

## COLE, RAYWID &amp; BRAVERMAN, L.L.P.

CHRISTOPHER W. SAVAGE  
 ADMITTED IN DC AND CALIFORNIA  
 DIRECT DIAL  
 202-828-9811  
 CHRIS.SAVAGE@CRBLAW.COM

ATTORNEYS AT LAW  
 1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
 WASHINGTON, D.C. 20006-3458  
 TELEPHONE (202) 659-9750  
 FAX (202) 452-0067  
 WWW.CRBLAW.COM

LOS ANGELES OFFICE  
 2381 ROSECRANS AVENUE, SUITE 110  
 EL SEGUNDO, CALIFORNIA 90245-4290  
 TELEPHONE (310) 643-7999  
 FAX (310) 643-7997

January 25, 2002

Ms. Magalie R. Salas  
 Secretary Federal Communications Commission  
 445 12<sup>th</sup> 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:

This letter responds to the letter filed in the above-noted dockets on January 24, 2002 by Mr. Lawrence W. Katz of Verizon ("Katz Letter"). Mr. Katz's letter is a perfect illustration of the aphorism, "no good deed goes unpunished."

On January 16, at the request of the Common Carrier Bureau Chief, Global NAPs representatives (including undersigned counsel) met with Common Carrier Bureau personnel to discuss certain issues of how to interpret Paragraph 32 of the GTE Merger Conditions. Verizon personnel (although not Mr. Katz) were present at the meeting. This arrangement was consistent with the parties' agreement in the (restricted) Enforcement Bureau proceeding about how to handle contacts with the Common Carrier Bureau in the (unrestricted) proceeding there.

On January 17, I filed in the above-noted dockets a letter disclosing the permitted *ex parte* contact in the Common Carrier Bureau proceeding. Letter from C. Savage to M. Salas (January 17, 2002) ("Global NAPs *ex parte* Letter"). Because of the overlap in the subject matter of that docket with the Enforcement Bureau proceeding noted above, and based on recent Enforcement Bureau practice in that proceeding (*see* below), I also filed that *ex parte* disclosure letter in the Enforcement Bureau proceeding. Mr. Katz objects to my having done so, and argues that the letter "should not be entered into the record of the complaint proceeding nor considered by the Commission in resolving the complaint." Katz Letter at 1.

Global NAPs finds it hard to understand how Mr. Katz would have it handle this situation. The meeting at the Common Carrier Bureau lasted for more than an hour, and basically involved having the representatives from both parties respond to questions posed by

No. of Copies rec'd 0  
 List A B C D E

Ms. Magalie R. Salas

January 25, 2002

Page 2

Ms. Attwood (and provide reactions to each others' responses). Given the overlapping subject matter of the two above-referenced proceedings, it was inevitable that the conversations with the Common Carrier Bureau would, and did, involve the substance of issues that are central to the resolution of Global NAPs' complaint against Verizon at the Enforcement Bureau.

One of the issues that was discussed — in Global NAPs' view, extensively — was the significance and proper interpretation of the use of the word "was" rather than "were" in a key sentence of Paragraph 32. As part of that discussion, I specifically mentioned that the matter had been briefed before the Enforcement Bureau and that Global NAPs' position there had been that the use of "was" rather than "were" was a grammatical error, but not significant.

That said — whether as a result of reflecting on Ms. Attwood's questions or on what Verizon's representatives said — literally sitting right there in a Common Carrier Bureau conference room, it struck me that (despite what I had said in Global NAPs' briefs to the Enforcement Bureau) a sensible and natural parsing of the relevant sentence from Paragraph 32 led to the following conclusions:

1. The sentence was *not* ungrammatical; and
2. Parsing it to be grammatically correct clearly showed the error of Verizon's claim that the phrase "subject to Section 251(c)" was intended to limit the scope of *provisions* of an interconnection agreement subject to Paragraph 32's "most favored nation" rights, as opposed to clarifying the type of *agreements* to which Paragraph 32 referred.

At the meeting on January 16 — knowing and openly admitting that this was a change from the position I had taken for Global NAPs in the briefing before the Enforcement Bureau — I explained that, indeed, a natural parsing of the language of Paragraph 32 supported Global NAPs' views on the merits of the scope of that MFN obligation, and undermined Verizon's view. As I reviewed this point in January 17 *ex parte* Letter:

"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 ... .

Ms. Magalie R. Salas

January 25, 2002

Page 3

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).'"

Global NAPs *ex parte* Letter at 3.

One would have thought that in the sensitive circumstances of these two overlapping proceedings, one restricted and one not, everyone would agree that the relevant after-the-fact *ex parte* disclosure letter should be particularly detailed and informative. Also, given the overlap, it seemed particularly important that the record of *both* proceedings properly reflect what had been said at the meeting with the Common Carrier Bureau. Indeed, this is precisely what happened in December, when *Verizon* met with some Common Carrier Bureau personnel on this issue: the new argument that Verizon had raised to the Common Carrier Bureau in its proceeding, and embodied in *its ex parte* filing regarding that proceeding, had been provided for the record of the Enforcement Bureau proceeding. See Letter from L. Katz to M. Salas (December 18, 2001) (providing for the record of the Enforcement Bureau proceeding the *ex parte* submissions Verizon had made in the Common Carrier Bureau proceeding).<sup>1</sup>

Yet — despite this recent and directly relevant precedent for how to handle contacts with the Common Carrier Bureau on these topics — Mr. Katz argues that somehow my letter of January 17 “should not be entered into the record of the complaint proceeding nor considered by the Commission in resolving the complaint.” Katz Letter at 1. Global NAPs submits that the only remotely plausible explanation for this suggestion is that Verizon is afraid of, and wants to deflect, the actual force of the argument it wishes to artificially exclude from the Enforcement Bureau proceeding. However, neither the Common Carrier Bureau, the Enforcement Bureau, nor the Commission itself, should blind themselves to consideration of relevant, probative arguments about how to interpret Paragraph 32.

Global NAPs of course does not object to including Mr. Katz’s response to Global NAPs’ letter in the record of both the Enforcement Bureau proceeding and the Common Carrier Bureau proceeding. Katz Letter at 1.

---

<sup>1</sup> Indeed, as Mr. Katz is aware, the filing of this letter in the Enforcement Bureau proceeding occurred at the direct request of Enforcement Bureau personnel, in light of the overlapping issues in the two proceedings.

Cole, Raywid & Braverman, L.L.P.

Ms. Magalie R. Salas

January 25, 2002

Page 4

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](mailto:chris.savage@crblaw.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Savage", with a long horizontal flourish extending to the right.

Christopher W. Savage  
Attorney for  
**GLOBAL NAPS, INC.**

cc: Dorothy Attwood  
Carol Matthey  
Anthony Dale  
Radhika Karmakar  
Larry Katz