BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS, Inc. for arbitration pursuant to 47 U.S.C. 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc.	DOCKET NO. 011666-TP ORDER NO. PSC-03-0805-FOF-TP ISSUED: July 9, 2003

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
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APPEARANCES:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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BACKGROUND

On December 20, 2001, Global NAPs, Inc. (GNAPs) petitioned this Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). On January 16, 2002, Verizon filed its response to GNAPs' petition.

On April 2, 2002, the parties agreed that the deadline for resolving the case could be extended to January 13, 2003. On June 4, 2002, Verizon and GNAPs filed a Joint Stipulation to Suspend Arbitration Schedule and Applicable Statutory Deadlines. In the Joint Stipulation, the parties noted that a number of arbitration issues overlap with issues being considered in Docket No. 000075-TP. The parties agreed to file a joint motion seeking new controlling dates within 30 days after the issuance of the order in Docket No. 000075-TP.

On September 10, 2002, we issued Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP. Subsequently, on October 10, 2002, the parties filed a Joint Motion for a New Arbitration Schedule. Due to the amount of time that had elapsed since filing of Direct Testimony and due to the impact of the decision in Docket No. 000075-TP on certain issues, parties were permitted to file Supplemental Direct testimony. On December 18, 2002, Verizon filed such testimony. None was filed by GNAPs. Both GNAPs and Verizon filed rebuttal testimony on January 16, 2003.

On February 14, 2003, Verizon filed its Motion of Verizon Florida Inc. for Leave to File Surrebuttal or in the Alternative to Strike Portions of the Rebuttal Testimony of Global NAPs, Inc. Witness Lee L. Selwyn. At the February 17, 2003, Prehearing Conference, the Prehearing Officer ruled that Verizon's surrebuttal testimony would be allowed.

On March 10, 2003, a hearing was held.

On April 10, 2003, GNAPs filed its Initial Brief of Petitioner. On April 11, 2003, Verizon filed its Post-Hearing Statement of Verizon Florida, Inc. On April 17, 2003, pursuant to an informal agreement, GNAPs filed its Corrected Post-Hearing Statement of Issues and Positions of Petitioner, Global NAPs, Inc.

(Revised Post-hearing Brief) On April 25, 2003, Verizon filed a Motion to Strike New Substantive Argument from GNAPs' Revised Post-hearing Brief. On May 5, 2003, GNAPs filed its Opposition to Verizon's Motion to Strike Substantive Argument From GNAP's [sic] Revised Post-Hearing Brief. We addressed these motions at the June 3, 2003, Agenda Conference, granting in part and denying in part Verizon's Motion to Strike.

All references to GNAPs' Brief in this Order are to GNAPs' Revised Post-hearing Brief.

I. JURISDICTION

Arguments

GNAPs states that we have jurisdiction to arbitrate the parties' interconnection agreement pursuant to 47 U.S.C. §252. Under §252(a)(4), the Commission must "limit its consideration of any petition . . . to the issues set forth in the petition and in the response" and must "resolve each issue set forth in the petition and the response" as required by §252(c). GNAPs argues, however, that we have no jurisdiction to regulate ISP-bound traffic.

As noted previously, GNAPs filed for arbitration of an interconnection agreement with Verizon pursuant to the Act. Pursuant to Section 252(b) of the Act, an incumbent local exchange carrier, or any other party to a negotiation, under the Act, after a prescribed period of time for voluntary negotiation, may petition a state commission to arbitrate any open issues. Pursuant to Section 252(b)(4) of the Act, the State Commission must limit its consideration to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252(c), of the Act. Pursuant to Section 252(c) of the Act, a State Commission, in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection,

services, or network elements according to Section 252(d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, we believe that we have the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

DECISION

We agree that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration that are not inconsistent with the Act and its interpretation by the FCC and the courts. Further, we believe that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent. However, we agree that it is appropriate for us to exercise our state authority with discretion.

Based on the foregoing, we have jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, we should use discretion in the exercise of such authority.

II. POINT OF INTERCONNECTION

ARGUMENTS

Witness Selwyn agrees that Verizon Florida does not appear to dispute GNAPs' right to designate a single point of interconnection per LATA within Verizon's network. GNAPs witness Selwyn states that GNAPs uses the fiber meet form of interconnection.

GNAPs responded in discovery that the use of MOUs "significantly delays the process of interconnection, despite the fact that these agreements are virtually universal within the Verizon footprint."

GNAPs acknowledges in its brief Verizon's position that GNAPs may interconnect on Verizon's network at one single point per LATA. However, GNAPs argues that Verizon's MOU allows Verizon alone to determine the terms of interconnection. GNAPs states that it began asking Verizon for interconnection in October 2002. GNAPS further states in its brief that in mid-February, 2003, "GNAPs' counsel drafted a proposed MOU based on others accepted and executed between the two parties," but has not received any comments on it from Verizon.

Verizon witness D'Amico agrees that Verizon will allow GNAPs to establish a single POI in a LATA at specified technically feasible points within Verizon's network, but notes that the parties have not yet agreed to specific contract language embodying this principle. He asserts that Verizon's proposed contract language "closely tracks" the language of §251(c)(2) of the Telecommunications Act of 1996 (the "Act"), which the FCC held in ¶192 of the Local Competition Order obligates incumbent LECs to provide interconnection within their networks at any technically feasible point.

Witness D'Amico provides contract language in which Verizon supplements "its definition of a POI to make clear that the POI must be on Verizon's network and to provide examples of what is or is not a technically feasible point on Verizon's network." The language he provides states:

> The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. As set forth in the Interconnection Attachment, a Point of Interconnection shall be at (i) a technically feasible point on Verizon's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement. By way of example, a technically feasible Point of Interconnection on Verizon's network in a LATA would include an applicable Verizon Tandem Wire Center or

> Verizon End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a GNAPs Wire Center, GNAPs switch, or any portion of a transport facility provided by Verizon to GNAPs or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of GNAPs or another party.

Regarding Verizon's requested Memorandum of Understanding (MOU), witness D'Amico contends that this is only required when a party requests the fiber meet form of interconnection. He explains that a fiber meet is an agreed-upon fiber point where the parties connect, with each party providing electronics at its own end. He continues that the parties must consider the electronics and software they are using and "make sure everybody is on the same page."

Witness D'Amico asserts that a fiber meet is not very common. He states that most CLECs do not request this form of interconnection. He notes that for all other forms of interconnection, no additional paperwork is required. He responds that he is unaware of the typical amount of time Verizon takes in processing an MOU.

Verizon emphasizes that GNAPs does not agree that it should be required to interconnect on Verizon's network. Verizon argues that GNAPs' proposed language would allow it to designate a POI anywhere in the LATA, irrespective of whether it is on Verizon's network. Verizon notes that the issue has been addressed in 47 CFR § 51.305(a)(2) and 47 U.S.C. § 251(c)(2), as well as by the FPSC in Docket No. 000075-TP.

Verizon argues in its brief that the Commission should reject GNAPs' proposal regarding fiber meet arrangements, which are an alternate means Verizon offers for interconnecting the parties' networks. Verizon contends that its approach to fiber meets is consistent with the FCC's "Local Competition Order" [*In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499 ¶553 (1996)], which recognizes that both the parties and the state commissions are in the best position to determine the details of interconnection using a fiber meet.

DECISION

We agree with Verizon's contention that the POI must be placed on Verizon's network. While GNAPs has not consistently referred to a location on Verizon's network, it has done so in several places. We believe that GNAPs has sufficiently acknowledged that it must choose a point of interconnection on Verizon's network within any given LATA. Therefore, it appears that the parties are in agreement on this point.

This position is also consistent with our previous decisions. In Docket No. 000075-TP we found that:

> . . . ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA.

The basis for this decision is that interconnection obligations are asymmetrical. Nothing in the Telecommunications Act of 1996 requires an ALEC to interconnect at multiple locations in a LATA.

GNAPs' concerns regarding Verizon's MOU requirement are unfounded. GNAPs offered no testimony on this issue, and only mentioned it briefly in response to our staff discovery requests. GNAPs' statement in its brief that it provided a draft MOU to Verizon in February 2003, is based upon a remark of GNAPs' counsel made in opening statements.

The record reflects that Verizon only requires an MOU when a fiber-meet is used. It appears from the record that such an arrangement only takes place on a minimal number of occasions for most carriers interconnecting with Verizon, although GNAPs may choose to use this form of interconnection. Verizon's position is unrebutted that a fiber meet takes more planning and engineering than other types of interconnection. Therefore, Verizon's MOU proposal has merit.

While there is no support for GNAPs' allegation that Verizon has been uncooperative on completing an MOU, both parties should be cautioned that full cooperation is necessary for any agreement to

work. If Verizon and GNAPs have not yet been able to work out an MOU, both should undertake a renewed effort to finalize the details of the fiber meet.

Therefore, GNAPs may designate a single physical point of interconnection per LATA on Verizon's network. Verizon shall be permitted to require a Memorandum of Understanding when a fiber meet is requested.

III. COMPENSATION RELATING TO POINT OF INTERCONNECTION

ARGUMENTS

Witness Selwyn argues that Verizon's VGRIP proposal is designed to permit Verizon to charge GNAPs call origination fees that are expressly prohibited by the FCC's intercarrier compensation rules. He contends that the incremental costs to transport traffic to a single POI in each LATA are de minimis, largely due to decreasing costs for transport resulting from advances in fiber optic transmission technology. Witness Selwyn points out that the FPSC, in its Final Order on Arbitration between AT&T and BellSouth, found that each party should assume financial responsibility for transporting its own traffic to the AT&T-designated interconnection point. He adds that we also reached the same conclusion in Docket No. 000075-TP. GNAPs notes in its brief that Verizon acknowledged in its prehearing statement that each party would bear responsibility for facilities on its side of the POI.

In his direct testimony, Verizon witness D'Amico explains that Verizon's proposal -- referred to as a "virtual geographically relevant interconnection point" or "VGRIP" -- distinguishes physical points of interconnection, from designated interconnection points where financial responsibility transfers from one carrier to another. However, in his supplemental direct testimony, witness D'Amico states that Verizon proposes simply that each party provide transport facilities to the POI at its own expense. He asserts that this is what GNAPs sought in its Petition for Arbitration, and that it is consistent with the FPSC's previous decision requiring the originating carrier to bear all the cost of transport to a

single point of interconnection, in Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP.

Witness D'Amico dismisses witness Selwyn's "de minimis" cost analysis, stating that it is not helpful in resolving the issue. He points out that the issue is not what the costs are, but which carrier should bear them. He adds that Verizon is no longer pursuing its VGRIP proposal in this proceeding. He notes that although Verizon provided GNAPs its updated contract proposal on December 2, 2002, GNAPs did not respond to this proposal or submit any supplemental direct testimony addressing Verizon's proposal.

Verizon argues in its brief that GNAPs' testimony in this case relates only to Verizon's superseded VGRIP proposal, so that testimony is irrelevant. Verizon urges the FPSC to adopt its proposed contract language because Verizon believes such language is consistent with the Commission's precedent and unchallenged in the record.

DECISION

Verizon argues that its VGRIP proposal is consistent with FCC orders and several recent federal court decisions. Nevertheless, witness D'Amico withdrew that proposal in his supplemental direct testimony. As noted by Verizon in its brief, GNAPs failed to respond to that change in position in its rebuttal testimony. Rather, GNAPs rebutted the original direct testimony of Verizon. In deposition, witness Selwyn asserts that it is not readily apparent from filed testimony that Verizon withdrew its VGRIP proposal.

However, upon filing of the briefs, it has become apparent that GNAPs does recognize that Verizon withdrew its VGRIP proposal. The parties now appear to be in agreement on this issue. As noted above, the agreement of the parties is consistent with our findings in Order No. PSC-02-1248-FOF-TP.

Each party is responsible for transporting its own traffic to the SPOI.

IV. DEPLOYMENT OF TWO-WAY TRUNKS

ARGUMENTS

GNAPs witness Selwyn did not provide testimony on this issue. GNAPs responded to our staff's discovery that witness Selwyn has not addressed this issue because he is an economist and provides policy testimony. Nevertheless, GNAPs states that "all issues remain, including, but not limited to implementation dates, forecasting requirements, Verizon's reservation of facilities and their ability to take facilities."

GNAPs argues in its brief that "the very fact this petition needs to be filed indicates that there is now, and will likely be in future, [sic] disagreements on these operational aspects." GNAPs contends that its proposed modifications to the agreement

> (1) exclude measured Internet traffic; (2) replace "intrastate traffic" with "other traffic"; (3) remove restrictions on the manner of connection; (4) impose industry standards for equipment used in provisioning; (5) assure equality in service quality and provisioning through the ASR process; (6) equalize trunk underutilization restrictions; (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due; (8) eliminate restrictive subtending arrangement requirements; and, (9) clarify the definition of "traffic rate."

GNAPs asserts that its proposed agreement provides for a more equitable offering of two-way trunking than that provided by Verizon. GNAPs continues that trunks on a tandem should be limited to 672, rather than the 240 trunks proposed by Verizon. GNAPs also complains that Verizon has never provided it with a Memorandum of Understanding (MOU) with regard to a request made by GNAPs in 2002 for interconnection.

Verizon witness D'Amico agrees that GNAPs may decide whether one-way or two-way trunk groups should be used. However, he asserts that the parties must agree on the operational responsibilities and design parameters required for two-way trunking architecture. D'Amico states that such understanding

should be reflected in the interconnection agreement. He argues that this is necessary to maintain network integrity. D'Amico compares a lack of agreement to driving an automobile without rules as to which side of the road to drive on or at what speed. He explains that the actions of one affect the other, which could result in blocking of traffic. Witness D'Amico opines that it is, therefore, reasonable that GNAPs and Verizon should mutually agree on the initial number of two-way trunks, a provision deleted by GNAPs. He rationalizes that such trunks carry both Verizon's traffic and GNAPs' traffic on the same trunk group, thus affecting the performance and operation of each party's network.

Witness D'Amico contends that GNAPs made edits to the agreement that make no sense. He notes that GNAPs uses the phrase "originating party" in section 2.2.4(b), to describe traffic where both GNAPs and Verizon "originate" and "terminate" traffic. D'Amico asserts that the use of the term "originating party" does not describe the parties with any specificity.

Witness D'Amico notes that Verizon currently uses two-way trunking with a number of CLECs in Florida with the same terms and conditions that Verizon has proposed to GNAPs. He states that GNAPs has not explained why it should be afforded different treatment.

Verizon notes in its brief that witness D'Amico's testimony is undisputed. Verizon points out that GNAPs' witness offered no explanation for GNAPs' contract proposal or GNAPs' opposition to Verizon's language. Verizon argues that GNAPs has no legal basis or record support for its proposal to solely dictate the specifications for two-way trunks.

DECISION

FCC Rule 47 CFR §51.305(f) states that, "If technically feasible, an incumbent LEC shall provide two-way trunking upon request." At issue here is, not whether two-way trunking should be provided, but whether mutual agreement on the engineering aspects of such an interconnection arrangement should be required.

We have previously addressed the issue of two-way trunking in a WorldCom/BellSouth arbitration. In Order No. PSC-01-0824-FOF-TP, we stated that

> We agree that WorldCom's and BellSouth's trunk engineers should cooperatively work together to decide when to use two-way trunking on a case-by-case basis that is mutually beneficial for both parties. We note that both parties agree with this suggestion. We further note that in the event the parties cannot agree, that WorldCom reserves the right to make the final decision. However, it should be noted that the outcome may be that WorldCom's network design takes precedent over BellSouth's. As a result, BellSouth's network may suffer, since WorldCom's economics would control. Notwithstanding that, although the FCC's rules allow WorldCom to order two-way trunks, and require BellSouth to use them, we trust that good engineering will determine the parties' practices. Therefore, we find that BellSouth is obligated to provide and use two-way trunks that carry each party's traffic at WorldCom's request.

Verizon appears to have no objection to providing two-way trunks to GNAPs. It asks that the parties agree on the operational responsibilities and design parameters. Verizon provided a list of thirty-seven companies with which it has agreements in Florida that it states contain the same two-way trunking language as that it proposes for GNAPs. Verizon witness D'Amico stated that he "personally scanned all of the language . . . but there are no substantial changes between what [Verizon] proposed with GNAPs." Thus, it appears that the language proposed by Verizon is in common usage.

Despite the common acceptance of Verizon's proposed language in Florida, GNAPs objects to coordinating its two-way trunks with Verizon. GNAPs contends in its brief that the very fact it filed a petition indicates there is a problem. However, we note that GNAPs had three opportunities to file testimony, and was even asked by our staff in discovery why it did not do so. At no time did GNAPs provide any record evidence in support of its position.

In its brief, GNAPs did enumerate a list of provisions, as shown above, that it proposed with its petition. Those provisions deal with a number of definitions in the proposed interconnection agreement. GNAPs asserts that "[t]hese proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by Verizon." As support for its position in its brief, GNAPs cites Exhibit B to its Petition. We determined that this exhibit contains the testimony of Jeffrey A. King on behalf of AT&T in Docket No. 020919-TP which is currently before this Commission. Two-way trunking is not an issue in that docket, nor is it discussed in the referenced testimony. GNAPs also cites the Proposed Interconnection Agreement at §§2.93-95. The provisions noted are part of the glossary to the interconnection agreement. They define Percent Interstate Usage (PIU) and Percent Local Usage (PLU) factors as well as the term "Trunk Side." GNAPs further cites Interconnection Attachment Sections 2.2-2.4, 5, 6, and 9. Several of these Sections do address two-way trunks, but again, there is nothing to support any of GNAPs' allegations that these provisions have any inherently negative impact. We do not see anything in the material cited by GNAPs that supports its statement that its proposed modifications are necessary to provide for a more equitable offering of two-way trunking than those proposed by Verizon. It is unfortunate that GNAPs did not file testimony that would have afforded us an opportunity to explore the allegations that GNAPs now makes.

We have the same problem with GNAPs' argument that the agreement should allow a maximum of 672 trunks instead of 240. There is no record evidence to support this statement.

GNAPs' discussion of MOUs is addressed in Section II of this Order.

We agree with Verizon that its testimony is unrebutted. Further, Verizon convincingly showed that it has used the language that lays out two-way trunking provisions. GNAPs provided no testimony or other evidence to the contrary. It appears that Verizon's request that the parties agree on the operational responsibilities and design parameters is in line with the FPSC's previous finding.

However, it should be made clear to Verizon, in keeping with our previous decision, that where Verizon and GNAPs' engineers have a difference of opinion, GNAPs should have the final say on the provisioning of two-way trunks, so long as GNAPs' requests are reasonable and technically feasible. As noted by the FCC in its First Interconnection Order, specific, significant, and demonstrable network reliability concerns may be evidence that a particular interconnection point is not technically feasible. See Order FCC 96-325 at ¶198, CC Docket Nos. 96-98, 95-185. Nevertheless, as we found with WorldCom and BellSouth, the outcome may be that GNAPs' network design takes precedent over Verizon's.

We find that GNAPs' and Verizon's trunk engineers should cooperatively work together to decide when to use two-way trunking on a case-by-case basis that is mutually beneficial for both parties. In the event the parties cannot agree, GNAPs has the right to make the final decision, providing such decision is reasonable and technically feasible. Thus, the parties should resolve any doubt in favor of GNAPs, so long as both parties make a good faith effort to work out the necessary engineering details.

V. RECIPROCAL COLLOCATION (V. And VI. are combined for purposes of all discussion related thereto)

VI. COMPENSATION ABSENT RECIPROCAL COLLOCATION

ARGUMENTS

GNAPs witness Selwyn emphasizes that the interconnection obligations in the Telecom Act of 1996 "do not require or provide for symmetric treatment of ILECs and ALECs." "An ILEC [i.e., Verizon] may not assume authority that is not provided for in the Act," according to witness Selwyn. The witness makes this point to stress that GNAPs, as an ALEC, is not constrained by the same guidelines and obligations as Verizon to provide collocation. Witness Selwyn states:

> The key point of this asymmetry is that both the *Telecommunications Act* as well as FCC Rules hold that, in order to interconnect with an ILEC, an ALEC need

> establish only one (1) point of interconnection ("POI") with an ILEC at any technical point *anywhere* in each LATA . . . Moreover, FCC regulations do not grant the ILEC the right to designate the point at which the other party must "pick up" the ILEC's traffic. (Emphasis in original)

Although this portion of witness Selwyn's testimony addresses GNAPs' argument for a single point of interconnection (SPOI), the witness offers very limited testimony that specifically addresses collocation. In its brief, GNAPs contends that Verizon is specifically required to provide collocation to ALECs, yet "there is simply no legal requirement for GNAPs to provide collocation."

In a discovery response, GNAPs contends that the issue of reciprocal collocation is a "legal issue and no factual testimony in its brief is required." Although not obligated, GNAPs asserts that it has never rejected a request from Verizon for collocation. In an interrogatory response, GNAPs states that

> This issue [Issue 3(b)] remains unresolved since it is conditional on a determination of Verizon's ability to collocate at Global facilities. It should be noted, however, that Global has not been asked by Verizon for collocation space, nor has Global rejected . . . or in any way dissuaded them from seeking such space.

A portion of Issue this issue involves the cost considerations for call transport, and witness Selwyn provides a considerable amount of testimony on this topic. The witness believes that Verizon is attempting to shift the financial responsibility of transporting Verizon-originated traffic to GNAPs. Witness Selwyn contends that if Verizon utilized a SPOI per LATA to transport its originated traffic to GNAPs,

> the incremental costs that Verizon Florida would incur to extend transport beyond the local calling area to a SPOI in each LATA are *de minimis*, in large part reflecting the drastic reductions in unit costs for transport that advances in fiber optic transmission technology have produced. (Emphasis in original)

The witness provides mathematical support to demonstrate his assertions.

In summary, GNAPs believes it should not be required to provide collocation to Verizon. GNAPs has concerns about possibly discriminating against other customers if it were to accede to the terms and conditions that Verizon seeks in collocating with it. Finally, GNAPs believes Verizon should bear its own network costs.

Verizon witness D'Amico characterizes these issues as being about "fairness," and states that Verizon should be offered the same terms and conditions for collocation that it offers to ALECs. Verizon seeks the right to establish a collocation arrangement with GNAPs in order to terminate its own traffic using its own facilities. Witness D'Amico asserts that the issue of compensation is conditioned upon our decision on reciprocal collocation, contending that unless we rule in favor of Verizon on this issue, Verizon would be forced to purchase transport facilities from GNAPs "at rates that are typically unconstrained by any form of regulation."

The witness describes allowing reciprocal collocation as being a "common sense approach to interconnection." Verizon witness D'Amico believes that since Verizon offers collocation to ALECs, it is "clearly reasonable that Verizon have available to it the same types of interconnection choices that are available to a CLEC so as to provide the most efficient type of interconnection." He asserts that both parties to an interconnection agreement can then have more than one option in order to facilitate interconnection. In its Brief, Verizon contends that its language actually proposes two interconnection options: (1) collocation at GNAPs facilities; and (2) purchasing GNAPs transport at non-distance sensitive rates.

To summarize, witness D'Amico is asking this Commission to recognize the potential "invitation for abuse" that Verizon would face if Verizon is not permitted to collocate at the facilities of GNAPs, and then were subject to GNAPs' pricing of its transport services at distance-sensitive rates. Verizon acknowledges that GNAPs has no obligation to provide collocation, though Verizon would prefer to interconnect in this manner. In the alternative, if this Commission does not order GNAPs to provide collocation,

Verizon believes it should be charged reasonable, non-distance-sensitive rates for transport of traffic to Global's network.

DECISION

We find that these issues are prematurely before us for consideration. In that no request for collocation has been made by Verizon, we are being asked to decide a hypothetical scenario and there is no actual case or controversy before us regarding this issue. Accordingly, we decline to render a decision on Issues 3(a) and 3(b) in these proceedings.

VII. LOCAL CALLING AREA IMPACT ON INTERCARRIER COMPENSATION

ARGUMENTS

GNAPs believes that intercarrier compensation should always be based upon the retail LCA "as defined by the originating local carrier." GNAPs witness Selwyn notes that in Order No. PSC-02-1248-FOF-TP, we concluded that use of the ILEC's definition of LCA will effectively prevent ALECs from offering their customers anything different. Specifically, he notes that we stated:

> Using the ILEC's retail local calling area appears to effectively preclude an ALEC from offering more expansive calling scopes. Although an ALEC may define its retail local calling area as it sees fit, this decision is constrained by the cost of intercarrier compensation. An ALEC would be hard pressed to offer local calling in situations where the form of intercarrier compensation is access charges, due to the unattractive economics.

PSC-02-1248-FOF-TP, p. 53. Witness Selwyn also noted that we have required that the retail local calling areas as defined by the originating local carrier be used as the default for purposes of determining where reciprocal compensation, rather than access charges, is to be paid to the terminating carrier.

At the time witness Selwyn filed his testimony in this docket, our originating carrier decision was being reconsidered. As such, the witness provided testimony stating his disagreement with our

staff's reconsideration recommendation that the originating carrier decision be modified such that the ILEC's LCA would be controlling on the matter of reciprocal compensation versus access charges. The witness stated:

> I believe that the September 10, 2002 ruling is the correct policy position and urge the Commission to retain it, especially with request [sic] to this arbitration between Verizon and Global NAPs. Reverting to ILEC local calling areas would undermine, at its most fundamental level, an ALEC's ability to introduce new and competitively attractive services, and would serve only to protect the competitive interests of the ILECs and their wireless affiliates. . . . If Global NAPs treats a particular call as "local" even if Verizon treats it as "toll," then Global NAPs should compensate Verizon at the applicable reciprocal compensation rate for terminating the call to the Verizon customer.

In support of this position, witness Selwyn cites to 47 U.S.C. §153(47) which defines "Telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

In addition, he notes that 47 U.S.C. §153(48) defines "Telephone toll service" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

The witness believes that based on the above definitions, any "telephone service between stations in different exchange areas" for which no separate charge is made is not "telephone toll service." As such, he explains, if calls to Sarasota from Tampa are included in GNAPs' "contracts with subscribers for exchange service," then by definition those calls are not toll calls.

The GNAPs witness also believes these definitions are applicable to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls because the term "exchange access," as defined in 47 U.S.C. §153(16), means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. Witness Selwyn argues that charges for exchange access are "thus only applicable for telephone toll services for which there is made a separate charge not included in contracts with subscribers for exchange service." If GNAPs does not impose "a separate charge" for calls that are included in its retail local calling areas, then those calls are not "telephone toll service," and the witness avers they are not subject to switched access charges.

Verizon believes its tariffed local calling areas are the appropriate basis for determining intercarrier compensation because it is "the most administratively simple and competitively neutral approach." Verizon witness Haynes acknowledges that in Order No. PSC-02-1248-FOF-TP, we chose the originating carrier's local calling area as the "default" for determining reciprocal compensation obligations. The witness believes that a principal motivation for the decision was our belief that adopting a default would encourage meaningful negotiations. However, Verizon strongly disagrees with this conclusion; in fact, it believes that the ruling will have the opposite effect because no ALEC will have any motivation to agree to anything other than the originating carrier approach. Moreover, Verizon does not believe we adequately considered the substantive consequences of this approach. Although Verizon and GNAPs have not reached agreement on this issue, Verizon maintains that we should not apply our "default" decision to the parties' interconnection agreement.

Verizon witness Haynes explains that what GNAPs proposes in this docket was discussed as the "originating carrier" plan in the

generic reciprocal compensation docket (i.e., the originating carrier's retail local calling area will determine intercarrier compensation obligations). However, despite repeated discovery requests, GNAPs has provided no details regarding the geographic area or areas it plans to offer its retail customers or the retail rate scheme it intends to apply. Moreover, the witness contends that the lack of implementation detail is one reason that led our staff to: 1) recommend we reverse our decision adopting the originating carrier approach; and 2) advise us not to adopt any default local calling area definition. The Verizon witness believes that we rejected our staff's recommendation because they trusted implementation details could be worked out by the parties on a case-by-case basis. Stating the obvious, witness Haynes notes that the parties in this proceeding have not been able to work out the details. As such the witness argues:

> . . . Global has not given Verizon or the Commission any clue as to how its originating carrier approach might work in practical terms. Because the Commission's decision assumed that implementation details would emerge on a case-specific basis, and because that has not happened here, this is reason alone to reject the originating carrier approach.

In addition to the lack of detail provided, witness Haynes believes there are several other reasons why the originating carrier plan should be rejected.[1] The witness contends that if the originating carrier plan were selected for inclusion in the parties' interconnection agreement it would:

- be administratively infeasible and unduly expensive;
- be inconsistent with the Commission-ordered intercarrier compensation for virtual NXX traffic;

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[1] Witness Haynes notes that many of the reasons for rejecting the originating carrier plan were addressed in his testimony in this docket, as well as in the generic reciprocal compensation docket through briefs, the testimony of Verizon's witnesses Trimble and Beauvais, and Verizon's Petition for Reconsideration.

- create artificial incentives to eliminate consumer choices rather than expand them;
- undermine universal service objectives by eliminating revenues that support universal service and creating incentives to increase calling areas and associated service rates;
- undermine the state-mandated access rates and improperly relieve Global of its obligation to contribute to universal service; and,
- enhance GNAPs opportunities to arbitrage Verizon's existing rate structure.

Witness Haynes provided significant detail in his testimony addressing the points outlined above.

Verizon witness Haynes also argues that using the originating carrier's retail local calling area to define the local calling area for reciprocal compensation purposes favors GNAPs over Verizon because "[t]his approach is administratively infeasible and fraught with irrational outcomes." The witness believes that this approach could enable GNAPs to pay lower reciprocal compensation rates for outbound traffic, to receive higher access rates for inbound traffic, or even a combination of the two. The witness provided an example to "prove the unacceptable nature of this proposal."

> Tampa and Sarasota are not in the same Commission-approved Verizon local calling area. But under the originating carrier scenario, they could be in the same GNAPs local calling area. In that situation, when a Verizon Tampa subscriber calls a GNAPs Sarasota subscriber, Verizon would be required to pay GNAPs access to terminate the call. However, under this hypothetical situation, when a GNAPs customer in Sarasota calls a Verizon customer in Tampa, GNAPs avoids paying Verizon's terminating access charges and instead pays only the lower reciprocal compensation rate. Thus, for identical calls between Tampa and Sarasota, GNAPs would collect a higher rate for calls from Verizon customers, but pay a lower rate for calls originated by its customers.

According to the Verizon witness the inequity of basing intercarrier compensation on the originating carrier's LCA is

obvious; the plan is not competitively neutral and would encourage gaming of the system. The witness also provided an example assuming that GNAPs markets outbound calling services.

Witness Haynes notes that several state Commissions have addressed this issue. He testifies that state commissions in California, Illinois, Massachusetts, Maryland, New York, North Carolina, New Hampshire, Ohio, Rhode Island, Texas, and Vermont have recognized that the ILEC's calling area is the proper basis for distinguishing between reciprocal compensation and access traffic. The witness notes that this includes decision makers in nine of the ten states in which the parties have arbitrated this same issue. The witness elaborated on the Massachusetts decision:

> Most recently, the Massachusetts Department of Telecommunications and Energy ("Department"), arbitrating the same issue between Global and Verizon, correctly observed that the issue "is not whether GNAPs must mirror Verizon's calling areas on a retail basis," but "how to define a calling area for the purpose of intercarrier compensation." (Petition of Global NAPS, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, . . . (Dec. 12, 2002) (Global/VZ MA Arbitration Order), at 19.) The Department "decline[d] GNAPs' invitation to alter the existing access regime" through its originating carrier proposal. (*Id.* at 25.) In rejecting Global's proposal, it cited the need to "balance customers' interests in having the largest local calling areas possible against the advantages of a comprehensive state structure for local calling areas that was cost-based and fair, that ensured rate continuity for customers and earnings stability for Verizon (then New England Telephone), and that protected universal service."

Id. at 24. Moreover, the Verizon witness noted that the Department emphasized that alteration of the access regime was "not an appropriate subject for investigation in a two-party arbitration." *Id.* at 23.

Last, the Verizon witness emphasizes that if we reject GNAPs' proposal to base intercarrier compensation on the originating

carrier's retail LCA, GNAPs will nevertheless remain free to establish LCAs that differ from Verizon's for retail calling purposes. Continuing to use existing local/toll conventions to determine intercarrier compensation obligations will not affect GNAPs' ability to define its own retail local calling areas in any manner it wishes.

DECISION

This issue is substantially similar to an issue addressed in our generic reciprocal compensation docket. In the generic docket we concluded that the originating carrier's retail local calling area should be used as the default local calling area for purposes of reciprocal compensation. Furthermore, in our reconsideration order we emphasized that our decision is a default only, and parties are free to negotiate a different solution for inclusion in interconnection agreements. We note that many of the arguments presented in this arbitration are similar if not identical to arguments made in the generic docket by these parties.

GNAPs' position in this arbitration is essentially the default mechanism adopted in Docket No. 000075-TP. While Verizon takes a different position in its testimony (i.e., its local calling areas should continue to govern intercarrier compensation obligations), in its brief Verizon acknowledged that "[a]lthough Verizon vigorously disagrees with the Commission's originating carrier ruling, it does not challenge that ruling here.[2]" However, Verizon does urge the Commission not to approve GNAPs' originating carrier proposal (or the "default") in this case because GNAPs has failed to provide any details that would "allow the Commission to order, or the parties to implement, Global's proposal." Verizon witness Haynes contends that GNAPs witness Selwyn has provided no detail regarding the geographic area or areas GNAPs will offer its retail customers, and no basis on which to understand or implement GNAPs' proposed originating carrier proposal. The Verizon witness emphasizes that GNAPs had not explained in any filing in this docket how it proposes to implement its originating caller proposal. (emphasis added) The witness points to a GNAPs discovery

[2]Verizon has appealed the decision to the Florida Supreme Court.

response in which GNAPs stated that it is "impossible" to identify and describe the calling area (or areas) it intends to market in Florida, although it "intends to define wide local calling areas" to eliminate access on "intraLATA, perhaps even intrastate calls." Witness Haynes maintains that:

> Something more than a vague allusion to an intent to avoid access charges to the greatest possible extent is necessary to implement Global's originating carrier scheme. For instance, there is no detail as to how Global will identify and update the calling area associated with the originating caller for intercarrier billing purposes, and it is not clear whether the originating carrier approach is supposed to operate on a carrier-specific or customer-specific basis. Global has provided no information to indicate how Verizon would be able to accurately bill Global for any traffic Verizon terminates for Global.

Without a concrete proposal to consider, witness Haynes maintains that there is no basis for us to adopt GNAPs' proposal.

We agree with Verizon that GNAPs has not provided any implementation details. In fact, in response to discovery GNAPs claims that it cannot identify the size of its intended local calling areas because "[t]he size of calling areas will depend, in large part, to the determination in this case." In response to another Verizon discovery question, which asked for specifics regarding GNAPs' calling areas and its intended markets in Florida, GNAPs responded: "This response calls for a hypothetical, and as such, is impossible to answer."

In an attempt to reach resolution on this matter, our staff also questioned GNAPs regarding its originating carrier plan. Specifically, GNAPs was asked to explain why it has not provided Verizon with its originating carrier plan detail. GNAPs responded that it does not originate voice traffic in Verizon's territory and has not implemented such a plan. In addition, GNAPs was asked to explain how this issue can be resolved, either by continued negotiation or Commission vote, if the carrier does not disclose its originating carrier plan. GNAPs did not provide a specific response to this question.

We agree with Verizon that necessary details are absent. We are troubled that GNAPs failed to provide this Commission with the information necessary to evaluate the feasability of its originating carrier proposal. Parties in future proceedings are hereby put on notice that we expect that they will provide reasonable information in order for this Commission to evaluate an originating carrier proposal. We expect sufficient detail will be provided to our staff so that they may evaluate the feasibility of any originating carrier proposal prior to making a recommendation to this Commission.

Consistent with our ruling in Docket No. 000075-TP, the originating carrier's retail local calling area should be the basis for determining intercarrier compensation for Verizon originated traffic. We withhold judgement on determining GNAPs' local calling area for purposes of intercarrier compensation for GNAPs' originated traffic at this time. Instead, we direct GNAPs to provide details of its originating carrier proposal to Verizon and our staff within 30 days after this Order becomes final. At a minimum, GNAPs should include responses to the eight questions found on page 6 of Exhibit 2.

We presume that GNAPs will provide appropriate responses. In addition, much like the record in our generic docket, the record here is silent as to exactly what details are necessary to implement the originating local carrier plan; as such, we do not know if GNAPs' responses to the eight questions will suffice or if additional information may be necessary. In any case, since GNAPs did not refute the relevancy of the eight questions, we conclude they are a reasonable starting point. Last, we conclude this decision should not hinder or delay the filing of the interconnection agreement since GNAPs does not originate voice traffic at this time. If all other portions of the interconnection agreement are complete, except for the details of GNAPs' originating carrier plan, the parties shall file the agreement while continuing to work on implementing this part of our decision. Thereafter, subsequent changes to incorporate language implementing this portion of our Order may be accomplished by amendment as necessary. If the parties determine that implementation of this issue will not be necessary at this time, they are directed to so state when filing their final agreement for approval.

VIII. ASSIGNMENT OF VIRTUAL NXX CODES

ARGUMENTS

According to GNAPs witness Selwyn, GNAPs and other ALECs employ non-geographic assignments of NPA-NXX codes, sometimes referred to as virtual NXX arrangements, in order to offer service that competes directly with Verizon's Foreign Exchange (FX) service. The witness notes that in its proposed interconnection agreement, Verizon has taken the position that GNAPs' local calling area (LCA) should mirror Verizon's LCA for the purposes of reciprocal compensation. Witness Selwyn argues that the LCA is fundamental to the VNXX issue because "the only reason anyone would ever care about assigning a customer in one location a telephone number with an NXX code associated with another location - that is, the "virtual" NXX issue - is if it matters that the customer is not in the local calling area associated with the assigned telephone number."

Witness Selwyn explains that traditionally LCA boundaries have served to delineate the rating treatment for an ordinary telephone call (i.e., whether it would be rated according to the ILEC's local service tariff, or whether toll charges would apply). Witness Selwyn also provided detailed testimony addressing:

- how telephone companies determine whether a call is a local call or if toll charges apply;
- why he believes the local versus toll distinction was originally established;
- why he believes that modern digital telecommunications networks do not support a distinction based upon distance-based cost differences between local and toll;
- why it is necessary for an ALEC to be granted flexibility to make non-geographic assignments of NPA-NXX codes to their customers;
- why he believes that it does not constitute an invasion of the ILEC's toll tariff, if an ALEC uses "virtual" NXX;
- how traditional ILEC FX service works;
- why Verizon's transport costs are unaffected by the location at which GNAPs terminates a Verizon Florida-originated call to a GNAPs customer (including examples and figures to support his position); and

- Verizon's single "500" number statewide local calling mechanism for use by its ISP affiliate, although the witness acknowledges that it does not appear that Verizon is currently providing such a service in Florida.

Regarding the issue of intercarrier compensation for VNXX, witness Selwyn argues that "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALEC's end user customer." Witness Selwyn contends that as long as the ALEC establishes a POI within the LATA, it should be allowed to offer service in any rate center in the LATA and to terminate calls dialed to that rate center at any location it wishes. As such, the witness believes that it is "reasonable and appropriate" that ALECs be permitted to assign NPA-NXX codes to end users outside the rate center in which the NPA-NXX is homed and still be entitled to full reciprocal compensation.

The GNAPs witness acknowledges that Verizon does not oppose GNAPs' use of VNXX codes, only that if the physical locations of the calling and called parties (e.g., the Verizon customer who originates the call and the GNAPs customer who receives it) are not both within the same Verizon LCA, then GNAPs should be required to pay access charges to Verizon. Witness Selwyn claims that under the conditions described above (i.e., paying access charges), it is not feasible for GNAPs to utilize VNXX codes. In addition, GNAPs states in response to discovery that:

> There appear to be no physical limitations proscribing the use of virtual NXXs. However, provisions dealing with the rating of calls using Verizon's methodology and Verizon's defined local calling areas restrict the economic ability of Global to provide services other than information access service to consumers in Florida by levying access and other charges irrespective of Global's defined local calling areas.

The GNAPs witness also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to ALEC VNXX numbers. He explains that if an ALEC customer dials a Verizon FX number that is

rated within the calling party's LCA (as defined by Verizon's tariffs), but is physically delivered to a location outside of that LCA, Verizon will not pay access charges to the ALEC. Moreover, the witness asserts that:

> If Verizon's proposed treatment of VNXX calls were actually driven by principle, then regardless of how Verizon Florida chooses to market or charge for a given service (e.g., FX) offered to its subscribers, if that service involved transport to an end-point that was physically beyond the originating caller's local calling area, then the service should be classified as "interexchange" so that switched access charges apply, rather than be classified as "local" so that reciprocal compensation applies.

Witness Selwyn believes that Verizon's opposition to an ALEC's right to establish its own LCA and to utilize VNXX services is an attempt to deter competition in the local exchange market. The witness asserts that Verizon is able to maintain the distinction between local and toll because it remains the monopoly provider of switched access services to competing interexchange carriers. "Stated simply, the Company's position is that if Verizon treats a particular route as a toll call with respect to retail pricing, its wholesale switched access charges, rather than local reciprocal compensation arrangements, will apply." Moreover, witness Selwyn believes that the economic effect of this practice is to protect Verizon's retail prices by preventing competitors from offering comparable services under structurally different pricing regimes. He argues that there is no reason why competitive marketplace forces should not be permitted to expand or reshape the traditional definition of local calling. In addition, witness Selwyn argues that:

> . . . by "walling off" its local calling areas via this device, Verizon actually protects two categories of retail service - intraLATA toll, and intraLATA foreign exchange (FX) services. Global NAPs' position is that it should be allowed to compete in both of these markets without being burdened with Verizon's *above-cost* access charges that exist to protect the Company's legacy of monopoly-era pricing practices. In contrast, Verizon

> seeks to block Global NAPs' ability to offer expansive local calling areas (or, similarly, to use virtual NXXs) whenever Global NAPS seeks to offer services that would compete directly with Verizon's intraLATA toll and/or foreign exchange offerings.

GNAPs believes that intercarrier compensation should always be based upon the retail LCA as defined by the originating local carrier. Witness Selwyn maintains that if GNAPs treats a particular call as local even if Verizon treats it as toll, then GNAPs should compensate Verizon at the applicable reciprocal compensation rate for terminating the call to the Verizon customer. In support of this position, witness Selwyn cites to 47 U.S.C. §153(47) which defines "Telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

In addition, he notes that 47 U.S.C. §153(48) defines "Telephone toll service" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

The witness believes that, based on the above definitions, any "telephone service between stations in different exchange areas" for which no separate charge is made is not "telephone toll service." As such, he explains, if calls to Sarasota from Tampa are included in GNAPs' "contracts with subscribers for exchange service," then by definition those calls are not toll calls.

The GNAPs witness also believes these definitions are applicable to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls because the term "exchange access," as defined in 47 U.S.C. §153(16), means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. Witness Selwyn argues that charges for exchange access are "thus only applicable for telephone toll services for which there is made a separate charge not included in contracts with subscribers for exchange service." If GNAPs does not impose "a separate charge" for calls that are included in its retail local calling areas, then those calls are not "telephone toll service" and the witness avers they are not subject to switched access charges.

Furthermore, GNAPs contends that:

> The interconnection agreement between the parties must not work to limit GNAPs' ability to compete and in so doing afford special protection to the ILECs' market, pricing practices, or other aspects of its incumbency - particularly since Verizon's wireless affiliate is permitted to compete with the Verizon ILEC entity and exchange most intraLATA traffic, and some inter-LATA traffic as well, on the basis of reciprocal compensation, not access charges.

GNAPs argues that it is not required to pay access charges on calls that traverse routes that Verizon treats as toll, or "that whatever impact GNAPs' expanded local calling would have upon Verizon Florida's revenues would be consequentially different than the impact arising from Verizon's own wireless affiliate - and other CMRS providers - exemption from access charges on intra-MTA calls." The witness explains that while a competitive loss of retail sales to GNAPs might erode Verizon's shareholder earnings, there is no basis upon which the FPSC can conclude that any such loss would so adversely impact Verizon's financial position as to invoke extraordinary relief measures or put any of its franchised services at risk. Witness Selwyn maintains that past attempts by ILECs to explicitly recover "competitive losses" have been soundly rebuffed by state regulators.

Last, witness Selwyn states that "the Commission should not act to protect Verizon Florida or any other incumbent LEC with respect to the financial consequences of a loss of business to competing local carriers."

Verizon witness Haynes provides definitions for several terms which he believes are the foundation for understanding the virtual NXX issue. He also provides testimony regarding how a customer's telephone number or "address" aids in the proper call routing and rating. The Verizon witness explains that NXX codes traditionally played a role in intercarrier compensation. Specifically, he notes that although not determinative of the underlying intercarrier compensation owed, carriers have traditionally exchanged NPA/NXX information in order to facilitate classification and rating of calls for intercarrier compensation purposes.

Witness Haynes believes that ALECs have used a virtual NXX for two main purposes. First, the virtual NXX allows an ALEC to alter the pricing which the calling party typically pays to complete a call, with no charge levied on the called party. Second, he believes that because ILECs have no information about the location of an ALEC's customer, ALECs have used VNXXs to "trick" ILEC billing systems. The Verizon witness contends that by "tricking" the billing system, the ILEC does not: 1) assess a toll charge on its end-user dialing the ALEC's customer outside the local calling area; and 2) the ILEC does not assess appropriate access charges that it normally would charge an interexchange carrier, but rather pays reciprocal compensation to the ALEC, because the call appears to the ILEC billing systems as local.

In addition, witness Haynes states that ALECs typically assign VNXX codes to customers that are expected to receive a high volume of incoming calls from ILEC customers within the exchange associated with the NXX. He explains that it is common for an ALEC to allow an ISP to collocate with the ALEC switch, and then the ALEC assigns that ISP telephone numbers associated with every LCA within a broad geographic area. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. If the ISP had been assigned an NXX associated with the calling area in which it is located, many of those calls may be rated as toll calls. Therefore, in that situation, Verizon

maintains that the ALEC avoids access charges and collects reciprocal compensation on the incoming calls.

Verizon contends that if GNAPs obtains a VNXX for its customers, it should not affect the intercarrier compensation owed. Specifically, witness Haynes notes:

> As the Commission recognized in the generic docket I discussed earlier, carriers can assign phone numbers to customers located outside the geographic area with which the NPN/NXX is associated, but the actual end points of the call will govern intercarrier compensation.

The witness emphasizes that Verizon proposes no contract language that prohibits GNAPs from assigning telephone numbers to end users located outside of the rate center to which the telephone numbers are homed. Rather, the witness explains that Verizon's proposed contract language ensures that GNAPs cannot alter the appropriate intercarrier compensation due by virtue of GNAPs' "virtual" assignment of NPN/NXX codes. Moreover, witness Haynes believes that Verizon's proposal is consistent with the FPSC's decision in the generic docket, and the proposed contract language ensures that traffic is not subject to reciprocal compensation unless it originates and terminates within Verizon's LCA.

Witness Haynes maintains that because GNAPs' virtual NXX traffic is not local in nature, it should not be subject to reciprocal compensation (which is applicable only on local calls), and access charges should continue to apply. The witness argues that VNXX traffic is interexchange telecommunications, as evidenced by the end points of the call. In addition, he states "if virtual NXX traffic is deemed subject to reciprocal compensation, Verizon would be required to pay terminating reciprocal compensation to GNAPs despite the fact that Verizon would be responsible for hauling the traffic beyond Verizon's local calling scope." If Verizon is required to route traffic beyond the local calling scope and to pay reciprocal compensation, while collecting only the basic local exchange rates from the Verizon retail end-user, then Verizon is not fairly compensated for the VNXX traffic. The witness again asserts that we have already concluded that VNXX calls are not local calls requiring payment of reciprocal compensation.

Verizon claims that there is now a method to accurately track and bill traditional FX and VNXX traffic consistent with our order in Docket No. 000075-TP. Witness Haynes explains that Verizon recently conducted a study in Florida to identify calls originated by ALEC customers and terminated to Verizon FX numbers. The study matched call records for calls from facilities-based ALECs to a list of telephone numbers that Verizon assigned to FX service lines. The study provided Verizon with a means of accurately identifying the access revenue to which ALECs would be entitled for ALEC-originated calls terminated to Verizon FX numbers. At the same time, Verizon considered what approach would be required to properly account for traffic originated by Verizon customers that terminated on ALEC VNXX numbers. Two options were identified:

- One option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon-originated minutes that were delivered to CLEC virtual NXX numbers.

- The other option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual NXX numbers. A query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was virtual NXX traffic. A billing adjustment would then be entered into each Party's billing system to properly account for the Verizon traffic delivered to the CLEC virtual NXX numbers.

Verizon states that it is prepared to work with GNAPs to implement one of these options so that traffic can be property billed. Also, according to the witness, neither option presents significant technical or system enhancement issues for Verizon.

Witness Haynes notes that currently Verizon and GNAPs are not exchanging traffic in Florida; however, in the ten states where the parties currently exchange traffic, the ratio of originating traffic exchanged through October 2002 between the parties' respective affiliates was over 99% Verizon to less than 1% GNAPs. Witness Haynes also states that in GNAPs' January 7, 2003,

responses to Verizon's discovery requests, it stated that "most traffic carried by Global is information access service traffic and that it provides no dial-tone service to a Florida customer." As such, Verizon believes that the traffic ratio for Florida can be expected to mirror that of the other ten states where the parties exchange traffic. Therefore, the witness argues that it is fair to conclude that for over 99% of the traffic the parties exchange, Verizon will originate the traffic, and one end point will be in LATA 952 (the "Tampa LATA"). Because Global admits that it terminates no traffic in the Tampa LATA, Verizon believes it is also fair to conclude that the other end point will be outside the Tampa LATA.

Verizon believes that it is common for GNAPs' customers to collocate at GNAPs' switch locations, making GNAPs' switch locations very likely end points to the traffic Verizon sends it. In addition, witness Haynes notes that notwithstanding the interLATA, and even interstate end points of the traffic, GNAPs witness Selwyn suggests that the parties' agreement should transform all traffic into reciprocal compensation (rather than access) traffic. According to Verizon witness Haynes, GNAPs witness Selwyn suggests that it would be appropriate for Verizon and GNAPs to make intercarrier compensation entirely dependent on the assigned NPA-NXX codes.

Witness Haynes disagrees with several points addressed in the testimony of GNAPs witness Selwyn. First, witness Haynes argues that GNAPs' allegation that its VNXX service is just like Verizon's traditional FX service is incorrect. The Verizon witness notes that while the two services are functionally alike, the similarity ends there. Specifically, he explains that Verizon's FX service is a private line toll substitute service designed so that a calling party in the "foreign" exchange may place to the FX customer, located outside the caller's local calling area, what appears to be a local call. For traditional FX service, Verizon primarily uses its own network to provide FX service. To the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. Unlike Verizon's FX and 500-number services, GNAPs primarily relies upon Verizon's transport network to provide its customer the toll-free calling service; thus, unlike traditional FX

services, the intercarrier compensation question is paramount, according to the Verizon witness.

Second, contrary to the opinion of GNAPs witness Selwyn, witness Haynes does not believe that the definition of LCA is fundamental to the VNXX issues. Witness Haynes contends that "Global's proposals relate to each other only in their common effect of allowing Global to step into the shoes of the Commission in deciding what traffic is subject to reciprocal compensation versus access charges." Witness Haynes continues by explaining that GNAPs' originating carrier proposal allows GNAPs to avoid paying access charges should it ever have customers who originate calls (i.e., outbound calls). Moreover, witness Haynes believes that under GNAPs' proposal, GNAPs wishes to establish the LCA not just for its own customers, but for Verizon's customers as well.

Third, witness Haynes argues that witness Selwyn's claim that "Global's interconnection proposals on Verizon would be de minimis" is not helpful in resolving the VNXX issue. Witness Haynes argues that although witness Selwyn does not directly apply his transport cost analysis to his discussion of the VNXX issue, GNAPs does attempt to support its VNXX proposal with reference to witness Selwyn's conclusion that Verizon's transport costs are "de minimis" and unaffected by the actual end points of the traffic at issue. Witness Haynes believes that in the context of the parties' interconnection agreement, the intercarrier compensation disputes relate to drawing a line between traffic that is subject to reciprocal compensation and traffic that is not. Moreover, he notes that the FPSC has acknowledged that the proper application of a particular intercarrier compensation mechanism is not based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

Fourth, witness Haynes disagrees with witness Selwyn's suggestion that the local/toll rating distinction is outdated. The Verizon witness explains that our local/toll distinction remains the backbone of our universal service policy. Although GNAPs witness Selwyn discusses "distance" as an outdated factor in retail and intercarrier pricing, he entirely ignores the role of implicit support for universal service.

Fifth, witness Haynes argues that witness Selwyn's claim that when GNAPs' VNXX assignments cause Verizon to lose toll revenue it would otherwise collect from its end users, Verizon has suffered a competitive loss of business, is an unfair characterization. The Verizon witness explains that when GNAPs assigns to a "non-local" GNAPs customer a phone number that "looks local" to Verizon's end users, GNAPs tricks Verizon's billing system into foregoing an otherwise applicable toll charge to Verizon's end users. Witness Haynes believes that because GNAPs has not taken a Verizon customer or sold any service to a Verizon customer, GNAPs cannot characterize this as a "competitive loss" to Verizon. Moreover, it is Verizon's network that GNAPs is using to provide a GNAPs customer with the ability to receive toll-free calling from Verizon customers. The witness argues that GNAPs' strategy is simply an attempt to game the intercarrier compensation system in a way that will force Verizon to provide all the transport for free, prevent Verizon from charging its customer, and allow GNAPs to charge both its customer and Verizon.

Furthermore, witness Haynes notes that GNAPs witness Selwyn attempts to characterize Verizon's loss of toll revenue as an "opportunity cost." Again the Verizon witness argues that this characterization is flawed. He states:

> Dr. Selwyn suggests that when Verizon provides Global a service, it may forego revenue for services it otherwise would have provided its own retail end users. When Verizon provides Global service in connection with Global's virtual NXX assignments, however, Global does not propose to pay Verizon at all. Rather, Global proposes to charge Verizon reciprocal compensation. Under Global's theory, Verizon should pay Global for the "opportunity" to forego toll revenues.

The Verizon witness maintains that it is not only Verizon that disagrees with GNAPs' witness Selwyn, but also several other state Commissions, including the FPSC. He notes that we have found that VNXX traffic is not subject to reciprocal compensation. In addition, he states that the state Commissions in California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Maryland, Missouri, New York, North Carolina, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and

Vermont have recognized that the ILEC's calling area is the proper basis for distinguishing between reciprocal compensation and access traffic (this list includes decision makers in nine of the ten states in which the parties have arbitrated this exact same issue). Witness Haynes contends:

> Dr. Selwyn's proposal departs from principles of intercarrier compensation in terms of the type of intercarrier compensation owed and the carrier that should pay it. The end points of the traffic span LATAs, making the traffic exchange access and exempt from reciprocal compensation as a legal matter.

Last, the Verizon witness contends that the fact that GNAPs is the carrier providing its customers with a toll-free calling service, and charging its customers for it, makes GNAPs the carrier that should pay Verizon the applicable intercarrier compensation.

DECISION

Because the parties in this arbitration could not negotiate "the best intercarrier compensation mechanism" to apply to non-ISP virtual NXX/FX traffic, as envisioned by our prior decision, we must address it here.

The issue which we must decide is what intercarrier compensation should apply to non-ISP bound VNXX traffic. This issue is substantively similar to Issue 15 in our generic reciprocal compensation docket (Docket No. 000075-TP). In fact, many of the arguments considered by us in Docket No. 000075-TP were also presented in this docket.

Regarding intercarrier compensation for non-ISP VNXX traffic, we concluded that:

> . . . we find that intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. We find that calls terminated to end users outside the local calling area in which their

> NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes. (emphasis added)

Verizon maintains that our conclusion in the generic docket is correct as a matter of law. Specifically, Verizon argues:

> With regard to the question of what intercarrier compensation applies to VNXX traffic, neither Verizon or GNAPs has presented any facts that could lead the Commission to alter its reasoning that VNXX traffic is not subject to reciprocal compensation. That conclusion was based on federal law. Because that law has not changed, there is no basis for the Commission to change its reasoning that reciprocal compensation does not apply to VNXX traffic.

GNAPs, on the other hand, appears to disagree with our conclusion and believes reciprocal compensation is appropriate for VNXX traffic. GNAPs filed extremely limited testimony addressing our decision in Docket No. 000075-TP even though it acknowledged that Issue 5 in this arbitration is the same as Issue 15 in the generic docket.[3] As part of our staff discovery, GNAPs was asked if it had

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[3]The parties were given the opportunity to file supplemental direct testimony to address the outcome of Docket No. 000075-TP.

presented any new facts in the arbitration case that could lead us to reach a different conclusion than that in Order No. PSC-02-1248-FOF-TP or our vote on reconsideration at the December 17, 2002, Agenda Conference. GNAPs responded: "Not yet, although the Commission should note the method by which the New Hampshire [sic] resolved the transport of ISP-bound information access traffic by assigning a specific NXX for such traffic . . . ."

In its testimony GNAPs presented several arguments as to why reciprocal compensation charges, rather than access charges, should apply to VNXX traffic. Many of the arguments were previously addressed by us in Docket No. 000075-TP. For example, witness Selwyn argues "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALECs' end user customer." We disposed of that argument in our generic docket by stating:

> We acknowledge that an ILEC's costs in originating a virtual NXX call do not necessarily differ from the costs incurred originating a normal local call. However, we do not believe that a call is determined to be local or toll based upon the ILEC's costs in originating the call. In addition, we do not believe that the proper application of a particular intercarrier compensation mechanism is based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

Order No. PSC-02-1248-FOF-TP, p. 30.

GNAPs also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to an ALEC's VNXX number. This matter was also addressed in our generic docket. In that docket the ALECs

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GNAPs did not file any supplemental testimony because they believe ". . . its Direct and Rebuttal testimony is sufficient for the Commission to make a well-reasoned decision supported by fact and law."

argued that Verizon treats FX traffic as local, charging reciprocal compensation for terminating calls to its FX customers. We recognized this issue and stated:

> We are troubled that Verizon insists that reciprocal compensation should not be applied to virtual NXX traffic, while at the same time charging reciprocal compensation for its own FX traffic. . . . witness Haynes attributes this to the fact that Verizon's billing systems are presently configured to determine whether a call is local or not, based upon the number dialed. He states that Verizon has not as of yet examined the possibility of separating FX traffic from local traffic dialed to the same NPA/NXX.

PSC-02-1248-FOF-TP, p. 32. Verizon also addressed this matter and maintains that to the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. Also, as noted above, Verizon claims that it now have a method to accurately track and bill traditional FX and VNXX traffic consistent with our order in Docket No. 000075-TP. Moreover, Verizon has testified that it is prepared to work with GNAPs to implement a method so that traffic can be properly billed.

In addition, we note that in our Order Denying Motions for Reconsideration, in Docket No. 000075-TP, we addressed GNAPs' argument that the LCA is fundamental to the VNXX issue. Specifically, we stated:

> . . . while the originating carrier could be viewed as integral to the originating point of a call, we disagree that there is conflict between our decision on the default local calling area and our decision that the jurisdiction of a call is to be determined by the originating and terminating points of a call. These decisions were based upon different factual situations and are supported by different rationale.

Last, we clearly stated that we disagreed with the ALECs' position that the jurisdiction of traffic should be determined

based upon the NPA/NXXs assigned to the calling and called parties. Instead, we stated that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. Moreover, we agreed with Verizon witness Haynes that traffic that originates in one local calling area and terminates in another local calling area would be considered intrastate exchange access under the FCC's revised Rule 51.701(b)(1). As such, we concluded that VNXX/FX traffic would not be subject to reciprocal compensation pursuant to Rule 51.701(b)(1).

The issue regarding the appropriate intercarrier compensation for non-ISP VNXX/FX traffic was sufficiently addressed in our generic docket. Moreover, GNAPs acknowledged that it has not presented any new facts in this arbitration that would lead us to a different conclusion than that reached in Docket No. 000075-TP. Since the parties could not resolve this matter via negotiation, we find that our conclusion from Docket No. 000075-TP should apply here. GNAPs will be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, intercarrier compensation for non-ISP calls to these numbers will be based upon the end points of the particular calls. Non-ISP calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls. Therefore, carriers will not be obligated to pay reciprocal compensation for this traffic; rather, access charges will apply. Moreover, virtual NXX traffic and FX traffic will be treated the same for intercarrier compensation purposes (i.e., access charges should apply).

IX. CHANGE-IN-LAW PROVISION

ARGUMENTS

Though GNAPs acknowledges that in Verizon's proposed Interconnection Agreement it grants the right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised, GNAPs argues that it is inadequate. Verizon argues, however, that GNAPs has not demonstrated that the general change-in-law provision is inadequate to address any decision that modifies the ISP Remand Order.

Verizon asserts that the undisputed, general change-in-law provision requires the parties to negotiate an amendment if a change in law alters the FCC's reciprocal compensation rules resulting from the ISP Remand Order. The parties do not need another change-in-law provision devoted to the ISP Remand Order. The Virginia Commission held "The general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the ISP Remand Order." Virginia Arbitration Order, ¶ 254

DECISION

We believe there are few industries more dynamic than telecommunications. The possibility of a change in the law affecting any provision of any interconnection agreement is ever present; thus, the general change-in-law provision. It is not apparent to us that the general change-in-law provision is inadequate in the event of a change in the law affecting the ISP issue. Additionally, it would be inconsistent to include a specific provision for ISP issues and not for other issues which may also see change in the foreseeable future.

We find that the parties' interconnection agreement need not include a change-in-law provision specifically devoted to the ISP Remand Order.

X. INCORPORATING TARIFFS BY REFERENCE

ARGUMENTS

In its brief, GNAPs argues that the sole determinant of the rights and obligations of the parties should be the interconnection agreement. Through Verizon's proposed references to the tariff and other documents (i.e., CLEC handbooks), Verizon would be allowed to change the agreement without GNAPs' approval. These references would eliminate the stability and certainty of the agreement. While Verizon argues that tariff filings are public records and that GNAPs has the ability to contest these filings, GNAPs contends that the right to contest the tariff is not the same as the right to veto the tariff. GNAPs continues that while a tariff filing is considered to be public notice of the filing, in reality GNAPs

would have to investigate every tariff filed to determine whether or not the relationship between the parties would change as a result of the filings. Additionally, GNAPs would incur legal costs if Verizon's position is adopted.

In discovery responses, Verizon provides the following information about how it provides advance notice of tariff changes:

> Advance notice is provided in accordance with the tariff filing requirements of Chapter 364 and the Commission's regulations. In this regard, nonbasic and interconnection services tariffs take effect on 15 days' notice. Basic services tariffs will take effect on 30 days' notice. While the tariff filing itself serves as notice, Verizon also posts notices of tariff filings on its website.

In its brief, Verizon argues that GNAPs proposes that service charges should be those in the applicable tariff. Verizon believes that GNAPs proposes that charges be frozen at the prices currently in the tariff, but proposes the deletion of over forty other references to the tariffs in the agreement, since they would unilaterally change the terms of the agreement.

Verizon observes that many of the tariff references GNAPs proposes deleting are "concerning services or facilities that are outside the scope of the interconnection agreement. Thus, when the agreement references a tariff, it simply informs Global where it can find the terms and conditions for that service." Verizon continues that its proposed agreement contains a hierarchy between the agreement and tariffs, whereby parties would refer to the tariff for prices. Additionally, in the event of a "conflict between the *terms and conditions* of that tariff and the interconnection agreement, the interconnection agreement would supercede the tariff."

Verizon argues in its brief that GNAPs' proposed contract changes concerning tariffs could freeze charges at current prices. If a tariff rate is reduced, however, GNAPs would seek to purchase the services out of the generally applicable tariff. Therefore, GNAPs could take advantage of any rate reductions, while avoiding rate increases that would apply to other ALECs.

Verizon asserts that the Commission, in similar arbitration proceedings, has disapproved of similar carrier-specific advantages. The specific case cited is Verizon's recent arbitration with Sprint in Docket No. 010795-TP. By Order No. PSC-03-0048-FOF-TP, issued January 7, 2002, we stated:

> We find that changes made to Verizon's Commission-approved collocation tariffs, made subsequent to the filing of the new Sprint/Verizon interconnection agreement, should supercede the terms set forth at the filing of this agreement. Furthermore, we find that this be accomplished by including specific reference to the Verizon collocation tariffs in the parties' interconnection agreement. However, we find that Sprint shall retain the right, when it deems appropriate, to contest any future Verizon collocation tariff revisions by filing a petition with this Commission. (pp. 37-38)

Verizon also notes that other Commissions[4] have rejected GNAPs' proposal as "contrary to the Act's requirement that rates for interconnection, UNEs, resale, and collocation must be 'just, reasonable, and *nondiscriminatory*.'"

Responding to GNAPs' argument that the tariff process is unilateral, Verizon points out that tariff revisions are a matter of public record and affected carriers have "the right to seek cancellation of any state tariff revisions," and that GNAPs has the ability to participate in generic proceedings that may result in tariff revisions.

Neither party filed testimony on this issue, and there were very few discovery responses relevant thereto. Therefore, this issue was argued mostly in the parties' post-hearing briefs.

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[4]In its brief, Verizon cites orders from its arbitrations with GNAPs in New York, Vermont, Rhode Island, New Hampshire, Ohio, Illinois, New Jersey, North Carolina, and Pennsylvania.

DECISION

We believe interconnection agreements should cover the terms and conditions of the relationship between GNAPs and Verizon, and that most of the tariff references included in the agreement are unnecessary. In the instances where the terms and conditions of service are not covered by the interconnection agreement, the terms and conditions in the tariff should prevail when incorporated by reference. In instances where the interconnection agreement and tariff conflict, the terms in the interconnection agreement should prevail.

Concerning GNAPs' ability to freeze charges at the current tariff rates, we believe that rates set forth in the pricing attachment to the interconnection agreement should prevail unless a tariff change is approved by this Commission or the Federal Communications Commission.

We do not agree with Verizon's argument that not having a tariff provision in its agreement with GNAPs would discriminate against other ALECs. Under Section 252(i) of the Act, other ALECs can opt into the GNAPs/Verizon agreement; thus, no discrimination occurs.

We find that the interconnection agreement shall cover the terms and conditions of the relationship between GNAPs and Verizon. Notwithstanding this, if the agreement references the tariff because the specific terms and conditions of a service are not contained in the agreement, the terms and conditions contained in the tariff shall prevail. Also, the rates set forth in the agreement's pricing attachment shall prevail unless a tariff change is approved by us or the Federal Communications Commission.

XI. INSURANCE REQUIREMENTS

ARGUMENTS

GNAPs first argues that PacBell considered GNAPs' current commercial general liability insurance coverage of $1 Million with $10 Million in excess liability coverage sufficient. GNAPs finds it inexplicable why PacBell would agree that GNAPs has sufficient

coverage while Verizon does not. Additionally GNAPs claims that Verizon's insurance proposals are burdensome and discriminatory.

Verizon counters that it is required to enter into interconnection agreements with ALECs and, therefore, it is critical for Verizon to seek protection on its network, personnel, and other assets, which it uses to serve all interconnecting ALECs, as well as end users as a carrier of last resort. Verizon argues that the insurance requirements it proposes here are no different than what it requires for other carriers, and are reasonable and necessary, in light of the risks for which the insurance is procured.

Verizon witness Fleming's testimony provided details regarding the reasonableness of Verizon's proposal for insurance requirements and the fact that those identical requirements have been adopted in similar agreements. GNAPs presented no testimony regarding the insurance issue upon which to base its argument.

DECISION

We find Verizon's testimony and argument compelling and, accordingly, find that the insurance requirements should be those detailed in the position of Verizon as set forth in §21 of the General Terms and Conditions section of Verizon's proposed Interconnection Agreement.

XII. AUDITS

ARGUMENTS

While GNAPs did not file testimony on this issue, it provided information through discovery and its post-hearing brief. In an interrogatory concerning this issue, GNAPs was asked about the audit provision in its interconnection agreement with BellSouth, and how the provision differs from the one proposed by Verizon. GNAPs responded:

> Global objects to the need for such provision with Verizon as it is unnecessary. First, under the current rules, Global will not receive payment for in-bound ISP traffic from Verizon in Florida by virtue of the FCC's

> introduction of "caps" which are based at zero as the carriers have not exchanged traffic previously. Second, both parties maintain call data records, or CDRs, which provide the appropriate information. Global makes these available to Verizon on a monthly basis and will do so in Florida as well. Finally, Verizon will not pay Global for amounts it contests should there be a disagreement, it will be Global challenging Verizon for payment and not Verizon challenging Global. In sum, it is an unnecessary provision which provides the incumbent the opportunity to burden the limited resources of its competitors and potentially gain competitively sensitive information for no apparent reason.

In its brief, GNAPs argues that while Verizon's proposal allowing for audits to verify bills appears to be reasonable, it ignores two facts. These two facts are that Verizon already keeps computer records of call traffic exchanged between GNAPs and Verizon, and that both parties already verify bills on a monthly basis.

GNAPs' concern with allowing Verizon to audit its records is that a lot of the material contained in these records is competitively sensitive, and it would be prohibitively expensive for GNAPs to redact those records. GNAPs also believes that Verizon does not require GNAPs' information, since "it ignores the fact that Verizon already keeps computer records of call traffic exchanged between the parties, and that Verizon and GNAPs have in place already a practice of verifying billing records on a monthly basis."

While opposed to most of Verizon's proposed audit provisions, GNAPs is amenable to providing Verizon the traffic reports and Call Data Records Verizon finds necessary to verify billing.

Verizon witness Smith begins his direct testimony by highlighting the terms of Verizon's proposed audit provision. Highlights include:

- The purpose of the audit is to evaluate the accuracy of the audited party's bills.

- Only annual audits can take place except if "a previous audit found uncorrected net billing inaccuracies of at least $1,000,000 in favor of the audited party."

- An independent certified public accountant performs the audit. This accountant is acceptable to both parties and paid by the party requesting the audit.

- Confidentiality agreements are executed to protect the information disclosed to the accountant by the audited party.

- The party requesting the audit pays for the audit.

In his direct testimony, Verizon witness Smith indicates that Verizon's proposed audit provisions allow parties to audit "books, records, facilities and systems for the purpose of evaluating the accuracy of the audited party's bills." He believes that the audit provisions are necessary, in order to "verify the accuracy and appropriateness" of GNAPs' charges to Verizon.

In addressing GNAPs' claims that Verizon's audit provisions compromise GNAPs' confidential business information, the Verizon witness responds that the information is provided to an independent certified public accountant who is acceptable to both parties and is paid for by the party requesting the audit. Additionally, the auditor is required to sign a confidentiality agreement in order to protect the confidential information he will receive. Further, Verizon's proposed language only allows the independent accountant access to the records "'necessary to assess the accuracy of the Audited Party's bills.'"

In order to avoid audits being requested without reasonable cause, Verizon's proposed contract language also requires that the party requesting the audit pay for the audit.

Witness Smith notes that audit provisions are included in over 99 percent of its agreements in Florida, and these provisions allow both parties to audit the other's books as they pertain to the services provided under the interconnection agreement.

Another issue concerning audits is the ability of the parties to audit each other's traffic data. Witness Smith indicates that traffic data is crucial in evaluating each other's bills, and Verizon's proposed provisions allow Verizon to audit GNAPs' traffic data and GNAPs to audit Verizon's traffic data.

A final issue raised regarding audits concerns whether Verizon should be allowed to audit GNAPs' use of Verizon's operations support systems (OSS). Witness Smith believes that this provision is necessary to prevent a CLEC from impairing Verizon's OSS. To avoid any impairment, Verizon would like the ability to audit GNAPs' use of Verizon's OSS in order to ensure that GNAPs is using the OSS in the intended manner and to ensure reliable OSS access for all CLECs.

DECISION

We agree with Verizon that an audit provision is necessary to evaluate the accuracy of the audited party's bills. We also believe Verizon's proposed provisions that limit the frequency of audits are reasonable. In addition, we find that providing the information only to an independent certified public accountant, subject to a non-disclosure agreement, mitigates GNAPs' concerns over Verizon receiving sensitive information. In order to limit abuse of the audit provision, we also agree with Verizon's proposal that the party requesting the audit pays for the audit. Finally, for the purpose of preventing impairment of its OSS, Verizon shall be allowed to audit GNAPs' use of Verizon's OSS.

In its brief, GNAPs argues that Verizon's proposal ignores the fact that Verizon already keeps computer records of call traffic exchanged between GNAPs and Verizon, and that both parties already verify bills on a monthly basis. However, there is notning in the record to support these statements.

We find that Verizon's proposed audit requirements shall be included in the interconnection agreement. These audit requirements are narrow enough in scope and frequency to allow for the evaluation of billing accuracy and contain provisions that prevent access to the confidential business information of the audited party.

XIII. EFFECTIVE DATE OF CHANGE-IN-LAW

ARGUMENTS

GNAPs urges that a change-in-law should be implemented when there is a final adjudicatory determination which materially affects the terms and/or conditions under which the parties exchange traffic. Verizon, however, maintains that a change-in-law should be implemented when it takes effect. GNAPs's proposed contract language would ignore the law, including effective orders

of this Commission, FCC, and the courts. Verizon's proposal requires only that the parties follow the law.

GNAPs' position is that a law should not take effect until tested and ruled upon by a commission or judicial body. That proposal is inconsistent with logic, as well as any known practice within our legal system. Laws are controlling from the time of the effective date. Many laws are never challenged but are, nevertheless, controlling as of the effective date. Many are challenged upon implementation and, at the discretion of the hearing official or judge, may or may not be stayed pending resolution.

DECISION

We are more persuaded by the position of Verizon in this issue. That position is that a change-in-law should be implemented when its takes effect. We also note that Verizon's position has been consistently upheld in various other states[5]. GNAPs was unable to cite an instance where its position has been upheld, and makes no argument in support of its position. Accordingly, we adopt Verizon's position on this issue.

XIV. ACCESS TO UNBUNDLED NETWORK ELEMENTS

ARGUMENTS

GNAPs witness Selwyn did not address this issue in direct or rebuttal testimony. In responding to a staff interrogatory, GNAPs contends that this issue "is a legal issue and no factual testimony is required." In responding to a deposition question, however, witness Selwyn asserts that he is generally aware of Verizon's position on the topic from a national level, though not on a more local level (i.e., Verizon-Florida level). According to witness Selwyn, on a national level

> [Verizon's position] is that it is not obligated to unbundle its network beyond the . . . designated elements that the FCC has specified or required to be unbundled.

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[5] Verizon/Global DE Award at 41; Verizon/Global VT Order at 47; Verizon/Global MA Order at 72; Verizon/Global RI Decision at 40-41; Verizon/Global NH Decision at 41; Verizon/Global OH Panel Report at 25; Verizon/Global IL Decision at 24-25; Verizon/Global NY Order at 21-22; Verizon/Global CA FAR at 95.

According to a GNAPs response to a Commission staff interrogatory, Verizon did not serve it with any discovery on Issue 11. GNAPs asserts that it has not sought access to network elements that have not already been ordered unbundled.

Like GNAPs, this issue was not addressed by any Verizon witness. Only a small amount of discovery in the proceeding went to this issue. An interrogatory response from Verizon explains its position on the issue:

> Verizon raised Issue 11 as a supplemental issue in its Response to Global's [i.e., GNAPs] Petition for Arbitration, because Global proposed contract language in the parties' General Terms and Conditions Attachment that would require Verizon to make 'next generation technology' available to Global . . . Although Global has never responded to Verizon's supplemental issue or otherwise explained its proposed contract language . . ., Global has never withdrawn its proposed contract language. (Footnotes omitted)

In responding to a deposition question, Verizon witness D'Amico asserts that he is generally aware that Verizon is under no obligation to unbundle anything not explicitly identified, ordered, and required to be unbundled. In its brief, Verizon asserts that GNAPs' proposal "interjects vague and ambiguous language that could give it access to 'all' of Verizon's 'next generation technology'." The Verizon brief makes clear that Verizon's unbundling obligation applies to Verizon's existing network. Verizon contends it has no obligation to (i) freeze its network in time, (ii) build a different network to suit GNAPs, or (iii) commit to unbundle technologies that are not yet deployed, as GNAPs' proposal would require, according to the company's Brief.

DECISION

Verizon raised access to UNEs in response to some language proposed by GNAPs. Because there is no testimony for this issue from either side, we have only a minimal amount of evidence to consider. Based on the wording of the issue, we believe the emphasis is on the "network elements that have not already been ordered unbundled." In our opinion, there appears to be a consensus between the parties that GNAPs is entitled to access to the network elements that have already been ordered unbundled.

As in prior issues in this post-hearing arbitration proceeding, we are perplexed that Verizon and GNAPs could not have resolved this matter without our involvement. Verizon contends it was the party that raised the issue initially, and it alleges that GNAPs never explained (or defended) the language that Verizon found objectionable. We are puzzled why Verizon did not serve any discovery on GNAPs to pursue an explanation. We believe that had this avenue been explored, it is conceivable that a stipulation between the two parties could have been reached.

In our view, Verizon presents the stronger case. We believe GNAPs was deficient in not explaining the terms that spawned this issue, and the GNAPs' brief contained no clarity on this matter. We agree with Verizon that the language at issue could be interpreted as being "vague and ambiguous." In its brief, Verizon maintains that it has prevailed in numerous other states where Verizon and GNAPs have filed arbitration proceedings, contending that GNAPs has "given the [Florida] Commission no reason . . . to be the first to adopt its extreme proposal." For the above reasons, we find that GNAPs shall only be permitted access to network elements that have already been ordered unbundled.

XV. CONCLUSION OF LAW

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth with the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that GNAPs shall provide the information identified in Section VII of the Order within 30 days of the issuance of this Order. It is further

ORDERED that this docket shall remain open pending our receipt and approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 9th Day of July, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).