ORIGINAL

Before the

STATE OF FLORIDA

PUBLIC UTILITIES COMMISSION

In the Matter of Global NAPs, Inc. Petition for Arbitration Pursuant to 23 U.S.C. § 232(b) of Interconnection Rates, Terms and Conditions with Verizon Florida, Inc., *f/k/a* GTE Florida, Inc.	Case No. 011666-TP

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I. Introduction.

On January 19, 2001, petitioner, Global NAPs, Inc. ("Global") opened negotiations with Verizon Florida, Inc. ("Verizon") regarding the terms of an interconnection agreement. Pursuant to an agreed upon schedule, Global filed for arbitration on December 20, 2001[1] with the Florida Public Service Commission ("Commission") pursuant to Section 252(b) of the Telecommunications Act of 1996[2] (the "Act"), and Fla. Stat. Chap. 364.[3] At the time of filing, Global and Verizon had several unresolved issues. Continued negotiation led to resolution of all but four basic issues regarding inter-carrier compensation and several issues unrelated to inter-carrier compensation. The inter-carrier compensation issues are: (1) whether Global has the right to interconnect with Verizon at a single point of interconnection ("SPOI"); (2) whether Verizon can impose origination fees to recover transport costs for carrying its customers' traffic on its side of the network when Global elects to interconnect via a single point of interconnection under §251(c)(2) ("Transport"); (3) whether Verizon can impose access or transport charges on Global when it utilizes virtual NXX codes[4] ("VNXX"); and (4) whether Verizon can impose access charges on Global for terminating Global's local traffic when Global offers LATA wide

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[1] The Petition was filed pursuant to 47 USC § 252(b) of the *Communications Act of 1934* ("*the Act*"), as amended by the *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 ("*1996 Act*"). Hereinafter, all citations to the Act or to the 1996 Act will be to the relevant section of U.S.C. unless otherwise noted.

[2] 47 U.S.C. § 252(b).

[3] Fla. Stat. Chap. 364 (2001).

[4] Foreign Exchange ("FX") Service is a telecommunications service that has been available for years and is simply a response to customer demand for dial tone in an exchange separate from the customer's physical location. Users of FX service typically desire to establish a local business presence in an area other than their physical location, and have typically determined that the ability to be reached via a local call is an integral component of that business presence. The same functionality is provisioned through the use of Virtual NXX Codes ("VNXX"), which rates a call as to one exchange but routes the call to a separate exchange.

local calling area service ("Local Calling Area"). Many of these issues have already been decided by this Commission in the "Generic Proceeding"[5] but nonetheless Verizon resists implementing these decisions, making this arbitration necessary.

Global contends that under federal law and consistent with sound public policy: (1) SPOI and Transport: Global has the right to interconnect with Verizon at a single point of interconnection ("POI") per LATA at any technically feasible location on Verizon's network and (2) each party should be responsible for the costs associated with transporting traffic on its side of the POI; (3) VNXX: Global should be permitted to assign its customers NXX Codes that are "homed" in a central office switch outside of the local calling area in which the customer resides without imposition of origination charges; and, (4) Local Calling Area: Global should be permitted to broadly define its own local calling areas without imposition of access charges.

This brief is divided into three sections. Section A explains how the FCC adopted a new regulatory regime in its *ISP Remand Order*[6] that controls the outcome of the inter-carrier compensation issues. Section B specifically addresses the inter-carrier compensation issues and explains why the new federal rules mandate the outcome Global proposes and why Global's proposal is consistent with sound public policy. Finally, section C addresses the non-intercarrier compensation issues.

II. Argument.

The FCC explained the purpose of the *1996 Act* as follows:

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[5] *In the Matter of Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP (Phase II) Order No. PSC-02-1248-FOF-TP (Sept. 10, 2002). (*Florida Order*).

[6] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition. ... The *Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well.*[7]

To permit true local competition, the *1996 Act's* mandate to remove statutory, regulatory, economic and operational impediments must be aggressively pursued. Consider, Verizon, as the monopoly incumbent, has a century lead on all competitors. It begins the competition with *all* the customers, *all* the switching capacity, and *all* the transport. For Global and other ALECs to have any opportunity to compete, their rights under the *1996 Act* and under the Rules,[8] must be strictly enforced.

A. *On April 27, 2001, the FCC adopted the <u>ISP Remand Order</u> that established a new regulatory regime that controls all of the inter-carrier compensation issues in this arbitration.*

1. Under the *ISP Remand Order*, inter-carrier compensation for all "telecommunications" traffic except "exchange access" traffic and "information access" traffic is controlled by the reciprocal compensation rules.

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[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 P. 1-3 (1996) ("*Local Competition Order*")(emphasis added).

[8] 47 CFR §51.1 *et seq.* (hereafter "Rule XXX" shall refer to 47 CFR §51.XXX).

On August 29, 1996, the FCC established its original rules implementing the *1996 Act* in the *Local Competition Order.*[9] The FCC established rules controlling inter-carrier compensation for *local* traffic, codified as Rules 701-717. Rule 701(a) stated: "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of *local* telecommunications traffic between LECs and other telecommunications carriers." Consequently, the reciprocal compensation rules only applied to *local* telecommunications traffic. State commissions were free to apply access charges on traffic that was not *local* telecommunications traffic. The term "*local telecommunications traffic*" was not defined in the *Act.* The FCC defined the term in Rule 701(b)(1): "[f]or purposes of this subpart, *local telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider *that originate and terminates within a local service area established by the state commission*." This definition expressly limited application of the reciprocal compensation rules to a geographic area, the "local service area." It gave great discretion to state commissions regarding application of the reciprocal compensation rules as the rules only applied to calls that originated and terminated within a "local service area" and the commissions defined the boundaries of "local service areas." The FCC explained:

> With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges.[10]

Everything changed on April 27, 2001.

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[9] 61 FR 45619 (Aug. 29, 1996).

[10] *Local Competition Order* ¶ 1035.

On April 27, 2001, the FCC issued its *ISP Remand Order.*[11] In the *ISP Remand Order* the FCC expressly rejected the past focus on "local" traffic. The FCC stated:

> We modify our analysis and conclusion in the *Local Competition Order*. There we held that 'transport and termination of *local traffic* for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2).' We now hold the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the local competition order, as in the subsequent *Declaratory Ruling*, use of the phrase 'local traffic' created unnecessary ambiguities, and we correct that mistake here.[12]

The FCC explained that section 251(b)(5) imposes a duty on all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[13] On its face, local exchange carriers are required to establish reciprocal compensation for transport and termination of all telecommunications they exchange with another telecommunications carrier, without exception.[14] However, the FCC concluded that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in § 251(g) from the reciprocal compensation requirements of § 251(b) (5): "[t]hus, the statute does not mandate reciprocal compensation for 'exchange access, information access, and exchange service for such access' provided to IXCs and information service providers."[15] Put affirmatively, "section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider."[16] Consequently, under the *ISP*

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[11] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

[12] *Id.* ¶ 46.

[13] *Id.* ¶ 31.

[14] *Id.*

[15] *Id.* ¶ 34.

[16] *Id.* ¶89 n. 177.

Remand Order, unless traffic is (a) interstate or intrastate access traffic delivered to an IXC, or (b) information access traffic, it is subject to § 251(b)(5) reciprocal compensation and all of the rules associated with reciprocal compensation traffic. By doing this, the FCC expressly removed the geographic limitation on the reciprocal compensation rules (except for CMRS provider), and thereby removed state commission discretion regarding application of the reciprocal compensation rules as application of these rules were no longer related to the boundaries of "local service areas."

On May 3, 2002, the United States Court of Appeals for the District of Columbia Circuit in the *Worldcom ISP Decision*[17] rejected the FCC's conclusion that section 251(g) provided a basis for the actions taken by the FCC in the *ISP Remand Order*, but expressly recognized that other legal bases for the FCC's action may exist and expressly declined to vacate the rules established by the *ISP Remand Order*.[18] Pursuant to the *ISP Remand Order,* the Rules were amended effective May 15, 2001.[19]

Rule 701(a), which sets out the scope of the reciprocal compensation rules, now reads "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of *telecommunications traffic* between LECs and other telecommunications carriers." Rule 701(b)(1) now states: "[f]or purposes of this subpart, *telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider, *except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.*" Consequently, under the Rules as

[17] *WorldCom, Inc. v. Federal Communications Comm'n., et al.*, No. 01-1218, Slip. Op. (D.C. Cir. May 3, 2002) ("*Worldcom ISP* Decision") at 6-7.

[18] *Id.*

[19] 66 FR 94 (May 15, 2001).

they now read, reciprocal compensation traffic, *i.e.,* traffic subject to Rules 701-717, is all telecommunications traffic except exchange access traffic and information access traffic.

This begs the questions: (a) what is *telecommunications traffic*, (b) what is exchange *access traffic*, and, (c) what is *information access traffic*? Unlike the term "*local telecommunications traffic*," which was left for state commissions to define by establishing boundaries for "local service areas", the term "*access traffic*" is defined in the *Communications Act* and "*information access traffic*" is defined in the *ISP Remand Order*.

a. "Telecommunications traffic" is the transmission of information, unchanged, between points the user specifies.

In terms of the statutory definitions, the broadest category is "communications," which comes in two categories, wire and radio.[20] This is quite broad, and would include, without limitation television broadcasting, cable TV, satellite transmissions, and information services. Within the broad realm of "communications" is the narrower category of "telecommunications," which means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[21] Within this narrower, but still broad realm of "telecommunications," the statute lays out some particular definitions that do not purport to exhaustively delimit the field such as

[20] *See* 47 U.S.C. §§ 153(51) (wire communications), (33) (radio communications).

[21] *See* 47 U.S.C. § 153(43).

exchange access[22], interLATA service[23], telephone exchange service[24], and telephone toll service.[25]

b. "Exchange access traffic" is traffic subject to a separate toll charge.

Exchange access is defined by the *Act* as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[26] The term "telephone toll service" means "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."[27] According to the *Act*, traffic is *only* exchange access traffic when it is subject to a separate toll charge levied by the originating customer's carrier.

c. "Information access traffic" is traffic routed by a LEC to or from information access providers.

The FCC explained what "information access traffic" entails in the *ISP Remand Order*:

> Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services... in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of the provider of information services." We conclude that this definition of "information access" was meant to include *all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.*[28]

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[22] *See* 47 U.S.C. §§ 153(16).

[23] *See* 47 U.S.C. §§ 153(21).

[24] *See* 47 U.S.C. §§ 153(47).

[25] *See* 47 U.S.C. §§ 153(48).

[26] 47 USC § 153 (16).

[27] *See* 47 USC §§ 153 (48).

[28] *ISP Remand Order* ¶ 44 (emphasis added). The *Order* goes on to explain, "others have argued that the 'information access' definition engraphs a geographic limitation that renders this service category a subset of telephone exchange service...[w]e reject that strained interpretation." *Id.* n. 82.

Consequently, traffic is reciprocal compensation traffic unless it is toll traffic or is routed to an information service provider.

2. The reciprocal compensation rules prohibit imposition of origination charges or access charges on reciprocal compensation traffic and require payment of reciprocal compensation for terminating this traffic.

The regulatory framework created by the FCC for inter-carrier compensation of telecommunications traffic is found in Rule 703. Rule 703 states:

> Reciprocal compensation obligation of LECs.
>
> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

Subsection (a) requires a LEC to establish reciprocal compensation arrangements for transport and termination of telecommunications traffic while subsection (b) precludes that same LEC from assessing charges for traffic that originates on its network. Absent subsection (b), subsection (a) would be meaningless as a LEC could impose origination charges that could wholly offset reciprocal compensation for termination and transport.

The FCC explained the basis of this regulation in the *Local Competition Order*:

> We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. *We therefore conclude that section 251(b)(5) prohibits charges* such as those some incumbent LECs currently impose on CMRS providers *for LEC-originated traffic.* As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and *must provide that traffic to the CMRS provider or other carrier without charge.*[29]

[29] *Local Competition Order* ¶ 1042 (emphasis added).

Rule 703 resolves the principal issues of this arbitration as it forbids the imposition of origination charges and establishes reciprocal compensation as the exclusive mechanism for inter-carrier compensation for reciprocal compensation traffic. As Global demonstrates in section B, below, application of this rule: (a) requires that each party be responsible for transport on its side of the single point of interconnection (Transport); (b) prohibits imposition of origination charges on VNXX traffic exchanged at the single point of interconnection (VNXX); (c) prohibits imposition of access charges on Global-initiated telecommunications traffic exchanged at the single point of interconnection (Local Calling Area); and (d) requires payment of reciprocal compensation for termination of reciprocal compensation traffic.

3. The "mirroring" rule prohibits imposition of origination charges or access charges on reciprocal compensation traffic.

The *ISP Remand Order* "mirroring" rule also prohibits Verizon from imposing any additional charges on reciprocal compensation traffic. The FCC stated the rule as follows: "[t]he rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate."[30]

Verizon has adopted the FCC's caps, so under the mirroring rule these caps apply to all inter-carrier compensation on reciprocal compensation traffic it exchanges with Global. These caps do not allow any additional charges for reciprocal compensation traffic — regardless of the location of the SPOI — so Verizon cannot impose transport charges upon Global. Nor do they

[30] *ISP Remand Order* ¶89.

allow additional charges for the use of a VNXX rating designation or for inter-exchange traffic.[31] Simply put, the rate caps forbid Verizon from imposing additional charges on Global for transport, VNXX or Global's LATA wide local calling area.

4. The ISP remand Order preempts state regulation of ISP-bound traffic or treatment of ISP-bound traffic in interconnection agreements.

In the *ISP Remand Order,* the FCC determined that inter-carrier compensation for ISP-bound traffic is solely within the jurisdiction of the FCC and that on a going forward basis, state commissions have been preempted from addressing the issue.[32] Thus, the Commission has no jurisdiction to impose access charges or other limitations on ISP in-bound traffic.[33] Similarly, inter-carrier compensation for ISP bound traffic is not an appropriate subject for an interconnection agreement.[34] The Arbitration Order should be clear that the Interconnection Agreement is not intended to regulate inter-carrier compensation for ISP-bound traffic in any manner.[35]

B. Federal law and sound public policy support Global's position on the inter-carrier compensation issues.

As explained above, both Rule 703 and the "mirroring" rule prohibit imposition of additional charges on reciprocal compensation traffic. In the following section, Global will show how this is dispositive of the inter-carrier compensation issues.

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[31] The only "telecommunications" traffic excluded is "exchange access" traffic (toll traffic delivered to an IXC) and information access traffic (traffic delivered to an information service provider). *See, ISP Remand Order* ¶89 n. 177.

[32] *ISP Remand Order* ¶ 82.

[33] Similarly, the Commission has no jurisdiction to determine who can or cannot terminate ISP-bound traffic. 47 CFR § 63.01(a) states that "[a]ny party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any point and to construct, acquire or operate any domestic transmission line... ."

[34] *ISP Remand Order* ¶ 82.

Although Global submits that as a matter of law Verizon is barred from imposing its additional charges, Global will also show that there are also compelling policy reasons why Verizon should not be permitted to impose its charges.

1. **A. May GNAPs designate a single physical point of interconnection per LATA on Verizon's existing network?**

   B. If GNAPs chooses a single point of interconnection (SPOI) per LATA on Verizon's network, should Verizon receive any compensation from GNAPs for transporting Verizon local traffic to this SPOI? If so, how should the compensation be determined?

The issues of whether Global should be required to install more than a single point of interconnection and the issue of financial responsibility for network costs, *i.e.,* transport, are integrated and discussed in this single section. Verizon's position on transport necessitates this integration because the effect of Verizon's position on Issue B – at least in other states - is to impose financial penalties on Global NAPs for electing a single point of interconnection and in that way to undermine the true characterization of Verizon's position on Issue A.

As an initial matter, it should be noted that Verizon apparently agrees with Global – at least in Florida – that Global may not be required to interconnect at more than one single point per LATA.[36] However, it is entirely unclear how employing such interconnection will affect intercarrier compensation for the carriage of traffic. This is especially true because, despite their general concurrence that Global should not be required to interconnect at more than one point per LATA, Verizon has yet to allow us to interconnect – at all.

Ironically, this confusion appears most apparent where it should be clearest. When Global receives in-bound information access traffic, the service is "jurisdictionally interstate" in

[35] Verizon acknowledged this as a preliminary matter immediately preceding the arbitration hearing.

[36] Supplemental Testimony of Peter D'Amico at 1 (Dec. 18, 2002).

nature and subject to Federal intercarrier compensation rules. Yet, in Massachusetts, Verizon asserts the right to impose access charges where such traffic traverses two or more of its local calling areas.[37] Not only does this result undermine the rationale behind the Act granting the single point of interconnection within a LATA to ALECs, but more importantly, it is also beyond the purview of the state to deliberate upon interstate traffic.[38] This issue has been contested both at the FCC and in the Federal District Court (First Circuit) in Massachusetts and Global urges this Commission to make clear that its ruling impacts *only* traffic over which it has specific authority – and not traffic governed by Federal rules such as Global's in-bound the information access traffic. Although Verizon contests that this issue is even before the Florida PSC[39], it was not an issue before the Massachusetts Department of Telecommunications and Energy either. Nonetheless, the Department issued a ruling beyond its jurisdiction and Verizon has vigorously pursued its enforcement. Verizon backstops its position of not requesting a ruling on Federally governed ISP traffic with the inconsistent statement that the Commission's determinations concerning non-ISP traffic for carriers provisioning service using non-geographically correlated NXXs should also apply to ISP traffic, *i.e.*, that access charges should be applicable where there is a failure to accept a bill-and-keep posture.[40] It is important that this Commission not make any determination which conflicts with Federal law and avoid making any determinations concerning in-bound information access traffic destined for Global NAPs.

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[37] *Petition of Global NAPs, Inc. for Arbitration with Verizon Massachusetts, Inc.*, DTE 02-45 Order at 29 (Dec. 12, 2002).

[38] The Staff-provided issues list included a question (A) asking the Parties: "A. ***[LEGAL ISSUE]*** What is the Commission's jurisdiction in this matter?" This question has become germane in light of Verizon's attempt to use state authority to interfere with federally tariffed services and impact federally controlled interstate intercarrier compensation rules/rates.

[39] *See* Haynes Surrebuttal at 2 (Feb. 14, 2003).

[40] *Id.* at 4.

Notwithstanding this aberration in Massachusetts, Verizon itself agrees that, consistent with the Commission's finding in the Generic Docket, each party should be responsible for network costs on their side of the point of interconnection, (this is synonymous with the "demarcation of financial responsibility for traffic exchanged at [the point of interconnection]").[41] As such, no compensation would be due to Verizon for transporting local traffic to the point of interconnection.

As Verizon witness D'Amico states:

> In its updated Interconnection Attachment, *5* 2.1 (Attachment A), Verizon proposes simply that "Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Verizon's network in a LATA selected by Global." This division of responsibility is what Global sought in its Petition for Arbitration and is consistent with the Florida Public Service Commission's decision in Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP (requiring the originating carrier to bear all the cost of transport to a single point of interconnection).[42]

Indeed, no compensation should be due for *any* traffic on its side of the point of interconnection within the LATA, irrespective of whether or not it is defined as "local" by Verizon.[43] This ties into and will be discussed later in the discussion of Issue 4: "Which carrier's local calling area should be used as the basis for determining intercarrier compensation obligations?"

Global's Proposal:	2.1 In accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement. **GNAPs may designate a single point of interconnection per LATA. This point shall be called the Point of Interconnection ("POI") between the Parties. The Parties may designate additional POIs within the LATA at a**

[41] Supplemental Testimony of Peter J. D'Amico at 1 (Dec. 18, 2002).

[42] *Id.* at 3.

[43] Compensation for interLATA traffic is a Federal compensation issue and should not be determined by the Florida PSC.

	later date, however, only one GNAPs-designated POI per LATA is required for interconnection of the Parties' respective networks. Each Party is responsible for transporting telecommunications traffic originating on their network to the POI at their own cost. 2.2 Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party ("Receiving Party") Reciprocal Compensation Traffic and Measured Internet Traffic that the Originating Party wishes to deliver to the Receiving Party. ***Verizon shall treat GNAPs' POI as Verizon's relevant IP and GNAPs will treat its POI as GNAPs' relevant IP***. To the extent GNAPs establishes additional POIs in the LATA, GNAPs may designate those points as relevant IPs.
Verizon's Proposal:	Verizon revised its proposal during the proceeding. The revisions can be found in the Supplemental direct testimony of Joseph D' Amico at Attachment A pages 1 and 2. 2.1 In accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement. 2.2 Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party ("Receiving Party") Reciprocal Compensation Traffic and Measured Internet Traffic that the Originating Party wishes to deliver to the Receiving Party. To the extent GNAPs establishes additional POIs in the LATA, GNAPs may designate those points as relevant IPs.
Other related Sections:	Glossary, Sections 2.45, 2.66; Interconnection Attachment, Sections 2.1, 2.1.2, 2.3, 2.4, 3, 5.2.2, 5.3, and 7.1.1.1.[44]

Global introduced testimony by Selwyn on the following points:

- ILECs such as Verizon FL 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

[44] Global urges the Commission to rule on the policy issues directly rather than ordering specific contract language to avoid conflicts in interpretation of the final contract language.

accommodate current and anticipated demand in an evolutionary, flexible manner.[45]

- 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.[46]

- A 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 any transport costs that may be incurred by the ILEC on the ILEC's side of the Point of Interconnection.[47]

- The incremental costs that Verizon FL would incur to transport GNAPs-originated calls to its customers from a single POI within a LATA would be *de minimis.*[48]

a. The reciprocal compensation rules and "mirroring" rule prohibit imposition of a transport charge on intra-exchange traffic.

Issue 1(b) is framed with sufficient vagueness that may allow Verizon to assert receipt of compensation for network services on its side of the point of interconnection because it refers to transporting Verizon 'local" traffic. Verizon's definition of "local" traffic does not encompass the entire LATA, Nor does it address ISP-bound information access traffic and other types of non-local traffic. Thus, if calls traverse Verizon local calling areas prior to being exchanged with Global at the single point of interconnection, Verizon may assert that it is due transport or access charges, despite the clear intention that each party bear its own network costs for traffic exchanged with each other at this single point of interconnection in a LATA. Thus, the issue of

[45] Direct Testimony of Dr. Lee L. Selwyn (Sept. 10, 2002) at 9-17 ("*Selwyn Direct*").

[46] *Id.* at 17-21.

[47] *Id.* at 21-33.

[48] *Id.* at 33-46.

compensation (*e.g.*, access and transport charges) for intra-exchange traffic may be ripe for determination by the Commission.[49]

Although Verizon does not deny that this is reciprocal compensation traffic, it claims it should be able to impose an *additional* transport charge on this traffic to pay for transport from the SPOI to its designated interconnection point ("IP"). This is a clear violation of Rule 703(a) and the "mirroring" rule. As reciprocal compensation traffic, Rule 703(a) establishes the inter-carrier compensation rule for terminating the traffic: "[e]ach LEC shall establish reciprocal compensation arrangements *for transport and termination* of telecommunications traffic with any requesting telecommunications carrier." Verizon receives reciprocal compensation to pay it for transport and termination of telecommunications traffic. Thus, receipt of additional transport charges would constitute a double recovery to Verizon for transport as well as a penalty to Global.[50]

This is true even though Global elects to interconnect with the ILEC at a single point in the LATA. As the FCC explained in its *Kansas/Oklahoma 271 Order,*[51] "[n]or did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation

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[49] Intra-exchange traffic is telephone exchange service under 47 U.S.C. §153 (47)(A). As this is telephone exchange service traffic and neither toll traffic nor traffic routed to an information service provider, it is reciprocal compensation traffic.

[50] *Global Naps, Inc. Petition 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 and Verizon South Inc. f/k/a GTE South Incorporated*, Arbitration Decision,02-0253 (Ill.C.C. Aug. 22, 2002) at 10 ("*IL Global-Verizon Order*"): 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." (Footnote omitted).

[51] *In the Matter of Joint Application by SBC Communications, Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order CC Docket No. 00-217, (rel. Jan. 22, 2001)(" *Kansas/Oklahoma 271 Order*").

obligations under our current rules."[52] The "mirroring" rule reinforces this finding, "[t]he rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent offers to exchange all traffic subject to section 251 (b)(5) at the same rate."[53] As Verizon accepted the caps, Verizon is required to exchange its traffic at the FCC rate, and cannot impose additional transport charges.

Recently, in a consolidated arbitration brought by AT&T, WorldCom & Cox Communications the Wireline Competition Bureau of the FCC issued the *Virginia Order*[54], which considered the issue of transport. As the FCC is charged with interpreting and implementing the *1996 Act,* its Order is virtually a mandate for state commissions to follow in making their arbitration determinations on the same issues resolved therein. The *Virginia Order* rejected Verizon's VGRIPs proposal, *i.e.,* that the ALEC be financially responsible for all transport between the SPOI and Verizon designated IPs, based on an interpretation that Verizon cannot assess charges on its side of the point of interconnection. The FCC concluded:

> Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which

[52] *Id.* ¶ 235.

[53] *ISP Remand Order* ¶ 89.

[54] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration*, Memorandum Order and Opinion, CC Docket No. 00-218; *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration*, CC Docket No. 00-249; *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. 00-218, DA 02-1731 (Re. July 17, 2002) ("*Virginia Order*").

> prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point. Accordingly, we adopt the petitioners' proposals.[55]

In other arbitrations, Verizon has relied upon various orders as authority for its position. Its cases may all be distinguished and generally predate the *Virginia Order*. *MCI Telecommunications*[56] rejected a requirement by the Pennsylvania state commission that would have required WorldCom to establish multiple POIs for interconnection. The Court stated, "[t]o the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to WorldCom."[57] In that case, the Court had *only* the single POI issue before it, not the issue of whether WorldCom should pay transport and tandem switching charges to bring traffic to its single POI. There was no examination of Rule 51.703(b), and no ruling that Rule 703(b) is inconsistent with, or in any respect violates, the *1996 Act*.[58]

In *US West Communications,*[59] the Court noted, "a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient or exhausts existing network facilities."[60] Again, the issue of

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[55] *Virginia Order* at ¶ 53.

[56] *MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir., 2001)("*MCI Telecommunications*").

[57] *MCI Telecommunications* at 518.

[58] Verizon presented this same argument to the Illinois Commerce Commission. The Commission's response was to deny Verizon's attempt to impose its VGRIP proposal and resulting transport costs on Global. "*MCI Telecom v. Bell Atlantic Pennsylvania*, 271 F.3d 491 (3rd Cir. 2001), on which Verizon relies, does not compel a contrary result. There, the court said only that the state commission "should consider shifting costs" to the ALEC. 217 F. 3d at 518. At Verizon's request, we have considered shifting costs here and we decline to do so." *IL Global-Verizon Order* at 10.

[59] *U S West Communications, Inc. v. AT&T Communications, Inc.*, 31 F.Supp.2d 839 (D.Or. 1998)("*US West Communications*").

[60] *Id.* at 853.

whether a ALEC that chooses a single POI per LATA should be required to pay transport and tandem switching charges was not before the court, and the court did not examine Rule 51.703(b) or make any determination regarding that rule. Further, *US West Communications* was decided in 1998, after the United States Court of Appeals for the Eighth Circuit vacated the FCC's pricing rules in 1997,[61] but before the Supreme Court reversed the Eighth Circuit in 1999.[62]

The *Verizon-PA 271 Proceeding Order*[63] states:

> The issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM. We find, therefore that Verizon complies with clear requirement of our rules, i.e., that incumbent LECs provide for a single point of interconnection per LATA. Because the issue is open in our Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities failed to comply with its obligations under the Act.[64]

There can be no doubt that the issue of financial responsibility for interconnection facilities is an open issue in the *Intercarrier Compensation NPRM* — the NPRM sought comments on this as well as many other issues for future rulemaking. Notwithstanding what the law may be in the future, the *Intercarrier Compensation NPRM* was abundantly clear that, "under our current rules, the originating telecommunications carrier bears the cost of transporting traffic to its point of interconnection with the terminating carrier."[65] From this we may only

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[61] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999) ("*Iowa Util. Bd.*").

[62] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378-386 (1999).

[63] *In The Matter Of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. And Verizon Selected Services, Inc. For Authorization To Provide In-Region Interlata Services In Pennsylvania*, CC Docket number 01-138, FCC 01-2 69 at ¶ 100 (rel. Sept. 19, 2001) ("*Verizon-PA 271 Order*").

[64] *Id.* ¶ 100.

[65] *Intercarrier Compensation NPRM* at ¶ 70.

conclude that imposition of transport costs may not be enough to prevent an ILEC from obtaining interLATA authority under section 271 of the *1996 Act* — but nothing more.

Verizon has offered paragraph 549 of the *Virginia Order,* relating to LATA wide reciprocal compensation, as authority that a state commission may permit transport charges. On first impression this seems unreasonable as the *Virginia Order,* discussed in detail above, dealt expressly with the transport issue and ruled in favor of the ALEC against imposition of transport charges. It stated that the ALEC's position was "more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point."[66] A careful review of paragraph 549 confirms that first impression.

In the Virginia arbitration, AT&T, the ALEC, argued that the distinction between "local" and "toll" calls is purely artificial, because both it and Verizon deliver all intraLATA traffic to each other over the same trunk groups, whether they are rated as "local" or "toll," the underlying costs of providing these different services are the same,' and a unified reciprocal compensation regime for all intraLATA calls would increase efficiency while reducing the administrative costs associated with tracking the originating point of every call.[67]

In response to these *policy* arguments for LATA wide reciprocal compensation, the FCC concluded:

> We reject AT&T's proposed language. Telecommunications traffic subject to reciprocal compensation under section 251(b)(5) excludes, *inter alia,* "traffic that is interstate or intrastate exchange access." The Commission has previously held that state commissions have authority to determine whether calls passing between

[66] *Virginia Order* at ¶53.

[67] *Id.* at ¶547.

> LECs should be subject to access charges or reciprocal compensation for those areas where the LECs' service areas do not overlap.[Footnote referring to *Local Competition Order* ¶1035.] Accordingly, we decline to disturb the existing distinction in Virginia between those calls subject to access charges and those subject to reciprocal compensation. To the extent that AT&T believes that the existing regime creates artificial discrepancies in compensation, is economically inefficient and adversely affects competition, it may advocate alternative payment regimes before the Commission in the pending *Intercarrier Compensation Rulemaking* docket.[68]

This simply considered a policy issue. There was absolutely no discussion nor consideration in this portion of the order as to the definitions appearing in the *Act* and their implications with regard to what comprises reciprocal compensation traffic. The reference to the Commission's previous holding is a reference to paragraph 1035 of the *Local Competition Order*, discussed above, which was superceded by the *Order on Remand,* which removed the "local" limitation on reciprocal compensation traffic.[69]

Finally, Verizon may note that other state commissions that have permitted imposition of transport costs inconsistent with the FCC's rules, and the FCC's Order in the Virginia consolidated arbitration proceeding: Ohio, North Carolina and South Carolina. In reaching its decision, the Ohio Commission relied upon section IV.C of its *Local Service Guidelines.* Its *Local Service Guidelines* were adopted four years *before* the *ISP Remand Order,*[70] which revised Rule 703 and adopted the "mirroring" rule, and have not been amended to conform to the very different regulatory framework now required by federal law. Global did not participate in the

[68] *Id.* ¶549.

[69] In Section II.B.3, below, Global explains why Rule 703(a) and the "mirroring" rule prohibit Verizon from applying access charges to Global intra-exchange traffic that traverses Verizon local calling areas. Verizon FLy claim that ¶549 authorizes application of access charges. Such a claim ignores the fact that ¶549 speaks only to policy issues and does not consider either Rule 703(a) or the "mirroring" rule.

[70] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

North Carolina or South Carolina proceedings and had no opportunity to make its case. (Indeed, Verizon itself did not participate in the North Carolina decision). Finally, as discussed below, in arbitrations brought by Global in New York[71], Illinois[72], Rhode Island[73], Connecticut[74] and Florida[75], the decisions have been uniformly against imposing transport charges on ALECs. It remains of paramount importance that this Commission adopt in this arbitration and enforce in its Order its resolution in the Generic Docket to have each party shoulder responsibility for network costs on their respective sides of the point of interconnection.

b. Verizon's size allows it to realize significant economies of scale that reduce the average incremental transport costs on a per line basis to a *de minimis* amount.

There is no reasonable basis for imposing transport costs on Global as Verizon's transport costs are *de minimus*. Selwyn provided the Commission with an explanation of how economies of scope and scale affect Verizon's transport costs. He testified that, although these are common to all telephone networks, they vary by degree.

> *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 *economies of scale and scope*. As I have previously noted, CLECs serve a far smaller customer population and carry far less traffic than do ILECs.

[71] *Order Resolving Arbitration Issues, 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.*, Case 01-C-0095 (N.Y.P.S.C. July 30, 2001) ("*NY AT&T Order*") at 27-28.

[72] *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, Arbitration Decision, 01-07 86 (Ill.C.C. May 14, 2002) ("*Global Illinois Order*") at 8; *see also IL Global-Verizon Order* at 9, 10.

[73] *In re Arbitration of the Interconnection Agreement of Global NAPs and Verizon-Rhode Island*, Arbitration Decision,Docket No. 3437, at 26 (R.I.P.U.C. Oct. 16, 2002).

[74] *Petition of Global NAPs, Inc. for Arbitration Pursuant to U.S.C. Section 252(b) of the Interconnection Rates, Terms and Conditions with the Southern New England Telephone Company*, Arbitration Award of Arbitrator Goldberg,Docket No. 01-01-30 at 3 (N.J.B.P.U. April 10, 2002).

[75] *See Florida Order* note 12.

> Because they are necessarily forced to operate at a far smaller scale, CLEC networks may exhibit higher average costs than ILEC networks.[76]

The converse is also true, *i.e.,* ILEC networks may exhibit lower average costs than ALEC networks. These differences are especially pronounced in terms of transport. "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."[77]

Not only does Verizon benefit from its sheer mass, it also benefits from other factors.[78] It is common knowledge that transport costs have been declining precipitously due to use of fiber optics. It is also common knowledge that incumbents have been deploying fiber at a rapid pace in their networks. The January 2001 issue of *Scientific American* reports that "the number of bits a second (a measure of fiber performance) doubles every nine months for every dollar spent on the technology."[79] Selwyn testified, "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-

[76] *Selwyn Direct* at 17.

[77] *Selwyn Direct* at 12.

[78] 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." 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." Selwyn Direct at 24 citing In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer of Control, Declaration of Doreen Toben (September 30, 1998) at ¶¶ 2 and 7.

[79] *Selwyn Direct,* Attachment 2 "The Triumph of Light" *Scientific American,* Gary Stix (Jan. 2001) at 81.

capacity fiber optics, massive amounts of capacity can be deployed at little more than the cost of more conventional transport capacity sizes."[80] On a per access line forward-looking incremental basis, therefore, incumbents' transport costs are negligible, or as the Illinois Commerce Commission recently found, "*de minimus.*"[81]

c. Verizon wishes to impose transport charges on Global that are orders of magnitude in excess of its costs.

In other states it is clear that Verizon seeks to recover transport costs far in excess of its actual *de mimimus* costs and it is not evident that Verizon has altered this based on the limitation of this issue to "local" traffic. Selwyn demonstrated the magnitude of the over-recovery of Verizon's costs in his testimony.[82] Given the 50% drop in costs every nine months, regulatory lag in setting rates can significantly overstate appropriate transport rates. First, rates are set on prior period results. Thus, rates set even as recently as yesterday significantly overstate the incumbent's costs. As a result, a large disparity exists in the difference between the *cost* that Verizon realizes for this incremental transport capacity on a forward-looking basis and the *rates* that it seeks to impose on ALECs today.

Selwyn uses a proxy model to evaluate the degree to which Verizon may be over-recovering its transport costs. This model, discussed on pages 35 to 46 of his testimony, is not meant to be a cost study for the purpose of proposing a rate, but a tool to indicate the magnitude of disparity between Verizon's transport costs and the transport charge Verizon wishes to impose. Selwyn presents testimony showing that if Verizon's charge was imposed, the

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[80] *Selwyn Direct* at 12.

[81] *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, Arbitration Decision, 01-07 86 (Ill.C.C. May 14, 2002) ("*Global Illinois Order*") at 8; see also *IL Global-Verizon Order* at 9, 10.

incremental charge should be approximately $0.00003725, *i.e.*, about four one thousandths of a cent[83] (*i.e.,* $70.00 per mile for DS-3 at a $0.00000787[84] incremental rate applied to the 9.78 average additional miles.[85]). Notwithstanding these minimal costs, Verizon insists on charging Global the $70.00 figure (and in some cases tandem switching as well). The charges that Verizon proposes to assess to Global are simply astronomical compared to their costs and reflect monopoly leverage in pricing services at other than incremental rates, rather than at costs plus a reasonable return.

Although a SPOI would result in only a *de minimis* increase in Verizon's transport costs, Verizon seeks to impose excessive and discriminatory charges for this transport. This violates §§251(c)(2)(C)and (D) of the *1996 Act* which require that interconnection be at least equal in quality to that provided by the local exchange carrier to itself and on rates, terms and conditions that are just, reasonable and nondiscriminatory. As the cost of additional transport stemming from a SPOI is *de minimis*, charges exceeding *de minimis* amounts are discriminatory and can preclude meaningful competition.

d. Requiring Verizon to pay for all transport on its side of the POI is consistent with rulings of other state commissions.

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[82] *Selwyn Direct* at 7 and Table 2 of Attachment 2.

[83] *Selwyn Direct* at 41, 42 & Table 2 of Attachment 3.

[84] *Selwyn Direct* at 41, 42.

[85] *Id.* at 42. It is curious to note how Verizon's costs in Florida can be $70.00 for a DS-3 on a per mile basis, while in Rhode Island, the same facility costs $3.60. *See* Verizon's R.I.P.U.C. Tariff No. 18 (establishing cost-based unbundled network element rates including rates for inter office transport).

As stated above, in arbitrations brought by Global in New York[86], Illinois[87], Rhode Island[88], Connecticut[89] and Florida[90], the decisions have been uniformly against imposing transport charges on ALECs. The Illinois Commission ruled:

> [T]he Commission is of the opinion that Ameritech and Global should be responsible both financially and physically on its side of the single POI. Ameritech's arguments, while lengthy are not persuasive to require the adoption of the Ameritech proposal. The Commission concurs that the transportation of calls to a single POI in each LATA would not significantly increase transport costs, but rather the incremental costs that Ameritech would incur would be de minimus. Ameritech's position could have the effect of undermining the single POI requirement.[91]

The New York Commission found that:

> Our orders establishing the framework for competition, recognize that CLEC networks would, in all likelihood, not mirror the incumbent's. This has proven to be correct, as most CLEC network designs use a single central office switch and long loops to serve a region, rather than the more traditional design of many switches and short loops. The policy established in our Competition II proceeding, that remains applicable, assumes that a carrier is responsible for the costs to carry calls on its own network.
>
> * * *
>
> We reject Verizon's proposal and shall 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.[92]

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[86] *Order Resolving Arbitration Issues, 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.*, Case 01-C-0095 (July 30, 2001) ("*NY AT&T Order*") at 27-28.

[87] *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, Arbitration Decision, 01-07 86 (Ill.C.C. May 14, 2002) ("*Global Illinois Order*") at 8; *see also IL Global-Verizon Order* at 9, 10.

[88], *In re Arbitration of the Interconnection Agreement of Global NAPs and Verizon-Rhode Island*, Arbitration Decision Docket No. 3437, at 26 (R.I.P.U.C. Oct. 16, 2002).

[89] *Petition of Global NAPs, Inc. for Arbitration Pursuant to U.S.C. Section 252(b) of the Interconnection Rates, Terms and Conditions with the Southern New England Telephone Company*, Arbitration Award of Arbitrator Goldberg, Docket No. 01-01-30 at 3 (Ct. D.P.U.C. April 10, 2002).

[90] *See Florida Order* note 12.

[91] *Global Illinois Order* at 8.

[92] *Order Resolving Arbitration Issues, 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.*, Case 01-C-0095 (N.Y.P.S.C. July 30, 2001) ("*NY AT&T Order*") at 27-28.

In the *Cablevision Order* [93] the New Jersey Commission rejected Verizon's VGRIPs proposal, reasoning "that to adopt VNJ's concepts of 'virtual' architecture at this stage in deregulation of the telecommunications industry would make 'more complex the transition to a competitive market for local calling services.'"[94]

This Commission has also rejected imposition of transport costs on a ALEC concluding:

> 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. We believe such a system would provide for asymmetrical recovery and, in addition, 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.[95]

Clearly the bulk of state commission precedent favors Global's interpretation of federal rules, including of course, the FCC's own ruling in the Virginia arbitration and this Commission's own ruling.

2. Should Global be Permitted to Assign NXX codes to Customers that do not Physically Reside in the Local Calling Area Associated with that NXX Code?

Currently ALECs and their customers enjoy competitive FX offerings provisioned using non-geographically correlated NXXs ("virtual NXXs" or "VNXX"). Verizon wants the Commission's assistance in crushing these competitive offerings. Verizon proposes to change

[93] *In The Matter Of The Petition Of Cablevision Lightpath-N. J., Inc. For Arbitration Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996 To Establish Interconnection Agreement With Verizon New Jersey, Inc.*, Order Approving Interconnection, Docket No. TO 01080498 (N.J.B.P.U. Jan. 9, 2002) ("*Cablevision Order*").

[94] *Id.* at 7. The opinion also noted that the ALEC intended to interconnect at additional tandems and left the Docket open to direct the parties to resume negotiations on the issues of additional trunking or pricing if the ALEC did not establish additional interconnection points.

[95] Order No. PSC-02-1248-FOF-TP Docket No. 000075-TP (Phases I1 and IIA) at 23, 24 (Sept. 10, 2002).

the current regulatory environment and impose access charges based upon the geographic endpoints of a call.[96]

Global's Proposal:	2.70 Rate Center Area. The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. **(Verizon language deleted)**. 2.71 Rate Center Point. A specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing for distance-sensitive Telecommunications Services. 2.72 Rate Demarcation Point. The physical point in a Verizon provided network facility at which Verizon's responsibility for maintaining that network facility ends and the End User Customer's responsibility for maintaining the remainder of the facility begins, as set forth in this Agreement, or as otherwise prescribed under Applicable Law. 2.73 Reciprocal Compensation. The arrangement **called for by 47 U.S.C. § 251(b)(5).**
Verizon's Proposal:	2.70 Rate Center Area. The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area. 2.71 Rate Center Point. A specific geographic point, defined by a V&H coordinate,

[96] Although Global believes otherwise, Verizon's proposed contract language at 2.70 may even be interpreted by some to actually prohibit Global from providing FX service using VNXXs.

	located within the Rate Center Area and used to measure distance for the purpose of billing for distance-sensitive Telephone Exchange Services and Toll Traffic. Pursuant to Telcordia Practice BR-795-100-100, the Rate Center Point may be an End Office location, or a "LEC Consortium Point Of Interconnection." 2.72 Rate Demarcation Point. The physical point in a Verizon provided network facility at which Verizon's responsibility for maintaining that network facility ends and the Customer's responsibility for maintaining the remainder of the facility begins, as set forth in this Agreement, Verizon's applicable Tariffs, if any, or as otherwise prescribed under Applicable Law. 2.73 Reciprocal Compensation. The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order to the extent it remains Applicable Law, and other applicable FCC orders and FCC Regulations, costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment). 2.74 Reciprocal Compensation Traffic. Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, information access, or exchange services for Exchange Access or information access. The determination of whether Telecommunications traffic is Exchange Access or information access shall be based upon Verizon's local calling areas as defined by Verizon. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic; (2) traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; or, (7) Voice Information Service Traffic (as defined in Section 5 of the

	Additional Services Attachment). For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.
Other related Sections:	Glossary Sections 2.70-74, 2.77; Interconnection Attachment Sections 9.2 and 13

In his testimony, Selwyn concentrated on the following points:

- Verizon FL should not be allowed to prohibit Global NAPs from offering Foreign Exchange service to its customers using "virtual" NXX arrangements, given that Verizon FL's costs are not affected by that practice and Verizon FL itself offers FX service in which "virtual" telephone numbers are assigned to the FX customer.[97]

- Verizon FL's position on VNXX calls is discriminatory and anticompetitive in that the Company seeks to apply switched access charges to VNXX calls that physically terminate in a different local calling area, but does not subject the Company's own services that terminate in a different calling area, including traditional FX and 500-number Single Number Service (SNS), to the same treatment.[98]

- Verizon FL's transport costs are entirely unaffected by the location at which Global NAPs terminates a Verizon FL-originated call to a Global NAPs customer.[99]

- 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 region-wide local calling mechanism for use by its own ISP affiliate, Verzon Online, and other ISPs under an arrangement that is not, as a practical matter, available to ALECs.[100]

a. The reciprocal compensation rules and the "mirroring" rule prohibit imposition of an origination charge on VNXX traffic.

As explained above, reciprocal compensation traffic is any traffic that is not toll traffic, or traffic routed to an information service provider. When a Verizon customer calls a Global

[97] *Selwyn Direct* at 46, 47.

[98] *Selwyn Direct* at 46-57.

[99] *Selwyn Direct* at 57-68.

[100] *Selwyn Direct* at 68-72.

VNXX customer, neither the calling party nor the called party pays a toll charge, so it is not toll traffic. The VNXX traffic subject to the interconnection agreement is not routed to an information service provider,[101] so it is not information access traffic. Consequently, VNXX traffic is reciprocal compensation traffic.

Like intra-exchange traffic, VNXX traffic is telephone exchange service.[102] "Telephone exchange service" is defined as follows:

> 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.*[103]

Standard industry practice establishes that FX traffic is telephone exchange service as it is a "comparable service." When a carrier provides retail FX service, telephone numbers are assigned to end users within NPA/NXXs that are associated with ILEC local calling areas other than the location of the end user. The classification (local vs. toll) of traffic delivered from the foreign exchange to the FX customer is determined as if the end user were physically located in the foreign exchange. That is, the classification of the call is determined by comparing the rate centers associated with called and calling party's NPA/NXXs, not the physical location of the customers. If this comparison identifies the call as toll, it is treated as toll. If the comparison identifies the call as exchange service, it is treated as exchange service. This method of

[101] As explained above, the interconnection agreement only deals with traffic not routed to information service providers.

[102] All "telephone exchange service" is reciprocal compensation traffic, however reciprocal compensation traffic is a broader category than telephone exchange service, it includes *all telecommunications* except *exchange access traffic* and *information access traffic*.

[103] 47 U.S.C. §153 (47)(emphasis added).

determining classification and the applicability of toll charges is used throughout the industry today and is the traditional method of making this determination. Global is not aware of a single state that has implemented a different method of distinguishing between exchange service and toll traffic, and every carrier in the country, including Verizon, adheres to this standard procedure. As VNXX traffic serves precisely the same function, it must also be treated as telephone exchange service.

As VNXX traffic is reciprocal compensation traffic, Rule 703(b) applies. This Rule states: "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." Similarly, the "mirroring" rule applies mandating that the originating carrier pay the terminating carrier the FCC rate.[104] This means that Verizon cannot charge transport or access charges for VNXX traffic.

b. Treatment of VNXX as telephone exchange service is consistent with standard industry practice.

The proposal to treat VNXX as toll traffic is a departure from Verizon's own method of determining a call's status as toll versus local. The applicable rate centers (and the associated distances) are determined by reference to the NPA-NXXs assigned to the called and calling parties, not the physical location of the customer. That is, Verizon does not look at the street addresses (physical locations) of the customers involved in a particular call, but instead looks at the NPA-NXXs, identifies the rate centers to which the calling and called NPA-NXXs are associated, and, if those rate centers are not within the local calling area of each other, calculates mileage based on the V&H coordinates associated with the rate centers.

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[104] *ISP Remand Order* ¶ 89.

Indeed, this comparison of NPA-NXXs allows Verizon to treat its own FX traffic as local, because *if* it made its determination based on the physical location of the calling and called parties, it would have to segregate its own FX traffic from all of its toll traffic in order to avoid billing toll charges, which it does not. This is clearly not Verizon's practice, and Global believes that calls originated from Global end users to Verizon's assigned FX numbers would not only be treated by Global as local, but that Verizon would bill Global for reciprocal compensation for the transport and termination associated with such FX calls rather than pay Global originating access. Verizon does not, indeed can not, perform the same type of measurements and apply similar billing to its own FX customers, despite its acknowledgement that if it could, it would design its billing system differently for its FX customers.

There is no readily available information that tells a carrier the physical location of a calling or called party (nor is one needed because there is no reason to draw any distinction between "traditional" local service and VNXX local service as there are no additional costs imposed when VNXXs are used). For instance, Verizon's billing system does not identify each physical service location belonging to a single retail customer. There is, therefore, no reason to believe that carriers could readily obtain the information on which Verizon proposes to rely and no reason to create this functionality. This was the basis upon which the FCC's *Virginia Order* rejected Verizon's proposal to rate calls based not upon the originating and terminating central office codes, or NPA-NXXs, associated with the call but upon the geographic originating and end points of the call.[105]

[105] *Virginia Order* ¶¶ 286-288.

c. **Verizon should not be permitted to impose access charges on VNXX service as VNXX service does not impose any additional transport costs on Verizon.**

VNXX service imposes no additional transport costs on the originating carriers. Whether or not the call from Verizon's customer is to a Global VNXX customer, Verizon's responsibility is the same: to deliver traffic originating on its network to the SPOI. Global provides the facility linking the VNXX customer to Global's switch. Therefore, Global's VNXX service generates the same costs that are involved with the delivery of any other local traffic to the SPOI.[106]

The following example illustrates the similarity of the cost of FX-like calls and other local traffic.[107] Assume a call is made by a Verizon customer in the Sarasota exchange and is delivered by Verizon to a ALEC in Tampa via a point of interconnection located in Sarasota. Global'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. Now let us change the facts of this example. Assume Verizon's Sarasota customer still dials a Sarasota telephone number (*i.e.,* a ALEC NPA-NXX that is rated to Sarasota), but instead of the ALEC delivering the call to a ALEC customer in Sarasota (as in the previous example), the ALEC delivers the call to a ALEC customer physically located in Tampa. Note that the POI at which Verizon hands off the call to the ALEC is still in Sarasota, but the point of delivery (Tampa in this case) is not within the local calling area of the originating ILEC telephone. In both of these cases, Verizon's work — and its costs — are absolutely identical. The sole distinction between the two examples lies in what the

[106] Selwyn's testimony described, by way of examples with diagrams how the "traditional" local call and a call using VNXXs were the same because 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. In both of these cases, the ILEC carries the call from the originating telephone to the Tampa POI, and so its work is entirely unaffected by where the ALEC ultimately delivers the call. *See Selwyn Direct* at 58-65.

ALEC does once it receives the call from Verizon at the POI. In both cases, Verizon 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. This example demonstrates that the originating carrier does not incur excessive transport costs for FX-like traffic, and such traffic imposes no "additional" burden on originating carriers.

d. Verizon should not be permitted to impose access charges on VNXX service as VNXX service does not cause Verizon to lose toll revenue.

The point of any FX service is to provide end users a *local* calling number for a particular business. There is no reason to assume that this traffic would exist if it required a toll call. If the originating caller wants to call a local number for the service he or she seeks, it is likely that the customer would simply find a vendor with a local number and place that call rather than dial a toll number which would allow Verizon to bill its toll charges. The customer, if confronted with a toll charge, would have been unlikely to make the call.[108] There is no loss of revenue if the customer is not able to, or would not choose to, make a call in the first place.[109] To the extent that Verizon suffers any revenue losses resulting from competition, adjusting its prices can minimize these losses—just as any other competitor would do.[110] Verizon revenue is not at risk, however competitive choice in FX service will disappear if Verizon has its way. Imposition of access charges on VNXX service is discriminatory because it permits Verizon to use VNXX while denying ALECs the ability to do this.

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[107] See *Selwyn Direct* at 58-65.

[108] *Selwyn Direct* at 65-66.

[109] *Id.* at 66.

[110] *Id.*

As explained above, Verizon incurs no additional transport cost when Global provides FX service via VNXXs. Notwithstanding this, Verizon proposes punitive access charges on Global if it employs VNXX to provide FX-like service. This makes it impossible for Global to provide this service economically. Unlike Global, Verizon is not hindered by reason of the access charge penalty. When/if Verizon pays an access charge, it pays the access charge to itself (or affiliate). In other words, Verizon's monopoly power with respect to intrastate toll traffic allows it to impose excessive charges on end users, while it "charges" access charges to itself by a mere journal entry. As long as the monopoly remains unchallenged, as a practical matter, it probably doesn't matter very much how Verizon accounts for its revenues.[111]

To allow Verizon to impose non-cost-based access charges on its competitors when they offer a service that might, arguably, in some small way erode Verizon's iron grip on the intrastate toll market is, purely and simply, to throw the weight of regulatory policy behind the anti-competitive desires of the monopolist ILEC. Global submits that it is impossible to square such a policy with the pro-competitive policies of the *1996 Act*.

In this regard, Verizon has an incentive to set access charges as high as possible, because the distinction between recording a journal entry between Verizon and its affiliates versus having competitors pay "real" cash becomes more pronounced the higher these charges are. This is not a true competitive advantage for Verizon, but rather is a result of the rate design and implementation of such an access charge regime.

[111] Imputing costs also fails to constrain the monopoly's ability to impose costs on others while avoiding them itself. Although imputing such costs is interesting as an academic exercise, it is ineffective as a restraint mechanism between affiliates or in a master/subsidiary relationship.

e. **Global's position on VNXX service is consistent with the current calling-party's-network-pays regime.**

As noted above, a ALEC incurs termination costs to deliver a VNXX call to its customers. The current regulatory regime requires that ALECs be compensated for these termination costs. The FCC recently acknowledged this in the *Intercarrier Compensation NPRM,* where it stated: "[e]xisting access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. These interconnection regimes are referred to as "*calling-party's-network-pays*" (or CPNP)".[112] Thus, the fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e.*, the originating party in the case of telephone exchange service) compensates the other party for the use of its network. Therefore, consistent with this principle, a carrier is lawfully entitled to recover its costs to terminate VNXX calls originating on Verizon's networks. However, Verizon's position that Global should compensate it in the form of access charges for VNXX calls when, in fact, Verizon is already being compensated for these calls from its customers through its retail rates, turns the current CPNP regime on its head.

f. **Global's VNXX service is similar to Verizon's 500-number Internet Protocol Routing Service/Single Number Service (IPRS/SNS).**

Selwyn testified regarding Verizon's 500-number Internet Protocol Routing Service/Single Number Service (IPRS/SNS), which though presently marketed by Verizon to ISPs in other states, but is not yet available in Florida, could be utilized for

[112] *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*") at ¶ 9; *see, also*, *ISP Remand Order* ¶46 (" [w]e now hold that telecommunications subject to those provisions [payment of reciprocal

everything presently done with FX and VNXX service. In an attempt to invent a distinction between Verizon's IPRS/SNS and Global's use of virtual NXX codes to provide customers with a "local from everywhere" presence, Verizon witness Terry Haynes ("Haynes") typically claims that because Verizon has established numerous IPRS "hub" locations throughout the serving area where this service is deployed and that as a result, roughly 80% of calls originated by Verizon end users to IPRS 500 numbers were being routed to hubs within the caller's local calling area.

The accuracy of Haynes' quantitative contention notwithstanding, the specific matter that he often raises – that most calls to IPRS 500 numbers are transported to a hub physically located within the calling party's local calling area – is of no particular relevance when comparing Global's use of virtual NXX codes to Verizon's use of a "local from everywhere" 500 number.

Unlike the case of traditional foreign exchange service, the IPRS customer (the ISP) does not pay Verizon for transport over the entire route, but instead pays only for a portion of that route – from the hub to the IPRS customer. Moreover, for the portion of the IPRS calls that are originated from locations that are ordinarily *toll calls* to the hub location, in other states where this service has been deployed, the IPRS customer pays no additional transport or access charges for what Verizon would consider the toll portion of the route in the manner defined by Haynes.

Verizon also attempts to portray the IPRS 500 number service as an "800-like" service. The only similarity between 800 Service and the 500 IPRS Single Number Service is in the fact that the customer can dial the same uniform number from any location. The similarity ends there. 800 Service is unambiguously a *toll service* for which access charges *always* apply. In

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compensation under §251(b)(5) and §251(d)(2)] are all such telecommunications not excluded by section 251(g).") As FX-like calls are not excluded by § 251 (g), they are subject to reciprocal compensation.

fact, even if a call to an 800 (or 888, 877 or 866) number is originated and delivered within the same local calling area, access charges will still apply *at both ends of the call.* Calls to 800-type numbers are carried by the interexchange carrier *selected by the 800 Service customer* and not by Verizon (except if Verizon happens to be the 800 Service carrier that the customer has selected). The caller does not pay a local call charge for calls to 800-type numbers, and does not drop coins into a payphone for originating such calls (because payphone-originated 800 calls are subject to FCC-ordered payphone compensation). Also, calls to 800 numbers can be originated from *any* LEC's telephones, whereas calls to Verizon IPRS 500 numbers can only be placed from Verizon telephones.

By contrast, when a customer places a call to a Global virtual NXX number, the customer is charged for a local call (just like Verizon's 500 numbers), and the call is routed to Global irrespective of the calling party's choice of intra-LATA presubscribed carrier. Global's ability to utilize virtual NXX numbers enables Global to compete with Verizon's IPRS/SNS service.

g. Treating VNXX service as reciprocal compensation traffic is consistent with recent cases.

In other jurisdictions, Verizon has looked to case law to support its position which may be distinguished. Verizon has relied on *AT&T Corp.*[113] for the proposition that the FCC rejected use of NPA-NXX in place of actual geographic end points in inter-carrier compensation. This misses the point. *AT&T Corp.* was decided in 1998, and the reconsideration was in 2000. This was before the *ISP Remand Order* removed the "local" limitation on the reciprocal compensation rules.

[113] *AT&T Corp. v. Bell-Atlantic Pennsylvania*, 14 FCC Rcd. 556 (1998) *recon den.* 15 FCC Rcd 7467 (2000).

Verizon also relies on *Mountain Communications.*[114] This is a CMRS case in which the FCC ruled that a "LEC may charge a CMRS carrier for services that are not necessary to effectuate interconnection."[115] The arguments Global makes in this arbitration were simply not considered in that order nor could they be as a CMRS carrier is not subject to the same reciprocal compensation rules.[116]

Verizon claims that inter-exchange calls have long been subject to their own separate compensation regime, they are exempt from reciprocal compensation. Again the history is irrelevant; the *ISP Remand Order* changed the applicable federal law. Verizon usually notes a number of states that do not impose reciprocal compensation upon VNXX traffic. Global disagrees with such a result, and notes that in the instant case Verizon seeks far more than an order requiring Global to terminate Verizon's calls to VNXX numbers for free, it seeks imposition of access charges on Global for terminating Verizon originated traffic.

Finally, Verizon claims that it has created a workable manner of billing VNXX calls and so has answered the FCC's concerns in the *Virginia Order.* Global submits that it has adduced insufficient evidence to show that this new plan, with no history of success, would work. Moreover, Verizon has not measured the cost of implementing its untested billing plan; nor has it provided sufficient information on what burdens it imposes on ALECs generally and Global in particular. Further, Verizon fails to note that it has provided no contract language relating to its late proposition; there have been no discussions between the parties relating to this sub-issue.

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[114] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642 (July 25, 2002) *aff'd* File No. EB-00-MD-017, 17 FCC Rcd 2091 (2002) ("*Mountain Communication*").

[115] *Id.* ¶6.

[116] Under Rule 701(b)(2) reciprocal compensation traffic for a CMRS provider, unlike a LEC, is defined geographically as telecommunications traffic that originates and terminates within a major trading area.

Finally, Verizon does not provide any method for an interim solution while it attempts to implement its untested billing system.

3. Which Carrier's Local Calling Area Should Be Used as the Basis for Determining Intercarrier Compensation Obligations?

Verizon's Local Calling Area proposal wholly ignores the *ISP Remand Order* by applying access charges on all inter-exchange calls regardless of whether they are toll calls or not.

Global's Proposal:	2.52 Measured Internet Traffic. Dial-up, switched Internet Traffic originated by a Customer of one Party on that Party's network , and delivered to a Customer or an Internet Service Provider served by the other Party, on that other Party's network.
Verizon's Proposal:	2.52 Measured Internet Traffic. Dial-up, switched Internet Traffic originated by a Customer of one Party on that Party's network at a point in a Verizon local calling area, and delivered to a Customer or an Internet Service Provider served by the other Party, on that other Party's network at a point in the same Verizon local calling area. Verizon local calling areas shall be as defined by Verizon. For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement. Calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis, are not considered Measured Internet Traffic.
Other related Sections:	Glossary Sections 2.34, 2.42, 2.47, 2.52, 2.56, 2.77, 2.83, 2.91; Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4, 13.3

Selwyn testified:

- 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 service from innovative offerings.[117]

- The Florida Commission has already determined this issue in Global's favor in the Generic Proceeding.[118]

a. The reciprocal compensation rules and "mirroring" rule prohibit imposition of access charges on reciprocal compensation traffic.

Applying the current rules to traffic originated by Global customers to be terminated by Verizon that traffic must be reciprocal compensation traffic (unless the traffic is exchange access or information access traffic). As explained above, by statute, traffic is only exchange access traffic when a separate toll charge is imposed upon it. As Global shall impose no toll charge on traffic originating and terminating within the LATA, its traffic is not exchange access traffic. As it is not exchange access traffic, Verizon may only charge reciprocal compensation for terminating this traffic under Rule 703(a) and may not charge more than the FCC cap rate under the "mirroring" rule.

Under the *1996 Act*, carriers have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[119] Consequently, the costs of transport and switching associated with terminating a call are paid by reciprocal compensation. So, when Verizon picks up a call at the SPOI, and delivers it to its customer within the LATA, it is wholly compensated by reciprocal compensation regardless of where the call originated.

[117] *Selwyn Rebuttal* at 40.

[118] *Id.* at 46.

[119] 47 USC § 251(b)(5).

Sometimes a party terminating a call may receive payment that exceeds the reciprocal compensation rate, such as if it is paid terminating access charges for terminating the call. However, this windfall payment only applies to exchange access traffic, which is traffic subject to a separate toll charge. This separate toll charge is shared by the IXC with the originating carrier and the terminating carrier. When there is no separate toll charge, it is not exchange access traffic, it is simply reciprocal compensation traffic and the terminating carrier is fully compensated by reciprocal compensation. Adherence to the FCC's reciprocal compensation rules always results in the terminating carrier receiving full compensation for its work, but prevents the terminating carrier from receiving a windfall when there is no toll charge to split.

The FCC's reciprocal compensation rules permit competition regarding the size of local calling areas because they permit ALECs like Global to offer larger local calling areas to customers without facing punitive access charges. Larger local calling areas promote competition and benefit the consumer. Global wants to offer LATA-wide local calling areas. Such an offering will allow it to compete with both local providers as well as IXCs. Most importantly, this would exert downward pressure on the current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product. This is precisely the kind of competitive benefit that consumers have so long deserved, and has so long been denied.

b. LATA wide local calling areas impose no additional costs on Verizon.

When a Verizon customer calls a Global customer, Verizon's work is to hand that call off to Global at the SPOI. It makes no difference what Global does with the call after handoff, as Verizon's work is complete upon handoff. This is why Global's VNXX service imposes no additional costs on Verizon. Conversely, when Verizon terminates a call originated by a Global customer, Verizon's work is to pick up the call at the SPOI and deliver it within the LATA. It makes no difference what Global does before the call is handed off, as Verizon's work does not begin until handoff. Consequently, it is completely irrelevant if the call originated from a location across the street from the Verizon customer who is receiving the call or if it originated on the other side of the LATA. In either case, Verizon picks up the call at the SPOI and delivers it to its customer.

Selwyn explained that the local versus toll distinction grew out of the architecture of the earliest telephone networks. Originally, an exchange generally referred to the geographic areas served by a manual switchboard to which all of the telephone lines with any 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 different switchboard, 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. For calls to nearby exchanges, direct lines 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 a major factor in both the complexity and cost of individual calls.[120]

The explosion in telecommunications technology over the past two decades, and particularly the enormous gains in fiber capacity has reduced the cost of telephone calls to a mere fraction of a cent per minute. It also has made any physical distinction that may have once

[120] *See Selwyn Direct* at 5-6, 12 and 51.

existed between local and toll calls all but obsolete, and has essentially eliminated distance as a cost driver for all telephone calls.[121]

Global's evidence shows that there is no economic or technical reason for local calling areas to be any smaller than a LATA. In addition, there are good reasons for local calling areas to be at least as large. No evidence appears in the record to disprove the technical capability to provide such a product. There are no valid technical arguments against LATA wide calling.

c. LATA wide local calling simply permits Global the opportunity to compete with services that Verizon is offering and has been offering for some time.

Verizon has many exceptions to its own local calling for its own customers. Its offerings include services such as metropolitan and eastern LATA unlimited, which are actually designated in the tariff as local services and not toll services. It also provides measured circle calling, which is designated as a toll service and flat-rated service that is designated as a local service. Verizon is offering what Global proposes to offer, local calling services that exceed the sort of basic home-and-contiguous type of local calling services. Global's proposal simply permits it to compete with Verizon's offerings.

d. LATA wide local calling is consistent with Florida precedent and other cases.

Other states have permitted LATA wide local calling areas. Arguably the most telling decision in this area is also the most recent. On September 10th, this commission issued a lengthy ruling on the issue of reciprocal compensation and local calling areas.[122] There, as here,

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[121] *See Selwyn Direct* at 51.

[122] *In re: Investigation into Appropriate Methods to compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996,* Docket No. 000075-TP (Phases II and IIA), Order No. PSC-02-1248-FOF-TP (Fl. P.S.C. Sept. 10, 2002). (*Florida Order*)*; see also Selwyn Direct* at 46-47 discussing the impact of this Order.

Verizon made many of the same arguments, including the contention that allowing ALECs to determine local calling areas for purposes of reciprocal compensation may threaten the implicit subsidies used to support universal service.[123] As the Order recites, "ILEC parties in this proceeding deal extensively with the potential threat to universal support if a system is adopted that reduces access revenues."[124] Verizon even filed testimony regarding projected losses, which the Commission took note of and discussed in its Order.[125] Nonetheless, the Commission determined that *the originating party's Local Calling Area should be used to define intercarrier compensation*.[126] It did so because, in its words, "[u]sing Verizon'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 areas 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 form of intercarrier compensation is access charges, due to the unattractive economics."[127]

In other jurisdictions, Verizon has looked to paragraph 1033 of the *Local Competition Order* that allowed the states to decide what is "local" for purposes of implementing the FCC's rules to support its claim that access charges should apply to all "inter-exchange" calls. It is

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[123] *See e.g.,* Verizon alleges at page 20 of its brief that "GNAPs' proposal would allow GNAPs to unilaterally ***abolish*** intraLATA access charges for GNAPs.

[124] *Florida Order* at 45.

[125] *Id.* at 51.

[126] *Id.* at 55.

[127] *Id.* at 53. The New York Commission also approved LATA wide local calling areas. *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.* , Case 02-C-0006 (N.Y.P.S.C. May 22, 2002) ("*Global New York Order*").

precisely that portion of its rules that the FCC has now expressly abandoned and modified, as a result of the confusion and ambiguity that arose from relying on the non-statutory term.[128]

Verizon has also suggested that Global will be charging a "flat rate" toll on its calls so they are "exchange access." Recall the definition of "toll": "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."[129] Global's plan does not include any separate charge. How can there be a "flat rate toll" when toll, by definition, requires a separate charge?

Verizon has raised no new arguments and presented no compelling evidence for this Commission to reevaluate its so recently made determination to define intercarrier compensation based on the terminating carriers' local calling areas. It is in the best interests of competition and the consumers to give this ruling a chance to make an impact. Upon confirmation by the Commission of this favorable ruling and incorporation into Global's interconnection agreement with Verizon, Global intends to expand its local calling area to be LATA-wide.

a. The reciprocal compensation rules and "mirroring" rule do not permit imposition of origination charges or access charges on reciprocal compensation traffic to fund implicit subsidies or universal service.

In other proceedings, Verizon has argued that state commissions must protect its toll revenue so Verizon may use this revenue to subsidize local service. For example, in an arbitration in California, Verizon submitted a Statement which stated:

> [t]he commission specifically recognized that Verizon's rate design reflects the guiding principle that residential basic exchange rates are set below their cost 'in order to continue progress to achieve universal service goals of this Commission.' The commission further recognized that Verizon's toll rates 'have historically been used to

[128] *See ISP Remand Order* at ¶¶ 45-46.

[129] *See* 47 USC §§ 153 (48)(emphasis added).

> subsidize low rates for basic exchange service.' Nevertheless, the Commission committed to giving Verizon 'a fair opportunity to retain sufficient revenues to permit [it] to carry out [its] obligations to serve the public to further other worthy social goals.'[130] From this, Verizon claimed in California that the Commission must permit it to impose origination charges and access charges on reciprocal compensation traffic to facilitate its implicit subsidy of basic service.[131]

Absolutely nothing in the reciprocal compensation rules or "mirroring" rule permits the imposition of an origination charge or an access charge on reciprocal compensation traffic to "further... worthy social goals." Instead, the *1996 Act*, and recent case law prohibit this anticompetitive practice.

47 USC § 254(e) states, in part:

> After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214 (e) shall be eligible to receive specific federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. *Any such support should be explicit* and sufficient to achieve the purposes of this section.

(emphasis added). Subsection (f) states that a "State may adopt regulations not inconsistent with the Commission's rules to preserve an advance universal service." The FCC adopted its regulations implementing section 254 in 1997.[132] On May 3, 2002, the United States Court of Appeals for the Fifth Circuit specifically held that the FCC cannot maintain any implicit subsidies whether on a permissive or mandatory basis.[133] As a state's regulations cannot be inconsistent with the Commission's rules, it follows that states cannot maintain any implicit

[130] *In The Matter Of Global NAPs, Inc. (U-6449-C) Petition For Arbitration Of The Interconnection Agreement With Verizon California, Inc. F/K/A GTE California, Inc. Pursuant To Section 252(B) Of The Telecommunications Act Of 1996*, Statement of Verizon California, Inc. at 8 (Ca.P.U.C. May 29, 2002).

[131] It is truly amazing that ILECs simultaneously look to commissions to protect their toll revenue so they can subsidize basic residential service and then complain that ALECs are not real telephone companies because they do not provide basic residential service.

[132] *Federal-State Joint Board On Universal Service*, 12 FCC Rcd 8776, 1997 W. L. 236 383 (1997).

[133] *COMSAT Corp. v. FCC*, 250 F. 3d 931, 939 (5th Cir. 2002).

subsidies whether on a permissive or a mandatory basis. Consequently, if Verizon were to subsidize basic residential service through the use of origination fees or access fees on reciprocal compensation traffic, it would be in violation of sections 254(e) and (f).

Similarly, under section 254(k), "a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition." There is little doubt that basic residential service is, or at least should be, subject to competition. When Verizon makes use of origination fees or access fees on reciprocal compensation traffic, it is using services that are not competitive to subsidize services that are subject to competition in violation of the statute.

Finally, common sense says that there will never be true competition for basic residential service if Verizon is permitted to subsidize this service.

b. The reciprocal compensation rules and the "mirroring" rule require payment for termination of reciprocal compensation traffic.

Rule 703(a) requires that "[e]ach LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier." The "mirroring" rule sets the rate at the FCC caps. Under these rules, each party must be compensated for the termination of the other party's reciprocal compensation traffic at FCC cap rates. This applies equally to intra-exchange traffic, VNXX traffic, and traffic from Global's LATA wide local calling area.

C. Sound public policy supports Global's position on the remaining issues.

In addition to the above issues which have an impact on intercarrier compensation, Global responds to the non-intercarrier compensation issues as follows:

Issue 6: Should the parties' interconnection agreement include a change in law provision specifically devoted to the *ISP Remand Order*?

Global's Proposal:	Global did not provide explicit language concerning the recognition of ISP Remand Order but instead requests a policy determination from the Department and will negotiate with Verizon based on such ruling.
Verizon's Proposal:	4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
Other related Sections:	Exhibit B, Proposed Interconnection Agreement GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 – 75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.[134]

[134] Global urges the Commission to rule on these issues directly rather than ordering specific contract language to avoid conflicts in the final contract language.

The proposed interconnection agreement submitted by Verizon acknowledged that Global has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. The issue is simply whether the language proposed by the ILEC is adequate.[135] Clearly it is not. Global submits Verizon's change of law paragraph is inadequate[136] because it does not directly pertain to the *ISP Remand Order* as the Interconnection Agreement does not deal with compensation for ISP bound traffic. The *ISP Remand Order* is being revisited by the FCC and given its uncertainty, deserves special attention. If ultimately overturned, the ILEC acknowledges that Global should have the right to demand renegotiation, and, if necessary, further arbitration. The agreement should, therefore, clearly state this in light of the pending decision on this matter.[137]

Issue 3: Should the parties' interconnection agreement require mutual agreement on the terms and conditions relating to the deployment of two-way trunks when GNAPs chooses to use them?

Global's Proposal:	2.2.1. In interconnecting their networks pursuant to this Attachment, the Parties will use, as appropriate, the following separate and distinct trunk groups: 2.2.1.1. Interconnection Trunks for the transmission and routing of Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, Tandem Transit

[135] Although explicit, Global and Verizon have not agreed to explicit language in the negotiations process, other states have seen fit to honor Global's request, including Nevada and Ohio. Language proposed by Verizon in the contract in dispute is found at GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 – 75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.

[136] *See* Exhibit B, Proposed Interconnection Agreement at §§ 4.4 - 4.7.

[137] *See* Exhibit B, Proposed Interconnection Agreement GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 – 75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.

	Traffic, and, Measured Internet Traffic and any traffic for which the calling party's carrier does not impose a toll charge, all in accordance with Sections of this Attachment; 2.2.3. Except as otherwise provided in this Agreement, GNAPs may designate where One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and uni-directional two-way trunks) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions) will be deployed. 2.2.5. Deleted 2.3.1.2 Deleted 2.3.2. et seq. Deleted 2.4.4. On a semi-annual basis, each Party shall submit a good faith forecast to the other of the number of End Office and Tandem Two-Way Interconnection Trunks that it anticipates that the other Party will need to provide for the next two (2) year period. GNAPs in its good faith performance of its obligations according to the Agreement shall provide trunk forecasts in a reasonably complete manner sufficient to allow Verizon to review, process, and prepare for such trunk forecasts. GNAPs will use reasonable efforts to provide forecasting according to Verizon's reasonable forecasting guidelines as in effect at that time and Verizon will not refuse to accept, process, and act upon any such trunk forecast that substantially complies with Verizon's reasonable and non-discriminatory trunk forecasting guidelines then in effect unless and only unless Verizon proves that GNAPs provided information that materially alters the accuracy of the information GNAPs sought to provide in the trunk forecast.
Verizon's Proposal:	2.2.3. Except as otherwise provided in this Agreement, **the parties will mutually agree upon** where One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and uni-directional two-way trunks) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions) will be deployed.

	Except as otherwise agreed in writing by the Parties, the total number of Tandem Interconnection Trunks between GNAPs's network and a Verizon Tandem will be limited to a maximum of 240 trunks. In the event that the volume of traffic between GNAPs's network and a Verizon Tandem exceeds, or reasonably can be expected to exceed, the capacity of the 240 trunks, GNAPs shall promptly submit an ASR to Verizon to establish new or additional End Office Trunks to insure that the volume of traffic between GNAPs's network and the Verizon Tandem does not exceed the capacity of the 240 trunks. ***2.3.1.2.1. For each Tandem One -Way Interconnection Trunk group provided by Verizon to GNAPs with a utilization level of less than sixty percent (60%), unless the Parties agree otherwise, GNAPs will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%).*** **2.3.2. Where the Parties have agreed to use One-Way Interconnection Trunks for the delivery of traffic from Verizon to GNAPs, Verizon, at Verizon's own expense, shall:** **2.3.2.1. provide its own facilities for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the GNAPs-IP or to the third-party Collocation arrangement used by Verizon at the GNAPs-IP; or** **2.3.2.2. obtain transport for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the GNAPs-IP or to the third-party Collocation arrangement used by Verizon at the GNAPs-IP (a) from a third-party, or, (b) if GNAPs offers such transport pursuant to this Agreement or an applicable GNAPs Tariff, from GNAPs; or** **2.3.2.3. order the One-Way Trunks from GNAPs in accordance with the rates, terms and conditions set forth in this Agreement and applicable GNAPs Tariffs for installation on an Entrance Facility obtained by Verizon from GNAPs pursuant to Sections and, or obtain the One-Way Trunks from a third-party that**

	has established an interconnection arrangement with GNAPs. **2.4.4. On a semi-annual basis, shall submit a good faith forecast of the number of End Office and Tandem Two-Way Interconnection Trunks that GNAPs anticipates Verizon will need to provide during the ensuing two (2) year period to carry traffic from GNAPs to Verizon and from Verizon to GNAPs. GNAPs's trunk forecasts shall conform to the Verizon CLEC trunk forecasting guidelines as in effect at that time.**
Other related Sections:	**Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.**[138]

Verizon does not oppose offering Global two-way trunks, but insists that the parties need to agree on operational responsibilities and design parameters. Unfortunately, the very fact this petition needs to be filed indicates there is now, and will likely be in future, disagreements on these operational aspects. These disagreements center chiefly on the onerous restrictions imposed by Verizon's proposed contract language upon Global's ability to order trunking facilities.[139]

Verizon claims that Global is in the best position to forecast both its traffic terminating on Verizon's network and Verizon's traffic terminating on Global's network.[140] Essentially, Verizon is abrogating all its forecasting obligations. It is asking Global to make, and be responsible for, both carriers' traffic forecasts. This is discriminatory and burdensome. A more equitable resolution is that presented by

[138] Global urges the Commission to rule on these issues as policy issues directly rather than ordering specific contract language to avoid conflicts regarding the intent of the final contract language.

[139] *See* Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.

[140] *See id.* at 26.

Global, which has made specific recommendations in its proposed contract language at section 2.4 where each carrier forecasts the traffic that it believes will terminate on the other carrier's network.[141] This is precisely the conclusion reached by the New York Commission.[142]

In addition to the forecasting burden, Global proposes modifications which (1) exclude measured Internet traffic, (2) replace "intrastate traffic" with "other traffic", (3) remove restrictions on the manner of connection, (4) impose industry standards for equipment used in provisioning, (5) assure equality in service quality and provisioning through the ASR process, (6) equalize trunk underutilization restrictions, (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due, (8) eliminate restrictive subtending arrangement requirements, and, (9) clarify the definition of "traffic rate". These proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by Verizon.[143]

Another example of Verizon dictating terms to its customers is its threshold end-office trunking requirements. There is no rationale behind Verizon's insistence on limiting trunks to the tandem to a maximum of 240 trunks. This would require connection to an end office when less than 50% of a DS-3 capacity is used. Such a requirement is inefficient, wasteful and is not based on any industry standard. A more

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[141] *See* Exhibit B, Proposed Interconnection Agreement at §§ Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.

[142] *Global New York Order* at 16.

[143] *See* Exhibit B, Proposed Interconnection Agreement at §§ 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.

logical limitation would be for Verizon to target 672 trunks as a maximum. This equates to a single DS-3

Most importantly, however, is that despite Verizon's concurrence that Global be required only to interconnect at a single point in a LATA, it has yet to allow Global to exercise this right. Verizon imposes a requirement that it – and it alone – dictate the terms and condition of interconnection in a "Memorandum of Understanding" ("MOU"). Global began asking Verizon for interconnection last year. An ASR was sent in October; an ALEC profile was sent to Verizon in November. Verizon did not respond with a proposed MOU. In mid-February, Global's counsel drafted a proposed MOU based on others accepted and executed between the two parties. Global has yet to receive a draft MOU from Verizon and has yet to receive comments on Global's proposed MOU.

Without interconnection, all the terms and conditions of a contract are inconsequential. SBC doesn't require similar agreements when Global interconnects. Other Florida incumbent providers don't have this requirement either (e.g., BellSouth). Clearly this is a stonewalling attempt by Verizon which, to date at least, has been effective. It should not be a requirement that Global be dictated terms and conditions by a monopoly of initiating service, especially when even such terms are not forthcoming. Global asks this Commission to compel Verizon to act on its obligation to allow for interconnection, irrespective of whether or not there is a MOU in place.

Issue 7 Should the Parties' Interconnection Agreement Incorporate by Reference Each Parties' Respective Tariffs?

Global's Proposal:	Verizon's proposed interconnection agreement is replete with references to its tariffs and even its CLEC handbook.[144]
Verizon's Proposal:	Retain all references to outside documents.

As a basic tenet of law, the contract, or, in this case, the interconnection agreement should be the sole determinant of the rights and obligations of the parties to the greatest extent possible. Verizon, in contrast, proposes numerous citations and references to tariffs and other documents outside "the four corners" of the interconnection agreement. The effect is that Verizon is able to change the terms and conditions of the interconnection agreement without Global's assent, ignoring Global's need for the stability and certainty of its interconnection agreement with Verizon. Although tariffs are the best example of how Verizon can unilaterally make subsequent changes affecting the rights of the parties, Verizon can also make changes to the CLEC handbook — which is not subject to the Commission's review and approval — to affect the parties' relationship.

Verizon argues that a tariff filing is a matter of public notice and that Global has the right to contest such filing. This misses the point. A contract evidences a meeting of the minds. It should not change merely because Verizon decides it should. Giving Global a right to participate in a regulatory review of Verizon's tariff filings can hardly be equated with a right to veto. Moreover, even though Global can contest a tariff, it needs to be made aware of the filing. Although filing a tariff at the Commission is deemed to be public notice, the reality is that Global would have to investigate each and every tariff filed every day to determine whether and how the contractual relationship between the parties may be changed should the proposed tariff be

[144] Global urges the Commission to rule on these issues directly rather than ordering specific contract language to avoid conflicts in the final contract language.

adopted.[145] Finally, even though Global can contest the tariff, Global will incur additional legal costs over and above those related to the negotiation and arbitration of the contract currently before this Commission. Worse still, there is no limit to the costs which Verizon can impose because it can, if it wishes, re-file with impunity the same proposed tariff change or some other modification as frequently as it wishes.

Thus, tariffs should not be permitted to supercede interconnection agreement rates, terms and conditions of the contract.[146] The definitions contained in Verizon's tariffs should not prevail over the definitions within the parties' interconnection agreement, and the parties' interconnection agreement should define "Tariff" so as to exclude incorporation of future tariffs.[147]

Issue 8: What Amounts and Types of Insurance Should GNAPs be Required to Obtain?

Global's Proposal:	Proposed insurance requirement terms can be found at Section 21 the General Terms and Conditions Section of the contract. **21.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage,**

[145] Should the Commission rule against Global, it should consider redistributing this burden on Verizon, since it is Verizon which is making the affirmative decision to alter the parties' contractual relationship. Specifically, Verizon should be compelled to provide direct notice to Global with service of any tariff and/or other change(s) which it believes will impact the relations of the parties.

[146] The California Commission's Draft Arbitrator's Report provides a compromise. "The issue of whether Verizon shall be allowed to reference its tariffs shall be determined on a case-by-case basis. I concur with GNAPs' contention that definitions or other terms and conditions in the ICA should not be superceded by tariffs. However, there are occasions where it is better to reference a tariff than to replicate all tariff provisions in the ICA." *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Draft Arbitrator's Report, Application 01-12-026 at 79 (Ca.P.U.C. April 8, 2002). This finding was not modified by subsequent Order.

[147] *Id* at 3.

	products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least $1,000,000 **combined single limit for each occurrence.** **21.2. Deleted** **21.3. Excess Liability Insurance, in the umbrella form, with limits of at least** $1,000,000 **combined single limit for each occurrence.** **21.4. Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than $1,000,000 per occurrence.** **21.5. Deleted.** *21.6. **If** a Party or its **contractors fail to maintain insurance as required in Sections through, above,** the other Party **may (but shall not be obligated to) purchase such insurance and the Party whose contractors failed to maintain insurance as required in Section 19.1 through 19.5 shall reimburse** the other Party **for the cost of the insurance.***
Verizon's Proposal:	**21.1. Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least** $2,000,000 **combined single limit for each occurrence.** **21.2. Commercial Motor Vehicle Liability Insurance covering all owned, hired and non-owned vehicles, with limits of at least** $2,000,000 **combined single limit for each occurrence.** **21.3. Excess Liability Insurance, in the umbrella form, with limits of at least** $10,000,000 **combined single limit for each occurrence.** 21.4. Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with

	limits of not less than $2,000,000 per occurrence. 21.5. All risk property insurance on a full replacement cost basis for all of GNAPs' real and personal property located at any Collocation site or otherwise located on or in any Verizon premises (whether owned, leased or otherwise occupied by Verizon), facility, equipment or right-of-way. ***21.6. If** GNAPs or GNAPs **contractors fail to maintain insurance as required in through, above,** Verizon FLy **(but shall not be obligated to) purchase such insurance and GNAPs shall reimburse** Verizon **for the cost of the insurance.***
Other related Sections:	GTC Section 21 et. seq.[148]

Verizon proposes burdensome insurance limits. PacBell considered Global's current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage sufficient. This insurance is more than adequate to cover any damages that may occur from Global's operations. It is inexplicable why PacBell would agree that Global has sufficient coverage while Verizon does not. Both are similarly situated ILECs. However, when Verizon was presented with the agreement between PacBell and Global resolving differences on insurance coverage, it still adamantly refused to change its stance. Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by either GNAPs — or any other ALEC.

Verizon's burdensome requirements are discriminatory for several reasons. First, it is not entirely clear that Verizon doesn't "self-insure." Although Verizon has not excluded the possibility that Global can similarly self-insure, it has not provided Global with the criteria

[148] Global urges the Commission to rule on these issues directly rather than ordering specific contract language to avoid conflicts in the final contract language.

sufficient for Global to assert that it is self-insured. Thus, Verizon is imposing costs where it has none. This situation is indicative of the type of one-sided negotiations in which a monopoly with leverage engages. Also, Verizon is asking for excessive insurance for an interconnection which does not contemplate collocation of equipment at Verizon's facilities. Finally, Verizon's own insurance costs are far less as they have a longer track record and greater financial stability given their presence as an incumbent provider.

Issue 9: To What Extent Should the Parties be Permitted to Conduct Audits to Ensure (i) the Accuracy of Each Other's bills, and (ii) Appropriate Use and Disclosure of Verizon OSS Information?

Global's Proposal:	GTC Section 7 7. Deleted.
Verizon's Proposal:	7. Audits 7.1. Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least $1,000,000. 7.2. The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later

	than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party. 7.3. Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills. 7.4. Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.
Other related Sections:	GTC Section 7 et seq.[149]

Verizon argues it should gain access to Global's records through the auspices of verifying bills. It states that the supplier (billing party) reasonably should be expected to carry the burden to justify its charges to the customer (the billed party). On the face of it, this is reasonable. However, it also ignores the fact that Verizon already keeps computer records of call traffic exchanged between the parties, and that Verizon and Global have in place already a practice of verifying billing records on a monthly basis.

Global does not believe that Verizon should be allowed to audit its accounts and records because much of the material contained in these records is competitively sensitive.[150] If Global were compelled to provide the ILEC with access to redacted records, the costs of "sanitizing" these records would be prohibitive. There really is no need for Verizon to require this

[149] Global urges the Commission to rule on these issues directly rather than ordering specific contract language to avoid conflicts in the final contract language.

[150] Verizon's proposal includes "[t]he right to audit books, records, facilities and systems ***for the purpose of evaluating the accuracy of the audited party's bills.***" Direct Testimony of Jonathan B. Smith at 3 (May 8, 2002); *see also* Verizon's Proposed Interconnection Agreement at § 7 General Terms and Conditions.

information since it should have its own records of calls exchanged with Global and/or verify compliance with OSS procedures. Global is amenable, however, to providing traffic reports and Call Data Records ("CDRs") necessary to verify billing.[151] With CDRs available, Verizon has no legitimate basis to insist on access to Global's books and records.

Issue 3: **(A) Should GNAPs be Required to Provide Collocation to Verizon at GNAPs' Facilities in Order to Interconnect with GNAPs?**

(B) If Verizon Cannot Collocate at GNAPs' Facilities, Should GNAPs Charge Verizon Distance-Sensitive Rates for Transport?

Global's Proposal:	2.1.5. Verizon may use any of the following methods for interconnection with GNAPs: 2.1.5.1. a Collocation arrangement Verizon has established at the GNAPs-IP pursuant to the Collocation Attachment, or an interconnection arrangement Verizon has established at the GNAPs-IP that is operationally equivalent to a Collocation arrangement (including, but not limited to, a Verizon provided Entrance Facility) **subject to GNAPs' sole discretion and only to the extent required by Applicable law;** and/or 2.1.5.2. a Collocation arrangement that has been established separately at the GNAPs-IP by a third party and that is used by Verizon to interconnect with GNAPs **subject to GNAPs' approval, which shall not be unreasonably withheld**; and/or 2.1.5.3. a non-distance sensitive Entrance Facility obtained from GNAPs (and any necessary multiplexing), from the Verizon network to the GNAPs-IP (including, but not limited to, at Verizon's election, an Entrance Facility accessed by Verizon through interconnection at a Collocation arrangement that GNAPs has established at a Verizon Wire Center pursuant to the Collocation Attachment, or through interconnection at a Collocation arrangement that has been established separately at a Verizon Wire Center by a third party and that is used by GNAPs), or an Entrance Facility obtained from a third party that has

[151] Global's proposed language is found at Exhibit B, Proposed Interconnection Agreement at GT&C § 7, Interconnection Attachment Section 6.3, 10.13. Additional Services Attachment § 8.5.4.

	established an interconnection arrangement with GNAPs, **subject to GNAPs' approval, which shall not be unreasonably withheld.**
Verizon's Proposal:	See above; bold language is in dispute.
Other related Sections:	None.[152]

Although Verizon is specifically required to provide collocation and does so by virtue of its tariff, there is simply no legal requirement for Global to provide collocation. Notwithstanding, it has long been company policy to do so for the convenience and benefit of its customers. Global has never rejected a request by Verizon to collocate at Global's facilities. Indeed, Verizon has never asked in any of the states in which GNAPs operates and has facilities.

As a general matter, Global welcomes customers and Verizon is no exception. Although "the customer is always right", this rule of thumb stops short of allowing the customer to dictate terms and conditions which purport to involve Global in discrimination between its customers. Moreover, Global may not be in a position to match all the terms and conditions requested and required by Verizon. Finally, Global provides collocation by and through a corporate entity not party to this arbitration. Thus, although Global has an incentive to provide collocation to its customers, including Verizon, there is no federal requirement for Global to provide collocation, nor should there be a state requirement to do so when it can potentially place Global in the position of discriminating between its customers.

It is Global's position that each carrier absorb its own costs on its side of the point of interconnection for carriage of traffic. It is not entirely clear how a Verizon collocation of equipment at Global's facilities would be relevant, since Global anticipates interconnection by

[152] Global urges the Commission to rule on these issues directly rather than ordering specific contract language to avoid conflicts in the final contract language.

use of an end point fiber meet at a Verizon facility in Tampa. Indeed, as discussed above, it has requested such and has yet to hear back from Verizon some six months later! Recall that there is an asymmetric right of ALECs to designate the point of interconnection, subject only to technical feasibility. Thus, the issue of collocating at a Global facility in Tampa is extremely unlikely given Verizon's past history. If Verizon collocation is the *only* point of interconnection between the two facilities, then traffic will be exchanged there and each party should bear its own network costs. If Verizon is denied collocation for some reason, *i.e.,* space availability, and as a result incurs additional transport fees, these are unavoidable costs of its customers' desire to exchange traffic with Global and should be absorbed by Verizon, consistent with the notion that wherever the point of interconnection is within the LATA, be it at a Global facility, a Verizon facility, or in between at a mid-span meet, each party bears financial responsibility for its own network costs on its side of the point of interconnection. Finally, it is clear by Verizon's testimony that it does not even believe that collocating in a Global facility is a proper interconnection method, so it is not apparent how this scenario of not having an interconnection point with Verizon on Verizon's network could ever come about.[153]

1. Verizon's Issues.

Verizon has included the following issues:

- Issue 10: When Should a Change in Law be Implemented?

Global submits both parties should follow the law.

- Issue 11: Should GNAPs be Permitted Access to Network Elements that Have Not Already Been Ordered Unbundled?

[153] Peter J. D'Amico specifically excludes a GNAPs wire facility as a technically viable point of interconnection. *See* Supplemental Testimony of Peter J. D'Amico at 2 (Dec. 18, 2002).

Global submits that Verizon framed the issue in such an argumentative and vague manner that Global cannot be expected to reply.

III. Conclusion.

In order to ensure that Florida consumers enjoy benefits of competition, this Commission should rule that each party should be responsible for the costs associated with transporting telecommunication traffic on its side of the single POI (Transport). Global should be permitted to assign its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides (VNXX) and have all calls rated on the basis of the originating and terminating NXX codes. Verizon local calling area boundaries should not be imposed upon Global for purposes of intercarrier compensation (Local Calling Area). Finally, the Commission should rule in favor of Global on the remaining issues.

Date: April 10, 2003

Respectfully submitted,
Global NAPs, Inc., By:

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2003, a copy of the foregoing Arbitration Petition and attachments were sent by U.S.Mail, unless otherwise indicated, to the following:

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Appendix "A" Summary of Global NAPs' Positions:

ISSUE	SECTION	TITLE	GLOBAL NAPs' POSITION
1	**Glossary Sections 2.45, 2.66; Interconnection Attachment Sections 2, 3, 5.2.2, 5.3, 7.1.**	Single Point of Interconnection per LATA	The FCC states clearly that CLECs are not required to install more than one POI per LATA and may establish a single POI per LATA. Global has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party. The FCC explicitly prohibits carriers from charging origination or transport fees on their side of the point of interconnection. Each carrier is financially responsible for transporting telecommunications traffic to the single POI. **Global's Legal Authority**: *Memorandum Opinion and Order, In the Matter of the Petition of WorldCom , Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* CC Docket No. 00-218*; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, CC* Docket No. 00-249*; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc*., CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("*FCC Virginia Order*") ¶¶52, 53. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 ¶ 209 (1996). *Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,*

ISSUE	SECTION	TITLE	GLOBAL NAPs' POSITION
			Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd 18354 ¶ 78 (June 30, 2000) ("Texas 271 Order"). *US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999). *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610 ¶¶ 70, 72 (Apr. 27, 2001). *In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237 ¶¶ 233-235 (Jan. 22, 2001). *In the Matter of the Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS WorldCom Pursuant to Section 252(b) of the Telecommunications Act of 1996*, 1999 Cal. PUC LEXIS 652, Decision No. 99-09-069, Application No. 99-03-047 (Cal. P.U.C. 1999). *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.00-01-022, D.00-08-011 Addendum to Final Arbitrator's Report (Cal. P.U.C. July 17, 2000). AT&T Arbitration Order, 2001 N.Y. PUC LEXIS 495, at * 50 (July 30, 2001); *see also 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.* , Case 02-C-0006 (NYPSC May 22, 2002). *Re AT&T Communications of the Southern States Inc. d/b/a AT&T*, Docket No. 000731-TP PSC-01-1402-FOF-TP, Final Order on Arbitration (Fla. P.S.C. June 28, 2001). Arbitration Decision, *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An*

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			Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech, 01-07-86 at 8 (May 14, 2002).
2	**Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.**	Trunking Requirements	Two-way trunking should be available to Global at Global's request. Global has the discretion to dictate how the Parties will interconnect and may use two-way trunking for interconnection. Accordingly, the agreement should provide less onerous restrictions on the use of two-way trunking for all types of traffic whenever possible, including but not limited to: local traffic, toll traffic, exchange access traffic, 800/8YY traffic, and 9-1-1 traffic. **Global's Legal Authority:** *Application by AT&T Communications of California, Inc for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, 2000 Cal. PUC LEXIS 564 *18 (Cal. PUC Aug. 3, 2000). *Application by Pacific Bell Telephone Company (U 1001C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Decision 01-09-054, 52, 68 (Cal. PUC Sept. 20, 2001).

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4	Glossary Sections 2.34, 2.47, 2.56, 2.77, 2.83, 2.91; Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4, 13.3.	LATA-Wide Local Calling Areas and Mutual Compensation	Global's local calling areas should not be set by ILEC constraints. The provision of expanded local calling areas is a competitive benefit to Pennsylvania consumers. All intra-LATA traffic exchanged between Global and Verizon should be treated as subject to cost-based "local" compensation under Section 251(b)(5); and should not be subject to intrastate access charges. There is no economic or technical reason for local calling areas to be any smaller than a LATA. There are good reasons for local calling areas to be at least as large as a LATA. Global should not be economically constrained by an interconnection agreement to mirror, or otherwise conform, to Verizon's legacy network. The interconnection agreement should reflect the economic and technical reality that the distinction between "local" and "toll" calls has become artificial. The interconnection agreement should allow Global the maximum economic flexibility to compete in Illinois by offering local calling area options that may exceed those currently offered by Verizon. Consumers benefit from a regime in which competing carriers are contractually and economically free to adopt local calling area definitions that differ from those of the ILEC. CLECs 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. **Global's Legal Authority**: *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Decision No. 99-09-029; Rulemaking No. 95-04-043, Investigation No. 95-04-044, 1999 Cal. PUC LEXIS 649 *25 (Cal. PUC Sept. 2,

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			1999). *In the Matter of the Petition By PAC-West Telecomm, Inc for Arbitration of an Interconnection Agreement with Citizens Telecommunications Company of California, Inc.* Decision No. 99-12-021 1999 Cal. PUC LEXIS 783 (Cal. PUC Dec. 2, 1999). *In re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996,* Docket No. 000075-TP (Phases II and IIA), Order No. PSC-02-1248-FOF-TP (Sept. 10, 2002).
5	**Glossary Sections 2.71-73, 2.77; Interconnection Attachment Sections 9.2 and 13.**	Deployment of NXX Codes	The FCC specifically allowed CLECs to use VNXX service in Virginia in a similar arbitration with Verizon. Global can offer an FX-like service to compete with Verizon. The assignment of NXX codes does not require geographic correlation. The assignment of NXX codes should be made at the CLEC's option based on switch assignment. There is no requirement that an LEC must link the NXX code of the telephone number assigned to a particular customer with the location of that customer's premises or CPE. The primary function of the NXX code is to provide routing information. The "rating" function of NXX codes is no longer valid in a competitive environment characterized by the use of modern digital switches and advanced network technologies. Some types of telecommunications customers desire to achieve a "presence" in a location other than the one in which the customer is physically located ("foreign exchange" or "FX" service). The point of such an arrangement is to allow callers from localities for which the customer's FX is a local call to reach that customer without being subject to a toll charge. Verizon and virtually all other ILECs offer these so-called "FX" service arrangements. Currently, if a CLEC customer dials a Verizon FX customer's number, the call will be rated as

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			"local" and the CLEC will be subject to a reciprocal compensation payment to Verizon. Verizon's attempt to arbitrarily restrict the assignment of NXX codes (by referring to the customers' physical location), limits competitors' ability to deploy new networks. Economically, Verizon's costs of originating a call will not differ based upon the ultimate location to which a CLEC delivers it. Placing strict limitations on the assignment of NXX codes by referring to a customer's physical location would also give Verizon the ability to impose its own retail pricing structure upon its CLEC rivals by reclassifying local calls as toll calls. Access to the Internet can be made affordable and readily available throughout the State through the flexible use of NXX codes, which allows ISPs to have a single point of presence that can be reached by dialing a local number regardless of the physical location of the Internet subscriber within the LATA. **Global's Legal Authority:** *AT&T Decision* 2000 Cal. PUC LEXIS 564 at *25; *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Decision No. 99-09-029, Rulemaking No. 95-04-043; Investigation 95-04-044, 1999 Cal. LEXIS 649 *32 (Cal. P.U.C. Sept. 2, 1999). *Draft Decision of the State of Connecticut Dept. of Public Utility Control, DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried over Foreign Exchange Service Facilities*, Docket No. 01-01-29 at § IV.B (Ct D.P.U.C. rel. Mar. 29, 2001) *Memorandum Opinion and Order, In the Matter of the Petition of WorldCom , Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* CC Docket

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			No. 00-218*; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, CC* Docket No. 00-249*; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("*FCC Virginia Order*") ¶¶ 301-304. *In the Matter of the Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, 2001 Ky. PUC LEXIS 873 (Mar. 14, 2001). *Level 3 Communications, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, 2000 Ill. PUC LEXIS 676, *10-19 (Aug. 30, 2000). *In re MCImetro Access Transmission Services*, Docket No. P-474, Sub 10, North Carolina Utilities Commission, WL 468490, *50-58 (N.C.U.C.) (rel. April 03, 2001). *In the Matter of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Order Ruling on Objections and Requiring the Filing of Composite Agreement (rel. Aug. 2, 2001). *Century Tel v. Michigan PSC*, 2001 Mich. App. LEXIS 69 (Mich. Ct. App. Apr. 13, 2000).
6	**GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 –**	Specific recognition of revisiting	The proposed interconnection agreement submitted by the ILEC acknowledged that Global

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	75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.	reciprocal compensation provisions in light of pending FCC action.	has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. The language proposed by Verizon is inadequate because such controversy has surrounded the issue of reciprocal compensation. The *ISP Remand Order* is being revisited by the FCC and given its uncertainty, deserves special attention. If ultimately overturned, the ILEC acknowledges that Global should have the right to demand renegotiation, and, if necessary, further arbitration. The agreement should, therefore, clearly state this in light of the pending decision on this matter. A specific change in law provision more precise than that contained within Verizon's template agreement, should be incorporated in the interconnection agreement to recognize the pending litigation on reciprocal compensation issues, such that if the FCC's *ISP Remand Order* is overturned or otherwise nullified by a court of competent jurisdiction either Party may immediately reopen negotiations on reciprocal compensation issues so that the terms of the agreement are consistent with applicable federal and state law on intercarrier compensation issues. **Global's Legal Authority:** *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001). *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service,* Decision No. 98-10-057, 1998 Cal. PUC LEXIS 875, *26-*27 (1998). *Order Instituting Rulemaking on the Commission's Own Motion into reciprocal compensation for telephone traffic transmitted to Internet Service Providers modems*, Rulemaking No. 00-02-005, 2000 Cal. PUC LEXIS 51 (Cal. P.U.C. 2000).

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7	**GT&C Section 1 and throughout the contract and attachments.**	Parties' Tariffs Do Not Supercede the Agreement	A final executed, or arbitrated, interconnection agreement represents the principal contract between the two interconnecting parties. The parties' duties and obligations are governed by the "four corners" of the document, not by outside documents under the control of one party. Verizon may not affirmatively impose additional obligations or alter its responsibility under the agreement through its tariff modifications. **Global's Legal Authority:** *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Application 01-01-010 (Filed January 8, 2001). *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 610 (1996).
8	**G T&C Section 21.**	Agreement Should Include Reasonable Insurance Limits	The Agreement should be modified to include more reasonable insurance limits that reflect the relative economic position of interconnecting CLECs. No insurance limit should exceed $1,000,000.
9	**GT&C § 7, Interconnection Attachment Section 6.3, 10.13. Additional Services Attachment Section 8.5.4.**	Agreement Should Not Authorize or Permit Either Party to Audit the Other Party's Books	The Agreement should not authorize or permit either Party to audit, review or otherwise access the other Party's confidential records and systems. Global provides traffic reports and voluntarily agrees to have these subject to audit.