1. Introduction

A virtual NXX ("VNXX") is an NXX that is assigned to a central office switch outside of the customer's local calling area. VNXX service is designed to allow customers in the "virtual exchange" to place calls to the VNXX customer as if that customer had a physical presence in the virtual exchange, and the calls therefore appear local to the calling party. The Parties disagree whether Verizon's proposed language would bar GNAPs from assigning VNXX numbers to its customers, whether VNXX calls are local or toll, and whether they are subject to reciprocal compensation rules or to the access charge regime.

2. Positions of the Parties

a. GNAPs

GNAPs argues that the primary function of NXX codes is routing, not rating, and that NXX codes no longer need to be associated with any particular geographic location (GNAPs Reply Brief at 13). Consequently, GNAPs states, the use of VNXXs will allow it to offer its retail customers wide local calling areas, similar to the calling areas currently enjoyed by wireless customers (GNAPs Petition ¶ 49).

Furthermore, GNAPs argues that because of advances in telecommunications technology, particularly fiber optics transmission systems, distance is no longer a cost driver in telephone calls, and the distinction between "local" and "toll" is obsolete (Exh. GNAPs-1, at 73; Tr. at 112). GNAPs contends that the classification of Foreign Exchange[26] ("FX") traffic

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[26] Foreign Exchange service provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. In its simplest form, a user picks (continued...)

as "local" or "toll" is determined according to the called and calling party's NXXs, not the physical location of the customers (Tr. at 73; GNAPs Brief at 33). GNAPs asserts that Verizon's FX service is essentially the same as the VNXX service that GNAPs proposes to offer its customers (Exh. GNAPs-I, at 69; GNAPs Petition ¶ 53). Accordingly, GNAPs contends, because VNXX serves the same function as FX, VNXX calls must be classified as local or toll in the same manner (GNAPs Brief at 34). Additionally, GNAPs argues that ILECs sometimes offer FX service without the use of dedicated faciliries, which is what GNAPs is doing: offering FX service without the use of dedicated facilities (Exh. GNAPs-1, at 78; Tr. at 76-77).

GNAPs further argues that if Verizon billed its own traffic based on the physical locations of the calling and called parties rather than by NXXs, Verizon would have to segregate its FX traffic in order to avoid billing toll charges, but it now does not do so (GNAPs Brief at 35). GNAPs argues that there is no readily available information that tells a carrier the physical location of a called or calling party, nor does there need *to* be, because there are no additional costs imposed when VNXX is used (id.). GNAPs asserts that this lack of information was the basis upon which the Wireline Competition Bureau of the FCC rejected Verizon's proposal to classify calls based on the geographic end points of the call in the Virginia Order (id. at 35-36). GNAPs contends that because VNXX traffic is not subject to

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26 (...continued)
up the phone in one city and gets dial tone in another city. He will also receive calls dialed to the phone in the foreign city. This means that users in the foreign city can place a local call to get the user. Newton's Telecom Dictionary (17th Edition).

the imposition of a toll charge, it is therefore local traffic subject to reciprocal compensation, and not subject to the imposition of access charges by Verizon (id. at 32).

GNAPs also asserts that Verizon should not be allowed to impose access charges on VNXX traffic. as VNXX service does not impose any additional transport costs on Verizon or cause Verizon to lose toll revenue (GNAPs Brief at 36, 37). GNAPs asserts that GNAPs' VNXX service imposes no additional charges on Verizon, because Verizon's work is done when it hands the call off to GNAPs at the SPOI (id. at 47). GNAPs argues that because Verizon itself offers VNXX service to its customers, it would be discriminatory to allow Verizon to impose access charges on VNXX traffic (id. at 38). GNAPs avers that Verizon's proposal turns the current "calling party's network pays" ("CPNP") regime "on its head" by seeking to impose access charges on VNXX calls when Verizon is already being compensated by its customers through its retail rates (id. at 40).

Moreover, GNAPs asserts that Verizon's 500-number Internet Protocol Routing Service/Single Number Service ("IPRS/SNS")[27] is unlike Verizon's traditional FX service, in that the IPRS customer only pays Verizon transport for the distance between the IPRS "hub" and the IPRS customer (GNAPs Brief at 41). GNAPs contends that its use of VNXX service allows it to compete with Verizon's IPRS service (Exh. GNAPs-1, at 83. 105; GNAPs Brief at 42).

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[27] With IPRS service, a Verizon end-user dials a number to connect to the ISP who subscribes to the IPRS service. The call is routed through the end-user's local Verizon central office and then connected to a Verizon IPRS hub. At the IPRS hub the call is handed off to the ISP via a dedicated link separately purchased by the ISP. See Exh. GN-VZ 1-13.

GNAPs further argues that it plays a major role in providing local dial-up access for Massachusetts ISPs, and if GNAPs was not permitted to offer its customers locally-rated inbound calls, through the use of VNXX. hundreds of thousands of residences and small businesses would lose access to dial-up internet access until their ISPs migrate to another carrier (Exh. GNAPs-1, at 68). GNAPs also argues that many of its ISP customers collocate their internet gateway equipment in GNAPs' central office buildings, and if GNAPs ceases offering VNXX service, these ISPs will have to seek another location for their equipment (id.).

Finally, GNAPs asserts that Verizon has not provided sufficient evidence of a workable solution to show that it has surmounted the VNXX billing problems identified by the FCC in the Virginia Order (GNAPs Brief at 44).

b. Verizon

Verizon asserts that it does not object to GNAPs assigning VNXX numbers to its customers (Tr. at 131-132). Rather, Verizon states that it objects to the goals of GNAPs' proposed VNXX service, which are to: 1) require Verizon to pay GNAPs reciprocal compensation for interexchange calls; and 2) deprive Verizon of the access charges it is entitled to for such toll calls (Verizon Response ¶ 67).

Contrary to GNAPs' contentions, Verizon argues that NXXs continue to serve both a routing and a rating purpose within the industry, as each NXX is assigned to a switch for routing and a rate center for rating purposes (id. ¶¶ 68-70). Verizon avers that GNAPs' proposed VNXX service is a substitute toll-free calling service which enables a Verizon customer to call a GNAPs VNXX customer without paying a toll charge, as if GNAPs had

assigned its customer an 800 number (Verizon Brief at 41). Verizon argues that this expands a Verizon customer's local calling area without compensating Verizon for transport outside of its local calling area (id.). Verizon asserts that local calling areas are defined by localities and exchanges, not by NXXs, and that the FCC confirmed that number assignment does not control intercarrier compensation (id. at 42 n.123, 43).

Verizon also disputes GNAPs' claim that VNXX is the same as Verizon's FX service (Verizon Response ¶ 92). Verizon asserts that when it offers FX, the FX customer pays Verizon for transporting the FX customer's calls from the foreign exchange where the NXX is "homed" to the FX customer's location (Exh. VZ-2, at 42; Verizon Response ¶ 92). Verizon further asserts that, with FX service, the FX customer has a dedicated line from the foreign exchange to their physical location, and if the FX customer wants to have FX service from more than one rate center within a LATA, the FX customer is required to pay Verizon higher monthly charges in order to compensate Verizon for transport from additional rate centers (Exh. VZ-2, at 43; Verizon Response ¶ 93). Verizon argues that its FX offering merely shifts payment responsibility from one user to another as a convenience to the called party (Exh. VZ-2, at 26; Verizon Brief at 45).

However, Verizon argues, under GNAPs' proposed VNXX offering, GNAPs expects Verizon to provide transport for free, and to pay reciprocal compensation to GNAPs (Verizon Response ¶ 92). Verizon argues that unlike FX, where Verizon is compensated by the called party for the service, GNAPs' VNXX service would provide GNAPs with all of the compensation while requiring Verizon to provide transport for free (Verizon Brief at 45).

Verizon also argues that GNAPs' VNXX service is not analogous to Verizon's IPRS service, because its IPRS service includes a charge for transport (Tr. at 135). In addition, Verizon states that it deploys hubs as close as geographically possible to concentrations of calling parties, and that more than 80 percent of the IPRS traffic is terminated at the hubs on a local basis (id.). Verizon asserts that GNAPs is attempting to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon for that privilege (Verizon Brief at 44).

Moreover, Verizon argues that, contrary to GNAPs' assertion, VNXX does not represent state of the art technology, because carriers have been offering toll-free service for decades, and there is nothing in GNAPs' VNXX proposal that can be considered new from a technological perspective (Exh. VZ-2, at 33). Verizon asserts that the vast majority of states that have considered GNAPs' VNXX proposal have rejected it. including Ohio, Illinois, California, Florida, Pennsylvania, Texas, South Carolina, Tennessee, Connecticut, Georgia, Maine, Missouri, and Nevada (Verizon Brief at 46).

Finally, Verizon claims it has developed a plan for the proper rating of VNXX calls. Specifically, Verizon states that the plan would require a CLEC to either submit a list of VNXX numbers to Verizon, or conduct a billing study which would allow Verizon to estimate the amount of traffic being delivered to CLEC VNXX numbers (Exh. VZ-2, at 41; Tr. at 166-167). Therefore, Verizon urges the Department to adopt Verizon's proposed contract language.

3. Analysis and Findings

This issue, like issue 3, turns on the distinction between "local" and "toll." Because Verizon does not dispute GNAPs' ability to assign NXXs as it chooses, the question of whether GNAPs may assign to its customers VNXXs "homed" in rate centers outside of the local calling area where the customer resides is not before us. GNAPs did not identify, nor could the Department find, any proposed language which would explicitly bar GNAPs from offering VNXX. Rather, the issue before the Department is similar to Issue 3, namely, whether GNAPs' VNXX service is properly considered local or toll, and whether it is subject to reciprocal compensation rules, or to the existing access regime. For the reasons discussed below, we find that VNXX calls will be rated as local or toll based on the geographic end points of the call.

First, although GNAPs testified at the hearing that Verizon's Tariff No. 10[28] contains a list of NXXs which define local calling areas, GNAPs did not provide this list as part of its Exhibit 3, nor does the Department find such a list in Tariff No. 10. Tariff No. 10 does contain, however, a list of the exchanges and municipalities that make up the local calling area for each Massachusetts exchange.[29] Verizon's Tariff No. 10 defines local calling areas in terms of municipalities and geographic areas, not in terms of NXXs. GNAPs' proposal, however, by assigning non-geographic NXXs. would make intraLATA toll calls originated by Verizon customers appear as local calls to both the calling party and the Verizon switch, depriving

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28 Tariff No. 10 contains the terms, conditions and rates at which Verizon offers exchange and network services.

29 Tariff No. 10, Part A, Section 6.1.

Verizon of toll charges for which it has an approved tariff, and enabling GNAPs to claim entitlement to reciprocal compensation for having terminated what is actually a toll call.

Second, GNAPs' argument that its proposed VNXX service is indistinguishable from Verizon's FX service, and therefore entitled to the same treatment. is unpersuasive. Verizon's FX service uses dedicated facilities to transport FX traffic to the FX customer's location, and the FX customer pays Verizon for the cost of transporting that traffic (Exh. VZ-2, at 42). Thus, the cost of FX service to the FX customer grows more expensive as the customer elects to receive calls from additional foreign exchanges. FX service does not alter the traditional definitions of local and toll, it merely shifts responsibility for paying the toll charge to the called party (id. at 26). Although GNAPs argued that ILECs in other states offer FX service without the use of dedicated facilities, GNAPs provided no evidence that Verizon offers FX service without the use of dedicated facilities in Massachusetts. Record evidence points exclusively the other way (id. at 42). Nor did GNAPs provide evidence that ILECs offering FX service without the use of dedicated facilities were not compensated for transporting the traffic to the FX customer. Accordingly, we give little weight to GNAPs' assertions on this point.

Similarly, GNAPs' VNXX service is readily distinguishable from Verizon's IPRS service. With IPRS, calls are routed to a hub, and the IPRS customer pays Verizon for transport from the hub to its location. Because Verizon only receives compensation for transporting traffic from the hub, it has an economic incentive to build as many hubs as possible, as close to the IPRS customer's calling parties as possible, which Verizon has indeed done. More precisely, 80 percent of IPRS traffic is local when it terminates at the hub (Tr. at

135).

Third, Verizon has proposed a solution to the billing of VNXX calls, which had not been considered by the Wireline Competition Bureau of the FCC (id. at 168-169). Verizon's proposed solution provides alternative methods by which carriers might work collaboratively to determine the geographic end points of a call, thus properly rating VNXX calls as local or toll. The Department finds that Verizon's proposed plan for rating VNXX calls as local or toll is responsive to the billing concerns raised by the Wireline Competition Bureau in the Virginia Order.[30] While the Department anticipates that it may eventually be called upon to help the Parties work out some of the details in Verizon's proposed plan for properly rating VNXX calls, an initial difficulty in implementation is not sufficient reason to forfeit any hope of the eventual proper rating of these calls. Indeed, when a carrier seeks to offer a service that complicates enforcement of the existing access regime, it is appropriate to require that carrier to work cooperatively with other carriers involved to ensure that the other carriers are duly compensated for their roles in carrying the traffic generated as a result of that service. To do otherwise would be to permit a de facto alteration of Verizon's local calling areas, which the Department has already determined to be an inappropriate topic for a two-party arbitration. We find Verizon's proposal to be an acceptable starting point to develop the cooperative billing process necessary to properly rate VNXX calls. Accordingly, we direct the Parties to submit, as part of the compliance filing, contract language that incorporates one or both of Verizon's

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30 As noted, supra, because the FCC's Wireline Competition Bureau was standing in the place of the Virginia Commission in issuing the Vireinia Order, the Virginia Order is persuasive authority, but is not binding on the Department.

proposed solutions.

In the Department's discussion of Verizon's local calling areas, supra, the Department rejected GNAPs' attempt to change Verizon's wholesale local calling areas as inappropriate for resolution in a two-party arbitration. GNAPs' VNXX proposal is even more ambitious, in that it would change both Verizon's wholesale and retail calling areas. The Department will not make such significant changes in a two-party arbitration. If GNAPs cannot ensure that all LECs, including Verizon,[31] have access to the geographic end point data necessary to properly rate a call as local or toll, and are properly compensated, then GNAPs cannot provide virtual NXX service to its customers.

GNAPs indicated that it serves a large number of Massachusetts ISPs through VNXX. and indicated further that GNAPs will have to stop serving these ISPs if GNAPs is prevented from offering locally-rated inbound calling via VNXX. **If so,** it appears that GNAPs' ability to serve ISPs is the result of merely shifting transport costs to other LECs and of billing reciprocal compensation for completing calls that are properly rated as toll. Unlike Verizon's IPRS service, where Verizon has an economic incentive to deploy as many new facilities as possible, GNAPs' VNXX would artificially shield GNAPs from the true cost of offering the service and will give GNAPs an economic incentive to deploy as few new facilities as possible. By artificially reducing the cost of offering the service, GNAPs will be able to offer an artificially low price to ISPs and other customers who experience heavy inbound calling. The VNXX

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31 Verizon no longer has a monopoly on the residential market, thus Verizon is unlikely to be the only carrier whose customers call GNAPs' VNXX numbers.

customers will be able to offer an artificially low price to their calling party subscribers, thus sending inaccurate cost signals to the calling parties concerning the true cost of the service. The result would be a considerable market distortion based on an implicit Verizon subsidy of GNAPs' operations. While this decision may frustrate GNAPs' ability to offer VNXX under the same financial terms which it may to this point have enjoyed, this decision does not explicitly bar GNAPs from offering VNXX service.

Although the Wireline Competition Bureau approved a VNXX proposal similar to GNAPs' proposal, this approval was based upon the narrow ground that there was no technically feasible manner of determining the geographic end points of a call. and therefore no alternative but to rate calls according to the originating and terminating NXXs. Vireinia Order at ¶¶ 301-302. As discussed above, Verizon has proposed alternative methods for determining the geographic end points of calls, and the Department finds that Verizon's proposal is responsive to the concerns raised in and consistent with the Virginia Order.

Turning to the contract language in dispute, we find that Glossary §§ 2.71 (Purchasing Party) and 2.77 (Retail Prices), referenced in GNAPs' Petition, are not relevant to Issue 4.[32] Accordingly, the Department makes no finding concerning language for these provisions. As to Glossary §§ 2.72 (Rate Center Area), 2.73 (Rate Center Point), and 2.76 (Reciprocal Compensation Traffic); and Interconnection Attachment § 13 (Number Resources, Rate Center Areas and Routing Points), we find that Verizon's contract language is in keeping with the Federal and Department policy concerning the distinctions between local and toll and the

[32] We believe GNAPs incorrectly identified these contract sections.

operation of the access regime. Accordingly, consistent with the discussion above, Verizon's proposed language is adopted.

D. Should the Agreement Include Language that Expressly Requires the Parties to Renegotiate Reciprocal Compensation Obligations if Current Law is Overturned or Otherwise Revised? (Arbitration Issue No. 5)

1. Introduction

GNAPs seeks an express and specific change of law provision concerning reciprocal compensation, in the event of a future reversal or modification to the FCC's ISP Remand Order. Verizon contends that its standard change-in-law language provides for such a contingency.

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposed contract language, which acknowledges GNAPs' right to renegotiate reciprocal compensation obligations if the current law is overturned or otherwise revised, is inadequate because it "does not directly pertain to the ISP Remand Order as the Interconnection Agreement does not deal with compensation for ISP bound traffic" (GNAPs Brief at **54).** According to GNAPs. the ISP Remand Order deserves "special attention" because it is currently being revisited by the FCC and its outcome is uncertain (id.). GNAPs does not provide explicit contract language on this issue, but instead requests a policy determination from the Department (id. at **53).**

b. Verizon

Verizon argues that the agreed upon change-in-law provisions contained in General

Terms and Conditions §§ 4.5 and 4.6 "squarely address any future reversal or modification to the ISP Remand Order and, thus, there is no need for a specific niche provision that would address the ISP Remand Order" (Verizon Brief at 57). Moreover, Verizon states that GNAPs' counsel conceded this point during the arbitration hearing (id., citing Tr. at 179).

3. Analysis and Findings

GNAPs and Verizon appear to agree that a judicial reversal or modification of the ISP Remand Order may require renegotiation of the affected provisions of their interconnection agreement. At issue is whether the ISP Remand Order deserves "special attention" above-and-beyond Verizon's standard change-in-law language. As noted by Verizon, in response to a question from the Department, GNAPs' counsel conceded that specific focus on the ISP Remand Order was not necessary when he stated that "[i]n other states where we have not prevailed on this issue for one reason or another, we are of the opinion that Verizon's language will still enable us to enforce Federal law in terms of the arbitrated contract" (Tr. at **179).** Accordingly, the Department finds GNAPs' proposal to include an express and specific change-in-law provision concerning reciprocal compensation. in the event of a future reversal or modification to the FCC's ISP Remand Order, unnecessary.[33] We find that the non-disputed change-in-law language contained in General Terms and Conditions §§ 4.5 and 4.6 is sufficient to address any future reversal or modification of the ISP Remand Order.

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[33] We note that this finding is consistent with the Virginia Order. See Virginia Order at ¶¶ 251, 254.

Turning to the contract language in dispute, we find as follows.[34] First. GNAPs cites to Glossary §§ 2.42 (Inside Wire or Inside Wiring) and 2.56 (Main Distribution Frame), and Interconnection Attachment § 6.1.1, as related to Issue 5, but these sections do not relate to Issue 5. Nor do they contain any disputed contract language. Accordingly, there is no need to render a decision on these sections.

Second, GNAPs fails to adequately support its proposed language in Glossary §§ 2.43, 2.74, and 2.75, Additional Services Attachment § 5.1, and Interconnection Attachment §§ 7.3.3 and 7.3.4. Consequently, we adopt Verizon's language. We note that, with respect to Glossary § 2.75 (Reciprocal Compensation), we find Verizon's proposed definition more complete.

Third, we adopt Verizon's proposed language in Interconnection Attachment § 7.4. We find that it is consistent with 47 C.F.R. § 51.711, which provides for symmetrical reciprocal compensation.

E. Whether Two-Way Trunking Should Be Available to GNAPs at GNAPs' Request? (Arbitration Issue No. 6)

1. Introduction

GNAPs seeks authority to request Verizon to provide two-way trunking at GNAPs' sole discretion. Verizon claims that operational issues for Verizon's network mandate mutual accord between the Parties as to the operational and engineering aspects of the two-way trunks

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34 GNAPs also references Glossary §§ 2.57 (Measured Internet Traffic), 2.76 (Reciprocal Compensation Traffic), and 2.92 (Toll Traffic) as related to Arbitration Issue No. 5. We addressed the disputed language in these sections in our discussion of Arbitration Issue No. 3, supra, where we adopted Verizon's proposals.

between them.

2. Positions of the Parties

a. GNAPs

GNAPs contends that there are now, and will likely be in the future, disagreements between Verizon and GNAPs over the operational responsibilities and design parameters associated with two-way trunks (GNAPs Brief at 58). GNAPs claims that these disagreements result from the "onerous restrictions imposed by Verizon's proposed contract language upon Global's ability to order trunking facilities" (id.). For example, GNAPs argues that Verizon's proposal for GNAPs to forecast its traffic terminating on Verizon's network and Verizon's traffic terminating on GNAPs' network is "discriminatory and burdensome" (id.).

GNAPs instead proposes that each party forecast the traffic that it expects will terminate on the other carrier's network (GNAPs Brief at 58, citing Petition, Exh. B, Glossary §§ 2.93-95: Interconnection Attachment §§ 2.2-2.4, 5, 6, 9). GNAPs further proposes modifications which: (1) exclude measured Internet traffic; (2) replace "intrastate traffic" with "other traffic"; (3) remove restrictions on the manner of connection; (4) impose industry standards for equipment used in provisioning: (5) assure equality in service quality and provisioning through the ASR process; (6) equalize trunk underutilization restrictions; (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due; (8) eliminate restrictive subtending arrangement requirements: and, (9) clarify the definition of "traffic rate" (id. at 58-59). According to GNAPs, "[t]hese proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by

Verizon" (id. at 59) (footnote omitted).

b. Verizon

Verizon agrees that GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection, pursuant to 47 C.F.R. § 51.305(f) (Verizon Brief at 72). However, Verizon states that because two-way trunks present operational issues for Verizon's own network, "the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them" (id.). In the hearing in response to a question from the Department, Verizon summarized its position on this issue:

> Again, Verizon's position is, you know, we don't have a problem with two-way trunks. It's just you need to lay some ground rules. And it could impact the integrity of [Verizon's] network because of sizing, blocking, utilization, stuff like that. We haven't had a problem with other CLECs agreeing to these terms, and actually it's worked out where traffic is flowing in both directions.

(Tr. at 186-187). According to Verizon, GNAPs' proposed contract language on this issue presents operational and technical problems for Verizon (Verizon Brief at 72).

3. Analysis and Findings

Pursuant to FCC rules, GNAPs' has the option to elect two way-trunking if two-way trunking is technically feasible. See Local Competition Order at ¶ 219; 47 C.F.R. § 51.305(f). But, the issue for the Department's resolution in this proceeding is whether GNAPs may dictate all operational and engineering aspects of the two-way trunks. The Department agrees with Verizon that two-way trunking presents operational and technical problems for Verizon's own network, and consequently, the Department must take into consideration Verizon's right, as "owner and manager of its network," to maintain its network integrity. See Tariff No. 17

Order at 148. The Department therefore rejects GNAPs' proposal for sole discretion over the operational responsibilities and design parameters of two-way trunks between the Parties. Accordingly, the Department adopts Verizon's proposed language for Interconnection Attachment § 2.4.2. Because two-way trunks affect operational issues of Verizon's network, the Department finds it reasonable for the Parties to mutually agree on the initial number of two-way trunks that the Parties will use.[35] Additionally, we adopt Verizon's proposal in Interconnection Attachment § 2.4.12 where Verizon would be able to disconnect trunks that are operating under 60 percent utilization. The Department finds this language appropriate for Verizon to maintain its network integrity and manage its network efficiently.

With respect to other disputed contract language, we find as follows. First, GNAPs fails to support its proposed language for Glossary §§ 2.94-2.95,[36] and Interconnection Attachment § 2.4.14. Sections 2.94-2.95 establish rating and billing parameters for interconnection trunks, which the Department finds appropriate for this interconnection agreement. For Interconnection Attachment § 2.4.14, GNAPs fails to support why it should be

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35 We also adopt Verizon's proposed language concerning one-way interconnections trunks in Interconnection Attachment §§ 2.2.3, 2.3.1 and 2.3.1.1. Furthermore, we find that Verizon's proposed language in § 2.3.1 specifies the terms and conditions for traffic from GNAPs to Verizon. GNAPs proposes language that references traffic exchanged in both directions (i.e., from GNAPs to Verizon and from Verizon to GNAPs), which not only confuses the issue because one-way interconnection trunks are by definition for traffic in one direction, but also is unnecessary considering that § 2.3.2, which is undisputed, outlines the terms and conditions for traffic from Verizon to GNAPs.

36 GNAPs cites to Glossary §§ 2.93-2.95 as related sections to the issue of two-way trunking. Section 2.93 is entitled "Toxic or Hazardous Substance" and both Parties agree on the contract language for this section. The Department therefore assumes that GNAPs intended to reference §§ 2.94-2.96.

entitled to an expedited period for replacing two-way interconnection trunk groups with one-way interconnection trunk groups, or even if such an expedited process is technically feasible or commercially viable. The Department finds that Verizon's proposed language for Glossary §§ 2.94 and 2.95, and Interconnection Attachment § 2.4.14 is reasonable and adopts it accordingly.

Second, Verizon claims that it does not understand what GNAPs is intending to accomplish with its edits to the definition of "Trunk Side" in Glossary § 2.96 (see Verizon Brief at 81). GNAPs has not explained its proposed changes. Accordingly, the Department finds that GNAPs has not properly presented and supported its proposal and hereby adopts Verizon's proposed language in § 2.96. We find Verizon's definition is clearer and more detailed than GNAPs' proposed definition.

Third, GNAPs also fails to explain why its proposed language in Interconnection Attachment §§ 2.2.4 and 2.4.11 is necessary or appropriate. The Department finds GNAPs' language in Interconnection Attachment §§ 2.2.4 and 2.4.11, especially in regards to "originating Party" and/or "terminating Party," confusing and unclear. We also agree with Verizon that the addition of the term "originating patty" is "nonsensical" considering that both Parties originate traffic over two-way trunks (see Verizon Brief at 79). In contrast, Verizon's proposed language is consistent with Department precedent on an ILEC's right to manage its network, as discussed above. Additionally, the Department further finds it reasonable for GNAPs to bear the responsibility to submit an Access Service Request ("ASR")to augment a trunk as proposed by Verizon in Interconnection Attachment § 2.2.4. Accordingly, we find

Verizon's proposal reasonable and therefore adopt Verizon's proposed language.

Fourth. Verizon offers no compelling reason why language requiring Verizon to "reasonably accept ASRs submitted by GNAPs" is unnecessary or undesirable. GNAPs' proposal simply provides GNAPs with assurances that its ASRs will not be unreasonably denied. Accordingly, we find GNAPs' proposal reasonable and adopt GNAPs' proposed language in Interconnection Attachment § 2.4.10.

Fifth, we also adopt GNAPs' proposed language in Interconnection Attachment §§ 2.4.3 and 2.4.6. The Department finds it reasonable to specify in § 2.4.6 that the equipment be required only "where technically feasible." Regarding Interconnection Attachment § 2.4.3, as discussed above in relation to Arbitration Issue Nos. 1 and 2, and in accordance with Department precedent, GNAPs has the right to designate its POI at its own discretion.

Sixth, because GNAPs customers are primarily ISPs, the majority of traffic between GNAPs and Verizon originates on Verizon's network and terminates on GNAPs' network. Thus, the Department finds that GNAPs is in a better position to forecast trunk requirements for traffic originating and terminating on GNAPs' network. Accordingly, the Department adopts Verizon's language for Interconnection Attachment § 2.4.4.

Seventh, we see no reason to exempt Verizon from performance standards in connection with two-way interconnection trunks as Verizon has proposed in Interconnection Attachment § 2.4.13. Nor has Verizon provided any reason for us to do so. We understand that implementation of two-way trunking is not entirely within Verizon's control, however, we find that Verizon's proposal to exempt itself from meeting performance standards in connection

with two-way trunks goes *too* far, and that more reasonable alternatives exist to address any lack of control. For instance, **a** "stopped clock" approach may be utilized for CLEC-caused delays in provisioning. Accordingly. § **2.4.13** should be stricken in its entirety, as GNAPs has proposed.

Eighth, we adopt Verizon's proposed Interconnection Attachment § **2.4.16.** The term "Proportional Percentage of Use" ("PPU") is a billing factor that addresses the traffic flow, and its use as a billing factor is the most equitable way to apportion expenses when actual traffic data is available. ***But,*** the PPU cannot be determined in the absence of actual usage data, e.g. for the first billing cycle after a two-way trunk is established. Verizon's proposal *to* apportion expenses equally when actual usage data is absent is fair, and we adopt it. Moreover, Verizon's proposal is standard language for interconnection agreements in Massachusetts and other states (see Tr. at **184).** Accordingly, the Department finds Verizon's proposed language for recurring charges in Interconnection Attachment § **2.4.16** is reasonable. The Department, however, rejects Verizon's proposed language for nonrecurring charges in Interconnection Attachment § **2.4.16**. Verizon is a co-user cf, and benefits from, the entire facility on which the two-way trunk rides. Accordingly, we find GNAPs' proposal *to* apportion nonrecurring charges equally for the entire facility on which the two-way trunk rides is appropriate. We adopt GNAPs' proposed language regarding nonrecurring charges **in** Interconnection Attachment § **2.4.16.**

Finally, we adopt Verizon's proposed Interconnection Attachment § **9.2** (Access Toll Connecting Trunk Group Architecture). GNAPs has failed to support or explain its proposed

changes. We agree with Verizon that GNAPs' proposal appears to violate routing and tandem subtending arrangements in the Local Exchange Routing Guide.

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)

1. Introduction

GNAPs opposes Verizon's incorporation by reference of other documents such as tariff rates, terms and conditions, and the CLEC Handbook, into the interconnection agreement. GNAPs argues that it is inappropriate to incorporate by reference other documents instead of fully setting out those provisions in the agreement.

2. Positions of the Parties

a. GNAPs

GNAPs maintains that the interconnection agreement should be the sole determinant of the rights and obligations of the Parties, yet GNAPs states that Verizon's proposal contains numerous citations and references to tariffs and other documents, such as the CLEC Handbook, which would, in effect, permit Verizon to change the terms and conditions of the interconnection agreement without GNAPs' assent (GNAPs Brief at 59). As a result, GNAPs claims, it would have no certainty over the very terms it has negotiated or arbitrated (GNAPs Petition ¶ 62).

In response to Verizon's argument that tariff filings are public documents which GNAPs has the right to contest, GNAPs contends that Verizon "misses the point" for several reasons (GNAPs Brief at 60). First, GNAPs asserts that a contract evidences a meeting of the minds

and should not change because Verizon "decides it should" (id.). Second, GNAPs states that to become aware of a tariff filing would require it to investigate daily each and every tariff filing to determine the potential impact on its interconnection agreement (id.). Third, GNAPs argues that it would incur additional expenses over and above those related to the negotiation and arbitration of the contract (id.). Fourth, GNAPs notes that the CLEC Handbook is subject neither to Department review or approval (GNAPs Reply at **24).**

Moreover, GNAPs contends that Verizon paints GNAPs proposal as an attempt to engage in regulatory arbitrage, but its proposal actually attempts to constrain Verizon from engaging in regulatory arbitrage by defeating contract language (id.). GNAPs explains that, although Verizon contends that GNAPs seeks to enjoy the lower of its interconnection prices or more recently determined prices set by the Department, if and when prices actually change due to a Department determination, this change constitutes a "change of law" which could be implemented pursuant to operation of that provision in the contract (id., citing §§ **4.5** and **4.6** of the General Terms and Conditions).

Lastly, GNAPs contends that because Verizon's references to its tariff and other documents are pervasive in the interconnection agreement, it has not proposed specific contract language related to this issue, but rather asks the Department to render a policy ruling that the interconnection agreement should be self-contained (GNAPs Reply at **23).** Specifically, GNAPs urges the Department not to permit tariffs to supersede interconnection agreement rates, terms or conditions (GNAPs Brief at **60).** Additionally, GNAPs requests that the Department permit Verizon to cross reference its tariffs solely for the purpose of utilizing its

tariffed rates for UNEs and collocation (GNAPs Petition ¶ 63). GNAPs further requests that definitions contained in Verizon tariffs should not prevail over definitions within the Parties' interconnection agreement, and that "Tariff" should be defined so as to exclude incorporation of future tariffs (GNAPs Brief at 60-61).

GNAPs indicates that references to other documents occur throughout the agreement including in the following sections: General Terms and Conditions § 1; Interconnection Attachment §§ 1, 8, 9, and 10.6; Network Elements Attachment §§ 1.1, 1.3, 4.3, 4.4.6, 6.2 and throughout contract: and the Pricing Attachment (GNAPs Petition ¶ 64).

b. Verizon

Verizon maintains that tariff terms and conditions only supplement the terms and conditions of the interconnection agreement (Verizon Brief at 83). More specifically, Verizon explains that, under proposed General Terms and Condition § 1.2, the Parties would rely on the appropriate Verizon tariff for applicable rates: but. when there is a conflict between the tariff and the interconnection agreement, the interconnection agreement's terms and conditions supersede terms and conditions contained in the tariff (id.). Accordingly, Verizon asserts its proposed language is consistent with the Department's policy that interconnection agreement provisions control unless the Parties agree otherwise (id. 83-84, citing Tariff No. 17 Order).

With regard to prices, Verizon notes that the Parties agreed that applicable tariffs are the first source of prices for services under the agreement (Verizon Brief at 84). Despite this agreement, Verizon asserts that GNAPs' contract modifications freeze current tariff prices and create an arbitrage opportunity that could render the tariff process moot (id.). Verizon insists,

on the other hand, that its proposal ensures that prices are set and updated in a manner that complies with Department guidelines, and is also efficient, consistent, fair and nondiscriminatory (id.). In fact, Verizon states, Verizon's proposal would conserve Department resources by relying on Department-approved prices and rates (id.).

Moreover, Verizon notes that the tariff process is not unilateral, and that, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs would not be compelled to review the details of each tariff filing (id. at 85-86). Additionally, Verizon points out that the Illinois, New York, and Ohio Commissions, and the Rhode Island arbitrator, agreed with Verizon's position (Verizon Brief at 86).

Finally, Verizon argues that GNAPs' broad challenge to the appropriateness of referencing tariffs in the interconnection agreement does not apply to many of the contract sections in which GNAPs has deleted tariff references, some of which GNAPs neglects to list. Furthermore, Verizon contends that GNAPs' failure to address each section leaves many proposed contract changes unsupported (Verizon Brief at 88). Accordingly, Verizon urges the Department to reject GNAPs' proposed changes (id.).

3. Analysis and Findings

As a matter of policy, the Department does not oppose the incorporation of documents, including tariffs, by sufficiently specific reference. In particular, we find cross-referencing Verizon tariffs for prices to be reasonable, a practice which GNAPs did not oppose in its Petition (see GNAPs Petition ¶ 63). Moreover, we do not find that **GNAPs'** concerns about the tariff process persuade us otherwise. As Verizon notes, the tariff process is not unilateral

and GNAPs may always participate in the tariff process to protect its interests. In fact, Verizon is obligated to provide electronic notification of proposed tariff changes to all CLECs with whom it has resale and interconnection agreements. Tariff No. 17 Order at 22-23.[37] This notice is provided on or about the same day that the proposed tariff changes are filed with the Department. Id. Thus, daily investigation by a CLEC is not necessary.[38] Additionally, we find that costs incurred in order to monitor new tariff filings to be part of a CLEC's normal cost of doing business. Accordingly, we reject GNAPs' request to define "tariff" to preclude future tariffs, which could, in effect, "freeze" prices in the interconnection agreement by limiting the reference to tariffs in effect on the day of a contract's execution. Accordingly, we approve Verizon's proposed language in its Pricing Attachment, as well as Network Element Attachment §§ 1.8 and 4.3.

As for references to documents other than tariffs, we find as a general matter that references to other such documents to be reasonable, even though modifications to these documents may not be reviewed or approved by the Department. To begin, we note that GNAPs has not actually identified any objectionable document reference in the Agreement, other than to tariff references, for our review. In addition, we find that the purpose of documents such as the CLEC Handbook are to facilitate the business relationship between

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37 Tariff No. 17 contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

38 Furthermore, we note that of the 38 tariffs filed in Massachusetts from July 1 to October 15, 2002, none of the tariffs contained substantive changes to services or rates that would impact any interconnection agreement between Verizon and GNAPs (see RR-DTE-6).

Verizon and a CLEC, and thus, the potential is small for the CLEC Handbook to materially affect the terms and conditions of the interconnection agreement in a way adverse to CLECs.

As to tariff terms and conditions superceding terms and conditions in the interconnection agreement, we previously determined that tariffs generally do not supersede negotiated or arbitrated terms. Tariff No. 17 Order at 19. Thus, our Tariff No. 17 Order already provides for that which GNAPs requests. Moreover, we find Verizon's proposed General Terms and Conditions §§ 1.1 and 1.2 to be more consistent with our policy, and approve these sections accordingly.

On the other hand, we are not necessarily opposed to GNAPs' suggestion to incorporate specific provisions of tariffs, or other documents, into the interconnection agreement directly.[39] But, GNAPs' failure to identify specifically which provisions it seeks *to* have incorporated in full from the tariff or other document, and the basis for incorporating that provision, prevents **us** from properly considering this approach. GNAPs may negotiate for insertion of specific provisions contained in documents, including tariffs or the CLEC Handbook, into the interconnection agreement, but we will dismiss any request for the insertion of specific language from other documents into the interconnection agreement which conflicts with any of the findings made in this order, unless agreed to, in whole, by both Parties.

Finally, in response to RR-DTE-7, Verizon states that if the Parties explicitly agree that

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39 Usually, rehearsal, in the body of a contract, of wording found in other, separate documents is unnecessary, for a contract "writing may incorporate other documents by reference and may indicate a method by which to determine the unstated terms that were actually agreed upon." Corbin on Contracts, § 95, n.12. But, the parties are free to incorporate specific provisions if they so choose.

an applicable tariff controls the terms of the offering, then "where an applicable tariff is incorporated by reference into an interconnection agreement, and the specific provision in the tariff was not provided in the interconnection agreement, the tariff provision would control since it was clearly the intention of the Parties to incorporate the tariff." We address this below.

In our Tariff No. 17 Order, at 18, we stated that the "Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC." We therefore held that "[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering." Id. at 19. Additionally, we stated that "the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which carriers may choose to purchase services not addressed in their interconnection agreements." Id. at 21.

Consequently, we find that incorporation of additional terms and conditions from other documents by mere reference to the document is inconsistent with the policy we set forth in our Tariff No. 17 Order unless the Parties explicitly intend to incorporate each and every additional term by the reference. By "additional," we mean terms and conditions in the tariff, or other document, which are not inconsistent with the terms and conditions in the interconnection agreement, and for which there may, or may not, be a corresponding provision contained in the interconnection agreement. Permitting Verizon to impose all such terms and conditions

from documents incorporated by reference without the explicit assent of the CLEC would allow Verizon to achieve a level of conformity in its agreement with different CLECs that would be inconsistent with our, and the Act's, preference for contracts that reflect the individual business strategies and priorities of each CLEC. Accordingly, we conclude that, where the Parties explicitly provide that an applicable tariff, or document, controls the terms and conditions of an offering, the agreement shall make clear that the Parties explicitly agree that all provisions in the tariff, or other document, which are not inconsistent with provisions in the interconnection agreement, or that are not addressed at all in the interconnection agreement, are also controlling.

In conclusion, we note that we do not directly address each and every provision in the interconnection agreement which contains a document or tariff reference: however, we expect that our findings above will allow the Parties to submit conforming contract language for all such provisions in the agreement.

G. Should the Interconnecti Specified Policy Forms? (Arbitration Issue No. 8)

1. *Introduction*

Verizon's proposed insurance requirements include the following: Commercial General Liability of $2 million: Excess Umbrella Liability of $10 million; Worker's Compensation of $2 million: and Commercial Motor Vehicle Insurance of $2 million. GNAPs proposes to reduce the limits to $1 million for the first three items, and to delete the requirement for Commercial Motor Vehicle Insurance. GNAPs also believes the precise form of insurance should be left to