

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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)
ALLTEL Florida, Inc.)

Docket No. 011354-TP
Filed: October 21, 2002

GLOBAL NAPS, INC.'S NOTICE OF FILING
REBUTTAL TESTIMONY
OF LEE L. SELWYN

Global Naps, Inc. hereby files its Notice of Filing Rebuttal Testimony of Lee L. Selwyn in the above-captioned docket.

Respectfully submitted this 21st day of October, 2002.



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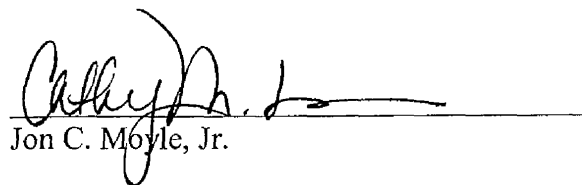
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Before the
**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In the Matter of Global NAPs, Inc. Petition
for Arbitration Pursuant to 47 U.S.C.
Section 252(b) of Interconnection, Rates,
Terms and Conditions with
ALLTEL Florida, Inc.

Docket No. 0011354-TP

Rebuttal Testimony

of

LEE L. SELWYN

on behalf of

Global NAPs, Inc.

October 21, 2002

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REBUTTAL TESTIMONY

1

2

3 **Introduction**

4

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

6

7 A. My name is Lee L. Selwyn; my business address is Two Center Plaza, Suite 400,
8 Boston, Massachusetts 02108.

9

10 Q. Are you the same Dr. Lee L. Selwyn who filed direct testimony on behalf of Global
11 NAPs in this proceeding on September 27, 2002?

12

13 A. Yes, I am.

14

15 Q. Have you reviewed the September 27, 2002 prefiled direct testimony submitted by
16 Alfred W. Busbee on behalf of ALLTEL in this proceeding?

17

18 A. Yes.

19

20 Q. Does any of the evidence or the arguments advanced by Mr. Busbee cause you to alter
21 the conclusions you presented in your Direct testimony?

22

23 A. No, and in fact, I note that Mr. Busbee did not even address a number of issues that I had
24 addressed in my direct testimony. Instead, Mr. Busbee makes unsubstantiated assertions

1 that Global NAPs' requests would somehow "impose requirements that are unduly
2 economically burdensome."¹ Mr. Busbee offers no evidence that contradicts my demon-
3 stration that the incremental costs that ALLTEL would incur to transport calls to a single
4 point of interconnection ("POI") within a LATA would be *de minimis*. Mr. Busbee has
5 not even attempted to fully demonstrate that ALLTEL's transport costs would be
6 materially affected by the location at which Global NAPs terminates an ALLTEL-
7 originated call to a Global NAPs customer. Moreover, where Mr. Busbee does respond
8 to the points raised in Global NAPs' Petition, it is clear that his arguments are unsound
9 and/or unsupported by the facts and should be rejected by the Commission.

10

11 **ALLTEL has not provided any factual support for its claim that interconnection with**
12 **Global NAPs would be "unduly economically burdensome," and its attempt to shift the**
13 **burden of proof to Global NAPs is expressly contrary to federal law and FCC rules.**

14

15 Q. At page 5 of his Direct testimony, Mr. Busbee asserts that Global NAPs' requests would
16 impose a "significant economic burden on users of telecommunications services
17 generally" and would be "unduly economically burdensome."² Do you agree with
18 ALLTEL's assertions?

19

20 A. Certainly not. Mr. Busbee does not even attempt to quantify the alleged "economic
21 burdens" to which he alludes. Instead, Mr. Busbee's bald assertions simply state that

1. Busbee (ALLTEL), September 27, 2002 direct testimony, at 5 and 27.

2. *Id.*, at 5.

1 interconnection with Global NAPs would undermine ALLTEL's ability to meet its
2 universal service obligations.³

3
4 As I have discussed in my direct testimony, the *Telecommunications Act of 1996* (the
5 "*Act*") establishes the criteria under which a state commission can exempt a rural
6 incumbent LEC from its obligations under Section 251.⁴ I would also note that in order
7 to be granted an exemption from its Section 251(c) obligations, ALLTEL has a specific
8 burden to *prove* — not simply *assert* — to this Commission that such obligations to
9 interconnect with another LEC are unduly economically burdensome. FCC rules, in
10 fact, state:

11
12 Upon receipt of a *bona fide* request for interconnection, services, or access
13 to unbundled network elements, a rural telephone company must **prove** to
14 the state commission that the rural telephone company should be entitled,
15 pursuant to section 251(f) of the Act, to continued exemption from the
16 requirements of section 251(c) of the Act.⁵

17
18 In order to satisfy this requirement to demonstrate an *undue* economic burden, ALLTEL
19 must prove that interconnecting with Global NAPs would impose economic costs that
20 exceed those that would ordinarily be expected to result from competitive entry. FCC
21 rules require that:

22
23 In order to justify continued exemption under section 251(f) of the Act
24 once a *bona fide* request has been made, an incumbent LEC must offer

3. Busbee (ALLTEL), direct testimony, at 17 and 22-3.

4. Selwyn (Global NAPs), October 10, 2002 direct testimony, at 10

5. 47 CFR §51.405(a) Burden of Proof (emphasis supplied).

1 evidence that the application of the requirements of section 251(c) of the
2 Act would be likely to cause undue economic burden beyond the economic
3 burden that is typically associated with efficient competitive entry.⁶
4

5 ALLTEL's *prima facie* case not only falls substantially short of its obligation to present
6 compelling evidence to support its assertions, ALLTEL actually attempts to shift the
7 burden of proof to Global NAPs.
8

9 Q. In what way is ALLTEL attempting to shift the burden of proof to Global NAPs?
10

11 A. Although its primary, but unsubstantiated, argument for being relieved of its Section
12 251(c) obligations rests upon some alleged economic burdens, ALLTEL ironically
13 criticizes Global NAPs for not divulging competitively sensitive information in order for
14 ALLTEL to perform a cost analysis of interconnecting with Global NAPs.⁷ And, as a
15 result, ALLTEL has attempted to suggest that it no longer needs to demonstrate that its
16 Section 251(c) obligations are unduly economically burdensome.
17

18 In connection with transporting ALLTEL's originating traffic to a single POI, ALLTEL
19 first assumes that it would need to construct new facilities or purchase transport from
20 another provider, and then it assumes the cost to transport such traffic would be

6. 47 CFR §51.405(c). Similarly, a request by an ILEC to suspend or modify its 251(c) obligations must also include substantial proof that interconnecting with an alternative LEC would cause an economic burden that is "*beyond the economic burden typically associated with efficient competitive entry,*" at 47 CFR §51.405.

7. Busbee (ALLTEL), direct testimony, at 13.

1 significant.⁸ However, relative to ALLTEL's first assumption, ALLTEL presents no
2 additional evidence suggesting, let alone *proving*, that its current facilities would need to
3 be augmented to handle its originating traffic to a Global NAPs POI. Nor does Mr.
4 Busbee attempt to quantify the allegedly "significant" costs. Instead of presenting
5 factual evidence, Mr. Busbee merely attempts to shift ALLTEL's burden of proof by
6 complaining that Global NAPs' has not provided traffic information or proposed service
7 locations.

8
9 As a threshold matter, Global NAPs is not in a position to estimate the volume of traffic
10 that ALLTEL customers will originate to Global NAPs. ALLTEL, not Global NAPs,
11 knows the number of customers it serves in each exchange and the amount of traffic its
12 customers typically generate in a given month. Additionally, Global NAPs is not in a
13 position at this time to provide information on the service locations it will establish in
14 the future, because those decisions will be heavily impacted by the outcome of this
15 arbitration itself. Once the Commission approves the interconnection agreement, Global
16 NAPs will be in a better position to provide, and will provide, ALLTEL with informa-
17 tion about service locations in order to establish its point(s) of interconnection for
18 exchanging traffic.

19
20 Second, the FCC has concluded that it is appropriate to place the burden of proof on the
21 incumbent LEC because "the party seeking exemption, suspension, or modification
22 [under Sections 251(f)(1) and (2)] is in control of the relevant information necessary for

8. *Id.*

1 the state to make a determination...”⁹ Thus, ALLTEL’s accusation that Global NAPs
2 “wrongfully denied ALLTEL the ability to perform detailed cost analysis”¹⁰ is misplaced
3 and should be disregarded.

4
5 Q. ALLTEL seems to suggest that because it serves non-contiguous local exchange terri-
6 tories, Global NAPs’ request imposes an abnormally excessive burden on it relative to
7 that imposed upon larger ILECs and RBOCs.¹¹ Do you agree?

8
9 A. No. There are facilities currently in place to transport originating traffic among
10 ALLTEL exchanges. In some cases, these are routed directly; in others, the routing is
11 via another ILEC’s tandem switch.¹² The choice of routing was presumably made by
12 ALLTEL based upon economic considerations, and it is reasonable to assume that
13 ALLTEL has made the efficient choice in each instance. Contrary to Mr. Busbee’s
14 claims, the type of fiber meet-point interconnection being proposed by Global NAPs is
15 technically simple and is widely used by ILECs throughout the country. Moreover,
16 Global NAPs and RBOCs have been transporting traffic across wide, noncontiguous
17 geographic areas for some time without having to design a technically cumbersome —
18 or infeasible — network architecture. Additionally, although the FCC is certainly aware

9. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-325, August 8, 1996, at para. 1263 (*FCC Local Competition Order*).

10. Busbee (ALLTEL), direct testimony, at 13.

11. *Id.*, at 12 and 16.

12. *Id.*, at 12.

1 that carriers serve noncontiguous exchanges, its rules do not carve out exemptions for
2 incumbent LECs on the basis of noncontiguity of operating areas.¹³

3

4 **Global NAPs' position that its retail local calling areas can differ from those of**
5 **ALLTEL and that it is entitled to exchange such local traffic with ALLTEL as traffic**
6 **subject to reciprocal compensation has been specifically adopted by the Florida**
7 **Commission in the recent *Reciprocal Compensation Order*.**

8

9 Q. Mr. Busbee offers an opinion suggesting that Global NAPs' requests and the
10 Commission's *Reciprocal Compensation Order*¹⁴ violate FCC rules and Florida
11 statutes.¹⁵ Do you agree?

12

13 A. No, I do not. Although Mr. Busbee does not dispute Global NAPs' right to define its
14 local calling areas,¹⁶ he wrongly believes that the *ILEC's* "local calling area scope"
15 should be the basis for determining what compensation rate applies.¹⁷ In ALLTEL's
16 view, ALECs must be required to define their local calling areas for purposes of
17 reciprocal compensation the same way ILECs currently define their own local calling

13. 47 CFR §51.305.

14. *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, ("*Reciprocal Compensation Order*").

15. Busbee (ALLTEL), direct testimony, at 22.

16. *Id.*, at 19.

17. *Id.*, at 21.

1 areas for *retail pricing* purposes.¹⁸ Mr. Busbee worries that if ALLTEL cannot apply
2 access charges for ALEC-originated calls terminated to ALLTEL that ALLTEL would
3 rate as “toll,” the Company risks losing approximately \$700,000 in net access
4 revenues.¹⁹ The effect of allowing ALECs to define their own local calling areas would,
5 according to Mr. Busbee, amount to the Commission condoning a violation of FCC rules
6 and Florida statutes. However, neither Global NAPs’ definition of local calling areas
7 nor the Commission’s *Reciprocal Compensation Order* violate the rules and statutes
8 identified in Mr. Busbee’s direct testimony. The rules and state laws simply explain the
9 conditions under which the appropriate rates apply. For example, Florida statutes
10 §364.16(3)(a) states:

11
12 No local exchange telecommunications company or alternative local
13 exchange telecommunications company shall knowingly deliver traffic, for
14 which terminating access service charges would otherwise apply, through a

18. *Id.*, at 22.

19. *Id.*, at 21. According to Mr. Busbee, ALLTEL currently bills \$900,000 annually in access charges for intraLATA calls, and incurs some \$200,000 in access charge payments to other ILECs for intraLATA calls. Assuming that there are no ALECs presently providing service in ALLTEL areas, one can surmise, from this data, that the \$200,000 represents access charge payments to other ILECs for intraLATA toll calls originated by ALLTEL customers terminating to those other ILECs, whereas the \$900,000 represents access revenues received by ALLTEL for from other LECs and IXCs for intraLATA toll calls originated by customers of other ILECs and ALECs *outside of ALLTEL operating areas*, and from calls placed by the probably small percentage of ALLTEL customers who have selected an IXC as their intraLATA carrier. That \$900,000 in “lost” (mostly) terminating access revenue is entirely unrelated to Global NAPs’ entry into the outbound local service market *within* ALLTEL areas, because (with the exception of those ALLTEL subscribers who have selected an IXC for intraLATA toll) virtually all of the \$900,000 in annual access revenue is attributable to calls originated *outside* of ALLTEL exchanges by customers of *other* local carriers, so ALLTEL would “lose” that revenue (based upon Mr. Busbee’s various assumptions) whether or not it enters into an interconnection agreement with Global NAPs.

1 local interconnection agreement without paying the appropriate charges for
2 such terminating access service.²⁰
3

4 While Mr. Busbee appears to believe that the cited statutory language also defines the
5 circumstances under which access charges would apply — specifically, for calls beyond
6 the ILEC’s retail local calling area — no such language is actually present. In its
7 *Reciprocal Compensation Order*, the Commission has now specified, as a default
8 condition, that access charges will apply only for calls placed to points outside of the
9 originating local carrier’s retail local calling areas.²¹ Nothing in the Florida statute or in
10 the FCC’s rules define what constitutes a local calling area. Contrary to Mr. Busbee’s
11 belief, the Commission’s *Reciprocal Compensation Order* — and Global NAPs’ posi-
12 tion in this arbitration — are not inconsistent with Florida law or FCC rules.
13

14 Q. ALLTEL asserts that Global NAPs’ right to provide customers with virtual NXX
15 numbers would likely result in ALLTEL losing an estimated \$700,000 annually in
16 access compensation.²² How do you respond?
17

18 A. As an initial matter, the Commission has already held, in its *Reciprocal Compensation*
19 *Order*, that the use of virtual NXX codes is a legitimate competitive response to foreign

20. Florida Statutes, §364.16 (3)(a).

21. *Reciprocal Compensation Order*, at 52-55.

22. Busbee (ALLTEL), direct testimony, at 27.

1 exchange (“FX”) services that have been offered by ILECs for many years.²³ In this
2 regard, the Commission has company, in that the New York PSC has also determined
3 that CLECs’ use of virtual NXX codes is a means to provide consumers with compe-
4 titive FX services, especially in rural areas.²⁴

5
6 Apart from the Commission’s ruling in the *Reciprocal Compensation Order*, it is
7 important to note that ALLTEL wrongly assumes its access revenues would evaporate
8 overnight. First, the \$700,000 to which Mr. Busbee here refers appears to be the very
9 same \$700,000 that he cited with respect to *outbound* local calls, and is thus duplicative,
10 rather than cumulative, of that figure. Notwithstanding ALLTEL’s pleas for relief, the
11 Company is capable of responding to ALECs’ use of innovative services by redefining
12 its own local calling areas, reducing its access rates, or a combination of both. ALLTEL
13 could also respond by providing advanced services like DSL or compete with other
14 incumbent LECs in adjacent local exchanges. So long as ALLTEL remains insulated
15 from competition, it has no incentive to respond competitively with respect to its own
16 services and prices, thus denying consumers in ALLTEL service areas the competitive
17 benefits that consumers in other parts of Florida have realized, and will realize by virtue
18 of the Commission’s *Reciprocal Compensation Order*. ALLTEL has provided no

23. Selwyn (Global NAPs), direct testimony, at 57; *Reciprocal Compensation Order*, at 28.

24. *Petition of Global NAPs, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York*, Before the New York Public Service Commission, *Order Resolving Arbitration Issues*, Case 02-C-0006, Issued and Effective May 24, 2002, at 14.

1 compelling evidence that the Commission is obligated to — or that it should as a matter
2 of policy — continue to shield ALLTEL from competition.

3
4 In that regard, it is useful to recognize that Mr. Busbee’s objections fall into two sepa-
5 rate and distinct categories. First, he argues, without offering any quantitative data, that
6 the interconnection being sought by Global NAPs will impose “costs” upon ALLTEL in
7 the form of physical enhancements to its network. Second, Mr. Busbee claims that
8 Global NAPs’ entry into the ALLTEL service area will cause ALLTEL to lose business
9 — specifically in the form of toll and access service revenues — as customers shift to
10 Global NAPs’ offerings and, potentially, to the extent that ALLTEL is itself forced to
11 adjust its prices and services in response. As I noted in my direct testimony, ILECs —
12 both large and small — have been advancing such “competitive loss” arguments for
13 many years and in many venues, and such claims have consistently been rejected. In
14 enacting the 1996 legislation, Congress *expected* and *intended* that the new law would
15 “promote competition and reduce regulation in order to secure lower prices and higher
16 quality services for American telecommunications consumers and encourage the rapid
17 deployment of new telecommunications technologies.”²⁵ Shielding ILECs such as
18 ALLTEL from competition would thus be inconsistent with and inimical to the
19 Congressional purpose and intent of the Act.

20
21 In fact, the FCC specifically indicated that state commissions need to recognize the
22 intent of Congress when considering the merits of a Section 251(f) petition. It was

25. 47 U.S.C. PMBL, *Telecommunications Act of 1996*.

1 Congress' intent to apply the requirements of Section 251 on all carriers, including small
2 and rural LECs. The FCC believes that "Congress did not intend to insulate smaller or
3 rural LECs from competition, and thereby prevent subscribers in those communities
4 from obtaining the benefits of competitive local exchange services."²⁶ This is precisely
5 the reason why there is a process for determining a LECs eligibility for the "rural
6 exemption." ALLTEL's claims as to potential competitive losses are unsubstantiated,
7 and in any event are not and should not be dispositive of the issues before the Commis-
8 sion in this arbitration, most of which have already been addressed *and resolved* in the
9 generic proceeding.

10

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

12

13 A. Yes.

26. *FCC Local Competition Order*, at para. 1262.