

Discussion

The parties agree that GNAPs has the right, at its sole discretion, to utilize two-way trunking. The parties disagree, however, on the need for certain operational issues. The disputed language from Issue 7 is resolved as follows:

- T&C Glossary §§ 2.93 and 2.94: Verizon's proposed language is adopted. GNAPs does not explain the reason for its proposed language, and Verizon terms GNAPs' language vague and unworkable. Verizon indicates that the terms "Traffic Factor 1" and "Traffic Factor 2" are used to separate types of traffic exchanged via interconnection trunks for purposes of rating and billing. It makes sense to include those definitions in the ICA.
- Interconnection § 2.2.4: Verizon's proposed language is adopted. Verizon is correct that both parties originate traffic over two-way trunks, so it makes no sense to include a reference to "the originating party." GNAPs should be responsible for submitting the ASR to augment the trunk group.
- Interconnection § 2.4.2: Verizon's proposed language is adopted. Since both parties will be sending traffic over any two-way interconnection trunks, they need to meet and mutually agree on the initial number of trunks required. GNAPs should not have the right to make that determination unilaterally.
- Interconnection § 2.4.4: There is no reason why the trunk forecasting requirement cannot be symmetrical. While initially Verizon will have difficulty in making accurate forecasts, that should change as the parties begin to exchange traffic.
- Interconnection § 2.4.6: GNAPs' proposed language is adopted. It makes no sense to require use of particular equipment if it is not technically feasible to do so.
- Interconnection §§ 2.4.8, 2.4.9: Verizon's proposed language is adopted. Under the terms of Iowa Utilities

Board v. FCC, Verizon is not required to provide GNAPs a better grade of service than what Verizon provides for itself or other CLECs.

- Interconnection § 2.4.10: GNAPs' language is adopted. It is reasonable to include a requirement that Verizon reasonably accept ASRs submitted by GNAPs.
- Interconnection § 2.4.11: Verizon's proposed language is adopted, with modification. There is no reason why both parties should not monitor the operation of two-way trunk groups. However, it is Verizon who will issue a Trunk Group Service Request to GNAPs, directing GNAPs to submit an ASR to augment the trunk group. If GNAPs discovers a blocking problem, it can submit an ASR to Verizon on its own. GNAPs' references to "receiving party" and "originating party" are confusing.
- Interconnection § 2.4.12: Verizon's proposed language is adopted. As Verizon states, when trunk groups are significantly underutilized, Verizon only disconnects enough excess trunks to ensure that Verizon will be able to manage its network in an efficient manner. This will allow those underutilized trunks to be used by Verizon or other carriers.
- Interconnection § 2.4.13: In its Comments on the DAR, Verizon asserts that it would be unfair to hold Verizon accountable for performance measures and penalties for two-way trunks because Verizon is not primarily responsible for the engineering of the trunk groups between the parties. GNAPs maintains responsibility for the trunks by issuing ASRs. Moreover, there are no trunk blocking performance measures for two-way CLEC/Verizon trunks in California. Verizon's position is adopted. Verizon has made a convincing argument that it should not be penalized for something that is outside of its control.
- Interconnection § 2.4.14: Verizon's proposed language is adopted. GNAPs is not entitled to an expedited time

period for replacing two-way interconnection trunk groups with one-way interconnection trunk groups.

- Interconnection § 2.4.16: GNAPs' proposed language is adopted. Each party shall pay its share of the trunks based on the PPU factor. The PPU shall not be used to calculate the charges on the other party's side of the POI.
- Interconnection § 6.2: Verizon's proposed language is adopted. The requirement that the parties exchange CPN data is critical to ensuring the proper traffic classification. Verizon's reference to calculating billing minutes in accordance with applicable tariffs is also adopted. This reference to Verizon's tariffs ensures that measurements for billing purposes will be consistent.

F. Issue 8

Is it appropriate to incorporate other documents into the agreement by reference, including tariffs, instead of fully setting out those provisions in the agreement?

GNAPs' Position

As a basic tenet of law, the ICA should be the sole determinant of the rights and obligations of the parties to the greatest extent possible. Verizon, in contrast, proposes numerous citations and references to tariffs and other documents outside the four corners of the ICA. The effect is that Verizon is able to change the terms and conditions of the ICA without GNAPs' assent, ignoring GNAPs' need for the stability and certainty of its ICA with Verizon. Although tariffs are the best example of how Verizon can unilaterally make subsequent changes affecting the rights of the parties, Verizon can also make changes to the CLEC handbook, which is not subject to Commission review and approval.

Verizon argues that a tariff filing is a matter of public notice and that GNAPs has the right to contest such filing. This misses the point that the ICA

represents a meeting of the minds. Also, even though GNAPs can contest a tariff, it must be aware of the filing, and it is burdensome for a small carrier to investigate each and every tariff filed by Verizon.

GNAPs concludes that tariffs should not be permitted to supercede ICA rates, terms, and conditions of the contract. Definitions contained in Verizon's tariffs should not prevail over the definitions within the ICA. The parties' ICA should define "Tariff" so as to exclude incorporation of future tariffs.

In its Supplemental Filing, GNAPs proposes the following contract language associated with Issue 8:

- GT&C §§ 1.1, 1.2, 1.3, 4.7, 6.5, 6.9, 41.1, 47: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Additional Services §§ 9.1, 9.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Interconnection §§ 1, 2.1.3, 2.1.3.3, 2.1.6, 2.4.1, 6.2, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.1, 10.6, 16.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Resale §§ 1, 2.1, 2.2.4: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Network Elements §§ 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 8.1, 12.11: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Collocation § 1: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Pricing §§ 9.5, 10.2.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.

Verizon's Position

According to Verizon, GNAPs misapprehends the fundamental distinction Verizon makes in its proposed ICA. For prices or rates in the ICA, the parties should rely on the appropriate Verizon tariff as the first source for applicable prices. As for terms and conditions in the ICA, these terms and conditions would trump any conflicting terms and conditions that may be contained in a Verizon tariff. Thus, a term and condition in the tariff will only supplement the ICA's terms and conditions, it will not alter the ICA's terms and conditions if there is a conflict.

Verizon asserts that GNAPs' opposition to any reference to a tariff is shortsighted, restrictive, and inconsistent with language upon which the parties already agree. In § 9.3 of the Pricing Attachment, GNAPs and Verizon agreed that the applicable tariffs are the first source of prices for services provided under the ICA. Despite this agreement, GNAPs' proposed contract changes would "freeze" any current tariff prices, preventing any changes to tariff prices from becoming effective.

Verizon's proposal ensures that prices are set and updated in a manner that is efficient and nondiscriminatory to all CLECs. Verizon's proposed references to tariffs also eliminate any arbitrage opportunity that would result from GNAPs' proposal locking Verizon into contract rates, while GNAPs remains free to purchase from future tariffs should the tariff rates prove more favorable. If other carriers opt into the GNAPs' ICA, the tariff process could be rendered moot.

Verizon states that, under the Commission's rules, parties have an opportunity to protest a tariff filing. When Verizon files a tariff, GNAPs will receive notice of the filing and have an opportunity to comment. This

Commission previously rejected a similar argument raised by Level 3. In the Level 3 FAR, the arbitrator held that:

General Order (GO) 96-A requires that notice of proposed tariff changes be served on competing utilities, as well as utilities and interested parties having requested such notification. (GO 96-A, § III.G.1.3 and 4). Level 3 is a competing utility, and is an interested party that could request notification, which Pacific is required to provide. (Level 3 FAR at 16.)

Moreover, because Verizon's proposal gives precedence to the terms and conditions of the ICA, GNAPs need not act as the "tariff police" by reviewing the details of every tariff filing in fear that it may contradict the terms of the ICA.

GNAPs mistakenly relies on a previous Commission decision refusing to allow extraneous documents to be referenced in the ICA between Pacific and MCImetro Access. That decision rejected Pacific's proposed language because it incorporated into the ICA "any [outside] document referred to in the ICA".¹² Unlike the proposal in the Pacific proceeding, Verizon has limited its reference to tariffs and orders, which do not implicate the Commission's previously expressed concern about any document being incorporated into an ICA. Moreover, the Commission previously has permitted incorporation of tariffs into ICAs on a case-by-case basis.¹³

¹² In Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Final Arbitrator's Report, A.01-01-010 (filed Jan. 8, 2001).

¹³ See *Id.* at 16.

GNAPs has broadly challenged the appropriateness of referencing tariffs in the parties' ICA. However, GNAPs' rationale does not apply to many of the contract sections containing deletions of tariff references as shown in the redline version filed. GNAPs failed to address each section in detail which leaves many proposed contract changes unsupported.

Verizon provides the following regarding the specific contract sections in which GNAPs has proposed deletion of a tariff reference:

- GT&C §§ 1.1 through 1.3, 4.7: Verizon's reference to tariffs in these sections sets up the order of precedence discussed above.
- GT&C § 6.5, 6.9: Verizon's reference to tariffs in these sections ensures that Verizon's practice of requiring cash deposits or letters of credit is consistent for all carriers and with any practice sanctioned by the Commission.
- GT&C § 41.1: Verizon's reference to tariffs in this section ensures that Verizon's practice of collecting taxes from the purchasing party is consistent for all carriers and with a practice sanctioned by the Commission.
- GT&C § 47: Verizon's reference to tariffs in this section ensures that restrictions on use of Verizon's services will be enforced by GNAPs when Verizon no longer has the relationship with the end-user. For example, if GNAPs purchases retail telecommunications service for resale, restriction on that service will only be articulated in Verizon's retail tariff. GNAPs should not evade its responsibility to ensure proper use of retail services by its end-users by deleting reference to the only document that would contain them. The general concerns GNAPs discussed in connection with this issue do not apply to the reference in this section.
- Additional Services §§ 9.1 and 9.2: Verizon's reference to tariffs in these sections ensures that the practices

associated with granting access to its poles, conduits and rights-of-way is consistent for all carriers and with any practice sanctioned by the Commission.

- Interconnection §§ 1, 2.1.3.3, 2.1.4, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 16.2: Verizon's reference to tariffs ensures that the parties interconnect with one another in accordance with their respective tariffs when appropriate. Because the parties may exchange and/or deliver exchange access traffic, and other traffic that is not covered by the parties' ICA, the reference to the parties' respective tariffs properly inform the parties that the rates, terms and conditions for this traffic are addressed in their tariffs.
- Interconnection § 2.1.6: The reference to GNAPs' tariff in this section is appropriate because not all of its rates, terms and conditions may be contained in the ICA.
- Interconnection §§ 9.2.2, 10.1, 10.6: Striking the references to Verizon's applicable access tariffs is inconsistent with the industry standard and applicable law. For instance, parties to an ICA refer to their applicable access tariffs in meet point billing arrangements because the customer is the toll provider, not generally GNAPs or Verizon. In addition, when GNAPs purchases access toll connecting trunks for the transmission and routing of traffic between GNAPs' local customer and an IXC, GNAPs purchases those trunks from Verizon's applicable access tariff because it is an access service.
- Resale §§ 1, 2.1, 2.2.4: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections dealing with resale of Verizon's telecommunications services. The general objections are inappropriate in light of the fact that it is Verizon's retail telecommunications services as set forth in Verizon's retail tariff that are resold. There will be no separate list of retail telecommunications services within the ICA. Verizon's reference to tariffs in this

section ensures that restrictions on use of Verizon services will be enforced by GNAPs when Verizon no longer has the relationship with the end-user.

- Unbundled Network Elements (UNE) § 1.1: Even though Verizon does not have a UNE tariff in California, if and when Verizon does implement one, the reference to tariffs in this section ensures that if the parties' ICA does not address the provisioning of a UNE, Verizon's applicable tariff may address the subject.
- Unbundled Network Elements § 1.4.1: GNAPs' general objections to tariffs are out of place because in this section Verizon's tariffs only apply when and if a change in law dictates that Verizon is no longer required to provide GNAPs a UNE or UNE combination. Should this event come to pass and GNAPs would like to receive a similar service, Verizon will provide it in accordance with its tariff.
- Unbundled Network Elements § 1.8: The reference to Verizon's tariff in this section ensures that Verizon's premises visit charge is uniform for all customers.
- Unbundled Network Elements §§ 4.3, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 8.1, 12.11: The reference to Verizon's tariff is appropriate because not all the rates may be addressed in the pricing attachment to the ICA. If they are not, Verizon is simply informing GNAPs that the applicable rate may be found in Verizon's tariff.
- Unbundled Network Elements § 4.7.2: The reference to Verizon's applicable tariff is beneficial to GNAPs. If a shorter collocation augment interval exists in Verizon's tariff, Verizon will comply with the shorter interval instead of the longer one contained in the ICA.
- Collocation § 1: GNAPs' general objection to tariff references is particularly inappropriate because Verizon's rates, terms and conditions for collocation can only be found in Verizon's collocation tariff.

- Pricing §§ 9.5 and 10.2.2: GNAPs already agreed that charges for a service will be stated in the applicable tariff. See § 9.2 of Pricing Attachment. Its agreement to this approach is inconsistent with its proposed deletion of § 10.2.2. Moreover, in § 9.5, it appears that GNAPs proposes to freeze those tariff prices to allow it a choice of picking between the tariffs in effect at the time of the ICA or a subsequent tariff price. GNAPs should not be permitted to preserve such a price arbitrage opportunity.

Discussion

The issue of whether Verizon shall be allowed to reference its tariffs shall be determined on a case-by-case basis. I concur with GNAPs' contention that definitions or other terms and conditions in the ICA should not be superceded by tariffs. However, there are occasions where it is better to reference a tariff than to replicate all tariff provisions in the ICA. Still, there are several instances where Verizon's tariff references are too broad and overarching.

In the following section, I dispose of the contract language disputes relating to Issue 8:

- GT&C §§ 1.1, 1.2, and 1.3: GNAPs' proposed language is adopted. Verizon's proposed language is much too broad and overarching. And in Section 1.3, Verizon reserves to itself the right to modify or withdraw a tariff without notice to GNAPs, which is contrary to the provisions of our General Order 96-A.
- GT&C §§ 6.5, 6.9: Verizon's proposed language is adopted. In these sections, Verizon refers to a specific tariff relating to deposits and payment of interest. By referencing the tariff in this instance, it is not necessary to include language on deposits in the ICA. If GNAPs wanted other language relating to deposits, it should have presented its language in the arbitration.

- GT&C § 41.1: Verizon maintains a list of taxes and surcharges in its tariff. It is appropriate to refer to that tariff section in the ICA, since the taxes or surcharges required could change during the life of the ICA.
- GT&C § 47: GNAPs' proposed language is adopted. Verizon's language is much too broad and would be difficult for GNAPs to comply with. It is more exact to include the specific statement relating to a specific tariff, as Verizon has done in some instances. In that way, GNAPs would have a better idea of which tariff provisions it needs to comply with. Verizon gives the example of resale of retail services. However, that issue is specifically addressed in the Resale Appendix, and need not be addressed here.
- Glossary § 2.73 "Rate Demarcation Point:" In its Comments on the DAR, Verizon states that while this section includes disputed language, neither party addressed it specifically, and the DAR did not resolve the parties' competing language for this term. Verizon's proposed language, which references its tariff, is adopted.
- Additional Services §§ 9.1 and 9.2: Verizon's proposed language is adopted. GNAPs did not proffer language relating to access to rights of way. Without detailed terms and conditions relating to that access, the parties could end up with disputes.
- Interconnection §§ 1, 2.1.3.3, 2.1.4, 2.1.6, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.6, 16.2: Verizon's language in §§ 1, 8.1, and 16.1 is too broad and shall not be adopted. Verizon's references to specific tariffs in §§ 2.1.3.3, 2.4.1, 8.2, 9.2.2, 10.1, 10.6 are appropriate and should be retained in the ICA. As Verizon states, its access services are not included in the ICA so there is a need to refer to that particular tariff. Verizon's proposed language in § 2.1.6 is adopted. As Verizon states in its Comments on the DAR, the reference to GNAPs' tariffs is appropriate because not all of GNAPs'

rates, terms and conditions may be contained in the ICA. In its Comments on the DAR, Verizon indicates that the DAR did not address the disputed language in § 5.4.¹⁴ Verizon's proposed language is adopted. This is an appropriate tariff reference. Verizon's tariff reference in § 8.4 is adopted. There is a need to address how the parties will handle any traffic not specifically addressed in the ICA. Verizon's proposed language in §§ 8.5.2 and 8.5.3 is adopted. The reference to a tariff in these instances is reasonable. In its Comments on the DAR, Verizon indicates that the DAR does not resolve the parties' competing language for Interconnection § 2.1.4. Verizon's proposed language in § 2.1.4 is adopted. As Verizon points out, this is consistent with the outcome in § 2.1.3.

- Resale §§ 1, 2.1 and 2.2.4: Verizon's proposed language is adopted. As Verizon says, its retail telecommunications services are set forth in its tariff, along with any restrictions that apply to use of those services. GNAPs should be held accountable for ensuring that restrictions on the use of Verizon services will be enforced by GNAPs.
- Network Elements: Verizon acknowledges that it currently has no UNE tariff in California. If and when it does implement one, the reference to tariffs in this section would apply. There is no point in referring to a tariff that does not exist. GNAPs' proposed language in §§ 1.1, 1.4.1, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1 relating to this issue is adopted. Verizon's proposed language in § 1.8 is adopted. In this case, Verizon is referring to the Premises Visit Charge in its tariffs, not to a nonexistent

¹⁴ Verizon first indicates the disputed language is in § 5.3, but then acknowledges that it is referring to §5.4 in Verizon's proposed interconnection agreement, which is the document the arbitrator is using. I will refer to this disputed issue regarding a tariff reference as §5.4.

UNE tariff. Verizon's proposed language in § 6.2.6 is adopted. Here Verizon is referring to the time and material rates in its tariffs, not to a UNE tariff.

Verizon's proposed language in § 12.11 is adopted.

Verizon is not referring to a UNE tariff in this section.

Verizon points out in its Comments to the DAR that it inadvertently included UNE § 8.1 in the list of disputed issues. Because the parties' dark fiber settlement resolved all disputed contract language associated with UNE § 8, the FAR need not address this issue. Parties should incorporate language consistent with their dark fiber settlement.

- Collocation § 1: Verizon's proposed language is adopted, with modification. Collocation procedures are detailed and complex, and the one-half page devoted to Collocation in the ICA does not begin to cover all those terms and conditions. There is a need to refer to the collocation tariff to find those detailed terms and conditions.
- Pricing §§ 9.5, 10.2.2: Verizon's proposed language is adopted. As Verizon states, this will ensure that all CLECs pay the same rates, and receive service under the same terms and conditions.

G. Issue 9

Should Verizon's performance standards language incorporate a provision stating that if state or federal performance standards are more stringent than the federally imposed merger performance standards, the parties will implement those more stringent requirements?

This issue was resolved by the parties.

H. Issue 10

Should the ICA require GNAPs to obtain excess liability insurance coverage of \$10,000,000 and require GNAPs to adopt specified policy forms?

GNAPs' Position

Verizon proposes burdensome insurance limits. It is inexplicable why Pacific would agree that GNAPs has sufficient coverage, but Verizon does not. GNAPs' current commercial liability insurance coverage of \$1 million with \$10 million in excess liability coverage is more than adequate to cover any damages that may occur from GNAPs' operations. Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by either GNAPs or any other CLEC.

In its Supplemental Filing, GNAPs proposes the following arguments for its proposed contract language associated with Issue 10:

- GT&C § 21.1: GNAPs' proposed modification would make the insurance obligations under the ICA more equitable by making them symmetrical.
- GT&C § 21.1.1: GNAPs would reduce an unreasonably high coverage level for commercial general liability insurance.
- GT&C § 21.1.2: GNAPs would eliminate an unnecessary vehicle insurance requirement.
- GT&C § 21.1.3: GNAPs' would reduce an unreasonably high coverage level for excess liability insurance.
- GT&C § 21.1.5: GNAPs would eliminate an unnecessary all-risk property insurance requirement for GNAPs property located at Verizon premises (including collocation sites).
- GT&C § 21.2: GNAPs would make requirements for deductibles, self-insurance retentions or loss limits on policies required by § 21 more equitable by making them symmetrical.
- GT&C § 21.3: GNAPs would make the duty to add additional insurance obligations under the ICA more equitable by making them symmetrical.

- GT&C § 21.4: GNAPs makes the certificate of insurance obligations of this provision symmetrical and, hence, more equitable.
- GT&C § 21.5: GNAPs makes provisions for contractor insurance symmetrical and, hence, more equitable.
- GT&C §§ 21.6, 21.7: GNAPs makes provisions for failure of contractors to obtain insurance and for contractors' insurance certificates symmetrical and, hence, more equitable.

Verizon's Position

Verizon is required to enter into ICAs with CLECs. In light of that requirement it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a CLEC has insufficient financial resources. GNAPs proposes amendments to Verizon's proposed insurance requirements that eliminate certain types of insurance and substantially lower the insurance amounts. Verizon asserts that its proposed insurance requirements are reasonable and consistent with what Verizon requires of other carriers.

In § 20 of the GT&C Section, GNAPs agrees to indemnify Verizon. As a natural extension of the indemnification, Verizon's proposed § 21 requiring insurance provides the financial guarantee to support the promised indemnifications. Verizon's recent experience with CLEC bankruptcies reveals that insurance coverage is often the only source of recovery. Verizon states that GNAPs' proposed coverage is inadequate. For example, GNAPs proposes that the general commercial and excess liability coverage be limited to \$1,000,000. In today's environment many individuals have more than \$1,000,000 coverage for liabilities associated with their residence and personal autos.

The FCC has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage."

(Second Report at ¶ 345.) with regard to insurance amount, the FCC found that “a LEC’s requirement for an interconnector’s level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average,” (*Id.* at ¶ 346.) which the FCC calculated as \$21.15 million in 1997. The aggregate amount of insurance Verizon seeks from GNAPs falls below this measure of reasonability.

Verizon provides the following regarding GNAPs’ edits to the ICA relating to Issue 10:

- Section 21.1.2: Although GNAPs proposes to delete the reference to vehicle insurance entirely, commercial automobile liability insurance should be provided to ensure that GNAPs’ vehicles used in proximity to Verizon’s network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to the performance of the agreement.
- Section 21.1.3: Excess liability insurance should be provided with limits of not less than \$10,000,000 and not the \$1,000,000 that GNAPs proposes for exposures associated with Verizon’s property and equipment, activities of GNAPs’ subcontractors, or GNAPs’ related activities occurring while on Verizon’s premises.
- Section 21.1.4: An employer’s liability limit of \$2,000,000 rather than GNAPs’ \$1,000,000 is standard in the industry and is an area of increased claims activity.
- Section 21.1.5: GNAPs should provide coverage for any real and personal property located on Verizon’s premises. It is good business practice to adequately insure your property and that of your employees.
- Section 21.3: In the insurance arena, the additional insured provision is used to appoint one party’s insurance as the primary contact and it provides for the defense of both parties. This avoids insurance company

“finger pointing” in the event of a loss. If both parties are named, each cancels out the other’s insurance.

Discussion

GNAPs proposed language in Section 21 is adopted, with modification. It is more equitable to make the insurance requirements symmetrical between the parties. Also, Verizon’s proposed coverage appears to be excessive, in light of the fact Pacific agreed to lower amounts in its ICA with GNAPs.

In its Comments on the DAR, Verizon indicates that the \$10 million in excess liability insurance which it proposes in § 21.1.3 is the same amount to which Pacific and GNAPs agreed. Verizon claims that it would be unfair to leave Verizon with only 10% of the excess liability coverage to which Pacific and GNAPs agreed. I agree with Verizon’s argument. Verizon’s proposed language in § 21.1.3, which provides for \$10 million in excess liability insurance, is adopted.

Verizon also states that the symmetrical outcome with respect to the “additional insured” provision at § 21.3 is problematic. In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the “additional insured” provision is to ensure that one of the insurance companies takes the lead in providing a defense. Because GNAPs’ risk is significantly less than Verizon’s the FAR should eliminate the “symmetry” and instead adopt Verizon’s proposed § 21.3. Verizon’s proposed language in § 21.3 is adopted.

I. Issue 11

Should the ICA include language that allows Verizon to audit GNAPs’ “books, records, documents, facilities, and systems?”

GNAPs’ Position

GNAPs does not believe that Verizon should be allowed to audit its accounts and records because much of the material contained in those records is competitively sensitive. If GNAPs were compelled to provide Verizon with access to redacted records, the costs of sanitizing those records would be prohibitive. There is no need for Verizon to require this information since it should have its own records of calls exchanged between GNAPs and Verizon.

In its Supplemental Filing, GNAPs proposes the following arguments for its proposed contract language associated with Issue 11:

- Interconnection § 6.3: GNAPs eliminates an apparently limitless number of audits that can be ordered by either party, a provision that would otherwise possibly be abused by Verizon.
- GT&C § 7, Interconnection § 10.13: GNAPs eliminates the unreasonable requirement of Verizon that each party be allowed extensive rights to audit books, records, documents, facilities, and systems, a provision that could allow Verizon to overwhelm a small competing carrier with audit requests and compromise GNAPs' confidential strategic plans.
- Additional Services § 8.5.4: GNAPs eliminates Verizon's nonsymmetrical right of audit by which it may review GNAPs' books to ascertain compliance with applicable laws and the ICA with respect to Verizon OSS information.

Verizon's Position

Despite the fact that GNAPs refuses to provide Verizon with audit rights, that is exactly what it has done in its ICA with Pacific. GNAPs proposes to entirely delete Verizon's proposed audit provisions, providing neither party with the ability to evaluate the accuracy of the other party's bills.

Verizon clarifies that its proposal applies equally to both parties, not just GNAPs. Second, GNAPs would not be providing records to Verizon; but

pursuant to § 7.2, the audit would be performed by independent certified public accountants, selected and paid for by the auditing party. Also, the auditing accountant would not have access to all records. The records accessed would be only those necessary to evaluate the accuracy of the audited party's bills.

Verizon does not seek the audit rights as a competitor of GNAPs, but as a customer. Without audit rights, Verizon is asked to accept GNAPs' charges without the ability to verify their accuracy or appropriateness. Such provisions are common in the industry. In at least 70 ICAs, Verizon has audit provisions that allow either carrier to audit the books and records of the other pertaining to the services provided under the ICA.

GNAPs claims that the terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the ICA for the purposes of billing and recordkeeping purposes. Further, GNAPs points to the right to pursue appropriate legal or equitable relief in the appropriate federal or state forum. In effect, GNAPs suggests that Verizon should initiate litigation and engage in discovery if it wishes to question the appropriateness of a bill. The parties should not have to resort to litigation in order to obtain an audit.

According to Verizon, it is no mystery why GNAPs hopes to deprive Verizon of the audit rights it seeks while granting audit rights to Pacific. Verizon uncovered an illegal billing scheme GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation (See Verizon's Complaint filed in New York Telephone Company, et al. v. Global NAPs, Inc. et al., No.00 Civ. 2650 (FB)(RL), (E.D.N.Y.).

Discussion

It is a standard practice in ICAs to include audit requirements. This does not mean that a carrier has limitless opportunities to make intrusive audits

of its competitor's records. However, given the nature of the agreement between the parties, there is a need to be able to audit the traffic exchanged between the parties.

- Interconnection § 6.3: Verizon's proposed language is adopted, with modification. Verizon asks for two traffic audits per year, and the number only increases if the preceding audit disclosed "material errors or discrepancies." The DAR reduced the number of audits to one per year. Given the nature of the traffic exchanged between the parties, and the need to rely on data from the other carrier, it is appropriate to include audit rights in the ICA. In its Comments on the DAR, Verizon reiterates its request to be able to audit GNAPs' traffic at least twice a year because it has uncovered what it believes is "an illegal billing scheme that GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation." However, since the contract language includes a provision for additional audits if an audit discloses "material errors or discrepancies," Verizon would be able to schedule additional audits if it found a problem. I will allow one audit per year, but I will leave in the provision that additional audits may be conducted if the preceding audit disclosed material errors or discrepancies.
- Interconnection § 10.13: Verizon's proposed language is adopted. The audit provisions are reasonable.
- Additional Services § 8.5.4: In its Comments on the DAR, Verizon explains that it needs to make certain that GNAPs is using OSS in the manner intended. Hundreds of other carriers rely on access to Verizon's OSS, and Verizon wants the right to monitor its OSS so that all carriers alike receive uninterrupted access to this system. Verizon's argument is convincing, and its proposed language in this section is adopted.

- GT&C § 7: Verizon's proposed language is adopted. It is reasonable that either carrier be able to audit the accuracy of bills once a year. The auditing party must hire an outside auditor and pay all costs associated with the audit. The language presented provides for protection of confidential information.

J. Issue 12

Should Verizon be permitted to collocate at GNAPs' facilities in order to interconnect with GNAPs?

Verizon's Position

GNAPs proposes edits to § 2.1.5 that only allow Verizon to collocate "subject to GNAPs' sole discretion and only to the extent required by Applicable Law."

Verizon recognizes that Section 251(c)(6) of the Act applies to ILECs, and not to CLECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon to interconnect with the CLECs via a collocation arrangement at their premises. By preventing Verizon from doing so, GNAPs limits Verizon's interconnection choices with GNAPs.

Furthermore, pursuant to GNAPs' proposals, all of the interconnection locations are determined by GNAPs, which gives GNAPs every means available to minimize its own expenses and maximize Verizon's. This is why Verizon proposes some reasonableness on GNAPs' discretion either through the VGRIP proposal, or through reasonable rules on collocation and distance-sensitive transport rates. Any CLEC that interconnects with Verizon makes a choice: either voluntarily allow Verizon to collocate at the CLEC's facilities or forgo charging Verizon distance sensitive rates for transport.

GNAPs' Position

GNAPs indicates that it is not required to provide Verizon with collocation at GNAPs' facilities, and will only do so "subject to GNAPs' sole discretion and only to the extent required by applicable law." The Act limits the duty to provide collocation to the premises of the ILECs. This responsibility does not extend to CLECs.

Verizon has enormous technical and financial resources that will enable it to minimize inconveniences caused by collocation arrangement limitations.

GNAPs presents its proposed contract language on Issue 12:

- Interconnection §§ 2.1.5.1, 2.1.5.2, 2.1.5.3: GNAPs clarifies its right of reasonable approval of Verizon methods for interconnection with GNAPs.

Discussion

The Act does not require GNAPs to provide collocation to Verizon, and I will not require GNAPs to provide that service. As GNAPs stated, Verizon is a company with significant financial and technical resources, and should be able to accommodate any interconnection request GNAPs makes. GNAPs' proposed language in Interconnection §§ 2.1.5.1, 2.1.5.2, 2.1.5.3 is adopted.

K. Issue 13

Should GNAPs be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination, or action?

Verizon's Position

GNAPs failed to provide any explanation as evidence to support its proposed change to § 4.7. Consistent with Verizon's general approach to make "applicable law" the cornerstone of the proposed ICA, Verizon's proposed language is the mechanism that ensures the parties' rights and obligations change with a change in law. GNAPs' proposed edits would delay

implementation of a change of law until appeals are exhausted, even if the change of law is not subject to a stay.

GNAPs' proposed edit regarding any discontinuance of service is superfluous. The parties have agreed that Verizon will provide 30 days' prior written notice of any such discontinuance of a service, unless a different notice period or different conditions are specified in the ICA or applicable law. It is critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to do so under applicable law.

GNAPs' Position

GNAPs believes the ICA should allow the parties to avoid implementation until appeals are exhausted. This interpretation should apply even if a legislative, judicial, regulatory or other governmental decision, order, determination, or action is unstayed.

GNAPs believes it is in neither party's interest to allow law that is in flux to govern affected ICA terms. GNAPs's proposed language in § 4.7 increases certainty and reduces costs for both parties. If nonfinal decisions were allowed to alter the agreement, the imposition of such interim costs would work to the disadvantage of the smaller party, GNAPs.

Discussion

Verzision's language in General Terms and Conditions § 4.7 relating to this issue is adopted. Orders of this Commission and the FCC, as well as court decisions, are effective unless stayed. Any such order or decision which is effective must be incorporated into the terms of this ICA. This Commission expects carriers to implement any order issued, as of its effective date. Carriers do not have the option to avoid implementation by waiting for the results of any final appeal.

L. Issue 14

Should GNAPs be permitted to insert itself into Verizon's Network Management or Contractually Eviscerate the "necessary and impair" analysis to prospectively gain access to network elements that have not yet been ordered unbundled?

Verizon's Position:

Since GNAPs has already agreed to accept Verizon's dark fiber proposal, this issue appears to be moot. Section 42, as proposed by Verizon, clearly states that Verizon will provide interconnection and UNEs to the extent required by applicable law. GNAPs, in its Supplemental Filing explained that its modifications to Section 42 makes the right of carriers to upgrade their systems symmetrical and more equitable and also makes clear that the parties must do so as required by law, not at their discretion. Despite GNAPs' explanation, GNAPs fails to define "next generation technology" and how it would be used in the context of the ICA.

GNAPs' failure to define the terms in its proposed contract necessarily renders this term vague, and it should not be included in the ICA. Applicable law only requires reasonable and nondiscriminatory interconnection to Verizon's existing network, not a superior one.

GNAPs' Position

GNAPs believes that Verizon must in good faith comply with the requirements of applicable law to allow GNAPs reasonable and nondiscriminatory access to all next generation technology for the purpose of providing telecommunications services.

GNAPs indicates that its term "next generation technology" is not vague, given that it is limited to technology to which GNAPs is entitled by

applicable law. To the extent that a GNAPs' request for technology was not supported by applicable law, Verizon would not be required to provide it. It is important that this provision be included to emphasize the duty of Verizon to provide GNAPs with state-of-the-art current versions of facilities, services and interfaces for elements subject to unbundling and for effecting interconnection.

Discussion

In its Comments on the DAR, Verizon suggests that the following sentence in GNAPs' proposed § 42 should be stricken: "Verizon is required to provide access to fiber as an unbundled network element according to 47 C.F.R. § 391[sic]." The parties have agreed to address UNEs, including dark fiber, in the Network Elements attachment, which is a separate portion of the ICA. Striking this sentence will ensure consistency with the parties' dark fiber settlement. I concur with Verizon's request to delete that sentence from § 42.

In its Comments, Verizon indicates that GNAPs' proposed language is imprecise in that it suggests that Applicable Law requires access to all next generation technology. Verizon proposes the following language as a substitute for GNAPs' proposed language:

Notwithstanding any other provision of this Agreement, each Party shall have the right to deploy, upgrade, migrate and maintain its network according to Applicable Law. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit GNAPs' ability to access loops and related technology. Verizon will in good faith allow GNAPs reasonable and non-discriminatory access to next generation technology as required by Applicable Law for the purpose of providing telecommunications services. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise in accordance with Applicable Law.

Verizon's proposed language is adopted. It modifies GNAPs' proposed language only slightly to make it clear that applicable law does not require access to next generation technology.

O R D E R

IT IS ORDERED that, on the schedule specified below, the parties shall file and serve:

1. An entire Interconnection Agreement, for Commission approval, that conforms with the decisions of this Final Arbitrator's Report. A statement which (a) identifies the criteria in the Act and the Commission's Rules (*e.g.*, Rule 4.3.1, Rule 2.18, and 4.2.3 of Resolution ALJ-181), by which the negotiated and arbitrated portions pass or fail those tests; (b) states whether the negotiated and arbitrated portions pass or fail those tests; and (c) states whether or not the Agreement should be approved or rejected by the Commission.

2. The Global NAPs, Inc./Pacific Bell Telephone Company filings referenced above shall be due on May 22, 2002.

3. The Global NAPs, Inc./Verizon California Inc. filings referenced above shall be due on May 29, 2002.

Dated May 15, 2002, at San Francisco, California.

/s/ Karen Jones

Karen Jones, Arbitrator
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated May 15, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.