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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 17, 2002

Ms. Magalie R. Salas
Secretary Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: CC Docket No. 98-184 (Bell Atlantic/GTE Merger)
EB File No. 01-MD-010 (*Global NAPs v. Verizon*)

Dear Ms. Salas:

The purpose of this letter is to memorialize a meeting held yesterday between undersigned counsel and Mr. William Rooney for Global NAPs, Inc.; Messrs. Ed Shakin and Don Evans of Verizon; and Ms. Dorothy Attwood, Ms. Carol Mattey, and Mr. Anthony Dale of the Common Carrier Bureau. The meeting was held at Ms. Attwood's request to discuss certain issues regarding how to properly interpret Paragraph 32 of the GTE Merger Conditions.[1]

At the outset, as the record of this proceeding already reflects, Global NAPs has a complaint matter pending at the Enforcement Bureau regarding the interpretation and application of Paragraph 32 to a particular situation involving the cross-border adoption in Massachusetts and Virginia of a fully negotiated pre-merger Bell Atlantic interconnection agreement from Rhode Island.[2] Global NAPs attached its complaint against Verizon to its comments in the above-captioned matter. Based on the discussion yesterday, Global NAPs is submitting its brief and reply brief before the Enforcement Bureau for the record of this proceeding as well. These documents are attached. Both of them deal directly with how to properly interpret Paragraph 32, and therefore are relevant to some of the issues in this proceeding, as well as to the Enforcement Bureau proceeding for which they were prepared.

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[1] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* Memorandum and Order, 15 FCC Rcd 14032 (2000) ("*Merger Order*"), Appendix D (conditions), ¶ 32.

[2] Global NAPs, Inc. v. Verizon, File No. EB-01-MD-010 (complaint filed April 27, 2001).

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I would also like to briefly follow up on two points discussed in the meeting yesterday.

First, we spent some time on the question of the significance of the term "was" in the following phrase from Paragraph 32:

> "Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that ***was*** voluntarily negotiated by a Bell Atlantic incumbent LEC...."

The issue matters because Verizon asserts that the words "subject to 47 U.S.C. § 251(c)" modify the term "provisions of an interconnection agreement" viewed as a single phrase. The effect of that interpretation, according to Verizon, is that the only portions of an interconnection agreement that are subject to cross-border adoption under Paragraph 32 are those portions that embrace the topics addressed in Section 251(c) of the Act. A main difficulty with that interpretation, from Global NAPs' perspective, is that it essentially writes the phrase "including an entire agreement" out of Paragraph 32, since in point of fact there are ***no*** "entire agreements" that deal only and exclusively with the subject matters addressed in Section 251(c) (or, indeed, entirely and exclusively with the subjects addressed in Sections 251(b) and (c)).

The counter-interpretation — which, Global NAPs submits, is the more natural one — interprets the phrase "subject to 47 U.S.C. § 251(c)" as modifying the term "interconnection agreement." Under this view, the kind of ***agreement*** to which Paragraph 32 applies is "an interconnection agreement ... subject to 47 U.S.C. § 251(c)." This would be distinguished from a generic carrier-to-carrier traffic exchange agreement of the sort that might exist between adjacent LECs prior to the 1996 Act, or individually negotiated arrangements for, e.g., access services at the state or federal level. Such non-Section-251 carrier-to-carrier "interconnection" agreements have long been contemplated by the Act, as evidenced by the existence of Section 211 — present in the Act since 1934 — that calls for filing them with the Commission. Under this view, the phrase "subject to 47 U.S.C. § 251(c)" limits the reach of Paragraph 32 to those interconnection agreements negotiated under the auspices of the 1996 Act, as distinct from all the ***other*** types of carrier-to-carrier agreements that could reasonably be viewed as a form of "interconnection agreement."

But — most relevant here — 1996-Act "interconnection agreements," particularly fully-negotiated ones, routinely contain a wide variety of provisions that go well beyond the specific LEC and ILEC duties contained in Sections 251(c) and (b). It follows, under this interpretation, that a fully-negotiated interconnection agreement — "including an entire agreement" — in one state is adoptable in another state, even though such an "entire agreement" will typically contain any number of provisions that do not directly relate to, respond to, or address the specific topic areas covered by Sections 251(b) and (c).

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This is where the term "was" becomes significant. "Was" is a singular verb. It makes grammatical sense to use it in connection with a singular noun, such as "agreement." It does not make sense to use it in connection with a plural noun, such as "provisions." The use of the term "was" in the quoted phrase above, therefore, supports Global NAPs' interpretation of the quoted phrase, and undercuts Verizon's. Consider:

> Bell Atlantic/GTE shall make available ... any ***interconnection arrangement*** [singular] ***UNE*** [singular] or provisions of ***an interconnection agreement*** [singular] ... subject to 47 U.S.C. § 251(c) .. that ***was*** [singular] voluntarily negotiated ... .

Reading the phrase with the emphasis just indicated means that the term "interconnection agreement" was the main noun that was supposed to be modified by "subject to 47 U.S.C. § 251(c)."

Verizon's interpretation would be to read the phrase as follows: "Bell Atlantic/GTE shall make available ... any ***interconnection arrangement*** [singular] ***UNE*** [singular] or ***provisions*** [plural] of an interconnection agreement ... subject to 47 U.S.C. § 251(c) .. that ***was*** [singular] voluntarily negotiated ... ." In other words, if Verizon is right, then the drafters of Paragraph 32 did not understand the basic rules of English grammar.[3]

Moreover, as we discussed, if the drafters of Paragraph 32 had really wanted to limit the adoptable "provisions" to those that addressed the subject matter of Section 251(c), they would more naturally have said something like, "Bell Atlantic/GTE shall make available any interconnection arrangement, UNE, or provisions of a voluntarily-negotiated interconnection agreement ***to the extent that such provision implements a Bell Atlantic/GTE duty*** under 47 U.S.C. § 251(c)." This alternative phrasing would clearly and simply have embodied the meaning that Verizon now wants to ascribe to the very different phrasing actually used in Paragraph 32. The fact that neither it nor anything like it was used indicates that its meaning is not, in fact, embodied in the actual language of Paragraph 32.

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[3] This same interpretation — that the correct reading of the phrase is [provisions of] [an interconnection agreement subject to 47 U.S.C. § 251(c)] — also applies to, and harmonizes the reading of, the part of Paragraph 32 describing the "most favored nation" obligations of former GTE companies, because that part of Paragraph 32 also uses the singular verb "was" to apply to (and, indeed, immediately following) the phrase "provisions of an interconnection agreement subject to 47 U.S.C. § 251(c)." In both cases, the use of the singular verb "was" makes sense if the phrase "subject to 47 U.S.C. § 251(c)" is seen as describing the types of agreements at issue, and fails to make sense if that phrase is seen as an attempt to describe or limit the types of ***provisions*** that are adoptable. This approach also harmonizes with the fact that the phrase "including an entire agreement" appears in the former-Bell-Atlantic section of Paragraph 32; indeed, that phrase is almost incomprehensible under Verizon's interpretation.

I confess that the realization that the use of the term "was" actually makes complete grammatical sense with the emphasis on the terms as indicated two paragraphs above only became clear to me in the course of discussing this issue with Ms. Attwood and the others yesterday. For this reason, as I mentioned yesterday, when I briefed this issue on behalf of Global NAPs before the Enforcement Bureau, I took the position that the use of the term "was" as opposed to "were" was simply a grammatical error with no interpretive significance. It is now clear to me that I was wrong in what I said in those briefs. In fact, the use of the singular verb "was" in the cited phrase from Paragraph 32 confirms that Global NAPs' reading of Paragraph 32 is right and Verizon's is wrong. I am therefore providing a copy of this letter to the Enforcement Bureau for consideration in the ongoing proceeding there.

The only other point I would emphasize from our meeting yesterday relates to what appeared to be a key question: why the Commission, as a policy objective, might have wanted to ensure the adoptability across state lines of all provisions of a negotiated interconnection agreement, as opposed to merely those provisions that indeed implement ILEC duties under Sections 251(b) and (c). The answer, as we discussed yesterday, is that — while no one contends that Paragraph 32 is a literal "clone" of Section 252(i) — the fact remains that Section 252(i) was and is the Act's principal "most favored nation" provision and provided a policy model, if not literally a drafting model, for Paragraph 32.

In this regard, Section 252(i) basically works pretty well in the real world. Under Section 252(i) a CLEC in one state may completely avoid the contention, delay, and expense of negotiating and arbitrating an interconnection agreement by pointing to an existing agreement in that state and saying, "I'll take that." Section 252(i) works, in part, because the CLEC can, at its option, get ***the entire agreement,*** including not merely the ILEC's obligations on key, core matters addressed by Sections 251(b) and (c), but also all of the ancillary and frankly unrelated matters that go into making a full and complete contract. As I noted in yesterday's meeting, when the 1996 Act is actually working, ILECs and CLECs negotiate deals under the auspices of Section 252(a)(1), which specifically says that they are ***not*** bound by the strict requirements of Sections 251(b) and (c). Paragraph 32 is limited to such fully-negotiated agreements — precisely the ones most likely to diverge from the strict requirements of Sections 251(b) and (c) — so it would be peculiar indeed to interpret Paragraph 32 as addressing only provisions of agreements that embody a strict effort to comply with those sections.[4]

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[4] In this regard, it is at least interesting that in 1996 and 1997 Verizon (that is, all the then-separate companies that now comprise it) successfully urged the 8th Circuit to rule that the only rational interpretation of Section 252(i) was that a CLEC seeking to adopt an existing agreement ***must*** take the whole agreement, not merely piece-parts. While that ruling was reversed — CLECs can adopt ***either*** an entire agreement ***or*** piece-parts — it does seem odd for Verizon now to be arguing that a Section 252(i)-based "most favored nation" provision can ***only*** reasonably be interpreted to allow the adoption of piece-parts, and not an entire agreement.

As we all recognized yesterday, Paragraph 32 is a complicated provision. It may not be possible to interpret it in a way that gives full and literal effect to each and every ***possible*** understanding of each and every word or phrase. As a result, the Commission's job in construing Paragraph 32 must be to simultaneously choose, from among the possible meanings of each word or phrase, the one that in each case minimizes or eliminates conflicts with ***other*** words or phrases.[5]

One way to achieve this harmony is to recognize that Paragraph 32 has, as its core purpose, extending the practical benefits available to CLECs under Section 252(i) — including the ability to adopt literally "an entire agreement" — into the realm of cross-border adoptions. This approach fits nicely with the view that the phrase "subject to Section 251(c)" reflects the type of agreement that may be cross-border adopted, as opposed to the individual provisions that are adoptable. It also fits nicely with the fact that the phrase "including an entire agreement" is specifically used to describe what a CLEC is entitled to adopt, under Paragraph 32.

By contrast, forcing the parties to fight about individual provisions — what Verizon wants to do — is directly counter to the whole point of Paragraph 32 (and Section 252(i)), which is to provide CLECs with a quick and efficient way to get a whole, workable contract (as well as specific provisions) in place without negotiation, litigation, and hassle.

Verizon plainly doesn't like the fact that it agreed to make entire negotiated interconnection agreements — including provisions that as a result of those negotiations go beyond what Verizon might literally have been required to do — available for cross-border adoption. As we discussed yesterday, though, it seems clear that this is just something that Verizon decided to agree to as part of the "price," so to speak, of getting its merger approved. It would rather not pay that price now, and presumably would have preferred not to have had to include it in the merger conditions. But there it is. Verizon has achieved and is achieving the benefits it sought from its merger — larger size, greater efficiency, etc. It is hard to see how the Commission could fairly conclude now that Verizon should not be held to the terms it agreed to accept, specifically designed to aid CLECs, in order to achieve those benefits.

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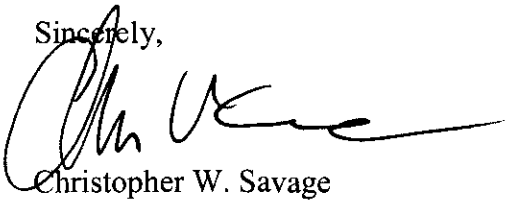
[5] The analogy I drew yesterday was trying to fit a single multi-variate regression line to a data set comprised of several independent variables. There ***is*** a "best-fit" line that minimizes divergence from the various data points, but even that best-fit line will not exactly reflect each and every data point. Here the different phrases and words of Paragraph 32 are the data points; the "best fit" regression line is a harmonious interpretation of Paragraph 32 that takes all of them into account to the greatest extent possible. Global NAPs submits that an analogy to what is available under the pre-existing and basically workable Section 252(i) process provides a powerful and helpful interpretive tool for how the various individual piece-parts of Paragraph 32 should work. From the perspective, the key issue that Paragraph 32 addresses and that is not present under Section 252(i) is how to identify provisions in an agreement from one state that are in some legitimate sense "state specific" and therefore not reasonably made available for adoption in other states.

Please feel free to contact me if you have any questions or comments about the matters discussed above. My direct dial is 202-828-9811, and my email is chris.savage@crblaw.com.

Sincerely,



Christopher W. Savage
Attorney for
GLOBAL NAPS, INC.

cc: Dorothy Attwood
Carol Mattey
Anthony Dale
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Gordon R. Evans (w/o attachments)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OFFICE OF THE SECRETARY

In the matter of Global NAPs, Inc. Complainant, v. Verizon Communications, Verizon New England Inc., Verizon Virginia Inc., Defendants.	File No. EB-01-MD-010

BRIEF OF GLOBAL NAPS, INC.

Global NAPs, Inc. ("Global NAPs") respectfully files this brief in accordance with the letter ruling of the Enforcement Bureau staff in this matter.[1] This brief addresses the specific questions posed by the staff in June 14, 2001 letter ruling.

1. **Does the phrase "subject to 47 U.S.C. § 251(c)" in Appendix D, Paragraph 32 of the *Merger Order*[2] mean that *only* interconnection agreement provisions established pursuant to the requirements of 47 U.S.C. § 251(c) may be adopted across state lines? If so, does Paragraph 32 require Verizon to do anything beyond what it was already obligated to do under 47 U.S.C. § 251(c)? How does footnote 702 of the *Merger Order* affect the way the language "subject to Section 251(c)" should be construed?**

Global NAPs' view of the meaning of the phrase "subject to 47 U.S.C. § 251(c)" as used in Paragraph 32 is laid out in its Complaint, particularly ¶¶ 42-48 and ¶¶ 75-82. The discussion

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[1] This brief is being filed today pursuant to the schedule established by the staff, as modified by an exchange of emails on July 10 and 11, 2001.

[2] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to*

here is intended to clarify and expand upon the complaint's discussion of this issue. Global NAPs' answers to the specific questions posed are set out below.

First, only interconnection agreements entered into "pursuant to" Section 251(c) are covered by Paragraph 32. The dispute between the parties on this issue, as Global NAPs understands it, is whether the phrase "subject to Section 251(c)" (the exact phrasing of Paragraph 32) is properly read to mean any interconnection agreement resulting from a Section 251(c)(1) good faith negotiation (Global NAPs' view) or instead is limited to an interconnection agreement addressing the narrow subject matters addressed in Sections 251(c)(2)-(6) (Verizon's view).

Verizon says that essentially all of the "entire agreements" negotiated, pre-merger, in Bell Atlantic territory, are not subject to adoption under Paragraph 32, because essentially all of them address matters other than those limited topics. Global NAPs says — correctly — that this interpretation would make the "entire agreement" language in Paragraph 32 a nullity.[3] From Global NAPs' perspective, the qualifying phrase "subject to Section 251(c)" distinguishes what have become known as "interconnection agreements" under the 1996 Act from other agreements between carriers that also establish terms and conditions on which their networks will interconnect. *See* Complaint at ¶ 46.

The staff asks, if this is so, whether Paragraph 32 requires Verizon to do things it would not otherwise be required to do under Section 251(c). From Global NAPs' perspective, the answer is "yes." The combination of the obligation to negotiate in good faith (Section 251(c)(1))

Transfer Control of a Submarine Cable Landing License, Memorandum and Order, 15 FCC Rcd 14032 (2000) ("*Merger Order*").

[3] This is why Global NAPs keeps challenging Verizon to produce even one, single pre-merger Bell Atlantic negotiated interconnection agreement that deals expressly and entirely with the limited subject matter that Verizon claims establishes the entire scope of Paragraph 32's "entire agreement" commitment. This is also why the Staff should have required Verizon to either produce such an agreement or admit that it wants the "entire agreement" language to be a nullity.

and parties' ability to agree to transcend, ignore, or supercede the requirements of the Act (Section 252(a)(1)) means that good faith negotiations involving different CLECs, even over the same general subjects, will produce a panoply of different agreements. As far as Global NAPs is aware, the obligation to negotiate in good faith does not, in and of itself and in all circumstances, require an ILEC to offer to every CLEC with which it deals exactly the same terms and conditions it has provided to other CLECs. ***That*** obligation comes from Section 252(i), not from Section 251(c)(1).

So, in cases where Section 252(i) does not already operate across state lines (*see* Complaint at ¶ 56 & n.35), Verizon has no generally applicable obligation to offer precisely the same terms to each CLEC, as long as the terms it does offer are offered in good faith. Most particularly, a good faith conclusion by Verizon that a previously offered term no longer makes business sense to Verizon would not, in all cases, be a violation of the obligation to negotiate in good faith.[4] Just as Section 252(i) constrains Verizon to provide the same contract to different CLECs within a state, whether or not "good faith" requires that action, so too Paragraph 32 requires Verizon to provide the same contract to different CLECs (or, here, the same CLEC) in different states, even in cases where "good faith" would not so require.

The staff may be suggesting an interpretation of the "subject to Section 251(c)" language that is even more restrictive than what Global NAPs understands to be Verizon's position. That would be an interpretation which says that only terms and conditions in an agreement that literally comply with the minimum requirements of Section 251(c) are subject to cross-border

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[4] There are, of course, some circumstances where such a failure might constitute a failure to negotiate in good faith. As the Commission has observed, determinations of what "good faith" requires are inherently fact-specific. *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*Local Competition Order*") at ¶ 150.

adoption. Such an interpretation would write ***all*** of Paragraph 32 out of existence. Verizon and all other ILECs are in all cases required to enter into agreements that meet their obligations under Section 251(c) (at the CLEC's option). If Paragraph 32 simply meant that "agreements that meet the requirements of Section 251(c), but not agreements that go beyond those requirements, are adoptable," then the only agreements that would be adoptable would be those to which a CLEC would be entitled in the first place. Yet the hallmark of purely ***negotiated*** agreements under the Act is that the parties may disregard the strict requirements of Sections 251(b) and (c) and fashion a deal that makes sense on its own terms. *See* Section 252(a)(1). The focus of Paragraph 32 on such ***negotiated*** agreements only makes sense if this broader universe of terms and conditions were being made available for adoption. Put another way, if the only agreements subject to cross-border adoption are those that literally comply with the strict requirements of Section 251(c), it would have made more sense to include both negotiated and arbitrated agreements within the cross-border adoption obligation. Since state commissions conducting arbitrations are obliged to establish results that are consistent with Section 251(c) — while negotiating parties are not — the limitation of Paragraph 32 to negotiated agreements would be illogical.

Global NAPs' view, of course, means that there will be cases under Paragraph 32 where Verizon would ***not*** be required to offer in one state the terms agreed to in another state, other than by the operation of Paragraph 32 itself. In other words, there will be cases where Verizon voluntarily agreed to terms in one state that it now regrets and wishes it could avoid in another state. We are obviously dealing with such a case here. Global NAPs would simply note again that this situation ***has*** to exist if Paragraph 32 is not meaningless. If the only agreements that Verizon has to offer under Paragraph 32 are agreements that Verizon would happily offer

without considering Paragraph 32 — that is, if Paragraph 32 never acted as an ***obligation*** of Verizon — then essentially by definition Paragraph 32 accomplishes nothing at all. *See* Complaint at ¶¶ 8-10. From this perspective, one of the chief benefits of Paragraph 32 — once the Commission makes clear that it will enforce it — is to prevent Verizon from forcing CLECs to "reinvent the wheel" in state after state after state with respect to issues that have been resolved by negotiation in another state.

That, of course, is exactly what is involved in this case. Verizon and Global NAPs (somewhat astonishingly, in retrospect) worked out a reasonable compromise on the issue of ISP-bound calling in Rhode Island. Paragraph 32 — a new obligation Verizon assumed in order to get approval for the merger of Bell Atlantic and GTE — means that the reasonable compromise from Rhode Island is exportable. In light of the controversy surrounding ISP-bound calling, Global NAPs would not assert that Verizon could not, as of July 2000 (the effective date of Global NAPs' adoption of the Rhode Island agreement) have a good faith belief that it did not want to compromise on the ISP-bound calling issue. What Paragraph 32 does, however, is require Verizon to accede, in other states, to the voluntarily-negotiated deal on this topic from Rhode Island, even though it really, really does not want to do so. But doing things we don't want to do, because we have to do them, is what distinguishes a binding obligation, such as Paragraph 32, from a whim or a preference.

The staff also asks about the significance of footnote 702 in the *Merger Order*. That footnote gives some insight into the specific negotiating history of the "subject to Section 251(c)" language. What it reveals is that this specific language was imposed to limit Verizon's ability to force CLECs to fight state-by-state battles in the context of negotiating multi-state interconnection agreements. Verizon's original proposal was a classic "sleeves out of the vest"

offer: Sure, says Verizon, we will negotiate multi-state deals, but only subject to our ability to take account of "differences caused by state regulatory requirements, product definitions, network equipment, facilities, and provisioning, and collective bargaining agreements" — in other words, subject to essentially anything that might cause deals to differ from state to state. *Merger Order* at note 702. CLECs (specifically, MCI WorldCom) objected to this suggestion, and, in response, Verizon came up with language indicating that its multi-state negotiations would not be so unconstrained: the relevant requirement, in multi-state negotiations, would be Section 251(c) (including both the substantive obligations and the obligation to negotiate in good faith), not the panoply of "differences" that might exist between states. In other words, the "subject to Section 251(c)" language was added to constrain Verizon's ability to confound and delay multi-state negotiation efforts — that is, to rein Verizon in — not to limit the scope of its MFN obligations. Since the language was parallel in these differing sections of the evolving draft merger conditions, however, it was included in Paragraph 32 as well.

The fact that the relevant language was proposed by Verizon means that it should be interpreted against Verizon in cases of ambiguity. *See* response to Question 11, *infra*. But there is really no basis to think that any language in the merger conditions should be interpreted to allow Verizon to impose burdensome negotiation and litigation costs on CLECs seeking to require compliance with those conditions. Footnote 702 itself is instructive in this regard. That footnote is appended to paragraph 306 of the *Merger Order*, which states:

> As we discuss above, ***this merger will increase the merged firm's incentive and ability to impose unnecessary negotiation costs on its competitors. To neutralize this incentive,*** in addition to promoting market entry and assisting telecommunications carriers that want to operate in more than one Bell Atlantic/GTE state, Bell Atlantic/GTE will offer requesting telecommunications carriers an interconnection and/or resale agreement covering multiple Bell Atlantic and/or GTE states, subject to technical feasibility, state-specific pricing, and the provisions in applicable collective bargaining agreements.

In other words, the Commission was expressly concerned that one of the evil effects of the merger would be to put the merged company in a better position than even the pre-merger monoliths to harm competitors and competition by forcing them to re-litigate and re-negotiate the same issues over and over, state by state. And the Commission was expressly concerned that the merger conditions act as an effective constraint on the post-merger Verizon to do that — and, indeed, included the "subject to Section 251(c)" language as part of that concern. It would pervert the Commission's purpose to allow Verizon here to use that language to effectively gut the "entire agreement" language of Paragraph 32.

2. How does footnote 686 of the *Merger Order* affect the way the term "interconnection arrangement" should be construed in Paragraph 32?

Footnote 686 states that the parties' "commitment" with respect to cross-border MFN rights "encompasses entire interconnection agreements or selected provisions from them." Given the language of Paragraph 32, this statement is both unremarkable and true. The MFN "commitment" with respect to pre-merger agreements is embodied in Paragraph 32. Paragraph 32 expressly states that "provisions of an interconnection agreement (including an entire agreement)" are adoptable. So footnote 686 is a fair summary of this aspect of Paragraph 32. The fact that the Commission took pains to note it in the *Merger Order* shows that the "entire agreement" language was not some unimportant afterthought, but that, instead, the Commission took it seriously.

The staff's question probably arises from the fact that footnote 686 is directly attached to the phrase "interconnection arrangement" in the text of ¶ 300 in the *Merger Order*. This could be read to suggest that the Commission meant that the specific term, "interconnection arrangement," should be interpreted to include both provisions of interconnection agreements

and entire agreements. This interpretation would not particularly affect the outcome of this case, as noted below, but that specific interpretation does not seem correct.

First, footnote 686 does not say that the "***term*** 'interconnection arrangement'" or the "***phrase*** 'interconnection arrangement'" or the "***words*** 'interconnection arrangement'" "should be interpreted to include" agreement provisions and entire agreements. It says that "this ***commitment*** encompasses" agreement provisions and entire agreements. A natural reading is that the term "this commitment" was a general reference to the MFN conditions contained in Paragraph 32 and elsewhere — that is, the subject matter of ¶ 300 of the *Merger Order* — not a directive regarding the interpretation of particular words in Paragraph 32. In this regard, note that the discussion in ¶ 300 is not specifically directed to Paragraph 32 at all. It is directed to the whole panoply of "most favored nation arrangements" addressed in the merger conditions considered as a whole. This strongly suggests an interpretation of "this commitment" to refer more generally to the MFN conditions in various parts of the merger conditions, as opposed to a specific word or two.

Second, it would make no sense, textually, to interpret footnote 686 as a directive to read the term "interconnection arrangement" as including agreement provisions and entire agreements. This is because — obviously — Paragraph 32 makes a point of listing those two items separately, in a list that also includes the term "interconnection arrangement." If the Commission literally intended the specific term "interconnection arrangement" to be read to include "provisions of agreements" and "entire agreements," then including them in the text of Paragraph 32 is totally unnecessary. It would be like saying, "This road may only be used by trucks, automobiles, Toyotas, and Buicks." Just as it is textually wrong to include specific makes of automobile when all automobiles are already covered, it would be wrong to include a

specific reference to "provisions of an interconnection agreement (including an entire agreement)" if those items were already covered by the term "interconnection arrangement." In other words, the inevitable consequence of reading footnote 686 as literally ***defining*** the term "interconnection arrangement" to include provisions of agreements and agreements is to conclude that the Commission's specific condition dealing with that topic is mis-drafted. While no drafting effort is perfect, no matter what else the Commission does, it should try to interpret the terms of the merger conditions and the discussion of them in the *Merger Order* in a way that leads to a harmonious interpretation of each, and to avoid interpretations that create conflicts (and perverse policy results to boot).

As noted above, however, a conclusion that the Commission indeed intended footnote 686 as a literal ***definition*** of the term "interconnection arrangement" would not, at bottom, change the result in this case. Global NAPs has explained that the specific carve-outs for various matters do not properly apply to the adoption of an "entire agreement" except to the extent that the "entire agreement" itself reflects UNEs and physical "interconnection arrangements." That is, those portions of an "entire agreement" that do not address (physical) interconnection arrangements or UNEs are not subject to carve-outs that refer expressly to those items. *See* Complaint at ¶¶ 75-82. But if the term "interconnection arrangement" does include agreement provisions not dealing with physical arrangements or UNEs, that means only that the contested term in the Rhode Island agreement — Section 5.7.2.3 embodying the parties' compromise on ISP-bound calls — must be evaluated in light of the various carve-outs. As discussed at length in the complaint, *see id.* at ¶¶ 83-90, it does not run afoul of any carve-outs even if they are construed to apply.

So, it seems clear to Global NAPs that the Commission's discussion in ¶ 300 of the *Merger Order* and footnote 686 was more general in nature — summarizing the impact of the language of Paragraph 32 (and other MFN-related conditions), not providing literal, specific directions for word-by-word interpretation. But even if Global NAPs is wrong about ***that,*** Global NAPs still wins its case. If Global NAPs' view of footnote 686 is right, that just means that the Commission need not explain whether the carve-outs that are limited to "interconnection arrangements" and "UNEs" do not bar the adoption of Section 5.7.2.3 — which they don't — because it would be able to conclude (correctly, in Global NAPs' view) that those carve-outs literally do not apply to it at all.

3. How does the parenthetical "(including an entire agreement)" affect the way Paragraph 32 should be construed? What is the significance of the fact that the language "(including an entire agreement)" only appears in the portion of Paragraph 32 dealing with the Bell Atlantic Service Area and does not appear in the portion of Paragraph 32 dealing with the GTE Service Area?

Meaning of the "entire agreement" language. Global NAPs addressed this issue extensively in the Complaint. *See id.* at ¶¶ 43-48. Basically, the "entire agreement" language was added to expand Verizon's post-merger MFN obligations. As discussed above and in the Complaint, the soundest reading is that Verizon's obligations with regard to "entire agreements" should be read as distinct from and addition to its obligations regarding particular "interconnection arrangements" or "UNEs." This affects the interpretation of the scope of the carve-outs in Paragraph 32. When a carve-out refers specifically to limitations on the availability of an "interconnection arrangement" or "UNE," that carve-out should not be construed to apply to an agreement "provision" or an "entire agreement," except, of course, to the extent that the provision (or portion of the "entire agreement") actually ***addresses*** a physical "interconnection arrangement" or "UNE."

In this regard, Global NAPs emphasizes that it does not claim that a CLEC's ability to adopt an "entire agreement" allows a CLEC to avoid or nullify the carve-outs relating to interconnection arrangements or UNEs. Just as limiting the "entire agreement" language to agreements that only address the topics in Section 251(c)(2)-(6) would nullify the effectiveness of that language, so too would interpreting the "entire agreement" language to allow a bypass of the carve-outs, where they apply, nullify the carve-out language.

Two interpretive principles are relevant here. First, Paragraph 32 should be interpreted in a manner so that all of its terms are given some effect. No term of Paragraph 32 should be read to make another term meaningless. Verizon's interpretation of "subject to Section 251(c)" would render the "entire agreement" language meaningless and should be avoided. A reading of the "entire agreement" language that nullified the carve-outs in all circumstances should also be avoided. Second, the notion that specific language "trumps" general language also applies. From this perspective, references to "interconnection arrangements" or "UNEs" are more specific than references to agreement "provisions" (which could address any topic at all) and references to "entire agreements" (which typically address much more than merely "interconnection arrangements" or "UNEs"). Under this second principle, while "entire agreements" may be adopted without more, individual parts of those agreements would remain subject to any carve-outs that apply.[5]

The distinction between former Bell Atlantic and former GTE agreements. Global NAPs does not know why the "entire agreement" language only appears in regards to former Bell

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[5] Consideration of this principle is what led Global NAPs to include in its complaint a discussion showing that none of the carve-outs actually applied to the key disputed provision here — Section 5.7.2.3 of the Rhode Island Agreement.

Atlantic territory. That said, consideration of the different real-world situations of pre-merger Bell Atlantic and pre-merger GTE suggests that the distinction makes sense.

Pre-merger Bell Atlantic was a geographically integrated firm (contiguous territory from Maine to Virginia), operating as the dominant (in some cases, only) ILEC in all of its states, and with reasonably strong central management of interconnection negotiations and arbitrations. Note that Bell Atlantic bought NYNEX in 1997, so the entire pre-merger Bell Atlantic territory had been under common control for nearly three years as of the Verizon merger closing date of June 2000. This is to be compared with the pre-merger GTE, with far-flung and diverse operations in dozens of states, ranging from small rural areas in some cases to large metropolitan areas (*e.g.*, Los Angeles) and entire states (Hawaii, Puerto Rico) in others.

From this perspective, both the firms' negotiators and the Commission staffers dealing with them could reasonably conclude that "entire agreements" within pre-merger Bell Atlantic had been developed as part of an integrated management process addressing state-specific operations that were generally parallel, *i.e.*, in all cases the pre-merger Bell Atlantic was the dominant ILEC in its affected state. It is not obvious why something that was acceptable to pre-merger Bell Atlantic in New Jersey or Virginia (where it is the dominant ILEC) should not be acceptable to pre-merger Bell Atlantic in New York or Pennsylvania or Massachusetts (where it is the dominant ILEC). It is less obvious, *e.g.*, that something that GTE found acceptable in rural Iowa should be acceptable for the Los Angeles metropolitan area. So, while Global NAPs was not privy to the discussions leading to the inclusion of the "entire agreement" language for pre-merger Bell Atlantic territories but not pre-merger GTE territories, general knowledge of how Bell Atlantic and GTE operated at the time of the merger suggests that a distinction would not be nonsensical.

This view also supports a ruling for Global NAPs in this case. As Global NAPs has noted, as a practical matter adopting Verizon's view of the "subject to Section 251(c)" language would mean that the "entire agreement" language is, in practical terms, meaningless. In that case, Verizon's obligations with respect to pre-merger Bell Atlantic territory would be identical to its obligations with respect to pre-merger GTE territory, despite the different and more expansive language defining the MFN obligation for pre-merger Bell Atlantic territory. Yet (unless one thinks that pure oversight led to the difference between pre-merger GTE and pre-merger Bell Atlantic territories) it is inconceivable that the Commission would have added the "entire agreement" language to apply to the pre-merger Bell Atlantic territory for no reason.[6]

4. According to Paragraph 32, "Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that *was* voluntarily negotiated by a Bell Atlantic incumbent LEC...." How does the use of the word "was" instead of "were" in the quoted sentence affect the way Paragraph 32 should be construed?

Global NAPs believes that this arguable grammatical infraction should not be given any interpretive significance. The negotiating history of the document shows that the grammatical flaw existed before the "including an entire agreement" language was added. Global NAPs attached to its Complaint a May 19, 2000 letter from Bell Atlantic showing the addition to Paragraph 32 of that language. As shown in that letter, before the addition of the "entire agreement" language, this portion of Paragraph 32 read as follows (newly added material shown here, as stricken out):

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[6] If somehow the Commission knows that the different language indeed arose by virtue of an oversight, then it should strongly consider extending the "entire agreement" language to pre-merger GTE territory. It surely would not justify ignoring it for pre-merger Bell Atlantic territory.

> Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement ~~(including an entire agreement)~~ subject to 47 U.S.C. § 251(c) ~~and Paragraph 39 of these Conditions~~ that was voluntarily negotiated by a Bell Atlantic incumbent LEC....

This suggests that the grammatical error crept in whenever the phrase "or provisions of an interconnection agreement" was added; grammatical perfection would have used "provision" (the singular noun to match the singular verb "was"). When the "including an entire agreement" language was added in May 2000, that would not have occasioned any attention to the verb, since "an entire agreement" is a singular noun phrase, which agreed with the then-existing (and still-existing) singular verb "was." When the language finally stabilized, grammatical correctness would have suggested changing "was" to "was or were," but it is easy to see why the Verizon negotiating team and the Commission's representatives working on the item, in the press of other more weighty matters, could have missed this.

5. What are the general policy ramifications of finding in favor of Global NAPs or Verizon? For example, could finding in favor of Global NAPs require a state to accept certain provisions that conflict with state laws, regulations, or policies? Could finding in favor of Verizon mean that there are few, if any, provisions that requesting carriers can opt into immediately?

Global NAPs addressed this in various ways in its complaint. Basically, a finding for Verizon means that the "entire agreement" language of Paragraph 32, and probably most of Paragraph 32 itself, is a nullity. Bell Atlantic and GTE came to the Commission, metaphorically on bended knee, seeking approval of their merger. The Commission concluded that the merger would be anticompetitive and contrary to the public interest unless a variety of conditions were to be imposed to offset those harms. Paragraph 32 is one of those conditions. It is intended to make it easy for CLECs to get into business in one state on terms that Bell Atlantic had formerly

found acceptable in another state. If Verizon's interpretation of Paragraph 32 is accepted, there will be nothing "easy" about the process; it will be a slow, litigious, anticompetitive hassle. That is, the Commission got it right, in ¶ 306 of the *Merger Order,* when it noted that the merger "will increase the merged firm's incentive and ability to impose unnecessary negotiation costs on its competitors." Finding for Verizon in this case would be capitulating to that "incentive and ability" despite the manifest purpose of Paragraph 32 (and other conditions) to thwart it. Global NAPs in this case, and other CLECs in other cases, would be deprived of the benefit of the bargain that the Commission struck with Verizon on behalf of the public.

On the specific question of Verizon's interpretation of the terms "entire agreement" and "subject to Section 251(c)," Global NAPs asserts yet again that as of the approval of the conditions in June 2000, there was not a single interconnection agreement anywhere in the former Bell Atlantic territory, the "entirety" of which addressed matters "subject to Section 251(c)," as Verizon interprets that phrase. Global NAPs again invites Verizon to produce even a single example of such an agreement. Its continued failure to do so is mute testimony to the number of agreements that would be available under the "entire agreement" clause: zero.

6. Does Paragraph 32 or any other portion of the *Merger Order* indicate whether this dispute should be brought before the Rhode Island, Massachusetts, or Virginia commission?

Global NAPs addressed this question extensively in its Complaint. *See id.* at ¶¶ 54-72. Global NAPs incorporates that discussion by reference here. Briefly, nothing in the language of Paragraph 32 purports to require or empower any state commission to do anything that the state commission was not already empowered or required to do under Section 252. Moreover, the statutory grounds on which the Commission based its imposition of Paragraph 32 did not include either Section 251, 252, or 201 — the only sources of statutory authority that could support

expanding state authority over interconnection arrangements. Global NAPs has asked the Commission to enforce one of the Commission's own orders.

It is conceivable that, once the Commission does so, that will result in certain activity before one or more state commissions. But none of the questions that Global NAPs has posed can be or should be resolved by state regulators.

Specifically, the question whether Section 5.7.2.3 is adoptable under Paragraph 32 is a question for this Commission. In addition to the legal basis for this conclusion stated above and in the Complaint, Global NAPs notes that a single decision on this point by this Commission would resolve the matter once and for all between the parties for all states where it is an issue (in addition to Massachusetts and Virginia, a similar adoption request and agreement between the parties applies in New Jersey, Delaware, and Pennsylvania). As a policy matter, therefore, Global NAPs notes that a single decision by this Commission would serve the policy goal of preventing Verizon from torturing CLECs with "the death of a thousand cuts," *i.e.*, forcing CLECs (here, Global NAPs) to litigate the same issue over and again in state after state. It would be peculiar indeed for the Commission to force such a result on Global NAPs in the application of a ruling in which the Commission itself notes Verizon's incentive to impose exactly that harm and in which the Commission itself took steps to mitigate that harm. *See* discussion of footnote 702 of the *Merger Order, supra.*

7. Is the Rhode Island commission's interpretation of section 5.7.2.3 binding on Verizon in Massachusetts and Virginia? Does Paragraph 32 or any other provision of the *Merger Order* limit Verizon's ability to object to the terms of the agreement before the Massachusetts and Virginia commissions, or limit the ability of those commissions to modify portions of the agreement as contemplated by section 252(e)?

The answer to the first question is "yes." Global NAPs has discussed this point in its Complaint. *See id.* at ¶¶ 91-109. Global NAPs would only add to that discussion a reference to

the Commissions statements in ¶ 306 of the *Merger Order* (discussed above under Question 1) noting that one of the anticompetitive effects of the merger, which the conditions were intended to mitigate, was the merged firm's ability to force CLECs to fight the same battles over and over, in state after state, both delaying CLECs from entering the market and leading to possible diversity among results in different states that complicate CLEC operations. It would be inconsistent with this purpose — indeed, it would facilitate anticompetitive delay and obfuscation — to interpret Paragraph 32 to allow Verizon to ignore fully-litigated interpretations of the meaning of an interconnection term when that term is exported to another state.

The answer to the second question is "yes" as to Verizon and "no" as to state commissions. As explained in the Complaint, Paragraph 32 obliges Verizon to offer CLECs the same terms contained in negotiated contracts in other states. It would defeat that obligation if Verizon could offer such terms in purported compliance with Paragraph 32, only to object to them before state commissions. So Verizon cannot object to the same terms it is obliged to offer to CLECs. That said, state commissions themselves remain free under Section 252(e)(2) to disapprove any imported conditions that could be disapproved under any "plain vanilla" negotiated agreement that parties might present for approval.

This analysis is consistent with Global NAPs' overall view that disputes about the requirements of Paragraph 32 are to be resolved by this Commission, not states. As Global NAPs has explained, Paragraph 32 requires Verizon to make certain offers, but not others, to CLECs. If there is a dispute about what offer Verizon must make (*e.g.*, a dispute about whether a carve-out applies to a particular term in an agreement), that is a matter for the Commission to resolve.

8. Can section 5.7.2.3 of the Rhode Island agreement be adopted in Massachusetts and Virginia, given the requirements of Paragraph 32 regarding consistency with the laws and regulations of the adopting state?

Yes. As explained in the complaint, Massachusetts expressly favors negotiated resolutions of the issue of compensation for ISP-bound calls. Its rulings on this topic making unfavorable policy comments on such compensation have occurred in the context of agreements that did not expressly address the issue, but simply called for compensation for "local" calls. Those same rulings have expressly said that parties should negotiate some arrangement if they can, and have praised Verizon and CLECs (such as Level 3) that were able to reach an accord. Here, Verizon and Global NAPs reached an accord on this topic in Rhode Island. Under Paragraph 32 that negotiated accord is available in Massachusetts.[7] There is no conceivable reason to think that Massachusetts regulators would ever have had a problem with such a negotiated solution for Massachusetts as well.[8]

As to Virginia, as this Commission is well aware, that state's view is that this Commission, having said that ISP-bound traffic is interstate, is responsible for sorting out any and all disputes between private parties regarding such traffic. Nothing in any ruling of the Virginia State Corporation Commission, or any law or regulation of the Commonwealth of Virginia, remotely suggests that it would be contrary to such ruling, law or regulation for parties to agree to the compromise embodied in section 5.7.2.3 of the Rhode Island agreement.

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[7] As noted in the complaint, that negotiated accord is also available in Massachusetts under Section 252(i). *See* Complaint at ¶ 56 & n. 35.

[8] Taking the question literally, there is certainly no "law" or "regulation" in Massachusetts that would bar adoption of Section 5.7.2.3 of the Rhode Island agreement. Verizon has cited none, and even the DTE, in its discussion of this topic, never claimed that any such "law" or "regulation" would be affected.

9. How does the Commission's April 27, 2001, *Order on Remand*[9] regarding ISP-bound traffic affect pre-existing contractual obligations between Global NAPs and Verizon from July 24, 2000, to be present in Rhode Island, Massachusetts, and Virginia?

Global NAPs does not believe that the *Order on Remand* directly affects this case at all. The parties have agreed that Global NAPs is entitled to the adoptable portions of the Rhode Island agreement in Massachusetts and Virginia as of July 2000. As a result, whenever this matter is finally sorted out, the adoptable portions of the Rhode Island agreement constitute the parties' agreement for those two states *nunc pro tunc,* starting in July 2000. The *Order on Remand* says that it has no effect on existing agreements other than by operation of their "change of law" provisions. The parties will have to sort out between themselves what the change of law provisions in the Rhode Island agreement imply for the remaining term of the contract, once it is established that their agreements in Massachusetts and Virginia include Section 5.7.2.3.

Global NAPs has not intended to bring ***that*** question to the Commission by its complaint. Analytically, that question has to do with interpreting the parties' interconnection agreements and resolving possible disputes about those agreements (specifically, the operation of the change in law provision in light of the *Order on Remand*). A Commission decision is needed here to establish that Section 5.7.2.3 is adoptable and has been adopted by Global NAPs in Massachusetts and Virginia. That ruling will establish what the parties' interconnection agreement ***is*** in those states. Once that question is answered, disputes between the parties about how that agreement operates would properly be brought to state regulators.[10]

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[9] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, Order on Remand and Report and Order (rel. Apr. 27, 2001) *("Order on Remand").*

[10] One exception to this general statement is the question of the proper interpretation of Section 5.7.2.3. As noted above and in the Complaint, it would defeat the purpose of Paragraph 32 and the MFN provisions in the *Merger Conditions* generally to permit Verizon to ***re***-litigate matters that had already been litigated to conclusion at the time an agreement from one state is exported to another. Another

All that said, as noted in Global NAPs' answer to Verizon's affirmative defenses, the *Order on Remand* makes clear that prior to its issuance, interconnection agreement provisions relating to compensation for ISP-bound calls were adoptable under Section 252(i). To the extent that Paragraph 32 is properly viewed, generally, as an effort to expand the operation of Section 252(i) across state lines, then this aspect of the *Order on Remand* confirms that Section 5.7.2.3 of the Rhode Island agreement was, indeed, adoptable across state lines as of July 2000, the relevant date in this case.

10. If section 5.7.2.3 is adoptable in Massachusetts and Virginia, what is the rate of reciprocal compensation that Verizon would have to pay – the Rhode Island rate, a rate to be determined by the Massachusetts and Virginia commissions, or a rate that already exists under tariff? Does the *Merger Order* or any provision of Paragraph 32 speak to this issue?

Global NAPs believes that the rate of $0.008 per minute for local and ISP-bound calls included in the Rhode Island agreement is not, in any meaningful sense, a "state specific" pricing provision. As noted in the Complaint, this same rate was agreed to by Verizon and Global NAPs simultaneously for New York, Rhode Island, Vermont, New Hampshire, and Maine, and was already in effect as the agreed rate for "local" traffic in Massachusetts. In the Complaint, Global NAPs has asked the Commission to so rule, *i.e.,* to hold that in the particular circumstances of this case, the $0.008 rate is not and should not be regarded as a "state specific" pricing provision for purposes of the carve-outs in Paragraph 32.

If the Commission disagrees with that ruling, then the per-minute rate for both Massachusetts and Virginia would be each of those states' respective TELRIC rates for local traffic. Global NAPs does not believe that there would be substantial dispute about those

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practical exception is, again, Virginia, which would likely wash its hands of any dispute involving ISP-bound calls. So, while that issue is not presently, actually before this Commission, it may well get back here with respect to the parties' operations in Virginia.

figures. Global NAPs believes that the figure for Virginia is approximately $0.001 per minute, whereas the figure for Massachusetts is more complex (containing time-of-day and urban/suburban/rural distinctions), but would range from approximately $0.002 per minute to more than $0.01 per minute.

11. If the Commission finds that the language in Paragraph 32 is ambiguous, what should the Commission look to in determining the meaning of Paragraph 32?

Several factors should guide interpretation of any unclear or ambiguous language in Paragraph 32. First are normal interpretative guidelines of the sort alluded to above: language should be interpreted to be meaningful and not nonsensical; all provisions should be given some meaning rather than no meaning; provisions should be interpreted in a manner that creates harmony among them, rather than disputes. As a general legal proposition, these kinds of interpretive guidelines apply to statutes, rules and regulations, contracts, and even court and agency opinions and rulings that are being consulted.

Second, the Commission should look to the pro-competitive policy goals it was trying to achieve with the conditions. The Commission found that the merger of GTE and Bell Atlantic would have anticompetitive effects. One of those anticompetitive effects was an increased ability of the merged firm to impose costs and delays on competitors by forcing competitors to re-negotiate, re-arbitrate, and re-litigate the same issues in state after state after state. Specifically to restrict the merged firm's ability to impose such costs and delays, the Commission adopted a suite of conditions, including both MFN requirements and requirements for multi-state negotiations, including, specifically, Paragraph 32. If ambiguous language in Paragraph 32 allows for more than one possible interpretation, then the only conceivably reasonable result is to choose the interpretation that is more hospitable to reining in Verizon's

ability to force competitors to fight the same issue over and over in multiple states, and less hospitable to Verizon arguments that have that effect.

Third, the closest established legal analogy to the merger conditions is a consent decree entered by an antitrust court or an agency such as the FTC or the Securities and Exchange Commission. Case law establishes that consent decrees are to be interpreted as contracts between the enforcement agency and the affected firm. *See United States v. Microsoft Corp.*, 147 F.3d 935, 945 (D.C. Cir. 1998) (*citing United States v. ITT Continental Baking Co.*, 420 U.S. 223, 236-237 (1975)); *accord, United States v. Western Electric Co.*, 900 F.2d 283, 293 (D.C. Cir. 1990).

It follows that normal contract interpretation rules apply here and, specifically, the rule that ambiguous language in a contract is to be interpreted against the drafter. Here, it is uncontested — and established by the record — that the "entire agreement" language was drafted by Verizon (and, indeed, by the former Bell Atlantic part of Verizon). It follows that this language should be interpreted against Verizon in the course of conflicts.

All of these interpretive guides indicate that Global NAPs, not Verizon, should prevail in this case.

CONCLUSION

Global NAPs' complaint in this matter thoroughly laid out the legal and factual basis establishing that it is entitled to relief from this Commission. Verizon's answer was brief and summary in nature, not even bothering to respond to some of Global NAPs' claims. That brevity, on some level a hallmark of Verizon briefing, created much of the need for the supplemental briefing ordered by the staff here. Global NAPs hopes that Verizon's brief being filed concurrently with this one provides a more useful explanation of what Verizon really thinks about some of these issues, allowing Global NAPs to fully explain Verizon's errors. If Verizon