BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 011666-TP

In the Matter of

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.

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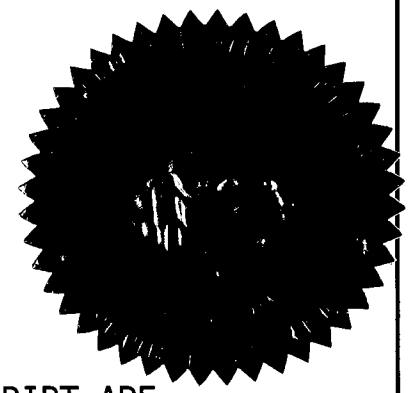

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VOLUME 1

Pages 1 through 165

PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER BRAULIO L. BAEZ COMMISSIONER CHARLES M. DAVIDSON
DATE:	Monday, March 10, 2003
TIME:	Commenced at 9:30 a.m. Concluded at 10:35 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	TRICIA DeMARTE, RPR Official FPSC Reporter (850) 413-6736

APPEARANCES:

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KELLY L. FAGLIONI, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, appearing on behalf of Verizon Florida, Inc.

LEE FORDHAM, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

I N D E X

MISCELLANEOUS

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
1	Stip-1	25	25
2	Stip-2	25	25
3	Stip-3	25	25
4	Stip-4	25	25
5	Stip-5	25	25
6	LLS-1	25	25
7	LLS-2	25	25
8	LLS-3	25	25
9	LLS-4	25	25
10	LLS-5	25	25
11	LLS-6	25	25
12	LLS-7	25	25
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14	LLS-9	25	25
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17	KLF-1	25	25
18	KLF-2	25	25
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P R O C E E D I N G S

COMMISSIONER DEASON: We'll call the hearing to order, and we'll begin by having the notice read, please.

MR. FORDHAM: Pursuant to notice issued February 10th, 2003, this time and place has been set for a hearing in Docket Number 011666-TP for the purposes set forth in the notice.

COMMISSIONER DEASON: Thank you. Take appearances.

MS. FAGLIONI: I'm Kelly Faglioni appearing on behalf of Verizon.

MR. SCHELTEMA: James Scheltema on behalf of Global NAPs, Inc.

MR. FORDHAM: And Lee Fordham representing the Commission.

COMMISSIONER DEASON: Okay. Mr. Fordham, do we have any preliminary matters?

MR. FORDHAM: Commissioner, we have one item. We have not received a response from Global yet on our first set of -- or our first request for production of documents. And I don't know -- do you have that this morning, Jim?

MR. SCHELTEMA: I'd like to discuss that off-line with Mr. Fordham if that's okay.

COMMISSIONER DEASON: You want to do that now or at a break or what?

MR. SCHELTEMA: I think at a break would be probably

better.

COMMISSIONER DEASON: Okay. Hopefully we'll be at a point where we can break --

MR. FORDHAM: Commissioner, if -- I'd like to preserve the matter for later discussion. In the event there's a need, then I would be making an ore tenus motion to compel. So if we could preserve that matter for later.

COMMISSIONER DEASON: We shall do so.

MR. FORDHAM: Thank you.

COMMISSIONER DEASON: Okay. Any other preliminary matters? Do the parties have any preliminary matters?

MS. FAGLIONI: No, sir.

MR. FORDHAM: None by staff, Commissioner.

COMMISSIONER DEASON: Very good. I understand that the parties have requested opening statements; is that correct?

MR. FORDHAM: That is correct, Commissioner.

COMMISSIONER DEASON: Mr. Fordham, do you want to go ahead and try to -- I know that you have gone to a great effort to organize the exhibits, and we can go ahead and identify those if this is preferable, or we can go ahead with opening statements.

MR. FORDHAM: Commissioner, the parties have the list, the exhibit list, that staff has produced, and it's the option of the Chair. But rather than labor through each individual item, if the parties agree, we could just introduce

the exhibits based on the list. They're all the same, and then that would just save a few minutes, or if you prefer, we can walk through them.

COMMISSIONER DEASON: Why don't we do this? I think -- we will proceed with opening statements, and we'll let the parties review the exhibit list. And maybe at the point that opening statements are concluded we can get a determination if there's any problems with any of the exhibits shown on the list.

MR. FORDHAM: Sounds good.

COMMISSIONER DEASON: Okay.

MR. FORDHAM: Thank you, sir.

COMMISSIONER DEASON: Very well. I suppose then we can just proceed to opening statements. Which party desires to go first?

MR. SCHELTEMA: I think as the moving party it's appropriate for me to speak first.

COMMISSIONER DEASON: Very well. Please proceed.

MR. SCHELTEMA: Thank you. As a preliminary clarification, it should be understood that this arbitration does not address nor should the Commission's order address --

COMMISSIONER DEASON: Could you get the microphone just a little closer?

MR. SCHELTEMA: Oh, I'm sorry.

COMMISSIONER DEASON: Thank you.

MR. SCHELTEMA: Most people actually don't want to hear from attorneys, you have to understand.

Anyway, as a preliminary matter, I think it's important to understand that Global NAPs did not raise, nor wishes the Commission to address, any aspect of the exchange of information access traffic as that is solely and exclusively the jurisdiction of the Federal Communications Commission.

Global believes the affirmation of such distinction between traffic types, just as the Ohio and Illinois Commissions have done in footnotes to their various orders, is an important aspect to the resulting arbitration decision here because it will avoid further litigation and contention which is between the two parties here present in Vermont and in Massachusetts currently.

Moving on to the issues at hand which we did raise. Issue 1A: Can Global NAPs designate a single point of interconnection per LATA on Verizon's existing network? Yes. Solely Global may designate the point of interconnection. Although this must be within the incumbent's network and technically feasible, it does not require mutual agreement between the parties. Mr. D'Amico's proffered contract material on Attachment A, Paragraph 1 would require this.

The requirement of mutuality has been a method which Verizon has been using to delay Global's entry into other markets. And, in fact, it's done it here as well. We

requested interconnection with Verizon on August 17th of 2002 and have yet to reach terms and conditions on which we can interconnect. In fact, we haven't received what they unilaterally require, which BellSouth does not, which is called a memorandum of understanding which lays out the terms and conditions for exchanging information.

It got so bad that on February 19th we provided them a draft based on previous memorandums of understanding between the parties. And we have not received either comment or their proposed draft to date. Thus, the whole idea of the mutuality of agreement in conflict with Section 251(c)(2) of the Telecom Act seems to be just a stumbling block between the parties.

Let me go on to 1B. If Global NAPs does choose a single point of interconnection per LATA on Verizon's network, what sort of compensation should result? Well, Mr. D'Amico indicates in his testimony that the financial responsibility should be shared and that the point of financial responsibility should be demarked at the point of interconnection. Later on in his discussion, however, he proposes that when Global's customers terminate traffic on Verizon's network, Verizon should be allowed to assess access charges. This is in contravention of your more generic order, and it's also not reciprocal because Global does not propose to assess access charges when Verizon's customers do the same on Global's network.

Moreover, it's doubtful that it can actually be applied because access charges apply to the carrier, and they only come into being when a toll charge is assessed against the end user. Global does not assess toll charges in Florida, nor does it propose to; therefore, there would be no access charge that would be applicable.

Let's move on to Issue 2. Should the parties' interconnection agreement require mutual agreement on the terms and conditions relating to the deployment of two-way trunks? Issue 2 is phrased in a way that belies the true nature of the dispute. It's not quite that the buyer is always right, but that cliché is certainly more accurate than the truth that the incumbent monopoly wants to voluntarily make its facilities open and available to competitors.

The implication is obvious, and it's more obvious somewhat than the intent and arcane technical arguments and details behind the issue. These encompass such things as traffic forecasts, the provisioning times, and the ability of Verizon to reclaim, quote, unquote, unused trunks, et cetera, irrespective of whether or not Global NAPs is actually paying for the facility. Bottom line: As a consumer of Verizon's product, we should have a right and a say in what is actually done.

Issue 3. This is the issue of reciprocal collocation. To begin with, there is absolutely no requirement

that Global provide collocation to Verizon. There is an asymmetrical right in the Telecom Act that Verizon should provide collocation to Global NAPs, but in fact, we don't require that. We use the most simple and efficient method of interconnection that's currently available which is an end point fiber meet or what they call a mid-span meet.

Global Realty is a nonregulated entity which controls the real estate where Verizon would be housing any collocation facility if we were to provide it. We have offered in every state that we've arbitrated, which I guess is more than a dozen now, Kelly, to house Verizon's facilities on the same terms and conditions space available at market rates that we do for any other carrier or any other customer. To date, Global has not received a single request for collocation from Verizon. This is really a smoke-and-mirrors issue. It's not going to come into play. And if it does, that's fine too because we wouldn't mind doing it on the same terms and conditions as others, but there's no requirement that we do it on Verizon's terms and conditions, which appears to be what they wish.

Issue 4: Which carrier's local calling area should be controlling? I believe the Commission has already determined that in the generic proceeding, and rather than raise that here again, I believe that that decision should rest as it currently is. In fact, I'm not sure that it's appropriate to raise it as an issue in an arbitration between

two carriers when it's already been determined between these same two carriers as well as having the input of a host of other carriers.

To use the local calling areas of the carrier's originating -- of the carrier's customer who originates the call was the decision in 970005-TP. The only reason why this is an issue is because Verizon refuses to accept the Commission's decision and to relitigate it in this forum, and so we're forced to bring it again.

Issue 5: VNXXs. Virtual NXX codes is a method by which CLECs and other competitors can provide competitive FX, or foreign exchange, service. Verizon itself will tell you that it has not presented language prohibiting such number assignment. More importantly, Verizon does so itself when it offers FX service. Global should be allowed to order and to provide competitive FX service using virtual NXXs.

Verizon can counter that it uses dedicated transport to serve its FX customers. First, if it is, this is a highly inefficient method to provision the service when there's switching and common transport which can effect the same result. Second, there is no technical impediments to Verizon providing the service using the exact same methods which Global is using. So tomorrow, it could do the exact same thing without any prohibitions on it whatsoever. Whereas, if we were stuck with a contract that said we could not use virtual NXXs,

we would be unable to complete. In fact, this is the kind of innovative service offering that the Telecommunications Act seek to foster.

Number 7: Should the parties' interconnection agreement incorporate by reference each party's respective tariffs? I'm sorry, I believe I skipped one. My apologies.

Number 6: Should the parties' interconnection agreement recognize a specific change in law provision related to the ISP Remand Order? Well, Global believes that a specific recognition is important because it's crucial to our business, and in point of fact, this is an issue, an area which has been influx, we'll say, to put it mildly, for a number of years. And there is absolutely no reason not to. There's no downside in including a provision which recognizes this.

Issue 7: Reference to items such as tariffs in the interconnection agreement. The agreement should, to the greatest extent possible, reflect a meeting of the minds of the parties at a given point in time. That's just basic contract law. But such a goal is frustrated by superseding the terms and conditions of the contract by subsequent tariff filings or by references to documents solely within the control of Verizon, such as a CLEC handbook. We have no input on these matters whatsoever. We have a very limited amount of resources to follow, much less to litigate, or complain against tariff filings.

Other states such as Delaware have provided a method whereby at least when Verizon files a tariff, it does so electronically, and it goes out to Global electronically as well, sort of an automatic notice provision. This would allow us, at a minimum, to be able to monitor what Verizon is doing and how it may impact Global's operations in an efficient manner. This is a minimum standard. It's something that we can track, but we can't show up at the Commission every day to find out if Verizon's filed a tariff. We're not asking Verizon to determine what impacts the contract, but we are asking it to give us an electronic notification, at a minimum.

The maximum is that no tariffs should impact the meeting of the minds at a given point in time. I recognize that pricing and some other matters obviously is important enough that it should be considered, quote, unquote, a change in law and supersede the meeting of the minds because, in fact, when we negotiate contracts, we don't go over pricing, we adopt the Commission's pricing standards.

Number 8: Insurance. The insurance Global asserts is excessive and burdensome. It's noteworthy that Global and SBC came to a voluntary understanding with respect to the terms and limits of insurance. I'm not sure why Verizon couldn't do so similarly. However, there are certain aspects of the insurance provisions that should be understood. One is that Verizon can itself avail itself of what they call

self-insurance, which is they're big enough and they have enough financial resources that they really don't need to provide insurance. You know, they take a loss, they take a hit, and Verizon continues in business. They require insurance of smaller companies. What this creates is a cost to us which is natural, but it creates an opportunity for a price squeeze. So to the extent that these limits are excessive, the price squeeze is aggravated.

Let's go on to audits. First, for the record, I'm a -- in addition to an attorney, I'm a certified public accountant. And I also have to confess that I did work for WorldCom, but I was not an accountant for WorldCom, so you can't throw me in jail. This issue really is not about audits. The way it operates currently is Global will send Verizon a bill. In fact, in Florida, it probably won't send it a bill because of the caps applied at the federal level for reciprocal compensation. So the bill is actually going to be zero. So this is a nonissue in terms of auditing.

Anyway, we send a bill to Verizon. Verizon can pay the bill or not pay the bill. They don't ask us for an audit. They just decide what they're going to do. If we want to be paid, we have to ask them for an audit. The sole reason for the audit provisions that Verizon has, therefore, is an attempt masked -- and, in fact, it hasn't been exercised, to my knowledge, yet -- to find out some competitively sensitive

information because there's no reason for them to audit us. They're not seeking our services. We are only seeking theirs. There is no reason for the audit. Every month we send them a request or an offer, rather, to provide CPNI data. Every month it's refused. This is the exact kind of traffic exchange information data upon which an audit is built. So this issue is another one of these smoke-and-mirrors issues. It really isn't important. It has nothing do from Verizon's perspective with payment of the bills, and in fact, it's only a provision from Global's perspective.

With respect to Issues 9 and 10, those are Verizon-raised issues, so I'm going to let them respond first. Thank you for your time.

COMMISSIONER DEASON: Thank you. Please proceed.

MS. FAGLIONI: Good morning. As I mentioned, I'm Kelly Faglioni here for Verizon, and I wanted to thank you for the opportunity to appear before you this morning.

Verizon and Global have negotiated and resolved the bulk of their interconnection agreement before initiating this arbitration process. There are just 11 issues remaining today for Commission resolution, and I particularly want to highlight for you one issue and that's the local calling area issue.

In the Commission's recent reciprocal compensation order, the Commission established the originating carrier's retail local calling area as the default local calling area for

purposes of reciprocal compensation. Global has very generally proposed use of that originating carrier proposal for the carrier's arbitration agreement here with Verizon.

The Commission, however, found in its January 8th, 2003 order, in the generic reciprocal compensation docket, that there was insufficient record to establish specifics of implementation of the originating carrier approach. Instead of rejecting that approach for the lack of implementation specifics in that docket, as the Commission staff advised, the Commission indicated an expectation that the parties would work it out on a case-by-case basis. Well, we're here before you because we haven't worked it out in this particular case.

Both Verizon and staff have asked Global to provide details that might let Verizon assess the feasibility of working it out, but despite Global's assertion that the Commission should order Verizon to use the originating carrier proposal in this docket, Global has refused throughout the docket to negotiate the details or provide the details of its originating carrier proposal.

To evaluate the feasibility of implementing Global's originating carrier proposal, some of the things Verizon would need to know would include the number of different calling plans that Global would plan to offer its customers, a geographic scope of each of those calling plans and its associated price, the geographic location of Global"s customers

that might originate traffic to Verizon, the Global calling area plan selected by each customer, the proposed format or process for providing the information, the proposed format for updating that information should it need to be updated, the frequency of those updates, Global's proposal for verifying that information. It's asking us to accept certain information about who has what size calling area and yet in the same breath denies audit provisions and has offered no alternative for how we would verify any representation of what the calling area was, how many people had signed up, how much traffic had been terminated to that calling area. And Global's proposal itself, Global has failed to provide its own proposal for identifying what traffic is subject to reciprocal compensation versus access charges and any proposal for verification.

Global hasn't provided any of these details in this docket either. Its only witness in this proceeding was Dr. Selwyn. Dr. Selwyn readily admits that he provides policy-level testimony only and not any practical implementation details. And even after the parties were given the opportunity to supplement their testimony in this arbitration proceeding, after the Commission entered its order in the generic reciprocal compensation proceeding, Global chose not to explain any details that would have allowed the parties to work out details of the originating carrier proposal.

Global filed no supplemental direct testimony. And

even though Verizon's witness, Terry Haynes, testified that it would be administratively infeasible to implement Global's originating carrier proposal, Global chose to file no rebuttal testimony either. So the Commission is not free to conclude otherwise on this record.

Global identified in discovery responses that Robert Fox was the person most knowledgeable about Global's business plan in Florida, but Mr. Fox provided no testimony to the Commission to share any of Global's business plan relative to its calling area proposal.

In response to one of Verizon's discovery requests inquiring about Global's proposed calling area proposal, Global claimed that the request calls for a hypothetical and is impossible to answer. When Verizon asked Global to identify and describe how it proposes to implement its originating caller proposal, Global provided no details, just a general assertion that it intends to define wide local calling areas so as to avoid charging toll, claiming that there would be no access for intraLATA, perhaps even intrastate, calls depending on the size of the local calling area Global defines.

When staff asked Global whether it had provided Verizon any information regarding its originating carrier proposal, Global honestly answered, no, it did not. Verizon Witness Haynes' testimony about the administrative infeasibility and expense associated with Global's undefined

originating carrier proposal is undisputed in this record. And despite the Commission's approval of a default in the generic reciprocal compensation docket, the Commission must resolve the arbitration issue as raised between Verizon and Global on the basis of the facts and arguments presented in this arbitration.

The only thing the evidence in this arbitration supports is a conclusion that it would not be administratively feasible for Verizon to implement what Global itself has described as its hypothetical originating carrier proposal. Global has refused to provide the Commission any basis to rule otherwise. For many reasons that Verizon fully explained and advocated in the generic reciprocal compensation docket, the Commission shouldn't order an originating carrier proposal, but setting that aside, the Commission cannot disregard the record in this case and order the parties to adopt the default which Global has readily admitted is hypothetical and impossible to identify for implementation purposes.

And just to follow up on a couple other issues other than the local calling area issues, Mr. Scheltema referenced the single point of interconnection issue which is Issue 1. It has two subparts, A and B. At this point in time I'd like to emphasize that Issue 1B related to financial responsibility on Verizon's side of that single point of interconnection. You may recall from the generic reciprocal compensation docket that Verizon proposed what it believed to be an equitable sharing of

those transport costs beyond its local calling area. That proposal in this record was known as its virtual geographically relevant interconnection proposal or referred to as VGRIP. Verizon has withdrawn that proposal here. So the real remaining dispute between the parties is about the single point of interconnection.

Mr. Scheltema suggested that Verizon requires mutual agreement on where that single point of interconnection is, and that's not correct. You can look at Verizon's contract language and see if Global wants to put its interconnection point at one point in a LATA on Verizon's network, as long as it's technically feasible, the contract language recognizes that Global has that right, that it can pick it, that it doesn't require mutual agreement.

Only if and when Global chooses to ask Verizon to enter into a fiber meet point arrangement -- which means, in effect, Verizon is building beyond its network to come reach Global. So Global's already got the benefit of, it gets one point per LATA. We have the financial burden throughout that LATA for all of the transport, and then the circumstance in which it doesn't want to come to our network, and it can do that at any time it wants us to come out and meet them somewhere, then Verizon does propose a mutual agreement scenario, not unreasonably so because both parties have to pick the location and define the details.

Mr. Scheltema was quick to refer you to the generic reciprocal compensation docket on the local calling area proposal, not mentioning that for -- the Commission addressed the virtual NXX proposal, which I believe is Issue 5 in this proceeding, and Verizon would simply refer the Commission back to that reciprocal compensation order on the virtual NXX where the Commission found that while Global was certainly free to assign the virtual NXX numbers and consistent with Verizon's contract proposal, it's free to do so. Verizon proposes no impediment that the intercarrier compensation would be based on the end points of the call, not on the assigned telephone number. And again, that's consistent with Verizon's contract proposal here.

Very quickly, with respect to the tariff references in the agreement, Mr. Scheltema referenced meeting of the minds of the parties. There are two different types of tariff references in the agreement. In some instances, the tariff references are referring to services that are really outside the contract. The contract isn't dealing with the terms and conditions of those tariffs. Instead it's saying, if you want to get some kind of service, go see our access tariff, or go see this kind of tariff which governs it. In that respect, it functions as a map, if you will. So it's not altering any kind of a meeting of the minds or an agreement. It's pointing outside the agreement and saying, here's where you go for that

kind of service.

Mr. Scheltema readily admitted that if prices change, prices should be changed, and many of the tariff references, if and when there were ever a UNE tariff, if there's a collocation tariff, if those prices change, Verizon's tariff references make sure that the agreement changes with those prices. Verizon's tariff references by the terms of the agreement do not supersede any general terms and conditions of the agreement. If a tariff term and condition contradicts something in the agreement, the agreement controls. So we don't have the problem that Global indicates with the tariff references.

And with respect to insurance, I'd point out that Verizon was the only one who provided any factual basis for the insurance proposal in the record. Global didn't provide any kind of evidence whatsoever that in many, many states Global has been required to provide the exact insurance that Verizon requests here. And so it's got that insurance. That it has it in many other states means that it already has it in place and can easily have it for Florida.

Mr. Scheltema referenced the fact that Verizon can self-insure as if that were no cost to Verizon. Verizon, in fact, procures insurance. It doesn't self-insure at this particular time, but if it did self-insure, that's not free of cost to Verizon. It's not like it can just absorb the loss.

It has to put aside reserves. It has to have that money available. And again, there's no record basis here to support that there is a basis for Global having a self-insurance rate or for opposing the kind of insurance that Verizon has requested here. Thank you for your time this morning.

COMMISSIONER DEASON: Okay. Thank you. We can now address the exhibit list which has been distributed. Are there any objections to the inclusion in the record of any of the exhibits described on the list?

MR. SCHELTEMA: Your Honor, I'd just like to note that I guess I don't see the Verizon responses to Global NAPs listed here. I did bring sufficient copies for everybody, and I would like to have that entered onto the record as well and become incorporated.

MS. FAGLIONI: And I believe Mr. Scheltema had discussed -- we're trying to decide whether to cull out certain discovery responses and put them in the record or just to put the entire set. And I came prepared with the entire set of both Global and Verizon responses so that we weren't picking and choosing.

COMMISSIONER DEASON: Okay. Let's do this first. Let's confine the discussion to the list that we have. Is there any objection to what is on the list?

MR. SCHELTEMA: No objection, sir.

MS. FAGLIONI: I have no objection, but one

clarification. There's a -- the very last thing on the list, KLF-3, indicates a map of Florida showing a lot of boundaries. I will not be introducing that.

COMMISSIONER DEASON: Okay.

MS. FAGLIONI: It's helpful when witnesses are on the stand to illustrate their discussion, but I don't think it's necessary in this proceeding.

COMMISSIONER DEASON: All right. We will strike KLF-3 from the list. And since there is no -- or no objections to the remaining exhibits shown on the list, we will number those exhibits consecutively beginning with Stip-1 as Exhibit 1 and numbering consecutively through KLF-2 which would be Exhibit 18. According to my numbering, that would be Exhibits 1 through 18.

(Exhibits 1 through 18 marked for identification.)

COMMISSIONER DEASON: And without objection, show then that Exhibits 1 through 18 as designated are admitted into the record.

(Exhibits 1 through 18 admitted into the record.)

COMMISSIONER DEASON: Now, are there additional exhibits which we need to identify at this point?

MR. SCHELTEMA: Yes. Sorry, I've got a frog in my throat this morning. As indicated, I would like to introduce Verizon's responses to Global NAPs, and I believe Ms. Faglioni said that she had the whole multitudinous plethora set of all

our responses. And if she wants to do that, that might be better than just me having my little box here. She has big boxes.

COMMISSIONER DEASON: Well, now, I'm amenable, but if there's only certain exhibits which you need, there's no need to clutter the record. So if --

MR. SCHELTEMA: I don't know what she requires of me, but my set is this big.

COMMISSIONER DEASON: Okay. Let's do this. Let's take a break at this point, let you all discuss it, and I want there to be agreement, if possible, and I don't want the record to be cluttered any more than is necessary.

And this will also give you an opportunity to discuss with Mr. Fordham the discovery situation and the responses which Mr. Fordham is seeking at this point. And when we get back on the record, we can discuss that as well.

Do the Commissioners have anything else for the parties to discuss during the break, any problems that you're aware of?

Okay. We will recess for 15 minutes and come back and address those matters, and hopefully we can go ahead and address the exhibits and get the testimony inserted into the record.

MR. SCHELTEMA: Great. Thank you, sir.

MR. FORDHAM: Thank you, Commissioner.

(Brief recess.)

COMMISSIONER DEASON: Call the hearing back to order. Mr. Fordham, let's discuss the discovery matter which we discussed earlier. Where do we stand?

MR. FORDHAM: Commissioner, there were two items on that request for production of documents. Item Number 2 is now moot and of no further significance. And Global has a short statement to make regarding Item 1 and that will dispose of the issue.

COMMISSIONER DEASON: Okay.

MR. SCHELTEMA: And if I can just read the request as well. Please provide copies of all standard confidentiality agreements utilized by Global NAPs in the audits --

COMMISSIONER DEASON: Slow down. This is being recorded by the court reporter, please.

MR. SCHELTEMA: Sorry. It's a Northern tradition. Please provide copies of all standard confidentiality agreements utilized by Global NAPs in the audits of its competitors and in competitors' audits of Global NAPs. And the response is that there has been none that I can produce. It's something that's requested at the time of an audit. And as I indicated earlier, these audits are essentially a nonexistent animal. They have not come into being.

So my response is, there really isn't any productive document that I can turn over to the Commission. I certainly

would if I could.

COMMISSIONER DEASON: Very well. Mr. Fordham, that's sufficient for your needs?

MR. FORDHAM: That is sufficient, Commissioner. Thank you.

COMMISSIONER DEASON: Okay. Now, we can proceed to additional exhibits to be added to the list we've already identified and admitted.

MR. FORDHAM: There will apparently be two additions, Commissioner. Item 19 would be Verizon's responses to Global NAPs' Interrogatories 1 through 29 and a request for production of documents.

COMMISSIONER DEASON: Okay. Now, can you repeat that exactly, what it constitutes? Interrogatories 1 through 29 and what?

MR. FORDHAM: Request for production of documents.

COMMISSIONER DEASON: And this was Global NAPs' request to Verizon; correct?

MR. FORDHAM: Correct.

COMMISSIONER DEASON: Do we have copies of that?

MR. FORDHAM: Yes, Commissioner. They were handed out during the break.

COMMISSIONER DEASON: This is what has been placed in front of the Commissioners?

MR. FORDHAM: Correct. One of the things placed in

front of the Commissioners was that document.

COMMISSIONER DEASON: Okay. And the cover sheet is a letter dated November 14th signed by Ms. Caswell?

MR. FORDHAM: That is correct, Commissioner.

COMMISSIONER DEASON: Okay. We will identify this as Exhibit Number 19.

(Exhibit 19 marked for identification.)

COMMISSIONER DEASON: And without objection, Exhibit 19 shall be admitted.

(Exhibit 19 admitted into the record.)

COMMISSIONER DEASON: Okay. We have another exhibit.

MR. FORDHAM: The other addition, which would be Exhibit Number 20, would be excerpts from Global NAPs/BellSouth interconnection agreement. Those also were distributed during the break to the court reporter and each Commissioner.

COMMISSIONER DEASON: I'm sorry, I don't see that. Is this --

MR. FORDHAM: Maybe the last --

COMMISSIONER DEASON: Just so that we're clear --

MR. FORDHAM: Maybe the last on that pile you have, Commissioner, the last item.

COMMISSIONER DEASON: Okay. I see. Someone has penciled in "Exhibit 20."

MR. FORDHAM: Correct.

COMMISSIONER DEASON: And in the upper right-hand

corner it says, "Attachment 1, Page 8." This is the first page of the exhibit; is that correct?

MR. FORDHAM: That's correct, Commissioner.

COMMISSIONER DEASON: Okay. This shall be identified as Exhibit 20.

(Exhibit 20 marked for identification.)

COMMISSIONER DEASON: And without objection, show that Exhibit 20 is admitted.

(Exhibit 20 admitted into the record.)

COMMISSIONER DEASON: That has been given to the court reporter as well; correct?

MR. FORDHAM: That's correct.

COMMISSIONER DEASON: Okay.

MR. FORDHAM: And, Commissioner, it's my understanding that there would be no additional exhibits beyond those two.

MS. FAGLIONI: Well, if I could ask for a clarification. I have provided and distributed copies of the price list. If we could mark that separately. It's Global NAPs' Florida price list.

MR. FORDHAM: I believe that was already identified as Exhibit Number 18.

MS. FAGLIONI: Oh, okay. I apologize.

COMMISSIONER DEASON: Very well. Okay. Let's proceed then with the witnesses, and I'll be using the list of

witnesses as contained in the prehearing order on Page 5.

And it is still the case that the parties have stipulated the insertion of the prefiled testimony as listed on Page 5; is that correct?

MR. SCHELTEMA: Yes, sir.

MS. FAGLIONI: I think with one clarification. I don't think that the supplemental direct testimony of Verizon Witnesses D'Amico and Haynes is listed separately.

COMMISSIONER DEASON: The supplemental direct of Witnesses Haynes and D'Amico?

MS. FAGLIONI: That's correct.

COMMISSIONER DEASON: What's the date of that supplemental testimony?

MS. FAGLIONI: December 18th, 2002.

COMMISSIONER DEASON: For both of those individuals?

MS. FAGLIONI: Yes.

COMMISSIONER DEASON: Okay. Is there any objection to the supplemental direct also being included in the record?

MR. SCHELTEMA: No, sir.

COMMISSIONER DEASON: Staff?

MR. FORDHAM: None by staff.

COMMISSIONER DEASON: Okay. Mr. Fordham, it is -- I think instead of going through witness by witness, we can just -- let me ask this question first. There's surrebuttal testimony of Witness Haynes is also to be included in the

record; correct?

MR. FORDHAM: That is correct, Commission. And I would think that we could just stipulate that all prefiled testimony be admitted into the record, and I think that would capture everything.

COMMISSIONER DEASON: That would include the additional direct as well as rebuttal and surrebuttal?

MR. FORDHAM: Yes. We can have that understanding that it includes that also.

COMMISSIONER DEASON: Okay. Very well then. Show the -- all prefiled testimony of the witnesses listed on Page 5 of the prefiled testimony which includes rebuttal, surrebuttal, and additional direct is admitted into the record as though read.

INTRODUCTION

Qualifications

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn. I am President of Economics and Technology, Inc., ("ETI"), Two Center Plaza, Suite 400, Boston, Massachusetts 02108. Economics and Technology, Inc. is a research and consulting firm specializing in telecommunications economics, regulation, management and public policy.

Q. Please summarize your educational background and previous experience in the field of telecommunications regulation and policy.

A. I have prepared a Statement of Qualifications, which is attached hereto as Attachment 1.

Q. Have you previously testified before the Florida Public Service Commission (the "Commission")?

A. Yes. I have testified before this Commission on a number of occasions dating back to the mid-1970s, on the subjects of rate design and service cost analysis on behalf of business telecommunications users as well as the State of Florida Department of General Services. These cases have included Dockets 74805-TP, 760842-TP, 810035-TP and 820294-TP involving Southern Bell, Docket 74792-TP involving General Telephone Company of Florida, Docket 750320-TP involving Central Telephone Company of

Florida. I also testified in Docket 950696-TP on the subject of Universal Service, on behalf of Time Warner AxS and Digital Media Partners. In 1997, I offered testimony in Docket No. 960833-TP/960847-TP on behalf of AT&T Communications of the Southern States, Inc. ("AT&T"), MCI Telecomm and MCI METRO Access. I also have testified before this Commission on certain reciprocal compensation issues on two prior occasions. In November 1999, I testified on behalf of Global NAPs, Inc. ("GlobalNAPs") in a complaint proceeding, Docket 991267-TP. In May 2000, I provided testimony on behalf of Global NAPs in Docket 991220-TP, concerning certain reciprocal compensation issues relating to Global NAPs' interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). I have also presented three rounds of prefiled testimony in the Commission's ongoing generic proceeding on reciprocal compensation, Docket 000075-TP, on behalf of several ALECs intervenors.[1]

Assignment

Q. On whose behalf is this testimony being offered?

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A. This testimony is offered on behalf of Global NAPs, Inc. ("Global NAPs").

Q. What was your assignment in this proceeding?

1. These intervenors included AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Allegiance Telecom of Florida, Inc., Florida Cable Telecommunications Association, Inc., and the Florida Competitive Carriers Association.

A. ETI has been engaged by Global NAPs to provide expert testimony addressing several of the outstanding contested issues between Global NAPs and Verizon Florida that have been designated for arbitration.

Q. What specific issues are addressed by your testimony?

A. My testimony addresses the following specific issues:

- Whether Global NAPs should be required to install more than one point of interconnection per LATA;

- Whether Global NAPs should be responsible for the costs associated with transporting traffic to a single point of interconnection;

- Whether Global NAPs should be required to adopt the local calling area boundaries currently defined by Verizon Florida;

- Whether Global NAPs should be able to assign NXX codes to its customers that are "homed" to a central office switch outside of the customer's local calling area (sometimes referred to as "virtual" NXX assignments) in order to compete directly with Foreign Exchange ("FX") service that has long been offered by Verizon Florida; and

- The appropriate form of intercarrier compensation for locally-rated traffic exchanged between Global NAPs and Verizon Florida, including calls terminated to Internet Service Providers (ISPs).

Summary of Testimony

Q. Please briefly summarize your testimony on these issues.

A. The issues being arbitrated by the Commission raise fundamental concerns about the physical interconnection arrangements (number and location of points of interconnection) between ILECs and ALECs,[2] and the use by ALECs of so-called "virtual" NXXs to provide Foreign Exchange ("FX") service to their customers. Indeed, these issues go to the heart of the need to establish regulatory policies that are designed to flexibly promote and encourage competition — the vision of the 1996 federal *Telecommunications Act* — as opposed to policies whose purpose is to protect the monopoly position of the incumbent — the vision of the ILECs.

To understand the critical nature of these issues, it is important to recognize first that ALECs face a considerable challenge in devising a strategy to compete with the ILEC's long-established serving arrangements, massive customer base, and ubiquitous network. At the same time, telecommunications technology has changed significantly since the ILEC's basic network design and construction was established. Moreover, ALECs will

2. In this testimony, Competitive Local Exchange Carriers ("CLECs") will be referred to as ALECs, in accordance with the terminology used by the Florida Public Service Commission.

typically not begin with a mix of customers that is in any way similar to the ILEC's customer base, either in terms of service needs or customer location; to the contrary, most ALECs will likely find that they can most easily gain a foothold in the market by serving one or more niches out of the total market demand for telecommunications services. The ALEC, therefore, will face different economic and market constraints on its network design than those faced by the ILEC. It is inevitable that these different considerations will lead ALECs to deploy networks that look very different from the ILEC's network — in terms of the number and locations of switches and inter-switch facilities, the length and nature of customer loops, and the types of services predominantly provided to their customers.

The Commission should encourage and accommodate these different ALEC strategies and network topologies. It would be regulatory folly to think that any ALEC will, should, or even could merely mimic or "clone" the ILEC's embedded network any time in the foreseeable future, if ever. Indeed, if the ILEC was building its network on a clean slate, it would probably not clone *itself*; instead, it would take advantage of new technology to build a different network than it has today. For this reason, it is critically important to the development of competition that regulators *not* make the mistake of assuming that the ILEC's network architecture is somehow written in stone, or even optimal to the needs of telecommunications consumers today. To the contrary, regulators should be alert to and resist ILEC efforts to impose costs on their competitors by using regulatory policies designed for other purposes to force ALECs to build facilities, or assume costs, that are not germane to the ALECs' own competitive strategies.

These considerations lead to the following general conclusions, which are explained at greater length in the body of this testimony:

- The party originating traffic is responsible for getting that traffic from wherever it originates on its network to the other party's point of interconnection. The notion that ALECs should have to "pick up" traffic from the ILEC at some point close to the location where the traffic originates on the ILEC's network is simply an anticompetitive effort to shift to ALECs costs that the ILEC should properly bear.

- ILECs have no right to demand interconnection at any particular point on an ALEC's network (although they do have an obligation to interconnect). ALECs, however, have the express right to establish interconnection "at any technically feasible point" on the ILEC's network. These obligations are asymmetrical *on purpose*. This asymmetry is designed to offset, in part, the inherent advantages of the ILEC's ubiquitous network and widely dispersed customer base. For this reason, ALECs are permitted to establish networks where and how they can, to deliver ALEC-bound traffic to the ALEC. ALECs also have, and ILECs are required to provide, maximum flexibility to ALECs for delivery of ILEC-bound traffic anywhere that is technically feasible (for the ILEC) and convenient (for the ALEC).

- Modern telecommunications technology has made the distance between a calling and called party almost totally irrelevant to the cost of handling a call. Basing charges on the distance a call is carried is a legacy of the era of legally sanctioned

telephone monopolies, but it has no legitimate role to play in competitive intercarrier relationships. Verizon Florida would incur *de minimis* additional costs to transport Global NAPs-destined calls beyond their local calling area boundaries. Therefore, the ILECs should not be permitted to subject Global NAPs to payments for such transport that would be orders of magnitude higher than those costs.

- In part because distance has become irrelevant as a cost driver, the "location" to which particular NXX codes are "assigned" should not matter for any significant inter-carrier purpose. The patchwork quilt of "rate centers" and "local calling areas" that the ILECs have created over the last hundred years bears no relationship to the technological or competitive realities of today. As a result, regulators should place no restrictions on which telephone numbers carriers can assign to their customers; to the contrary, regulators should establish a regime in which carriers are permitted maximum competitive flexibility with respect to the creation and marketing of both "inward" and "outward" local calling areas.

- Verizon Florida should not be allowed to prohibit Global NAPs from offering FX services to its customers using "virtual" NXX arrangements, given that their costs are not affected by that practice and Verizon itself offers FX services that involve the assignment of "virtual" telephone numbers to customers, *i.e.*, numbers rated to exchanges different from the one in which the customer is physically located and where the service is physically terminated.

The final section of my testimony addresses the issue of intercarrier compensation for locally-rated traffic exchanged between Global NAPs and Verizon Florida. I review the history of the FCC's efforts to impose a distinction for intercarrier compensation purposes between ISP-bound calls and other locally-rated traffic, and describe the rules set forth in the FCC's *ISP Remand Order* which presumably govern intercarrier compensation in this instance. I recommend that, in the event that the Commission determines that the specific intercarrier compensation rules set forth in the FCC's *ISP Remand Order* do not apply to locally-rated traffic exchanged between Global NAPs and Verizon Florida (*e.g.*, as a result of an appellate court ruling to reverse, vacate, or stay the *ISP Remand Order*), the Commission should apply a symmetric, TELRIC-based reciprocal compensation rate to all such traffic, including ISP-bound calls.

POINT OF INTERCONNECTION AND VIRTUAL FX ISSUES

ILECs such as Verizon Florida continue to reflect their long history as franchise monopoly service providers in the massive scale and ubiquity of their local exchange networks, whereas ALECs tend to design their networks to more closely accommodate current and anticipated demand in an evolutionary, flexible manner.

Q. Are there major differences between the architectural features of ILEC and ALEC networks?

A. Yes. Local telephone networks are comprised of three principal components:

- *Subscriber loops* — dedicated facilities interconnecting the local exchange carrier wire center with the subscriber's premises and/or equipment;

- *End office switches* — the switching systems at which individual subscriber loops terminate and which interconnect subscribers with each other and with interoffice and interexchange network facilities; and

- *Interoffice network* — trunking and switching facilities that provide interconnections among end offices and between end offices and other telecommunications carriers.

The principal architectural differences between ILEC and ALEC networks arise largely in the relative *mix* of these various network components.

Q. Please explain.

A. ILEC networks have been built up over more than a century and generally consist of a large number of end offices that are physically located in relatively close geographic proximity to the subscribers they directly serve. For example, Verizon Florida currently operates a total of 266 central office switches in its Florida service areas, that terminate the approximately 2.4-million access lines (subscriber loops) served by the Company.[3] When a call involves customers served by different end offices (for example, customers located in different communities), completion of the call requires that it be routed between the two end offices over an interoffice trunk. In order to avoid deploying dedicated interoffice trunks between every possible pair of ILEC end offices, in most cases individual end offices are connected (via interoffice trunks) to an intermediate switching point known as a "tandem" office. The tandem switch (sometimes referred to as a "Class 4" switch in the traditional North American network hierarchy) can then interconnect any of the individual end offices to which it is directly trunked. Where the end offices involved in a particular call are trunked to (subtend) *different* tandem switches, the call is completed via an interoffice trunk between the two tandems. In certain situations in which particularly high volumes of traffic exist within pairs of end offices, direct interoffice trunks may be used to connect the two end office switches involved.

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3. Federal Communications Commission, ARMIS Report 43-08 (Table II. Switched Access Lines by Technology), for year 2001, accessed 05/02/02. According to that report, Verizon Florida had 2,363,036 access lines in service and 266 central office switches (including 178 remote switches) as of year end 2001.

Q. Why might a ALEC network not be designed the same way?

A. The differences between ILEC and ALEC network architectures are best explained in terms of the relative economics of switching vs. transport.

Q. Are switching and transport economic substitutes for one another?

A. In some cases, yes. One way of looking at the principal network components identified above is in terms of the primary functions of switching and transport. Subscriber loops support a transport function, carrying traffic between the customer's premises and the serving wire center; interoffice trunks also provide a transport function, carrying traffic from one switch to another. Switching and transport facilities are often economic substitutes for one another; for example, as I described above, by introducing a tandem switch to interconnect a number of individual end offices, one avoids the need to deploy direct interoffice trunks between every possible pair of end offices on the ILEC's network. Similarly, by deploying end office switching facilities in close geographic proximity to the individual subscriber, it is possible to concentrate traffic on a smaller complement of transport facilities than would be possible if, for example, individual switches are used to serve subscribers located across a large geographic area.

The specific mix of switching vs. transport facilities in a network thus depends heavily upon the relative cost of each and the overall scale of operations of the network. ILECs such as Verizon serve millions of individual subscribers statewide and can thus afford to deploy relatively efficient, large-scale switching systems in close geographic proximity

to their customers. ALECs typically serve a customer population that is a minute fraction of the size of the ILEC's customer base. In order to achieve switching efficiencies, ALECs often deploy a relatively small number of switches, so their customers' traffic must be transported over relatively large distances.

This switching vs. transport trade-off has always been present in telecom network design: you can generally reduce switching costs by concentrating demand in a small number of large switches, but by so doing you increase the transport capacity that is required to connect the switches to customers over greater distances. In recent years, however, the scales have been tipped — *shoved* would probably be a better word — decidedly in the direction of substituting transport for switching.

As a general matter, the costs of transport have been dropping at an enormous rate in recent years. This point is highlighted in an article appearing in the January 2001 issue of *Scientific American,* "The Triumph of the Light" by Gary Stix. The article reports that "the number of bits a second (a measure of fiber performance) doubles every nine months for every dollar spent on the technology." In other words, the cost per unit of transport is cut by 50% *every nine months*. Put another way, over the past five years, the cost per unit of telecommunications transport has fallen by more than 98%! Transport costs have become far less distance-sensitive and, with the use of high-capacity fiber optics, massive amounts of capacity can be deployed at little more than the cost of more conventional transport capacity sizes.

One effect of this economic trend has been that ILECs have been consolidating multiple switches into large main frame/remote configurations. In the case of ALECs, the substantially smaller scale of their customer base and traffic load makes any other approach infeasible as an economic matter.

Q. How might a typical ALEC network be designed?

A. Some ALECs will use Unbundled Network Element (UNE) loops leased from ILECs, along with ALEC-owned subscriber loop facilities, and collect these loops at centralized locations in each community in which the ALEC offers service. At these collection points, the traffic is concentrated onto high-capacity transport facilities (that may be leased from the ILEC or from other carriers or owned by the ALEC itself) for the sometimes long trip to the ALEC switch. There are several different types of concentration arrangements that may be used, depending upon the aggregate amount of traffic that is involved. For relatively low-volume situations, passive multiplexing of the individual subscriber loops onto specific dedicated channels in the high-capacity "pipe" may be most efficient; in other cases, small stand-alone switches or Remote Service Units (RSUs) subtending the distant Host Switch may be deployed. Where the ALEC's customers are concentrated within a small, relatively confined area (*e.g.*, within a shopping mall), a small PBX-like switch may be used to interconnect individual end users with a common pool of facilities for the trip to the ALEC central office switch.

Other ALECs adopt different strategies, depending on the type of customers they serve and the needs of those customers. For example, while some businesses (*e.g.*, a dry

cleaners or a movie theater) have a specific geographic location that is significant to their business operations, others (*e.g.*, taxicab dispatch services, ticket agencies, answering services, unified message service providers, Internet service providers) do not. Customers of this latter sort — particularly in times of expansion — may be willing to locate some or all of their telecommunications-related gear at or near the ALEC's location, if such an arrangement offers other benefits. To accommodate such customers requires the ALEC to obtain more space in its own central offices than it needs for its own operations, in order to accommodate customers' collocated equipment. This arrangement amounts to an economic trade-off of the costs of real estate and office space (which the ALEC recovers through charges to its customers for (short) loops and for collocation space) for the costs of loop plant to a distant customer location (which the ALEC would recover purely through loop charges). An ALEC pursuing this strategy would have switching resources and collocation space, as well as interconnection facilities between the ALEC and the ILEC; such an ALEC will have few if any "loops" — at least if a "loop" is construed to require outside plant.

Other ALEC strategies, involving still other mixes of telecommunications network investments and other investments, are also possible. The point of the 1996 Act is to create an environment where the arrangements a particular carrier deploys are driven by economics, ingenuity and customer demand, as opposed to obsolete regulatory categories and assumptions. In particular, ALECs should not be forced to replicate or emulate legacy ILEC network multi-switch architectures by, for example, being forced to construct (or otherwise acquire the use of) dedicated facilities between the ALEC's switch and multiple ILEC switches.

Q. Would adoption of Verizon Florida's position concerning the location of POIs and responsibility for transport have such an undesirable effect?

A. Yes, that is my understanding. While I have not been directly involved in the negotiations between Verizon Florida and Global NAPs, I have reviewed Global NAPs' Petition for arbitration,[4] discussed the company's position with Global NAPs' counsel for those negotiations; and reviewed Verizon Florida's response to Global NAPs' Petition.[5]

Q. Please outline Verizon Florida's position as you understand it.

A. It appears that Verizon Florida's position is that it "does not dispute GNAPs option to designate a single point of interconnection ("POI") per LATA within Verizon's network."[6] However, Verizon Florida asserts that "GNAPs should be financially responsible for the *consequences* of exercising its option to designate only one POI."[7] Moreover, Verizon Florida argues that Global NAPs' proposal means that when a

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4. *In the Matter of Global Naps, Inc. Petition for Arbitration Pursuant to Section 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Florida, Inc.*, FL PSC Docket No. 011666-TP, Petition for Arbitration, December 20, 2001 ("Global NAPs' Petition").

5. *In the Matter of Global Naps, Inc. Petition for Arbitration Pursuant to Section 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Florida, Inc.*, FL PSC Docket No. 011666-TP, Response of Verizon-Florida, Inc., to Petition for Arbitration of Global NAPS, Inc., January 16, 2002 ("Verizon Florida's Response").

6. *Id.*, at page 6.

7. *Id.* (emphasis supplied).

Verizon Florida customer calls a Global NAPs customer, Verizon will be required to carry that call to the Global NAPs POI which "frequently will be outside the originating local calling area." Verizon Florida claims that Global NAPs is asking it to "subsidize its entry into the marketplace."[8]

Q. Do you agree with Verizon Florida's assertion that Verizon Florida is being asked to subsidize Global NAPs' entry and that this amounts to "corporate welfare"?[9]

A. No. Verizon Florida's assertions are unfounded. Global NAPs' proposal also requires Global NAPs to transport its originating traffic to the POI. Each carrier would be responsible for transporting its originating traffic to the POI. Under the conditions required by Verizon Florida, once Verizon delivers traffic to Global NAPs' "IP," Global NAPs becomes financially responsible to deliver this traffic to its switch. To do so Global NAPs would be compelled to purchase transport from Verizon, self-provision the transport to its switch, or purchase transport from a third party – thereby limiting the ability of Global NAPs to take advantage of a network design based upon a single switch per LATA.[10]

8. *Id.*, at page 7.

9. *Id.*

10. *Id.*, at page 8.

The differences between ILEC and ALEC network architectures, as well as the substantially smaller scale of ALEC operations, are key sources of cost differences between the two types of carriers.

Q. Is it reasonable to expect that an ALEC's costs will differ, with respect to both level and structure, from the cost conditions confronting an ILEC?

A. Indeed, yes. There are in fact two principal sources of cost variation as between an ALEC and an ILEC with respect to the provision of local exchange service and, in particular, the costs of transporting and terminating local calls: *scale* and *facilities mix*. I address each in turn.

Scale. The overall cost of constructing and operating a telecommunications network is heavily affected by the overall volume of traffic and number of individual subscribers that the network is designed to serve; that is, telecom networks are characterized by substantial *economics of scale and scope*. As I have previously noted, ALECs serve a far smaller customer population and carry far less traffic than do ILECs. Because they are necessarily forced to operate at a far smaller scale, ALEC networks may exhibit higher average costs than ILEC networks.

Q. Are there other ways in which an ALEC's relatively small scale of operations may affect the level of its costs?

A. Yes. The effects of these scale and scope economics are further compounded by the fact that ILECs are able to purchase switching, transport and other network components at a far more favorable price than their much smaller ALEC rivals. For example, testimony

offered by Bell Atlantic/GTE in the 1998 FCC proceeding to consider the Joint Application of Bell Atlantic and GTE for approval of their merger indicated that following the merger the companies' costs of equipment purchases would decrease substantially due to the increased purchasing power of the newly formed company, Verizon, relative to that of a stand alone GTE. Specifically, the Declaration of Doreen Toben, Vice President and Controller of Bell Atlantic Corporation, stated that the "merger of Bell Atlantic and GTE will produce substantial cost savings and revenue improvements that are hard, real, and certain."[11] According to Toben, Bell Atlantic had exceeded its projected savings and revenue enhancement resulting from its merger with NYNEX: "The very substantial cost savings estimated at the time of the Bell Atlantic-NYNEX merger were subsequently increased and the increased targets are being achieved."[12]

Of course, even Verizon Florida standing alone, without reference to its parent company or its affiliates, has some 2.4-million residential and business access lines in Florida, and is much larger than any ALEC. Accordingly, it is entirely reasonable to expect that, without the volume discounts available to a large ILEC such as Verizon, an ALEC will experience higher capital-related costs. An ALEC's capital-related costs will also tend to exceed the corresponding ILEC items due to the substantially greater level of risk that investors ascribe to ALECs. ALECs can thus expect to confront higher costs of debt and equity capital as well as the need to recover their capital investments over a somewhat

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11. *In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transfere. For Consent to Transfer of Control*, Declaration of Doreen Toben, September 30, 1998, at para. 2.

12. *Id.*, at para. 7.

shorter period of time than would be required for an ILEC with more stable and predictable demand.

Facilities Mix. All else being equal, an ALEC's network will typically consist of relatively less switching and relatively more transport or transport substitutes than would an ILEC network. While switching costs are sensitive both to the number of call set-ups as well as to aggregate call duration, transport costs tend to vary primarily with duration. Accordingly, it is reasonable to expect that ALEC local usage costs will exhibit proportionately greater duration-sensitivity and proportionately less set-up sensitivity than do ILEC usage costs.

Q. Is a LEC's choice of network architectures influenced by the level of traffic volumes that it serves or anticipates serving?

A. Yes, of course. The network design choices of the ALECs are particularly sensitive to anticipated demand conditions. To understand this, we must first consider the factors that drove the development of the ILEC networks. The design of the ILECs' contemporary networks generally reflects their traditional role as monopoly service providers serving all potential telephone service subscribers within their assigned operating areas. Under those conditions, the efficient network design tended to require an essentially ubiquitous deployment of distribution facilities, including distribution cables placed down virtually every street and extending to every business office park, high-rise building, and the like — whereupon traffic from those facilities was aggregated into higher-capacity feeder cables and transported back to a relatively high

number of local, end-office switches and (other than intra-switch calls) was switched onto the interoffice transmission network for the transport of each call to its intended destination. Because ILECs serve close to 100% of the local service market, there is in each community sufficient demand to support at least one, and often several, central office switches or "remote service units" ("RSUs"). Consequently, the geographic areas served by individual central office switches (or wire centers, in cases where switches for several "exchanges" have been consolidated) tend to be relatively small and the lengths of subscriber loops connecting the wire center with the customer's premises tend to be relatively short.

In contrast, a typical ALEC serves only a small fraction of the total customer base in any single community. Because the demand is so much smaller than for ILEC services, it would be extremely inefficient and costly for an ALEC to deploy a switch or even an RSU in each local community it wishes to serve. Instead, an ALEC will typically use one switch to serve all of its customers for a broad geographic area. An ALEC will design its network to accommodate the actual locations of its customers (including customers for whom location is variable, and might collocate with the ALEC) and their actual demand characteristics under an architecture that can be expanded in a flexible manner as demand for the ALEC's services grows.

Q. How do these different ALEC network architectures affect the issues in this proceeding?

A. Because Global NAPs will deploy a very different network architecture to meet the needs of its customers than that used by Verizon, regulators must avoid the tendency to

assume that there is something automatic, appropriate, or "natural" about the ILEC's network design, or that there is anything automatic, appropriate, or "natural" about requiring ALECs to conform their operations to that design, whether for purposes of interconnection points or otherwise. There is nothing automatically natural or appropriate about the ILEC's network design. It is essentially an accident of history in any given case. Indeed, as will be seen, the very different ALEC network architectures highlight the arbitrary (and obsolete) nature of ILEC "local calling" areas, whether for incoming or outgoing calls. In other words, the interconnection issues to be arbitrated by the Commission in this proceeding are directly affected by the fact that ALECs can, should, and do use very different network architectures than that used by the ILEC.

An ALEC is not required to establish more than one Point of Interconnection in any LATA in order to obtain LATA-wide coverage via that interconnection arrangement; and is not financially responsible for transport costs outside of the ILEC's local calling area.

Q. Dr. Selwyn, what is Verizon Florida's position relative to the right of Global NAPs to establish a single POI in a LATA to interconnect with the ILEC?

A. As I explained earlier in my testimony (pages 15-16), Verizon claims that it does not dispute Global NAPs' right to establish a single point of interconnection, but rather proposes that multiple "Interconnection Points" be established for the purposes of determining responsibility for the costs associated with the transport of traffic to the single point of interconnection.[13]

13. Verizon Florida Response, at page 8.

Q. Are you aware of whether this Commission has made a determination regarding the right of a ALEC to interconnect with an ILEC's network at a single point in a multi-tandem LATA?

A. It is my understanding that this Commission's decisions in past proceedings have supported Global NAPs' position that ALECs have the right to interconnect with the ILEC at one point within a LATA.[14] Specifically, in an arbitration between AT&T and Verizon last year, the Commission found that "Interconnection obligations are imposed on incumbents, not on competitors" and that "Competitors have the right to designate single interconnection points per LATA."[15]

Q. Setting aside this Commission's findings and Verizon's position, are ILECs such as Verizon Florida bound by any specific statutory or regulatory obligations relative to the issue of establishing Points of Interconnection (POIs) for the exchange of traffic with an ALEC's network?

A. Yes, I believe that they are. While I am not an attorney and am not offering a legal opinion, from a policy standpoint it is clear to me that the FCC's implementation of the interconnection requirements of the *Telecommunications Act* defines the basic framework within which the Commission should consider the question of points of

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14. *See Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C Section 252*, Florida PSC Docket No. 000731-TP, Final Order on Arbitration, Issued June 28, 2001, at 43.

15. *Id.*, at 44.

interconnection and the costs of delivering traffic to them. The issue of the originating local carrier's responsibility has to be analyzed in the context of the obligations borne by two interconnected local carriers, which largely has been spelled out in the *Telecommunications Act* and the FCC's implementation of its local interconnection provisions.

As a threshold matter, it is important to understand that the interconnection requirements adopted in the *Telecommunications Act* and developed in the FCC's *Interconnection Order* do not require or provide for symmetric treatment of ILECs and ALECs. Section 251(c)(2) *obligates* ILECs to interconnect with ALECs *at any technically feasible point on the ILEC's network* "(A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory..."; by contrast, Section 251(a)(1) confers upon all telecommunications carriers the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" but contains none of the specifics that Section 251(c) applies to *incumbent* LECs.

Q. Why is the lack of symmetry between ILECs and ALECs with respect to their inter-connection obligations important?

A. 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, a ALEC need establish only one (1) point of interconnection ("POI") with an ILEC at any technically feasible point *anywhere* in each LATA. The *Telecommunications Act* and FCC Rules thus *obligate* each ILEC to allow such interconnection by a ALEC at *any* technically feasible point that is designated by the ALEC.[16] 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. In its *Local Competition Order*, the FCC explained:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows *competing carriers to choose* the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering *the competing carriers'* costs of, among other things, transport and termination of traffic.[17]

The FCC identified the *Act* as the source of these differing obligations.[18]

Q. Is there any prohibition against ILECs determining technically feasible interconnection points and imposing those determinations upon interconnecting ALECs?

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16. Rule 51.305(a)(2).

17. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, rel. August 8, 1996, 11 FCC Rcd 15499, 15588 (emphasis supplied) (*Local Competition Order*), aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

18. *Id.*, at para. 220.

A. I am not aware of any provision of the *Act* that says, in so many words, "ILECs may not designate the locations at which CLECs must interconnect." But that is the only rational way to understand what the statute says and what the FCC says about it. As noted above, the interconnection obligations of LECs and ILECs are specifically identified in the *Act*, and ILECs' obligations are different and more extensive than those of ALECs. An ILEC may not assume some authority that is not provided for in the *Act*.

Q. Can you cite any specific actions taken by the FCC that support your interpretation of the *Act* with respect to this issue?

A. Yes. First, the FCC promulgated Rule 51.223(a), which specifically forbids states from imposing upon ALECs the obligations that Section 251(c) imposes upon ILECs. Section 251(c)(2) requires ILECs to allow interconnection at any technically feasible point on their networks. Rule 51.223(a) indicates that ILECs have no similar right to dictate where they will interconnect with ALECs' networks. In fact, the FCC reiterated its reasoning in connection with an interconnection dispute in Oregon, where the FCC intervened and urged the court to reject US West's argument that the *Act* requires competing carriers to interconnect in the same local exchange in which it provides local service. The FCC explained:

> Nothing in the 1996 Act or binding FCC regulations require a new entrant to interconnect at multiple locations within a single LATA. Indeed, *such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.*[19]

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19. Memorandum of the FCC as Amicus Curiae at 20-21, *US West Communications* (continued...)

More recently, in its order on SBC's Section 271 application for Texas, the FCC made clear its view that under the *Telecommunication Act*, ALECs have the right to designate the most efficient point *from the ALEC's perspective* at which to exchange traffic. As the FCC explained:

> New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination.[20]

The FCC was very specific:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. *This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.*[21]

Furthermore, the FCC confirmed this understanding in the *Intercarrier Compensation NPRM* it issued in April 2001.[22] At paragraph 72 of that *NPRM*, the FCC stated that

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(...continued)
Inc. v. AT&T Communications of the Pacific Northwest, Inc., (D. Or. 1998) (No. CV 97-1575- JE), emphasis supplied.

20. Memorandum Report and Order, *Application of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Texas*, CC Docket No. 00-65 at para. 78 (June 30, 2000).

21. *Id.*, at para. 78.

22. *See In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("*Intercarrier Compensation NPRM*").

"under our current rules, interconnecting CLECs are obligated to provide one POI per LATA."[23]

All of this supports the conclusion that ALECs are *entitled* to designate one and only one location at any technically feasible point within a LATA as their POI for that LATA, and the ILEC is *required* to transport traffic to be interchanged with the ALEC between the ILEC's end office switches and that POI, with the ALEC assuming the obligation to transport the traffic between the POI and the ALEC's end office switches. Nowhere is there any provision, either in the statute or in FCC rules, that would permit an ILEC to force interconnecting ALECs to establish a POI within each ILEC local calling area or to limit the ILEC's obligations with respect to reciprocal compensation to only those situations in which the POI is physically located within the ILEC local calling area associated with the ILEC customer who originated the call or to whom the call is to be terminated. Furthermore, the respective transport obligations of the ILEC and the ALEC on either side of their POI must encompass *financial* responsibility for the associated costs of their transport as well as the physical transport activity itself.

This conclusion is also reinforced by considering the larger context of the *Act*. As a policy matter, it is unquestionable that the overriding purpose of the *Act* is to encourage competition in the local exchange market. That purpose would be frustrated if the ILEC could directly or indirectly force ALECs to incur costs to, in effect, duplicate the ILEC's ubiquitous embedded network. This anticompetitive result, however, is exactly what would occur if ALECs were forced to pick up traffic from the ILECs in multiple

23. *Id.*, at para. 72, citation omitted.

locations. It would also amount to the same thing, and have equally anticompetitive consequences, if the ILEC was able to shift financial responsibility for some or all of the transport costs incurred on its side of the POI to the ALEC, which is responsible for the transport that occurs on its side of the POI.

Q. Are you aware of a whether this Commission has made a determination in previous arbitrations relative to the responsibility of the ILEC for the costs of transport from the point at which the call originates on its network to the POI?

A. Yes. In its *Final Order on Arbitration* between AT&T and BellSouth last year, this Commission found that AT&T could establish a single POI "with both parties assuming financial responsibility for bringing their traffic to the AT&T-designated interconnection point."[24] More recently, this Commission approved a Staff recommendation in the Commission's Intercarrier Compensation proceeding.[25] The Commission affirmed the Staff's recommendations that:

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24. *See AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C Section 252*, Florida PSC Docket No. 000731-TP, Final Order on Arbitration, Issued June 28, 2001, at 46; *See*, also *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, Special Commission Conference Agenda, Issued November 21, 2001, which notes a Staff Recommendation that the "originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic."

25. *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, Vote Sheet, December 5, 2001, at Issue 14.

> (a) An originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic. (b) An originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.[26]

Commission Staff rejected the ILECs' position, stating that: "If the ILEC proposals are adopted, a terminating carrier would be responsible for paying a portion of the transport costs of an originating carrier's traffic. Staff believes such a system would appear to be contrary to 47 C.F.R. 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on the LEC's network."[27] Recent actions by other state regulatory commissions and the FCC support this Commission's findings.[28]

Q. Please elaborate.

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26. *Id.*

27. *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, Memorandum from the Florida PSC Divisions of Competitive Services and Legal Services, November 21, 2001, at 66.

28. *See e.g., Intercarrier Compensation NPRM*, at para. 70; *Generic Proceeding on Point of Interconnection and Virtual FX Issues*, Georgia PSC Docket No. 13542-U, Final Order, July 23, 2001, at 8; *Joint Petition of AT&T Communications of New York, Inc., et. al. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, New York PSC Case No. 01-C-0095, Order Resolving Arbitration Issues, 2001 N.Y. PUC LEXIS 495, July 30, 2001, at *50 (emphasis supplied).

A. In a Generic proceeding addressing interconnection issues in Georgia, the Georgia Public Service Commission found that BellSouth was responsible for transporting its traffic to the ALEC's single POI.[29] The Commission reasoned that because the ALEC also must bear the cost of transporting its originating traffic to the POI, the ILEC was not being placed at a disadvantage, and that the requirement that the ILEC bear the costs of transporting its originating traffic was "symmetrical, fair and consistent with the Federal Act's intent to promote competition."[30] The Georgia Public Service Commission's decision explicitly contemplated the fact that the ALEC's choice of a single POI as opposed to multiple POIs would increase transport costs:

> Assuming a CLEC's choice to interconnect at a single point in the LATA resulted in greater transport costs than if the CLEC established a POI in each local calling area within the LATA, it still does not lead to the conclusion that the CLEC should bear the cost of transporting the traffic to the POI. To draw such a conclusion would be to argue that a CLEC should pay a price for taking advantage of its right under the Federal Act as construed by the FCC. Stated in the converse, it is to argue that an ILEC should receive additional compensation for meeting its duty under the Federal Act.[31]

Q. Have any state Commissions in Verizon's operating territory determined responsibility for transport costs relative to interconnection?

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29. *Generic Proceeding on Point of Interconnection and Virtual FX Issues*, Georgia PSC Docket No. 13542-U, Final Order, July 23, 2001, at 8.

30. *Id.*

31. *Id.*, at 7.

A. Yes. In its *Order Resolving Arbitration Issues* between AT&T and Verizon New York last year, the New York Public Service Commission rejected Verizon New York's proposal (which was similar to Verizon Florida's in this case) and determined that the PSC would "keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches *the* point of interconnection."[32]

Requiring the terminating carrier to pay for transport that is beyond the originating caller's local calling area, but nevertheless on the originating carrier's side of the POI, violates the established interconnection obligations, and must be rejected. In this regard — and, again, I am not a lawyer — I would direct the Commission's attention to the FCC's discussion of inter-network transport costs in paragraph 1062 of the August 1996 *Local Competition Order*. In that discussion, the FCC is addressing how carriers should split the cost of facilities used to link their two networks, and the FCC makes quite clear that the originating carrier is responsible for the cost of getting its outbound traffic to the interconnecting carrier. Specifically:

> if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The interconnecting carrier, however, *should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier* . . . Carriers operating

32. *Joint Petition of AT&T Communications of New York, Inc., et. al. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, NYPSC Case No. 01-C-0095, Order Resolving Arbitration Issues, 2001 N.Y. PUC LEXIS 495, July 30, 2001, at *50 (emphasis supplied).

> under arrangements which do not comport with the principles we have set forth above, shall be entitled to convert such arrangements so that each carrier is only paying for the transport of traffic it originates, as of the effective date of this order.[33]

Most recently, the FCC observed in paragraph 70 of its *Intercarrier Compensation NPRM* that its current rules require that "the originating telecommunications carrier bear the costs of transporting traffic to its point of interconnection with the terminating carrier."[34]

Q. Is Verizon Florida attempting to shift financial responsibility for its originating transport to GNAPs?

A. Yes. As I explained earlier in my testimony (at pages 15-16), my understanding is that Verizon Florida's position in its negotiations with Global NAPs is that Global NAPs should bear the costs of any transport that may be required to deliver the ILECs' originated traffic to a single POI.[35] Specifically, its VGRIPS proposal seeks to establish multiple "Points of Interconnection" that would designate the "the point on the network where financial responsibility for the call changes hands."[36] Imposition of these requirements would have the effect of shifting the ILECs' financial responsibility for

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33. *Local Competition Order*, at para. 1062, emphasis supplied.

34. *Intercarrier Compensation NPRM*, at para. 70.

35. See Verizon Florida Response, at page 8.

36. *Id.*, at 8.

originating transport to Global NAPs, contrary to the principle that the FCC has articulated.

The incremental costs that Verizon Florida would incur to transport calls to a single POI within a LATA would be *de minimis*.

Q. Does an ILEC such as Verizon Florida typically incur transport costs for calls that it originates and terminates within the same local calling area?

A. Yes. Local calling areas generally consist of a number of individual exchanges and in some cases multiple central offices within individual exchanges. When an ILEC carries a local call on an end-to-end basis (*i.e.*, without a hand-off to another carrier), it typically must transport that call from the originating end office to the terminating end office, over interoffice facilities.[37] For example, a local call from the Tampa exchange to the Plant City exchange would require transport by Verizon Florida of about 15.5 miles between the two serving end offices.[38] Exactly the same principle applies where Global NAPs is provided with a single POI for LATA-wide access, the only difference being the average *distance* over which the Verizon Florida transport would occur.

Q. If the Commission were to adopt Global NAPs' position and require Verizon Florida to transport calls to a single POI in each LATA, would Verizon Florida incur significantly

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37. The only exception is when the call is an entirely *intraoffice* call, *e.g.*, a call placed to a neighbor down the street.

38. See Table 1 of Attachment 2 to my testimony.

increased transport costs because of the additional distance those calls would be transported?

A. No, it would not. In fact, as I shall demonstrate below, the incremental costs that Verizon Florida would incur to extend transport beyond the local calling area to a single POI 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.

Q. How would Verizon Florida transport outbound calls from its end users to Global NAPs, if Global NAPs were to establish a POI within each local calling area?

A. In order to provide this "local calling area transport," Verizon Florida would utilize interoffice trunks, tandem switching and various other network facilities. Where there is a relatively high volume of traffic from a particular Verizon Florida end office to the Global NAPs POI (typically at the T-1 level or above, approximately 250,000 minutes per month), a "direct end office trunk" ("DEOT") would be established between that end office and the POI. The DEOT is typically "derived" from a larger transport facility (*e.g.*, a DS-3, OC-12 or larger "pipe") and physically routed through one or more Verizon Florida buildings where its tandem switches are located, but not actually being switched by those tandems. This "groomed traffic" can be carried very efficiently between the Global NAPs POI and individual Verizon Florida end offices using one or more dedicated DS-1 channels established and interconnected at the Verizon Florida tandem building using digital access and cross-connect systems ("DACs") or another type of digital multiplexer. The only situations in which Global NAPs traffic would be

physically switched through a Verizon Florida tandem *switch* is for low-volume end offices and for "overflow" traffic where the DEOT is being fully utilized.

Q. How does the work that Verizon Florida does in order to provide this "local calling area transport" change if Verizon Florida is required to provide LATA-wide transport, *i.e.*, to provide transport between all of its end offices in, for example, the Tampa LATA and a single Global NAPs POI?

A. For the most part, the work that Verizon Florida is required to do is essentially the same, but with two differences. First, the overall transport distance involved will be greater, on average, if Verizon Florida provides "LATA-wide transport" rather than "local calling area transport." Second, in some LATAs with more widely dispersed exchanges, the routing can involve two ILEC tandem buildings rather than one. Again, however, as long as the volume of traffic between the Verizon Florida end office and the Global NAPs POI is at the DS-1 level or greater, the traffic will be routed through the tandem switch building as a direct end office trunk, using a DACS rather than the tandem switch. So for the most part, the principal source of difference in work — and cost — is the additional *distance* that, on average, will be involved for LATA-wide vs. local calling area transport.

Q. Is it possible to estimate the difference in average transport distance for local calling area transport versus LATA-wide transport?

A. Yes. In order to explain how this can be done, let me describe the methodology using a highly simplified example. Suppose that the Verizon Florida local calling area around the Global NAPs POI includes four end offices, A, B, C and D, at distances of 0, 5, 10 and 15 miles, respectively, from the Verizon Florida rate center in which the Global NAPs POI is located. Suppose that office "A" exchanges 20,000 minutes per month with Global NAPs, "B" exchanges 40,000 minutes, "C" exchanges 15,000 minutes, and "D" exchanges 25,000 minutes (100,000 minutes total). These figures are summarized on the following table:

Local Calling Area
Weighted Average Transport Distance

Exchange	Distance from POI	Traffic volume	Percent of total traffic
A	0 miles	20,000	20%
B	5 miles	40,000	40%
C	10 miles	15,000	15%
D	15 miles	25,000	25%
Weighted average distance	7.25 miles	100,000	100%

From this data, we can calculate the *weighted average distance* for the full local calling area by multiplying the distance to each Verizon Florida end office by the relative percentage of total exchanged traffic associated with each Verizon Florida end office. In this illustration, the weighted average distance is 7.25 miles.

Now let's expand our illustration to a LATA-wide situation. End offices E, F, G and H are in the same LATA but outside of the local calling area:

LATA-wide Weighted Average Transport Distance			
Exchange	Distance from POI	Traffic volume	Percent of total traffic
A	0 miles	20,000	13.97%
B	5 miles	40,000	27.77%
C	10 miles	15,000	10.42%
D	15 miles	25,000	17.36%
E	20 miles	25,000	17.36%
F	30 miles	15,000	10.42%
G	40 miles	3,000	2.08%
H	100 miles	1,000	0.69%
Weighted average distance	13.16 miles	144,000	100%

Thus, for LATA-wide transport in this example, the weighted average distance is 13.16 miles, as compared with the 7.25 miles for local calling area transport. The *additional transport* associated with LATA-wide transport vs. local calling area transport is the difference between these two averages, *i.e.*, 5.91 miles. *Verizon Florida's cost for LATA-wide transport vs. local calling area transport is thus whatever it costs per minute, on average, for an additional 5.91 miles of transport.*

Q. How does that additional 5.91 miles of transport then translate into the additional cost of LATA-wide transport?

A. A DS-3 transport facility contains 672 voice (DS-0) channels. There are approximately 43,000 minutes in a month. Hence, the theoretically maximum capacity of a DS-3 trunk is 672 x 43,000, or about 29-million minutes per month. Of course, that could occur only under constant 24x7 use of all 672 channels. In actual practice, a DS-3 interoffice trunk typically carries approximately 8.9-million minutes of traffic per month.[39] Verizon Florida's currently-tariffed transport DS-3 mileage rate element is $70.00[40] Dividing that amount by the 8.9-million minutes, I calculated a voice-grade transport rate per-minute per-mile of $0.00000190, *i.e.*, about two ten-thousandths of a cent.

Q. But doesn't the DS-3 tariff also contain a "fixed" monthly rate in addition to the per-mile rate?

A. Yes, but the non-distance-sensitive "fixed" monthly rate would apply for all distances, both within and outside of the local calling area. If we were to compare the DS-3 rate for a 10-mile facility with that for a 40-mile facility, the "fixed" component would be

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39. This estimate was obtained from the testimony of BellSouth's cost witness Cynthia K. Cox before the Georgia Public Service Commission in Georgia PSC Docket No. 13542-U, Direct Testimony of Cynthia K. Cox (BellSouth), April 3, 2001, at page 11. Ms. Cox testified that a "level of 8.9 million minutes of traffic per month is typically equivalent to a DS3 level."

40. Verizon Florida, Inc., Facilities for Intrastate Access Tariff, Switched Access, Section 6.6.2(G), Effective July 3, 2001.

the same for both, and hence the only *difference* between the two would be the additional 30 miles in the longer facility.

So, returning to our illustration, the additional price for a DS-3 interoffice trunk that is 15.5 miles in length vs. one that is 7.25 miles in length can be calculated by multiplying the difference between these two distances, 5.91 miles, times the $70.00 rate per mile. That works out to $413.7 per month. Dividing that additional cost by the 8.9-million minutes that can typically be pumped through a DS-3 each month, we get a per-minute cost of $0.000046483 per minute, *i.e.*, around five one-thousandths of a cent.

Q. So far we've been looking at an illustration, a hypothetical calculation. Have you been able to perform this same type of calculation for an actual local calling area and LATA served by Verizon Florida?

A. Yes. I have developed a cost estimate using this method for the Tampa LATA. In this case, I have calculated the incremental costs that Verizon Florida would incur to transport calls from its end users to a single POI in the Tampa LATA, relative to the transport that Verizon Florida ordinarily would incur to complete calls that are entirely within the local calling area of the exchange that contains that POI. To perform this calculation, I have assumed that Global NAPs would locate a single POI in the Tampa exchange. Tampa is served by a Verizon Florida tandem and is a major population

center so it is reasonable to assume placement of a POI there.[41] Verizon Florida's local calling area for Tampa (assuming flat rate residential service) includes Plant City.[42]

Q. How did you determine the average transport distance for each of these two cases?

A. For these calculations, I assumed that the volume of traffic from each Verizon Florida central office is proportional to the number of access lines served out of that office. In other words, I am assuming that each access line served by Verizon Florida is equally likely to place a call to an access line served by Global NAPs. It is implemented by using weighting factors that equal the percentage of the total number of access lines in the given area (local calling area or LATA) that are served by any particular central office. Those weighting factors are applied against the distance from the switch to the POI location (Tampa).

Consider, for example, the calculation of the average transport distance within the Tampa local calling area. Because Plant City switch PTCYFLXA serves 87.7% of the lines within the Tampa local calling area, its distance to the Tampa base switch, 15.5 miles, is weighted by 87.7%, to produce a weighted distance of 13.56 miles. When combined with the weighted transport distance for the other central offices in the Tampa local calling area, this produces an average weighted transport distance of 15.54 miles. These calculations are shown in Table 1 of my Attachment 2.

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41. The specific base point used for my calculations is the V and H location of Verizon Florida switch TAMPFLXE.

42. GTE - Florida, General Services Tariff, 10th Revised Page 8, Effective December 3, 1997.

Q. Did you follow the same weighting process when performing the calculation of Verizon Florida's LATA-wide transport?

A. Yes. These calculations are presented in Table 2 in Attachment 2. As shown therein, the average LATA-wide transport distance for calls originated by Verizon Florida customers to the Tampa POI is 25.32 miles. Thus, after subtracting the 15.5 miles of transport that occurs within the Tampa local calling area, the *additional* transport distance to reach the single LATA-wide POI is 9.78 miles. See Table 3 of my Attachment 2.

Q. How does this additional average transport distance of approximately 9.78 miles translate into the additional transport costs associated with a single POI covering the entire Tampa LATA vs. the case of having individual POIs for each local calling area in that LATA?

A. As I have previously discussed, a DS-3 transport facility contains 672 voice (DS-0) channels. In all, a DS-3 interoffice trunk can carry approximately 8.9-million minutes of traffic per month.[43] Dividing Verizon Florida's currently-tariffed dedicated transport DS-3 mileage rate element of $70.00[44] by 8.9-million minutes, I calculated a voice-grade

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43. This estimate was obtained from the testimony of BellSouth's cost witness Cynthia K. Cox before the Georgia Public Service Commission in Georgia PSC Docket No. 13542-U, Direct Testimony of Cynthia K. Cox (BellSouth), April 3, 2001, at page 11. Ms. Cox testified that a "level of 8.9 million minutes of traffic per month is typically equivalent to a DS3 level."

44. Verizon Florida, Inc., Facilities For Intrastate Access, Section 6: Switched Access, (continued...)

transport rate per-minute per-mile of $0.00000787, *i.e.*, about eight ten-thousandths of a cent. Multiplying this per-mile rate by the 9.78 miles of additional transport associated with a single POI vs. a POI in each of Verizon Florida's local calling areas, I calculated the average additional transport cost per minute at $0.00003725, *i.e.*, about four one-thousandths of a cent. See Table 3 in Attachment 2 to my testimony for the workpaper showing this calculation.

Q. In your selection of the DS-3 level as the appropriate unit of transport capacity to apply in this analysis, did you consider the fact that because Verizon Florida's service territory in Florida includes some smaller towns and rural areas, not all of its interoffice transport routes face demand that is sufficiently high to utilize a DS-3 facility's entire capacity?

A. Yes, but I have concluded that the DS-3 level is appropriate to apply for this purpose notwithstanding that some Verizon Florida exchanges may typically generate demand that in aggregate falls below the DS-3's full capacity (*i.e.*, 672 simultaneous voice calls). First, Verizon Florida's switching infrastructure in Florida includes 236 remote service units (RSUs), which constitute just under 54% of its total of 439 central office switches in the state. RSUs are typically used to serve access lines in smaller exchanges where it is uneconomic to deploy a fully-functional standalone switch. Because an RSU connects to a host switch by a so-called "umbilical" fiber transport facility (which is typically of DS-3 capacity and may traverse dozens of miles in its own right), the effect is that the

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44. (...continued)
7th Revised Page 35, Effective July 3, 2001. *The Switched Access rate has been used in this case instead of the UNE rate on account of the ongoing investigation into pricing of unbundled network elements by the FPSC; Docket NO. 990649B-TP; Order NO. PSC-02-0090-PCO-TP.*

demand generated by those smaller exchanges served by RSUs is aggregated at the host switch, thereby increasing the capacity requirements for transport from the host to other points in the ILEC network. Thus, small exchanges that might otherwise require interoffice transport at a small capacity level (*e.g.*, 20-50 simultaneous voice grade calls) are instead likely to be served by an RSU and a host with considerably larger interoffice trunk connections.

Second, the economics of transport are better than linear, in that the cost of a DS-3 transport link is much less than the cost of 28 DS-1 facilities (which would provide capacity equivalent to a DS-3), so that the break-even for employing a DS-3 is much lower than a requirement that all 672 potential channels of a DS-3 must be utilized. For these reasons, a DS-3 capacity is the appropriate choice for my cost analysis. Verizon Florida also uses higher capacities than DS-3, such as OC-12, which are even cheaper per channel.

Q. What conclusions do you draw from these calculations?

A. These calculations demonstrate that the additional costs that Verizon Florida would incur to transport traffic between a Global NAPs POI in Tampa and Verizon's central offices LATA-wide, relative to the costs that Verizon Florida would incur for transport confined entirely within the Tampa local calling area, are extremely small, on the order of four one-thousandths of a cent or, more likely, even less than that.

Q. On that point, Verizon contended in its Brief in the Global NAPs arbitration in New York that you had utilized "common transport" for your calculations when in fact the method of transport being used was "dedicated transport."[45] Did you do that, and are you doing that here?

A. That entirely spurious criticism appears to have resulted from a fundamental misunderstanding of the purpose of the study on the part of Verizon and its witnesses. Apparently, they jumped to the "common transport" conclusion because I calculated a "per-minute" cost, and "common transport" rates are typically expressed on a "per-minute" basis. In fact, what I did in the New York case and what I am doing here is to translate the *tariffed monthly rate for a dedicated DS-3 interoffice trunk* into a per-minute amount by dividing that monthly rate by the typical traffic volume that would be carried by an interoffice trunk each month, namely 8.9-million minutes.

Verizon also claims that for many low-volume central offices, the total *utilized* DS-3 interoffice trunk capacity is well below the 672 channel DS-3 limit, although it seems to admit that DS-3 facilities would still be deployed. Verizon argued that "[m]ost likely, the parties would not come close to exchanging 8.9 million MOUs per month on all the transport paths." Once again, Verizon entirely missed the point: The issue is not how much traffic "the parties would come close to exchanging." Indeed, it is entirely likely that on many individual routes the amount of traffic being exchanged between an ALEC and an ILEC will be extremely small. This is precisely why it is far more efficient for the ILEC to provide the transport than for the ALEC to construct or lease dedicated

45. Verizon brief in GNAPs' Arbitration, A.01-12-026, at 18-19.

transport facilities, which is of course exactly what Verizon wants to force ALECs to do. And as for those cases where the ILEC's own traffic on a given route is well below the maximum 672-channel capacity of a DS-3, the *incremental cost of additional channels to handle the traffic exchanged with ALECs will be even lower than the costs calculated by the methodology that I am using, because the ILECs will then be able to utilize idle capacity that they already have, in existing DS-3 facilities.*

The matter of whether Verizon would utilize common or dedicated transport to carry the GNAPs traffic between its end offices and the GNAPs POI is entirely immaterial to this cost calculation. The ILEC provides transport, local switching, and in some cases tandem switching whether the transport is confined to the local calling areas or LATA-wide. The only difference between what the ILEC does in the case of "local calling area transport" and "LATA-wide transport" relates to *distance*, and it is that differential in *distance* that my study calculates.

Q. Wouldn't Global NAPs incur costs of this same order-of-magnitude if it were required to deploy its own transport network rather than having Verizon Florida perform this function?

A. No, Global NAPs would incur significantly higher costs if it were forced to undertake that transport on its own network. Because Verizon Florida serves some 2.4-million access lines statewide, it is able to operate at a scale much larger than any one ALEC such as Global NAPs, and therefore enjoys scale economies that are not available to ALECs. The costs of fiber optic transport facilities are particularly sensitive to scale,

e.g., the unit cost of carrying an additional voice grade circuit on an OC-3 transport system (which equates to 2016 voice grade channels) is much less than the comparable unit cost for an OC-1 transport system (672 channels). It is contrary to the public policy goal of promoting telecommunications competition to require that ALECs construct their own inefficient networks. Indeed, assuring that ALECs are able to access and benefit from the extreme economies of scale that are present in ILEC networks as a result of their massive embedded customer base and ubiquitous coverage was one of the express goals of the *Telecommunications Act* and, in particular, of Sections 251 and 252, which expressly require that ILECs provide ALECs with access to their networks on an unbundled basis at forward-looking cost-based rates.

Verizon Florida should not be allowed to prohibit Global NAPs from offering Foreign Exchange service to its customers using "virtual" NXX arrangements, given that the ILECs' costs are not affected by that practice and the companies themselves offer FX service in which "virtual" telephone numbers are assigned to the FX customer.

Q. Dr. Selwyn, can you summarize the issue concerning the use of "virtual" NXX arrangements that the Commission must arbitrate in this case?

A. Yes. In its proposed interconnection agreement with Global NAPs, Verizon Florida has taken the position that Global NAPs' local calling areas should mirror Verizon's local calling areas for the purposes of reciprocal compensation.[46] Global NAPs and other ALECs employ non-geographic assignments of NPA-NXX codes, sometimes referred to as "virtual" NXX arrangements, in order to offer a service to their customers that competes directly with Verizon Florida's own longstanding Foreign Exchange (FX)

46. See, Verizon Florida's Response, at page 18.

service. The ILECs consider those arrangements to amount to an evasion of the retail toll tariffs they apply to their own end users (who may place such calls), and thus want to compel ALECs to conform to Verizon Florida's established local calling area definitions and a geographically-linked application of NPA-NXX codes.

Significantly, Verizon Florida offers its own customers several types of serving arrangements wherein the telephone number that is assigned to the customer is not rated in the same exchange as the customer is physically located and where the service is physically provided. One such service arrangement that ILECs have traditionally offered for decades is known as "Foreign Exchange" ("FX") service. By seeking the opportunity to define and utilize virtual NXX codes, Global NAPs is seeking to provide its customers with services and serving arrangements that are comparable to and competitive with those currently being offered by Verizon Florida.[47]

Q. Has this Commission made a finding with respect to the right of ALECs to define and utilize virtual NXX codes in competition with an ILEC's foreign exchange service?

A. Yes. The Commission recently determined that carriers in the state may establish VNXX services to customers outside the rate center in which the telephone is homed.[48] The Commission voted to approve a staff recommendation under which carriers would

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47. *See*, Verizon Florida, Inc., General Services Tariff, Section 9, Third Revised Page 1, Effective September 1, 2001.

48. *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, Vote Sheet, December 5, 2001, at Issue 15.

be "permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone is homed, within the same LATA." While not mandating the form of intercarrier compensation to govern VNXX traffic, it approved the staff recommendation that "virtual NXX traffic and FX traffic be treated the same for intercarrier compensation purposes."[49]

Q. Please explain how local calling areas enter in to the issue of "virtual" NXX code assignments?

A. Recall that a local calling area generally consists of one or more individual exchanges (sometimes referred to as "rate centers") to which customers may place calls without a toll charge ("outward local calling area") or from which customers may receive incoming calls without the calling party being subject to a toll charge for such calls ("inward local calling area"). An exchange is an administrative definition of a geographic area within which all customers receive identical rating and rate treatment with respect to both outgoing and incoming calls. In non-metropolitan areas, an exchange usually corresponds to the area served by a single wire center or central office switch. In metropolitan areas, an exchange may include an area served by more than one wire center.[50]

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49. *Id.*

50. The precise definition of a local calling area tends to be more complex. Over time, most states have established one or more "optional extended area calling" arrangements under which the same call might be rated as toll for a customer that does not subscribe to the extended arrangement, but local for one who does. However, I will use the term "local calling area" to refer to the rate centers that a subscriber can call without incurring a toll

(continued...)

The definition of local calling areas is fundamental to the "virtual" NXX 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. Traditionally, local calling area boundaries have served to delineate the rating treatment for an ordinary POTS call, *i.e.* whether it would be rated according to the ILEC's local service tariff, or whether toll charges would apply. In order to fully understand the ramifications of allowing "virtual" NXX code assignments, one first needs to consider how NPA-NXX codes are used for POTS call rating and routing.

Q. How does a telephone company determine, for any given call, whether it is a local call or if a toll charge applies?

A. The area code (NPA) and central office code (NXX) of a telephone number (NPA-NXX) are, with limited exceptions, mapped specifically to a particular exchange. For example, the 215-369 NPA-NXX uniquely specifies the Yardley exchange. There may be, and (particularly for urban areas usually are) more than one NPA-NXX code associated with an exchange; since the onset of local telephone service competition, some of the NPA-NXX codes may be "held" by the incumbent LEC while others may be assigned to ("held by") one or more ALECs. When a call is placed, the dialed number is examined by the originating central office switch to determine whether to route the call directly to

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50. (...continued)
charge from a basic one-party flat rate residential (1FR) or business (1FB) access line, *i.e.*, the subscriber's home exchange and EAS exchanges.

the central office serving the dialed NPA-NXX or whether to route the call through an intermediate switching entity known as a tandem switch. The central office thus "translates" the dialed number into a routing for the call. It may also determine, through a lookup in a reference table maintained in the switch itself, whether, based upon the dialed NPA-NXX code, the call is to be rated as "local" or "toll." In some cases, this determination may affect the dialing sequence that the customer is required to use in order to place the call. The rating of the call *for billing purposes* is also based upon the dialed NPA-NXX, with the billing software looking to reference tables for the treatment and applicable rate for a call originated at one NPA-NXX and terminated at another NPA-NXX.

Q. Why was the "local" versus "toll" distinction originally established in the early days of the telephone industry?

A. The "local" versus "toll" distinction essentially grew out of the architecture of the earliest telephone networks. Originally, an exchange generally referred to the geographic area served by a manual switchboard to which all of the telephone lines within that exchange were connected. An operator would complete "local" calls by physically plugging the calling party's line into the called party's line using a patch cord. If the call was destined to a customer served by a different switchboard (*i.e.*, in a different exchange), the operator would signal the terminating switchboard and instruct the operator at that location as to which phone line the call was to be connected. Generally, such "inter-exchange" calls were rated as "toll" and additional charges for the call would apply. For calls to nearby exchanges, direct trunks would interconnect the

individual switchboards; however, for longer distances, one or more intermediate switchboards would be involved in interconnecting trunks so as to achieve the desired end-to-end connection. Distance was thus a major factor in both the complexity and the cost of individual calls.

As the number of telephone lines increased and mechanized switches replaced cord switchboards, the "exchange" began to take on more *administrative* properties rather than the *physical* properties associated with individual switchboards. Multiple central office switches could — and did — serve the same "exchange," and local calling was extended to include nearby exchanges as well as the subscriber's "home" exchange. Nevertheless, maintaining a rating distinction between local and toll calls made sense for many years, because it generally reflected significant distance-based cost differences between the two classes of calls.

Q. In today's modern digital telecommunications networks, is the local/toll rating distinction still supported by distance-based cost differences between "local" and "toll" calls?

A. No. The explosion in telecommunications technology over the past two decades, and particularly the enormous gains in fiber optic transmission systems capacity that I discussed earlier in my testimony (page 12), has reduced the cost of telephone usage to a mere fraction of a cent per minute. It also has made any physical distinction that may have once existed as between "local" and "toll" calls all but obsolete, and has essentially eliminated *distance* as a cost-driver for all telephone calls.

Q. Has distance in fact ceased to be a basis for pricing in those sectors of the telecommunications industry that are now or that have become robustly competitive?

A. Yes. It is now widely recognized that both the long distance and wireless service markets are characterized by intense competition. Distance has all but disappeared entirely in interstate long distance pricing structures. Under most of the pricing plans being offered by interexchange carriers to residential and business consumers, the price of a 39-mile interstate toll call from Tallahassee, Florida to Bainbridge, Georgia is exactly the same as the price of a 2,226-mile call from Tallahassee to San Francisco, California. Notably, AT&T recently introduced an "AT&T Unlimited Plan" that offers unlimited interLATA and intraLATA direct-dialed toll calling to other AT&T residential toll subscribers nationwide for a flat $19.95 a month, with a non-distance-sensitive charge of $0.07 per minute for the same types of calls to non-AT&T subscribers.[51] Distance-based charges have also disappeared in the *international* long distance market as well, although country-specific price differences, based upon factors *other than distance*, persist.

Wireless carriers have also largely eliminated distance as a pricing element. Prior to the entry of PCS competition, cellular carriers offered very limited local calling areas (often replicating precisely the local calling area defined by the ILEC for the exchange in which a particular cell phone was rated), and also imposed high "roaming" charges for outward calls that were originated outside of the customers "home" service territory

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51. "AT&T Unlimited Plan" at http://www.shop.att.com/wrapper?portal=shopatt&bannerid=ILB011DRTTV&product=shopatt_orp2p), accessed 3/7/02.

(even where the call was originated from another service territory controlled by the same cellular carrier). As PCS carriers came into the market, they began to offer extended, sometimes *nationwide*, local calling, and have also introduced calling plans that eliminate most or all roaming charges. Both Sprint PCS and AT&T Wireless Services have been offering standard calling plans that make no distinction as between "local" and "long distance" calls or otherwise charge on the basis of distance.[52] Competitive pressure from these companies has forced incumbent cellular carriers such as Verizon Wireless or Cingular Wireless to adopt similar non-distance-sensitive pricing plans. For example, Verizon Wireless offers calling plans that are marketed as having no roaming or long distance charges for calling anywhere within the United States.[53]

In fact, one of the *only* segments of the telecommunications industry where distance-based pricing (in the form of local/toll distinctions and/or mileage-based rates) persists is in the largely noncompetitive *local* telecommunications sector; indeed, the fact that this pricing remnant of a monopoly era persists in the case of local telephone services serves to *confirm* the utter lack of effective competition in this sector.

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52. The Sprint PCS "Real Nationwide Long Distance Included" plans provide various usage packages for a flat monthly fee, after which a distance-insensitive charge of $0.40 per minute applies. See, http://www1.sprintpcs.com/explore/servicePlansOptionsV2/PlansOptions.jsp (accessed 01/09/02).

53. See, for example, the "SingleRate" plans currently being offered by Verizon Wireless, at http://www.verizonwireless.com/ics/plsql/customize.intro?p_section=PLANS_PRICING (accessed 3/12/02).

Q. Is it appropriate for competing carriers to adopt local calling area definitions that differ from those of the ILEC?

A. Indeed it is. One of the primary public policy goals of introducing competition into the local telecommunications market has been specifically to encourage and stimulate innovation in the nature of the services that are being offered. ALECs should not be limited to competing solely with respect to *price*, nor should they be expected to become mere "clones" of the ILEC with respect to the services they offer. And indeed, the extent of the local calling area is itself becoming something that some ALECs see as an opportunity to differentiate their products from those being offered by the ILEC. An ALEC might, for example, offer its customers a larger local calling area than that being offered by the ILEC as a means for attracting customers or, alternatively, might choose to offer a *smaller* local calling area than the ILEC's service provides, at a correspondingly lower price. ILECs themselves are also changing the definition of "local calling area" by introducing optional calling plans that provide for extended area local calling including, in some cases, all exchanges within the subscriber's LATA.[54]

This is not to say that establishing larger local calling areas — whether inward or outward — will necessarily be the optimal competitive strategy for all ALECs, or even for the ILEC. One of the effects of decades of tight regulation of ILEC local service plans has been that we don't really know what combinations of price, inward/outward

54. Indeed, in some locations, ILECs have established optional calling plans that allow unlimited, flat-rated calling — "local" in all relevant respects — to all locations within an entire LATA. This type of arrangement only highlights that even in the case of the ILEC, the distinction between "local" and "toll" is largely arbitrary in terms of network technology and the underlying costs of providing service.

calling areas, and other features will appeal to different segments of the market. So, for an initial period — in fact, likely lasting for several years — I would expect to see different ALECs experimenting with different service plans, as long as regulators grant them the necessary flexibility to do so.

Q. How important is it to ALECs such as Global NAPs to be granted the flexibility to make non-geographic assignments of NPA-NXX codes to their customers?

A. It is extremely important, because such "virtual" NXX use of code assignments allows ALECs such as Global NAPs to overcome the constraints ordinarily imposed upon their customer's inward local calling area definitions by the ILEC's conventional local calling areas and to be able to compete with comparable "virtual" services being offered by Verizon Florida. The problem is that in the case of incoming calls, the local calling area applicable to the *calling party* (who we can assume is most likely to be an ILEC customer) will necessarily govern the rate treatment for the call. Recall from our earlier discussion that the determination as to whether a particular call is to be rated as local or toll will be based upon the NPA-NXX code of the called telephone number. An ALEC can define an expanded *outward* local calling area for its customer simply by placing the NPA-NXX codes for one or more additional exchanges into the (outward) local rating table of its switches. Under current rules, however, there is no corresponding requirement for an ILEC to symmetrically place the same NPA-NXX code(s) within the local rate tables of *its* switches, so that ordinarily calls to those NPA-NXXs will be rated at toll calls. However, the "virtual" NXX solution allows a ALEC to compete with Verizon Florida's FX service.

Q. Does it constitute an evasion of the ILEC's toll tariff, if a ALEC uses the "virtual" NXX method to establish one or more locally-rated inbound routes that otherwise would be subject to toll rates if placed to an ILEC subscriber in the same rate center ?

A. No, not in my opinion. As I have explained earlier in my testimony, the prevailing distinction between "local" and "toll" is an artifact of historic network architectures and technological conditions that may no longer be applicable. There is no reason why competitive marketplace forces should not be permitted to expand or otherwise reshape the traditional definition of "local calling" and perhaps to eliminate the notion of "intraLATA toll" altogether, especially given that call distance no longer influences costs in the manner that it did when the "local" versus "toll" pricing distinction was first established.

Moreover, as I have noted, the ILECs have for many years offered Foreign Exchange (FX) services, which allow customers to expand their inward local calling areas in essentially the same way that ALECs seek to do through "virtual" NXX arrangements.[55] In fact, some ILECs have described the ALECs' expanded inward calling area services as a "Virtual Foreign Exchange" type of service.

Q. How does a traditional ILEC FX service work?

55. *See*, Verizon Florida, Inc., General Services Tariff, Section 9, Third Revised Page 1, Effective September 1, 2001.

A. Suppose that a customer located in exchange A might want a local telephone number presence in exchange B, from which exchange A would otherwise be a toll call. A caller in exchange B dials the FX number as a local call to exchange B, yet the call is physically delivered to the FX customer located in exchange A. Usually, but not always, the FX service involves a leased line connecting the central offices in the two exchanges. The FX customer pays for the dial tone line in exchange B and pays for the leased line between exchange B and exchange A. Sometimes, the ILEC may elect to provision the FX service via a switched rather than a dedicated interexchange connection. Such an arrangement, if used, is (supposed to be) transparent to the customer, who will still be charged a flat monthly rate for the leased line. Regardless of how the FX service is priced by the ILEC, the essential fact is that the ILECs have tariffed FX services that allow their end users to place calls to points beyond their local calling area and avoid incurring toll charges, just as ALECs such as Global NAPs seek to do by offering the "virtual FX" services made possible by non-geographic NPA-NXX code assignments.

Verizon Florida's transport costs are entirely unaffected by the location at which Global NAPs terminates a Verizon Florida-originated call to a Global NAPs customer.

Q. Dr. Selwyn, consider the case where a Verizon Florida end user places a call to a customer served by Global NAPs in Florida. Would the costs incurred by Verizon Florida vary at all depending upon whether Global NAPs delivered that call to a telephone number with a geographic NPA-NXX code assignment, versus a non-geographic assignment?

A. No, not at all. As I shall demonstrate, 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. 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. Thus, it is entirely 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 with respect to such calls.

To be sure, an ILEC's *revenues* may well be affected by, for example, an ALEC's decision to offer a larger local calling area than that being offered by the ILEC, but that impact is a *competitive loss* to the ILEC to which it has ample opportunity to respond competitively, for example, by offering its own customers expanded inward (and perhaps outward as well) local calling. An ILEC should not be permitted to escape the financial consequences of its failure to successfully compete by refusing to compensate other competing carriers for work that they have legitimately performed, nor should it be permitted to prevent its competitors from introducing new and innovative services that amount to more than merely parroting of the ILEC's traditional offerings.

Q. How is it that the cost to the ILEC is not affected by the location at which the ALEC delivers traffic to its customers?

A. Perhaps the best way to explain this point is by way of examples. Please refer to Figure 1 below. In this example, the call is originated by an ILEC customer in Sarasota and is

delivered by the ILEC to an ALEC in Tampa via a Point of Interconnection located in Sarasota. The ALEC's customer to whom the call was directed is also located in Sarasota, and so the ALEC needs to transport the call back to the delivery point in Sarasota. In this example, both of the ILEC's conditions for reciprocal compensation have been met, *i.e.*, the POI is located within the local calling area of the originating ILEC access line (*i.e.*, in Sarasota), and the call is terminated to a ALEC customer who is also located within the local calling area of the originating ILEC access line in Sarasota.

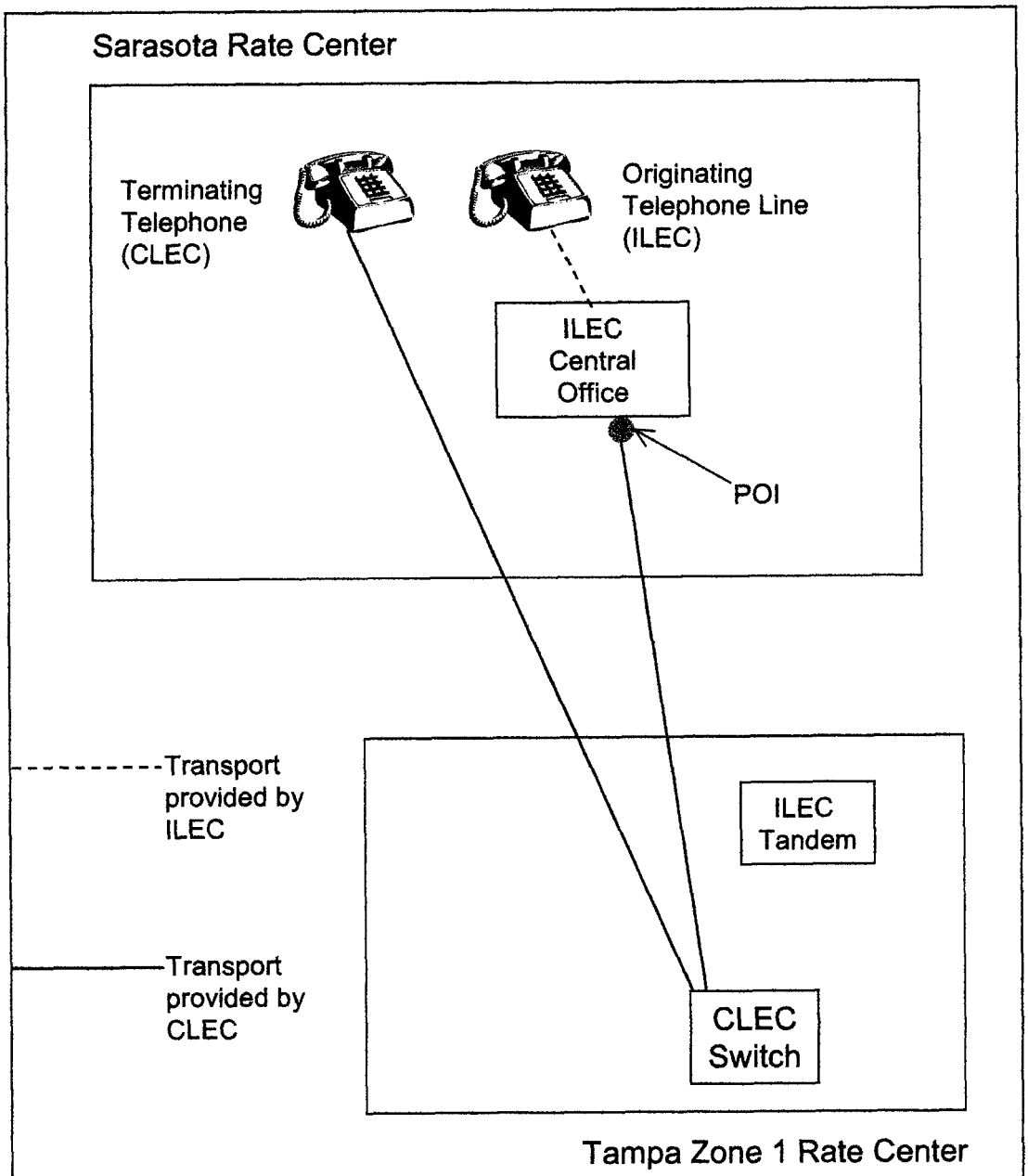

Figure 1. Call originated by an ILEC customer in Sarasota to a CLEC customer in Sarasota and delivered by the ILEC to a CLEC in Tampa (Zone 1) via a Point of Interconnection located in Sarasota.

Now let's change the facts of this example so as to violate one of the two assumed conditions for reciprocal compensation. Here, the ILEC's Sarasota customer still dials a Sarasota telephone number (*i.e.*, an ALEC NPA-NXX that is rated to Sarasota), but instead of the ALEC delivering the call to an ALEC customer in Sarasota as in the previous example, the ALEC delivers the call to an ALEC customer physically located in Tampa. Note that the POI at which ILEC hands off the call to the ALEC is still in Sarasota, *i.e.*, still within the local calling area of the ILEC access line that originated the call. In this circumstance, the physical location of the point of delivery (Tampa in this case) is not within the local calling area of the originating ILEC telephone and, as I understand it, an ILEC placing such limits on reciprocal compensation would argue that this is not a "local" call and that no reciprocal compensation is required in this case.

Q. Is there any difference in the work that ILEC would be required to perform in handing off the originated call to the ALEC as between these two examples?

A. No, and that is the essential point of these examples: In both of these cases, the ILEC's work — and its costs — are absolutely identical. The sole distinction between the two examples lies in what the *ALEC* does once it receives the call from ILEC at the POI. In the first case (Figure 1), the ALEC hauls (transports) the call all the way back from Tampa to Sarasota; in the second case (Figure 2), the ALEC delivers the call to a customer located near its Tampa switch. In both of these cases, the ILEC carries the call from the originating telephone to the Sarasota POI, and so its work is entirely unaffected by where the ALEC ultimately delivers the call.

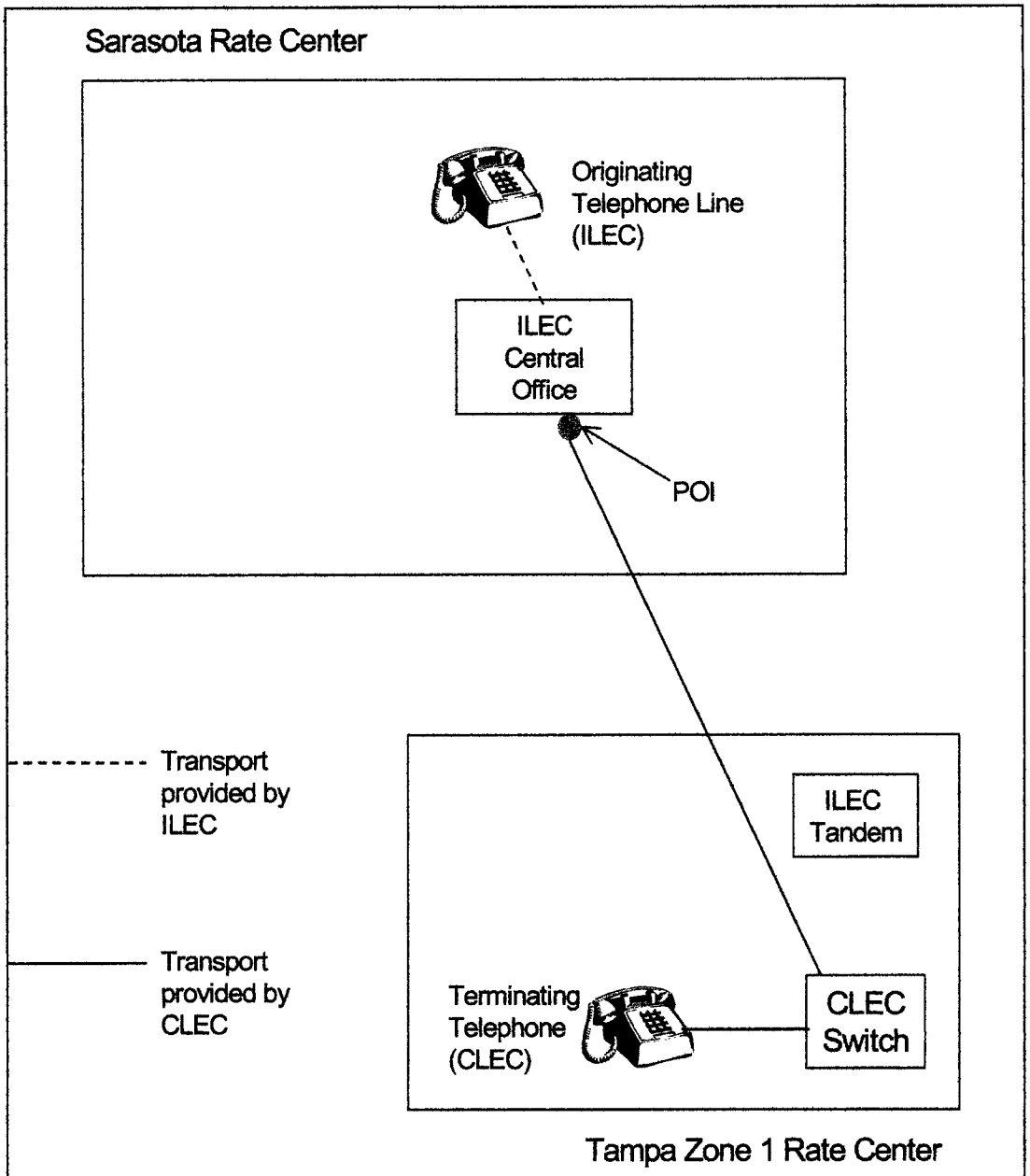

Figure 2. Call originated by an ILEC customer in Sarasota to a CLEC customer in Tampa (Zone 1) and delivered by the ILEC to a CLEC in Tampa (Zone 1) via a Point of Interconnection located in Sarasota.

Q. What if you were to eliminate the condition that a Point of Interconnection must be established in each local calling area. Does the location of the point of delivery by the ALEC to its end user customer then affect the ILEC's costs?

A. No, it does not. To see why, please refer to Figures 3 and 4 below, which correspond with Figures 1 and 2, respectively, except that in these two cases I am assuming that the POI is now located in Tampa. In Figure 3, the ILEC customer in Sarasota dials an ALEC number rated to Sarasota, as before. Because the POI is in Tampa, the ILEC is required to transport the call over its network to Tampa, where it is handed off to the ALEC. As in Figure 1, the ALEC then transports the call *over the ALEC's network* back to Sarasota for delivery to its customer. In Figure 4, the ILEC customer in Sarasota also dials an ALEC number rated to Sarasota, and the ILEC transports the call to the POI in Tampa. However, as in Figure 2, the call is then delivered by the ALEC to an ALEC customer in Tampa rather than in Sarasota. As was the case as between Figures 1 and 2, there is absolutely no difference in the work that the ILEC is called upon to perform as between Figures 3 and 4. In both of these cases, the ILEC transports the originating call from its Sarasota customer to the ALEC POI in Tampa; *the location where the ALEC ultimately delivers the call has no effect whatsoever upon ILEC's work or its costs.*

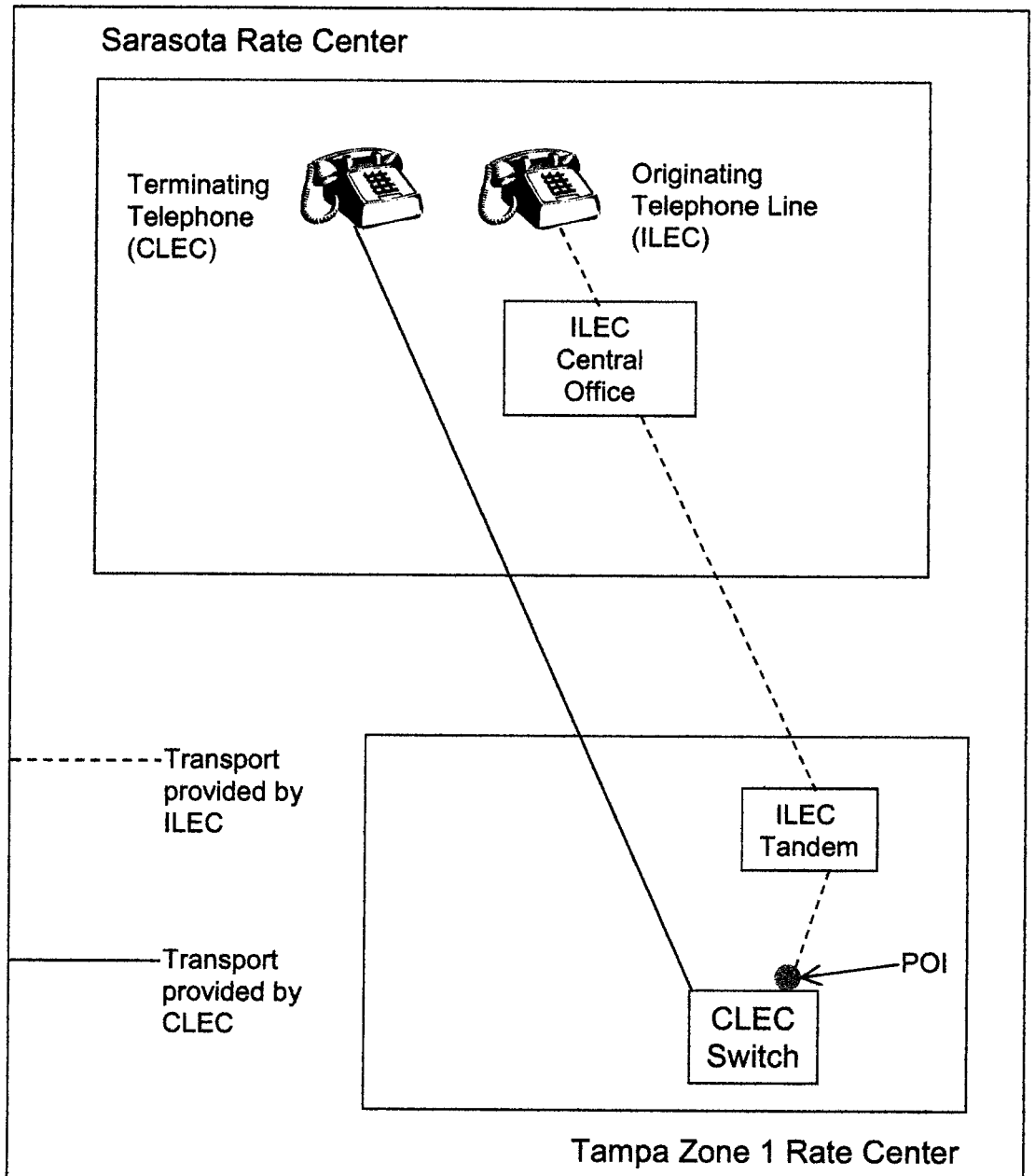

Figure 3. Call originated by an ILEC customer in Sarasota to a CLEC customer in Sarasota and delivered by the ILEC to a CLEC in Tampa (Zone 1) via a Point of Interconnection located in Tampa (Zone 1).

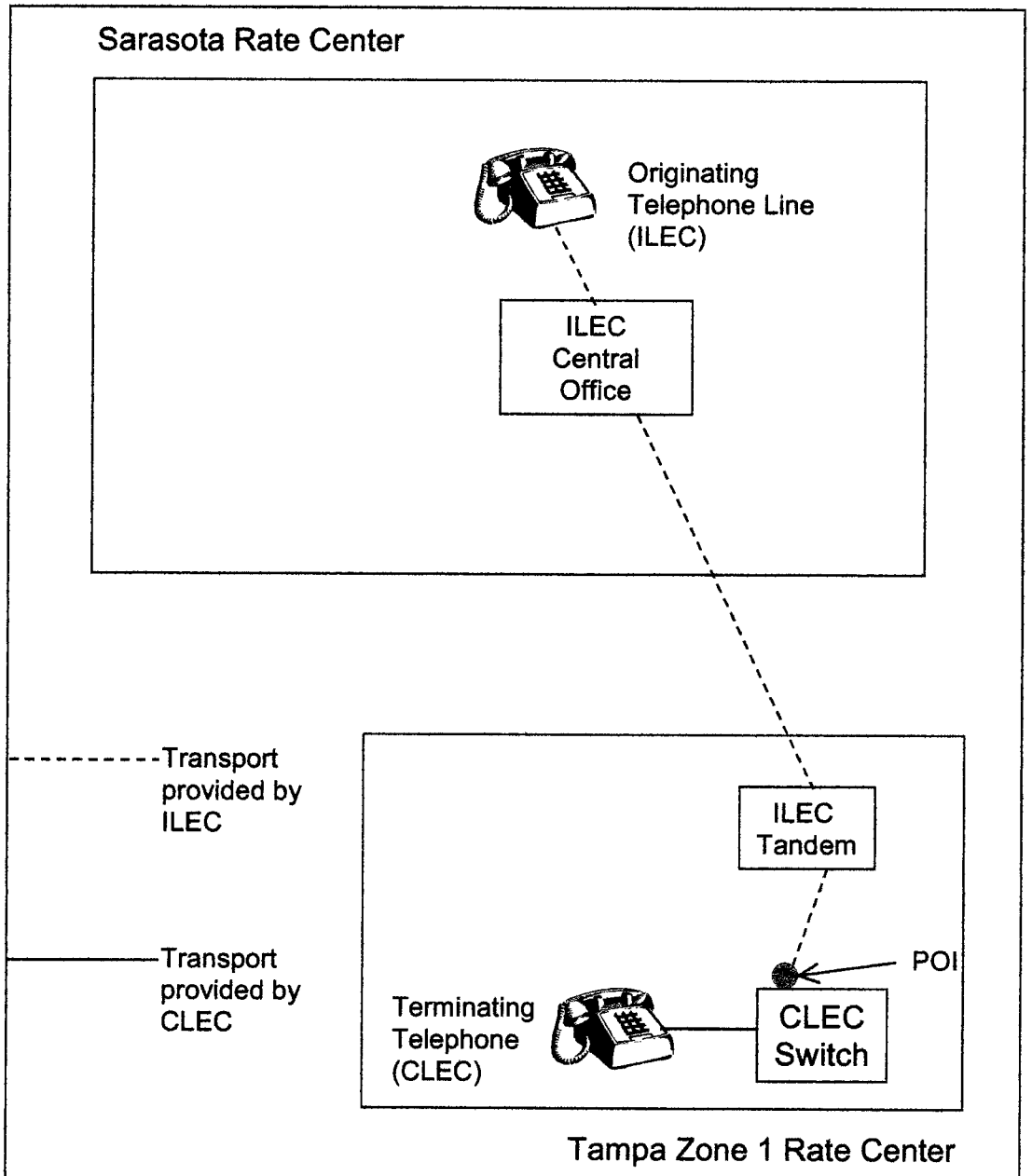

Figure 4. Call originated by an ILEC customer in Sarasota to a CLEC customer in Tampa (Zone 1) and delivered by the ILEC to a CLEC in Tampa (Zone 1) via a Point of Interconnection located in Tampa (Zone 1).

Q. You have suggested that the only impact upon the ILEC arising out of Global NAPs' decision as to the point of delivery of a given call lies in the possibility that the ILEC might sustain a competitive revenue loss. Please elaborate on this point.

A. Suppose that, under the Verizon Florida tariff, a toll charge may apply for calls beyond a certain distance or between non-contiguous exchanges, whereas an ALEC, in an effort to differentiate its service from that of the ILEC and also to offer potential customers some additional service features that are not being offered by the ILEC, treats some of these calls as "local" and thus imposes no specific charge for the call. If, as a result of the ALEC's offering, some of the ILEC's customers are persuaded to switch over to the ALEC's service, the ILEC will sustain a loss of both local and toll revenue. *Such a loss of business is a direct and inescapable outcome of competition*; Verizon Florida can either respond by reducing or eliminating its own (toll) charges for these calls (thereby sustaining some revenue loss), or risk losing customers to the less expensive ALEC service (thereby also sustaining some revenue loss). The issue here is entirely one of *pricing and competitive response*, not one of policy. In many cases, however, even that potential loss of revenue can be overcome if Verizon were to adopt more competitively rational pricing metrics.

Q. You stated that in some cases Verizon Florida may sustain a loss of toll revenue. Why would that not arise in *all* cases where the ALEC provides "free" service over a route for which the incumbent imposes a charge?

A. This is because in many cases where the incumbent imposes a toll charge, its customers do not use the service as much or even at all. For example, as we have previously discussed, many customers reach their Internet Service Provider ("ISP") by dialing a number rated in the customer's home community that the LEC (Verizon Florida or an ALEC) ultimately delivers to the ISP at a distant point. In the examples we were discussing earlier and that are illustrated in Figures 1 through 4, suppose that the ISP's end-user customer takes local telephone service from Verizon Florida in Sarasota, and that the call is handed off to an ALEC, which then delivers the call to an ISP in Tampa. One might argue that this arrangement deprives Verizon Florida of the toll revenue it would otherwise have received were this virtual FX arrangement not in place. In reality, the Sarasota customer would have been unlikely to have called the Tampa ISP on a toll call basis in the first place, and would instead have selected a different ISP with a Sarasota presence; chosen another (non-dial up) method to access the Internet; or simply not used the Internet at all. In any case, Verizon Florida would not have received any toll (or expanded "local") revenue. Hence, in this circumstance, the only "revenue loss" to Verizon Florida is a theoretical one based upon the "what might have been" rather than the "what actually was."

Q. Why is it not appropriate, as an economic matter, for Verizon Florida to be allowed to recover its "opportunity cost" when providing interconnection and other network functionality to ALECs?

A. In competitive markets, prices are expected to closely approximate costs, and so a loss of revenues (*e.g.*, as a result of a loss of a customer to a competitor) would be expected

to be roughly offset by a corresponding decrease in cost. If the price of a product or service is set (and sustainable) at a level that is well in excess of cost, for example, intraLATA toll rates, then the potential for a loss of business does present an opportunity cost. Suppose that the *price* of an intraLATA toll call is 10 cents per minute while its cost is one cent per minute. If Verizon Florida provides interconnection and other services to Global NAPs and as a result Global NAPs is able to attract some Verizon Florida toll users to the Global NAPs service, Verizon Florida might consider that foregone toll revenue to be an "opportunity cost" of the services it furnishes to Global NAPs. However, this does not mean that Verizon Florida should be entitled to recover such "competitive losses"? The interconnection agreement between the parties must not work to limit Global NAPs' ability to compete and in so doing afford special protection to the ILECs' market, pricing practices, or other aspects of its incumbency.

While attempting to shut down ALEC competition in the market for dial-up ISP access services by prohibiting ALEC use of virtual NXX codes, Verizon has itself created a single "500" number statewide local calling mechanism for use by its own ISP affiliate, Verizon Online, under an arrangement that is not, as a practical matter, available to ALECs, and can be expected to attempt to introduce this same serving arrangement in Florida.

Q. Dr. Selwyn, you have described Verizon Florida's opposition to Global NAPs' use of VNXX-based services that could be used to offer local dial-up access to ISPs. Does Verizon offer a similar type of wide area local dial-up access to its own ISP affiliate, *Verizon Online*?

A. Indeed it does. While it does not appear that Verizon is currently providing such a service in Florida, Verizon is currently providing local dial-up access to its ISP affiliate

in numerous other states, including all six New England states and in New Jersey, New York, Pennsylvania, Delaware, Maryland, the District of Columbia, and Virginia (see Attachment 3 to my testimony). In fact, Verizon Online offers its dial-up subscribers not just LATA-wide or statewide access, but *region*-wide single-number local call access via a "500" number, 500-699-9900 (*Id.*) These "500" numbers are rated as "local calls" from wherever originated, *provided that the originating telephone line is served by Verizon.* In other words, an ALEC or an independent company customer would not be able to dial the Verizon Online "500" number on a local call basis or, for that matter, would not be able to dial it at all.

Q. Is the "500" number arrangement available to ALECs such as Global NAPs in a manner that would allow them to compete successfully with Verizon's "500" number offerings to ISPs?

A. No. Because Verizon's "500" number services are being offered out of its interstate *access* tariffs[56] (see Attachment 4 to my testimony), they are not subject to the resale discount that would permit an ALEC such as Global NAPs to resell the service at a competitive price that could also recover the ALEC's own costs for marketing, customer service, and other retailing functions it must perform. Moreover, while an ALEC such as Global NAPs theoretically could develop its own "500" number service directly, as a practical matter it is extremely unlikely that any rational ISP would actually order such

56. Verizon's placement of this service, which is expressly targeted to ISPs, in its *access* tariff is itself highly questionable, inasmuch as ISPs are *end users*, and decidedly *not* telecommunications carriers. See Attachment 6, at 31-32. The *effect* of this action is to limit ALEC resale opportunities for this *end-user* service, an action that may well violate 47 U.S.C. § 251(c)(4).

service from an ALEC. The reason for this is that to reach the "500" number the calling party must also be served *by the same local carrier as the "500" number subscriber* (*i.e.*, the ISP). Inasmuch as no single ALEC in Florida currently serves more than a tiny fraction of the total access line market, ALEC-provided "500" numbers would be *inaccessible* from all but an insignificant fraction of the potential ISP customer base.

Consequently, the only practical means by which Global NAPs or other ALECs could compete with Verizon for ISP business is through the use of virtual NXX codes, which can be dialed from *any* telephone, served by *any* local carrier. If ALECs are denied the ability to utilize virtual NXX codes as a means for competing in this market, the dial-up Internet access market could quickly be conceded to, and would be monopolized by, Verizon.

Q. Aside from the obvious impact upon ALEC competition, are there any other implications of allowing Verizon to acquire a *de facto* monopoly of the market for dial-up ISP access through its provision of these "500" numbers?

A. Indeed there are. Because the Verizon "500" numbers can only be dialed from *Verizon* telephones, Verizon would be in the position of creating a *de facto* tying arrangement between its regulated local exchange service and its nonregulated ISP, Verizon Online. Indeed, if other ISPs who currently utilize ALEC services were forced to migrate to Verizon because those ALECs would no longer be able to offer virtual NXX local call access, then *end users* of dial-up ISP services would be forced to take their local phone service from Verizon in order to obtain local call access to their ISP — whether that ISP

is Verizon Online or a non-affiliated provider that has subscribed for Verizon "500" number service.

Q. To summarize your recommendation, is there any merit in Verizon Florida's position that Global NAPs should not be permitted to utilize virtual NXX assignments and rating arrangements?

A. No, and for the Commission to accede to the Company's position on this issue would have the effect of denying Global NAPs the opportunity to offer exactly the same types of services that Verizon Florida itself can provide, and thereby to inappropriately protect Verizon Florida from competitors.

The point is that Verizon's introduction of "500" number local calling for dial-up Internet use is clearly the Company's response to ALEC competition in the ISP access market. But by restricting the use of these "500" numbers to Verizon local service customers only while at the same time attempting to shut down ALECs' use of virtual NXX serving arrangements, Verizon not only recaptures the ISP market, but forces individual consumers to abandon their ALEC-provided residential and small business services in order to obtain local Internet access at all.

INTERCARRIER COMPENSATION ISSUES

From an economic and policy perspective, the appropriate intercarrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users.

Q. Dr. Selwyn, what rules currently govern the intercarrier compensation payments applicable to calls that are made to an Internet Services Provider?

A. While I am not offering a legal opinion, my understanding is that the FCC's *ISP Remand Order*[57] currently governs the intercarrier compensation payments that must be made when a locally-rated dial-up call to an Internet Services Provider (ISP) is handed off from the originating carrier to another carrier for completion. That order represents the FCC's second effort to impose a federally-mandated distinction between ISP-bound calls and all other locally-rated traffic that is subject to reciprocal compensation for intercarrier compensation purposes (so-called "Section 251(b)(5) traffic"). On May 3, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling that remanded the *ISP Remand Order* back to the FCC, but did not vacate the order.[58] Unfortunately, the Court's action serves only to extend the present uncertainty for at least two more years, perhaps longer.

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57. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order,* FCC 01-131 (rel. April 27, 2001) ("*ISP Remand Order*").

58. WorldCom, Inc., v. FCC *et al*, No. 01-1218 (D.C. Cir. May 3, 2002).

Q. Can you briefly summarize the history of those efforts?

A. Yes. In February 1999, the FCC issued a *Declaratory Ruling* which held that such calls are jurisdictionally mixed, but largely interstate; and that because ISP-bound calls were "non-local interstate traffic" to which Section 251(b)(5) did not apply, state commissions were free to determine whether or not reciprocal compensation payments should apply to that traffic when arbitrating new interconnection agreements[59]. However, in March 2000, the D.C. Circuit Court of Appeals vacated and remanded the *Declaratory Ruling* "for want of reasoned decision-making."[60] In April of last year, the FCC released the *ISP Remand Order*, in which it concludes once again that ISP-bound calls are exempt from the reciprocal compensation obligations of Section 251(b)(5), although it bases that conclusion on what appears to be an entirely different legal analysis than that put forth in the *Declaratory Ruling*.[61] In a parallel action, the FCC

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59. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, FCC 99-38 (rel. February 26, 1999) ("*Declaratory Ruling*"), at paras. 18-20 and 26.

60. *Bell Atl. Tel. Cos. V. FCC*, 206 F.3d 1 (D.C. Cir. 2000)("*Bell Atlantic*"). Specifically, the Court found that the FCC had applied an "end-to-end analysis" that had been formerly used to determine calls' jurisdictional status, without explaining why that analysis was relevant to evaluating whether ISP-bound calls fit within the definition of Section 251(b)(5) traffic. *Id.* at 17.

61. *See ISP Remand Order* at paras. 31-47 (finding that ISP-bound traffic falls within the categories enumerated by Section 251(g), which are exempted from the reciprocal compensation requirements of Section 251(b)(5)).

also issued a *Notice of Proposed Rulemaking* to consider more permanent intercarrier compensation arrangements for ISP-bound traffic (as well as other types of calls).[62]

Q. What are the particular rules established by the *ISP Remand Order*?

A. The *ISP Remand Order* establishes specific rates and terms for intercarrier compensation for ISP-bound traffic on an interim basis, including the following provisions:

- For six months following the effective date of that order, intercarrier compensation for ISP-bound traffic was to be capped at $0.0015 per minute of use (MOU); thereafter, the compensation rate would fall to $0.0010 / MOU for the next eighteen months, and thence to $0.0007 / MOU thereafter pending further FCC action;[63]

- A LEC's total compensation for termination of ISP-bound traffic is limited in each of the years 2001-2003 to its historical levels, plus a "growth factor" ranging from zero to ten percent;[64] and

62. *Intercarrier Compensation NPRM.*

63. *ISP Remand Order*, at para. 78.

64. *Id.*, at para. 78. The specific formulas to be applied are given therein.

- A rebuttable presumption is applied that traffic out of balance by more than a 3:1 ratio is ISP-bound terminating traffic to which the ISP compensation rates and limits will apply.[65]

Because the FCC was concerned about the "superior bargaining power of incumbent LECs" relative to ALECs seeking interconnection, it has conditioned the application of its intercarrier compensation rules for ISP-bound traffic to the ILEC's acceptance of the same rules for all forms of traffic subject to Section 251(b)(5), including local traffic exchanged with CMRS providers.[66] The FCC allows ILECs to make this election on a state-by-state basis.[67] Finally, where carriers had not been exchanging traffic pursuant to an interconnection order at the time of the *ISP Remand Order*, "carriers shall exchange ISP-bound traffic on a bill-and-keep basis during the interim period."[68]

Q. Notwithstanding the applicability of the rules established by the *ISP Remand Order* to the instant case, does the proposal by Verizon Florida to utilize bill and keep for "local" traffic represent a reasonable form of intercarrier compensation from an economic and policy standpoint?

A. No, it does not. As a general matter, the most appropriate form of intercarrier compensation for the termination and transport of ISP-bound local calls, as well as other

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65. *Id.*, at para. 79.

66. *Id.* at para. 89.

67. *Id.*, at footnote 179.

68. *ISP Remand Order*, at para. 81

forms of local traffic, continues to be a symmetric rate based upon the ILEC's prevailing TELRIC cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users. These incentives and the positive market developments they engender were expressly recognized by the FCC in 1996, when it designed the reciprocal compensation rules that continue to be applied on a default basis to local telecommunications traffic subject to Section 251(b)(5).[69] Despite the fact that the FCC recognized the limited applicability of bill-and-keep at that time, and that bill-and-keep was strenuously opposed by several of the ILECs, the FCC has seized upon mandatory bill-and-keep as a "solution" to the problem that it believes has been created by the rapid growth in providers of specialized call termination services, including but not limited to termination of ISP-bound calls. However, a thorough analysis of the economic and policy foundations to intercarrier compensation, as applied to ISP-bound calls and other telecommunications traffic, leads to the conclusion that mandatory bill-and-keep would fail to be an efficient or equitable form of intercarrier compensation, and in fact would seriously disadvantage ALECs in favor of ILECs in a manner contrary to the *Act.*

Q. Have you undertaken such an analysis?

A. Yes. In August of 2001, ETI's Vice President, Scott C. Lundquist, and I prepared a report that examines in detail the economic and policy issues associated with intercarrier compensation arrangements for interconnecting telecommunications carriers entitled

69. *See* the FCC's *Local Competition Order.*

Efficient Intercarrier Compensation Mechanisms for the Emerging Competitive Environment, attached hereto as Attachment 6.[70]

Q. Can you summarize the principal findings contained in that report?

A. Yes. One focus of our report was to respond to two papers published by the FCC's Office of Plans and Policy (OPP) which the FCC cited in the *Intercarrier Compensation NPRM* as support for adopting a mandatory bill-and-keep framework for intercarrier compensation. In brief, our report identifies four main flaws in those papers:

(1) The OPP papers fail to recognize the intrinsic linkage between the method adopted for intercarrier compensation and the retail prices paid by end users, which causes their analyses to be fundamentally incomplete, and fail to appreciate the enormous disruptions and formidable regulatory burdens that would arise in the attempt to transition to their proposed "bill-and-keep" arrangement.

(2) The papers make certain assumptions concerning the allocation of the benefits and costs of a call between the calling and called parties, assumptions that are unsupported by any factual evidence and that are most likely wrong as an empirical matter.

70. This report was originally submitted in the FCC's Intercarrier Compensation rulemaking, CC Docket No. 01-92, as an attachment to the August 21, 2001 Comments of Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp.

(3) The papers inconsistently combine theoretical and pragmatic considerations to support their concrete proposals for how interconnection should be priced.

(4) The papers unduly defer to existing architectures and practices of ILECs, in effect requiring entrants to accept what amounts to a "take-it-or-leave-it" set of inter-connection conditions, such as existing ILEC local calling area definitions and the premise that inward and outward traffic that is out-of-balance is categorically to be discouraged.

Neither of the OPP papers provides a sound economic or policy basis for regulators to impose "bill-and-keep" arrangements as the preferred solution for intercarrier compensation on ISP-bound calls and other locally-rated traffic. The other principal findings of our report are as follows:

- The perceived "problems" with the existing intercarrier compensation mechanism of explicit reciprocal compensation payments — traffic imbalances and the growth in payments by ILECs to ALECs for termination of ISP-bound calls — are properly viewed as the outcome of exactly the type of competition that the *Telecommunications Act* and the FCC's *Local Competition Order* was intended to promote, and do not represent market "failures" that must be remedied by further regulatory intervention.

- Despite the recent revival of interest in a bill-and-keep model for intercarrier compensation — which was flatly opposed by most ILECs when first considered in

post-*Act* arbitrations and regulatory proceedings to establish reciprocal compensation rates — the economics of bill-and-keep have not changed from the period when the FCC previously concluded that it was reasonable to apply *only* when carriers exchanged traffic that was roughly balanced so that *mutual* compensation would take place.

- When evaluated using appropriate criteria, including economic efficiency, competitive neutrality, and impacts upon end users, neither bill-and-keep nor other options that have been considered for application to ISP-bound traffic, including traffic imbalance thresholds and access charge treatment, would provide a satisfactory alternative to the existing form of reciprocal compensation arrangements.

Q. What are your recommendations at this time to the Commission concerning the application of intercarrier compensation to locally-rated traffic exchanged between Global NAPs and Verizon Florida?

A. In the event that the Commission determines at some future point that the specific intercarrier compensation rules set forth in the FCC's *ISP Remand Order* do not apply to locally-rated traffic exchanged between Global NAPs and Verizon Florida (*e.g.*, as a result of an appellate court ruling to reverse, vacate, or stay the *ISP Remand Order*), the Commission should apply a symmetric, TELRIC-based reciprocal compensation rate consistent with the findings and supporting analysis presented in our report.

Q. Does this conclude your direct testimony at this time?

A. Yes, it does.

REBUTTAL TESTIMONY

Introduction

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn; my business address is Two Center Plaza, Boston, Massachusetts 02108. I am President of Economics and Technology, Inc. ("ETI").

Q. Are you the same Lee L. Selwyn who submitted direct testimony in this proceeding on May 8, 2002 on behalf of Global NAPs, Inc.?

A. Yes, I am.

Q. What is the purpose of the additional testimony that you are offering at this time?

A. This testimony responds to the direct testimony submitted by Verizon Florida Inc. ("Verizon Florida") witness Pete D'Amico with respect to Issues 1 and 2 and Verizon Florida witness Terry Haynes with respect to Issues 3 and 4 as have been designated by the Commission for consideration in this proceeding.

I would note at the outset, however, that my direct testimony anticipated and rebutted many of the arguments that Messrs. D'Amico and Haynes raise in their testimony. Accordingly, I will not repeat all of the discussion of these issues that I have already

submitted, but will attempt in this brief rebuttal testimony to elucidate the fundamental policy conflicts between the Verizon Florida and Global NAPs positions as demonstrated by the Verizon Florida witnesses' direct testimony.

Verizon Florida's "VGRIP" proposal is in no sense a compromise as portrayed by Mr. D'Amico, but instead would permit the Company to charge Global NAPs call origination fees that are expressly prohibited by the FCC's intercarrier compensation rules.

Q. Mr. D'Amico contends that if Global NAPs was permitted to establish a single POI in the LATA without paying for the transport of Verizon Florida originated calls beyond the local calling area boundary to the POI, Global NAPs would not be constrained to make efficient network design choices and Verizon Florida "would unfairly be forced to subsidize GNAPs' costs of interconnection as well as their network design choices."[1] Do you agree with that assessment?

A. No. The Commission should not lose sight of the fact that Global NAPs is a new entrant to the Florida local exchange market, competing against Verizon Florida, an incumbent LEC, that controls essentially all of the potential customer base and virtually all of the existing local exchange facilities within its service territory. As the recent rash of ALEC bankruptcies throughout the US has confirmed, any ALEC confronting this situation must operate as efficiently as possible in order to have a chance to survive. As I

1. D'Amico (Verizon) Direct Testimony, at 5.

explained in my Direct Testimony,[2] the FCC established its ILEC-to-CLEC interconnection policies and rules fully recognizing that basic asymmetry, and expressly granted CLECs the ability to select the most efficient points of interconnection with ILECs from the LECS' perspective so as to partially offset the ILECs' inherent advantages. Adoption of the VGRIP proposal would drastically curtail Global NAPs' ability to make those choices and to compete with Verizon Florida.

Q. Mr. D'Amico contends that the VGRIP proposal would require Verizon Florida to incur "more than its share of the transport obligation, because its transport obligation would still exceed that normally associated with traffic within a local calling area."[3] Do you agree with that assessment?

A. No. As a threshold matter, I should explain that Global NAPs' position is that the issue of financial responsibility for transport is essentially a legal matter. Counsel advises me that in his opinion, FCC rule 47 CFR §51.703(b),[4] which prohibits a LEC from charging another carrier for its originating traffic, precludes Verizon Florida from creation of the IP/POI fiction that results in charges to Global NAPs for transport on the Verizon

2. Selwyn (Global NAPs) Direct Testimony, at 23-25.

3. D'Amico (Verizon) Direct Testimony, at 11, lines 2-4.

4. 47 CFR §51.703(b) reads as follows: "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

Florida side of the POI for calls originated by Verizon Florida's own customers.[5] Thus, Verizon Florida entirely mischaracterizes this issue when it tries to portray it as a matter of fairness or equity. However, setting aside the legal basis for resolving this issue, VGRIP would not cause the Company to incur "more than its share" of those transport costs. With very few exceptions,[6] LECs' local calls are charged on a "sent-paid" basis, meaning that *all* costs and charges associated with completing the call — including all transport costs — are intended to be assessed on the originating caller and not, for example, on any interconnecting carrier.[7] The sent-paid paradigm has continued to apply even as ALECs have been permitted into the local service market and now exchange local traffic with ILECs. By proposing to charge Global NAPs to recover part of the costs of transporting the sent-paid local calls originated by Verizon Florida end users, Verizon Florida would be violating the sent-paid paradigm.

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5. Verizon Florida does not dispute that the transport for which it proposes to charge Global NAPs occurs on Verizon Florida's side of the POI. *prior to hand-off of its originating traffic to Global NAPs*. Consequently, those transport costs are part of the costs of *originating* calls, not *terminating* them. Under VGRIP, Verizon Florida proposes to charge its unbundled transport interoffice rates to the terminating carrier (in this case, Global NAPs) for transport on *the Company's side of the designated POI.* This would constitute the imposition of call origination charges, which counsel advises me are expressly prohibited by 47 CFR §51.703(b). See also page 29 of my Direct Testimony on this issue.

6. One exception that I have addressed in my Direct Testimony (pages 68 -71) is the 500-number wide area service arrangement that Verizon offers in numerous other jurisdictions.

7. The "sent-paid" approach is explained more fully at page 14 of the Selwyn/Lundquist paper on intercarrier compensation provided in Attachment 6 to my Direct Testimony.

Q. Has the FCC affirmed that its prohibition of charging local call origination fees to another carrier applies in the context of the single POI rule?

A. Yes, that is my understanding. In its *Kansas/Oklahoma Section 271 Order*, the FCC stated:

> Finally, we caution SWBT from taking what appears to be an expansive and out of context interpretation of findings we made in our SWBT Texas Order concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our SWBT Texas Order, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. *Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.* These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.

Q. Has the FCC had the occasion to apply this understanding of its current rules in addressing Verizon's contention that an ALEC is responsible for costs of transport on the ILEC's side of the single point of interconnection where such transport extends beyond the local calling area of the ILEC's customer?

A. Yes, indeed it has. On July 17, 2002, the FCC's Wireline Competition Bureau ("Bureau") released a *Memorandum Opinion and Order* that resolved certain disputed issues brought to the FCC for arbitration by AT&T, Cox, and WorldCom, after those

companies were unable to reach negotiated interconnection agreements with Verizon.[8] This consolidated arbitration case (CC Docket Nos. 00-218, 00-249, and 00-251) was initiated when the Virginia State Corporation Commission ("Virginia Commission") declined to arbitrate the carriers' disputes under Section 252(c) of TA96, and the three CLECs petitioned the FCC to preempt the Virginia Commission's authority under Section 252(e)(5).[9] The FCC granted the carriers' motion, and the two-prong proceeding commenced in January 2001.[10] The Wireline Competition Bureau notes in its July order that "[i]n this proceeding, the Wireline Competition Bureau, *acting through authority expressly delegated from the Commission*, stands in the stead of the Virginia State Corporation Commission."[11] Counsel advises me that this decision is final in the sense that it has taken effect, although the parties could appeal the Bureau's *Order* to the Commission for its reconsideration. Subsequently, the parties filed conforming interconnection agreements which were also approved by the FCC.

In the *FCC Virginia Arbitration Decision*, the Bureau interpreted Section 251(c)(2) of the *Act*, which grants CLECs the right to request interconnection at any technically

8. *FCC Virginia Arbitration Decision*, at paras. 1-2.

9. *Id.*, at para. 6.

10. *Id.*, at para. 6. This proceeding is the first of two decisions to resolve the disputed terms of interconnection between the carriers. The second decision will address cost-related issues requiring arbitration. *Id.*, at para 5.

11. *Id.*, at para. 1, emphasis supplied.

feasible point on the incumbent's network, to mean that CLECs have the right to interconnect at a single point per LATA.[12] Specifically, the Bureau declared that:

> *[u]nder the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA.* The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic. The interplay of these rules has raised questions about whether they lead to the deployment of inefficient or duplicative networks. The Commission is currently examining the interplay of these rules in a pending rulemaking proceeding. As the Commission recognized in that proceeding, incumbent LECs and competitive LECs have taken opposing views regarding application of the rules governing interconnection and reciprocal compensation.[13]

Thus, this decision confirms that, under the Commission's existing rules and interpretation of the *Act*, ALECs have the option to determine a single point of interconnection per LATA.

Q. Did the Bureau also address the issue of transport costs in the *Virginia Arbitration Decision*?

12. *Id.*, at para. 52.

13. *Id.*, footnotes omitted, emphasis supplied.

A. Yes, clearly it did. As paragraph 52 demonstrates, the Bureau also determined unequivocally that the incumbent is responsible for the costs associated with transporting a call originating on its network to the ALEC's POI. In doing so, the Bureau cited 47 CFR 51.703(b) as prohibiting LECs "... from charging any other carrier for traffic originating on that LEC's network ..."[14] Furthermore, the Bureau rejected Verizon's proposal attempting to establish multiple interconnection points ("IPs"), separate from the ALEC's POI, to serve as points at which the ALEC would become responsible for the costs associated with further transport on Verizon's network.[15] Thus, the Bureau has clearly stated in the *Virginia Arbitration Decision* that carriers are responsible for the transport of their own traffic over their networks up to the POI(s) chosen by the ALEC.

All of this supports the conclusion that ALECs are *entitled* to designate one and only one location at any technically feasible point within a LATA as their POI for that LATA, and the ILEC is *required* to transport traffic originated by its customers to be interchanged with the ALEC between the ILEC's end office switches and that POI, with the ALEC assuming the obligation to transport the traffic between the POI and the ALEC's end office switches. Nowhere is there any provision, either in the statute or in FCC rules, that would permit an ILEC to force interconnecting ALECs to establish a POI within each ILEC local calling area or to limit the ILEC's obligations with respect to reciprocal compensation to only those situations in which the POI is physically located

14. *Id.*, footnote 119, and para. 53, footnote 125.

15. *Id.*, at para. 53.

within the ILEC local calling area associated with the ILEC customer who originated the call. Furthermore, the respective transport obligations of the ILEC and the ALEC on either side of their POI must encompass *financial* responsibility for the associated costs of their transport as well as the physical transport activity itself.

This conclusion is also reinforced by considering the larger context of the *Act*. As a policy matter, it is unquestionable that the overriding purpose of the *Act* is to encourage competition in the local exchange market. That purpose would be frustrated if the ILEC could directly or indirectly force ALECs to incur costs to, in effect, duplicate the ILEC's ubiquitous legacy network. This anticompetitive result, however, is exactly what would occur if ALECs were forced to pick up traffic from the ILECs in multiple locations. It would also amount to the same thing, and have equally anticompetitive consequences, if the ILEC was able to shift financial responsibility for some or all of the transport costs incurred on its side of the POI to the ALEC, which is responsible for the transport that occurs on its side of the POI.

Q. Has this Commission issued any rulings that are consistent with Global NAPs' positions with respect to Issues 1 and 2?

A. Yes. In this Commission's generic proceeding on reciprocal compensation issues, it determined that ILECs are responsible for transporting their originating traffic to the

ALEC's single POI.[16] The Commission reasoned that because the ALEC also must bear the cost of transporting its originating traffic to the POI, the ILEC was not being placed at a disadvantage, and that requiring a terminating carrier to be held responsible for a portion of the transport costs of the originating carrier would "provide for asymmetrical recovery and, in addition, would appear to be contrary to 47 CFR 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on the LEC's network."[17] The Commission concluded that

> Based on the foregoing, we find that an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in the LATA. These rules require the originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.[18]

Q. Have any other state commissions determined that the ILEC is financially responsible for transport costs on its side of the single POI in each LATA?

A. Yes. In its *Order Resolving Arbitration Issues* between Global NAPs and Verizon New York last year, the New York Public Service Commission rejected Verizon New York's proposal (which was similar to Verizon Florida's in this case) and determined that the

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16. *Investigation into the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida Public Service Commission Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, Issued September 10, 2002 (*"Florida Reciprocal Compensation Order"*), at 25.

17. *Id.*, at 23-24.

18. *Id.*, at 24.

PSC would retain the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches their point of interconnection. As explained in that order:

> As to the allocation of transport costs, we have previously considered and rejected proposals resembling VGRIP. Verizon has provided no convincing basis to treat cost allocation at this time and under these circumstances differently here than we have with respect to carriers offering voice as well as data service. As there is no legal or regulatory authority at this time requiring modification of the allocation of costs for transport to the point of interconnection, the GNAPs position is adopted.
>
> Verizon relies upon §252(d)(1) of the 1996 Act as requiring GNAPs to compensate it for additional costs associated with interconnection at points chosen by Global. As we have recently determined, the Verizon VGRIP proposal is a fundamental change, requiring the divergence of the physical point of interconnection from the financial point. Under this plan, GNAPs would pay to have traffic originated by Verizon customers on Verizon's network hauled to the physical point of interconnection. We rejected this proposal recently, while recognizing that Verizon raised a legitimate concern. We rejected the proposal on the basis that not only would the competitor "pay for the transport of traffic associated with virtual NXX calls, it would also pay for the transport of traffic associated with its facilities-based local exchange business."[19]

The NYPSC also rejected claims that the Global NAPs arbitration presented a unique situation in that Global NAPs "appears to be overwhelmingly, if not entirely, a carrier for the provision of internet service."[20] Mr. D'Amico has implied in this case that

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19. *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York Inc.*, NYPSC Case No. 02-C-0006, Order Resolving Arbitration Issues, May 24, 2002 ("NYPSC Verizon-GNAPs Arbitration Order"), at 9.

20. *Id.*, at 9.

Global NAPs' network architecture presents an extraordinary situation.[21] To the contrary, what is "extraordinary" is Mr. D'Amico's suggestion that a CLEC's preferred network architecture or business plan should permit Verizon to avoid its interconnection obligations under the *Act* and FCC's rules. The NYPSC supports this position, noting that: "Our orders establishing the framework for competition, recognize that CLEC networks would, in all likelihood, not mirror the incumbent's."[22]

In its October 1, 2002, the Illinois Commerce Commission ("Illinois CC") released its final decision in the Global NAPs-Verizon arbitration case, and held that:

> "Each party here should assume financial responsibility for transport on its side of any POI established for the exchange of telecommunications traffic. Accordingly, the final sentence of section 2.1.1 of the 'Interconnection Attachment' to the Global Revision should be included in the interconnection agreement between the parties."[23]

Q. Are you aware of any other recent decisions in Verizon arbitrations with Global NAPs in which a state regulatory commission also rejected Verizon's position on Issues 1 and 2?

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21. D'Amico (Verizon) Direct Testimony, at 8-10.

22. NYPSC Verizon-GNAPs Arbitration Order, at 27. (Footnote omitted.)

23. *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South Inc., F/k/a GTE South Incorporated*. Illinois Commerce Commission Arbitration Decision. Docket 02-0253. Order ("*Verizon Illinois Arbitration Decision*"), at 11.

A. Yes. In its Verizon Illinois Arbitration Decision, the Illinois Commerce Commission ("Illinois CC") held that:

> Moreover, the question is not whether Verizon's proposal prohibits a single POI (it does not), but whether it imposes a penalty on that lawful option, thereby undermining it.
>
> The Commission finds that the VGRIP proposal is such a penalty. It is a direct response to Global's single POI proposal and is explicitly intended to increase the cost of that proposal to Global . By choosing the single POI option, Global is doing what the Federal Act allows. The Congress could have established a concomitant compensation scheme for the additional transport that a single POI necessitates, but did not do so. We will not second-guess the Congress on this point.[24]

Verizon's position on VNXX calls is discriminatory and anticompetitive in that the Company seeks to require that Global NAPs pay switched access charges for VNXX calls that physically terminate in a different local calling area, while pursuing its own product marketing strategies that effectively evade and avoid Verizon's own access charge practices.

Q. What is your understanding of Verizon Florida's position with respect to Global NAPs' use of so-called virtual NXX codes?

A. Mr. Haynes states that Verizon does not oppose Global NAPs' use of virtual NXX codes, only that if the physical locations of the calling and called parties (e.g., the Verizon customer who originates the call and the Global NAPs customer who receives

24. *Id.*,, at 10.

it) are not both within the same *Verizon* local calling area, then Global NAPs should be required to pay access charges to Verizon for such calls.[25]

Q. Is it feasible for Global NAPs to utilize virtual NXX codes under such conditions?

A. No. As posited by Mr. Haynes, not only would Global NAPs not be compensated for its work in completing calls *originated by Verizon customers*, it would be forced to *pay Verizon* for the privilege of doing so.

Q. Does Verizon Florida's demand that access charges be applied for calls placed by its customers to Global NAPs VNXX numbers also apply to ISP-bound traffic that is specifically addressed in the FCC's *ISP Remand Order*?[26]

A. That is not clear; certainly Mr. Haynes does not distinguish between ISP-bound calling and other types of calls in his testimony.

Q. Does the FCC's *ISP Remand Order* address the applicability of access charges on ISP-bound calls that extend beyond the ILEC's local calling area?

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25. Haynes (Verizon Florida), at 4.

26. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order,* FCC 01-131 (rel. April 27, 2001) ("*ISP Remand Order*").

A. Yes, and the imposition of access charges on such calls is expressly prohibited. At footnote 82 of the *ISP Remand Order*, the FCC states:

> ... Some have argued that 'information access' includes only certain specialized functions unique to the needs of enhanced service providers and does not include basic telecommunications links used to provide enhanced service providers with access to the LEC network. The MFJ definition of information access, however, includes the telecommunications links used for the 'origination, termination, [and] transmission' of information services, *and* '*where necessary*, the provision of network signaling' and other functions. Others have argued that the 'information access' definition engrafts a geographic limitation that renders this service category a subset of telephone exchange service. We reject that strained interpretation. Although it is true that 'information access' is necessarily initiated 'in an exchange area,' the MFJ definition states that the service is provided '*in connection with* the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services.' Significantly, the definition does not further require that the transmission, once handed over to the information service provider, terminate within the same exchange area in which the information service provider first received the access traffic.

(Emphasis in original, citations omitted.) Put simply, the FCC has determined that ISP-bound calls are interstate information access traffic, and has ruled that information access traffic is not subject to *intrastate* local calling areas or local/toll distinctions. Accordingly, *all* information access traffic is subject to the intercarrier compensation regime established by the FCC in the *ISP Remand Order*.

Q. Has this point been recognized by other state commissions?

A. Yes. On October 28, 2002, the New Hampshire PUC issued an order in its generic *Investigation as to Whether Certain Calls are Local*[27] in which it concluded (a) that the rating of ISP-bound calls as local has been preempted by the FCC in its *ISP Remand Order*, and that (b) one or more "Information Access NXX" ("IANXX") codes should be established specifically and solely for use in connection with ISP-bound traffic that would be rated as local from all exchanges within New Hampshire.

> In sum, for purposes of inter-carrier compensation, the FCC found that ISP traffic is information access service and jurisdictionally interstate. In addition, ISP traffic remains subject to the ESP exemption. Because the FCC determined that inter-carrier compensation for ISP-bound traffic is within its jurisdiction under 47 USCS §201, our consideration of the issues raised in this docket excludes any rulings regarding inter-carrier compensation for ISP-bound traffic.[28]
>
> . . .
>
> We will deal with this ISP-bound data traffic in a manner that promotes the public interest by fostering competition in a non-discriminatory marketplace. LECs wishing to carry information-access traffic outside of traditional local calling areas without incurring toll charges for the end user shall do so by using specific NXX blocks which will have statewide extended area service (EAS). This practice will serve the public interest by separately identifying federal jurisdictional traffic and state jurisdictional traffic and by creating an unconstrained pathway to information access. The process we intend to implement, as described below, is within our authority to direct the manner in which our jurisdictional telephone utilities serve their customers. *See* RSA 374:26. Arguments to the contrary about our jurisdiction are irrelevant, as we do not rely upon the authority delegated by the FCC for numbering conservation actions and we do not attempt to exercise authority over ISPs.

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27. *Investigation as to Whether Certain Calls are Local*, New Hampshire PUC Docket DT-00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, Docket DT-00-054, *Final Order*, No. 24,080, issued October 28, 2002.

28. *Id.*, at 44-45.

> We direct Staff to work with NANPA and the LECs to arrange for specified NXX blocks having statewide EAS, such service to be known as information access NXX (IANXX) service, that will be used only for information access traffic. All ISPs will be able to purchase IANXX service from any carrier. Carriers shall provide IANXX service only for information access traffic. Carriers shall obtain certification from their customers that such numbers will be used only for Internet-bound traffic. We will, as necessary, audit the carriers' certifications, and, in the event of an investigation, a carrier must demonstrate that, to its knowledge, the IANXX service was used as intended.[29]

The New Hampshire ruling substitutes a single LATA-wide "Information Access NXX" ("IANXX") code for the multiple VNXX codes that CLECs in that state had been using for purposes of achieving local rate treatment for ISP-bound calling. This was done for purposes of promoting number resource conservation, and is functionally the same as the use of multiple VNXX codes from the perspective of the calling party, the ALEC, and the ISP. The use of a "local from everywhere" NXX code for ISP access provides a competitively neutral result that is technically feasible (since Verizon has established such arrangements for inbound calls to wireless phones), consistent with the *ISP Remand Order* (by providing local call access to ISPs statewide), efficient in its use of numbering resources, and will assure the availability of Internet access on a local call basis in all parts of the state. This solution is clearly in the public interest, and should be adopted for Global NAPs in this arbitration and, more generally, for all LECs in the generic proceeding.

29. *Id.*, at 53-54.

Furthermore, the in its Verizon Illinois Arbitration Decision, the Illinois Commerce Commission ("Illinois CC") held that:

> Since we will not require either reciprocal compensation payments or access charges, the allocation of cost responsibility for virtual NXX traffic remains before us. In the Essex Telecom Order, the Commission instructed the parties "to adopt a bill-and-keep regime for FX-like calls between the two systems." We will do the same here. Under bill-and-keep, which is authorized under the Federal Act, Verizon will retain its local service revenues and Global will keep whatever it is able to charge for a virtual NXX. This arrangement is consistent with our determination, above, that each carrier will be responsible for its own transport to and from the parties' POI. It is similarly consistent with the Commission's directive in the Global-Ameritech Arbitration Order, at 15, that "each party should bear its own costs on its side of the POI for FX and FX-like traffic." As Verizon recognizes, it will incur no more additional cost for transporting a virtual NXX call to the POI than it does for transporting any other Global-bound local call to the POI, and we have already found that such additional cost will be trivial (footnotes omitted).[30]

Q. Is there any technical reason why a "local from everywhere" NXX code could not be established, as Global NAPs has requested?

A. There is no *technical* reason why ALECs need multiple NXX codes in order to provide a LATA-wide local call presence for their customers. In fact, for a number of years, Verizon has been providing LATA-wide locally-rated inbound calling interconnections to wireless carriers irrespective of the nominal rate center to which specific wireless NXX codes are assigned (see Attachment 1). That very same technique can be used for ALEC interconnections; were that done, ALECs such as Global NAPs would be able to

30. *Id.*, at 17.

offer their customers the same LATA-wide local presence that is presently accomplished by means of virtual NXX codes by instead utilizing a single LATA-wide code. At the present time, the use of virtual NXX codes is the only viable means by which Global NAPs has been able to compete with Verizon FX services and, in the case of ISP customers, with Verizon's Internet Protocol Routing Services. I would certainly urge the Commission to examine the use of single-number local calling on a LATA-wide or other extended area basis.

Q. In its recent *Reciprocal Compensation Order,* the Commission found that:

> We believe that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years. Differing network architectures necessitate differing methods of providing this service; nevertheless, we believe that virtual NXX and FX service are similar "toll substitute services." Therefore, we believe carriers should be permitted to assign NPA/NXXs in a manner that enable them to provision these competitive services.[31]

Does Verizon Florida 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?

A. No. If an ALEC customer dials a Verizon Florida FX number that is rated within the calling party's local calling area (as defined by Verizon's tariffs) but is physically delivered to a location outside of that local calling area, Verizon will *not* pay access

31. *Florida Reciprocal Compensation Order*, at 28.

charges to the ALEC. 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. Additionally, in its former Bell Atlantic and NYNEX operating areas, Verizon is already offering expanded inbound calling services that similarly do not involve the payment or imputation of any access charges.

While attempting to shut down ALEC competition in the market for dial-up ISP access services by imposing prohibitive access and transport charges on ALEC use of virtual NXX codes, Verizon has itself created a single "500" number statewide local calling mechanism for use by its own ISP affiliate, Verizon Online, and other ISPs under an arrangement that is not, as a practical matter, available to ALECs.

Q. To what expanded inbound calling services are you referring?

A. The Verizon service to which I have been referring is known generally as "Internet Protocol Routing Service" ("IPRS"). While initially introduced in the former NYNEX (Verizon-North) and Bell Atlantic (Verizon-South) regions, Verizon has announced plans to introduce IPRS throughout its entire footprint:

> At this point, IPRS is offered only in the former Bell Atlantic footprint. However, planning for deployment in the former GTE footprint is currently underway. We plan to offer one nationwide IPRS tariff covering both the

former Bell Atlantic and former GTE areas, making the pricing and terms consistent across the entire Verizon footprint.[32]

Q. What is IPRS, and how does it work?

A. I have reproduced portions of Verizon's FCC Tariff Nos. 1 and 11 pertaining to IPRS in Attachment 2 to my testimony. Tariffs 1 and 11 are Verizon's Interstate Access tariffs covering, respectively, the former Bell Atlantic (Tariff 1) and NYNEX (Tariff 11) regions.[33] The descriptions and rates for IPRS contained in the two tariffs are substantially the same. The specific feature of IPRS that is a direct competitor to Global NAPs' use of virtual NXX codes is known as "Primary Rate Interface Single Number Service" ("PRI SNS"). Verizon's PRI SNS product description is reproduced in Attachment 2 to my testimony.

Verizon has obtained, from the North American Numbering Plan Administration ("NANPA"), the '699' NXX code in the '500' Service Access Code ("SAC"). Verizon has designated all calls to '500-699-XXXX' numbers as "local" when originated from any telephone within the geographic area served by an IPRS "LATA Hub." Calls to the IPRS '500-699-XXXX' "will only work with [Verizon] NPA-NXX end offices equipped

32. *Verizon ISP Markets Market Talk*, June 2001, available at www22.verizon.com/ispmarkets/ fifth/files/market_talk.pdf (Reproduced in Attachment 2 hereto.)

33. Verizon's IPRS offering can be found in FCC No. 1 for the states of MD, VA, WV, DE, PA, NJ, and DC; Verizon's IPRS offering can be found in FCC No. 11 for the states of CT, NY, MA, ME, NH, RI, and VT.

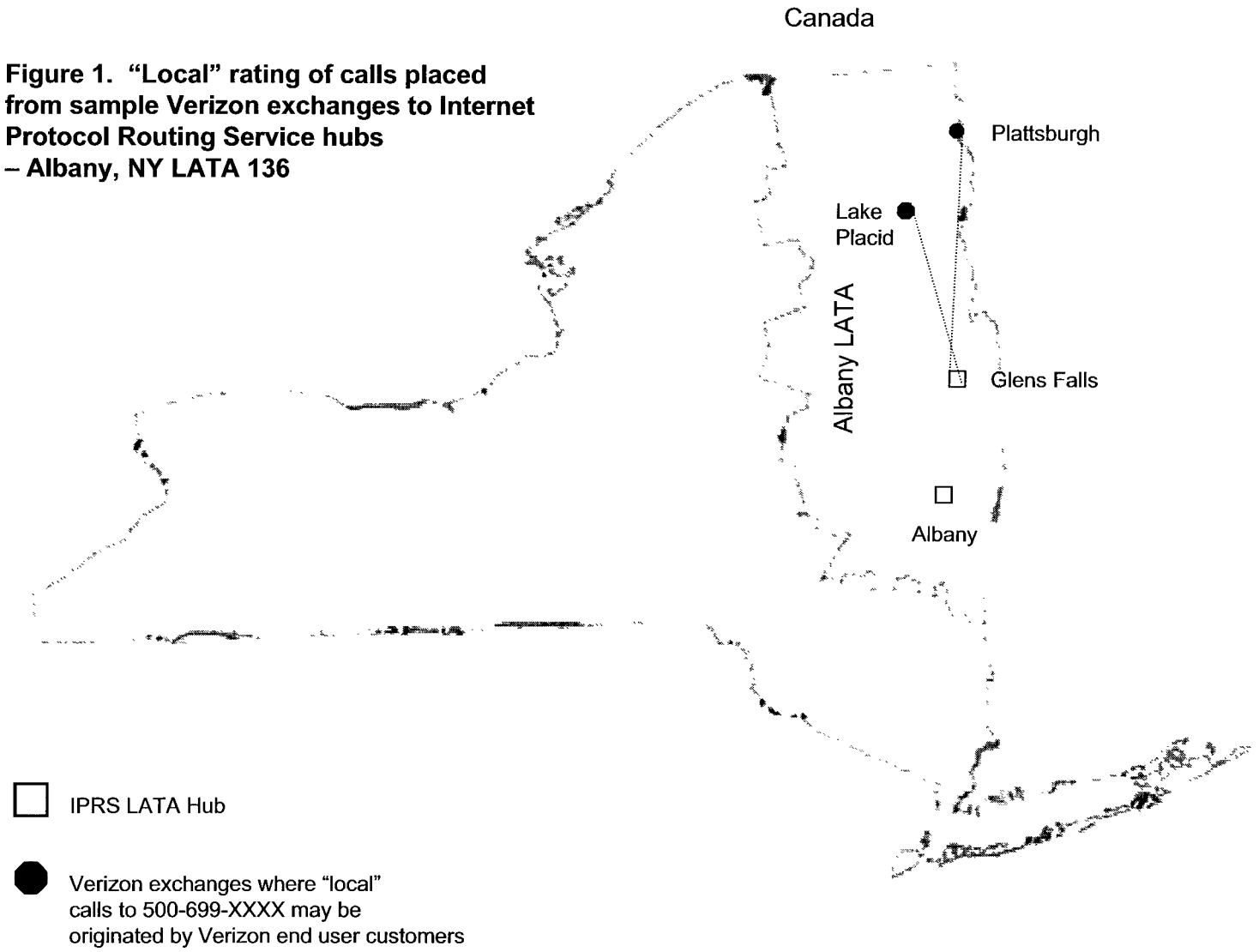
with the Advanced Intelligent Network (AIN) platform."[34] "Calls to the SNRS [500] number will be charged to the originating party as a local call.[35] The call is transported over the Public Switched Telephone Network ("PSTN") as an ordinary voice call from the originating telephone to the IPRS LATA Hub. At the IPRS LATA Hub, calls from throughout the serving area of the LATA Hub are aggregated and converted to digital form, where they are transported to the site designated by the ISP. While dedicated facility transport charges do apply for the portion of the call *between the LATA Hub and the ISP*, there are no access or transport charges for the portion of the call that is carried over the PSTN, i.e., between the calling party and the IPRS LATA Hub. Significantly, the distances involved with respect to the PSTN portion of the call can extend well beyond the originating party's local calling area.

For example, the Albany, New York LATA 134 stretches approximately 200 miles from Selkirk, New York (south of Albany) to the Canadian border (see Figure 1 below).

34. Maine PUC Docket No. 98-758, Verizon response dated September 20, 2002, to GNAPs Request 1-1.

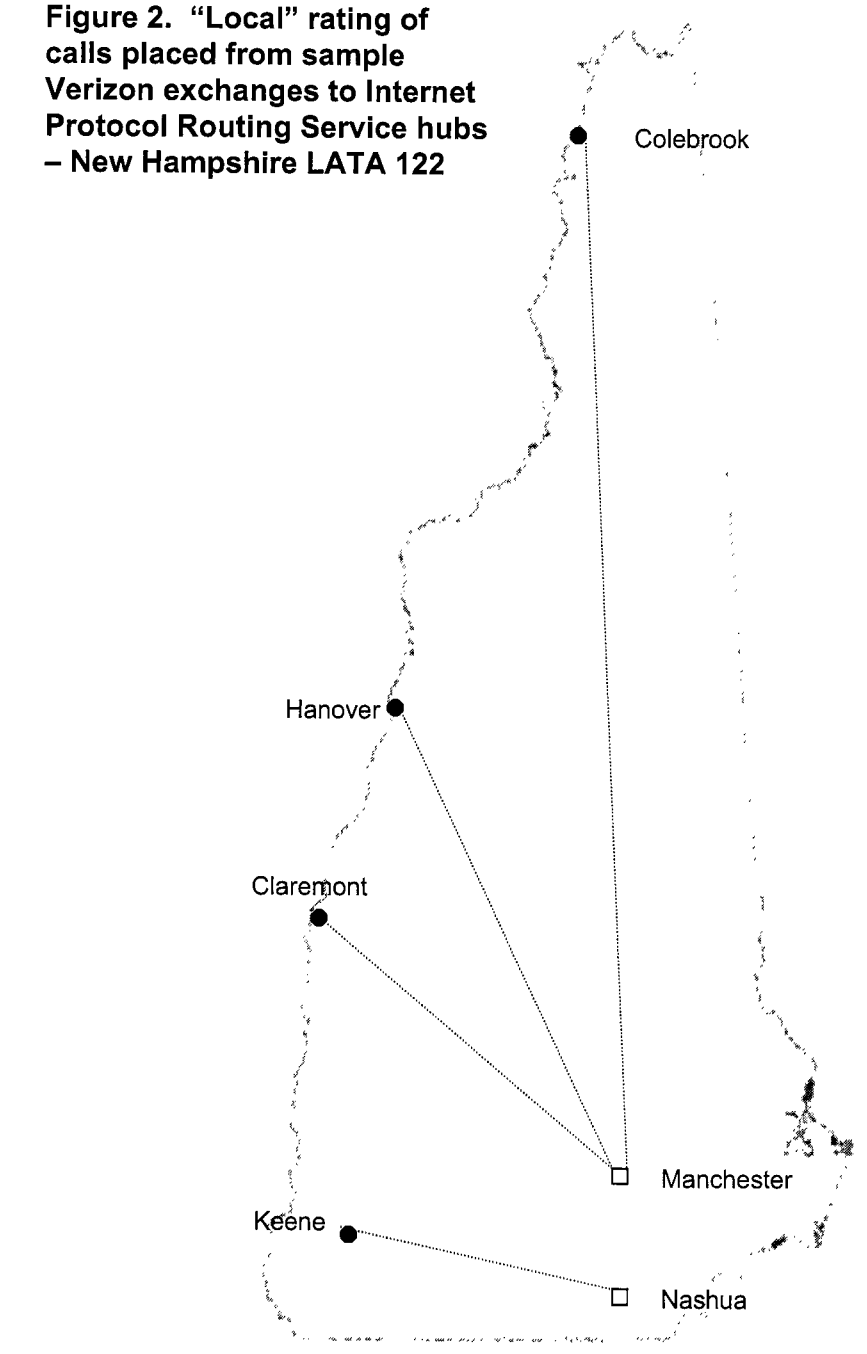
35. *Id.*

Figure 1. "Local" rating of calls placed from sample Verizon exchanges to Internet Protocol Routing Service hubs – Albany, NY LATA 136



Verizon has established only two IPRS hubbing points in the Albany LATA, one in Albany and a second in Glens Falls, about 40 miles to the north. Similarly, the entire state of New Hampshire, which is a single LATA (LATA 122), also has only two IPRS hubs, one in Nashua just over the Massachusetts border, and a second in Manchester, about 15 miles north (see Figure 2). *In both of these cases, which are fully representative of the IPRS hub deployments across the former Bell Atlantic footprint, "local" calls to the IPRS 500-699-XXXX numbers can involve transport distances of well in excess of 100 miles*, distances that far exceed the extent of any normal local calling areas in the various Verizon jurisdictions.

Figure 2. "Local" rating of calls placed from sample Verizon exchanges to Internet Protocol Routing Service hubs – New Hampshire LATA 122



Q. But aren't these "500" calls the same as "800"-type toll-free calls?

A. No, they are distinctly different. 800-type calls (i.e., 800/888/877/866) are in all cases "toll" calls that are subject to applicable switched access charges at both the originating and terminating ends of each call, *even if the two end-points happen to be physically located within the same local calling area.* 800-type calls and their associated switched access charges are billed on a usage-sensitive basis. The calling party is never charged for calls to 800-type numbers, even if placed from a local measured-service access line. If called from a payphone, no coin drop is required to reach an 800-type number, and payphone owners receive compensation from the IXC that provides the 800-type service for such calls. And, for purposes of 47 CFR Part 36, the FCC's Jurisdictional Separations Rules, calls to 800-type numbers would be classified as "toll."

Verizon's treatment of calls to its 500-699-XXXX numbers is drastically different. First, if placed from a Verizon telephone, all such calls are always "local" even if the IPRS LATA hub (where the PSTN portion of the call physically terminates) and/or the ultimate location where the call is physically delivered to the ISP are outside of the calling party's local calling area. If the caller had measured local service, a local message charge would apply. If the call were placed from a payphone, a coin drop would apply. If customers in Bartow or Venice, as the case may be, had selected, for example, AT&T as their intraLATA Presubscribed Interexchange Carrier ("PIC"), the calls — even though traversing what is unambiguously a toll route — would still be

carried by Verizon and would *not* be handed-off to AT&T.[36] Further, for purposes of Jurisdictional Separations, this usage would be classified as "local," not as "toll."

Q. What charges would the IPRS customer — i.e., the ISP — pay for the PSTN portion of these IPRS 500-number calls?

A. Verizon's FCC Tariff 11, at Section 17.5.1, states as follows:

> The customer has the option of utilizing, as a feature of IPRS, Single Number Routing (SNR) in lieu of local telephone numbers, which are included as part of IPRS. This option provides for all end users in a defined geographic area (i.e., a LATA) to have access to the customer via one specialized telephone number. The end user can initiate a call within the service area to the customer, and the call will be treated as a local call by the Telephone Company for the connection and duration of the call. This option (which is assigned USOC NS01X) is part of the standard IPRS offering and is included in the rates and charges at no additional charge.

Verizon's Interstate Access Tariff FCC No. 11, Original Page 31-312, provides the per-port charges for IPRS "dial-up" ports, which can be as low as $29 per month based upon a 5-year term commitment and port volumes of up to 75,500. By contrast, Verizon's monthly rate for an ordinary flat-rate multiline business local exchange service access line in New Hampshire, for example, including all applicable Subscriber Line Charges, Universal Service Charges, Local Number Portability charges, and the like, is $54.89 per

36. Mr. Haynes confirms that the call would not be handed off and is carried entirely on Verizon's network. Haynes (Verizon NH) New Hampshire Direct Testimony, at 46.

month.[37] Indeed, even the monthly local multiline Verizon New Hampshire business *measured-rate* access line rate - which might be used by a customer with primarily inbound calling requirements and from which inbound local calling is strictly limited to the local calling area associated with that measured business line — is $31.12, which is still *higher* than the $29 charge per IPRS "port" that offers unlimited inbound statewide toll-free "local" calling. The corresponding Verizon Florida *measured* business line rate, including the SLC and all other surcharges is $37.11 or $42.70[38] per month, depending upon rate group. Both of these rates also easily exceed the $29 flat-rate IPRS "port" charge under a five-year term contract. The inbound 500-number service also offers its customers unlimited LATA-wide toll-free inbound calling. There is no additional "transport charge" for hauling the call from the exchange where it is

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37. This number is a total of the Basic Exchange Business subscriber line charge (Unlimited 1 party for Rate Group C - business line charges range from $27.74 to $44.67 depending on the customer's rate group classification), End user Common line charge, primary interexchange carrier charge, service provider number portability per month charge and the basic FUSF surcharge. The Verizon Telephone Companies Tariff FCC No. 1, Access Service, section 4.1.7.4 (H) 1., 5th revised page 4-21 effective July 13, 2002 and 6th revised page 4-23 effective July 1, 2001, The Verizon Telephone Companies Tariff FCC No. 1, Access Service, section 13.3.16 (F), effective April 28, 2001, Verizon - Maine Inc., Tariff No. 83 Exchange and Network Services, Part M, Section 1.5.1, page 16, effective 3-07-01.

38. This number is a total of the Basic Exchange Business subscriber line charge (Unlimited 1 party for Rate Group C - business line charges range from $24.47 to $30.06 depending on the customer's rate group classification), End user Common line charge, primary interexchange carrier charge, service provider number portability per month charge and the basic FUSF surcharge. The Verizon Telephone Companies Tariff F.C.C. No. 14, Facilities for Interstate Access, Section 13.11, 10th Revised Page 13-6, Effective October 26, 2002; Section 12.4.5, 10th Revised Page 12-15, Effective October 26, 2002; Section 12.5, 9th Revised Page 12-22, Effective October 26, 2002; Verizon Florida Inc., General Services Tariff, Section A3.2, 19th Revised Page 1, Effective July 1, 2002; NECA F.C.C. No. 5, Access Service Tariff, Section 17.1.3(C), 24th Revised Page 17-3, Effective August 1, 2002.

originated to the IPRS hub. In fact, the only "transport charge" associated with IPRS service is for the portion of the call *between the IPRS Hub and the point of delivery to the ISP*. Verizon's Tariff 11 makes this clear:

> The Telephone Company's IP (Internet Protocol) Routing Service, IPRS, provides for the collection, concentration and management of the customer's data traffic within a LATA. IPRS consists of network routers located at LATA hub sites that will collect the customer's end user data traffic and *concentrate it for connection and transport over the Telephone Company's fast packet data network* to a customer's designated location. (Emphasis supplied.)

As the tariff language confirms, the "transport" for which specific charges apply is to carry the ISP's traffic *from the IPRS LATA hub sites* to the ISP's designated location. The "transport charge" that Verizon Florida seeks to apply for calls handed-off to Global NAPs *is for the portion of the call between the Verizon Florida end user and the point of interconnection with Global NAPs*. As Figure 3 demonstrates, this segment of a Verizon-to-Global NAPs call is *identical* in every material respect to the PSTN segment of a Verizon IPRS call — the segment from the calling party to the IPRS LATA Hub. Yet in the case of calls handed-off to Global NAPs, Verizon is insisting not only on being compensated for transport beyond the local calling area, but for access charges as well.

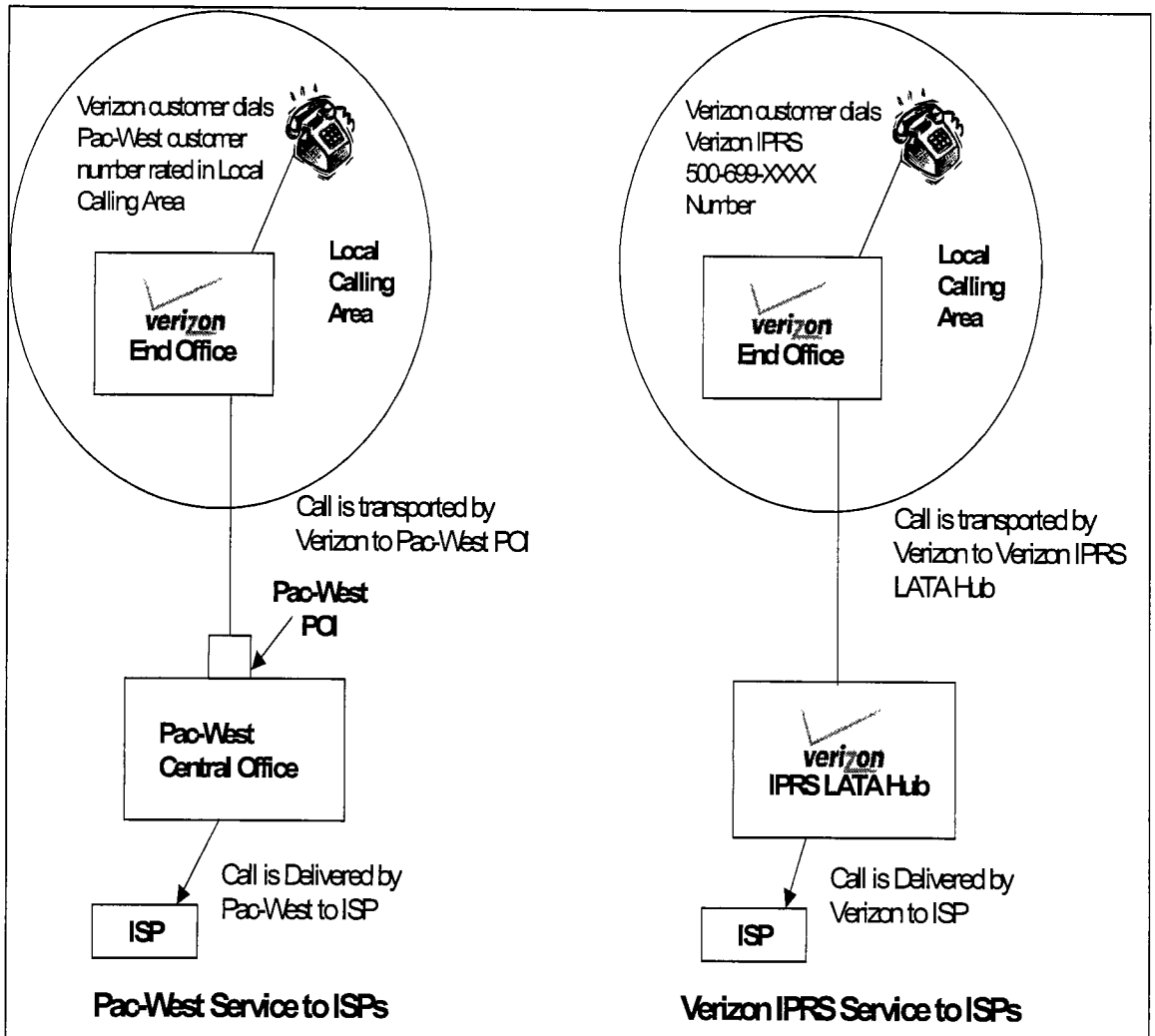

Figure 3. Comparison of transport provided over the Verizon network for IPRS calls vs. virtual NXX calls handed off to single LATA-wide CLEC point of interconnection

Q. Do any access charges apply with respect to Verizon IPRS calls that involve transport beyond the calling party's local calling area?

A. No. Mr. Haynes' New Hampshire testimony confirms this[39] and the point was also clarified in a Verizon-New York response to an on-the-record information request in the recent Global NAPs arbitration.[40] As the response confirmed, calling *to the IPRS hub* from an end user's dialtone line is rated as local and involves no usage-based or other transport, toll, or access charges:

> By purchasing the IOF at the rates in the NYPSC No. 1, the originating caller dialing an ISP served via a PRI HUB purchaser can send a call beyond the local calling area without incurring additional toll charges. A PRI HUB customer (CLEC/ISP) must also purchase dedicated high speed access facilities from the PRI HUB to the (CLEC/ISP) customer premises equipment in order to complete the call. PRI HUB rates do not include the price of access to a phone line (i.e., the end user must still buy local phone service to get dialtone).[41]

Q. Do access charges apply if an IPRS call goes beyond the local calling area of the calling party?

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39. Haynes (Verizon NH) Direct Testimony, at 45-47.

40. Verizon New York's Responses to Global NAPs Data Requests, April 11, 2002 (e-mail from Verizon New York counsel Kimberly Newman to Global NAPs counsel Jim Scheltema, ALJ Stein, et al), NYPSC Case No. 02-C-0006.

41. *Id.*, at 2.

A. No. The IPRS subscriber pays only the $29 dial-up port charge and pays no usage-based transport or access charges for receiving inbound calls placed by Verizon end user subscribers to the IPRS 500-699-XXXX number, even if and especially if those calls extend beyond that end user's normal local calling area.

Q. In recent arbitration proceedings between Global NAPs and Verizon, Verizon has attempted to suggest that Global NAPs' use of VNXX numbers amounts to Foreign Exchange (FX) service, for which Verizon applies transport charges.[42] As such, Verizon argues that Global NAPs should compensate Verizon for the its use of VNXX service just as end users compensate Verizon for Foreign Exchange (FX) services. In view of Verizon's planned deployment of IPRS, is the comparison that Verizon seeks to draw as between Global NAPs' VNXX offerings and Verizon's FX service the appropriate one?

A. No. In fact, VNXX arrangements of the type being offered by Global NAPs are *exactly analogous* to Verizon's designation of the 500-699 SAC-NXX as "local" when dialed

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42. See, *e.g.*, *In the Matter of Global NAPs North Carolina, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon South, Inc. f/k/a GTE South Incorporated*, North Carolina Utilities Commission Docket No. P-1141, Sub 1, Direct Testimony of Terry Haynes on behalf of Verizon South Inc., May 14, 2002, at 29; *Petition of Global NAPs Ohio, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc f/k/a GTE North Incorporated*, Ohio Public Utilities Commission Case No. 02-876-TP-ARB, Response of Verizon North Inc. To the Petition for Arbitration of Global NAPs Ohio, Inc., May 6, 2002, at 48; *In the Matter of Global NAPs, Inc. Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon-Pennsylvania,* Pennsylvania Public Utility Commission Docket No. A-310771, Direct Testimony of Terry Haynes on behalf of Verizon Pennsylvania, April 23, 2002, at 28-29.

from Verizon telephone lines. Whereas Verizon FX service usually (but not always) involves a dedicated private line between the "virtual" rate center where the FX NPA-NXX is homed and the physical location of the FX customer, Verizon's IPRS 500-699 Single Number Service utilizes *exactly the same type of public switched network common transport* that Verizon utilizes in transporting calls originated by its end user customers to the Global NAPs POI. And while Verizon may apply toll charges for ordinary calls placed by its *retail* customers that are directed to points outside the customers' local calling areas, it applies no toll, access, or any other form of transport charge for hauling the IPRS calls from the originating Verizon end user to the IPRS LATA Hub. IPRS is thus *not* like FX service, because FX service as offered by Verizon involves specific mileage-based charges, and is not like other "toll-free" services, such as 800/888 type services, because these involve usage-based toll-like charges and, where provided by Verizon, require imputation of switched access charges as well.

Q. Are there ISPs currently utilizing Verizon's Internet Protocol Routing Service and the associated 500-699-XXXX "local" numbers?

A. Yes. I am aware of at least one such ISP, which happens to be Verizon's own ISP affiliate, Verizon Online. Verizon Online offers its dial-up subscribers not just LATA-wide or statewide access, but *region*-wide single-number local call access via a uniform number, 500-699-9900 (see Attachment 3). Calls to 500-699-9900 are rated as "local calls" from wherever originated, *provided that the originating telephone line is served by Verizon.* In other words, an ALEC or an independent company customer would not

be able to dial the Verizon Online "500" number on a local call basis or, for that matter, might not be able to dial it at all.

Q. Is Verizon actively marketing IPRS to other, non-affiliated ISPs?

A. Indeed it is. As demonstrated in the product descriptions reproduced in Attachments 2 and 3, not only is Verizon promoting this service to ISPs, it has even created a specific "migration plan" for ISPs to move from ALEC virtual NXX dial-up arrangements to the single 500-699-XXXX number:

> In order to minimize any disruption of service to the ISP's customers, Verizon would redirect the (Verizon) assigned lead dial access numbers currently in use today to the new PRI trunk groups by using the AIN 10-digit trigger. As a future enhancement, for those TNs assigned to the ISP by CLECs (TCG, Brooks Fiber, NE PA Telephone, TC NY NJ, Peco Hyperion, etc.), Verizon would trigger on the dialed numbers using the local number portability (LNP) platform and direct those calls to the new PRI trunk groups. Once the conversion was complete, all traffic would be directed to ISP over the PRIs terminated in each sector hub, and the old PRIs could be disconnected. Verizon would be able to provide ISP with a hub homing table to NPA-NXX cross-reference table to assist in the sizing of the PRI trunk groups.

Q. Couldn't Global NAPs or any other ALEC offer its ISP customers similar "500" number services that would also enable those ISPs to offer their dial-up subscribers local call access LATA-wide or beyond?

A. In theory they could, but as a practical matter it is extremely unlikely that any rational ISP would actually order such service from an ALEC. The reason for this is that to

reach the "500" number the calling party must also be served *by the same local carrier as the "500" number subscriber* (i.e., the ISP). Inasmuch as no single ALEC currently serves more than a tiny fraction of the total access line market,[43] ALEC-provided "500" numbers would be *inaccessible* from all but an insignificant fraction of the potential ISP customer base.

The only practical means by which Global NAPs or other ALECs can compete with Verizon for ISP business is through the use of virtual NXX codes, which can be dialed from *any* telephone, served by *any* local carrier. If ALECs are denied the ability to utilize virtual NXX codes as a means for competing in this market, or are subject to transport, access or other charges that are not applicable for Verizon's own competing offering, the dial-up Internet access market will quickly be conceded to, and will ultimately be monopolized by, Verizon.

Q. Aside from the obvious impact upon ALEC competition, are there any other implications of allowing Verizon to acquire a *de facto* monopoly of the market for dial-up ISP access through its provision of these "500" numbers?

A. Indeed there are. Because these Verizon "500" numbers can only be dialed from *Verizon* telephones, Verizon would be in the position of creating what may be viewed as

43. A recent FCC report indicates that as of June 30, 2002, less than 10% of end-user switched access lines in Florida were served by ALECs; there were 19 reporting ALECs. FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002*, December 2002, Table 6 and Table 10, respectively.

a *de facto* tying arrangement (in the antitrust sense of the term) between its regulated local exchange service and its nonregulated ISP, Verizon Online. Indeed, even if other ISPs who currently utilize ALEC services are forced to migrate to Verizon because those ALECs will no longer be able to offer virtual NXX local call access, then *end users* of dial-up ISP services will be forced to take their local phone service from Verizon in order to obtain local call access to their ISP — whether that ISP is Verizon Online or a non-affiliated provider that has subscribed for Verizon "500" number service because it can no longer obtain virtual NXX calling arrangements from an ALEC.[44]

The point is that Verizon's introduction of "500" number local calling for dial-up Internet use is clearly the Company's response to ALEC competition in the ISP access market. But by restricting the use of these "500" numbers to Verizon local service customers only while at the same time attempting to shut down ALECs' use of virtual NXX serving arrangements, Verizon not only recaptures the ISP market, but forces individual consumers to abandon their ALEC-provided residential and small business services in order to obtain local Internet access at all.

As the marketing and service strategies of Verizon confirm, Verizon outrageously and disingenuously asks this Commission and other state regulatory commissions to *reject*

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44. In this case, the "tying" product is the Verizon IPRS/Verizon Online service, which Verizon will come to monopolize if ALECs are not permitted to compete with IPRS using dialable NANP numbers (either a VNXX or a "local from everywhere" NXX code), and the "tied" product is basic exchange service, which is (in theory) being offered by ALECs in competition with Verizon. If customers are only able to call ISPs from Verizon telephones, they will be forced to buy local exchange service from Verizon as a condition for accessing an ISP on a local call basis.

LEC use of virtual NXX numbers and "local from everywhere" numbers *while proceeding with its own plans to develop and to deploy essentially the same type of services with the same no-transport-charge features*. All of the various arguments regarding "compensation" for ILEC transport and concerns about universal service apply equally to these ILEC-provided serving arrangements, yet the ILECs are proceeding to embark upon precisely the same service strategies apparently with little regard for these same concerns.

Q. What is the solution — should the Commission *prevent* the ILECs from offering these ISP-oriented services?

A. Only if the Commission prevents Global NAPs and other ALECs from providing the same types of services, but that would mean that dial-up ISP access would not be available outside of the principal Florida population centers.

Instead, the Commission should allow for these services, and allow Global NAPs the ability to offer like services, such as the ability to deploy VNXX numbers without being required to apply toll charges for such calls or, preferably, define a single NXX code in each LATA calls to which will be rated as local when originated from any exchange within Florida, just as Verizon plans to use of 500-699-XXXX numbers in connection with its IPRS affords Verizon's ISP customers (including its own affiliate) the ability to offer dial-up access on a local call basis statewide. Competition is expected to spur innovation in services and pricing. If ALECs and ILECs are prevented from offering

these services to ISPs, then consumers in more rural areas of Florida will be denied local dial access to the Internet. I am in no way suggesting that the Commission prevent Verizon from deploying IPRS, but it is unfair and highly inappropriate for the Commission to impose costs and burdens upon ALECs with respect to these services while permitting Verizon to pursue them without suffering similar restrictions.

Q. Is IPRS or SNRS current being offered by Verizon in Florida?

A. No, not to my knowledge. Nevertheless, the fact that Verizon *is* providing this service in other states, coupled with its stated intent to roll out the service throughout its entire footprint, serves to place the issue squarely before this Commission. The Commission should not permit Verizon to prevent ALECs from competing with a service that Verizon clearly intends to introduce at some point in Florida. Verizon should also not be permitted to escape Commission examination of the relationship between IPRS and the VNXX issue in this arbitration merely because, as of this particular date, Verizon has not itself introduced IPRS in this state. The *possibility* that Verizon will introduce IPRS or some other type of inbound calling service at any time during which the Global NAPs Interconnection Agreement will be in effect is by itself sufficient justification for the Commission to examine and address this disparity at this time. IPRS, like FX, competes directly with ALEC services that are based upon VNXX number assignment, and it is essential, in order to assure competitive neutrality, that identical compensation arrangements be applied with respect to all of these competing services.

Q. Why do you believe that the fact that Verizon is currently providing IPRS *outside of Florida* is relevant to the issues in this Arbitration?

A. The existence of IPRS as a Verizon service offering goes directly to several of the enumerated issues in this Arbitration, *viz.*, Issue 3 (basis for distinguishing "local" vs. "toll" calls and treatment of calls to so-called "virtual" NXX numbers), and Issue 4 (responsibility for transport costs on each carrier's side of a single POI per LATA). Verizon Florida's corporate parent has *announced* that "planning for deployment in the former GTE footprint is currently underway" and that Verizon "plan[s] to offer one nationwide IPRS tariff covering both the former Bell Atlantic and former GTE areas, making the pricing and terms consistent across the entire Verizon footprint."[45] IPRS *when offered by Verizon Florida* would compete for the very same ISP business that GNAPs currently serves by means of VNXX numbering arrangements, which Verizon Florida is attempting in this arbitration to "tax" out of existence through the imposition of access and transport charges. Verizon's IPRS will provide *exactly the same type of transport beyond the calling party's local calling area* without any access or transport charges either to the ISP or the ISP's end user customer. Whatever erosion of Verizon Florida toll and access revenues the Company claims to result from GNAPs' VNXX calling *will occur in exactly the same way* once Verizon Florida introduces IPRS to the ISP market.

45. *Verizon ISP Markets Market Talk*, June 2001 (Reproduced in Attachment 2 hereto).

Verizon has presented GNAPs with a "template agreement" that it uses throughout its entire Bell Atlantic/NYNEX/GTE footprint. Global NAPs should not be expected to operate its business oblivious to current market conditions and trends. Verizon *is* offering IPRS outside of Florida. Based upon Verizon's own announcements, Global NAPs has every basis to expect that Verizon Florida *will* be introducing IPRS *in Florida* within the term of this interconnection agreement. There are no technical impediments that I am aware which may otherwise preclude Verizon from offering IPRS in Florida.

Verizon's opposition to an ALEC's right to establish its own local calling areas and to utilize virtual NXX services is an attempt to deter competition in the local exchange market and thereby to protect its retail services from innovative offerings.

Q. Verizon witness Haynes claims that Verizon does not dispute Global NAPs' right to define its retail local calling areas as broadly as it wishes, but contends that nevertheless, "[t]he Commission should maintain the status quo–that is, approve use of Verizon's local calling areas for purposes of applying intercarrier compensation."[46] Does Verizon's position raise anticompetitive concerns?

A. Yes, it certainly does. As I explained in my Direct Testimony,[47] as an economic matter, the local/toll rating distinctions maintained by Verizon and other ILECs are no longer supported by significant distance-based cost differences between "local" and "toll" calls, and they would not be sustainable in a fully-competitive marketplace. Verizon is able to

46. Haynes (Verizon) Direct Testimony, at 5, lines 4-6.

47. Selwyn (Global NAPs) Direct Testimony, at 51-52.

maintain the distinction between "local" and "toll" rate treatment solely 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. However, the economic effect of this policy is to protect Verizon's *retail* prices by preventing competitors from offering comparable services under structurally different pricing regimes.

The prevailing distinction between "local" and "toll" is a *retail pricing issue* that is an artifact of the ILECs' historic monopoly and their network architectures and technological conditions that are no longer applicable. There is no reason why competitive marketplace forces should not be permitted to expand or otherwise reshape the traditional definition of "local calling" and perhaps to eliminate the notion of "intraLATA toll" altogether as has already been done for wireless services, especially given that call distance no longer influences costs in the manner that it did when the "local" versus "toll" pricing distinction was first established.

In fact, 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. Also, as I have noted, the Company's future offering of "500" number services is an attempt by Verizon to further impede competition.

Significantly, Mr. Haynes candidly admits that Verizon's opposition to Global NAPs on Issues 3 and 4 is motivated specifically by this concern that Verizon would be placed "at a competitive disadvantage with regard to intraLATA toll calling" under GNAPs' proposal.[48] Mr. Haynes' solution is to have the Commission protect Verizon from the potential revenue losses that Global NAPs might cause it to endure if Global NAPs is successful in competing against it. However, to the extent they arise, those competitive losses represent an *opportunity cost* precisely in the manner spelled out in the FCC's rules,[49] and the FCC is correct in forbidding ILECs from extracting them from ALECs via their reciprocal compensation arrangements.

48. Haynes (Verizon) Direct Testimony, at 9, lines 19-20.

49. *See* 47 CFR §51.505(d)(3): "Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements."

Q. In his testimony, Mr. Haynes contends that basing reciprocal compensation on the originating carrier's retail local calling area would not be "competitively neutral" in that it would afford different treatment to ALECs, ILECs and IXCs.[50] Do you agree?

A. No. As a threshold matter, the FCC long ago deviated from "competitive neutrality" with respect to "local calling areas" and the application of access charges as between wireline and wireless carriers.[51] Wireless carriers are not subject to access charges, and may exchange traffic with wireline carriers via reciprocal compensation, for all calls initiated by their customers to points within the same "Major Trading Area" ("MTA").[52] A map of the Florida MTAs is reproduced as Figure 4 below. Florida is divided into four MTAs. The South Florida MTA covers roughly the southern one-third of the state, running from Key West to Fort Myers on the west coast to Vero Beach on the east coast. The Central Florida MTA embraces virtually all of the Verizon Florida service area, running from Sarasota to Ocala, including the Tampa-St. Petersburg metropolitan area, and across the state to south of Melbourne to north of Daytona Beach. The North

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50. Haynes (Verizon Florida), at 15-16.

51. Compare 47 CFR §51.701(b)(1) with (b)(2). 47 CFR §51.701(b)(2) holds that reciprocal compensation, *not* access charges, apply with respect to "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area ..." Major Trading Areas ("MTAs") are *not* defined relative to the ILEC's local calling areas and in fact are typically much broader than ILEC local calling areas.

52. 47 CFR §24.202(a) relies upon the delineations of Major Trading Areas as set forth in the standard *Rand McNally Commercial Atlas & Marketing Guide.*, *See*, e.g., *1994 Rand McNally Commercial Atlas and Marketing Guide*, 125th Edition, Copyright 1994, Rand McNally Publishing, at 39.0

Florida MTA includes Jacksonville, Gainesville, Tallahassee and Panama City, and well as a large area of southern Georgia. And Pensacola is included in a multi-state MTA that includes parts of southern Alabama, southern Mississippi, and the southern half of Louisiana, including New Orleans, Baton Rouge, and Lafayette. Calls to or from wireless phones both ends of which fall within the same MTA but not within the same ILEC local calling area are not subject to access charges and are treated as "local" for reciprocal compensation purposes. Note that the various Florida MTAs extend well beyond LATA boundaries. Verizon Florida's affiliate, Verizon Wireless, and other ILEC-affiliated wireless carriers, are thus able to, and do, offer their customers expanded local calling without having to pay access charges to complete many of these calls. Indeed, this "free long distance" feature has become a central focus of Verizon Wireless' marketing strategy. Consumers are using their wireless phones to place what would otherwise be "toll" calls,[53] and such use has the same impact upon Verizon Florida's ability to support universal service as would a policy that similarly permits an ALEC to offer expanded local calling without having to pay access charges to the ILEC that terminates the call. Mr. Haynes' position seeks to protect Verizon Florida and Verizon Wireless from ALEC competition, and nothing more. The Commission should dismiss Mr. Haynes' transparent argument, and reaffirm its decision in the generic docket that reciprocal compensation will apply on all calls defined as "local" by the originating carrier.

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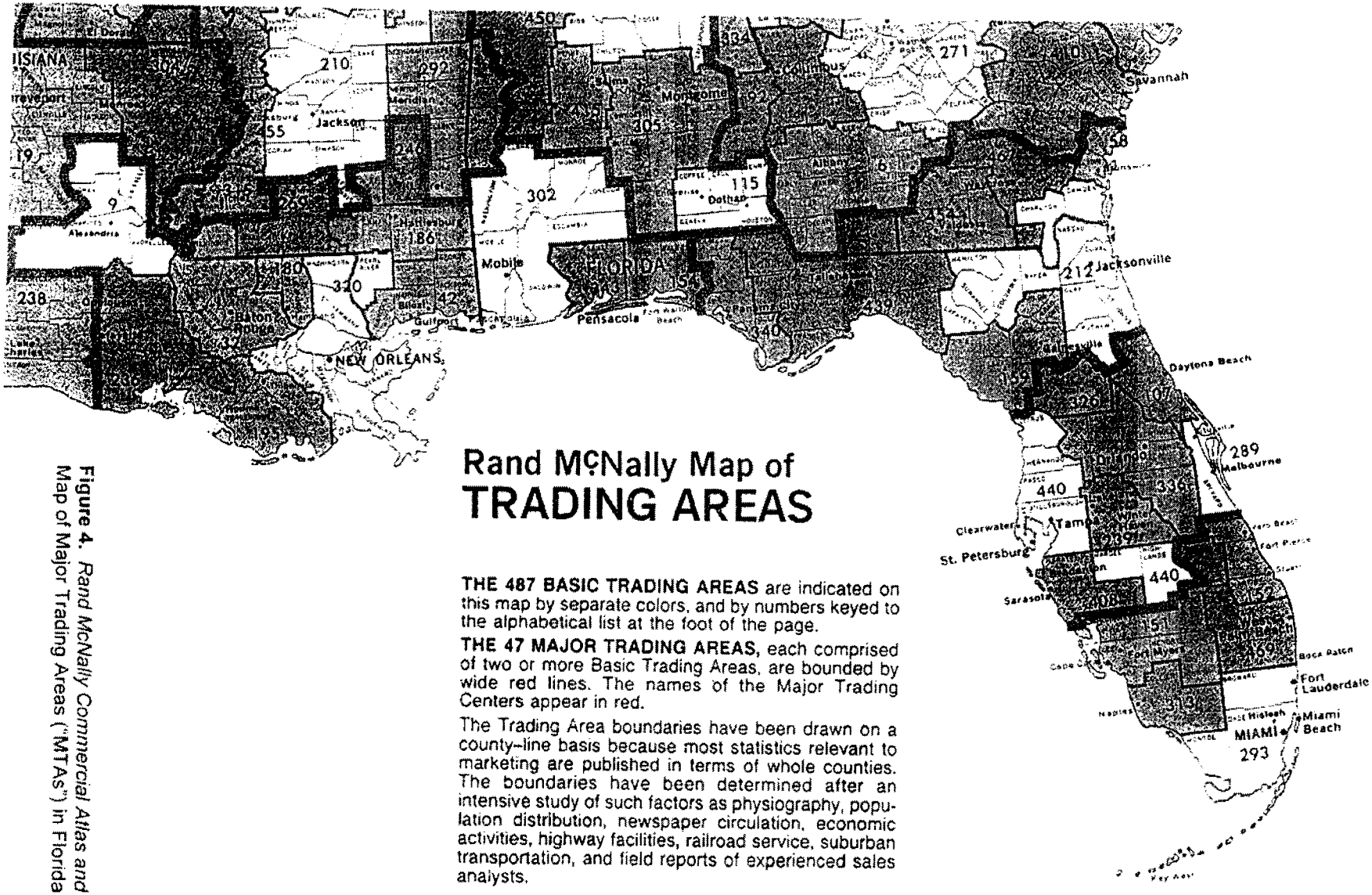
53. See, e.g., *When The Cellphone Is The Home Phone*, Simon Romero, The New York Times, Thursday, August 29, 2002, at E1 and E7.



Rand McNally Map of TRADING AREAS

THE 487 BASIC TRADING AREAS are indicated on this map by separate colors, and by numbers keyed to the alphabetical list at the foot of the page.

THE 47 MAJOR TRADING AREAS, each comprised of two or more Basic Trading Areas, are bounded by wide red lines. The names of the Major Trading Centers appear in red.

The Trading Area boundaries have been drawn on a county-line basis because most statistics relevant to marketing are published in terms of whole counties. The boundaries have been determined after an intensive study of such factors as physiography, population distribution, newspaper circulation, economic activities, highway facilities, railroad service, suburban transportation, and field reports of experienced sales analysts.

Figure 4. *Rand McNally Commercial Atlas and Marketing Guide,* Map of Major Trading Areas ("MTAs") in Florida

Q. What standard should be applied in determining whether reciprocal compensation or access charges apply when one local carrier terminates a call handed-off to it by another local carrier?

A. In its September 10, 2002 Order in the generic local competition proceeding, the Commission concluded that use of the ILEC's definition of "local calling areas" will effectively prevent ALECs from offering their customers anything different:

> 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.[54]

And in that ruling, the Commission has 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, are to be paid to the terminating carrier:

> Based on the foregoing, we find that it is appropriate to establish a default local calling area for purposes of reciprocal compensation. This issue appears with enough frequency that a default definition is needed for the sake of efficiency. A default should be as competitively neutral as possible, thereby encouraging negotiation and development of business solutions. On this basis, we find that the originating carrier's retail local calling area

54. *Investigation into the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Florida Public Service Commission Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, Issued September 10, 2002 (*"Florida Reciprocal Compensation Order"*), at 53.

shall be used as the default local calling area for purposes of reciprocal compensation.[55]

I understand that this aspect of the generic decision is currently being reconsidered by the Commission, and that the Staff has recommended that the *Order* be modified such that ILEC local calling areas, rather than the originating LEC's local calling areas, would be controlling on the matter of reciprocal compensation vs. access charges. I believe that the September 10, 2002 ruling is the correct policy position and urge the Commission to retain it, especially with request 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. And those wireless affiliates would be enabled to offer expanded local calling over what are ILEC "toll" routes with intercarrier compensation being based upon reciprocal compensation rather than access charges. The form of intercarrier compensation should in all cases be based upon the retail local calling area *as defined by the originating local carrier*. 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.

Q. Is there support for this position in the *Telecommunications Act*?

A. Yes, I believe that there is. 47 U.S.C. §153(47) defines "Telephone exchange service:"

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55. *Id.*, at 54-55.

> The term "'telephone exchange service'" means (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.

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.*

(Emphasis supplied.) Read together, any "telephone service between stations in different exchange areas" for which *no separate charge is made* is *not* "telephone toll service." If calls to Sarasota from Tampa are *included* in Global NAPs' "contracts with subscribers for exchange service," then *by definition* those calls are *not* toll calls.

Q. How does this relate to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls?

A. Once again we can look to the statute. 47 U.S.C. §153(16) defines "Exchange access":

> The term "'exchange access'" means the offering of access to telephone exchange services or facilities *for the purpose of the origination or termination of telephone toll services.*

(Emphasis supplied.) 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 Global NAPs 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, accordingly, are not subject to switched access charges.

Q. Is it appropriate that competing carriers be permitted to adopt local calling area definitions that differ from those of the ILEC?

A. Indeed it is. One of the primary public policy goals of introducing competition into the local telecommunications market has been specifically to encourage and stimulate innovation in the nature of the services that are being offered. ALECs should not be limited to competing solely with respect to *price*, nor should they be expected to become mere "clones" of the ILEC with respect to the services they offer. And indeed, the extent of the local calling area is itself becoming something that some ALECs see as an opportunity to differentiate their products from those being offered by the ILEC. An ALEC might, for example, offer its customers a larger local calling area than that being offered by the ILEC as a means for attracting customers or, alternatively, might choose to offer a *smaller* local calling area than the ILEC's service provides, at a correspondingly lower price. ILECs themselves are also changing the definition of "local calling area" by introducing optional calling plans that provide for extended area local calling including, in some cases, all exchanges within the subscriber's LATA.[56]

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56. Indeed, in some locations, ILECs have established optional calling plans that allow unlimited, flat-rated calling — "local" in all relevant respects — to all locations within an (continued...)

This is not to say that establishing larger local calling areas — whether inward or outward — will necessarily be the optimal competitive strategy for all ALECs, or even for the ILEC. One of the effects of decades of tight regulation of ILEC local service plans has been that we don't really know what combinations of price, inward/outward calling areas, and other features will appeal to different segments of the market. So, for an initial period — in fact, likely lasting for several years — I would expect to see different ALECs experimenting with different service plans, as long as regulators grant them the necessary flexibility to do so.

Q. Is it appropriate for this Commission to protect Verizon's toll and access revenues from ALEC competition, as Mr. Haynes would have it do?

A. No, it is not. In competitive markets, prices are expected to closely approximate costs, and so a loss of revenues (e.g., as a result of a loss of a customer to a competitor) would be expected to be roughly offset by a corresponding decrease in cost. If the price of a product or service is set (and sustainable) at a level that is well in excess of cost, for example, intraLATA toll rates and carrier switched access charges, then the ILEC has the potential to sustain a net decrease in profit. The solution, of course, is to eliminate the supracompetitive prices, rather than to protect the incumbent's ability to maintain them. If Verizon provides interconnection and other services to Global NAPs and as a

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56. (...continued)
entire LATA. This type of arrangement only highlights that even in the case of the ILEC, the distinction between "local" and "toll" is largely arbitrary in terms of network technology and the underlying costs of providing service.

result Global NAPs is able to attract some Verizon toll users to the Global NAPs service, Verizon might consider as an "opportunity cost" of the services it furnishes to Global NAPs that forgone toll revenue. However, this does not mean that Verizon should be entitled to recover such "competitive losses." The interconnection agreement between the parties must not work to limit Global NAPs' 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.

Q. Mr. Haynes seems to be saying that the rates and quality of basic local telephone service would potentially be at risk because Verizon's revenues from toll and access charges would be diminished.[57] Has he demonstrated that this is in fact going to happen?

A. No, he has not. Rhetoric aside, Mr. Haynes has offered no actual facts or evidence to support his contentions. Global NAPs is not required to pay access charges on calls that traverse routes that Verizon treats as toll, or that whatever impact Global NAPs' 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. While a competitive loss of retail sales to Global NAPs might well erode *shareholder earnings*, there is no basis upon which the Commission can conclude that any such loss would so

57. See Haynes (Verizon) Direct Testimony, at 9, lines 2-14.

adversely impact Verizon's financial position as to invoke extraordinary relief measures or put any of its franchised services at risk. Indeed, past attempts by ILECs to explicitly recover "competitive losses" have been soundly rebuffed by state regulators. For example, the California PUC soundly *rejected* claims by Pacific Bell and GTE (now Verizon) that they should be made whole with respect to their "competitive losses." The California Commission concluded that:

> Assuring the LECs recovery of competitive losses would undermine the incentive that NRF was intended to create... Compensating for competitive loss would force the LECs' customers to shelter [the requested amounts] of toll revenue from competitive risk even after rates are rebalanced, effectively granting the LECs rate cap returns on those revenues. This would be inconsistent with the ratepayer safeguards and LEC incentives established in NRF. Moreover, Pacific's and GTEC's competitors have no captive markets to provide them with a steady revenue stream if they are inefficient... Therefore, Pacific's and GTEC's requests for compensation for competitive losses are denied.[58]

Protecting incumbents from competitive losses fundamentally undermines competition. Accordingly, 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.

Q. Does this conclude your rebuttal testimony at this time?

A. Yes, it does.

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58. California Public Utilities Commission, Investigation (I.) 87-11-033, *Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision (D.) 94-09-065, *Implementation and Rate Design*, 56 CPUC 2d 117, 210-211.

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, TRICIA DeMARTE, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13th DAY OF MARCH, 2003.

Tricia DeMarte

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FPSC Official Commission Reporter
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