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Before the

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

Global NAPs, Inc.,
Complainant,

versus

BellSouth Telecommunications, Inc.
Defendant

Docket No. 991220-TP

Rebuttal Testimony

of

WILLIAM J. ROONEY, JR.

on behalf of

Global NAPs, Inc.

May 1, 2000

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1

2

TESTIMONY

3 **Qualifications**

4

5 Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

6 A. My name is William J. Rooney, Jr. I am Vice President and General Counsel of
7 Global NAPs, Inc., the petitioner in this case ("Global NAPs"). My business
8 address is 10 Merrymount Road, Quincy, Massachusetts.

9

10 Q. HAVE YOU FILED TESTIMONY PREVIOUSLY IN THIS PROCEEDING?

11 A. Yes, I filed initial testimony in this case on April 3, 2000. I also testified
12 previously before this Commission in Docket No. 991267-TP.

13

14 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

15 A. The purpose of my testimony is to address Mr. Varner's testimony concerning
16 arbitration issues 6 through 14. As I stated in my initial testimony, I have worked
17 with Global NAPs and its interconnection issues since before the company began
18 operations in late 1997. However, Dr. Lee Selwyn, an expert economist, will
19 provide rebuttal testimony for Global NAPs on arbitration issues 2, 3, 4 and 5,
20 concerning whether dial-up connections should be treated as "local traffic,"
21 whether, if ISP-bound traffic should be compensated, what rate of compensation
22 should apply, the appropriate reciprocal compensation rates that should be

1 included in a Global NAPs interconnection agreement, and the appropriate
2 definition of “local traffic” that should be included in the agreement. Specifically,
3 Dr. Selwyn will explain why the “inter-carrier compensation” proposal advanced
4 by Mr. Varner lacks any merit whatsoever, as a matter of economics or otherwise.
5 He will also address the D.C. Circuit’s recent decision concerning the FCC’s
6 Reciprocal Compensation Order, and rebut Mr. Varner’s explanation of its impact
7 on this proceeding. Mr. Fred Goldstein will provide rebuttal testimony concerning
8 the technical aspects of the delivery of ISP-bound traffic that Mr. Varner either
9 misstated or ignored in his initial testimony on behalf of BellSouth, as well as a
10 discussion of Mr. Varner’s misuse of the terminology relating to “access” service
11 as it applies (and does not apply) to ISP-bound calling.

12

13 **Summary**

14

15 Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

16 A. My testimony makes three points that are applicable to issues 6 – 14. First, Global
17 NAPs, a CLEC, has developed a viable new business, just as Congress hoped in
18 enacting the Telecommunications Act of 1996. Global NAPs presently provides
19 service predominantly to Internet Service Providers (“ISPs”), and does so
20 effectively and well. In the near term, however, Global NAPs plans to build on its
21 success in its market niche, and expand its services to the broader retail
22 telecommunications market. Global NAPs, however, will expand its market

1 segment only when it has the financial capacity to do so. The result of Global
2 NAPs' near-term strategy is that although Global NAPs applauds the
3 improvements in the offering of Unbundled Network Elements (UNEs) by
4 BellSouth, as well as greater specificity concerning local number portability and
5 collocation, these and other issues are simply not critical to Global NAPs'
6 immediate business plan. Therefore, although Global NAPs has no objection to
7 including more updated and detailed information on selected, specific issues, it
8 makes more sense to Global NAPs to continue using an interconnection agreement
9 that, in large part, has been working.

10

11 Of course, Global NAPs and BellSouth have unresolved issues concerning
12 reciprocal compensation (especially regarding ISP-bound calling) that necessitates
13 this arbitration proceeding. However, Global NAPs' position is that it prefers to
14 continue using its current interconnection agreement, which is based on the ITC
15 DeltaCom agreement, rather than adopt a new, "Standard Agreement" that is filled
16 with new definitions, terms and nuances. Global NAPs is a very small company in
17 relation to BellSouth. Global NAPs' approach to this arbitration can be
18 characterized as "if it ain't broke don't fix it." Global NAPs believes that
19 revamping an entire interconnection agreement just to include something new that
20 Global NAPs will not likely use, or that provides details irrelevant to Global
21 NAPs, should be unnecessary.

22

1 Second, adoption of BellSouth's new "Standard Agreement" is expensive. Global
2 NAPs will have to examine hundreds of pages of new definitions, terms and
3 prices. This is a costly exercise for Global NAPs and every other new competitor
4 that wants to interconnect with BellSouth. The (anti-)competitive strategy that
5 underpins BellSouth's insistence that Global NAPs accept its new "Standard
6 Agreement" becomes obvious, if one considers the collective time and expense
7 that will be incurred by all of BellSouth's new competitors if BellSouth is able to
8 continue to foist "new" "standard" agreements on them, rather than allowing them
9 to "opt in" to agreements pursuant to Section 252(i).

10

11 Third, new competitors like Global NAPs are entrepreneurs and business people.
12 They need a practical agreement with clarity on a few key points that allows them
13 to obtain the provisioning they need from BellSouth. They should not be required
14 to read and adopt a weighty tome like the "Standard Agreement" when a much
15 simpler agreement would suffice. Moreover, BellSouth has spent hundreds of
16 attorney hours drafting every nuance of every phrase in a Standard Agreement that
17 is hundreds of pages long. If these attorneys have done their job, the "Standard
18 Agreement" will always favor the business interests of the author, BellSouth. The
19 document is not the result of a negotiation or an arbitration, where there have been
20 two sides pitted against one another. Therefore, while Global NAPs would agree to
21 adopt some new, specific information to amend the existing agreement (which is
22 what Global NAPs sought from BellSouth at the beginning of its negotiations) —

1 under which it has worked for more than a year now — but does not agree to adopt
2 an entirely new “Standard Agreement.” If BellSouth had simply identified the
3 new information with which it wished to amend the agreement initially, during
4 negotiations, the parties would not have had to request the Commission to arbitrate
5 these issues.

6

7 In summary, Global NAPs asks this Commission to allow it to continue its existing
8 form of interconnection agreement with BellSouth on the issues specified below,
9 or to supplement the existing agreement with specific, relevant information from
10 BellSouth.

11

12 Q. WHAT, THEN, IS GLOBAL NAPS SUGGESTING SHOULD HAPPEN TO
13 ESTABLISH A NEW CONTRACT?

14 A. The parties should start with the terms of their current interconnection agreement.
15 To the extent indicated below, and limited to the specific topics indicated below
16 (and as issues in this arbitration), the current contract should be amended, and a
17 new term (Global NAPs proposes two years, which we believe to be acceptable to
18 BellSouth) established. As described in my original testimony and above, we
19 reject as unnecessary and unreasonable any wholesale rewrite of the existing
20 agreement.

21

1 **Issue 6: What Are the Appropriate UNE Rates to be Included in the Interconnection**
2 **Agreement?**

3

4 Q. WHAT IS GLOBAL NAPS' POSITION WITH RESPECT TO APPROPRIATE
5 UNBUNDLED NETWORK ELEMENT (UNE) RATES?

6 A. Mr. Varner states in his testimony that the DeltaCom agreement does not contain
7 the most current UNE rates. Global NAPs does not deny that UNE rates may have
8 changed since they were specified in the DeltaCom agreement. Since Global NAPs
9 does not currently purchase or use UNEs, this does not impact Global NAPs'
10 interconnection arrangements with BellSouth. However, Global NAPs wants to be
11 able to order UNEs at their most current rates, terms and conditions. Therefore,
12 Global NAPs has no objection to including current UNE information in its
13 interconnection agreement, with the understanding that, if Global NAPs needs to
14 order UNEs at some future time, it may do so at the then-prevailing rates, terms
15 and conditions, taking account of orders of the FCC and/or this Commission that
16 might not yet be fully reflected in BellSouth's "standard" UNE language.

17

18 That said, there are a few minor changes that would be appropriate to even the
19 language that BellSouth has proposed — recognizing that at present Global NAPs
20 has not yet used any BellSouth UNEs, and so is working from a more abstract
21 perspective than might exist for an ALEC that is an active and intense user of
22 UNEs.

1

2 Q. WHAT CHANGES WOULD GLOBAL NAPS REQUIRE TO BELLSOUTH'S
3 "STANDARD" UNE LANGUAGE AT THIS TIME?

4 A. First, on page 4 of Attachment 2 to of the "Standard Agreement" (attached to Mr.
5 Varner's testimony), the first full sentence states "With the exception of the sub-
6 loop elements which are located outside of the central office, BellSouth shall
7 deliver the network elements purchased by CLEC-1 ... to the designated CLEC-1
8 collocation space." Global NAPs believes that the entire initial phrase ("With the
9 exception of the sub-loop elements which are located outside of the central
10 office,") should be deleted. While it is certainly true that most collocation to date
11 has involved collocation in central offices, in fact many network elements (the
12 accessing of which is the purpose of collocation) are not located in central offices.
13 This is shown by BellSouth's own description of BellSouth "premises" for
14 purposes of collocation (*see* Attachment 4 to the "Standard Agreement," page 1,
15 section 1.2). "Collocation space" may, in theory, be on any BellSouth "premises,"
16 which certainly includes, but equally certainly is not remotely limited to, central
17 offices.

18

19 Second, on page 16 of Attachment 2, all of Section 2.6.7.3.4 should be deleted.
20 That section reflects a confusion on BellSouth's part between "Network
21 Terminating Wire" as a UNE, on the one hand, and deregulated "Premises Wire"
22 owned or controlled by property owners, on the other.

1

2 Q. PLEASE EXPLAIN.

3 A. Under applicable FCC rules (47 C.F.R. Section 68.3), every premises has a
4 “demarcation point” at which a carrier’s “network” ends and unregulated
5 “premises wire” begins. Carriers do not control “premises wire” — property
6 owners do. Consequently, to the extent that BellSouth’s proposed language
7 obliges an ALEC to make “premises wire” available, that is simply not a fit subject
8 for an interconnection agreement. That is a fit subject for discussions with a
9 property owner.

10

11 On the other hand, to the extent that BellSouth really is talking about the UNE of
12 “Network Terminating Wire,” *i.e.*, wire on a premises (likely a multiple dwelling
13 unit) that is part of a carrier’s network and subject to unbundling, the proposed
14 language violates FCC Rule 51.223(a). In that rule the FCC forbids states from
15 imposing on non-ILECs any of the requirements established in Section 251(c) of
16 the Act, which obviously includes the unbundling requirements of Section
17 251(c)(3). BellSouth’s proposed language violates the rule because — again, to
18 the extent it deals with part of an ALEC’s network, and not deregulated premises
19 wire — it is seeking to require the ALEC to unbundle that part of its network.
20 Global NAPs cannot accede to this suggestion by BellSouth.

1 **Issue 7: What are the Appropriate Collocation Provisions to be Included in the**
2 **Interconnection Agreement?**

3

4 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

5 A. Although Global NAPs does not perceive a reason to change its interconnection
6 agreement without a definite business purpose, Global NAPs would have no
7 objection to including BellSouth's current language concerning collocation in its
8 interconnection agreement, as long as this information would be subject to
9 updating, as described above. That is, the parties would understand and agree that
10 Global NAPs would automatically be entitled to then-current rates, terms and
11 conditions for collocation when and if Global NAPs actually requests collocation
12 from BellSouth.

13

14 **Issue 8: What is the Appropriate Language Concerning Order Processing to be**
15 **Included in the Interconnection Agreement?**

16

17 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

18 A. BellSouth's Order Processing attachment covers a variety of ground. Global
19 NAPs will accept BellSouth's normal order processing procedures. On the
20 specific subject of Enhanced Extended Links ("EELs") mentioned by Mr. Varner,
21 Global NAPs does not have a current need for EELs. Moreover, Global NAPs is
22 currently obtaining provisioning from BellSouth, and has no objection to including

1 the language in Attachment 2, Access to Network Elements and Other Services,
2 Sections 1, 4 and 5 to reflect the FCC's UNE Remand Order, as cited in Mr.
3 Varner's testimony at page 37, lines 19-25, and in Attachment 6, Ordering and
4 Provisioning, described on page 38, lines 1-3, of Mr. Varner's testimony.

5

6 **Issue 9: What is the Appropriate Language Relating to Conversion of Exchange**
7 **Service to Network Elements to be Included in the Interconnection Agreement?**

8

9 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

10 A. The Global NAPs interconnection agreement does not currently include language
11 relating to conversion of exchange service to network elements, and Global NAPs
12 does not think this provision is necessary in light of its own business plans.
13 Therefore, Global NAPs prefers to leave this language out of the interconnection
14 agreement. If Global NAPs' business plans change, then Global NAPs would
15 likely adopt an appropriate provision on this topic, pursuant to Section 252(i) of
16 the Telecommunications Act.

17

18 **Issue 10: What are the Appropriate Service Quality Measurements to be Included in**
19 **the Interconnection Agreement?**

20

21 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

1 A. Global NAPs has no objection to including BellSouth's Service Quality
2 Measurements (SQMs), if this Commission is inclined to adopt such SQMs.
3 BellSouth states in Mr. Varner's testimony at page 39, lines 17-18, that the SQMs
4 would allow the Florida Public Service Commission to monitor non-
5 discriminatory access. If the Commission would like the ALEC industry to
6 include these SQMs in interconnection agreements, Global NAPs would be happy
7 to do so. Global NAPs would like to adopt the SQMs approved by the
8 Commission, or as filed with the Commission as described in Mr. Varner's
9 testimony at page 41, lines 1-7.

10

11 **Issue 11: What is the Appropriate Language Relating to Network Information**
12 **Exchange to be Included in the Interconnection Agreement?**

13

14 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

15 A. Global NAPs does not object to updating the language of its interconnection
16 agreement concerning network information exchange, particularly concerning
17 customer record information and the Disaster Recovery Planning for CLECs
18 document described in Mr. Varner's testimony at page 42, lines 1 - 11.

19

20 **Issue 12: What is the Appropriate Language Relating to Maintenance and Trouble**
21 **Resolution to be Included in the Interconnection Agreement?**

22

1 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

2 A. Global NAPs does not have any objection to including specific language regarding
3 the interfaces that are available to ALECs for electronic trouble reporting using
4 BellSouth's Trouble Analysis Facilitation Interface (TAFI) and an industry
5 standard machine-to-machine Electronic Communications Trouble Administration
6 (ECTA) Gateway interface. In addition, Global NAPs has no objection to
7 including updated language concerning service centers or specific language
8 regarding how maintenance issues will be handled, as described on page 43, lines
9 15–20, of Mr. Varner's testimony.

10

11 **Issue 13: What is the Appropriate Language Relating to Local Traffic Exchange to**
12 **be Included in the Interconnection Agreement?**

13

14 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

15 A. Mr. Varner states in his testimony at page 44, lines 14–16, that “[a]s discussed
16 under Issue 1 above, definitions of local traffic or local traffic exchange must
17 contain new language that more clearly states when reciprocal compensation is
18 applicable.” Global NAPs' experience is that the last time BellSouth attempted to
19 “clarify” these definitions, they did not improve them. Therefore — in addition to
20 the parties' specific dispute about ISP-bound calling — Global NAPs wishes to
21 keep the language in the existing agreement concerning local traffic exchange.

22

1 **Issue 14: What is the Appropriate Language Relating to Telephone Number**
2 **Portability Arrangements to be Included in the Interconnection Agreement?**

3

4 Q. WHAT IS GLOBAL NAPS' POSITION ON THIS ISSUE?

5 A. Global NAPs has no objection to adopting updated language concerning
6 permanent Local Number Portability ("LNP"), in addition to the interim Service
7 Provider Number Portability currently included in the agreement.

8

9 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

10 A. Yes. Global NAPs believes that it should be able to amend its agreement with
11 BellSouth in a small number of identified areas, such as the areas outlined above.
12 These changes do not require that Global NAPs scrap its entire existing agreement
13 with BellSouth and adopt, on a wholesale basis, an entirely new "Standard
14 Agreement." As I explained previously in my Initial and Rebuttal testimony, such
15 a requirement would inure to the detriment of all new competitors, not just Global
16 NAPs. Therefore, Global NAPs seeks the Commission's assistance in resolving
17 this issue, as well as the reciprocal compensation issues presented for arbitration.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20 A. Yes, it does.