ORIGINAL

HUNTON & WILLIAMS

RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

KELLY L. FAGLIONI
DIRECT DIAL: 804-788-7334
EMAIL: kfaglioni@hunton.com

April 9, 2003

FILE NO: 56423.000310

Via UPS-Overnight Delivery

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Petition by Global NAPS, Inc. for Arbitration Pursuant to 47 U.S.C. 252(b) of Interconnection, Rates, Terms and Conditions with Verizon Florida Inc.
Docket No. 011666

Dear Ms. Bayo:

Enclosed please find (i) an original and fifteen copies of the Post-Hearing Statement of Verizon Florida Inc., and (ii) a diskette containing an electronic copy. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Kelly L. Faglioni

Kelly L. Faglioni

KLF/sc
Enclosures

cc: Service List (Via UPS-Overnight Delivery and Electronic Mail)

AUS
CAF
CMP
COM 3
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

DOCUMENT NUMBER-DATE
03384 APR 11 03

SERVICE LIST

Lee Fordham, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John C. Dodge, Esq.
David N. Tobenkin, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W., 2nd Floor
Washington, DC 20006

Jon C. Moyle, Esq.
Moyle Flanigan Katz Raymond & Sheehan P.A.
118 North Gadsden Street
Tallahassee, FL 32301

William Rooney, Jr., Esq.
Vice President and General Counsel
Global NAPs, Inc.
89 Access Road
Norwood, MA 02062

James R. J. Scheltema
Director-Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road West
Columbia, MD 21044

FLORIDA PUBLIC SERVICE COMMISSION

Petition by Global NAPs, Inc. for Arbitration Pursuant to 47 U.S.C. 252(b) of Interconnection Rates, Terms, and Conditions with Verizon Florida Inc.	))))	**Docket No. 011666-TP**

POST-HEARING STATEMENT OF VERIZON FLORIDA INC.

RICHARD CHAPKIS
Vice President & General Counsel
Verizon Florida Inc.
201 North Franklin Street
Tampa, FL 33602
Tel: (813) 484-1256

KIMBERLY CASWELL
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110
Tel: (813) 483-2617
Fax: (813) 223-4888

KELLY L. FAGLIONI
EDWARD P. NOONAN
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

Attorneys for Verizon Florida Inc.

DOCUMENT NUMBER-DATE
03384 APR 11 8
FPSC-COMMISSION CLERK

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT OF VERIZON'S GENERAL POSITION

The two principal issues in this arbitration relate to the intercarrier compensation that will govern the parties' interconnection pursuant to §§ 251 and 252 of the Telecommunications Act of 1996 ("Act").[1] Global NAPs, Inc. ("Global") proposes to base the parties' intercarrier compensation obligations on its retail calling area (Issue 4) and on its telephone number assignments (Issue 5). Its proposals are contrary to law. Consistent with Verizon Florida Inc.'s ("Verizon") proposals, the law and this Commission's own precedent holding that reciprocal compensation does not apply to virtual NXX calls, the Commission should make clear that the parties' intercarrier compensation obligations depend on the actual geographic end points of the call, relative to the existing, uniform standard—the incumbent's tariffed local calling areas. Not only are Global's proposals contrary to the law, Global has provided the Commission no basis in the record for adopting them.

The Commission should also resolve the remaining issues in this proceeding in Verizon's favor. With respect to each disputed issue, only Verizon's proposal is supported by the record and consistent with the requirements of federal law and the FCC's rules and orders. Global's contract proposals are nothing more than an unsupported attempt to shift its business risks to Verizon.

II. VERIZON'S POSITION ON THE ISSUES

Issue 1(A): May GNAPs designate a single physical point of interconnection per LATA on Verizon's existing network?

Yes. Global cannot, however, require Verizon to interconnect on Global's network, contrary to the Act and FCC requirements.

Verizon's proposed contract language (Verizon Glossary § 2.67; Interconnection Attachment §§ 1, 2.1, 7.1) allows Global to designate a single physical point of interconnection ("POI") per LATA on Verizon's existing network. This proposal also allows the parties to negotiate a fiber meet arrangement.[2]

---

[1] *See* 47 U.S.C. § 251 *et seq.*

[2] *See* Tr. at 193 (D'Amico Suppl. Dir. Test. at 2).

Verizon's proposal is the only one that complies with the Act and the FCC's implementing rules, which require an ALEC to select a POI "within the incumbent LEC's network."[3] This Commission has, likewise, confirmed that "the point of interconnection designated by the ALEC, to which the originating carrier has the responsibility for delivering its traffic must be within the ILEC's network."[4]

Global, however, proposes language that would allow it to designate a POI anywhere in the LATA, without regard to whether or not it is on Verizon's network.[5] This language does not comport with the Act or this Commission's own precedent. As the Delaware Commission found in selecting Verizon's proposal over Global's, it "is not appropriate to require Verizon to accept a POI at any point other than one on its existing network."[6] Even Global's own witness recognizes what Global's contract language does not: § 251(c)(2) of the Act "*requires* ILECs to allow interconnection [with ALECs] *at any technically feasible point on the their network.*"[7]

Neither Global's pleadings nor its testimony explained why it opposes Verizon's proposed contract language. For the first time, in response to discovery requests, Global suggested that it opposes Verizon's proposal because it purportedly requires the parties to mutually agree on the selection of a POI.[8] Global is wrong. Verizon's language allows Global to unilaterally select any technically feasible POI on Verizon's network.

---

[3] 47 C.F.R. § 51.305(a)(2) ("An incumbent LEC shall provide . . . interconnection . . . [a]t any technically feasible point within the incumbent's network."); 47 U.S.C. § 251(c)(2) (ILECs have a "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network."

[4] *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996,* Order Denying Motions for Reconsideration, Order No. PSC-03-0059-FOF-TP, at 23 (Jan. 8, 2003) ("*Order Denying Reconsideration*").

[5] Global's proposed Interconnection Attachment § 2.1.1 provides only that "Global may designate a single point of interconnection per LATA," without limitation to Verizon's network.

[6] *Petition by Global NAPs, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware Inc.*, Arbitration Award, PSC Docket No. 02-235, at 6 (Del. PSC Dec. 18, 2002), *aff'd*, Order No. 6124 (Del. PSC March 18, 2003) ("*Verizon/Global DE Award*").

[7] *See* Tr. at 57 (Selwyn Dir. Test. at 25) (emphasis added); Tr. 172-73 (D'Amico Dir. Test. at 4-5).

[8] Ex. 1 (Global Response to Staff Interrogatory No. 23 (filed Feb. 18, 2003)).

Global has, likewise, failed to explain why its proposed definition of a "POI" (Global Glossary § 2.66) references the FCC definition of a network interface device ("NID"). The NID, the "gray box" at a customer's premises, is the interface device between a customer's inside wire and Verizon's network; it has nothing to do with the POI, which is where an ILEC and ALEC physically interconnect their networks.[9] Because Global has not explained, let alone supported, its language regarding POI definition and placement, the Commission should reject that language.

The Commission should, likewise, reject Global's proposal regarding fiber meet arrangements, which are an alternate means Verizon offers for interconnecting the parties' networks. A fiber meet-point arrangement requires Verizon to "build out" from its network to meet Global at a mutually agreed point. As Verizon witness D'Amico explained, a fiber meet point requires a high degree of joint planning and engineering by the parties, because of variables such as location, size and type of facilities, and costs.[10] Verizon's fiber meet proposal (Interconnection Attachment § 3) requires the parties to execute in advance a memorandum of understanding to memorialize the terms, conditions, technical and operational details, and rates of the fiber meet arrangement at a specific location. Once the memorandum of understanding is completed and signed, it becomes an addendum to the interconnection contract.[11]

Global proposes that the parties include in their agreement detailed fiber meet arrangements, apparently taking the position that these terms will be suitable for every fiber meet arrangement and that it has the right to unilaterally dictate those terms to Verizon. Global cites no legal right to this approach, which is also untenable in practical terms and contrary to the record evidence in the case. Every meet-point arrangement is different, and implementation of each one requires close coordination between the parties. Verizon's proposal ensures that all details of the arrangement are worked out and understood by both parties before implementation begins, thus minimizing the likelihood of problems and delays once the network build-out begins. Verizon's approach to fiber meets is also the most consistent with the

[9] *See* Tr. at 172 (D'Amico Dir. Test. at 4).

[10] *See* Ex. 4 (March 5, 2003 Verizon witness D'Amico Deposition) at 8-11.

[11] *Id.* at 12.

Local Competition Order, which recognizes that the parties (that is, *both* parties) and the state commissions are in the best position to determine the details of a "reasonable accommodation of interconnection" under the meet-point approach.[12]

Verizon's more reasonable proposed language associated with Issue 1(A)—including the language on definition and placement of the POI and meet-point arrangements—has been incorporated into the Global/Verizon interconnection contracts in just about every state in which they have arbitrated.[13] As the Rhode Island and New Hampshire Commissions concluded, Verizon's language is "far simpler and clearer."[14] The Commission likewise should adopt Verizon's proposed Glossary § 2.67 and Interconnection Attachment §§ 1, 2.1, and 3.

---

[12] *In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499 ¶ 553 (1996) ("*Local Competition Order*").

[13] *See Verizon/Global DE Award* at 6; *Petition of Global NAPs, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Order, Docket No. 6742, at 6-7, 38 (Vt. PSB Dec. 26, 2002) ("*Verizon/Global VT Order*"); *Petition of Global NAPs, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts*, Order, D.T.E. 02-45, at 16-17 (Mass. D.T.E. Dec. 12, 2002) ("*Verizon/Global MA Order*"); *In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Case No. 02-876-TP-ARB, Panel Arbitration Report, at 11 (rel. July 22, 2002) ("*Verizon/Global OH Panel Report*"), *aff'd*, Arbitration Award, at 5 (Ohio PUC Sept. 5, 2002) ("*Verizon/Global OH Award*"); *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 02-C-0006, Order Resolving Arbitration Issues, at 8 n. 9 (NY PSC May 22, 2002) ("*Verizon/Global NY Order*"); *Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Final Recommendation, Docket No. TO02060320, at 6-7 (NJ BPU March 7, 2003) ("*Verizon/Global NJ Recommendation*"); *Petition of Global NAPs South, Inc. For Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Recommended Decision, Docket No. A-310771F7000, at 6 (Pa. PUC Oct. 10, 2002) ("*Verizon/Global PA Recommendation*"). With respect to fiber meets, *see, e.g., Verizon/Global DE Award* at 7 (Verizon demonstrated that fiber meets are case-specific and require mutual agreement); *Verizon/Global MA Order* at 18 ("Given the number of technical and operational aspects that can vary between two different end point meet arrangements, [Verizon's] case-by-case approach is preferable."); *In the Matter of Global NAPs, Inc.* (U-6449-C) *Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company and Verizon California, Inc. Pursuant to Section 252(b) of Telecommunications Act of 1996*, A. 01-11-045 and A.01-12-06, Final Arbitrator's Report, at 33 (May 8, 2002) (*"Verizon/Global CA FAR"*) (finding that Verizon's proposed language is consistent with ¶ 553 of the *Local Competition Order*), A. 01-11-045 and A.01-12-06, *adopted in part and modified in part*, Commission Decision, D. 02-06-076 (Cal. PUC June 27, 2002) ("*Verizon/Global CA Decision*").

[14] *Global NAPs, Inc. Petition for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon NH*, Report and Recommendation of the Arbitrator Addressing Contested Issues, DT 02-107, at 5, *aff'd*, Final Order, Order No. 24,087, at 8 (NH PUC Nov. 22, 2002) ("*Verizon/Global NH Decision*"); *Also see In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon Rhode Island*, Arbitration Decision, Docket No. 3437, at 24 (RI PUC Oct. 16, 2002) ("*Verizon/Global RI Decision*").

Issue 1(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?

Verizon does not seek any compensation from GNAPs for transporting Verizon's traffic to the SPOI.

Verizon originally proposed to interconnect with Global pursuant to the terms of its virtual geographically relevant interconnection point ("VGRIP") proposal.[15] Under VGRIP, Global would compensate Verizon for the additional transport Global admits it causes on Verizon's network when Global selects a distant SPOI.[16] Verizon's VGRIP proposal is consistent with FCC orders[17] and several recent federal court decisions. Indeed, applying the FCC's rules, the United States Courts of Appeals for the Third and Ninth Circuits have held that it is consistent with the Act to require an ALEC to pay the additional costs resulting from its choice of a more expensive POI.[18] In addition, a federal district court in North Carolina upheld an ILEC's proposal substantially similar to Verizon's VGRIP proposal.[19]

Despite federal authority to the contrary, this Commission has held that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its sources to the point(s) of interconnection in a LATA."[20] Although Verizon does not agree with the Commission's ruling on this issue, Verizon has

---

[15] Tr. at 173-75 (D'Amico Dir. Test. at 6-7) (Verizon witness D'Amico discussed Verizon's now-withdrawn VGRIP proposal—Glossary § 2.47, Interconnection Attachment §§ 7.1.1.1 and 7.1.1.2).

[16] Global witness Selwyn testified that Verizon would incur additional costs to transport traffic to the point of interconnection located outside of Verizon's customer's local calling area, because the "overall transport distance involved will be greater," and "in some LATAs with widely dispersed exchanges, the routing can involve two ILEC tandem buildings rather than one." *See* Tr. at 67 (Selwyn Dir. Test. at 35).

[17] *See, e.g., Local Competition Order* ¶¶ 199, 209; *Application of Verizon Pennsylvania Inc., et a. for Authorization to Provide In-Region InterLATA Services in Pennsylvania*, 16 F.C.C.R. 17419 ¶ 100 (2001).

[18] *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania, Inc.*, 271 F.3d 491, 518 (3d Cir. 2001), *cert. denied*, 123 S.Ct. 340 (2002) ("To the extent, however, that WorldCom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to WorldCom."); *U.S. West v. Jennings*, 304 F.3d 950, 960-61 (9th Cir. 2002) (*citing MCI Telecommunications* and *Local Competition Order* ¶ 209).

[19] *MCImetro Access Transmission Services LLC v. BellSouth Telecomm., Inc. et al.*, Order, Case No. 5:01-CV-921-H(4), 2003 U.S. Dist. LEXIS 2473, at *12-17 (E.D. N.C. Jan. 21, 2003).

[20] *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation, Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, at 26 (Fla. PSC Sept. 10, 2002) ("*Reciprocal Compensation Order*"), *recon. denied*, Order

since proposed alternate contract language to Global that requires each party to be financially responsible for the facilities on its side of the POI.[21] Verizon offered this contract language to Global on December 2, 2002, and Verizon witness D'Amico discussed it in his supplemental direct testimony on December 18, 2002. Global, however, has never responded to Verizon's new proposal for Issue 1(B) or criticized it in this case. Global's testimony in this case relates only to Verizon's superseded Verizon's VGRIP proposal, so that testimony is irrelevant.[22] Because Verizon's proposed contract language is consistent with the Commission's precedent and unchallenged in the record, the Commission should adopt it (Interconnection Attachment §§ 2.1 and 7.1).

Issue 2: 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 has the option to use two-way trunks for interconnection. If and when Global opts to use two-way trunks, however, the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them, because Global's decision necessarily affects Verizon's network.

Verizon's proposal (Verizon Interconnection Attachment §§ 2.2.3, 2.2.4, and 2.4) allows Global to decide whether it will use one-way or two-way interconnection trunks. If Global opts to use two-way trunks, however, Verizon's language identifies operational areas the parties must jointly address to achieve a workable interconnection arrangement.

Both parties send traffic over two-way interconnection trunks, thus affecting both carriers' networks. As Verizon witness D'Amico's undisputed testimony explains, it is imperative for Verizon to

---

Denying Motions for Reconsideration, Order No. PSC-03-0059-FOF-TP (Fla. PSC Jan. 8, 2003) ("*Order Denying Reconsideration*").

[21] *See* Tr. at 192-97 (D'Amico Suppl. Test. at 1-5); Glossary § 2.67; Interconnection Attachment §§ 1, 2.1, 7.1. Verizon Interconnection Attachment § 2.1 provides that "[e]ach 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]."

[22] *See* March 5, 2003 Global witness Selwyn Deposition at 9 ("My testimony addressed the VGRIPs proposal. If it, in fact, has been withdrawn and Verizon is not seeking compensation for transport from the single point of interconnection, then as far as I would understand it, there would be no further points of contention.").

have the ability to assess and address the resulting operational impacts on Verizon's network.[23] It is entirely reasonable for Verizon to participate in establishing the parties' respective operational responsibilities and the design parameters of the two-way trunks.[24] There is, on the other hand, no basis in the record or the law for Global's proposal to dictate the specifications for two-way trunks—or Verizon's network generally. Global's witness offered no explanation for Global's contract proposal[25] or Global's opposition to Verizon's language. Numerous other state commissions have recognized that Global's proposal ignores essential operational realities.[26] The Commission should thus approve Verizon's language, as reflected in its Interconnection Attachment §§ 2.2.3, 2.2.4, 2.4.

Issue 3(A): Should GNAPs be required to provide collocation to Verizon at GNAPs' facilities in order to interconnect with Verizon?

Issue 3(B): If Verizon cannot collocate at GNAPs' facilities, should GNAPs charge Verizon distance-sensitive rates for transport?

*** If the Commission permits Global to interconnect at a SPOI that is not on Verizon's network, it is particularly important for Verizon to have the right to (1) collocate at Global's facilities and (2) pay reasonable, non-distance-sensitive rates for transport of traffic to Global's network.***

In connection with Issues 3(A) and 3(B), Verizon's proposal (Verizon Interconnection Attachment § 2.1.5) allows Verizon the interconnection options of (i) collocating at Global's facilities[27] or

---

[23] *See* Tr. at 187-89 (D'Amico Dir. Test. at 19-21). Global never responded to Verizon's concerns about two-way trunks.

[24] *See id.*

[25] *See* Prehearing Order at 5 (Global identified Dr. Selwyn as its only witness and he only addressed Issues 1, 4 and 5). Indeed, many of Global's unexplained, proposed changes to the two-way trunking language make no sense. For example, in Verizon's proposed §§ 2.2.4 and 2.4.11, Global added the phrase "originating party," so Global's language introduces ambiguity into the contract as both parties originate traffic over a two-way trunk. *See* Tr. at 188-89.

[26] *See Verizon/Global RI Decision* at 37 (adopting Verizon's contract language); *Verizon/Global NH Decision* at 15 (adopting Verizon's trunking language); *Petition for Arbitration Pursuant to Section 252(b)of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc.*, Recommended Decision, Case No. 02-053, at 19 (Ill.C.C. Aug. 22, 2002), ("*Verizon/Global IL Recommendation*"), *aff'd* Arbitration Decision at 19 (Oct. 1, 2002) ("*Verizon/Global IL Decision*") (finding that Verizon made the "clearer and more persuasive case on this issue"); *Verizon/Global OH Panel Report* at 13-14, *aff'd, Verizon/Global OH Award* at 11; *Verizon/Global NY Order* at 16 (rejecting Global's contract proposal); *Verizon/Global NJ Recommendation* at 14 (finding that Verizon's language will not interfere with Global's decision to use two-way trunks); *Verizon/Global PA Recommendation* at 19-20.

[27] *See* Tr. at 189-91 (D'Amico Dir. Test. at 21-23).

(ii) purchasing Global's transport at non-distance sensitive rates.[28] Verizon's ability to obtain collocation and transport to Global's network is critical in the unlikely event that the Commission, contrary to its own precedent and federal law, requires Verizon to interconnect with Global at a point that is not on Verizon's network. If Verizon is compelled to interconnect at a point on Global's network, it is plainly reasonable and equitable for Verizon to have interconnection choices comparable to those of Global.

Neither Global's pleadings nor its testimony explain why Global opposes Verizon's proposals. In fact, Global's advocacy supports Verizon's proposal. Global said it is willing to offer Verizon collocation.[29] And although Global would apparently charge Verizon distance-sensitive transport rates, its witness insists that distance is no longer relevant as a pricing factor for transport.[30]

In Verizon's arbitration with Sprint, the Commission recognized that Verizon's collocation proposal was a "reasonable means" of reducing transport costs, but declined to order reciprocal collocation under the circumstances of that case.[31] The record in this proceeding, however, justifies a different decision, because Global—unlike Sprint—is willing to offer Verizon collocation. Verizon urges the Commission to find, as Commissions elsewhere have, that Verizon's proposal affords the parties "more flexibility to establish efficient interconnection"[32] and to adopt Verizon's proposed Interconnection Attachment § 2.1.5.

---

[28] *See id.* at 190-91.

[29] *See* Prehearing Order at 11.

[30] Tr. at 38-39 (Selwyn Dir. Test. at 6-7). Notwithstanding the testimony of its witness, Global apparently intends to charge Verizon distance-sensitive rates for transport. *See* Tr. at 190-91 (D'Amico Dir. Test. at 22-23); *see also* Ex. 18 § 3.3 (Global NAPs, Inc.'s Local Exchange Price List, Calculation of Distance).

[31] *Petition by Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Section 251/252 of the Telecommunications Act of 1996*, Final Order on Petition for Arbitration, Order No. PSC-03-0048-FOF-TP, at 39 (Fla. PSC Jan. 7, 2003) ("*Verizon/Sprint Order*").

[32] *Verizon/Global NY Order* at 20 (adopting Verizon's proposal as long as it was technically feasible for Global to provide collocation); *see also Verizon/Global VT Order* at 47; *Verizon/Global RI Decision* at 40; *Verizon/Global NH Decision* at 25 (agreeing with the New York Commission, the Commission permitted to collocate Verizon at Global's facilities subject to space and technical feasibility); *Ohio Panel Report* at 23-24, *aff'd*, *Verizon/Global OH Award* at 2; *Verizon/Global IL Recommendation*, *aff'd*, *Verizon/Global IL Decision*, at 24 ("Since Verizon's collocation rights . . . go no further than Global's . . . the Commission perceives no reason to grant Global discretionary powers that Verizon does not have"); *Verizon/Global NJ Recommendation* at 18; *Verizon/Global PA Recommendation* at 28-29.

Issue 4: Which carrier's local calling area should be used as the basis for determining intercarrier compensation obligations?

Verizon's tariffed local calling areas should continue to govern intercarrier compensation obligations. Despite repeated inquiries, Global failed to provide any implementation details about its originating carrier proposal. Therefore, there is no basis in the record to adopt Global's extreme proposal.

Verizon has proposed that its tariffed local calling areas continue to govern intercarrier compensation obligations. Under this approach, reciprocal compensation applies to calls that remain within a Verizon local calling area. Access charges apply to calls that travel beyond local calling area boundaries. This approach is based on the local/toll distinction the Commission has deliberately maintained since 1983, when it created the state access charge regime.

Under this existing system, ALECs, including Global, have the right to designate any retail local calling areas they wish, but intercarrier compensation is governed by the ILECs' local calling areas. Because all carriers understand the Commission's longstanding local/toll distinction, based on the ILEC's local calling areas, there is no doubt when reciprocal compensation and access charges, respectively, are to be applied. In addition, the current system does not vary with the type of carrier (whether ILEC, interexchange carrier, or ALEC) or the direction of the call.[33]

Global has proposed a radical departure from this existing system. Under Global's proposal, the originating carrier's retail local calling area would govern intercarrier compensation obligations. In other words, the direction of the call will determine whether it is subject to reciprocal compensation or access charges.

For example, Sarasota and Tampa are in different Verizon local calling areas within the same LATA. Today, when an ALEC customer in Sarasota calls a Verizon customer in Tampa, the ALEC pays Verizon terminating access charges for completing the call. If the call travels in the opposite direction, Verizon pays the ALEC terminating access for completing a call from its Tampa subscriber to the

[33] Tr. at 205 (Haynes Dir. Test. at 5).

ALEC's Sarasota subscriber. Verizon and the ALEC, likewise, pay each other reciprocal compensation for terminating each other's calls within Verizon's tariffed local calling areas.

Under Global's proposal, however, Global would unilaterally redefine intercarrier compensation obligations, with the explicit intention of avoiding access charges.[34] Global intends to designate a LATA-wide (or perhaps even larger) local calling area,[35] so that all of its calls exchanged with Verizon will be subject to reciprocal compensation. Access charges will no longer apply to any of Global's traffic within the LATA. In the example above, Global would pay Verizon reciprocal compensation, rather than terminating access, to terminate the call from its customer in Sarasota to Verizon's customer in Tampa. Verizon, however, would still pay Global access charges on the same call traveling in the opposite direction. Verizon's reciprocal compensation rates, which are required to be TELRIC-based, are about 10 times lower than access rates, which were established with the explicit goal of "maintain[ing] the financial viability of the LECs while maintaining universal service."[36]

Global and Verizon have arbitrated this issue in a number of states. In each case, Global made the same vague proposal it has here; in each case, the Commission rejected Global's proposal. Rhode Island, for example, found that Global's originating carrier proposal "seems to be contrary to federal law"; would "more likely promote rate arbitrage than competition"; "will bring greater administrative confusion to the competitive marketplace"; and "impact VZ-RI's ability to satisfy its obligations as the carrier of last resort" by eliminating access charges.[37] Massachusetts found that: "While low-priced LATA-wide calling may be an attractive option to many consumers, it appears that GNAPs' ability to offer this service on an economical basis is contingent upon the alteration of the access regime, which is not an appropriate subject for investigation in a two-party arbitration . . . . The Department's conclusion is

---

[34] Ex. 3 (Global Response to Verizon Interrogatory No. 34).

[35] *See id.*; Global Petition at 16 (Global "expects to offer its customers the benefits of a LATA-wide local calling service").

[36] *Intrastate Tel. Access Charges for Toll Use of Local Exchange Services*, 83 FPSC 100, 1983 Fla. PUC Lexis 71, at *15 (1983).

[37] *Verizon/Global RI Decision* at 28-31.

consistent with the FCC's holding that intrastate access regimes in place prior to the Act will continue to be enforced until altered by state commissions."[38] Other Commissions ruling against Global include Vermont (concluding that Global's selection of the local calling area "does not determine the intercarrier compensation that applies (*i.e.*, whether the call is subject to reciprocal compensation or access charges");[39] Ohio (holding that Verizon's local calling areas "shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation");[40] Delaware ("The basic premise behind transport and termination is reciprocity. Global's proposal violates that premise without any economic rationale ... In addition, the use of any local calling areas other than Verizon's would be disruptive to the application of the in-state pricing regime");[41] California ("We support the ILECs' policy arguments relating to [the local calling area issue]. It is not our intent in this arbitration to disrupt the local and intraLATA calling paradigm adopted by the Commission. And we have no intention of making a decision in an arbitration proceeding that would have the net result of abolishing intraLATA calling");[42] New York (rejecting Global's originating carrier proposal despite New York's LATA-wide calling scheme established before the Act was adopted);[43] and New Hampshire.[44] The Arbitrator's decision pending before the New Jersey Board, likewise, finds that access charges should apply to "traffic across the boundaries of Verizon's local calling areas. To rule otherwise could amount to Verizon subsidizing Global's operations."[45]

To Verizon's knowledge, the Commission has never ordered an originating carrier approach to intercarrier compensation in an arbitration. The Commission did, however, find in its Generic Reciprocal

---

[38] *Verizon/Global MA Order* at 25 (*citing In the Matter of Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151 ¶ 39 ("*ISP Remand Order*"), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002)).

[39] *Verizon/Global VT Order* at 12.

[40] *Verizon/Global OH Award* at 8.

[41] *Verizon/Global DE Award* at 20.

[42] *Verizon/Global CA Decision* at 22.

[43] *Verizon/Global NY Order* at 12.

[44] *Verizon/Global NH Decision* at 21-22

[45] *Verizon/Global NJ Recommendation* at 9.

Compensation Proceeding that the originating carrier's retail local calling area should be used as the "default" for assessing reciprocal compensation.[46] The Commission affirmed this holding on reconsideration, despite acknowledging that there was no record basis to establish the specifics of implementation of an originating carrier approach. In light of the lack of implementation specifics, the Commission "encourage[d] the parties to negotiate the definition and implementation of 'retail local calling scope' as contemplated in this context by our Order."[47]

Although Verizon vigorously disagrees with the Commission's originating carrier ruling, it does not challenge that ruling here. (Verizon has, instead, appealed that decision to the Florida Supreme Court.) Verizon does, however, urge the Commission not to approve Global's originating carrier proposal in this specific case. Global has failed to provide any details that would allow the Commission to order, or the parties to implement, Global's proposal.

As noted, the Commission found the record in the Generic Reciprocal Compensation Proceeding to be insufficient to establish how an originating carrier approach to intercarrier compensation would work. Instead of addressing the implementation problems and questions Verizon and Sprint raised, the Commission left implementation details to be resolved on a case-by-case basis.[48] That will be impossible to do on the basis of the record in this case. There are no more details in this record about how an originating carrier approach would work than there were in the generic docket, so the practical questions surrounding implementation remain completely unaddressed. Despite numerous opportunities to do so, Global has given the Commission no basis upon which to implement its originating carrier proposal.

Verizon witness Haynes testified that "[a]llowing the originating carrier to define the local calling area for intercarrier compensation purposes would be administratively infeasible."[49] For example, the definition of retail local calling scope could be carrier-specific or customer-specific. That is, Global

---

[46] *Reciprocal Compensation Order* at 55.

[47] *Order Denying Reconsideration* at 15.

[48] *See Reciprocal Compensation Order* at 54-55; *Order Denying Reconsideration* at 15.

[49] Tr. at 217 (Haynes Dir. Test. at 17).

could offer multiple plans with varying local calling areas, and customers may change plans at will. Verizon will have no way of ascertaining, let alone updating on an ongoing basis, information about what plan a Global customer has and where his calls go, so that the appropriate intercarrier compensation may be assessed. In addition, "[s]uch a drastic deviation from the current use of an ILEC's calling areas ... would likely require significant alteration of Verizon's billing systems."[50] Global, as well as Verizon, would have to attempt to track calling plan changes and build and maintain billing tables to implement each local calling area and associated reciprocal compensation application. Administration is even further complicated if local calling areas extend beyond LATA, or even state, boundaries.[51] The expense and practical difficulties associated with implementing an originating carrier scheme will be insurmountable as other ALECs adopt the Global/Verizon agreement—as they will surely do if the Commission approves the originating carrier approach in this arbitration. The ALECs (particularly those with IXC operations) make no secret of their objective of avoiding access charges, and can be expected to take every opportunity to do so.

In response to a Commission Staff interrogatory asking what details would be necessary to evaluate the feasibility of implementing Global's originating carrier proposal, Verizon listed: (i) the number of different calling plans Global offers its customers; (ii) geographic scope of each calling plan Global offers its customers and its associated price; (iii) the geographic location of Global's customers that may originate traffic to Verizon; (iv) the Global calling area plan selected by each customer; (v) the proposed format of, and process for providing, the foregoing information; (vi) the proposed format for updating the foregoing information (including the process for providing such updates and the proposed frequency of updates); (vii) Global's proposal for verification of the foregoing information; and (viii)

[50] Tr. at 238-39 (Haynes Suppl. Test. at 4-5).

[51] Tr. at 217 (Haynes. Dir. Test. at 17).

Global's proposal for identifying what traffic is subject to reciprocation compensation versus access charges and proposal for verification.[52]

Global provided none of these details, or any others. It never claimed that this information was not necessary to evaluate how an originating carrier approach could be implemented. Its witness never rebutted Mr. Haynes' testimony about the expense and administrative problems associated with implementation of Global's proposal, or offered any insight about how Verizon and Global might implement Global's vague proposal. In fact, Global witness Selwyn readily admitted that he provides "policy" level testimony only and no practical details.[53]

No one else at Global provided any practical details, either. Global identified Robert Fox as the "person most knowledgeable about Global's business plan in Florida,"[54] but Mr. Fox filed no testimony. Likewise, Global declined to disclose the details of its proposal in response to discovery. Verizon specifically asked Global to provide some of the practical implementation details of Global's originating carrier plan.[55] Commission Staff did the same.[56] None of these questions elicited any information about how Global's originating carrier approach is supposed to work in practice. When the Commission Staff asked Global whether it had provided Verizon any information regarding its originating carrier plan, it candidly answered "no."[57] In fact, Global claimed that it was "impossible to answer" questions about its proposed calling areas and prices.[58]

---

[52] *See* Tr. at 217-18 (Haynes Dir. Test. at 17-18), 238-41 (Haynes Suppl. Test. at 4-5), 254-55 (Haynes Reb. Test. at 2-3); *see also* Ex. 2 (Verizon Response to Staff Interrogatory No. 12 (Jan. 28, 2003)).

[53] *See* Ex. 5 (March 5, 2003 Global witness Selwyn Deposition) at 10 ("for clarification, I am not testifying as a business witness for Global NAPs. I am not an employee of Global NAPs"), and 13 ("I'm not involved at all with respect to the relationship between Global NAPs and Verizon.").

[54] *See* Ex. 3 (Global Response to Verizon Interrogatory No. 25 (filed Jan 7, 2003)).

[55] *See* Ex. 3 (Verizon Interrogatory No. 12) and Ex. 3 (Verizon Interrogatory Nos. 31 and 34).

[56] *See* Ex. 1 (Global Response to Staff Interrogatory No. 14 (filed Jan. 28, 2003)).

[57] Ex. 1 (Global Response to Staff Interrogatory No. 14(a)).

[58] *See* Ex. 3 (Global Response to Verizon Interrogatory No. 31). Verizon asked Global to "[i]dentify and describe with particularity the calling areas that Global markets or intends to market in Florida, including but not limited to the price Global charges or intends to charge for each calling plan identified."

Global's failure to provide any details about its originating carrier plan is all the more inexcusable, because Verizon and Global were given an additional round of testimony (supplemental direct testimony) just so they could discuss their positions here in light of the holdings in the Commission's Generic Reciprocal Compensation Proceeding.[59] Global filed no supplemental direct testimony.

The most specific information Global provided concerned its motivation for offering a wide local calling area—that is, Global intends to offer a LATA-wide (and perhaps larger) local calling area so that there would be "no access for intraLATA, perhaps even intrastate calls, depending on the size of the local calling area Global defines."[60] While Global claims there would be no "toll" for this wide-area calling service, the Commission has no assurance that consumers will benefit from Global's unilateral elimination of access charges. Global could, for example, offer a flat-rated toll service (as many carriers do today), call it "toll-free," and charge customers the same or more than they would have paid under a "toll" offering. Meanwhile, Global would pocket the savings from elimination of access charges.

Moreover, the Commission rejected LATA-wide intercarrier compensation in its generic docket because of its anticompetitive effects. There, the Commission observed that it was "concerned with the impact on the intraLATA toll markets that would result from adoption"[61] of a LATA-wide plan—that is, while ALECs and ILECs would exchange traffic in a LATA at reciprocal compensation rates, IXCs would "continue to be required to pay originating access and terminating access to the respective LEC, essentially creating a separate, more costly form of intraLATA toll service."[62] The anticompetitive outcome of Global's LATA-wide intercarrier compensation plan will be even worse than the Commission contemplated in the generic docket, because Verizon, as well as the IXCs, will be condemned to provide

---

[59] *See* Order Modifying Procedural Dates Established in Order Number PSC-02-0430-PCO-TP, Order No. PSC-02-1461-PCO-TP (Oct. 23, 2002); Order Suspending Proceedings, Order No. PSC-02-0791-PCO-TP (June 10, 2002).

[60] Ex. 3 (Global Response to Verizon Interrogatory No. 34); *see also* Global Petition at 16, 19.

[61] *Reciprocal Compensation Order* at 52.

[62] *Id.*

the "separate, more costly form of intraLATA toll service" the Commission identified in the generic proceeding. Global alone will be absolved of access charges.

The Commission has no better idea today how an originating carrier plan would work than it did in the generic docket, so it can no more order implementation of a specific plan or define "retail local calling scope" for purposes of the contract here than it could in the generic docket. Global has deliberately passed up numerous opportunities in this docket to flesh out the details of its plan, to allow the Commission to assess its feasibility and its competitive consequences. Global has also failed to rebut Verizon's testimony about the intractable practical and administrative problems an originating carrier approach would present. There is no evidence whatsoever showing that Verizon can implement any originating carrier plan, let alone the unidentified plan Global may have in mind. And, because no Commission has ever accepted Global's proposal, there is no real-world experience with Global's plan anywhere else. Indeed, the only detail the Commission knows about Global's plan—that it will be at least LATA-wide—assures the same anticompetitive outcome that led the Commission to reject LATA-wide intercarrier compensation in the generic docket.

Unlike Global's originating carrier proposal, Verizon's proposal to maintain its local calling areas as the basis for assessing intercarrier compensation under this contract is supported in the record and consistent with the law and sound policy. The Commission should order the parties to include Verizon's proposed language (Glossary §§ 2.34, 2.48, 2.57, 2.76, 2.84, 2.92, and Interconnection Attachment §§ 6.2 and 7.3.4) in their contract.

Issue 5: Should GNAPs be permitted to assign NXX codes to customers that do not physically reside in the local calling area associated with that NXX code?

Consistent with its ruling in the Reciprocal Compensation Order, the Commission should rule that virtual NXX traffic is not subject to reciprocal compensation, as a matter of law, and require the parties to pay access charges on interexchange traffic, including Internet-bound traffic delivered to virtual NXX numbers.

The arbitration issue Global identified for resolution is whether it should be allowed to assign virtual NXX codes. Verizon proposes no contract language preventing Global from doing so. The parties' real dispute—which Global did not properly identify as an issue—is not about whether Global

should be permitted to assign virtual NXX ("VNXX") codes, but about what intercarrier compensation should apply to VNXX traffic. Verizon proposes to base intercarrier compensation on the end points of the traffic, while Global would base intercarrier compensation on the assigned NPA/NXX codes.

The Commission resolved the basic issue presented here in the *Reciprocal Compensation Order.* In that generic proceeding, the Commission—adopting Verizon's position in this arbitration—determined that intercarrier compensation should be based on the physical location of the calling party and the customer receiving the call.[63] Two further conclusions followed from that correct determination. First, reciprocal compensation does not apply to VNXX calls where, by definition, the calling party and the customer receiving the call are not physically located in the same local calling area.[64] Second, in the absence of a contrary agreement between the parties to an interconnection agreement, the "default" rule is that access charges apply to VNXX calls.[65]

Despite the straightforward terms of the *Reciprocal Compensation Order*, the parties have been unable to resolve this issues because they disagree about how the Commission's decision should apply to Internet-bound VNXX traffic. Neither Global's Petition for Arbitration nor its direct testimony indicated any belief that this Commission lacked jurisdiction over Internet-bound VNXX traffic. In fact, in its direct testimony, Global's witness asked the Commission to apply TELRIC-based reciprocal compensation to all Internet-bound calls.[66]

Late in the proceeding, however—after having lost the issue in the generic docket—Global changed its position about the Commission's jurisdiction over Global's VNXX traffic. In its Rebuttal Testimony, Global suggested, for the first time, that Internet-bound VNXX traffic and voice VNXX traffic should be treated differently in terms of intercarrier compensation.[67] In an attempt to avoid the

---

[63] *Reciprocal Compensation Order* at 30.

[64] *Id.* at 31.

[65] *Id.* at 33.

[66] Tr. at 40, 107-08 (Selwyn Dir. Test. at 8, 75-76).

[67] *See* Tr. at 126-29 (Selwyn Reb. Test. at 14-17).

Commission's analysis in the Generic Reciprocal Compensation Proceeding, Global now argues that this Commission has no jurisdiction over Internet-bound traffic.

Global is wrong as a matter of federal law. To be sure, this Commission indicated in the *Reciprocal Compensation Order* that its discussion of VNXX traffic would be limited by its terms to non-Internet-bound traffic.[68] But, the FCC made clear in the *ISP Remand Order* that, to the extent Internet-bound traffic is subject to existing interstate or intrastate access charges, federal law *preserves* the application of those access charges. The interim Internet-bound traffic compensation regime applies only in those situations where traffic is not subject either to reciprocal compensation under § 251(b)(5) or access charges under state or federal law. There can be no dispute that, under longstanding federal law, Internet-bound calls have been subject to access charges to the same extent as calls bound for ordinary business end users. For this reason, this Commission's determination that non-Internet-bound VNXX calls are subject to access charges necessarily applies to Internet-bound traffic, as well.

A. The Commission Correctly Determined that Virtual NXX Calls Are Not Subject to Reciprocal Compensation.

The Commission's fundamental conclusion in the *Reciprocal Compensation Order* is that "classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call."[69] Likewise, "proper application of a particular intercarrier compensation mechanism is based upon ... the jurisdiction of a call as being either local or long distance."[70] Accordingly, and contrary to Global's position in this arbitration, "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned are not local calls for purposes of reciprocal compensation" and, thus, "are not subject to reciprocal compensation."[71] Instead, this traffic "would be considered *intrastate exchange access*" under federal law.[72]

---

[68] *Reciprocal Compensation Order* at 26.

[69] *Id.* at 30.

[70] *Id.*

[71] *Id.* at 31.

[72] *See id.*

That determination is correct for several reasons. *First,* it is compelled by the terms of federal law. The FCC's rules have always made clear that reciprocal compensation under 47 U.S.C. § 251(b)(5) "do[es] not apply to the transport and termination of interstate or intrastate interexchange traffic."[73] The FCC confirmed that result in its April 2001 *ISP Remand Order,* in which it held that reciprocal compensation does not apply to "interstate or intrastate exchange access, information access or exchange services for such access."[74] The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls *that travel to points - both interstate and intrastate - beyond the local exchange,*" it is providing an access service, and "Congress excluded all such access traffic from the purview of section 251(b)(5)."[75] It is undisputed that the calls at issue here "travel to points ... beyond the local exchange."[76] Indeed, the very point of VNXX traffic is that the call is transported on a long distance basis. Accordingly, such traffic simply is not subject to reciprocal compensation under federal law.[77]

Second, the FCC's determination is the only one that accords with sound regulatory policy. When a Global customer subscribes to a VNXX service, it pays an extra charge to Global in order to be able to receive calls originated in a distant exchange without a toll charge being imposed on the calling party.[78] Global is thus paid by *its* subscriber precisely to ensure that Verizon will *not* be paid any toll charges by *its* subscriber for an interexchange call. There is nothing necessarily wrong with that, so long as Global compensates Verizon appropriately for the service that Verizon continues to provide. But it

---

[73] *Local Competition Order* ¶ 1034. This portion of the *Local Competition Order* has never been challenged and remains binding federal law.

[74] 47 C.F.R. § 51.701(b)(1).

[75] *ISP Remand Order* ¶ 37 (emphasis added).

[76] *See* Tr. at 35 (Selwyn Dir. Test. at 3); *also see* Tr. at 225 (Haynes Dir. Test. at 25).

[77] In *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Order on Review, File No. EB-00-MD-017, 17 F.C.C.R. 15,135 (2002) ¶ 6 (July 25, 2002) ("*Mountain Communications*"), aff'g Memorandum Opinion and Order, *Mountain Communications, Inc. v. Qwest Communications International, Inc.,* 17 F.C.C.R. 2091 (Chief, Enf. Bur. 2002), the FCC made clear yet again that number assignment does not and cannot control intercarrier compensation obligations. The FCC ruled that the receiving carrier was required to compensate the originating carrier for facilities used to transport such calls to its switch. *Id.* ¶ 5.

[78] *See* Ex. 18 (Global Florida Price List § 3.6). Global offers blocks of 100 consecutive telephone numbers for direct inward dialing, and charges $550 per month and an installation fee of $1,000.

would be deeply inconsistent with regulatory policy and basic fairness to require Verizon to *pay* Global, when Verizon continues to bear the same costs of originating and transporting the interexchange call, when Verizon is deprived of the toll charges that would ordinarily apply, and when Global is already receiving compensation from its customers.

Recent decisions of other commissions emphasize this point. As the Massachusetts Department of Telecommunications and Energy recently held, treating VNXX traffic as though it were local:

> would artificially shield GNAPs from the true cost of offering the service and will give GNAPs an economic incentive to deploy as few new facilities as possible. By artificially reducing the cost of offering the service, GNAPs will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling. The VNXX customers will be able to offer an artificially low price to their calling party subscribers, thus sending inaccurate cost signals to the calling parties concerning the true cost of the service. The result would be a considerable market distortion based on an implicit Verizon subsidy of GNAPs' operations.[79]

Third, the weight of state commission authority is in agreement with this Commission's own decision that reciprocal compensation does not apply to VNXX traffic because it does not physically originate and terminate in the same local calling area.[80]

Accordingly, any claim by Global that the Commission resolved this issue incorrectly in the *Reciprocal Compensation Order* would be utterly without merit.

---

[79] *Verizon/Global MA Order* at 36-37.

[80] *See Verizon/Global VT Order* at 21-24; *Verizon/Global RI Decision* at 32-36; *Verizon/Global OH Award* at 8-10; *Verizon/Global IL Recommendation* at 15-17, aff'd, *Verizon/Global IL Decision*; *Verizon/Global NJ Recommendation* at 12-13; *Verizon/Global PA Recommendation* at 13-17; *Petition of US LEC of South Carolina Inc. for Arbitration,* Order on Arbitration, Order No. 2002-619, Docket No. 2002-181-C (S.C. PSC Aug. 30, 2002); *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996,* Revised Arbitration Award, Docket No. 21982, at 18 (Tex. PUC Aug. 31, 2000); *Generic Proceeding of Point of Interconnection and Virtual FX Issues,* Final Order, Docket No. 13542-U, at 10-12 (Ga. PSC July 23, 2001); *Level 3 Comm., Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecomm. Act of 1996 to Establish an Interconnection Agreement with Ill. Bell. Tel. Co.*, Arbitration Decision, Docket No. 00-0332, at 9 (Ill.C.C. Aug. 30, 2000); *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Order, Case No. TO-2001-455, at 31 (Mo. PSC June 7, 2001); *Petition of Focal Communications Corp. of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Order and Opinion Docket No. A-310630F0002, at 10-11 (Pa. PUC Jan. 29, 2001); *Public Utility Commission Investigation into Use of Central Offices Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber*, Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, and Order Disapproving Proposed Service (Me. PUC June 30, 2000).

B. The Commission Should Confirm that Access Charges Apply to Virtual NXX Traffic.

The *Reciprocal Compensation Order* makes clear that VNXX traffic is interexchange traffic subject to access charges—at least in the absence of a contrary agreement by the parties.[81] As the Commission held, "traffic that originates in one local calling area and terminates in another local calling area would be considered *intrastate exchange access*."[82] As a result, "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas."[83] The Commission made clear that this analysis "creates a default for determining intercarrier compensation."[84]

The default is appropriately applied in the parties' agreement.[85] Global obtains blocks of NPA-NXX codes and sells them to customers who wish to allow end users throughout Florida to make interexchange calls to them without incurring a toll charge.[86] Global intends to use Verizon's network in providing this toll-free calling service to Global's customers. Global should be *paying* Verizon for this use of its network in the same manner as it would pay if it were to use a 1-800 toll-free calling service, rather than a VNXX assignment; there is no relevant distinction between Global's use of the Verizon's facilities to provide VNXX and 1-800 services. In the 1-800 scenario, the dialing party pays no toll, and the carrier providing the toll-free calling service charges its customer for the service and *pays* access to other carriers involved in transporting the call. In Global's view, the VNXX scenario should relieve the dialing party from paying toll, and allow the carrier providing the toll-free calling service to charge *both* its customer and the other carriers involved in transporting the call. Because the effect on the dialing party of 1-800 and VNXX services is the same, the only apparent reason an ALEC would use VNXX

---

[81] *Reciprocal Compensation Order* at 32.

[82] *Id.* at 31.

[83] *Id.* at 32.

[84] *Id.* at 33.

[85] *See* Tr. at 248 (Haynes Suppl. Test. at 14) (discussing Verizon's contract proposals clarifying the Commission's directive that intercarrier compensation between the parties be based on the end points of a call rather than its assigned NPA-NXX).

[86] *See* Ex. 18 (Global Florida Price List § 3.6).

assignments is to avoid access charges, which are applied in the 1-800 scenario, and allow itself the ability charge reciprocal compensation to other LECs. As this Commission has recognized, there is no legitimate basis for allowing Global's unilateral decision to assign non-geographically correlated NPA/NXX codes to distort the intercarrier compensation rate regime in this way.

The Commission left open the possibility that parties might treat VNXX traffic differently *if* they mutually agreed to do so. In this case, however, the parties have not so agreed, and the Commission should accordingly make clear that access charges apply to such traffic. Nothing in federal or state law would authorize the Commission to order either party to forfeit the access charges that are due on this traffic in the absence of such an agreement.

Moreover, the record makes clear that requiring the parties to track and pay access charges for VNXX or FX traffic would not entail costly modifications to billing systems. As Mr. Haynes testified, it is a relatively straightforward and inexpensive matter to distinguish interexchange traffic, based on an analysis of known FX and VNXX numbers, and thereby determine the proportion of calls exchanged between the parties that are not subject to reciprocal compensation but that should be subject to access charges.[87] Global witness Selwyn did not disagree. Thus, nothing in the record would support any claim that it would be burdensome for Global to determine the volume of traffic that it delivers to its VNXX customers.

C. The *ISP Remand Order* Did Not Preempt Access Compensation Regimes Applicable to Interexchange Traffic.

Very late in this proceeding, Global asserted that the Commission lacked jurisdiction to consider intercarrier compensation for VNXX traffic destined to the Internet.[88] As noted, Global did not appear to hold this view at the start of the arbitration. Indeed, if Global believed the Commission had no authority

---

[87] *See* Tr. at 264-65 (Haynes Reb. Test. at 12). Global's reliance on the 1-500 service offered by other Verizon affiliates does not lend support to Global's position. Also, as explained by Verizon in response to Global Interrogatory No. 19, Ex. 19, Verizon's tariffed services include access or transport charges in the packaged service price to account for the transport associated with this offering. Global, however, would like to use Verizon's network for free when it offers a virtual NXX product to its customer.

[88] *See* Tr. at 8; *also see* Tr. at 126-29 (Selwyn Reb. Test. at 14-17).

over intercarrier compensation for Internet-bound traffic, there would have likely been no reason for Global to raise the issue in this arbitration, because its traffic is typically Internet-bound.

Global now takes the extreme (and self-contradictory) position that the transitional rate regime the FCC established in the *ISP Remand Order* applies to all Internet-bound traffic, including traffic, like VNXX, that is interexchange (despite having proposed contract language that presumes the *ISP Remand Order* is not effective).[89] Global misreads the effect of the *ISP Remand Order.* There is no basis for this position in the Order or elsewhere. The *ISP Remand Order* addresses only rates for Internet-bound traffic that is dial-up (*see e.g., ISP Remand Order* ¶ 59) and in which the calling party and the ISP modem bank are in the same local calling area (*see, e.g., ISP Remand Order* ¶ 13). In short, the FCC's interim rate regime preempts compensation for Internet-bound traffic only to the extent that such traffic would otherwise have been subject to reciprocal compensation.

The *ISP Remand Order* expressly states that the transitional rule governing intercarrier compensation for Internet-bound traffic does not displace the preexisting access regime and reaffirms that existing interstate and intrastate access charge regimes apply to *all* traffic, including Internet-bound traffic, as they did before the *ISP Remand Order* was adopted:

> Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intrastate* services, they remain subject to the jurisdiction of state commissions).... *This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic.*[90]

The FCC thus emphasized not only that the reciprocal compensation provisions in § 251(b)(5) of the Act do *not* apply to Internet-bound traffic, but also that Congress "did not intend to disrupt . . . *pre-existing [access]* relationship[s]."[91] Driving this point home, the FCC also cited the Eighth Circuit's decision in *Competitive Telecommunications Ass'n v. FCC,* in which the court held that "LECs will continue to provide exchange access . . . for long-distance service, and continue to receive payment, under

[89] *See* Global Petition at 25.

[90] *ISP Remand Order* ¶ 39 (emphases added).

[91] *Id.* ¶ 37 (emphasis added).

pre-Act regulations and rates."[92] Thus, the *ISP Remand Order* affirms, rather than removes, the state commissions' authority to maintain access charges where they had that authority before the *ISP Remand Order,* including in the case of Internet-bound calls.

To the extent that Global argues that the statement in the *ISP Remand Order* that "state commissions will no longer have authority to address this issue"[93] means that this Commission lacks jurisdiction to apply its access compensation regime to VNXX traffic destined to the Internet, Global is incorrect. The *ISP Remand Order* makes clear that its preemptive language applies only to a limited scope of traffic—that is, traffic that is delivered to an ISP that is physically located within the same local calling area in which it originates. State commissions have the same authority to determine the operation of their intrastate access charge regimes as they had before the *ISP Remand Order.* Pursuant to the *ISP Remand Order,* this Commission's legal conclusion that VNXX traffic is subject to access charges applies with equal force to Internet-bound traffic.

This conclusion also reflects the operation of the FCC's "ESP Exemption," the policy that permits Enhanced Service Providers, including ISPs, to purchase access to the local exchange for the provision of interstate services from local business tariffs rather than from interstate access tariffs.[94] Pursuant to that policy, ISPs are treated for purposes of end user billing as though they were business end users. Accordingly, to the extent that a caller places a call to an ISP access number that is rated as toll, such toll charges fully apply and the access charges due as a result must be paid. For the same reason, if an ISP purchases a "toll substitute service" such as 800 service, FX service, or VNXX service, the ISP must pay the same additional charges as any other end user, and access charges again apply.

A simple hypothetical best illustrates how the *ISP Remand Order* operates when an end user calls an ISP located in a different exchange. Suppose a Verizon residential customer in Sarasota calls an ISP in Tampa served by Global. Absent a VNXX arrangement, the call works as follows: (1) the customer

[92] *Id.* ¶ 38 *(citing* 117 F.3d 1068, 1073 (8th Cir. 1997)).

[93] *Id.* ¶ 82.

[94] *See generally ACS of Anchorage, Inc. v. FCC,* 290 F.3d 403, 409 (D.C. Cir. 2002) ("ISPs . . . purchase [interstate] access through intrastate tariffs").

makes a "1+" toll call; (2) Verizon carries the call from the end user to the end user's preferred intraLATA toll carrier (which might be Verizon itself); the intraLATA toll carrier carries the call to Global, and Global carries the call to the ISP; and (3) the end user pays for the toll call, the intraLATA toll carrier (assuming that Verizon is not the carrier) pays originating access to Verizon, and the intraLATA toll carrier also pays terminating access to Global.

This is the way all such calls are handled today, and nothing in the FCC's *ISP Remand Order* changes this access arrangement. To the contrary, as noted above, the order expressly *preserves* this arrangement. Indeed, if the *ISP Remand Order* were understood to override existing access charges applicable to Internet-bound calls, a toll call from an end user in Florida to an ISP access number in Texas would not be subject to *interstate* access charges. That is plainly not the law.

Applying this analysis to the case of Internet-bound VNXX traffic makes clear that access charges apply to such calls under the *ISP Remand Order.* Suppose that, instead of assigning its ISP customer a telephone number associated with a Tampa exchange, Global assigned its customer a number associated with the Sarasota exchange.[95] In such a case, the *same* customer is calling the *same* ISP, *i.e.,* the customer is making the same call, but Global is providing a "toll substitute service" (and receiving handsome compensation for that service) while Verizon (which is still doing the same work of transporting the traffic) is deprived of toll charges. Because Global is being compensated by its customer precisely so that Verizon's customer will be relieved of the toll charges that would otherwise apply to the call, Global is required to pay originating access charges to Verizon for such calls, just as it would in the case of non-Internet-bound VNXX calls.[96] Indeed, if the Commission were to relieve Global of the obligation to pay such access charges, the Commission would not only violate federal law, but it would

[95] Note that the ISP would pay precisely the same additional charges for virtual NXX service as any business end user.

[96] The same result would apply in the case of 1-800 services, which, like virtual NXX arrangements, are designed to give callers toll-free access. A typical call delivered to a 1-800 number would result in the 1-800 service provider paying Verizon originating access for initiating the call to the 1-800 number. The 1-800 provider is then compensated by the customer to whom it provides the 1-800 service--just as Global's virtual NXX customer would compensate Global for its virtual NXX service.

also encourage the very type of anticompetitive regulatory arbitrage that the *ISP Remand Order* is designed to extinguish, that is, Global would be able to "on the basis of [its] ability to shift costs to other carriers" and not "on the basis of the quality and efficiency of the services [it] provide[s]."[97]

Other state commissions that have decided this issue have squarely held that state commission authority to determine the proper treatment of VNXX traffic also governs Internet-bound traffic *and* that payment of access charges is required to avoid anticompetitive results. The *Verizon/Global MA Order* is particularly instructive. There, Global took the position that it was not required to pay Verizon access charges when it used VNXX service to deliver Internet-bound calls. Global argued that the *ISP Remand Order* "changed everything" regarding intercarrier compensation and the distinctions between local and toll traffic.[98] The Massachusetts Department rejected that argument, explaining that the FCC's order "explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action" and "continues to recognize that calls that travel to points beyond the local exchange are access calls."[99]

Accordingly, the Commission should make clear that Internet-bound VNXX traffic must be treated in the same way as other VNXX traffic and is subject to appropriate access charges; and it should approve Verizon's proposed language on this issue (Verizon Glossary §§ 2.34, 2.47, 2.60, 2.70, 2.71, 2.72, 2.73, 2.76, 2.77, 2.80, 2.82; Interconnection Attachment §§ 2.2.1.1, 2.2.1.2, 6.5, 7.2, 7.2.9, 9.2.1, and 13.3).

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

***No. The undisputed, general change-in-law provision requires the parties to negotiate an amendment if a change in law alters the FCC's reciprocal compensation rules resulting from the ISP Remand Order. The parties do not need another change-in-law provision devoted to the ISP Remand Order. ***

[97] *ISP Remand Order* ¶ 71.

[98] *See Verizon/Global MA Order* at 24.

[99] *Id.*; *see also Verizon/Global VT Order* at 42.

In Issue 6, Global raises only the question whether additional change-in-law language should be included in the agreement to specifically address changes to the *ISP Remand Order*.[100] Nevertheless, Global has proposed no related contract provision. The only potentially related contract language is Global's proposed Glossary § 2.76 (definition of Reciprocal Compensation Traffic),[101] in which Global inserts the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation." Global's proposed addition to Glossary § 2.76 is unnecessary and inappropriate.[102]

First, the FCC eliminated the use of the word "local" in its rules describing what traffic is subject to reciprocal compensation.[103] Use of this term in the contract would introduce the same ambiguity the FCC sought to avoid in moving away from the term "local" in its Rules.

Second, as the Bureau in the *Virginia Arbitration Order* held, "the general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the" *ISP Remand Order*.[104] The Bureau found that "[n]one of the petitioners demonstrates that the general change of law provision would be inadequate to effectuate any court decision that reverses, remands, or otherwise modifies the" *ISP Remand Order*.[105] Global has, likewise, failed to make any such demonstration in this proceeding. It contends that a special change-in-law provision is needed to "expressly recognize that the issue of compensation for Internet-bound calls might need to be revisited during the period that the Parties' contract is in effect."[106] But Global has offered no reason why the parties' general change-in-law provision would be "inadequate" to address any

---

[100] *See* Global's Petition at 23. Specifically, Global's Issue 5 states: "Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?"

[101] *See* General Terms and Conditions §§ 4.5 and 4.6.

[102] *See Verizon/Global IL Recommendation* at 18, *aff'd, Verizon/Global IL Decision* at 18.

[103] *ISP Remand Order* ¶ 46.

[104] *Virginia Arbitration Order* ¶ 254.

[105] *Id.*

[106] Global Petition at 25.

decision that modifies the *ISP Remand Order*. It has, instead, focused on attempting to explain what is wrong with the current intercarrier compensation regime for Internet-bound traffic.[107] This criticism of the existing state of the law has nothing to do with the issue of whether a specific provision is necessary to address any changes in that law. Regardless of Global's views on what the appropriate intercarrier compensation regime should be for Internet-bound traffic, the parties do not dispute that the interconnection agreement shall be subject to future changes of law and they do not dispute the specific contract language in §§ 4.5 and 4.6 that will implement such changes in law.

Global has offered no reason why the undisputed change-in-law provision in the General Terms and Conditions will not adequately address any future reversal or modification to the *ISP Remand Order*. As such, there is no need for Global's proposed Glossary § 2.76.[108] Accordingly, the Commission should reject Global's proposed language and adopt Verizon's, as a number of other Commissions have.[109]

Issue 7: Should the parties' interconnection agreement incorporate by reference each parties' respective tariffs?

Yes. The interconnection agreement will control the terms and conditions for services covered by the agreement, while tariffs will be the first source for applicable prices. This approach is necessary to prevent discrimination as between ALECs, as the Commission has already found.

Although Global agrees that charges for a service shall be the charges stated in the providing party's applicable tariff,[110] Global's contract proposal would allow it to "freeze" current tariffed prices.[111]

---

[107] *See* Tr. at 104-12 (Selwyn Dir. Test. at 72-80). It is not exactly clear if this testimony relates to Issue 6 or not. At the prehearing conference, counsel for Global claimed that its witness was not offering testimony in support of Global's position with respect to Issue 6. Nevertheless, this is the only issue to which this testimony could conceivably relate.

[108] *See* General Terms and Conditions §§ 4.5 and 4.6. The parties have agreed that they "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." *Id.* § 4.5. Section 4.6 contains a virtually identical obligation.

[109] *See Verizon/Global DE Award* at 27; *Verizon/Global MA Order* at 39; *Verizon/Global RI Decision* at 36-37; *Verizon/Global IL Recommendation* at 18, *aff'd, Verizon/Global IL Decision* at 18; *Verizon/Global OH Award* at 10-11; *Verizon/Global NJ Recommendation* at 13.

[110] *See* Pricing Terms and Conditions § 1.3. In opening statements, counsel for Global stated that "I recognize that pricing and some other matters [are] obviously important enough that it should be considered a "change in law" and supersede ... because ... we adopt the Commission's pricing standards." Tr. at 14.

Global, moreover, proposes to delete over forty references to tariffs throughout other parts of the interconnection agreement. It argues that these other tariff references would give Verizon the unilateral ability to affect material *terms* of the interconnection agreement.[112] That is not correct.

As an initial matter, many of the tariff references to which Global objects concern services or facilities that are outside the scope of the interconnection agreement. Thus, when the agreement references a tariff, it simply informs Global where it can find the terms and conditions for that service. So, Global's rationale for deleting tariff references—that it "seeks certainty over the terms of the interconnection agreement"[113]—does not even apply to references for services outside the contract.

For services within the contract, Verizon's agreement establishes a hierarchy between the agreement and tariffs. As Verizon proposes, and Global agrees, parties would look to the appropriate tariff for applicable prices. When there is a conflict between the *terms and conditions* of the tariff and the interconnection agreement, however, the interconnection agreement would supercede the tariff. Thus, tariff terms and conditions will only *supplement*, not alter, the terms and conditions of the interconnection agreement.[114] Again, based on this hierarchy, Global's concern about certainty within the agreement is unfounded.

In § 1.3 of the Pricing Attachment, Global agreed that applicable tariffs are the first source of prices for services provided under the agreement.[115] In light of this agreement and the fact that Verizon's tariff references will *not* supersede agreement terms and conditions, Global's deletions to tariff references throughout the agreement make no sense, except if Global's objection is to gain a unique competitive

---

[111] *See* Pricing Terms and Conditions § 1.1 in which Global proposes to delete reference to incorporation of tariffs and § 1.3 in which Global deletes reference to each party's right to "add, modify, or withdraw, its Tariff(s) at any time."

[112] *See* Global Petition at 29.

[113] *Id.*

[114] *See, e.g.*, Verizon General Terms and Conditions § 1.2.

[115] Global does not object to references to tariffs as a source of prices. *See* Global's Petition at 26 (Issue 7): "For this reason, Global requests that the Commission allow Verizon to cross reference its tariffs solely for the purpose of utilizing its tariffed rates for UNEs or collocation." *See also*, § 1.3 of the Pricing Attachment, which is an undisputed provision referencing tariffs as the source of charges for a service provided under the agreement.

advantage. For example, Global's proposed contract changes could allow it to "freeze" current tariffed prices. Thus, if tariff prices go up, Global will continue to pay the old, lower rate. If, however, a tariff rate is reduced, Global would, no doubt, seek to purchase service out of the generally applicable tariff. Global would gain the benefit of any rate reductions, but avoid the increases that would apply to every other ALEC.

The Commission already disapproved of such carrier-specific advantages in Verizon's arbitration with Sprint.[116] There, the Commission "recognize[d] the importance of ensuring equal competition opportunities for all carriers." The Commission held that adopting Sprint's proposed language, which would allow it to avoid being bound by future collocation tariff revisions, would give Sprint "an unfair competitive advantage over its fellow competitors in the ALEC market."[117] Global's proposal raises even more acute competitive concerns, because it would allow Global to avoid the effect of any non-conflicting tariff changes, not just collocation tariff price changes. As the Commission acknowledged in the *Verizon/Sprint Order,* Verizon's proposal is efficient, consistent, fair, and non-discriminatory to all ALECs.

This is consistent with other Commissions' holdings rejecting Global's proposal as contrary to the Act's requirement that rates for interconnection, UNEs, resale, and collocation must be "just, reasonable, and *nondiscriminatory*."[118] In Verizon's arbitration with Global in New York, for example, the Commission held that "the interplay between tariffs and interconnection agreements, while without guarantees, establishes nondiscriminatory pricing consistent with § 251 of the Act,"[119] because, as the Commission noted in another arbitration, "the tariff process promote[s] comparable interconnections for

---

[116] *Verizon/Sprint Order* at 36-37

[117] *See id.* at 36.

[118] *See* § 251(c)(2)(D), (c)(3) and (c)(4) (emphasis added); *see also* § 251(b)(1).

[119] *Verizon/Global NY Order* at 23; *see also Verizon/Global DE Award, modified in part,* Order No. 6124 at 3; *Verizon/Global VT Order* at 46; *Verizon/Global RI Decision* at 37-38; *Verizon/Global NH Decision* at 29-30; *Verizon/Global OH Panel Report* at 16-17; *Verizon/Global IL Decision* at 20; *Verizon/Global NJ Recommendation* at 15; *In the Matter of Petition of Global NAPs North Carolina, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon South, Inc.*, Docket No. P-1141, Sub. 1, Recommended Arbitration Order at 31 (NCUC Nov. 27, 2002) ("*Verizon/Global NC Recommendation*"), *Verizon/Global PA Recommendation* at 20-22.

competitive carries and unbundled access on similar terms [and it] permits ample opportunity for interested persons to participate and seek changes (or even rejection) of proposed tariffs before they become effective."[120] A carrier should not be permitted to obtain a permanent advantage over its competitors by the mere fortuity of when the carrier executed the governing interconnection agreement.[121]

Global is not correct that the tariff process is unilateral, so that Verizon could push through tariff changes without any input from Global. Tariff revisions are, of course, publicly filed documents. As the Commission recognized in the Verizon/Sprint arbitration, Global (as well as any other affected carrier) has the right to seek cancellation of any state tariff revision.[122] There are similar avenues for challenge of federal tariffs.[123] In addition, to the extent that Verizon's tariff revisions are the result of a generic industry proceeding, Global would be able to participate in those proceedings.

In its Response to Global's Petition, pages 28-29, Verizon explained each tariff reference Global proposes to delete. Global failed to respond to this point-by-point analysis, and its generic rationale about "unilateral" action by Verizon to alter the contract is unfounded. There is no reason to allow Global alone to avoid the effect of generally applicable tariffs. The Commission should, therefore, leave Verizon's proposed tariff references intact,[124] which would achieve a result consistent with the Commission's order in the 1997 arbitration between Verizon's predecessor and AT&T and MCI.[125]

---

[120] *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Order Resolving Arbitration Issues, Case 01-C-0095 2001 N.Y. PUC LEXIS 495, at * 6-7, (N.Y. PSC July 26, 2001).

[121] *Verizon/Global NY Order* at 21.

[122] *Verizon/Sprint Order* at 34-35.

[123] *See generally* 47 U.S.C. § 203(b)(1) (no change to tariff unless change has been "filed and published after . . . notice"); 47 C.F.R. § 61.58 (establishing federal notice requirements for tariff filings); *id.* § 1.773 (establishing procedure for petitions to reject proposed tariff).

[124] General Terms and Conditions §§ 1, 4.7, 6.5, 6.9, 41.1, 47; Additional Services Attachment §§ 9.1, 9.2; Interconnection Attachment §§ 1, 2.1, 2.4.1, 5.3, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.1, 10.6, 16.2; Resale §§ 1, 2.1, 2.2.4; UNE Attachment §§ 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 8.1, 12.11; Collocation Attachment § 1; Pricing Attachment §§ 9.5, 10.2.2.

[125] See *Petitions by AT&T Communications of Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Inc., Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Final Order, Order No. PSC-97-0064-FOF-TP (Fla. PSC Jan. 17, 1997). The Commission recognized that

Issue 8: What amounts and types of insurance should GNAPs be required to obtain?

Verizon is legally required to enter into interconnection agreements with ALECs, so it is reasonable for Verizon to seek adequate protection of its network, personnel, and other assets. Verizon's proposed insurance requirements are reasonable, given the risks of interconnection, and consistent with Verizon's requirements for other carriers.

Verizon is required to enter into interconnection agreements with ALECs. In light of that requirement, it is critical for Verizon to seek protection of its network, personnel, and other assets, which Verizon uses to serve all interconnecting ALECs, as well as end users as a carrier of last resort.[126] Verizon witness Fleming's undisputed testimony explains the types and amounts of insurance that it requires, as is typical in the industry. The insurance requirements Verizon proposes here are no different than those Verizon requires of other carriers.[127] They are reasonable and necessary, in light of the risks for which the insurance is procured.[128]

Global and Verizon operate in a highly volatile industry and either party could be held jointly or severally liable for the negligent or wrongful acts of the other. The facilities-based interconnection agreement that will result from this proceeding will provide Global the ability to collocate at a Verizon facility–which increases Verizon's risks of injuries to its employees and network damage or failure due to fire, theft, or other intentional or unintentional events due to a third party's presence in Verizon's facilities.[129] Evaluating the same insurance requirements as Verizon proposes here, the New York Commission found Verizon's proposal reasonable "in light of the potential for network damage or tort

---

"interconnection agreements between GTEFL and AT&T and MCI may be modified by subsequent tariff filings if the agreements contain express language permitting modification by subsequent tariff filing, such as a clause establishing a contractual requirement with specific reference to a tariff provision." *Id.* That result is consistent with what Verizon proposes to do here.

[126] *See* Tr. at 282-83 (Fleming Dir. Test. at 3-4).

[127] Tr. at 283 (Fleming Dir. Test. at 4).

[128] *See In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second Report and Order*, 12 F.C.C.R. 18, 730 ¶¶ 346, 348 ("*Second Report*") ("a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average . . .[of] 21.15 million"). The aggregate amount of insurance Verizon seeks from Global fall below this measure of reasonability.

[129] *See* Tr. at 282-83 (Fleming Dir. Test. at 3-4).

liability when network interconnection or physical collocation takes place."[130] The FCC[131] and other state commissions[132] have, likewise, recognized that it is reasonable for an ILEC to seek adequate protection of its network, personnel through insurance requirements.

Global's proposed amendments to Verizon's insurance requirements would, however, eliminate certain insurance requirements and substantially lower insurance amounts. Global contends that these requirements are a "covert barrier to competition."[133] This is nonsense, and it is unsupported by anything in the record. The New York Commission rejected the same claim in the Verizon/GNAPs arbitration in New York, observing that Verizon's proposal "does not in itself create a competitive advantage, in light of Verizon's substantial exposure as the network provider."[134]

In addition, Global's proposal to make the insurance requirements mutual makes no sense. First, Verizon maintains an extensive insurance program that is financially sound.[135] Second, the risks associated with the interconnection agreement run primarily to Verizon, because Global is entering and using Verizon's facilities.[136] Third, requiring both parties to name the other as a "mutual insured" is

---

[130] *Verizon/Global NY Order* at 18.

[131] *Second Report* ¶¶ 343-55. The FCC, for example, has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage," including automobile insurance, workers' compensation and employer liability insurance. *See* id. ¶ 345.

[132] *See Verizon/Global DE Award, modified in part*, Order No. 6124, at 3; *Verizon/Global VT Order* at 46; *Verizon/Global MA Order* at 58-61; *Verizon/Global RI Decision* at 38-39; *Verizon/Global NH Decision* at 33-34; *Verizon/Global OH Panel Report* at 20; *Verizon/Global IL Decision* at 21-22; *Verizon/Global NY Order* at 18; *Verizon/Global CA FAR* at 93-94; *Verizon/Global NJ Recommendation* at 16; *Verizon/Global PA Recommendation* at 23-25; *Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company*, CASE 96-C-0723, 1997 N.Y. PUC LEXIS 360, (NY PSC June 13, 1997); *Petition of NEXTLINK Pennsylvania, L.L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., Pursuant to the Telecommunications Act of 1996*, Docket No. A-310260F0002, 1998 Pa. PUC LEXIS 208, (Pa. PUC May 22, 1998); *Petition of TCG Pittsburgh for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310213F0002 1996 Pa. PUC LEXIS 119, (Pa. PUC Sept. 6, 1996).

[133] Global Petition at 33.

[134] *Verizon/Global NY Order* at 18.

[135] Global apparently operates under the misunderstanding that Verizon self-insures. As Verizon witness Fleming testified, that is not the case. *See* Tr. at 283 (Fleming Dir. Test at 4).

[136] *See id.* at 282 (Fleming Dir. Test. at 3). Verizon witness Fleming also highlighted several other problems with Global's proposed language, beginning with General Terms and Conditions § 21.1.2. *See id.* at 284-87 (Fleming Dir. Test. 5-8).

counterproductive. The function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense.[137] If the insured commits a wrongful act causing damage to the additional insured, the additional insured could simply file a claim rather than be forced to incur litigation expenses against both the insured and its insurance company in order to recover.[138] If both parties name each other as additional insureds, it would no longer be clear which insurance company should begin investigation, take responsibility for claims, or take the lead in providing a defense, and the benefit of the additional insured provision is lost.

Global filed no testimony on the insurance issue and failed to otherwise offer any legitimate rationale for its position. Because Verizon's proposed insurance requirements are reasonable and Global's are inadequate, the Commission should reject Global's revisions to § 21 of the General Terms and Conditions.

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?

The contract should permit either party to employ a third-party auditor to verify the accuracy or appropriateness of the other's charges. Under Verizon's proposal, the purpose, scope, and frequency of audits are reasonably constrained, and the parties can require the auditor to keep sensitive or proprietary information confidential.

Global proposes to delete all of Verizon's proposed audit provisions (in § 7 of the General Terms and Conditions, § 8.5.4 of the Additional Services Attachment, and §§ 6.3 and 10.13 in the Interconnection Attachment). Global's opposition to these provisions is ill-founded, because Global does not understand them. Global has made the same mistake here as it did in its New York arbitration with Verizon, where the Commission correctly held that Global had "misconstrued the breadth of the audit provisions."[139]

---

[137] *Id.*

[138] *Id.*

[139] *Verizon/Global NY Order* at 19.

Global asserted that Verizon's audit provisions would force Global "to provide *Verizon* access to *all* of its 'books, records, documents, facilities and systems.'"[140] This statement reveals three basic misunderstandings. First, Verizon's proposal applies equally to both parties, not just Global. Second, pursuant to § 7.2, Global would not be providing records to *Verizon*; instead the "audit shall be performed by independent certified public accountants" selected and paid by the auditing party, but who are also acceptable to the audited party. If Global believes it is providing competitively sensitive information, it can request a protective agreement or order.[141]

Third, the auditing *accountant* would not have access to *all* records. The audit is limited to records, documents, employees, books, facilities and systems "necessary to assess the accuracy of the Audited Party's bills."[142] In short, Verizon's audit provisions are not the "unreasonably broad" mechanism that opens Global's "proprietary business records to Verizon" that Global claims. Rather, Verizon's proposal (1) places financial responsibility for audits on the Auditing Party (GTC § 7.4), (2) only allows audits once a year, unless a previous audit revealed discrepancies and then no more than once per quarter (GTC § 7.1), and (3) inappropriately circumscribes the parties' audit rights and obligations (Additional Services Attachment § 8.5.4 and Interconnection Attachment § 10.13).[143]

With the exception of Verizon's operator support systems ("OSS") audit provision (Additional Services Attachment § 8.5.4), Verizon's proposal is directed at evaluating the "accuracy of the Audited Party's bills" and ensuring that rates are being applied appropriately.[144] Verizon does not seek audit rights as a competitor of Global, but as a customer. It is reasonable to expect a supplier (the billing party) to carry the burden of justifying its charges to the customer (the billed party). Without audit rights, Verizon is asked to accept Global's charges without the ability to verify their accuracy or appropriateness.

---

[140] Global Petition at 34 (emphasis added).

[141] Tr. at 294-95 (Smith Dir. test. at 5-6).

[142] Verizon General Terms and Conditions § 7.3.

[143] Tr. at 292-93 (Smith Dir. Test. at 3-4).

[144] Verizon General Terms and Conditions § 7.1; Interconnection Attachment § 6.3.

This is unacceptable from a business perspective. Indeed, such provisions are common in the industry. In fact, Global has similar audit provisions in place with BellSouth in Florida.[145]

Global claims that the "terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the Agreement for the purposes of billing and record keeping purposes"[146] and points to "the right to pursue good faith negotiations in the first instance, and failing that [Verizon] may seek legal or equitable relief in the appropriate federal or state forum."[147] It is plainly unreasonable and bad public policy to expect a carrier to resort to litigation just to verify the appropriateness of a bill.

It is no mystery why Global hopes to deprive Verizon of audit rights. In New York, Verizon uncovered an apparently illegal billing scheme Global implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation.[148] In California, a federal court found that a Global principal "acted in bad faith, vexatiously, wantonly and for oppressive reasons"[149] and "perpetrated a fraud on the Court"[150] in the context of a civil breach of contract lawsuit. In light of this kind of behavior, it is particularly unreasonable for Global to insist that Verizon should simply have to trust Global's word that it is acting reasonably and in compliance with the interconnection agreement.

With specific regard to Verizon's proposed § 8.5.4, that section protects not only Verizon's interest in assuring that Global is using Verizon's OSS in the intended manner, but also all other ALECs' interest in the reliable performance of Verizon's OSS. Hundreds of ALECs, CMRS providers, and IXCs rely on access to Verizon's OSS. Section 8.5.4 merely provides Verizon with the right to monitor its OSS so that all carriers receive uninterrupted access to this system. It also assures Verizon's ability to prevent unauthorized disclosure of the customer proprietary network information ("CPNI") that resides in

---

[145] Ex. 20

[146] Global's Petition at 35.

[147] *Id.*

[148] *See* Tr. at 293 (Smith Dir. Test. at 4) (discussing Verizon's Complaint filed in *New York Telephone Company, et al. v. Global NAPs, Inc., et al.*, No. 00 Civ. 2650 (FB) (RL) (E.D. N.Y.)).

[149] *See* Tr. at 294 (Smith Dir. Test. at 4) (discussing August 31, 1995 Order of the United States District Court for the Central District of California in *CINEF/X, INC. v. Digital Equipment Corporation,* No. CV 94-4443 (SVW (JRx)) at 31.).

[150] *Id.*

Verizon's OSS database. As the Commission recognized in the *BellSouth/Supra Order*,[151] § 222 of the Act "'expressly recognizes the duty of all carriers to protect customer information.'"[152] Verizon's audit provisions allow it to maintain the integrity of its OSS for the nondiscriminatory benefit of all users.[153]

All other Commissions arbitrating this issue between Verizon and Global have accepted Verizon's proposal.[154] This Commission should do the same, recognizing, as the New York Commission did, that "audit procedures are, of course, standard language" in interconnection agreements, that "reasonable protections are built in" Verizon's proposal.[155] Verizon asks the Commission to adopt Verizon's proposed language in General Terms and Conditions § 7, Additional Services Attachment § 8.5.4, and Interconnection Attachment §§ 6.3 and 10.13 the Commission should order inclusion of Verizon's proposed language in General Terms and Conditions § 7, Additional Services Attachment § 8.5.4, and Interconnection Attachment §§ 6.3 and 10.13.

Issue 10: When should a change in law be implemented?

A change in law should be implemented when its takes effect. Global's proposed contract language would ignore the law, including effective orders of the Commission, FCC, and the courts. Verizon's proposal requires only that the parties follow the law.

Verizon's proposed General Terms and Conditions § 4.7 implements applicable law when it is *effective*.[156] Global's proposed language, however, would require the parties to wait until all avenues for appeal have been exhausted before implementing the change in law. Global's proposal would thus

---

[151] *Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, Final Order on Arbitration, Order No. PSC-02-0413-FOF-TP (Fla. PSC March 26, 2002) ("*BellSouth/Supra Order*").

[152] *Id.* at 47 (*quoting* FCC 98-27, Second Report and Order and Further Notice of Proposed Rulemaking, *In The Matter of Implementation of the Telecommunications Act of 1996:* CC Docket Nos. 96-115, 96-149, 13 F.C.C.R. 8061, ¶ 1).

[153] *See* 47 U.S.C. §§ 222, 251.

[154] *Verizon/Global DE Award* at 38-39; *Verizon/Global VT Order* at 31, 47; *Verizon/Global MA Order* at 65-66; *Verizon/Global RI Decision* at 40; *Verizon/Global NH Decision* at 36; *Verizon/Global OH Panel Report* at 22-23; *Verizon/Global IL Decision* at 22-23; *Verizon/Global NY Order* at 29; *Verizon/Global CA FAR* at 96-97; *Verizon/Global NJ Recommendation* at 17; *Verizon/Global PA Recommendation* at 26-27.

[155] *Verizon/Global NY Order* at 19

[156] *See* Verizon General Terms and Conditions § 4.7.

require Verizon to ignore orders from this Commission, the FCC, and federal courts even when those decision-makers have not stayed the effective date of their respective decisions.

State commissions arbitrating this issue between the parties have *uniformly* rejected Global's proposed contract language.[157] The New York Commission, for example, held that "[w]e see no reason to modify standard change of law provisions and therefore we adopt Verizon's position."[158] The California Commission correctly observed that an order of the California "Commission or the FCC or the relevant court is effective unless stayed, and must be implemented by the parties."[159] The Ohio Commission was persuaded by Verizon's argument that Global's proposal was "superfluous and, thus undesirable from a contract drafting standpoint."[160]

The contract must recognize changes in law when they take effect. The Commission should thus adopt Verizon's proposed General Terms and Conditions § 4.7.

Issue 11: Should GNAPs be permitted access to network elements that have not already been ordered unbundled?

*** No. Global must interconnect with Verizon's existing network. Verizon has no obligation to (i) freeze its network in time, (ii) build a different network to suit Global, or (iii) commit to unbundle technologies that are not yet deployed, as Global's proposal would require. ***

Verizon's proposed General Terms and Conditions § 42 (i) memorializes Verizon's right to upgrade and maintain its network, (ii) ensures that Global does not force Verizon to unbundle its network absent a requirement to do so, and (iii) makes Global financially responsible for interconnecting with Verizon's network.

---

[157] *Verizon/Global DE Award* at 41; *Verizon/Global VT Order* at 47; *Verizon/Global MA Order* at 72; *Verizon/Global RI Decision* at 40-41; *Verizon/Global NH Decision* at 41; *Verizon/Global OH Panel Report* at 25; *Verizon/Global IL Decision* at 24-25; *Verizon/Global NY Order* at 21-22; *Verizon/Global CA FAR* at 95; *Verizon/Global NJ Recommendation* at 17-18; *Verizon/Global NC Recommendation* at 37; *Verizon/Global PA Recommendation* at 30-31.

[158] *Verizon/Global NY Order* at 21.

[159] *Verizon/Global CA FAR* at 71.

[160] *Verizon/Global OH Panel Report* at 25, *aff'd*, *Verizon/Global OH Award* at 2.

There can be no legitimate dispute that Verizon may "deploy, upgrade, migrate and maintain its network," as Verizon states in its proposed language.[161] Nothing in the Act or elsewhere requires Verizon's network to remain static simply because other carriers have chosen to interconnect with Verizon. In fact, denying Verizon the ability to upgrade and maintain its network, as Global's proposal could do, would jeopardize service quality in Florida and defeat the Act's objective of encouraging the "rapid deployment of new telecommunications technology."[162]

Global's proposal, in addition, interjects vague and ambiguous language that could give it access to "all" of Verizon's "next generation technology."[163] Verizon is required only to provide unbundled access to items that have been declared UNEs.[164] It is not required to provide Global access to non-UNEs, let alone to an undefined and un-deployed range of "next generation technology." If and when any element is declared a UNE, including any that might fall into Global's "next generation technology" term, the contract requires Verizon to provide it at that time.

In every state in which the parties have arbitrated this issue, the Commission has approved Verizon's proposal on this issue.[165] Global has given the Commission no reason for this Commission to be the first to adopt its extreme proposal. Verizon asks the Commission to adopt Verizon's proposed General Terms and Conditions § 47.

III. CONCLUSION

For the foregoing reasons, the disputed issues should be resolved in Verizon's favor.

---

[161] Verizon General Terms and Conditions § 42.

[162] Preamble to the Act.

[163] *See* Global General Terms and Conditions § 42.

[164] *Iowa Utilities Commission v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000), *rev'd on other grounds, Verizon v. FCC*, 122 S.Ct. 1646, 1678 (2002).

[165] *See Verizon/Global DE Award* at 42; *Verizon/Global VT Order* at 48; *Verizon/Global MA Order* at 74-76; *Verizon/Global RI Decision* at 41; *Verizon/Global NH Decision* at 43; *Verizon/Global OH Panel Report* at 25; *Verizon/Global IL Decision* at 24-25; *Verizon/Global NY Order* at 26; *Verizon/Global CA FAR* at 102; *Verizon/Global NJ Recommendation* at 18; *Verizon/Global NC Recommendation* at 38; *Verizon/Global PA Recommendation* at 31-32; *In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Reconsideration Order, Docket No. 2002-66-C Order No. 2002-482 at 10 (S.C. PSC June 21, 2002) ("Verizon shall not be required to construct facilities on HTC's behalf, and HTC shall not dictate to Verizon how to update Verizon's network.").

Respectfully submitted on April 10, 2003.

By Counsel

RICHARD CHAPKIS
Vice President & General Counsel
Verizon Florida Inc.
201 North Franklin Street
Tampa, FL 33602
Tel: (813) 484-1256

KIMBERLY CASWELL
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110
Tel: (813) 483-2617
Fax: (813) 223-4888

KELLY L. FAGLIONI
EDWARD P. NOONAN
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

Attorneys for Verizon Florida Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Post-Hearing Statement of Verizon Florida Inc. were sent via overnight mail on April 9, 2003, and by electronic mail on April 10, 2003, to the following:

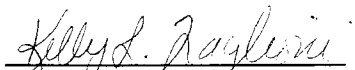
Lee Fordham, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John C. Dodge, Esq.
David N. Tobenkin, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W., 2nd Floor
Washington, DC 20006

Jon C. Moyle, Esq.
Moyle Flanigan Katz Raymond & Sheehan P.A.
118 North Gadsden Street
Tallahassee, FL 32301

William Rooney, Jr., Esq.
Vice President and General Counsel
Global NAPs, Inc.
89 Access Road
Norwood, MA 02062

James R. J. Scheltema
Director-Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road West
Columbia, MD 21044



Kelly L. Faglioni