is there any basis in Verizon's intrastate access tariff for a dedicated tandem trunk port charge on MPB trunks?

A37. No. The only arguably relevant mention is in Section 30.6.3, which addresses "Dedicated Tandem Trunk Port" rates. Again, this would not apply to XO in this case because in this scenario XO is not an IXC and is not purchasing switched access services XO orders MPB trunks as local interconnection trunks and XO is using these MPB trunks to jointly provide switched access service to IXC access customers. Further, the tariff contains no description of this service, so it is impossible to determine its purpose. Without any explanation of the purpose of this rate, or the underlying service that Verizon provides, it is meaningless.

Neither the Verizon tariff, nor the Verizon-XO ICA reference a "MPB dedicated tandem trunk port" (or Access Toll Connecting Trunks ("ATC"), as has been referred to with respect to One Communications' Complaint) so there is no basis on which Verizon can charge XO for such an element.

Q38. If Verizon is supposed to recoup its "end office side" tandem trunk port costs **through its tandem switching charges to the IXC, wouldn't it be over recovering if it were allowed to charge XO as well?**

A38. Absolutely. If Verizon were following the FCC's rules it should be recovering its costs of tandem switching, including the dedicated tandem trunk port charges at issue here, through its access charges imposed on IXCs. Whatever tandem switching costs Verizon may incur related to jointly provided switched access are to be recovered solely through its tandem switching charges to the IXCs. It would be a pure windfall for Verizon if it

were allowed to receive additional revenues from CLECs for services provided and charged to the IXCs.

VI. Conclusion

Q39. In summary, what is your opinion regarding the validity of Verizon's charges for MPB dedicated tandem trunk ports?

A39. These dedicated tandem trunk port charges are completely unsupported from both a contractual and practical perspective. Verizon cannot charge XO under its access tariff, since the MPB trunks are not leased as an access service and XO is not an access customer. Even if it were, the tariff contains no charge for a trunk port on the XO side of the tandem. Likewise, Verizon cannot XO under the ICA, because the ICA contains no charge for a trunk port of any kind.

Q40. Does that conclude your testimony?

A40. Yes.

LIST OF ATTACHMENTS