D.T.E. 02-45 December 12, 2002

Petition of Global NAPs, Inc.. pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration to establish an interconnection agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts.

APPEARANCES: James R.J. Scheltema
Director, Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road West
Columbia, MD 21044-1445
-and-
William J. Rooney, Jr.
Vice President and General Counsel
Global NAPs, Inc.
89 Access Road
Norwood, MA 02062
Petitioner

Bruce P. Beausejour
Keefe B. Clemons
Verizon New England, Inc. d/b/a Verizon-Massachusetts
185 Franklin Street, Room 1403
Boston, MA 02107
-and-
Kimberly A. Newman
Hunton & Williams
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006
-and-
Thomas C. Singher
Hunton & Williams
200 Park Avenue, 43rd Floor
New York, NY 10166-0136

Respondent

TABLE OF CONTENTS

I. INTRODUCTION .... Page 1

II. PROCEDURAL HISTORY .... Page 1

III. STANDARD OF REVIEW .... Page 3

IV. UNRESOLVED ISSUES .... Page 4

A. Should Either Party be Reauired to Install More Than One Point of Interconnection ("POI") per LATA? (Arbitration Issue No. 1); Should Each Party Be Responsible for the Costs Associated with Transporting Telecommunications Traffic to the Single POI? (Arbitration Issue No. 2) Page 5

1. Introduction .... Page 5

2. Positions of the Parties .... Page 6

a. GNAPs .... Page 6

b. Verizon .... Page 9

3. Analvsis and Findings .... Page 11

B. Should Verizon's Local Calling Area Boundaries be Imposed on GNAPs, or Mav GNAPs Broadlv Define its Own Local Calline Areas? (Arbitration Issue No. 3) .... Page 19

1. Introduction .... Page 19

2. Positions of the Parties .... Page 19

a. GNAPs .... Page 19

b. Verizon .... Page 21

3. Analvsis and Findings .... Page 23

C. Can GNAPs Assien to its Customers NXX Codes that are "Homed" in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides? (Arbitration Issue No. 4) .... Page 27

1. Introduction .... Page 27

2. Positions of the Parties .... Page 27

a. GNAPs .... Page 27

b. Verizon .... Page 30

3. Analvsis and Findings .... Page 33

D. Should the Aereement Include Language that Expresslv Reauires the Parties to Reneeotiate Reciprocal Compensation Oblieations if Current Law is Overturned or Otherwise Revised? (Arbitration Issue No. 5) .... Page 38

1. Introduction .... Page 38

2. Positions of the Parties .... Page 38

a. GNAPs .... Page 38

b. Verizon .... Page 39

3. Analvsis and Findines .... Page 39

E. Whether Two-Wav Trunkine Should Be Available to GNAPs at GNAPs' Request? (Arbitration Issue No. 6) .... Page 40

1. Introduction .... Page 40

2. Positions of the Parties Page41
a. GNAPs Page41
b. Page42
3. Analysis and Findings . . . . Page 42
F. Is it Appropriate to Incorporate by Reference Other Documents, Including Tariffs, into the Agreement Instead of Fully Setting out Those Provisions in the Agreement? (Arbitration Issue No. 7) . . . . Page 47
1. Introduction . . . . Page 47
2. Positions of the Parties Page47
a. GNAPs Page47
b. Verizon Page49
3. Analysis and Findings . . . . Page 50
G. Should the Interconnection Agreement Require GNAPs To Obtain Excess Liability Insurance Coveraee of $10 Million and Require GNAPs to Adopt Specified Palicy Forms? (Arbitration Issue No. 8) . . . . Page 54
1. Introduction . . . . Page 54
2. Positions of the Parties . . . . Page 55
a. GNAPs Page55
b. Page57
3. Analysis and Findings . . . . Page 58
H. Should the Interconnection Agreement Include Language That Allows Verizon
(Arbitration Issue No. 9) . . . . Page 62
1. Introduction Page62
2. Positions of the Parties . . . . Page 62
a. GNAPs Page62
b. Verizon Page63
3. Analysis and Findings Page65
I. Should GNAPs Be Permitted To Avoid Its Agreement To Permit Collocation In Accordance With Tariffed Terms? (Arbitration Issue No. 10) . . . . Page 66
1. Introduction . . . . Page 66
2. Positions of the Parties . . . . Page 67
a. Verizon Page67
b. GNAPs Page68
3. Analysis and Findings . . . . Page 69
J. Should GNAPs Be Permitted to Avoid the Effectiveness of Any Unstayed Legislative, Judicial, Regulatory or Other Governmental Decision, Order, Determination or Action? (Arbitration Issue No. 11) . . . . Page 71
1. Introduction Page71
2. Positions of the Parties . . . . Page 71
a. . . . . Page 71
b. Verizon Page71
3. . . . . Page72
K. Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management to Prospectively Gain Access to Network Elements That Have Not

Yet Been Ordered Unbundled? (Arbitration Issue No. 12) .... Page 73
1. *Introduction* .... Page 73
2. **Positions of the Parties** Page73
a. GNAPs Page73
b. Verizon Page74
3. Analysis and Findings .... Page 75

V. ORDER Page77

.....

I. INTRODUCTION

This arbitration proceeding between Global NAPs, Inc. ("GNAPs" or "Global") and Verizon New England, Inc. d/b/a Verizon-Massachusetts ("Verizon") (collectively, "Parties") is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act").[1] By this Order, the Department of Telecommunications and Energy ("Department") makes findings necessary to finalize an interconnection agreement between the Parties.

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. GNAPs is a competitive local exchange carrier ("CLEC") with an approved tariff to provide local exchange service to residential and business customers throughout Massachusetts

II. PROCEDURAL HISTORY

On July 30, 2002, GNAPs filed a Petition for Arbitration of an interconnection agreement with Verizon ("Petition"). Verizon responded to GNAPs' Petition on August 22, 2002 ("Response"). On September 4, 2002, the Department held a procedural conference and technical session. On September 10, 2002, the Parties filed direct testimony. GNAPs filed the testimony of William J. Rooney, Vice President and General Counsel of GNAPs: and Lee L. Selwyn, President of Economics and Technology, Inc. Verizon filed the testimony of Terry Haynes, Manager, State Regulatory Policy and Planning Group: Karen Fleming, Manager - Risk Management: Jonathan B. Smith, Executive Director - Local Interconnection Billing and

---

1 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

Wholesale Billing Support; William Munsell, Negotiator - Interconnection Contracts: and Peter J. D'Amico, Senior Product Manager - Interconnection Product Management Group. Pursuant to the arbitration schedule, the Parties filed a First and Second Stipulation of Issues on September 10 and September 25, 2002, respectively.[2] The evidentiary hearing was held on October 9, 2002, at which GNAPs presented its witness, Lee Selwyn, and Verizon presented Terry Haynes and Peter D'Amico as witnesses.[3] On October 17, 2002, the Parties filed record request responses.[4] Finally, on October 21 and 28, 2002, the Parties filed their initial and reply briefs, respectively

The twelve issues for the Department's resolution are related to: (1) the designation of a single Point of Interconnection: (2) responsibility for the costs associated with transporting telecommunications traffic to the single Point of Interconnection; (3) the definition of local calling areas: (4) the use of virtual NXX codes: (5) the "change of law" provisions: (6) two-way trunking: (7) the appropriateness of incorporating by reference other documents into the interconnection agreement: (8) insurance requirements: (9) audit rights: (10) reciprocal

---

2 The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

3 The Parties presented witnesses on only the first four issues raised in the Petition, and agreed to waive cross-examination on the remaining issues.

4 Also on October 17, 2002, pursuant to G.L. c. 25. § 5D, Verizon filed a Motion for Protective Treatment of Confidential Information contained in its responses to RR-DTE-4. The Department has reviewed the response to RR-DTE-4 and agrees that the data contained therein include specific customer proprietary information for Massachusetts and other Verizon states relating to Verizon's interstate Internet Protocol Routing Service ("IPRS") that may properly be protected from public disclosure under § 5D. Accordingly, the Department grants Verizon's motion.

collocation; (11) the "applicable law" provision: and (12) obligations during network upgrades and maintenance.[5]

III. STANDARD OF REVIEW

The standards for arbitrations by state commissions are set forth in 47 U.S.C. § 252(c), which states, in relevant part, that a state commission shall:

> (I) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

Additionally, § 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Specifically, each ILEC has the duty:

> [T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) 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 (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

---

5 The first nine issues were presented by GNAPs in its Petition. Verizon raised the three additional issues in its Response.

IV. UNRESOLVED ISSUES

Each of the nine issues GNAPs presents to the Department contains a general policy question. The nine issues also present specific disputes over precise contract language. Many of these disputes Verizon challenges as unrelated to the broad policy questions identified. The three additional issues Verizon presents to the Department focus on specific contract language in dispute. As to the resolution of the issues presented by GNAPs, GNAPs requests that the Department render decisions only on the broad policy issues it identifies in its Petition, and then order the Parties to implement contract language embodying these policy decisions (GNAPs Petition ¶ 13). Verizon opposes this approach and asks the Department to rule on the specific contract language in dispute (Verizon Brief at 2).

Resolving the general policy issues and as many as we can of the particular contract language disputes is the better approach. Resolution of only the policy issues would leave a significant portion of the disputed contract language unresolved, and thus would only delay finalization of the Parties' interconnection agreement. Accordingly, in this Order, we seek to resolve all disputed contract language. At a minimum, we endeavor to provide sufficient direction to allow the Parties to resolve their differences.[6] Lastly, we note the Department will

---

6 For contract language that we do not directly address, because, for instance, the record is insufficient to address, or, for contract language that cannot be resolved based upon the direction we provide in this Order, we direct the Parties to continue to negotiate these provisions with particular attention to any relevant policy findings contained herein. In the event that the Parties are unable to craft mutually-agreeable contract language for such provisions, if any, for submission during the compliance phase of this arbitration proceeding, each party shall present its proposed contract language and provide specific support for its position in the compliance filing.

review all modified contract language during the compliance phase of this proceeding.

A. <u>Should Either Party be Required to Install More Than One Point of Interconnection ("POI") **per** LATA?</u> (Arbitration Issue No. 1)

<u>Should Each Party Be Responsible for the Costs Associated with Transporting Telecommunications Traffic to the Single POI?</u> (Arbitration Issue No. **2**)

1. <u>Introduction</u>

For Arbitration Issue No. 1, the Parties do not disagree that GNAPs has the right to designate a single POP ("SPOI")per LATA. In fact, the Parties state that while they have reached conceptual agreement on this issue, they have not arrived at contract language to implement that agreement. <u>See</u> First and Second Stipulation of Issues

Arbitration Issue No. **2** involves the issue of financial responsibility for transporting telecommunications traffic. GNAPs argues that each carrier is responsible for transporting telecommunications traffic to the GNAPs-determined SPOI and Interconnection Point' ("IP"). Verizon, however, argues that consistent with Department precedent, GNAPs must compensate Verizon, in accordance with prior Department orders, for GNAPs-originated traffic that Verizon transports from the SPOI to Verizon's multiple IPs located at its tandem or end offices.

---

7 The POI is the point where Verizon's network physically interconnects with the CLEC's network (<u>see</u> Tr. at **23).**

8 The IP is the "point on the terminating carrier's network from which the terminating carrier will provide transport and terminate on its network a call delivered by an originating carrier." <u>See</u> <u>MediaOne/Bell Atlantic Arbitration</u>, D.T.E. 99-42/43-A at **4,** n.6 (March 15, 2001) ("<u>MediaOne Supplemental Order</u>"). In other words, the IP is the rating point that determines financial responsibility for transport and termination costs, including reciprocal compensation. <u>See</u> <u>id.</u>; <u>see</u> <u>also</u> Tr. at **24.**

GNAPs contends that it is necessary to integrate Arbitration Issue Nos. 1 and 2 because "if the effect of Verizon's position on Issue 2 is to impose financial penalties on Global NAPs for electing a single point of interconnection, then [GNAPs] believe[s] that operates to undermine the true characterization of Verizon's position on Issue 1" (GNAPs Brief at 15. citing Tr. at 21). Because we find that Arbitration Issue Nos. 1 and 2 are intertwined, the Department addresses them together.

2. Positions of the Parties

a. GNAPs

GNAPs claims that each party should be responsible for transporting its own traffic on its side of the POI (GNAPs Brief at 14). According to GNAPs, the reciprocal compensation rules and the ISP Remand Order[9] "mirroring rule" prohibit imposition of a transport charge on intra-exchange traffic (id. at 16). GNAPs claims that Verizon should not be able to impose a transport charge on intra-exchange traffic above and beyond the reciprocal compensation it recovers because such an approach violates Rule 703(a)[10] and also constitutes double recovery (id. at 17). GNAPs further argues that because Verizon accepted the FCC's rate cap for traffic

9 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) ("ISP Remand Order").

10 Rule 703(a) states that "[e]ach carrier shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting carrier."

bound for Internet Service Providers ("ISPs"),[11] "Verizon is required to exchange its traffic at the FCC rate, and cannot impose additional transport charges" (id. at 18).

GNAPs cites to the Virginia Order" issued by the Wireline Competition Bureau of the FCC to support its position (GNAPs Brief at 18). According to GNAPs, the Virginia Order rejected Verizon's virtually geographically relevant interconnection points ("VGRIPs")[13]

11 The FCC adopted an intercarrier rompensation rate cap for ISP-bound traffic as an interim measure to resolve problems associated with the current intercarrier compensation regime for ISP-bound traffic. Specifically, the rate cap for ISP-Bound traffic applies "*only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate." ISP Remand Order at ¶¶ 77, 89 (emphasis in original) (footnote omitted).

12 In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration; and Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., CC Dockets Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002) ("Virginia Order").

13 Under Verizon's VGRIPs proposal, geographically relevant CLEC-IPs would be located at a collocation site at each Verizon tandem office in a multiple-tandem LATA, at each Verizon end office in a single-tandem LATA, or at other Verizon-designated wire centers in LATAs with no tandem offices. Virginia Order at ¶ 37. VGRIPs is similar to Verizon's geographically relevant interconnection points **("GRIPs")** proposal, which Verizon has proposed in Massachusetts and other jurisdictions in the past. GRIPs is based on the "proposition that the parties should exchange local traffic with each other within a reasonable geographic proximity to the terminating end user customer, defined by Bell Atlantic as a 'geographically relevant point.' According to Bell Atlantic, each party would be responsible for the transport to and from the geographically relevant point, and once traffic is delivered to an IP, reciprocal

(continued...)

proposal, i.e. that the CLEC be financially responsible for all transport between the SPOI and Verizon designated IPs, based on an interpretation that Verizon cannot assess charges on its side of the POI (id., citing Virginia Order at ¶ 53).

GNAPs acknowledges that Verizon's proposal in this proceeding differs from the one proposed in Virgina in that Verizon's proposal in Virginia "contemplated that the CLEC was responsible for all transport costs between the Verizon designated IP and the CLEC." while "Verizon's proposal here [in Massachusetts] simply requires that Global be responsible for all transport costs from Global to the Verizon designated IPs" (id. at **19).** GNAPs claims that, notwithstanding this difference, Verizon's proposal in this proceeding "violates the reciprocal compensation rules and the reasoning of the Virginia Order applies" (id.).

Moreover, GNAPs claims that the authority on which Verizon relies for its position rests on orders that "generally predate the Vireinia Order" (GNAPs Brief at 19). GNAPs states that the Virginia Order "dealt expressly with the transport issue and ruled in favor of the CLEC against imposition of transport charges" (id. at 21). GNAPs further argues that in arbitrations brought by GNAPs in New **York,** Illinois, Rhode Island, Connecticut, and Florida, the decisions have been uniformly against imposing transport charges on CLECs (id. at **23).**

Additionally, GNAPs argues that "there is no reasonable basis for imposing transport costs on Global" because Verizon's size allows it to realize significant economies of scale and scope that make its transport costs de minimis (GNAPs Brief at 24). GNAPs further states that

---

13 (...continued)
compensation charges would apply." D.T.E. 99-42/43, 99-52, at 10 (August 25, 1999) ("MediaOne") (citations omitted).

the use of fiber optics has caused the cost of transport to decline (id. at 24-25). GNAPs argues that Verizon seeks to impose transport charges that are in excess of its costs (id. at 26-27). In support of this position, GNAPs submits a "proxy model to evaluate the degree to which Verizon may be over-recovering its transport costs" (id.). GNAPs claims that the transport costs that Verizon seeks to impose are "excessive and discriminatory" and in violation of §§ 251(c)(2)(C) and (D) of the Act (id. at 27). GNAPs concludes by stating that requiring Verizon to pay for all transport on its side of the POI is consistent with rulings of other state commissions (id.).

b. Verizon

Verizon does not dispute that GNAPs has the option to designate a SPOI in the LATA within Verizon's network (Verizon Brief at 8). Verizon contends that GNAPs need only interconnect "at any technically feasible point within" Verizon's network, as required by applicable law (id., citing 47 U.S.C. § 251(c)(2)(B)). Verizon states that the Parties appear to have reached "substantive agreement" on this issue, yet GNAPs's contract proposals "do not confine GNAPs' choice of [POI] to any technically feasible point on Verizon's network" (id.) (emphasis in original).

On the other hand, Verizon claims that its proposed contract language permits GNAPs to physically interconnect with Verizon at a single point on Verizon's existing network (Verizon Brief at 7). Verizon further argues that its proposed language allows the Parties to establish IPs for purposes of determining financial responsibility in accordance with the Department's prior rulings (id. at 8). Verizon states that "the issue in dispute is whether

GNAPs must compensate Verizon in accordance with the Department's orders for GNAPs' originated traffic" (id. at 8-9).

Verizon argues that valid Department decisions support its position. Specifically, Verizon contends that the Department's Tariff No. 17 Order[14] and MediaOne Supplemental Order found that all local exchange carriers in Massachusetts are responsible for transporting their originating traffic all the way to the terminating end user or paying for transport provided by another carrier to accomplish the same (Verizon Brief at 9). Verizon further argues that the MediaOne Supplemental Order is "exactly on point in this issue" because Verizon and GNAPs are at present interconnected by an End Point Fiber Meet ("EPFM")[15] at GNAPs' Quincy switch (id., citing Exh. VZ-GNAPs-9). Verizon insists that, "[c]onsistent with [the MediaOne Supplemental Order], GNAPs is responsible for compensating Verizon for the transport of GNAPs' traffic that Verizon provides between the EPFM and Verizon's IP which, pursuant to Verizon's proposed contract language, will be located at Verizon's tandems or end offices serving the terminating end user" (id. at 10) (footnotes omitted).

Regarding GNAPs' argument that Verizon's transport costs are de minimis, Verizon states that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based unbundled network element ("UNE") rates for dedicated and common transport

---

14 Tariff No. 17 Order, D.T.E. 98-57 (March 24, 2000) ("Tariff No. 17 Order").

15 An EPFM is a type of mid-span meet (see Verizon Brief at 10). For an EPFM, the POI is designated at the physical location of either the CLEC's or the ILEC's switching point; for a mid-span meet, the POI is designated on the transport facility between the CLEC's and ILEC's switching points (see Tr. at 48).

recently established in the Department's UNE Rates Order[16] (Verizon Brief at 1). Verizon states that the Department, in the D.T.E. 01-20 proceeding, conducted an exte iive review of Verizon's costs and established new rates for unbundled dedicated and common transport (id.). Verizon claims that GNAPs, however, is apparently not satisfied with the results of the UNE Rates Order and seeks, in this arbitration proceeding, to collaterally attack the rates established in that order (id. at 11-12). Verizon argues that the Department should not reach conclusions in this proceeding contrary to those it recently reached in the rate proceeding specifically designed to examine Verizon's costs (id. at 12).

3. Analysis and Findings

Section 251(c)(2) of the Act requires the incumbent to provide for interconnection with the local exchange carrier's network:

> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) 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
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Furthermore, the FCC established additional rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier.[17] These rules, which were identified by the Wireline Competition Bureau of the FCC in its Virginia Order, establish that:

---

16 UNE Rates Investigation, D.T.E. 01-20 (July 11, 2002) ("UNE Rates Order").

17 See, e.g., In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶¶ 209, 1062 (rel. August 8, 1966) ("Local Competition Order").

> **(1)** competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network;
> **(2)** competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;
> **(3)** all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and
> **(4)** competitive LECs may refuse to permit other ILECs to collocate at their facilities.

Vireinia Order at ¶ **67** (footnotes omitted). Rules 1, 2, and **3** are at the ***crux of*** the Parties' dispute for Issues **1** and **2.**

Before turning to the issues at hand, we find it appropriate to comment on the weight of the Vireinia Order in this arbitration proceeding. The Wireline Competition Bureau of the FCC preempted the jurisdiction of the Virginia State Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WordCom, Inc., Cox Virginia Telecorn, Inc., and AT&T Communications of Virginia, Inc., and issued its Virginia Order, standing in the stead of the Virginia State Corporation Commission. Thus, the Vireinia Order is analogous more *to* another state commission decision than an order issued by the FCC.

As a general rule, the Department does not find other state commission decisions to be dispositive on proceedings conducted in Massachusetts. In fact, the Department "ordinarily place[s] little weight on the decisions reached in other states, since we rely for our decisions on the record presented here." Phase 4 Order[18] at 23.[19] But, the Virginia Order is unique.

---

[18] Consolidated Arbitrations, D.P.U. **96-73/74, 96-75,** 96-80/81, **96-83, 96-94** (Phase **4)** (December **4, 1996)** ("Phase 4 Order").

[19] See also UNE Rates Order at **24** ("[T]he Department will not make findings on any issue based solely on the fact that another state (or any number of states) made a similar (continued...)

Although the Wireline Competition Bureau explicitly stated that it was acting in place of the Virginia State Corporation Commission, we nonetheless find it reasonable to place greater weight on the Wireline Competition Bureau's interpretation on the intent and application of FCC rules than we would another state commission's interpretation of the same FCC rules, which we view as merely instructive. In addition, unlike most state arbitration decisions, the Wireline Competition Bureau of the FCC did not consider Virginia law when it rendered its decision. Thus, potential conflicts between another state's law and Massachusetts law are absent. Accordingly, we find the Virginia Order to be persuasive authority: however, we do not consider it binding on the Department because of the fact that it is not a mandate from the FCC.[20] With this in mind, we turn to Arbitration Issue Nos. 1 and 2.

GNAPs is entitled to interconnect at any technically feasible point, which includes the right to select a SPOI in each LATA. But, as noted above, the Parties do not dispute this. Rather, it is the issue of responsibility for transport costs on each carrier's side of the POI that is driving the dispute in Arbitration Issues No. 1 and 2.

As to the issue of financial responsibility raised in Arbitration Issue No. 2, GNAPs

---

19 (...continued)
finding, however useful or instructive other states' actions may be").

20 In contrast, in D.P.U./D.T.E. 97-88/97-18-A [Phase II] (August 8, 2001) ("Payphone Reconsideration Order"), the Department found that the Common Carrier Bureau's decision in In the Matter of Wisconsin Public Service Commission Order Directing Filings, 14 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("Wisconsin Order") was binding on state regulators, unless stayed or reversed. Unlike the Wisconsin Order, the Virginia Order is an arbitration decision issued by the Wireline Competition Bureau acting on behalf of the Vireinia State Corooration Commission. Thus, we find it appropriate to consider it persuasive, but not binding, authority.

suggests that the Department's precedent on these issues, which predate the Vireinia Order, no longer apply. GNAPs is wrong. The Vireinia Order rejected Verizon's language requiring AT&T, Cox, and WorldCom to establish GRIPs or VGRIPs with Verizon at designated or agreed upon points on the carriers' networks. Vireinia Order at ¶¶ 37, 51-53. This finding mirrors the Department's own finding which rejected Bell Atlantic's [now Verizon's] GRIP proposal in MediaOne by concluding that "neither the Act nor the FCC's rules require MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points." MediaOne at 41. Nevertheless, GNAPs' argument misses the mark, because Verizon proposes neither GRIPs nor VGRIPs in this arbitration -- an important point of distinction that GNAPs concedes (see GNAPs Brief at 19).

Accordingly, the Department's precedent on these issues is relevant and on point, as Verizon has argued. We further note that our precedent is in accord with Rule 3 contained in the Vireinia Order, referenced above. The Department first articulated its policy of shared financial responsibility in MediaOne when the Department found that "[t]he FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules." MediaOne at 42. The Department elaborated in its Tariff No. 17 Order that:

> [W]here the parties interconnect and exchange traffic at a mid-span meet, Bell Atlantic would be forced to provide transport of its originating traffic up to the mid-span meet, and, for CLEC originating traffic, Bell Atlantic would have to provide transport from the mid-span meet to the Bell Atlantic end-user customers. In the latter case, reciprocal compensation payments only compensate Bell Atlantic for the portion of the call from Bell Atlantic's end

> office or tandem switch to the end-user customers -- Bell Atlantic's costs to transport CLEC-originated traffic from the mid-span meet to its end office or tandem switch are left "stranded."

Tariff No. 17 Order at 130-131. To resolve this transport cost recovery issue, the Department found as follows:

> Transport costs should be assigned in a competitively neutral manner. Carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-user customers. This is regardless of where the carriers choose to physically interconnect. CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic all the way to the terminating end user. Carriers may choose the most efficient method to accomplish this task.

Id. at 133-134. The Department further explained that:

> In the MediaOne situation, if MediaOne chooses to interconnect with Bell Atlantic only at a single mid-span meet in the LATA, then MediaOne shall arrange or pay for transport of Mediaone-originated calls from the meet point to Bell Atlantic's end or tandem office.

MediaOne Reconsideration Order[21] at 16-17. Additionally, the Department stated in the MediaOne Supplemental Order that:

> Both carriers are responsible for delivering their traffic (either through self-provisioning or leasing another carrier's transport) from the Mid-Span Meet to the terminating carriers' appropriate interconnection point ("IP"), which may be located at a remote tandem or end office.

MediaOne Supplemental Order at 4, n.6. Our precedent is directly on point for Arbitration Issue Nos. 1 and 2, and the Department finds that GNAPs has not presented a convincing

---

[21] MediaOne/Greater Media/Bell Atlantic Arbitration, D.T.E. 99-42/43, 99-52 (March 24, 2000) ("Mediaone Reconsideration Order").

argument to disturb settled precedent.

GNAPs challenges Verizon's imposition of transport costs, alleging that these costs are ~~de minimis~~ and, based on a GNAPs-produced "proxy [cost] model." are in excess of Verizon's costs. The Department recently conducted an 18-month investigation into Verizon's UNE costs in the UNE Rates Order. Our investigation determined that Verizon's transport costs are not de minimis, as GNAPs would have us believe, and we are establishing transport rates accordingly. Moreover, we agree with Verizon that this two-party arbitration is not the appropriate proceeding to reconsider the TELRIC-based UNE findings in the Department's UNE Rates Order. Accordingly, we reject GNAPs' argument.

We now turn to the contract language raised by the Parties. First, the Department agrees with Verizon that Interconnection Attachment §§ 5.2.2 (Trunk Group Connections and Ordering) and 5.3 (Switching System Hierarchy and Trunking Requirements) are not related to any issue being arbitrated in this proceeding. Nor is there any record evidence upon which to make a determination. Accordingly, we make no findings on the disputed language in these provisions.

Second, Verizon's proposed definitions for IP and POI in Glossary §§ 2.46 (IP) and 2.67 (POI),[22] and its proposed language in Interconnection Attachment §§ 2.1.1 and 2.1.2, are consistent with the Department's precedent, as discussed above. For that reason, and the

22 GNAPs refers to Glossary §§ 2.45 and 2.66 in its Petition, but these sections do not contain any disputed language. Therefore, the Department assumes GNAPs intended to refer to §§ 2.46 and 2.67, which do contain disputed text related to Arbitration Issue Nos. 1 and 2.

reasons discussed below, Verizon's proposed findings are adopted. GNAPs' proposed language attempts to make the IP and the POI one and the same, to give GNAPs the sole discretion in determining the IP for itself and for Verizon, and to shift the burden of transport costs onto Verizon. all in contravention of Department precedent. The IP is the financial demarcation point for termination and transport costs, including reciprocal compensation, while the POI refers to the physical point of interconnection; GNAPs' proposal confuses these concepts and is therefore rejected. Furthermore. GNAPs proposes, without explanation, to define the POI in Glossary § 2.67 by citing to 47 C.F.R. § 51.319(b) in which the FCC defines the Network Interface Device ("NID"). Because the definition of a NID has nothing to do with a POI, GNAPs' proposal is rejected.

Third, GNAPs' proposed language in Interconnection Attachment § 7.1.1.1 attempts to force Verizon to accept as its IPs, for the delivery and termination of reciprocal compensation traffic to Verizon's customers, those IPs that GNAPs selects for itself. That proposal is in violation of our precedent. Verizon's proposal, however, is consistent with Department precedent in that each carrier has the right to select its own IPs for this traffic. Accordingly, we adopt Verizon's language.

Similarly, we find GNAPs' proposal, to strike in its entirely Interconnection Attachment § 7.1.1.2, to be more consistent with Department policy. More precisely, Verizon's proposal seeks to circumvent Department precedent by forcing GNAPs to forfeit its right to select its IP or IPs. For instance. if GNAPs establishes a collocation site at a Verizon end office wire center, GNAPs may elect, at its sole discretion, that such collocation site be established as the

GNAPs IP for traffic originated by Verizon customers served by that end office. Verizon, however, may not dictate that GNAPs designate this collocation arrangement as its IP for Verizon-originated traffic. Accordingly, we adopt GNAPs' proposal.

Additionally, we find that GNAPs' proposal for Interconnection Attachment § 7.1.1.3 is more consistent with our precedent, as well as with our findings on Interconnection Attachment §§ 7.1.1.1 and 7.1.1.2, which permit each party to choose its own IP. Verizon's proposed § 7.1.1.3 seeks to force GNAPs to forgo a portion of the intercarrier compensation to which it is entitled if an agreement to transition pre-existing GNAPs IPs to IPs that conform to Interconnection Attachment § 7.1.1.1[23] is not reached within 30 days. But, we see no basis under such circumstances to impose a financial penalty for the transition of existing IPs, which were presumably properly established between the Parties. Accordingly we adopt GNAPs' proposed language.

Finally, the Department adopts Verizon's proposed language in Interconnection Attachment §§ 3.4 and 3.5 regarding alternative interconnection arrangements: namely, end point meet arrangements. Given the number of technical and operational aspects that can vary between two different end point meet arrangements, a case-by-case approach is preferable to the boilerplate language that GNAPs proposes and also is consistent with Department and FCC precedent. See MediaOne at 39; Local Competition Order at ¶ 553.

B. Should Verizon's Local Calling Area Boundaries be Imposed on GNAPs, or May GNAPs Broadly Define its Own Local Calling Areas? (Arbitration Issue

23 Verizon's proposed language also requires the IPs to conform with § 7.1.1.2, which we rejected above.

No. 3).

1. Introduction

Arbitration Issue No. 3 concerns whether Verizon's local calling areas[24] are binding on GNAPs on a retail and wholesale basis. GNAPs proposes to offer LATA-wide local calling to its customers; however, the Parties disagree as to whether Verizon's proposed language would bar GNAPs from offering LATA-wide retail calling areas, and whether, for the purpose of intercarrier compensation, GNAPs-originated LATA-wide traffic is properly considered local or toll.

2. Positions of the Parties

a. GNAPs

GNAPs argues that it should be permitted to define its own local calling areas because there is no economic or technical reason for local calling areas to be smaller than a LATA (GNAPs Petition ¶ 41; Exh. GNAPs-1, at 62). But, GNAPs contends, Verizon's proposed Template Agreement forces GNAPs to adopt an inefficient network architecture and prevents GNAPs from offering an economically-viable LATA-wide local calling area service (GNAPs Petition ¶ 44). GNAPs asserts that it is not attempting *to* dictate the manner in which Verizon divides its retail offerings into "local" and "toll." and thus, by the same token, Verizon should not be permitted to force GNAPs to mirror Verizon's calling areas (id. ¶ 42).

---

24 A "local calling area" is the area within which a customer with basic exchange service can place a call without incurring a toll charge. The Department has defined local calling areas as comprising a customer's home and contiguous exchanges. See New England Telephone and Telegraph Company, D.P.U. 89-300, at 69-70 (1990) ("D.P.U. 89-300").

Moreover, GNAPs argues that the ISP Remand Order established a new regulatory regime that controls all of the intercarrier compensation issues in this arbitration (GNAPs Brief at 5). GNAPs asserts that under the ISP Remand Order, all telecommunications traffic that is not exchange access or information access traffic is subject to the reciprocal compensation rules (id.). GNAPs contends that because the Act defines exchange access traffic or toll traffic as traffic that is subject to a separate toll charge imposed by the originating carrier, and because GNAPs proposes to offer its customers LATA-wide retail caliing areas without the imposition of a separate toll charge, GNAPs-originated calls from one end of a LATA to the other are therefore local calls subject to reciprocal compensation and not to the imposition of access charges by Verizon (Exh. GNAPs-1, at 51: GNAPs Reply Brief at 10).

Consequently, GNAPs contends that Verizon's proposal violates the ISP Remand Order by imposing access charges on local calls (GNAPs Brief at 44). More specifically, GNAPs asserts that traffic originated by GNAPs' customers and terminated by Verizon is reciprocal compensation traffic, not subject to the imposition of access charges (Exh. GNAPs-1, at 53; GNAPs Brief at 45). In addition, GNAPs argues, when Verizon picks up a GNAPs-originated call at the SPOI and delivers it to its own customer within the LATA, Verizon is wholly compensated through the assessment of reciprocal compensation (GNAPs Brief at 46).

GNAPs further argues that the ISP Remand Order "mirroring rule" prohibits Verizon from imposing an additional origination or transport charge on reciprocal compensation traffic (GNAPs Brief at 12). GNAPs asserts that Verizon has adopted the FCC's rate caps for ISP-bound traffic, and therefore the mirroring rule requires that the FCC's rate caps apply to all intercarrier compensation on reciprocal compensation traffic exchanged with GNAPs (id. at 13). Furthermore, GNAPs argues that because Verizon has consistently argued that competition rather than regulation should control its offerings and prices, Verizon should not now be permitted to retreat behind its calls for a generic proceeding (Exh. GNAPs-1, at 58).

b. Verizon

Verizon states that it accepts GNAPs' right to define its own local calling areas for its retail customers (Verizon Response ¶ 47; Verizon Brief at 29). But, Verizon contends, the real dispute in Issue 3 is the manner in which local calling areas are defined for the purpose of intercarrier compensation, which the Department has already addressed (Verizon Response ¶ 47; Verizon Brief at 29). Specifically, Verizon states that Federal law gives state commissions the authority to determine local calling areas for the purpose of intercarrier compensation (Verizon Response ¶ 51; Verizon Reply Brief at 8). Verizon states that the Department, however, has not done so, but instead determined, in the Phase 4-B Order,[25] that arbitration proceedings are not the proper forum for considering changes to Verizon's existing tariffed local calling areas because local calling areas present issues of great complexity suitable only for generic proceedings (Verizon Response ¶ 47, citing Phase 4-B Order at 9). Verizon

---

[25] Consolidated Petitions of New England telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the

between NYNEX and the Aforementioned Companies, Order on Motion by TCG for Reconsideration, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 2B) (Phase 4B), (May 2, 1997) ("Phase 4-B Order").

argues that relying on the results of a two-party arbitration to order a change in Verizon's local calling areas for the purpose of intercarrier compensation would be inconsistent with this Department precedent (Exh. VZ-2, at **4;** Verizon Reply Brief at 8). Verizon claims that GNAPs' Petition and proposed contract changes add nothing to the Department's previous analysis and thus should be rejected (Verizon Response ¶ **47).**

Verizon argues that for practical implementation and compliance with Federal law, calling areas must be symmetrical for the purpose of intercarrier compensation (Verizon Brief at 32). Verizon contends that asymmetrical calling areas would give rise to regulatory arbitrage, where a carrier could pay low reciprocal compensation rates for its customers' outbound calls, but collect a higher access rate for its customers' inbound calls (Exh. VZ-2, at **17;** Verizon Brief at 32). Verizon asserts that implementation of GNAPs' proposal would significantly impact its compensation structure and therefore its ability to act **as** the carrier of last resort, a fact recognized by the Rhode Island Public Utilities Commission (Verizon Brief at 32). Verizon avers that GNAPs' proposal could amount to a Verizon subsidy of GNAPs' operations, a likelihood acknowledged by the New York Public Service Commission (id. at 35).

Finally, Verizon argues that the "mirroring rule" in the ISP Remand Order does not apply to this case because the mirroring rule requires Verizon to offer to exchange reciprocal compensation traffic at the FCC's interim ISP traffic rates, and also requires GNAPs to accept Verizon's offer, which GNAPs has not done (Verizon Reply Brief at **9).** In fact, Verizon maintains that the Parties have agreed not to exchange § 251(b)(5) traffic at the same rates as

ISP-bound traffic, and GNAPs should not be heard to argue otherwise (id. at **11).**

3. Analysis and Findings

The issue in this case is not whether GNAPs must mirror Verizon's calling areas on a retail basis. Verizon has stated that GNAPs is free to determine its own retail calling areas, and GNAPs has not identified, nor could the Department find, any language in the contract that would prevent GNAPs from offering its retail customers whatever retail calling plans it chooses.

The issue is, simply, how to define a local calling area for the purpose of intercarrier compensation. On this question, Department precedent is clear. The Department has already considered and rejected a request to alter Verizon's local calling areas in a two-party arbitration. In Phase **4-B** of the Consolidated Arbitrations, Teleport Communications Group, Inc. ("TCG") advanced the same argument as that advanced by GNAPs in this arbitration, that forcing CLECs to abide by Verizon's (then NYNEX) local calling areas for the purpose of intercarrier compensation would have anti-competitive effects, and that TCG should be free to define its own local calling area for both its retail customers and for its intercarrier compensation regime with Verizon. See Phase **4-B** Order at **4-5**.

The Department rejected TCG's argument on the grounds that a change to Verizon's local calling areas had far-reaching consequences and was an issue of such complexity that resolution through a two party arbitration would be inappropriate. Phase **4-B** Order at **8.** In contrast, the existing local calling structure established in D.P.U. 89-300 was the result of a proceeding in which all interested Parties had the opportunity to comment: any change to this structure must be deliberated in a similarly open forum. As discussed below, there has been no change in law at the Federal level that would require a reconsideration of the Department's findings in its Phase 4-B Order. Nor has GNAPs advanced any other arguments that the Department has not considered and rejected before. GNAPs has, therefore, presented no basis upon which the Department should depart from its precedent.

In D.P.U. 89-300, the Department balanced customers' interests in having the largest local calling areas possible against the advantages of a comprehensive state structure for local calling areas that was cost-based and fair, that ensured rate continuity for customers and earnings stability for Verizon (then New England Telephone), and that protected universal service. The Department determined that a reasonable local calling area would consist of a customer's home and contiguous exchanges. D.P.U. 89-300, at 69-70.

Although GNAPs argued in its Brief that the ISP Remand Order "changed everything" regarding intercarrier compensation and the distinctions between local and toll, GNAPs did not advance, nor could the Department find, any basis on which the Department's prior conclusions regarding local calling areas was changed by the ISP Remand Order or any other FCC decision. The ISP Remand Order explicitly recognized that intrastate access regimes in place prior to the Act remain unchanged until further state commission action. ISP Remand Order at ¶ 39. Furthermore, the ISP Remand Order continues to recognize that calls that travel to points beyond the local exchange are access calls. Id. at ¶ 37. In addition, the FCC, when striking the term "local traffic" from its rules, recognized that there is a difference between a call being geographically local and merely rated as local. The FCC explicitly recognized that the term "local" is not statutorily defined and that its use created considerable ambiguity as to whether what is being referred to is a locally rated call or a jurisdictionally local call. Id. at ¶¶ 45. 46. As such, the ISP Remand Order has no impact on the calling area structure implemented by the Department in D.P.U. 89-300.

While low-priced LATA-wide calling may be an attractive option *to* many consumers, it appears that GNAPs' ability *to* offer this service on an economical basis is contingent upon the alteration of the access regime, which is *not* an appropriate subject for investigation in a two-party arbitration.

For the reasons discussed above, while GNAPs is free to offer its customers whatever retail calling areas it chooses, GNAPs is required to follow Verizon's Department-established local calling areas for the purpose of intercarrier compensation. Although a call from Plymouth to Pepperell might not "feel" like a toll call *to* a GNAPs customer if GNAPs does not assess a separate charge for that call, the call is still a toll call for the purpose of intercarrier compensation, and GNAPs is required to pay access charges. The Department's conclusion is consistent with the FCC's holding that intrastate access regimes in place prior to the Act will continue to be enforced until altered by state commissions. See ISP Remand Order at ¶ 39. On this record, we decline GNAPs' invitation *to* alter the existing access regime.

Turning to the specific contract language related to this issue, we find as follows. For Glossary §§ 2.34 (Extended Local Calling Scope Arrangement), 2.48 (IXC), 2.57 (Measured Internet Traffic, 2.76 (Reciprocal Compensation Traffic), 2.92 (Toll Traffic): Interconnection Attachment §§ 2.2.1.1, 2.2.1.2 (Trunk Types), 7.3.3, 7.3.4 (Traffic *Not* Subject to Reciprocal

Compensation), and **13.3** (Nun er Resources, Rate Center Areas and Routing Points), we find that GNAPs' proposals improperly equate local calling with flat-rated toll and would permit GNAPs to alter Verizon's local calling areas for the purpose of intercarrier compensation. Because GNAPs' proposals are in violation of Department precedent and policy with regard to the definition of local calling, Verizon's proposed language is adopted.

With regard to Glossary § 2.84 (Switched Exchange Access Service), Verizon's proposed language offers a detailed description of the service. Because GNAPs did not explain why Verizon's proposed language is unreasonable, or offer descriptive language of its own, we adopt Verizon's proposal.

We find that the provisions in Glossary §§ 2.47 (Integrated Services Digital Network), 2.56 (Main Distribution Frame), 2.77 (Retail Prices), 2.83 (Switched Access Summary Usage Data), and 2.91 (Third Party Claim): and Interconnection Attachment § 7.1 (Reciprocal Compensation Traffic Interconnection Points) do not appear to be relevant to Issue **3.** The Department makes no finding concerning language for these provisions. Similarly, the Department makes no finding concerning language in Interconnection Attachment § 6.2 (Traffic Measurement and Billing over Interconnection Trunks) because, despite having been referenced in GNAPs' Petition, this provision does not appear to be in dispute.

C. <u>Can GNAPs Assign to its Customers *NXX* Codes that are "Homed" in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides?</u> (Arbitration Issue No. 4)