

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition by Global NAPs, Inc. for)
arbitration pursuant to 47 U.S.C. 252(b)) Docket No. 011666-TP
of interconnection rates, terms and)
conditions with Verizon Florida Inc.)

DIRECT TESTIMONY OF
JONATHAN B. SMITH
ON BEHALF OF
VERIZON FLORIDA INC.

May 8, 2002

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DIRECT TESTIMONY OF JONATHAN B. SMITH

I. WITNESS BACKGROUND AND OVERVIEW

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Jonathan B. Smith. My business address is 1095 Avenue of the Americas, New York, New York 10036.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Verizon Services Corp. as Executive Director -- Local Interconnection Billing and Wholesale Billing Support. In that position, I am responsible for the review and payment of invoices received from CLECs for local interconnection traffic and facilities, as well as for support of the Wholesale Billing and Collections Organization.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I have more than twenty years of experience in the telecommunications industry as an employee of Verizon and its predecessor companies. Prior to assuming my present position in August 2001, I have held positions of increasing responsibility in billing and collection services, resale services marketing, customer services, and outside plant engineering. I received a Bachelor of Science degree in Engineering from Northeastern University in 1979 and a Masters of Business

1 Administration from Babson College in 1992.

2

3 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

4 A. The purpose of my testimony is to address Issue 9, including the
5 disputed contract language associated with this issue, as identified
6 below:

7	Issue	Disputed Contract
8	<u>No.</u> <u>Statement of Issue</u>	<u>Sections Related Issue</u>
9	9 “To what extent should 10 should the parties be 11 permitted to conduct 12 audits to ensure (i) the 13 accuracy of each other’s 14 bills and (ii) appropriate 15 use and disclosure of 16 Verizon OSS Information?”	Verizon’s GT&C § 7; Additional Services § 8.5.4; Interconnection Attachment §§ 6.3, 10.13

17

18 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

19 A. There are four sections in Verizon’s proposed interconnection
20 agreement that address audit rights.

- 21 • Verizon’s General Terms and Conditions § 7 provides audits for
22 the purpose to evaluate the accuracy of the audited party’s bills.
- 23 • Verizon’s Additional Services § 8.5.4 provides for audits to
24 ensure that GNAPs complies with legal requirements for access
25 to and use of Verizon Operations Support Systems (“OSS”).

- 1 • Verizon’s Interconnection Attachment § 6.3 provides for audits of
2 traffic data for interconnection trunks.
- 3 • Verizon’s Interconnection Attachment § 10.13 provides for audits
4 of access recording in the context of meet-point billing
5 arrangements.

6 It is standard practice to include audit requirements in interconnection
7 agreements. Moreover, Verizon’s proposed audit provisions are
8 reasonably tailored to their respective purposes, with provisions that
9 protect confidential business information and prevent needless
10 intrusion on each party’s business.

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12 **II. ISSUE 9: AUDIT RIGHTS**

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14 **Q. PLEASE EXPLAIN VERIZON’S PROPOSED AUDIT PROVISIONS**
15 **THAT ALLOW EACH PARTY TO VERIFY THE ACCURACY OF**
16 **BILLING INFORMATION.**

17 **A.** Verizon’s proposed General Terms and Conditions § 7 provides a
18 mechanism for Verizon and GNAPs to ensure the accuracy of each
19 other’s bills. The highlights of Verizon’s audit provisions include:

- 20 • The right to audit books, records, facilities and systems *for the*
21 *purpose of evaluating the accuracy of the audited party’s*
22 *bills.*
- 23 • No more than annual audits generally, with an exception if
24 previous audit found uncorrected net billing inaccuracies of at
25 least \$1,000,000 in favor of the audited party.

- 1 • Audit performed by independent certified public accountants
- 2 selected and paid by the auditing party, but acceptable to the
- 3 audited party.

- 4 • Confidentiality agreement to protect the confidentiality of the
- 5 information disclosed by the audited party to the accountants.

- 6 • Audits at the auditing party's expense.

7

8 **Q. WHY ARE THESE BILLING AUDIT PROVISIONS NECESSARY?**

9 A. Verizon does not seek the billing audit rights as a competitor of
10 GNAPs, but as a customer. Without audit rights, Verizon is asked to
11 accept GNAPs' charges without the ability to verify their accuracy or
12 appropriateness. This is unacceptable from a business perspective.
13 The supplier (billing party) reasonably should be expected to carry the
14 burden to justify its charges to the customer (the billed party).

15

16 There is particularly good reason for contractual audit provisions in the
17 Verizon/GNAPs agreement. In New York, Verizon uncovered what it
18 believed to be an apparent illegal billing scheme GNAPs implemented
19 to overcharge Verizon millions of dollars under the guise of reciprocal
20 compensation. See Verizon's Complaint filed in *New York Telephone*
21 *Company, et al. v. Global NAPs, Inc., et al.*, No. 00 Civ. 2650 (FB) (RL)
22 (E.D. N.Y.). Moreover, a California federal court found that a GNAPs'
23 principal "acted in bad faith, vexatiously, wantonly and for oppressive
24 reasons" and "perpetrated a fraud on the [California Federal] Court" in
25 the context of a civil breach of contract lawsuit. August 31, 1995 Order

1 of the United States District Court for the Central District of California in
2 *CINEFX, INC. v. Digital Equipment Corporation*, No. CV 94-4443
3 (SVW (JRx)) at 31. It is not reasonable to expect Verizon to simply
4 trust that GNAPs will not act unreasonably under the parties'
5 agreement.

6

7 **Q. GNAPS CLAIMS THAT VERIZON'S AUDIT PROVISIONS**
8 **COMPROMISE GNAPS' CONFIDENTIAL BUSINESS**
9 **INFORMATION. DO YOU AGREE?**

10 A. No. Verizon's proposal applies equally to both parties, not just
11 GNAPs. Thus, if GNAPs' purported concern was legitimate, Verizon
12 would have the same concern. Neither party, however, is obligated to
13 provide records directly to the other. Rather, pursuant to § 7.2, the
14 "audit shall be performed by independent certified public accountants"
15 selected and paid by the Auditing Party who are also acceptable to the
16 Audited Party. The auditor is required to execute a confidentiality
17 agreement to protect the audited party's confidential information.

18

19 **Q. DOES VERIZON PROPOSE UNLIMITED ACCESS TO RECORDS?**

20 A. No. Verizon's audit provisions are not the "unreasonably broad"
21 mechanism that would disclose GNAPs' "proprietary business records
22 to Verizon," as GNAPs complains on page 35 of GNAPs' Petition.
23 Rather, Verizon's proposed § 7.1 defines the purpose of the audit as
24 evaluating the "accuracy of the Audited Party's bills," and this purpose
25 circumscribes the parties' rights and obligations in this section of the

1 contract. Section 7.3 provides that the auditing *accountant* -- not
2 Verizon's personnel -- would not have access to *all* records but only to
3 records, documents, employees, books, facilities and systems
4 "necessary to assess the accuracy of the Audited Party's bills."

5

6 **Q. ARE THERE OTHER SAFEGUARDS AGAINST ABUSE OF**
7 **VERIZON'S PROPOSED AUDIT PROVISIONS?**

8 A. Yes. Verizon's proposed § 7.4 requires the auditing party to bear the
9 expense of the audit, thus ensuring that audits will not be requested
10 without reasonable cause. In addition, § 7.1 limits the frequency of
11 audits to one per calendar year.

12

13 **Q. ARE VERIZON'S AUDIT PROVISIONS TYPICAL IN THE**
14 **INDUSTRY?**

15 A. Yes. In at least 99 agreements in Florida, Verizon has audit provisions
16 that allow the parties to audit each other's books and records
17 pertaining to the services provided under the interconnection
18 agreement. These kinds of provisions are common business practice
19 to safeguard the right to an accurate bill.

20

21 **Q. VERIZON ALSO PROPOSES THAT THE PARTIES BE ABLE TO**
22 **AUDIT ONE ANOTHER'S TRAFFIC DATA. WHY ARE THESE**
23 **PROVISIONS REASONABLE?**

24 A. The ability to audit one another's traffic data is a crucial component in
25 assessing the accuracy of the other party's bill. For example, assume

1 that GNAPs sends Verizon a bill for reciprocal compensation based
2 upon the amount of traffic that GNAPs terminates from Verizon. In
3 order to accurately assess these bills, it is necessary for Verizon to
4 audit the traffic data GNAPs uses to create these bills. Not only would
5 **Verizon** have the right to audit GNAPs' traffic data at least twice a
6 year, but Verizon's proposed §§ 6.3 and 10.13 of the Interconnection
7 Attachment provide **GNAPs** with the same ability to audit Verizon's
8 traffic data.

9

10 **Q. GNAPs PROPOSES TO DELETE ENTIRELY VERIZON'S**
11 **PROPOSED § 8.5.4 OF THE ADDITIONAL SERVICES**
12 **ATTACHMENT, WHICH PERMITS VERIZON TO AUDIT GNAPs'**
13 **USE OF VERIZON'S OSS. WHY IS THIS PROVISION**
14 **NECESSARY?**

15 **A.** Hundreds of CLECs, CMRS providers, and IXC's rely on access to
16 Verizon's OSS to serve their customers. Section 8.5.4 provides
17 Verizon with the right to monitor *its* OSS so that all carriers, not just
18 GNAPs, receive access to this system. This is essential to Verizon
19 because a CLEC could establish a program to repetitively access
20 Verizon's OSS to mine proprietary information. By engaging in such
21 conduct, a CLEC would impair Verizon's OSS. Verizon's proposed
22 § 8.5.4 thus not only protects Verizon's interest in ensuring GNAPs
23 uses OSS in the intended manner, but ensures reliable OSS access
24 for all CLECs.

25

1 In addition, Verizon's OSS contains customer proprietary network
2 information ("CPNI"). Verizon is obligated to protect CPNI and to
3 release it only to authorized parties. See 47 U.S.C. §§ 222, 251. To
4 fulfill that obligation, Verizon must be able to audit GNAPs' use of
5 Verizon's database.

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7 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes, it does.

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