

June 11, 2002

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RECEIVED

JUN 11 2002

Re: CC Docket No. 00-218

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Dear Mr. Dygert:

WorldCom submits this letter to provide the Commission with copies of two recently issued state commission decisions that directly support WorldCom's position on Issues I-1 and I-6 in the above-captioned docket: Petition of Global NAPs, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Verizon New York ("Global Naps NY"), Case No. 02-C-0006, Order Resolving Arbitration Issues (N.Y. Pub. Serv. Comm'n May 24, 2002) (attached hereto at Tab 1); In re Global NAPs, Inc. (U-6449-C) Petition for Arbitration of a Interconnection Agreement with Pacific Bell Telephone Co. Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Global Naps CA"), Application No. 01-11-045, Final Arbitrator's Report (Cal. Pub. Util. Comm'n May 15, 2002) (attached hereto at Tab 2).

Issue I-1 involves Verizon's proposal to replace the current interconnection arrangement – in which each carrier assumes financial responsibility for transporting its own originating traffic to the network of the called party's carrier – with "GRIPS" or "VGRIPS." WorldCom objects to Verizon's GRIPS and VGRIPS proposals because they violate FCC regulations that require Verizon to permit interconnection of new entrant facilities at any technically feasible point, including a single point per LATA, and because Verizon's proposed arrangement unfairly burdens the new entrant with the bulk of the financial responsibility for all calls.¹ Issue I-6 concerns WorldCom's proposal that the interconnection agreement provide that a call's status as "local" be determined by referring to the NPA-NXXs of the calling and called numbers, and that a party terminating foreign exchange ("FX") service traffic receive reciprocal compensation for that traffic if the NPA-NXXs indicate that the call is local.² The recently issued New York and California state commission decisions support WorldCom's position on both of these issues.

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¹ See WorldCom Br. at 4-17.

² See WorldCom Br. at 80-89.

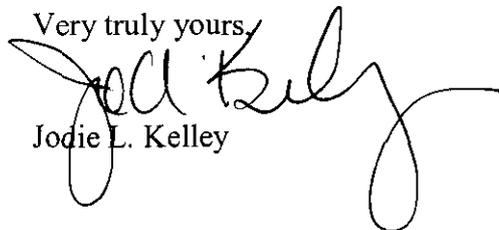
The New York commission's rejection of Verizon's VGRIPs proposal in Global Naps NY supports WorldCom's position on Issue I-1. As the New York commission recognized:

[C]ompetitor networks do not and need not mirror the incumbent's. Verizon has produced insufficient evidence or rationale for revisiting or modifying the policy established in our Competition II proceeding, the assumption that a carrier is responsible for the costs to carry calls on its own network. Moreover, the adoption of the Verizon VGRIP or a similar proposal, involving delineation of one point for physical interconnection and a separate point or point for financial interconnection, runs the risk of undermining the policy of allowing a single point of interconnection between carriers. Verizon has not adduced sufficient evidence for us to find that abandoning that policy is appropriate at this time.³

In addition, the commission reaffirmed its policy that reciprocal compensation applies to all calls except interLATA traffic, and recognized that a CLEC's provision of an FX-like service ensures that customers in all localities, particularly rural areas, have competitive alternatives to Verizon's service.⁴ These holdings support WorldCom's position on Issue I-6.

The California state commission has also recently rejected Verizon's VGRIPs proposal. In Global Naps CA, the commission held that CLECs may designate a single technically feasible point of interconnection, and cannot be charged for transport of Verizon's originating traffic to the point of interconnection when they do so.⁵ This confirms that each LEC is responsible for the costs associated with transporting its own traffic on its side of the POI, and supports WorldCom's position on Issue I-1. In addition, the arbitrator held that: FX-like service should be treated as local traffic for intercarrier compensation purposes; the originating and terminating end-users do not have to be physically located in the same local exchange area; such FX-type traffic is subject to reciprocal compensation; and that access charges are not applicable.⁶ These holdings support WorldCom's position on Issue I-6.

If you have any questions please do not hesitate to contact me.

Very truly yours,

Jodie L. Kelley

Encl.

³ Global Naps NY, at 9-10.

⁴ See Global Naps NY, at 12,14-15.

⁵ See Global Naps CA, at 5-6, 18-34.

⁶ See Global Naps CA at 60-67.

Jeffrey Dygert
June 11, 2002
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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing letter were delivered this 11th day of June, 2002, by federal express and regular mail to:

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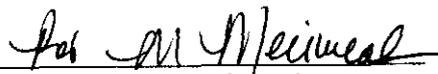
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By: 
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on May 22, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 02-C-0006 - Petition of Global NAPs, Inc., Pursuant to
Section 252(b) of the Telecommunications Act of
1996, for Arbitration to Establish an
Intercarrier Agreement with Verizon New York
Inc.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective May 24, 2002)

BY THE COMMISSION:

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CASE 02-C-0006

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INTRODUCTION

Global NAPs, Inc. (Global or GNAPs) filed this petition for arbitration of interconnection rates, terms and conditions on January 3, 2002. Verizon New York Inc. (Verizon) filed its response on January 28, 2002. Parties have stipulated that the formal request for negotiation took place on July 28, 2001 and, therefore, this arbitration award must be issued no later than May 27, 2002, pursuant to §252(b)(4)(C) of the Telecommunications Act of 1996 (the 1996 Act). Following the exchange of discovery requests and responses, an on-the-record technical conference was held on April 4, 2002. Witnesses were heard and both cross examination and an exchange of subject matter expertise took place. A stenographic transcript of 196 pages was created and seven exhibits were placed in evidence. Following the technical conference, both parties stipulated to a briefing schedule and filed briefs.

PROCEDURAL MATTERS

Two threshold procedural matters are presented in this proceeding: motions to strike portions of the record, and an underlying controversy between the parties concerning exactly what issues have been formally placed in arbitration by petitioner Global, and are therefore properly before this Commission for arbitration. We will discuss and resolve these threshold issues before addressing the parties' substantive concerns.

The Motions to Strike

Two motions to strike portions of the record were proffered by Global. The first concerned portions of the direct testimony of Verizon's Witness Jonathan B. Smith, filed by Global on April 2, 2002. The second motion was made on the record during the Technical Conference, and concerned one and a

half pages of Verizon testimony as to what is the definition of a true carrier.

1. The Parties' Positions

GNAPS seeks to strike Direct Testimony of Verizon's witness Smith, which concerns GNAPS' past conduct. In GNAPS' view, this testimony is highly prejudicial. The testimony details a prior dispute between the parties concerning GNAPS billing of Verizon. In GNAPS view, this testimony is entirely irrelevant to the issues in this arbitration proceeding and, in addition, is prejudicial to its interests as the testimony introduces past charges of fraud and racketeering as evidence that an independent audit provision is essential in the interconnection agreement.

GNAPS' oral motion to strike portions of the Direct Testimony of Verizon witness Terry Haynes, made at the Technical Conference, is also intended to avoid prejudice in this proceeding. Mr. Haynes' testimony concerned the definition of a "true carrier," and included his view that a data-only carrier, such as Global currently appears to be, is not a "true" carrier.

Verizon opposes both motions. As to the motion to strike Mr. Smith's audit testimony, it argues that this Commission has long recognized that parties should include audit provisions in their interconnection agreements because they "afford each party reasonable assurances that the other will fulfill its obligations."¹ The disputed portion of Mr. Smith's

¹ Verizon relies upon our decision in Case No. 99-C-1389, Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York, Order Resolving Arbitration Issues (issued January 28, 2000) retaining mutual audit and examination terms, contained in the parties' prior interconnection agreement.

testimony, Verizon argues, explains why such audit provisions are especially necessary in this case given what Verizon characterizes as the "troubled history" of GNAPs. Mr. Smith's testimony concerns this history, which includes pleadings in the discontinued litigation between the parties in several federal courts and is proffered as the basis for Verizon's position that the intercarrier agreement needs audit provisions.

As to the Haynes testimony, Verizon protests it is relevant and in no way prejudicial, noting that absent a jury the question of prejudice is, as a legal matter, academic.

2. Discussion and Conclusion

The GNAPs motions to strike are denied. The disputed Smith testimony contains background information concerning the previous financial relationships between the parties. This testimony may not be directly material to today's issues in this arbitration, but evidence of the existence of a past course of dealing between these parties may be relevant and should be admitted to compile a complete record. GNAPs' concerns as to the import of the testimony bear on the weight it should be accorded and will be considered to that extent.

The disputed Haynes testimony, while of limited probative value, is simply a statement of opinion and not particularly prejudicial to GNAPs.

The Definition of Issues Properly in Arbitration

The Global petition identified 11 enumerated unresolved issues in arbitration pursuant to the requirements of §252(b)(2).² Supplementing the petition on January 7, 2002 Global filed a redline draft of the intercarrier agreement containing language embodying its positions on the identified

² Petition, p. 9.

unresolved issues following negotiations between the parties and also copious other edits. Verizon added six new issues in its response, bringing the number of unresolved issues to 17. Of these two, issues six (dark fiber) and nine (performance standards), have been withdrawn and resolved, respectively. Not all issues have been argued or briefed by petitioner. Global requests the Commission not only resolve the disputed issues, but also affirmatively order the parties to implement the concomitant contract language it offers.

As a threshold matter, purported issues identified only by redlining in a draft contract will not be considered issues properly placed in arbitration pursuant to §252(b)(2) of the 1996 Act. To meet that standard, a party petitioning for arbitration must provide the State commission all relevant documentation concerning the unresolved issues, including the position of each of the parties with respect to those issues.³ Accordingly, only issues briefed or argued on the record will be addressed in this order.

SPECIFIC ARBITRATION ISSUES

After considerable discussion, parties reached agreement or withdrew two of the issues initially proposed for arbitration. Accordingly, of the 17 issues, 15 remain for determination in this arbitration award. These have been consolidated below as appropriate. Unless indicated otherwise, where we adopt the position of one party, we also adopt the contract language proffered by that party.

³ 47 U.S.C. §252(b)(2)(A).

Single Point of Interconnection in
a LATA and Allocation of Costs of
Transport to the Single Point of Interconnection

The first issue concerns whether Global may be required to physically interconnect with Verizon at more than one point on Verizon's existing network. Parties are in agreement that Global is entitled to establish a single point of interconnection within a LATA. However, parties disagree as to which party is responsible for the costs associated with transporting telecommunications traffic to the single point of interconnection.

1. The Parties' Positions

Global asserts each carrier should be responsible for transport on its own side of the point of interconnection because imposing costs only on the competitive local exchange carrier is contrary to federal law. Global argues that requiring a terminating carrier to pay for transport that is beyond the originating caller's local calling area, but still on the originating carrier's side of the point of interconnection, violates FCC policy on interconnection obligations.⁴ In GNAPs' view, each party must transport traffic on its side of the point of interconnection, while the originating party must pay reciprocal compensation to the terminating party on local traffic.

Further, Global asserts, scale and network architecture differences between CLECs and the ILEC result in CLECs having higher average costs. The difference should be absorbed by Verizon, Global asserts, based upon the asymmetry in

⁴ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C.R. 15499 (released August 6, 1996) (Local Competition Order), ¶1062.

interconnection obligations stemming from the 1996 Act.⁵ Moreover, GNAPS views transport costs as de minimis, contending that distance is no longer a significant factor in transport costs.

In response to discussion at the Technical Conference as to the advisability of extending the FCC and PSC 3:1 inbound/outbound reciprocal compensation ratio to the allocation of transport costs, GNAPS urged that there should be no policy distinction between traffic directed to a carrier engaged in internet-related business and traffic directed to a carrier providing a mix of services. Such a distinction, GNAPS asserted, would prevent the development of niche markets, an important avenue for market entry.⁶

Verizon, in contrast, proposes contract language reflecting its view that, consistent with applicable law, Global may choose where to interconnect with the incumbent's existing network but that, because Global's network design choices affect Verizon's network, Global is responsible for costs resulting from these network design choices.

Verizon proffers a "virtual geographically relevant interconnection proposal," or VGRIP, which would allow GNAPS the flexibility to interconnect physically at only one point in a LATA. However, the Verizon proposal differentiates between the physical point of interconnection and the point on the network defining financial responsibility. Verizon views its proposal as a significant compromise, for parties would share additional incremental costs resulting from transport beyond the local calling area. GNAPS would bear responsibility for delivery of

⁵ Selwyn Testimony, pp. 17-39.

⁶ Tr. 76-80.

this traffic from the financial interconnection point to its switch.

Verizon contends that GNAPs is solely responsible for its own network architecture and that the traffic transport costs are a function of that design. Transport costs are not de minimis, Verizon responds, otherwise GNAPs would not be trying to avoid them.

As an alternative to VGRIP, Verizon suggests the end office serving a customer could be appointed a virtual interconnection point, after which GNAPs must pay for traffic transport costs. In Verizon's view, these proposals promote efficient interconnection.

Another alternative supported by Verizon, one it considers more consistent with its tariffs on interconnection and reciprocal compensation than the GNAPs position, is to apply the 3:1 usage ratio to facilities that provide the usage. Verizon asserts the applicable data were available: a study in New York showed that the ratio of GNAPs inbound to outbound traffic is 1620:1.⁷ Further, Verizon maintains, it is possible to measure traffic to determine if it is going to an internet service provider.

In contrast to the framework for transport cost allocation in the voice network, Verizon asserts that internet traffic is distinguishable from other local traffic as holding times are higher, raising the cost to carry a call. Global responds that its traffic sensitive costs are lower because an internet service provider has a more efficient trunk side connection.

⁷ Tr. 95, 163.

2. Discussion and Conclusions

The 1996 Act requires the incumbent to provide for interconnection "at any technically feasible point within the carrier's network"; that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection"; and "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." ⁸

As the parties agree, GNAPS clearly is entitled to choose a single point of interconnection in each LATA at any technically feasible point. Verizon concurs with this view. Accordingly, GNAPS is entitled to a single point of interconnection as technically feasible.⁹

As to the allocation of transport costs, we have previously considered and rejected proposals resembling VGRIP. Verizon has provided no convincing basis to treat cost allocation at this time and under these circumstances differently here than we have with respect to carriers offering voice as well as data service. As there is no legal¹⁰ or

⁸ 47 U.S.C. §251(c)(2).

⁹ See D'Amico Testimony, p. 4; Verizon Response, p. 9, Tr. 9-10. The Verizon contract language should be employed, however, as it appears a more accurate reflection of the law and this determination than the GNAPS language.

¹⁰ GNAPS relies upon *MCI Telecommunication Corporation v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir. 2001) for authority that a state commission may not adopt an incumbent local exchange carrier's requirement that a competitive local exchange carrier must interconnect at any particular point or at more than one point in a LATA. Although the Third Circuit noted that to the extent the competitor's "decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to" the competitor, GNAPS interprets that dicta to refer to the mode, rather than the geography, of interconnection, and our consideration here is to retain the existing allocation.

Id., at 518.

regulatory authority at this time requiring modification of the allocation of costs for transport to the point of interconnection, the GNAPs position is adopted.¹¹

Verizon relies upon §252(d)(1) of the 1996 Act as requiring GNAPs to compensate it for additional costs associated with interconnection at points chosen by Global. As we have recently determined, the Verizon VGRIP proposal is a fundamental change, requiring the divergence of the physical point of interconnection from the financial point. Under this plan, GNAPs would pay to have traffic originated by Verizon customers on Verizon's network hauled to the physical point of interconnection. We rejected this Verizon proposal recently, while recognizing Verizon had raised a legitimate concern. We rejected the proposal on the basis that not only would the competitor "pay for the transport of traffic associated with virtual NXX calls, it would also pay for the transport of traffic associated with its facilities-based local exchange business."¹²

At issue in this arbitration is the significance, if any, of the fact that Global appears to be overwhelmingly, if not entirely, a carrier for the provision of internet service rather than a partially facilities-based voice competitor. We see no legal, policy or factual basis to draw such a distinction at this time. As we have recognized, competitor networks do not

¹¹ Because GNAPs contract language on this issue is not clearly identified, however, no proffered contract language is adopted and GNAPs will be required to craft appropriate language to embody this decision.

¹² Case 01-C-0095, Arbitration to Establish an Interconnection Agreement between AT&T Communications of New York, Inc., et al., and Verizon New York Inc., Order Resolving Arbitration Issues (issued July 30, 2001), p. 27.

and need not mirror the incumbent's. Verizon has produced insufficient evidence or rationale for revisiting or modifying the policy established in our Competition II proceeding, the assumption that a carrier is responsible for the costs to carry calls on its own network. Moreover, the adoption of the Verizon VGRIP or a similar proposal, involving delineation of one point for physical interconnection and a separate point or point for financial interconnection, runs the risk of undermining the policy of allowing a single point of interconnection between carriers. Verizon has not adduced sufficient evidence for us to find that abandoning that policy is appropriate at this time.¹³ Accordingly, we adopt the GNAPs position on this issue. Parties should craft commensurate contract language.¹⁴

¹³ The FCC is currently considering this issue. In its Notice of Proposed Rulemaking 01-132, it asks: "If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area?" CC Docket No. 01-92, Developing a Unified Inter-carrier Compensation Regime, Notice of Proposed Rulemaking (released April 27, 2001), ¶113. In light of pending FCC action, we are disinclined to disturb our existing rule.

¹⁴ In Case 00-C-0789 we required CLECs to pay for the transport of internet traffic on calls originated from the customers of independent telephone companies. However, in that case, Verizon was acting as an intermediate carrier of calls outside the independent local exchange carrier service territory, when the competitive local exchange carrier was not contesting customers with the independent telephone company. In this instance, GNAPs and Verizon do compete for customers' internet traffic.

The Definition of Local Calling Areas

At issue is whether a competitive local exchange carrier may define local calling areas different from Verizon's and, if so, whether the CLEC architecture affects Verizon's obligation to pay reciprocal compensation to the CLEC for terminating traffic. As a general matter, if a call is local, then the originating carrier typically must pay the terminating carrier reciprocal compensation for those calls on a LATA-wide basis.

1. The Parties' Positions

In petitioner's view, CLECs should have the ability to set local calling areas as they see fit.¹⁵ GNAPS argues that the difference between local and toll calls is artificial, and that distance-sensitive pricing, used by Verizon, is outmoded and does not reflect its true costs.

GNAPS relies upon our 1999 adoption of the concept of wide-area rate centers,¹⁶ asserting that geographically large rate centers are a forward-thinking business model that does not merely replicate the ILEC's network design. Moreover, GNAPS asserts, Verizon's contract language is intended to extend retail concepts of toll and local into wholesale services, thus forcing GNAPS into uneconomic and inefficient interconnection architecture choices and prohibiting GNAPS from offering LATA-wide local calling.

Verizon responds that GNAPS is entitled to establish statewide or LATA-wide local calling areas for its customers if it chooses. In Verizon's view, intercarrier compensation should be determined irrespective of the retail calling options GNAPS

¹⁵ Selwyn Testimony, pp.46-65; Petition, pp. 16-19.

¹⁶ Case 98-C-0689, Omnibus Proceeding to Investigate Telephone Numbering Resources, Order Instituting Wide Area Rate Centers and Number Pooling (issued December 2, 1999).

offers its customers. Verizon also suggests it may be entitled to access charges as a result of GNAPs' architecture choices.

Verizon notes that the traffic between Verizon and GNAPs is almost completely one way (from Verizon customers to GNAPs' switch). In its view, the Commission established LATA-wide reciprocal compensation between carriers. If GNAPs language is adopted, Verizon could be required to transport all traffic as local, thus losing access charge compensation as well as having to pay reciprocal compensation to GNAPs.

2. Discussion and Conclusion

We see little necessity to arbitrate this conceptual dispute. It has long been the policy that each carrier defines its local calling area and that carrier access charges only apply to interLATA traffic; to all other calls reciprocal compensation applies. Verizon's position most closely mirrors these policies. We adopt Verizon's position. With the use of a single point of interconnection and virtual NXXs, which we have upheld in the past, Verizon hauls GNAPs traffic long distances. Allowing GNAPs to establish geographically large local dialing areas, which also have the effect of eliminating Verizon's entitlement to access charges and increase its obligation to pay reciprocal compensation, could amount to a Verizon subsidy of GNAPs operations.

The Use of Virtual NXXs

Virtual NXX is a technology enabling competitors to establish numbers perceived by and billed to customers as local calls, regardless of the actual location of the calling center. This virtual local calling is of particular importance for carriers serving internet providers.

1. The Parties' Positions

GNAPs asserts that linking NXXs to physical location has been superseded by technology. It views the use of virtual NXXs as necessary to allow CLECs to provide competitive offerings. In Global's view, virtual NXXs are analogous to Verizon's foreign exchange or FX product.¹⁷

GNAPs also asserts that virtual NXXs are equivalent to Verizon's 500 number product which allows local dialing access to Verizon's affiliated internet service provider. As to cost, Global states that the local/toll cost distinctions are not supported by distance-based cost differences. The use of virtual NXXs is innovative and has the potential to allow CLECs to define larger or smaller calling areas to meet consumers' interests.

Verizon asserts that the establishment of virtual NXXs has significant policy ramifications which affect more than the two parties to this arbitration. In its view, the Commission should address these issues in an industry-wide forum where more carriers are participants.¹⁸ Verizon fears that GNAPs proposes NXX arbitrage, entailing several problems: it would eliminate the local/toll distinction; it would render meaningless the Commission's previous decision to defer implementation of wide area rate centers; it would increase number shortages (thus frustrating number conservation); and it would confuse customers.

Verizon rejects the analogy to FX service, asserting that if the use of virtual NXXs is allowed, GNAPs should have to pay Verizon the access charges that would otherwise apply to the

¹⁷ Petition, pp. 21-23; Tr. 148-152, 192-195.

¹⁸ Moreover, Verizon asserts that the contract revisions GNAPs has proposed do not address GNAPs using NXXs associated with one rate center to direct calls to another location outside the rate center.

calls. Verizon avers the use of virtual NXXs subverts the proper rating of calls, and that this Commission's rates for calls have long been used to support the public policy goal of widespread availability of affordable telephone service. Verizon foresees it will be denied compensation for transporting calls, a windfall for GNAPs, and fears it would be unable to recover these costs.

Verizon's alternative is its offer of hubbing services which allow internet service providers to offer local numbers to end users without requiring Verizon to haul traffic to distant points of interconnection for free. This alternative, according to Verizon, allows multiple internet service providers, not only Verizon's internet affiliate, to offer free local dialing.¹⁹

Verizon also expresses concern that use of virtual NXXs, if volumes grow, could eliminate interLATA toll, the revenue of which is built into Verizon rates. Finally, Verizon warns about virtual NXX assignment exhausting available numbering resources.

2. Discussion and Conclusion

We adopt the position of Global on this issue. The availability of virtual NXXs at this time appears to be an efficient method to ensure that customers in all localities in the state have competitive choices for access to local calling to the internet. Evidence in this proceeding indicates that, while Verizon maintains a local call capability to its affiliated internet service provider in virtually all parts of New York State, there are many areas, principally rural, where no alternative or competitive option was offered. Allowing GNAPs to adopt virtual NXXs is a reasonable method to address

¹⁹ Tr. 87-90, 161-168, 169-174, 185-191.

this lack of customer competitive opportunities.²⁰ Finally, in light of the implementation of thousand number block pooling, the Verizon argument as to the impact of virtual NXX assignment on number conservation is not persuasive.²¹

Availability of Two-Way and One-Way Trunking and Definition of Trunk-Side

GNAPs seeks authority to request Verizon to provide two-way trunking at GNAPs' sole discretion. Also, because of GNAPs proposed changes to provisions governing the availability of one-way trunking as well as the term "trunk-side," Verizon requested these two related issues be placed in arbitration.

1. The Parties' Positions

According to GNAPs, competitors should have the ability to employ two-way trunking at their own discretion, and GNAPs should therefore receive two-way trunks from Verizon on request. In contrast, Verizon's contract language states that two-way trunks will be installed only by mutual agreement between parties, and only where feasible. GNAPs also argues, generally, that the other related contract changes it proposes support a more equitable means of offering two-way trunking. GNAPs nowhere addresses the issues identified by Verizon related to one-way trunking and the redefinition of "trunk-side".

²⁰ Although we determined with respect to independent local exchange carriers in Case 00-C-0789, Omnibus Proceeding on Interconnection Arrangements, Order Establishing Requirements for the Exchange of Local Traffic (issued December 22, 2000), that similar calls were local for the purpose of requiring payment of carrier access charges, our policy remains that with respect to interconnection with the incumbent local exchange carrier a carrier is responsible for traffic transported from the service territory of another carrier to its facilities used to provide customer service.

²¹ Case No. 00-C-0689, Number Pooling, Order Instituting State-Wide Number Pooling (issued March 17, 2000).

Verizon asserts that CLECs are indeed entitled to the trunking of their choice, available in Verizon's tariff No. 8. Verizon reiterates it is not attempting to inappropriately limit access to trunks, but maintains that because two-way trunks carry traffic from both carriers, the parties should jointly determine capacity requirements for initial construction.

In Verizon's view, GNAPs wishes to use trunk forecasts to reserve facilities without placing service orders. It asserts GNAPs attempts to require a higher grade of trunking service than that Verizon provides to itself and other CLECs, and to prohibit Verizon from managing its own network resources through the disconnection of underutilized trunks. In addition, Verizon fears GNAPs is attempting to renegotiate—in an inappropriate forum--its compensation to Verizon for both recurring and non-recurring costs associated with trunk provisioning.

2. Discussion and Conclusion

Verizon's position is adopted. Two-way and one-way trunks are available pursuant to Verizon's PSC No. 8 tariff. This tariff adequately provides for the needs of competitors without compromising network reliability and efficiency. Should the parties reach an agreement on terms and conditions at variance with the tariff, we would approve such a divergence. However, we are unwilling to compel Verizon to diverge from the terms of its tariff absent good cause. Verizon's definition of "trunk-side" also is consistent with the tariff and is adopted.

Transmission and Routing of Exchange Access Traffic

At issue is the ordering process to be used by Global for access toll connecting trunk groups. These facilities are provided by Verizon pursuant to its access tariffs.

1. The Parties' Positions

Verizon questions GNAPs' "redlines" in Agreement Sec. 9.2. GNAPs does not address this issue in its petition, testimony, or brief; however, because Verizon in its response requested this issue be arbitrated, we will analyze and decide it here.²² According to Verizon, GNAPs' contract additions and removals (§§9.2.1, 9.2.2, 9.2.3 and 9.2.) appear to violate the routing and subtending procedures found in the Local Exchange Routing Guide (LERG). In its view, GNAPs should be required to purchase access trunks through Verizon's access tariff.

2. Discussion and Conclusion

We adopt Verizon's position. The import of GNAPs' proposal is unclear; GNAPs' changes may indeed cause severe difficulties for other carriers attempting to route calls, and it appears to undermine LERG guidelines. Verizon's contract language will prevent network problems, including dropped or misdirected calls.

Insurance Levels

At issue is whether the levels of insurance Verizon requires of GNAPs are excessive, so as to constitute an anticompetitive barrier to entry. Verizon seeks \$2 million in general liability, \$10 million in excess liability, \$2 million in commercial motor vehicle, and \$2 million workers compensation.

1. The Parties' Positions

GNAPs counters with lower proposed insurance levels: \$1 million in general liability; either \$1 million or \$10 million in excess liability (the amount varied in GNAPs' submissions); statutory requirements for vehicle insurance; and

²² Verizon Response, pp.99-100.

\$1 million workers compensation. In GNAPs' view, these alternative levels are reasonable and adequate. GNAPs argues that higher levels of insurance are a barrier to market entry by CLECs. It points out that Verizon can self-insure, which Global views as an unfair advantage.

GNAPs submitted contract language eliminating language which required Verizon to be named an additional insured.

Verizon responds that GNAPs' proposed levels are inadequate to indemnify it in the event of damage to Verizon's network or other tort liability. It adds that Verizon's proposed levels are equivalent to those required of other CLECs. It notes that Verizon's proposed levels are reasonable under current FCC authority which allows for levels at up to one standard deviation above the industry average (estimated at \$21.15 million).²³

2. Discussion and Conclusion

We adopt Verizon's position. The insurance levels proposed by Verizon are reasonable in light of the potential for network damage or tort liability when network interconnection or physical collocation takes place. These are the same levels of insurance required of other CLECs. Under opt-in provisions of interconnection agreements, if the levels are lowered here, any CLEC could take advantage of the lowered levels. Moreover, listing the other party to a contract as an additional insured is common practice to avoid fingerpointing among insurers in the event of a claim. The fact that Verizon has sufficient assets to self-insure within limits does not in itself create a competitive advantage, in light of Verizon's substantial exposure as the network provider.

²³ FCC Second Report and Order in the Collocation Docket, (released June 13, 1997), ¶346.

The Audit Provisions of the Agreement

1. The Parties' Positions

GNAPs protests that the audit language proposed by Verizon, allowing either party to audit the other party's records, is overly broad and would allow Verizon access to all GNAPs records. In GNAPs' view, it is unreasonable for Verizon to be able to audit a competitor's records which may contain competitively sensitive information.

GNAPs sees no need for audit language or a process in the contract. In its view, much of the relevant data (call patterns and traffic flow) is already in Verizon's records.

Verizon responds that its general audit language is narrowly tailored to limit auditable material to that relating to billing records. Additional audit language relates to GNAPs' access to and use of Verizon's proprietary OSS information as well as traffic information. Verizon asserts its access to GNAPs data is for specific purposes only, and that competitive harm would be avoided by exclusive disclosure to third party auditors required to protect such information as confidential.

The general terms and conditions for invoking the audit process Verizon proposes limit audits to once a year, unless a previous audit found a discrepancy of greater than \$1 million. The auditing party pays audit expenses.

2. Discussion and Conclusion

We adopt the Verizon position. Audit procedures are, of course, standard language in contracts of this type. GNAPs appears to have misconstrued the breadth of the audit provisions; reasonable protections are built in.

Verizon Collocation at GNAPS Facilities

This is a supplemental issue raised by Verizon.²⁴

Verizon notes that it is required to provide various types of interconnection to GNAPS; it asserts the reverse should also be true. Such a provision would allow Verizon more flexibility to establish efficient interconnection. Verizon asserts that if it is not allowed to collocate on GNAPS' network, a carrier that GNAPS has allowed to collocate must carry the traffic and could charge Verizon exorbitant rates.

GNAPS does not appear to have addressed this issue.

While Verizon should not be able to use this issue to avoid allowing GNAPS the single point of interconnection, consistent with that requirement it appears reasonable to require GNAPS to allow collocation, subject to the established restrictions as to technical feasibility and space. To that extent, Verizon's position is adopted.

Express Renegotiation on Reciprocal Compensation

GNAPS seeks an express and specific change of law provision concerning reciprocal compensation, in the event that the United States Circuit Court of Appeals for the District of Columbia Circuit modifies the FCC's recent Internet Service Provider Remand Order. In Verizon's view, its boilerplate general change in law language provides for that contingency. Additionally, Verizon has questioned GNAPS' changes to numerous provisions in the contract that Verizon asserts are unrelated to any change of law resulting from any outcome of the appeal of the FCC's order.

GNAPS and Verizon appear to agree that a judicial nullification or revision of the FCC Internet Service Provider

²⁴ Verizon Response, pp. 93-94; D'Amico/Albert Testimony, pp. 27-28.

Remand Order may require renegotiation of the affected provisions of their interconnection agreement. In light of the centrality of this issue to GNAPs and the unfolding appellate interventions,²⁵ we see no reason why the parties should not provide specifically for that eventuality in the interconnection agreement and therefore we adopt GNAPs' position, and leave it to the parties to craft appropriate language, consistent with our award on the general change of law provisions in the agreement.

GNAPs' proposed edits to various definitions, which GNAPs indicates are related to this issue and to which Verizon objects, are either ambiguous or inconsistent with existing definitions of toll service. Thus, these proposed contract changes are not adopted.

Implementation of Changes in Law

GNAPs seeks a provision in the interconnection agreement that would require Verizon to delay the effect of a change in law until all appeals are exhausted, whether or not the change in law is subject to a judicial or regulatory stay. GNAPs' proposal would maintain the status quo regardless of a court mandate. Verizon proposes to give effect to all changes in law.

Whether to maintain the status quo following a judicial, legislative, or regulatory decision is the prerogative of those decisionmakers. While parties may voluntarily agree to a different protocol with respect to changes of law, we see no basis to require a nonconforming contract provision that might produce uncertainty. We see no reason to modify standard change of law provisions and therefore we adopt Verizon's position.

A related issue is whether Verizon may discontinue a service only in accord with federal or state regulations.

²⁵ See, e.g., WorldCom v. FCC, _F.3d_ (D.C. Circuit May 3, 2002).

Verizon seeks discontinuation of service contingent on 30 days written notice unless applicable legal provisions require a longer period. GNAPS is silent on this issue.

This issue and related issues will be addressed in our pending proceeding clarifying migration and exit requirements.²⁶ Accordingly, to the extent Verizon's position is consistent with state and federal law it is adopted, with the proviso that this interconnection agreement will be subject to the outcome of that proceeding.

GNAPS Entitlement to Next Generation Technology

GNAPS proposes that the contract provide it with "nondiscriminatory access to all next generation technology for the purpose of providing telecommunications services." Verizon objects because the term is undefined and inconsistent with applicable law. Verizon also argues that it is required only to provide CLECs with reasonable, nondiscriminatory interconnection to its network and to items that have been determined to be unbundled network elements.

We adopt Verizon's position. The Global provision regarding next generation technology is overly broad. Adoption of GNAPS' proposed language could have the effect of forcing Verizon to deploy new technology that it would otherwise have no intention of incorporating in its network. To the extent next generation technology is deployed by Verizon in its network, under applicable law GNAPS would be entitled access to such technology on the same basis as other CLECs.

Incorporation of Tariffs by Reference

GNAPS asserts the interconnection agreement should contain all terms governing the dealings of the parties and that Verizon's ability to unilaterally amend a tariff will defeat that objective. Verizon points to the language in §1.2, General

²⁶ Case 00-C-0188, Migration of Customers between Local Carriers, Notice Clarifying Exit Requirements (issued May 10, 2002).

Terms and Conditions, which provides that the agreement governs in the event there is a conflict with a tariff. In addition, Verizon disputes the unilateral amendment characterization. Verizon also points out that were the agreement to be amended every time a tariff price changed, the process would be multiplied by all CLECs opting into the GNAPs/Verizon interconnection agreement.

The interplay between tariffs and interconnection agreements, while without guarantees, establishes nondiscriminatory pricing consistent with §251 of the 1996 Act. Accordingly, Verizon's position is adopted.

CONCLUSION

The GNAPs motions to strike are denied as discussed herein. The issues properly presented for arbitration in the GNAPs petition and the Verizon response are decided as discussed herein.

The Commission orders:

1. The issues contained in the GNAPs petition for arbitration and the Verizon New York Inc. response are resolved as stated in this Order.
2. The parties are expected to complete the preparation of an interconnection agreement employing language adopted herein or language consistent with the determinations herein.
3. The parties are expected to file a completed and executed interconnection agreement, in compliance with the terms of this Arbitration Award, within 30 days of the issuance of this Order.
4. This proceeding is continued.

By the Commission,

JANET HAND DEIXLER
Secretary