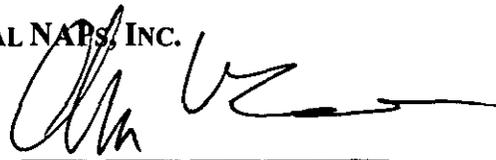


passes up this opportunity as well to lay out its views, then the Commission in this complaint case would be fully justified in finding for Global NAPs on all issues for that reason alone.

Respectfully submitted,

**GLOBAL NAPs, INC.**

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**CERTIFICATE OF SERVICE**

I, Linda M. Blair, do hereby certify that a true copy of the foregoing Brief of Global Naps, Inc. was served by hand delivery or facsimile (followed by U.S. mail) (\*) on July 16, 2001, as follows:

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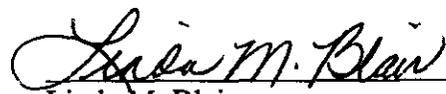
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

AUG 6 2001

FEDERAL COMMUNICATIONS COMMISSION  
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

**REPLY BRIEF OF GLOBAL NAPs, INC.**

Global NAPs, Inc. ("Global NAPs") respectfully files this reply brief in accordance with the letter ruling of the Enforcement Bureau staff in this matter.<sup>1</sup>

**INTRODUCTION**

Global NAPs' specific replies to Verizon's opening brief on the staff's designated questions are set out below. At the outset, however, Global NAPs notes that Verizon does not really have an integrated or coherent theory about how Paragraph 32 of the GTE Merger Conditions is supposed to work, either as a stand-alone provision or as part of the broader *GTE Merger Order*.<sup>2</sup> Instead, Verizon has, at most, two stand-alone positions it is trying to defend,

<sup>1</sup> This brief is being filed today pursuant to the schedule established by the staff, as modified by an exchange of emails between the parties and staff on July 10 and 11, 2001.

<sup>2</sup> 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) ("*GTE Merger Order*").

essentially irrespective of whether those positions make any sense in light of the language and purpose of Paragraph 32 or the *GTE Merger Order* as a whole.

At the highest level, the *GTE Merger Order* starts from the proposition that the merger of Bell Atlantic and GTE would have significant anticompetitive consequences. In accordance with the Commission's long-standing practice, however, rather than simply denying the parties' permission to merge, the Commission afforded them an opportunity to mitigate the anticompetitive effects of the merger by voluntarily accepting various conditions that go above and beyond what the parties would otherwise have been required to do by law following the merger. That is, the conditions impose *additional obligations* that would not otherwise exist. As a result, interpreting Paragraph 32 (or any other condition) as, in terms or in effect, simply restating an already-existing obligation is simply inconsistent with the purpose and context in which the merger conditions were created.

The Commission's findings of anticompetitive effects from the merger, moreover, were not general, generic, or inchoate. To the contrary, the Commission made a number of specific findings as to the precise *type* of anticompetitive conduct that the merged firm would be inclined to engage in, and many of the individual merger conditions are specifically designed to nullify the merged firm's ability — if not its incentive — to engage in such conduct.

The “most favored nation” provisions in the merger conditions serve several purposes. One of the most important is the elimination of the anticompetitive effects arising from the ability of a massive multistate entity such as Verizon to subject competitors to two key forms of the “death of a thousand cuts” — generic delay in finalizing interconnection arrangements, and a more specific tactic of forcing competitors to negotiate, arbitrate and litigate the same issues over and again in state after state after state. In the words of the Commission, the general purpose of

the “MFN” condition was “to facilitate market entry throughout Bell Atlantic/GTE’s region as well as the spread of best practices (as that term is understood by Bell Atlantic/GTE’s competitors).” *GTE Merger Order* at ¶ 300. And the Commission was quite explicit about the specific point as well:

Negotiating a separate interconnection agreement between the same parties in multiple states can impose substantial unnecessary costs and delays on competitors and provides incumbent LECs with an incentive to game the process. As we discuss above, this merger will increase the merged firm’s incentive and ability to impose unnecessary negotiation costs on its competitors.

*Id.* at ¶ 306 (footnote omitted).

These specific findings provide two touchstones in interpreting the meaning and application of particular merger conditions: (1) interpret them in a manner that recognizes Verizon’s ability and incentive to engage in anticompetitive practices that delay market entry and stall the spread of “best practices (as that term is understood by ... competitors);” and (2) interpret them in a manner that prevents Verizon from imposing “substantial unnecessary costs and delays on competitors,” from “gam[ing] the process,” and from “impos[ing] unnecessary negotiations costs” on competitors.

One might have expected Verizon to address these issues in its brief. It did not. Instead, as noted above, its entire presentation is devoted towards defending one or at most two propositions. First and foremost, of course, is that Verizon should never, ever, no-way, no-how, have to pay compensation for ISP-bound calls. In the service of this obsession, Verizon is prepared to distort and ignore the language and the logic of the merger conditions in general and Paragraph 32 in particular. There is no other explanation — certainly no logical explanation — for its insistence that the “entire agreement” language in Paragraph 32 really only means any entire agreements that might exist that address solely and entirely the duties of an incumbent

LEC under Section 251(c) of the Act. Global NAPs explained in its complaint and in its brief — and again, briefly, below — why this interpretation is illogical and, indeed, contrary to the language of Paragraph 32. There is similarly no explanation for Verizon’s insistence that provisions of agreements relating to compensation for ISP-bound calls are not adoptable under Paragraph 32. Paragraph 32 itself, of course, says nothing remotely supporting that conclusion, and says much that supports the contrary view.

Second, and somewhat more generally, Verizon seems unfazed to make the suggestion that Paragraph 32 in fact adds little or nothing to its pre-existing obligations under Section 251. While it is certainly in Verizon’s narrow business interest to have its obligations under the *GTE Merger Order* construed as narrowly as possible, such a narrow — one might even say churlish — view of the scope of its obligations is flatly inconsistent with the context in which that order was issued, described above.

At some level, then, what it all comes down to is this: Verizon agreed that any “entire agreement” it had negotiated prior to the merger in Bell Atlantic territory would be available throughout Bell Atlantic territory. It now wishes that that commitment said something like “except agreements dealing with compensation for ISP-bound calling,” or perhaps even “except any agreements (nudge, wink) that deal with subjects beyond ILEC duties under Section 251(c)” (knowing that no such agreements existed). But Paragraph 32 says what it says. It does not except agreements or provisions of agreements dealing with compensation for ISP-bound calling. And it is not limited to agreements dealing only with the ILEC duties under Section 251(c). It follows that Verizon should lose this case, and Global NAPs urges the Commission to promptly so rule.

1. Does the phrase “subject to 47 U.S.C. § 251(c)” in Appendix D, Paragraph 32 of the *Merger Order* 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?

In responding to this question, Verizon starts with its “compensation-for-ISP-bound-calling-isn’t-subject-to-Section-251” theme, stating that “[b]ecause agreements to pay reciprocal compensation for Internet-bound traffic are not subject to section 251, such agreements do not fall under the terms of the merger condition.” Verizon Brief at 2. Verizon, of course, is wrong.

Perhaps the best way to see the problem with Verizon’s logic is to ask what the phrase “subject to Section 251(c)” modifies in the overall language of Paragraph 32. Verizon argues, at bottom, that what must be “subject to Section 251(c)” is the particular *subjects* addressed by an agreement. In other words, it thinks that Paragraph 32, properly drafted, should have read something like, “any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) *dealing with the ILEC-specific-duties addressed in 47 U.S.C. § 251(c).*” But that is not what it says. The “provisions” and “entire agreements” that may be adopted across state lines are the “*provisions*” or “*agreements*” that are “subject to” Section 251(c). The difference is profound, as explained below.

Verizon claims that the actual language of Paragraph 32 is unambiguous, and relies on Webster’s for the proposition that “subject to” means “under the authority or control of.” Verizon Brief at 2. Without contesting that definition (although there are others),<sup>3</sup> far from

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<sup>3</sup> Indeed, a later edition of the very same Webster dictionary Verizon quotes provides four definitions of the adjective “subject”: 1 under the authority or control of, or owing allegiance to, another [*subject peoples*] 2 having a disposition or tendency; liable (to) [*subject to fits of anger*] 3 liable to receive; exposed (to) [*subject to censure*] 4 contingent or conditional upon (with *to*) (note continued)...

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supporting Verizon's case, it actually supports Global NAPs'. This is because Section 251(c)(1) specifically imposes on ILECs an obligation to negotiate interconnection agreements in good faith. It follows that any interconnection agreement that Verizon has negotiated in good faith under Section 251(c)(1) is "an interconnection agreement ... subject to 47 U.S.C. § 251(c)." In other words, the most natural reading of the actual language of Paragraph 32 is to identify a particular set of agreements — those negotiated in good faith under Section 251(c)(1) — to which the paragraph applies.<sup>4</sup>

Now, Verizon surely knew when this provision was being worked out with the Commission, just as it knows now, that interconnection agreements negotiated in good faith under Section 251(c)(1) typically — indeed, Global NAPs believes, essentially always — address many matters that go beyond the specific ILEC duties identified in other subsections of Section 251(c). Indeed, with the issuance of the Commission's *Reciprocal Compensation Order* in February 1999, provisions calling for compensation for ISP-bound calls were probably the industry poster child for fully enforceable provisions not mandated by Section 251 (under the

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...(note continued)

[*subject to his approval*]. Webster's New World Dictionary of the American Language, Second College Edition at 1417 (1980). Interestingly, Verizon chooses to cite the only definition of the adjective "subject" supplied that is *not* regularly used with the preposition "to." See also Black's Law Dictionary at 1425 (6<sup>th</sup> Ed. 1990) (defining "subject to" as "Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for"); The American Heritage Dictionary of the American Language, New College Edition at 1282 (1978) (providing four definitions for the adjective "subject": 1. Under the power or authority of another; owing obedience or allegiance to another. 2. Prone; disposed. Used with *to*. 3. Liable to incur or receive; exposed. Used with *to*: *subject to misinterpretation*. 4. Contingent or dependent. Used with *to*).

<sup>4</sup> As Global NAPs has previously noted, the prefatory language of Section 251(c) specifically references the duties in Section 251(b) as also applicable to ILECs. This is also fatal to Verizon's view that only agreements addressing ILEC duties specified in Section 251(c) are adoptable across state lines.

logic of that order) but nonetheless included in “interconnection agreements [entered into] subject to 47 U.S.C. § 251(c).”<sup>5</sup>

A simple thought experiment shows the error in Verizon’s position. If Verizon thought it could get its merger past the Commission with a condition that only allowed cross-border adoption of parts of agreements dealing with substantive ILEC interconnection duties under Section 251(c), it would not have been difficult to propose language (such as that suggested above) that would have unambiguously had that effect. Global NAPs is not aware whether Verizon ever actually proposed such language and had it rejected, or never even suggested it; but either way, there is a clear disconnect between what Paragraph 32 actually says, and what Verizon now wishes it said. In light of the remedial purposes of the merger conditions and Paragraph 32 — not to mention the fact that the conditions are akin to a contract drafted by Verizon — it would be completely unreasonable to stretch to interpret Paragraph 32 in a manner that limits Verizon’s obligations.

Indeed, consider that what Global NAPs is trying to do by adopting the Rhode Island agreement (in Massachusetts, Virginia and elsewhere) is to end litigation over a contentious inter-carrier issue. It seeks to do so not by imposing some bizarre or unreasonable terms on Verizon, but simply by exporting to other states a reasonable solution that Verizon itself accepted, completely voluntarily, in New York, Rhode Island, New Hampshire, Vermont and Maine. In other words, what Global NAPs is trying to do is *exactly* what Paragraph 32 was

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<sup>5</sup> For this reason, among others, there is simply no force to Verizon’s observation that compensation for ISP-bound calls is not mandated by Section 251(b)(5). *See, e.g.*, Verizon Brief at 3. That view may or may not ultimately prevail — as the Commission knows, it is now before the D.C. Circuit yet again — but even if true, it is irrelevant. Agreements that include provisions not mandated by (or even necessarily contemplated by) the substantive interconnection duties in Section 251 are, nonetheless, agreements that are *themselves* “subject to” that section.

designed to facilitate — spread “best practices,” avoid litigation, and avoid delay. And what Verizon is trying to do is *exactly* what the MFN provisions in the *GTE Merger Order* were designed to prevent — impose delay on competitors by forcing them to renegotiate and relitigate contentious issues in state after state, *despite Verizon’s voluntary agreement to a reasonable solution to those issues in other states.*

The heart of Verizon’s erroneous approach is contained in one sentence of its response to this first of the staff’s questions: “Paragraph 32 does not impose a more extensive substantive obligation on Verizon than does section 251(c) alone.” Verizon Brief at 3. Think about that. Verizon is saying that under Paragraph 32, a competitor has *no* substantive rights against Verizon that it did not have in the absence of Section 251(c). So, any time that Verizon may have worked out a reasonable deal in one state by means of a trade-off — “I’ll give you this, even though I don’t think I have to, if you’ll give me that, even though you don’t think you have to” — that reasonable deal cannot automatically be exported under Paragraph 32. Instead, under its view of Paragraph 32, any time Verizon agreed to such a trade-off, it reserves completely its right to litigate over and again whether its part of the bargain is “really” required under Section 251(c). In other words, under Verizon’s interpretation of Paragraph 32, any issue that it could force to arbitration and litigation before Paragraph 32, it can force to arbitration and litigation after Paragraph 32 — all it has to do is argue that the way it *voluntarily* resolved the issue in one state actually goes beyond what was required of it under Section 251(c).<sup>6</sup>

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<sup>6</sup> It is no help to Verizon’s position to claim that there are lots of different ways to implement Section 251(c) duties and that Paragraph 32 allows those different ways to be exported across state lines. Verizon Brief at 3-4. The only time Paragraph 32 acts as a real obligation is when a particular provision that Verizon agreed to in one state is for whatever reason not voluntarily acceptable to Verizon in another. Under Verizon’s interpretation of Paragraph 32, it would retain complete discretion to decide whether a particular provision in an  
(note continued)...

Verizon's interpretation of the language in footnote 702 is also unpersuasive. According to Verizon, the SBC/Ameritech merger dealt with cross-border adoption of "interconnection arrangements or UNEs;" the language of Paragraph 32 is supposedly just a "clarification" of that language. Verizon Brief at 4-5. How could anyone possibly have intended, Verizon implicitly asks, that *its* obligations under *its* merger conditions could be **broader** than those imposed on SBC and Ameritech? Yet it is quite clear that that is exactly what was intended. Verizon seems doggedly, obsessively devoted to ignoring the fact that *its* merger conditions specifically and explicitly require that "entire agreements" be made available across state borders, as long as those agreements were voluntarily negotiated in the originating state. *See also infra.*<sup>7</sup>

Indeed, while Verizon takes a few snippets of language from footnote 702, it ignores the text of paragraph 306 of the *GTE Merger Order* to which that footnote is appended. As Global NAPs pointed out in its opening brief, that text shows that the merger conditions should be interpreted to prevent exactly what Verizon is trying to do to Global NAPs here:

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...(note continued)

agreement merely implements, or actually goes beyond, its substantive obligations under Section 251(c). It would therefore retain complete discretion to either accede to a competitor's request, or to require the competitor to litigate the same issue over and over again in different states. Yet, as the *GTE Merger Order* plainly shows (*see id.* at ¶ 306), a key purpose of the MFN conditions was to **deprive** Verizon of precisely that discretion.

<sup>7</sup> Verizon's colorful example of having to export an interconnection agreement provision calling for the sale of a used truck, Verizon Brief at 5, is both amusing and ineffectual. First, Verizon has not suggested that any of its interconnection agreements actually call for such a sale, so the "problem" is totally hypothetical. (In this same fashion, Verizon has never produced or affirmatively claimed the existence of any particular agreement in pre-merger Bell Atlantic territory that deals only and exclusively with the subject of ILEC duties under Section 251(c), yet relies on the existence of such mythical agreements to avoid depriving the phrase "including an entire agreement" of all meaning.) Second, the sale of a particular used truck would doubtless be "state-specific" in some relevant sense, just as (for example), a particular interconnection agreement implementing the Section 251(c)(2) interconnection duty in one state may list, as interconnection points, ILEC or CLEC switch locations *in that state*. When that provision is exported to another state under Paragraph 32, the specific interconnection locations would be  
(note continued)...

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.

Global NAPs Brief at 6 (citing *GTE Merger Order* at ¶ 306). The only way to “neutralize [Verizon’s] incentive” to force competitors such as Global NAPs to incur unnecessary negotiation (and litigation) costs is to rule against Verizon in this case.

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

Verizon uses this staff question to restate its view that the only “entire agreements” that might be subject to cross-border adoption are those (hypothetical, non-existent) agreements whose subject matter is entirely limited to ILEC duties laid out in Section 251(c). Verizon Brief at 5. Global NAPs has refuted this claim in its complaint, in its opening brief, and elsewhere in this reply brief, and will not repeat that discussion here. Suffice it to say that, in service of its overriding goals in this litigation, Verizon’s discussion of footnote 686 ignores both the terms of that footnote (which refers to Verizon’s “commitment” with respect to making entire agreements available, and does not purport to literally define the specific phrases used to embody that commitment) and the discussion in paragraph 300 of the *GTE Merger Order*, to which the footnote is appended.

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...(note continued)

established in the importing state, not the exporting state.

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?**

In response to this staff question, Verizon yet again recites its mantra that only a (hypothetical, nonexistent) “agreement that contains provisions that are entirely subject to section 251(c) of the Act could be adopted in another state.” Verizon Brief at 5. It then engages in a grammatical exegesis designed to prove that the parenthetical phrase “including an entire agreement” cannot “limit” the meaning of the requirement that affected agreements or provisions be “subject to” Section 251(c). *Id.* at 6.

Global NAPs has explained the flaw in this argument above (under Question 1). Briefly, what must be “subject to” Section 251(c) is the interconnection agreement provision(s) or the “entire agreement.” Because Section 251(c) expressly establishes an ILEC obligation to negotiate agreements in good faith, the most logical reading of the “entire agreement” phrase is that it refers to “entire agreements” that result from the negotiation process expressly identified in Section 251(c)(1). In other words, provisions of agreements, or entire agreements, negotiated in good faith under Section 251(c)(1) — as opposed to provisions or entire agreements arbitrated and imposed on the ILEC under Section 252(b) — are adoptable under Paragraph 32. This eliminates any possible conflict between the phrase “entire agreement” and the phrase “subject to 47 U.S.C. § 251(c).” Indeed, any such conflict arises entirely from Verizon’s erroneous interpretation of the phrase “subject to” Section 251(c) as meaning “addressing the subject of ILEC obligations contained in” Section 251(c). This is one of many reasons to reject Verizon’s interpretation.

Verizon has essentially nothing to say about why the “entire agreement” language might be included in the portion of Paragraph 32 relating to pre-merger Bell Atlantic territory and not pre-merger GTE territory. Apparently Verizon’s view is that the “entire agreement” language was so trivial, so unimportant, so “de-emphasized,” that it doesn’t really mean anything. It’s just a “clarification” of what the relevant phrase means even without the “entire agreement” language; it doesn’t add any independent force or obligations. From this Verizon concludes that “having clarified” the meaning of the phrase “once, there was no need to include the parenthetical a second time” in the GTE portion of Paragraph 32. *See* Verizon Brief at 6.

This is truly remarkable when one thinks about it. Verizon has just claimed that the “entire agreement” language *is completely meaningless*, since under its view, its Paragraph 32 obligations in pre-merger GTE territory — which are not subject to that language — are exactly the same as in the pre-merger Bell Atlantic territory — which are subject to that language. While it is quite clear that Verizon *wishes* that the “entire agreement” language had no meaning, however, it is equally clear that it would make no sense to interpret Paragraph 32 that way.

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 and Verizon agree that the use of the term “was” as opposed to “were” is an apparent drafting oversight with no interpretive significance. *See* Verizon Brief at 7.

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?**

Verizon uses this question as an opportunity to argue that as a policy matter, the Commission does not favor compensation for ISP-bound calls; from this premise, Verizon argues that it would be bad policy for the Commission to allow agreement provisions regarding ISP-bound calls to be adopted across state lines. Verizon Brief at 7-8.

There are two main flaws with this argument. First, at the time the merger conditions were adopted, and at the time Global NAPs adopted the Rhode Island agreement for Massachusetts and Virginia (and other states), the Commission's latest statement (vacated to be sure) was that parties were free to agree to compensate each other for ISP-bound calls, even though that was not (in the Commission's view) required by Section 251(b)(5). That Commission view was reaffirmed in the April 2001 *ISP Remand Order*,<sup>8</sup> and, specifically, in paragraph 82 of that order, in which the Commission made clear that its new policy regarding ISP-bound calling was not intended to supercede existing agreements.

Second, the *ISP Remand Order*, also in paragraph 82, makes clear that prior to the issuance of that order, provisions of interconnection agreements relating to ISP-bound calling were indeed subject to adoption under Section 252(i) of the Act.<sup>9</sup> So, again, at the time relevant to this case, not only was there no Commission policy against carriers' agreeing to compensate

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<sup>8</sup> 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).

<sup>9</sup> As noted in other Global NAPs filings in this case, it would make no sense for the Commission to specifically rule that carriers may "*no longer invoke* Section 252(i)" unless, prior  
(note continued)...

each other for ISP-bound calls, such agreements were adoptable within a given state under Section 252(i). Global NAPs expresses no opinion about whether the Commission's newly-imposed limitation on adopting provisions relating to ISP-bound calling under Section 252(i) does or does not affect the adoptability of such provisions under Paragraph 32 of the *GTE Merger Conditions*, for the simple reason that that issue has nothing to do with the case at hand.

To the contrary, Global NAPs has adopted the Rhode Island agreement for Massachusetts and Virginia, *nunc pro tunc*, as of July 2000. The agreement continues of its own force until later this year. The *ISP Remand Order* thus affects the parties' agreement in Massachusetts and Virginia (and, indeed, in Rhode Island), if at all, only to the extent called for by the agreement's "change in law" provisions — as stated in paragraph 82 of the *ISP Remand Order* itself. That question, however, is not presented by this case.

Verizon also claims that for Global NAPs to win this case "would be inconsistent with ... the intent of the merger conditions themselves." Verizon Brief at 7. What Verizon means, apparently, is that for the Commission to hold that Paragraph 32 allows adoption of the Rhode Island agreement in other states would conflict with the carve-out in Paragraph 32 relating to "consisten[cy] with the laws and regulatory requirements of, the state for which the request is made." Verizon Brief at 9. Global NAPs has already explained, in its complaint and in its response to staff questions Nos. 7 and 8, both that the Rhode Island agreement is consistent with the policies of the relevant states (Massachusetts and Virginia) and that those states retain the

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...(note continued)

to the issuance of that order, Section 252(i) could, indeed, be "invoked" for this purpose."

right under Section 252(e)(3) to protect their own state interests in this matter. Verizon's discussion offers nothing to rebut Global NAPs' earlier explanations.<sup>10</sup>

**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?**

Verizon's response to this question is that "yes," Paragraph 32 does indicate whether this dispute should be brought to states, "but only for matters within the scope of their merger conditions." Verizon Brief at 10. Verizon then goes on to claim, yet again, that the disputed provisions of the Rhode Island agreement are not "subject to those conditions." *Id.* It then quotes the relevant language from Paragraph 32 and says that the language means that disputes about matters subject to Paragraph 32 should go to states. *Id.*

Global NAPs has little to say in response to this that it has not said elsewhere. Briefly, the key legal issue here is that the *GTE Merger Order* could not, and did not purport to, expand state authority to handle interconnection disputes, whether arising under Paragraph 32 or otherwise. Paragraph 32 recognizes this by saying that states are to resolve disputes that arise "under 47 U.S.C. § 252 *to the extent applicable*" (emphasis added), without ever giving a hint as to just how or in what ways Section 252 might be "applicable." As Global NAPs explained in its complaint at ¶¶ 54-72, the best way to understand Paragraph 32 is as requiring Verizon to make certain offers to CLECs that Verizon would not otherwise be called upon by law or regulatory

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<sup>10</sup> Remarkably, in further service of its narrow view of its MFN obligations, Verizon argues that *Section 252(i)* only really applies to matters addressed in Section 251(c). See Verizon Brief at 9 n.2. This from the same company that successfully implored the 8<sup>th</sup> Circuit in 1996 to rule that Section 252(i) could only sensibly be interpreted to apply to entire interconnection agreements. See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800-01 (8<sup>th</sup> Cir. 1997). When it comes to arguing that its MFN obligations are limited and ineffectual, however, it seems that Verizon's view is, "in for an inch, in for a mile."

obligation to make. If a dispute arises as to whether Verizon has adequately met its obligation to make an offer as required by Paragraph 32, that is a question for this Commission, since it relates to interpretation of a Commission order. States will be involved in approving and enforcing the agreements that result from such offers. That is the extent to which Section 252 is “applicable” here.<sup>11</sup>

- 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)?**

Verizon’s response to this question is indicative of its muddled thinking about Paragraph 32 and the role of states under it. Verizon completely fails to distinguish between what Paragraph 32 requires Verizon to do — which is to make offers to CLECs in conformity with its terms — and what Paragraph 32 requires states to do — which is, nothing.

Long before Paragraph 32 was imposed — indeed, before the “entire agreement” language was added to Paragraph 32 — the Rhode Island commission issued a binding interpretation of Section 5.7.2.3 of the parties’ agreement. Verizon did not appeal that interpretation. That interpretation, therefore, constitutes the actual meaning of Section 5.7.2.3 in Rhode Island.

Paragraph 32, as explained in Global NAPs’ complaint, obliges Verizon to *make offers* to CLECs in one Bell Atlantic state that contain an “entire agreement” that it voluntarily entered into in another Bell Atlantic state during the pre-merger period. Since Section 5.7.2.3 of the

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<sup>11</sup> Global NAPs notes that Verizon’s thin response to this and other staff questions reflects the point made in the Introduction above, which is that Verizon doesn’t really have a coherent theory of how Paragraph 32 works — much less how it interrelates with its freestanding obligations under Sections 251 and 252.

Rhode Island agreement, *as interpreted by the Rhode Island commission*, was part of an “entire agreement” that Verizon had voluntarily entered into pre-merger, it follows that Section 5.7.2.3 of that agreement, *as interpreted by the Rhode Island commission*, must be offered by Verizon under Paragraph 32.

None of the above in any respects constitutes any imposition by the Commission on any authority of any state. Verizon’s claim that “[j]ust because Verizon adjudicated the interpretation of section 5.7.2.3 before the Rhode Island commission for application in Rhode Island does not preclude it from asking an adopting state commission in a new proceeding to interpret the same language in a different way for application within that state,” therefore, is wrong. Verizon Brief at 11. Paragraph 32 requires Verizon to offer CLECs not merely the words, but also the meaning of the words, contained in voluntarily negotiated interconnection agreements. Verizon’s alternative view would mean that under Paragraph 32 Verizon is free to litigate, over and over again, what a particular provision means in a state-by-state regulatory lottery, looking for favorable interpretations of disputable language, and all the while subjecting the affected CLECs to the costs and delays of litigation. That Verizon would *want* to do this is obvious: as the Commission said in adopting the merger conditions, “this merger will increase the merged firm’s incentive and ability to impose unnecessary negotiation costs on its competitors.” *GTE Merger Order* at ¶ 306. But it is equally obvious that Paragraph 32 — imposed to “*neutralize*” that incentive — cannot properly be read to support Verizon’s anticompetitive agenda.<sup>12</sup>

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<sup>12</sup> Note that under Global NAPs’ view, if particular language in an adopted interconnection agreement is subject to litigation in the originating state for the first time *after* that same language has been adopted in another state, this “ex post facto” litigation in the originating state would not be binding on Verizon in the importing state. This is because the offer that Verizon  
(note continued)...

**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?**

Global NAPs has explained in its Complaint and in its opening brief why the answer to this question is “yes.”

Verizon claims that the question of whether section 5.7.2.3 is or is not consistent with the laws of the states where Global NAPs seeks to adopt it is not a matter for this Commission. Verizon Brief at 12. As explained in Global NAPs’ complaint and opening brief, this is wrong. If the question is, “what terms does Verizon have to offer Global NAPs?” — *i.e.*, what does Paragraph 32 require? — that is a question for the Commission. Verizon is free to ask this Commission to rule that section 5.7.2.3 is not part of the offer required by Paragraph 32, including on the grounds that it is supposedly subject to the carve-out relating to consistency with state law.<sup>13</sup>

Assuming that Verizon’s offer must include section 5.7.2.3, Verizon and Global NAPs are then, at least arguably, called upon to submit their new agreement to the affected state for approval under Section 252(e) of the Act.<sup>14</sup> Verizon cannot be permitted to use such submission

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...(note continued)

made (pursuant to Paragraph 32) in the importing state was made prior to the interpretation of the contract in the originating state, and so would not logically be interpreted as including the results of that (as of the date of the offer) future litigation.

<sup>13</sup> As Global NAPs explained in its complaint, this may occasionally involve the Commission in determining what a particular state’s laws or regulations might require. This type of “conflict of laws” question, however, is common in court adjudications, and there is no reason to think that, in the complex assignment of state and federal responsibilities under the Communications Act, adjudications before this Commission should be exempt from them. *See Complaint*’ at 28.

<sup>14</sup> The Commission has ruled that agreements opted into under Section 252(i) are not subject to the process of submission to state commissions for review and approval. *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities* (note continued)...

as an opportunity to renege on the offer that Paragraph 32 requires it to make; that would plainly nullify the purpose of Paragraph 32 — speeding market entry and eliminating state-by-state litigation of provisions voluntarily agreed to elsewhere. That said, under Section 252(e)(2)(A), in certain limited circumstances a state may refuse to approve even a fully-negotiated interconnection agreement presented to it. While Global NAPs cannot believe that any state commission could, consistent with those limited circumstances, reject section 5.7.2.3 (note, after all, that it was approved by the regulators in five states — New York, New Hampshire, Vermont, Rhode Island, and Maine), in the abstract this process — if it applies to “Paragraph 32” adoptions — gives states an opportunity to vindicate their state-specific interests.

9. **How does the Commission’s April 27, 2001, *Order on Remand*<sup>15</sup> 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?**

Verizon concedes that, in light of paragraph 82 of that order, the *ISP Remand Order* does not directly affect existing agreements. See Verizon Brief at 13. In this case, Global NAPs has adopted the Rhode Island agreement in Massachusetts and Virginia, *nunc pro tunc*, as of July 2000. It follows that the terms of that agreement constitute “pre-existing contractual obligations” between the parties, as of the date of the *ISP Remand Order*. Consequently, while the parties

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...(note continued)

*Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12530, ¶ 8 n. 25 (1999). It would not be unreasonable for the Commission to rule that, for the same reasons, agreements adopted under Paragraph 32 would not be subject to such submission either.

<sup>15</sup> 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*”).

may disagree (actually, they *do* disagree, as indicated by ongoing litigation in Rhode Island) as to the effect of the *ISP Remand Order* on their obligations under the applicable “change in law” language of the Rhode Island agreement, Global NAPs does not believe (and does not understand Verizon to argue) that *this* question is one of the matters at issue in this case.

Putting the matter plainly, if Global NAPs wins this case, then section 5.7.2.3 of the Rhode Island agreement governs the parties’ handling of compensation for ISP-bound calls in Massachusetts and Virginia, *nunc pro tunc* from July 2000 forward. This means that Verizon will owe Global NAPs a substantial amount of money for ISP-bound calling in those states during the period from July 2000 forward. As of the effective date of the *ISP Remand Order*, however, in each of those states, the parties will face the question of how that order affects the operation of section 5.7.2.3. That question — not present in this case — will be resolved by negotiation or litigation, as the case may be.

- 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?**

Verizon offers nothing by way of explanation as to why the rate of \$0.008 per minute in the Rhode Island agreement should properly be viewed as a “state specific” pricing provision. Assuming, however, that is so viewed, Global NAPs and Verizon do not seem to disagree that the applicable rate should be the state-developed TELRIC rate for local traffic termination.

- 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?**

Verizon offers nothing of substance in response to this question. *See* Verizon Brief at 14. It simply claims that the language is not ambiguous, then recites its mantras about the limitations

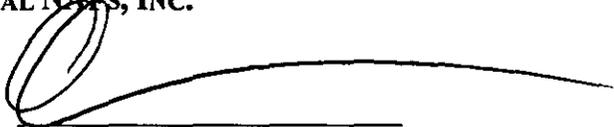
of Paragraph 32 and the scope of Section 251(b)(5). Global NAPs, therefore, has nothing to reply to, and rests on its earlier response to this question.

**CONCLUSION**

Global NAPs' Complaint in this matter, combined with its opening brief, fully explains why it is entitled to relief from this Commission. For the reasons stated there and in Global NAPs' other filings, Global NAPs respectfully requests that the Commission grant Global NAPs' complaint in this matter on all counts.

Respectfully submitted,

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August 6, 2001

**CERTIFICATE OF SERVICE**

I, Linda M. Blair, do hereby certify that a true copy of the foregoing Reply Brief of Global Naps, Inc. was served by hand delivery or facsimile (followed by U.S. mail) (\*) on August 6, 2001, as follows:

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