

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Global NAPs South, Inc.  
For Arbitration pursuant to 47 U.S.C.  
§252(b) of Interconnection Rates,  
Terms and Conditions with Verizon  
Pennsylvania Inc.

Docket Number  
A-3 10771F7000

**RECOMMENDED DECISION**

Before  
**HERBERT SMOLEN**  
Administrative Law Judge  
Acting as Arbitrator

**HISTORY OF THE PROCEEDING**

On January 4, 2002, Global NAPs South, Inc. (Global or GNAPs) filed a Petition for Arbitration (Petition) pursuant to Subsection 252(b) of the Federal Telecommunications Act of 1996, 47 U.S.C. §252(b) (Federal Act) and applicable Commission rules and regulations, to resolve ~~certain~~ disputed issues with Verizon Pennsylvania Inc. (Verizon) in order to establish an interconnection agreement with Verizon in areas in which Verizon provides service.

Verizon filed a Response to Global's Petition on January 28, 2002. Verizon's proposed interconnection agreement, without Global's proposed revisions, is attached to Verizon's Response as "Exhibit B." Global's proposed revisions are set forth in "Exhibit B" attached to Global's Petition. In addition, in ~~its~~ Response, Verizon also identified additional disputed issues for resolution, as is permitted under 47 U.S.C. §252(e)(4).

By **notice** dated February 15, 2002, the matter was assigned to the undersigned Administrative Law Judge and a telephonic **prehearing** conference was held on March 8, 2002 whereat a **procedural** schedule **was** established. **This** schedule was later modified by **agreement** of the parties. The parties also agreed that certain issues would be **addressed through** written testimony, cross-examination and briefings, while other **issues** would be addressed **only** through briefings.

**An** arbitration hearing was held on July 9, 2002. Global presented the testimony **of two** witnesses [Dr. Lee Selwyn (Global Exhibits 1 and 2) and William E. Rooney]; Global also introduced **Cross-Exam** Exhibits Nos. 1-6. Verizon presented the testimony of **six** witnesses (Pete D'Amico, Karen Fleming, Terry Haynes, William Munsell, Jonathan B. Smith and Kevin C. Collins). Verizon also introduced four exhibits. The record consists of 218 pages of transcript and the aforesaid exhibits. Briefs **and** Reply Briefs were filed by the parties.

It is significant to **note** that the parties agreed to waive the **federal** scheduling guidelines for arbitrating interconnection agreements in order that the Pennsylvania Public Utility Commission may render its decision **at** the first Agenda **Meeting** following a sixty-day **period** after service of the Recommended Decision in this matter. A **true** and correct copy **of** said waiver is appended hereto and marked Attachment I.

### **DISCUSSION**

In **this** proceeding the parties have designated certain issues to be determined. The principal issues are as follows:

1. Whether or not GNAPs may designate a single point of interconnection (**FOI**) within a LATA.
2. What is the point of financial responsibility; **i.e.**, who should pay the transport costs?
3. When GNAPs defines local calling areas differently than Verizon's local calling areas what is the impact on local carrier compensation?
4. 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?
5. Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?
6. Should limitations be imposed on Global's ability to obtain available Verizon dark fiber?
7. Should two-way trunking be available to GNAPs at GNAPs' request?
8. Is it appropriate to incorporate by reference other documents, including tariffs, into the agreement, instead of fully setting out those provisions in the agreement?
9. Should Verizon's performance standards language incorporate a provision stating that if state or federal performance standards are more stringent than the federally imposed merger performance standards, the parties will implement those more stringent requirements?
10. Should the interconnection agreement require Global to obtain excess liability insurance coverage of over \$10,000,000 and require Global to adopt specified policy forms?
11. Should the interconnection agreement include language that allows Verizon to audit Global's "books, records, documents, facilities and systems?"
12. Should Verizon be permitted to collocate at Global's facilities in order to interconnect with Global?

- 13 The Parties' agreement should recognize applicable law.
- 14 GNAPs should only be permitted to access UNEs that have been ordered unbundled or be allowed access to Verizon's existing network.
- 15. Other Disputed Language

It must also be noted that Issues 1 and 2 are so interrelated that reference to them may be included in both sections of this Recommended Decision relating to those issues.

Issue 1 - Whether or not GNAPs may designate a single point of interconnection (POI) within a LATA.

Both parties agree that GNAPs need only interconnect "at any technically feasible point within Verizon's network per LATA as required by applicable law." 47 U.S.C. §251(c)(2)(B). Thus, to the extent that the contract language does not reflect the applicable law, it should be made consistent with §251(c)(2) of the Act and the FCC's Local Competition Order implementing the Act, wherein the FCC held that "section 251(c)(2) obligates incumbent LECs to provide interconnection within their networks at any technically feasible point."

In this regard, the FCC has stated:

Under the Commission's rules, competitive LECs may request interconnection at *any* technically feasible point. *This includes the right to request a single point of interconnection in a LATA<sup>2</sup>.*

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, Docket No. 96-98 (August 8, 1996) (Local Competition Order)

<sup>2</sup> *Memorandum Opinion and Order, In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia*

and in another proceeding that,

Section 251(c)(2) of the Act gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at *any* technically feasible *point* on that network, *rather than* obligating such carriers to transport traffic to less convenient or efficient interconnection *points*. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.<sup>3</sup>

So too, the United States Courts of Appeals for the Third and Ninth Circuits have explicitly **ruled** that a CLEC has the right to establish a single **FOI** per LATA for the mutual exchange of telecommunications traffic.<sup>4</sup> The Third Circuit recently explained:

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*State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. **00-218**; *In the Matter of Cox Virginia Telcom. 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*, CC Docket No. **00-249**; *In the Matter of 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 Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. **002-51 (DA02-1731) (Rel. July 17, 2002)** ("FCC Virginia Order").

<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd **15499, ¶ 209 (1996)** ("Local Competition Order") (emphasis added); see also *Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Report and Order*, FCC **00-238**, CC Docket No. 00-65, 15 FCC Rcd **18354, ¶ 78** (June 30, 2000) ("Texas 271 order").

<sup>4</sup> See *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d **491** (3<sup>rd</sup> Cir. Nov. 2, 2001) (ruling that it is technically feasible for a CLEC to interconnect at only one point within a LATA and that Verizon failed to prove that it is technically necessary to interconnect at each access tandem serving area); see also, *US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d **1112** (9<sup>th</sup> Cir. 1999) (affirming arbitration decision that required Parties to adopt a single **FOI** based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

The decision where to interconnect and where **not** to interconnect must **be** left to WorldCom, *subject only to concerns of technical feasibility*. Verizon has not presented evidence that it is not technically feasible for WorldCom to interconnect at only one point within a **LATA**. Nor has Verizon **shown** that it is technically necessary for WorldCom to interconnect at each access **tandem serving** area. *The PUC's requirement that World Com interconnect at these additional points is not consistent with the Act.*<sup>5</sup>

It is clear therefore that GNAPs need only interconnect at any technically feasible point within Verizon's network, and to the extent that this **is** not reflected in the proposed agreement, it should be. Same is recommended.

Issue 2 - What is the point of financial responsibility; i.e., who should pay the transport costs?

GNAPs Position – Each party should be responsible for the costs associated with **transporting** its **own** traffic to the point of interconnection (POI) and Verizon is precluded under law from imposing **transport** costs on its side of the POI on Global **through** Verizon's VGRIP proposal.

Verizon's Position – Verizon's proposal does permit *GNAPs* to physically interconnect with Verizon at only one point on Verizon's existing network. However, Verizon seeks to allocate costs to GNAPs based on a geographically relevant interconnection point (VGRIP). Verizon asserts that the interconnection agreement should require GNAPs to pay for **transport** costs caused by GNAPs' potential selection of only one physical **POI** in a **LATA**. Verizon's VGRIP proposal differentiates between the **physical POI** (where carriers physically exchange traffic) and a point **on** the network where **financial** responsibility for the call changes hands. Verizon refers to **this** point as the "Interconnection Point" or "IP."

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<sup>5</sup> *MCI Telecommunications Corp.*, 271 F.3d at 518 (emphasis added).

Recommendation – GNAPs' proposal should be adopted. **As** aforesaid, **Federal** Law clearly provides for Global's right to establish a single point of interconnection (POI) with Verizon in each local Access and Transport **Area** (LATA) in which Global interconnects with Verizon. Federal Law also requires Verizon to bear full financial responsibility for delivering Global-bound traffic from Verizon's customers to the single POI, just **as** Global must deliver Verizon bound **traffic** to the same POI.

Under Verizon's VGRIP proposal, the location **of** GNAPs' interconnection point (IP) will be at a Verizon wire center,<sup>6</sup> or in each Verizon local calling area in which GNAPs chooses to **assign** telephone numbers to its customers.<sup>7</sup> By establishing an IP at a tandem, Verizon **asserts** that it has thus agreed to provide **transport** for GNAPs **beyond** the local calling area from where the call originates and is assuming an additional transport obligation that it did not have prior to interconnection with GNAPs. In either case, Verizon argues that it is offering to GNAPs its choice of interconnection points that **are** located within a reasonable distance of GNAPs' customers originating or receiving the call.

According to Verizon, once it delivers **traffic** to GNAPs' financial demarcation point (the IP), Verizon proposes to make GNAPs financially responsible for delivery of this traffic in order to place at least a portion of the costs in the hands of GNAPs which, according to Verizon, guarantees **proper** financial incentives in place to ensure fair

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<sup>6</sup> **See** Verizon Interconnection Attachment §7.1.1 ("In the case of GNAPs **as** a Receiving Party [Verizon originates traffic to GNAPs], Verizon may request, and GNAPs will then establish, geographically-relevant IPs by establishing an GNAPs-IP at a Collocation site at each Verizon Tandem in a LATA (or such other wire centers in the LATA designated by Verizon), or those NXXs serving equivalent Verizon rate centers which subtend the Verizon Tandem. .").

<sup>7</sup> **See** Verizon Interconnection Attachment 57.1.1.2 ("At any time that GNAPs establishes a Collocation site at a Verizon End Office, then either Party may request that such GNAPs Collocation site be established **as** the GNAPs'IP for traffic originated by Verizon Customers served by that End Office").

competition. Further, asserts Verizon, GNAPs may either purchase dedicated transport from Verizon at its cost-based rates or self-provision the ~~transport~~.

Additionally, Verizon *argues* that if GNAPs chooses not to establish an IP at a tandem or end office, the financial demarcation point – in *this* case a "virtual IP" – would be at the end office serving the Verizon customer that places the call. When Verizon transports this traffic, wherever it may be located in a LATA, Verizon maintains that GNAPs should be financially responsible for the ~~transport~~, tandem switching, if any, and any other costs from the "virtual IP" to GNAPs' POI.

While Verizon's proposal allows for one POI within a LATA, the difficulty with Verizon's proposed contract language is that it provides for an artificial distinction between the point of interconnection and the interconnection point. –

In this regard, Global *seeks* a ruling consistent with the Commission's prior ruling,<sup>8</sup> i.e., that each party is responsible for transporting telecommunications traffic on its "side" of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating ~~traffic~~ from the POI to the designated end user via reciprocal compensation. As aforesaid, such a ruling would be consistent with *this* Commission's precedent and is supported by Federal Law and is reinforced by FCC rules and decisions.<sup>9</sup>

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<sup>8</sup> The Commission has held in the Focal arbitration that Focal is entitled to keep the POI and IP at the same location. By designating the IP and POI as the same location, Focal would not be subject to Verizon's transport charges because financial responsibility for ~~traffic~~ would pass at the same point that the physical responsibility for such traffic passes. See *Petition of Focal Communications Corporation of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310630F0002, Opinion and Order, 43-44 (PA PUC Aug. 17, 2000).

<sup>9</sup> See 47 C.F.R. §§ 51.305(a)(2), 51.703(b); see also Oklahoma/Kansas 271 Order at ¶¶233-35 (these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network).

Thus, in the Virginia Arbitration, the FCC found **that**:

The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.

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Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point. Accordingly, we adopt the petitioners' proposals.

*FCC Virginia Order ¶¶ 52, 53.*<sup>10</sup> Global's position in the instant matter is consistent with the FCC's interpretation of the relevant governing laws. Moreover, its position is consistent

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*In the Matter of 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 Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("FCC Virginia Order")*

with other **State** Commissions' **Orders**. Thus, the New York Commission rejected Verizon's attempt to avoid paying these **costs** just **as** the FCC did and explained that it would "keep in place the existing **framework** that makes each party responsible for the costs associated with the **traffic** that their respective customers originate **until** it reaches the point of interconnection."<sup>11</sup> The New York Commission explained "that a **carrier** is responsible for the costs to **carry** calls on its own network."<sup>12</sup> The Illinois Commerce Commission also found ". . . that Ameritech and Global should be responsible both financially and physically **on** its side of the single POL"<sup>13</sup>

For all of the foregoing reasons, it is recommended **that** Global's proposed contract language on this point should be adopted.

Issue 3 – **When** Global NAPs defines local calling **areas** differently than Verizon's local calling areas, what is the impact on local carrier compensation?

GNAPs' Position – Global should be permitted to broadly define its own local calling areas without imposition of access charges

Verizon's Position – Verizon's local calling area should be the basis for assessing reciprocal compensation. This does **not** force GNAPs to adopt Verizon's local calling areas for retail purposes because regardless of how the interconnection agreement defines local calling areas for reciprocal compensation purposes, GNAPs will remain free to establish its own local calling **areas** for purposes of marketing its services to customers.

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<sup>11</sup> See *AT&T Arbitration Order*, 2001 N. Y. PUC LEXIS 495, at \* 50 (July 30, 2001); see also *Petition of Global Naps, Inc., Pursuant To Section 252 (B) of The Telecommunications Act of 1996 For Arbitration To Establish An Inter-carrier Agreement With Verizon New York Inc., Case 02-C-0006* (NYPSC May 22, 2002).

<sup>12</sup> *Id.*  
<sup>13</sup> *Arbitration Decision, Global Naps, Inc. Petition for Arbitration Pursuant to Section 252 Of The Telecommunications Act of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech, 01-07-86 at 8* (May 14, 2002).

Recommendation – Global's proposal should be adopted. Global wants to define its own local calling areas (LCAs) without having to conform to Verizon's pre-existing LCA boundaries.<sup>14</sup>

One of the primary goals of introducing competition into the local telecommunications market **has been** specifically to encourage and stimulate innovation in the nature of the services that are being offered. Global asserts that there is no technical or economic reason for a new competitor to maintain the ILEC's present local calling areas and that LATA wide local calling **areas** promote competition and benefit the consumer and **will** allow Global to compete with local providers **as well as** interexchange carriers (EXCs). Moreover, continues Global, it exerts downward pressure on current intraLATA access services by offering an innovative competitive telecommunications product. The Administrative Law Judge agrees.

Global cites the decision of the New York Commission which has approved LATA-wide local calling areas for the purposes of intercarrier compensation.<sup>15</sup> In addition, continues Global, the Florida Commission has approved the GNAPs' position of defining LCAs for its retail customers and for purposes of intercarrier compensation between it and Verizon. Global also points out that the Florida Commission recently stated,

The Commission has jurisdiction to define local calling areas, and recommends that the originating carrier's local calling area

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<sup>14</sup> Petition at 18.  
<sup>15</sup> *Petition of Global Naps, Inc. Pursuant to Section 252(B) of The Telecommunications Act of 1996, For Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc.*, Case 02-C-0006 (N.Y. P.S.C. May 22, 2002) ("Global New York Order").

be used as the default local calling area for purposes of reciprocal compensation.<sup>16</sup>

Further, Global points out that on September 10, 2002, the Florida Commission issued a ruling on the issue of reciprocal compensation and local calling areas.<sup>17</sup> There, the Florida Commission, recognizing that the ILEC parties had dealt extensively with the potential threat to uniform support if a system were adopted that reduced access revenues<sup>18</sup> and even though Verizon presented testimony of projected losses, determined that the originating party's Local Calling Area should be used to define intercarrier compensation.<sup>19</sup> The Florida Commission did so because, in its words, "[u]sing the ILEC's retail local calling area appears to effectively preclude an ALEC (ALEC is the term used in Florida for CLEC) from offering more expansive calling scopes. Although an ALEC may define its retail local calling areas as it sees fit, this decision is constrained by the cost of intercarrier compensation. An ALEC would be hard pressed to offer local calling in situations where form of intercamer compensation is access charges, due to the unattractive economics."<sup>20</sup>

In the instant matter, by adopting Global's proposal, competition on the basis of local calling areas will be promoted and Global will be able to exert the kinds of competition contemplated by the Act. Verizon then may respond in a competitive manner, e.g., expand its calling areas, reduce charges, etc. If Verizon is allowed to assess fees on Global, Global will be economically prohibited from defining larger local calling areas then

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<sup>16</sup> *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Issue 13 at 2 of Vote Sheet (August 20, 2002).

<sup>17</sup> *In re: Investigation into Appropriate Methods to compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TT (Phases II and IIA), Order No. PSC-02-1248-FOF-TT (Sept 10, 2002). (Florida Order.)

<sup>18</sup> *Id.* at 45

<sup>19</sup> *Id.* At 55

<sup>20</sup> *Id.* at 53

Verizon's. There is no reason to retard competition. The Commonwealth of Pennsylvania and its **consumers** should be able to reap the benefits of Global's proposal on **this** issue.

For all of the foregoing reasons, it is recommended that Global's proposal be adopted.

Issue 4 – 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?

GNAPs' Position – Yes. The primary function of NXX codes is for network **traffic routing**, not rating purposes. Accordingly, NXX codes no longer need to be associated with any particular customer location.

Verizon's Position – No. If GNAPs wishes to use a virtual NXX arrangement to mimic other toll-free calling services, GNAPs is not entitled to receive reciprocal compensation for this arrangement, and should provide Verizon fair compensation for the use of Verizon's network in providing such a service.

Recommendation – Verizon's proposal should be adopted. The category of traffic involved in Issue 4 is **traffic** with endpoints in different Verizon local calling **areas** but with NPA-NXX codes associated with the same *Verizon* local calling **area**. Verizon **points** out that by assigning NXX codes, GNAPs *can* create a situation in which a *Verizon* end-user can call a GNAPs customer outside the Verizon end-user's local calling zone without paying a toll charge, thus expanding the Verizon end-user's local calling zone without providing appropriate compensation to Verizon for the transport outside the local calling area. This situation, *i.e.*, the virtual NXX assignment tricks Verizon's billing systems into failing to levy toll charges on the Verizon end-user and into payment of reciprocal compensation to GNAPs.

Verizon explains that there **are** other services, such as Verizon's FX service or a 1-800 service, that allow **GNAPs** to **offer** its customer toll-free calling capability while preserving appropriate compensation schemes. Indeed, **argues** Verizon, if GNAPs foregoes use of these alternative services, and instead relies on assignment of virtual NXX codes to provide such a "toll-free" service to its customers, GNAPs should provide **fair** compensation for **use** of Verizon's **network** in providing what amounts to an inbound "toll-free" service.

Verizon also points out that this Commission has rejected GNAPs' position in this regard.<sup>21</sup>

Verizon further argues, and the Administrative Law Judge agrees, that the traffic at issue is clearly **an** interexchange call although the virtual NXX assignment prevents Verizon from assessing toll charges on its end-user placing the interexchange call;

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*Application of MFS Intelenet & Pennsylvania, Inc.*, Docket No. A-310203F0002, *Application of TCG Pittsburgh*, Docket No. A-310213F0002, *Application of MCI Metro Access Transmission Services, Inc.*, Docket No. A-310236F0002, *Application of Eastern Telelogic Corp.*, Docket No. A-310258F0002, Opinion and Order, Pennsylvania Public Utility Commission (adopted July 18, 1996) at 19 (holding that CLECs must assign NXX codes to customers that conform to the same local calling area/rate centers where customers are actually located in order "to avoid customer confusion and to clearly and fairly prescribe the boundaries for the termination of a local call and the incurrence of a transport and termination charge, **as** opposed to termination of a toll call in which case an access charge would be assessed.") ("**MFS II Order**"). This was reaffirmed by the Commission in 2000. *Petition & Focal Communications Corporation & Pennsylvania for Arbitration Pursuant to Section 252(b) & the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310630F0002 (adopted August 17, 2000) at 43 n.67 ("**Focal Order I**") ("[A]ny abuse by Focal in assigning telephone numbers to customers using NXX codes that do not correspond **to** the rate centers in which the customers' premises are physically located" . . . "will be deemed as a direct violation of this Order and **our MFS II Order** and will be subject to Civil Penalties for Violations under Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301."). *See also* *Petition of Focal Communications Corporation of Pennsylvania for Arbitration Pursuant to Section 252(b) & the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310630F0002, Opinion and Order (Jan. 24, 2001) at 11 (citing **MFS II Order** for the proposition that CLECs must assign their "customers' telephone numbers with NXX codes that correspond to the rate centers in which the customers' premises **are** physically located," so that applicable access charges can be assessed) ("**Focal Order II**").

and because of the actual end points of the call, it is **traffic** that is exempted from reciprocal compensation under § 251(b)(5) of the Act, **as** the Commission has recognized. In response to these same concerns raised by Verizon's predecessor, Bell Atlantic-Pennsylvania, in an arbitration with Focal Communications, the Commission reiterated its *MFS II* directive that requires assignment of [a CLEC's] customers' telephone numbers with NXX codes that 'correspond to the rate centers in which the customers' premises are physically **located**.<sup>22</sup> In *MFS II*, this Commission explained its rationale **as** follows:

{E}ach CLEC must comply with BA-PA's local calling areas. This is *imperative* to avoid customer confusion and to clearly and fairly prescribe the boundaries for the termination of a local call and the incurrence of a **transport** or termination charge, **as** opposed to termination of a toll call in which case an access charge would be assessed.<sup>23</sup>

Further, the Commission also addressed this issue in its initial ruling in the Focal Communications proceeding:

With regard to BA-PA's argument that Focal escapes any obligation to pay for the use of BA-PA's **transport** network by assigning its customers telephone numbers with NXXs that misrepresent the actual locations of those customers, we agree with Focal that the alleged transport concerns raised by BA-PA are irrelevant in this proceeding because they **are** advanced **as** examples under an existing interconnection agreement between BA-PA and Focal, and not under the agreement that is being arbitrated. (FocalRExc., p. 17). *At the same time, however, we are of the opinion that if the allegations by BA-PA concerning any abuse by Focal in assigning telephone numbers to customers using NXX codes that do not correspond to the rate centers in which the customers' premises are physically located are true, then we admonish Focal to comply with the directives in our MFS II Order and*

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*Focal Order II* at 10-11.

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*MFS II Order* at 26.

*to refrain from this practice.* At any rate, it is more appropriate to address the specifics of violation issues in a separate proceeding.<sup>24</sup>

Moreover, as pointed out by Verizon, this result is in accord with the determinations of the state commissions that have considered the issue, and which have held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area.<sup>25</sup>

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*Focal Order I* at 43 (citations omitted) (emphasis added).

<sup>25</sup>

*See. e.g., Illinois: Illinois GNAPs/Ameritech Arbitration Order* at 15; *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Arbitration Decision, Illinois Commerce Commission Docket No. 00-0332, 2000 III PUC LEXIS 676 at \*7 (Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation"); Ohio: *Ohio GNAPs/Ameritech Arbitration Order* at 11; *Ohio Verizon/GNAPs Arbitration Panel Report* at 9-10; Staff Memorandum, Investigation into Appropriate Methods to Compensate Carriers for Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, Florida PSC Docket No. 000075-TP ("Reciprocal Compensation recommendation") (Nov. 21, 2001) at 68.71, approved at Agenda Conference (Dec. 5, 2001); Texas: *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Revised Arbitration Award, Texas PUC Docket No. 21982 (Aug. 31, 2000) at 18 (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope); South Carolina: *In re Petition of Adelpia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order on Arbitration, S.C. PSC Docket No. 2000-516-C (Jan. 16, 2001) at 7; Tennessee: *In re Petition for Arbitration of the Interconnection Agreement Between Bell South Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Tennessee PSC Docket No. 99-00948 (June 25, 2001) at 42-44, Georgia: *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Final Order, Georgia PSC Docket No. 13542-U (July 23, 2001) at 10-12 ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.") ("Georgia Generic Proceeding"); Maine: Public Utility Commission Investigation into Use of Central Offices Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Maine PUC Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, and Order Disapproving Proposed Service (June 30, 2000); Missouri: *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Order, Missouri

Verizon ~~furth~~er asserts, and the Administrative Law Judge agrees, that the problem with GNAPs' proposal for virtual NXX service is that GNAPs is, in effect, attempting to require Verizon to provide this service ~~free~~ of charge to GNAPs, relying on the fact that these virtual NXX calls ~~are~~ "rated" as "local calls" to Verizon's end-users. In addition, GNAPs proposes that Verizon pay GNAPs reciprocal compensation for this traffic, while ignoring the actual end points of the call. The Administrative Law Judge further agrees that GNAPs' retail marketing of a toll-free calling product to its customers in the guise of virtual NXX does not change the nature of the underlying interexchange traffic for purposes of determining intercarrier compensation. The Administrative Law Judge also agrees that GNAPs should not be permitted to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon for that privilege. Otherwise, GNAPs' virtual NXX proposal would obliterate the longstanding local/toll distinction that guides telephone service pricing policy.

For all of the foregoing reasons, the Administrative Law Judge recommends that the Commission adopt Verizon's position on this issue.

Issue 5 – Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?

GNAPs' Position – **GNAPs** seeks inclusion of a specific provision that will allow renegotiation if the law pertaining to intercarrier compensation for **ISP** traffic is changed.

Verizon's Position – Verizon asserts that the general "change of law" provision (sections **4.5** and **4.6**) will adequately address any subsequent changes in law specifically addressing intercarrier compensation.

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PSC Case No. TO-2001-455 (June 7, 2001) at 31 (finding VFX traffic "not classified as a local call").

Recommendation – GNAPs' proposal should be adopted. The issue here is whether the language proposed by Verizon is adequate. Global's concern is that since the agreement does not deal with compensation for ISP-bound **traffic**, its general "change of law" provisions will not adequately address that subject.

It is to be noted that there **is** continuing uncertainty surrounding whether ISP-bound calls **are** local traffic, subject to reciprocal compensation under **47 U.S.C. §251(b)(5)**, and therefore the proposed interconnection agreement **should** be made explicitly applicable to any changes resulting from the FCC's reconsideration of the ISP Remand **Order**. There has been no convincing **argument** presented against providing additional depth and specificity on the subject in light of the aforesaid uncertainty. Accordingly, **as** aforesaid, it is recommended that GNAPs' proposed additional language be included in the interconnection agreement.

Issue 6 – Should limitations be imposed on Global's ability to obtain available Verizon dark fiber?

The parties have resolved this issue and no recommendation **or** Commission decision thereon is required.

Issue 7 – Should two-way trunking be made available to GNAPs at GNAPs' request?

GNAPs' Position – GNAPs contends that it should have the right to utilize two-way trunking at its own discretion.

Verizon's Position – Verizon does not oppose offering GNAPs two-way trunking, but contends that the parties must come to **an** understanding about the operational and engineering aspects of the two-way **trunks** between them.

Recommendation – Verizon's position should be adopted. The **main** disagreement between the parties is whether there should be agreement on the terms and conditions relating to **two-way** trunking. Verizon agrees that pursuant to 47 C.F.R. §51.305(f), GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection, however Verizon maintains that because two-way trunks present operational issues for Verizon's **own** network, it must have some say as to how *this* impact is assessed and handled.

Verizon points out that both the New **York** and California Commissions have adopted Verizon's **position**.<sup>26</sup> Likewise, asserts Verizon, the **Ohio** Arbitration Panel also adopted Verizon's position, with only a minor modification. There the panel stated:

The panel agrees with both parties that GNAPs **can** use **two-way** trunks for interconnection. **As** to the operational and engineering aspect of two-way **trunks** between the parties, the panel notes that GNAPs did not provide any detailed testimony to support its proposed contract language for the operational and engineering aspect of two-way trunking. Therefore, the panel agrees with the testimony of Verizon's witness D'Amico which points out that because two carriers are sending traffic over the Same **trunk** from the two ends, the actions of one affects the other. For that reason, there must be a mutual agreement on the operational responsibilities and design parameters. Furthermore, the panel notes that because the two-way **trunking** language that Verizon **has** proposed delineates the same terms and conditions that appear in a number of NECs [CLECs] and Verizon agreements in Ohio, the panel believes that the language is nondiscriminatory and should be adopted by the parties.<sup>27</sup>

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<sup>26</sup> New York/GNAPs Arbitration Order at p. 16; California/Verizon/GNAPs Arbitration Order at p. 81.

<sup>27</sup> *Ohio Verizon/GNAPs Arbitration Panel Report* at 13. Verizon notes that the Ohio Arbitration Panel modified Verizon's proposals **only** slightly, requiring the parties to provide for reciprocal exchange of traffic forecasts on a regular basis.

Inasmuch as Verizon's proposal preserves GNAPs' option to use two-way trunks while providing necessary and reasonable detail to ensure mutual consultation and agreement, it is recommended that Verizon's proposal in this regard be adopted.

Issue 8 – Is it appropriate to incorporate by reference other documents, including tariffs, into the Agreement, instead of fully setting out those provisions in the Agreement?

GNAPs' Position – No. The four corners of the Agreement control any term or provision that affects the dealings of the parties. Otherwise, Verizon **may** unilaterally amend the terms and conditions of the Agreement.

Verizon's Position – GNAPs has proposed to delete **almost every tariff** reference in the interconnection agreement, but does not object to references to tariffs as a **source** of prices. GNAPs ignores or misapprehends Verizon's proposed §1.2 in the General Terms and Conditions section, which establishes the parties' interconnection agreement in the governing document in the face of conflict between the agreement and a tariff. Verizon's references to tariffs are the first source for applicable prices and ensure that the interconnection agreement's terms and conditions take precedence over conflicting tariffed terms and conditions.

Recommendation – Verizon's proposal should be adopted, with modification.

Verizon's proposal to establish effective **tariffs** as the first source for applicable prices, ensures that its prices are set and updated in a manner that **is** efficient, consistent, fair, and non-discriminatory for all CLECs. Verizon's proposed contract provisions justifiably eliminate the arbitrage that would result from GNAPs' proposal locking Verizon into contract rates, but leaving GNAPs free to purchase from future tariffs should the tariff rates prove more favorable.

Moreover, contrary to GNAPs' assertion in its **Initial Brief**,<sup>28</sup> should a conflict arise between the terms and conditions of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement would preempt those contained in the **tariff**. Verizon's proposal ensures that prices **are** set and updated in a manner that complies with Commission guidelines. To cover situations in which the price for a Verizon product or service is not contained in an appropriate **tariff**, Verizon's proposed agreement contains a price schedule that would apply.

Further, this process is not "open-ended," **as** GNAPs asserts.<sup>29</sup> Verizon's language provides for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and **efficient**, and more importantly, is overseen by this Commission. Additionally, the CLEC Handbook is provided by Verizon to facilitate the CLEC relationship and provides resources for the CLEC in obtaining and maintaining interconnection with Verizon.<sup>30</sup> **As** aforesaid, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs has no convincing basis for concern that it may contradict the terms of the interconnection agreement. Additionally, Verizon points out that the New York Commission adopted Verizon's **tariff** language in the recently concluded Verizon/GNAPs arbitration in that state.<sup>31</sup> Further, continues Verizon, the Ohio Arbitration Panel also adopted Verizon's position in its **Ohio Verizon/GNAPs Arbitration Panel Report**, stating:

The panel believes that Global's entitlement to certainty over the terms and conditions of the interconnection agreement is in no way compromised by Verizon's proposal to have tariffs incorporated by reference in various places throughout the parties' interconnection agreement. In the panel's opinion, an

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**GNAPs Initial Brief at 45.**

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**GNAPs Petition at 26.**

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**The CLEC Handbook is accessible and maintained on Verizon's website.**

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**<http://www22.verizon.com/wholesale/handbooks/toc/1,389,c-1,00.html>  
*New York Verizon/GNAPs Arbitration Order at 23; Verizon Post Hearing Brief, p. 34.***

interconnection agreement can both incorporate by reference a tariff that is subject to change over time and also be "the sole determinant of the rights and obligations of the parties to the greatest extent possible." In reaching this conclusion, we **are** particularly persuaded by the facts, brought out in Verizon's brief, that (1) the parties have, in section **1.2** of the pricing attachment, already agreed that applicable tariffs **are** the *first* source of prices for services provided under the agreement; and (2) Verizon's proposed language in section 1 of the GTC attachment would specify that the interconnection agreement's terms and conditions take precedence over conflicting tariffed terms and conditions. The panel is also persuaded by Verizon's argument that its proposed tariff references would eliminate what Verizon has described **as** the "arbitrage opportunity" that otherwise would be opened for Global and all other CLECs, i.e., to choose "**frozen**" rates **from** an interconnection agreement over any tariff rates and prices that might be subsequently established in accordance with the Commission's tariff approval process. Nor is the panel persuaded that there is any unfairness in expecting Global to participate in the Commission's tariff approval process in exactly the same way **as** all other CLECs can, to the extent that Global finds that a **necessary** step in maintaining its contractual relationship with Verizon.<sup>32</sup>

Accordingly, it is recommended that the Commission adopt Verizon's proposal **on** this issue, with the modification that Verizon be required to provide direct notice to GNAPs with service of any tariff and/or other change(s) which **Verizon** believes will impact the interconnection contractual relationship between the parties.

Issue 9 – Should Verizon's Performance standards language incorporate a provision stating that if state or federal performance standards are more stringent than the federally imposed merger performance standards, the parties will implement those more stringent requirements?

The parties have resolved this issue and require no Commission decision.

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<sup>32</sup> Ohio Verizon/GNAPs Arbitration Panel Report at 17; Verizon Post Hearing Brief, p. 35.

Issue 10 – Should the interconnection agreement require Global to obtain excess liability insurance coverage of over \$10,000,000 and require Global to adopt specified policy forms?

GNAPs' Position – No. The interconnection agreement should **require** GNAPs to obtain minimum commercial liability insurance coverages **far** lower than those contained in the **current** Template Agreement and should allow GNAPs to **use** an umbrella policy in lieu of more specific categories of insurance to meet realistic insurance requirements.

Verizon's Position – Yes. GNAPs must obtain commercial liability insurance coverage of up to \$10,000,000 and must provide insurance coverage in explicitly defined categories.

Recommendation – Verizon's proposal should be adopted. Verizon proposes that GNAPs maintain: (1) commercial general liability insurance, on a per occurrence basis, with **limits** of at least **\$2,000,000**; (2) commercial motor vehicle liability with limits of at least **\$2,000,000**; (3) excess liability insurance, in the umbrella **form**, with limits of at least \$10,000,000; (4) worker's compensation insurance with limits **of** not less than **\$2,000,000** per occurrence; and (5) all **risk** property insurance **on** a full replacement cost basis for all of GNAPs' real and personal property at a collocation site or otherwise located **on** or in any Verizon premises, facility, equipment or right of way.”

GNAPs believes that the level **of** these insurance requirements is excessive and proposes reduced **limits** as follows:

- Commercial General Liability Insurance with minimum limits of \$1,000,000, including \$1,000,000 per occurrence;
- Excess liability insurance with a *limit* of \$1,000,000;
- Worker's Compensation Insurance with a limit of \$1,000,000;

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See, e.g., Agreement, General Terms and Conditions, Section 21.

- No express requirement as to automobile insurance because it would duplicate existing state automobile insurance requirements;
- GNAPs also believes that it should be permitted to substitute an umbrella excess liability policy for the insurance minimum listed **above**.<sup>34</sup>

As Verizon points out, GNAPs and Verizon operate in a highly volatile industry and in a society in which either Party could be held jointly or severally liable for the negligent or wrongful acts of the other. The interconnection agreement that will result from this proceeding provides GNAPs the ability to collocate at a Verizon facility. Verizon witness Karen Fleming explained that collocation significantly increases Verizon's **risks**,<sup>35</sup> and Verizon seeks adequate protection of its network, personnel and other assets in the event GNAPs has insufficient financial resources.

In evaluating the same insurance requirements **as** Verizon proposes in the instant matter, Verizon points out that the New York Commission found Verizon's proposal reasonable "in light of the potential for network damage or tort liability when network interconnection or physical collocation takes place."<sup>36</sup> Verizon also cites the California Commission which likewise ruled that GNAPs be required to maintain a **\$10** million excess liability insurance policy and include Verizon as an additional insured under its policy.<sup>37</sup> Verizon further explains that the Ohio Arbitration Panel also adopted Verizon's proposals in the *Ohio Verizon/GNAPs Arbitration Panel Report*, stating:

The decision that PacBell apparently made in **an** otherwise unrelated case, to accept those **same** insurance requirements that Global **has** proposed here, should have very little, if any, bearing on Verizon's own assessment of the level of insurance

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<sup>14</sup> **Petition at 39.**  
<sup>35</sup> **Fleming Direct Testimony at 6.**  
<sup>36</sup> **New York Verizon/GNAPs Arbitration Order at 18; Verizon Post Hearing Brief, p. 36.**  
<sup>37</sup> **California Verizon/GNAPs Final Arbitrator's Report at 97; Verizon Post Hearing Brief, p. 36.**

that should be considered to offset the increased risk and exposure to loss that Verizon (i.e., not PacBell) will face when the interconnection agreement under consideration in this case is consummated. *On balance, Global has foiled to convince the panel that Verizon's proposed insurance requirements are unreasonable, while Verizon's arguments that Global's proposed requirements are inadequate seem the more persuasive. Therefore, the panel recommends that the Commission should adopt Verizon's proposed insurance requirements.*<sup>38</sup>

The Administrative Law Judge agrees that Verizon's proposed insurance requirements are reasonable in light of the risks for which the insurance is obtained. Accordingly, the Administrative Law Judge recommends that the Commission adopt Verizon's proposed insurance requirements.

Issue 11 – Should the interconnection agreement include language that allows Verizon to audit Global's "books, records, documents, facilities and systems?"

GNAPs' Position – Global objects to several audit provisions included in Verizon's proposed agreement.<sup>39</sup> Global argues that under Verizon's proposed Section 7.1 of the "General Terms and Conditions" section, either party can, at its **own** expense, audit the other's "books, records, documents, facilities, and systems for the purpose of evaluating the accuracy" of the other carrier's bills. In addition, Global argues that pursuant to Section **8.5.4.1** of the "Additional Services Attachment," Verizon would be authorized to conduct an audit to determine whether Global "is complying with the requirements of Applicable Law and this Agreement with regard to [Global's] access to, and use and disclosure of, Verizon OSS [operations support systems] information"; that under Section 6.3 of the "Interconnection Attachment," each party is empowered to perform audits "to ensure that

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<sup>38</sup> *Ohio Verizon/GNAPs Arbitration Panel Report* at 20 (emphasis added). In Ohio, GNAPs had argued that because PacBell in California had voluntarily accepted some of GNAPs' insurance proposals, that Verizon should also be so bound.

<sup>39</sup> *Petition* at 29.

rates are being applied appropriately"; and that Section 10.13 of the same attachment allows audits of the "various components of access recording." Global contends that these audit provisions are unnecessary and would permit Verizon to have unreasonably broad access to competitively sensitive Global records. Global further asserts that Verizon already keeps computer records of call traffic exchanged between the parties, and that it (Global) will provide, on a voluntary basis (i.e., outside of the interconnection agreement), traffic reports and call data records necessary to verify billing.

Verizon's Position – Verizon's audit provisions are reasonable because they apply equally to both Parties and would be conducted by a third party for a limited purpose. Verizon does not seek the audit rights it proposes as a competitor of GNAPs, but as a customer. Without audit rights, Verizon will be forced to accept GNAPs' charges without any way to verify their accuracy or appropriateness.

Recommendation – The Commission should adopt Verizon's proposal. Under Global's proposal, both parties' ability to evaluate the accuracy of the other's bills would be eliminated. Moreover, under Verizon's proposal, Global would not be providing records to Verizon – instead – the audit would be performed by independent certified public accountants selected and paid for by the auditing party with appropriate safeguards against disclosure of competitively sensitive information and neither Verizon nor the auditing accountant would have access to all of Global's records, but only those records which are necessary to verify the accuracy of the audited party's bills, and is not a general license to examine all of Global's competitively sensitive information.

Verizon points out that the New York Commission ordered the Parties to adopt Verizon's proposed audit provisions, observing that GNAPs has "misconstrued the

breadth of the audit provisions."<sup>40</sup> Verizon also explains that the California Commission likewise adopted Verizon's audit proposals with only minor modification.<sup>41</sup> Likewise, continues Verizon, the Ohio Arbitration Panel also dismissed GNAPs' objections to Verizon's proposals in the *Ohio Verizon/GNAPs Arbitration Panel Report* stating inter alia,

The panel expressly rejects Global's suggestion that Verizon's proposed provisions are unreasonable simply because the terms "books, records, documents, facilities, and systems" as found within those provisions, are not identified within the agreement. Global has never explained why attributing to these commonly understood terms their ordinary meaning should bring into question the reasonableness of Verizon's proposed auditing provisions. Verizon has, in the panel's opinion, demonstrated several valid reasons why it should, as both a customer of Global and a nondiscriminatory supplier of its OSS to all carriers who wish to use it, be entitled to certain audit rights under the parties agreement: (1) to verify the accuracy of Global's bills; (2) to ensure that rates are being applied appropriately; and (3) to maintain the integrity of Verizon's OSS for the nondiscriminatory benefit of all carriers who use it, including Global. Moreover, in the panel's opinion, Verizon has also demonstrated that the auditing procedures it has proposed are reasonable and, by design, offer Global an adequate opportunity to seek to protect the confidentiality of any competitively sensitive information that Global believes should be entitled to such protection.<sup>42</sup>

For all of the foregoing reasons, it is recommended that Verizon's language be adopted on this issue.

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<sup>40</sup> *New York Verizon/GNAPs Arbitration Order* at 19; Verizon Post Hearing Brief, p. 37.  
<sup>41</sup> *California Verizon/GNAPs Arbitration Order* at 100 (adopting Verizon's language with modification, allowing one audit per year rather than two, and leaving door open for more audits "if the preceding audit disclosed material errors or discrepancies."); Verizon Post Hearing Brief, p. 37.  
<sup>42</sup> *Ohio Verizon/GNAPs Arbitration Panel Report* at 22-23; Verizon Post Hearing Brief, p. 38.

Issue 12 – Should Verizon be permitted to collocate at Global's facilities in order to interconnect with Global'?

GNAPs' Position – There is **no** legal requirement for Global to provide **this** service.

However, Global has offered to provide Verizon with collocation at market rates in a non-discriminatory manner. Global reflects collocation as public offering on its webpage at [www.GNAPS.com](http://www.GNAPS.com).

Verizon's Position – **Verizon** should have the option to collocate at GNAPs' facilities in order to interconnect with GNAPs if and when GNAPs deploys facilities in Pennsylvania. Verizon points out, *inter alia*, that under GNAPs' proposal, all of the interconnection locations are determined by **GNAPs**<sup>43</sup> and this would limit Verizon's interconnection choices. According to Verizon, this gives GNAPs the opportunity to minimize its own expenses and maximize Verizon's. Verizon contends that if it cannot interconnect with GNAPs via a collocation arrangement, Verizon cannot self-provision the transport to the distant GNAPs switch, and Verizon would then have to purchase distance-sensitive transport from GNAPs (or a third party that GNAPs allows to collocate).

Recommendation – Verizon's proposal should be adopted. As Verizon argues, GNAPs' proposal places it (Verizon) at the mercy of GNAPs when Verizon delivers its originating traffic. Therefore, it is fair to include some reasonable **limits** on GNAPs' discretion **through** rules or collocation and distance-sensitive transport rates. There is nothing in the Act prohibiting the Commission **from** allowing Verizon to *interconnect* with the CLECs (GNAPs in this case) via a collocation arrangement at their premises. As aforesaid, it ensures fair terms for interconnection and provides Verizon an opportunity to evaluate whether it is more cost-effective to purchase transport from GNAPs or build its own facilities.

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<sup>43</sup> See GNAPs' proposed interconnection agreement, Interconnection Attachment, §§ 2.1-2.1.5.

In this regard, Verizon points out that the New ~~York~~ Commission granted Verizon's collocation request, recognizing that permitting Verizon to collocate at GNAPs' facilities, provided there is space and power available, affords Verizon "more flexibility to establish efficient interconnection." Likewise, continues Verizon, the ~~Ohio~~ Arbitration Panel agreed that Verizon should have the same collocation option in its *Ohio Verizon/GNAPs Arbitration Panel Report*, stating:

Absent a bona fide request (BFR) from Verizon, and without any record of opposition from GNAPs to Verizon's proposal, the panel recommends that Verizon submit a BFR to interconnect to GNAPs, which is required pursuant to Local Service Guideline III.A.2 (Tr. **286-288**). GNAPs generally does have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers for the ~~mutual~~ exchange of traffic, unless it applies for, and is granted, a waiver of this requirement by the Commission. *Also, GNAPs is required to provide physical collocation at its premises, at Verizon's request, unless it can demonstrate that physical collocation is not practical for technical reasons, or because of space limitations (Local Service Guideline III.B.4). If the latter applies, GNAPs is required to provide virtual collocation*<sup>45</sup>.

For all of the foregoing reasons, it is recommended that Verizon's proposal be adopted.

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<sup>44</sup> *New York Verizon/GNAPs Arbitration Order at 20 Verizon Post Hearing Brief, p. 39.*  
<sup>45</sup> *Ohio Verizon/GNAPs Arbitration Panel Report at 23-24 (emphasis added) (citations omitted); Verizon Post Hearing Brief, p. 40.*

Issue 13 – The Parties' Agreement should recognize applicable law.

GNAPs' Position – GNAPs proposes edits in the language that would deploy implementation of a change of law until appeals **are** exhausted, **even** if the change of law is not subject to a **stay**.<sup>46</sup>

”  
Verizon's Position – If a change in law is effective, the parties' agreement must give it effect rather than predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay.

Recommendation – Verizon's proposal should be adopted.

The GNAPs' proposed edits unreasonably delay implementation of a change of law until appeals **are** exhausted, even if the change of law is not subject to a stay. If a change in law is effective, the parties' agreement should recognize it.

Verizon points out that both the New York and California Commissions rejected GNAPs' proposed changes to this ~~Verizon~~ language in the Verizon/GNAPs arbitrations in those states. Specifically, Verizon cites the New York Commission which stated

Whether to maintain the status quo following a judicial, legislative, or regulatory decision is the prerogative of those decision makers. While parties may voluntarily agree to a different protocol with respect to changes of law, we see **no** basis to require a *nonconforming* contract provision that might produce uncertainty. We see no reason to modify standard change of law provisions and therefore we adopt Verizon's **position**.<sup>47</sup>

<sup>46</sup>

<sup>47</sup> §4.7 of the General Terms and Conditions

*New York Verizon/GNAPs Arbitration Order at 21; Verizon Post Hearing Brief, p. 40.*

Verizon also points out that the California Commission agreed, noting "**This Commission has previously denied the request in an arbitration that parties need implement *only* 'final and non appealable orders and decisions.'** **An order of this Commission or the FCC or the relevant court is effective unless stayed, and must be implemented by the parties.**"<sup>48</sup> The **Ohio** Arbitration Panel also sided with Verizon on this issue in the *Ohio Verizon/GNAPs Arbitration Panel Report*.<sup>49</sup>

For all of the foregoing reasons, it is recommended that Verizon's proposal be adopted in *this* regard.

Issue 14 – GNAPs should only be permitted to access **UNE s** that have **been** ordered unbundled or be allowed access to Verizon's existing network

According to Verizon, its proposal ensures that Verizon will provide interconnection and UNEs consistent with applicable law. Verizon asserts that GNAPs' proposed contract language would effectively give GNAPs access to "all" of Verizon's "next generation **technology**."<sup>50</sup> Verizon contends that GNAPs assumes that "applicable law" requires "reasonable and non-discriminatory access to **all** next generation technology for the purpose of providing telecommunications services."<sup>51</sup> Verizon submits that applicable law only requires reasonable and non-discriminatory interconnection to Verizon's network and to items that have been declared to be UNEs.

Moreover, Verizon points out that other State Commissions have adopted Verizon's position. Verizon states that the New ~~York~~ Commission adopted Verizon's proposal in the *New York Verizon/GNAPs Arbitration Order*,<sup>52</sup> as did the **Ohio** Arbitration

<sup>48</sup>

*California Verizon/GNAPs Arbitration Order* at 73; Verizon Post Hearing Brief, p. 41.

<sup>49</sup>

*Ohio Verizon/GNAPs Arbitration Panel Report* at 25; Verizon Post Hearing Brief, p. 41.

<sup>50</sup>

GNAPs Proposed Contract, General Terms & Conditions § 42.

<sup>51</sup>

*Id.*

<sup>52</sup>

*New York Verizon/GNAPs Arbitration Order* at 22; Verizon Post Hearing Brief, p. 41.

proposal in the *New York Verizon/GNAPs Arbitration Order*,<sup>52</sup> as did the Ohio Arbitration Panel in its *Ohio Verizon/GNAPs Arbitration Panel Report*.<sup>53</sup> Additionally, Verizon cites the recent arbitration with HTC over a similar issue where the South Carolina Commission held that HTC should have access to Verizon's current network at the time such access is requested.<sup>54</sup>

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GNAPs has provided no convincing argument in support of its proposed contract language and therefore, it is recommended that Verizon's proposal be adopted.

#### 15. Other Disputed Contract Language

Verizon contends that GNAPs, in its filings, has inserted cites to various disputed contract sections unrelated to the respective issues or GNAPs supporting analyses. Verizon also argues that GNAPs' witness presented no support for the GNAPs contract proposals unrelated to the issues, including such issues relating to requirements for access toll connecting trunks (Verizon Post Hearing Reply Brief, p. 21) and GNAPs' changes to the definition of "Trunk Side" (Verizon Post Hearing Reply Brief, p. 22).

Moreover, Verizon asserts that GNAPs has failed to explain why GNAPs' language should be adopted for the unrelated contract sections cited by GNAPs in Issues 1, 3, 4, 5 and 7 and that GNAPs has failed to explain why Verizon's proposals should be rejected.<sup>55</sup>

<sup>52</sup>

*New York Verizon/GNAPs Arbitration Order* at 22; *Verizon Post Hearing Brief*, p. 41.

<sup>53</sup>

*Ohio Verizon/GNAPs Arbitration Panel Report* at 26; *Verizon Post Hearing Brief*, p. 41.

<sup>54</sup>

*In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Reconsideration Order, Docket No. 2002-66-C Order No. 2002-482 at 10, South Carolina Public Service Commission (rel. June 21, 2002); *Verizon Post Hearing Brief*, p. 42.

<sup>55</sup>

See *Verizon Post-Hearing Brief* at 42.

Verizon **further** argues, and the Administrative Law Judge agrees, that GNAPs, **as** Petitioner pursuant to **§252(b) of the Act**, is obligated to address all unresolved issues and the parties' positions thereon and GNAFs has had the opportunity to do **so**; but has not done so, and has merely set **forth** various cites to unrelated contract sections at the end of several issues. Verizon submits that **this** approach does not provide the Commission a sufficient basis to analyze GNAPs' proposals and therefore such GNAPs' proposals should be rejected.

The Administrative Law Judge agrees. Moreover, **as** Verizon points **out**, this conclusion was reached by the New York Commission in its *New York Verizon/GNAPs Arbitration Order*, wherein it is stated, inter alia,

As a threshold matter, purported issues identified only by redlining in a draft contract will not be considered issues properly placed in arbitration pursuant to **§252(b)(2) of the 1996 Act**. To meet that **standard**, a party petitioning for arbitration must provide the **State** commission all relevant documentation concerning the unresolved issues, including the position of each of the parties with respect to those issues. Accordingly, only issues briefed or argued on the record will be addressed in this order.<sup>56</sup>

Verizon explains that the New York Commission refused to consider GNAPs' unexplained, unsupported edits because they had not been properly presented and thus were unripe for consideration; and that GNAPs consequently accepted Verizon's proposed language without modification in New York.<sup>57</sup>

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*New York Verizon/GNAPs Arbitration Order at 4; Verizon Post Hearing Brief, p. 43.*  
*See Verizon/GNAPs New York Interconnection Agreement; Verizon Post Hearing Brief, p. 43.*

The Administrative Law Judge agrees with **this** approach and accordingly recommends that the Commission adopt Verizon's contract proposals identified as disputed but unrelated to the issues which GNAPs raised for arbitration.<sup>58</sup>

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and parties in this proceeding.
2. The Commission has jurisdiction to arbitrate the issues presented herein.

### **RECOMMENDED ORDER**

THEREFORE,  
IT IS RECOMMENDED:

1. That with respect to all unresolved issues between Global NAPs South, Inc. and Verizon Pennsylvania Inc. in Docket No. A-310771F7000, the proposed language of each party for inclusion in the proposed interconnection agreement is either approved, modified or rejected consistent with this Order.
2. That within thirty (30) days from the date of the entry of the Commission Order in this matter, Global NAPs South, Inc. and Verizon Pennsylvania Inc. shall file with this Commission for approval, an interconnection agreement consistent with this Order.

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<sup>58</sup> Verizon has attached a chart as Exhibit A to its Post-Hearing Brief indicating how other State Commissions have addressed GNAPs unexplained edits.

3. That upon the approval by the Commission of the interconnection agreement consistent with this Order filed by the parties pursuant to this Order, the record in this proceeding shall be ~~marked~~ closed.

October 10.2002

Date

A handwritten signature in cursive script, appearing to read "Herbert Smolen", written over a horizontal line.

HERBERT SMOLEN  
Administrative Law Judge  
Acting as Arbitrator

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James R. J. Scheltema  
Admitted in Maryland & the  
District of Columbia

Direct Dial  
817-604-5513

jscheltema@comcast.net

Global NAPS, Inc.  
89 Access Road  
Norwood, MA 02169  
Telephone (781) 551-9707  
Fax (781) 551-9984  
www.gnaps.com

Virginia office  
12347 Sunrise Valley Drive  
Reston, Virginia 20191  
Tel. (703) 381-8057

March 28, 2002

**BY FEDERAL EXPRESS**

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Global NAPs South, Inc., Petition for Arbitration Pursuant to 47 U.S.C. §252(b) of  
Interconnection Rates, Terms and Conditions with Verizon Pennsylvania, Inc.  
Docket No. A-310771

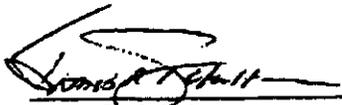
Dear Mr. McNulty:

Global NAPs South, Inc. and Verizon Pennsylvania Inc. have agreed to waive the federal scheduling guidelines for arbitrating interconnection agreements in order that the Pennsylvania Public Utilities Commission may render a judgment in the first Agenda Meeting following a sixty-day period after the release of Judge Smolen's Recommended Decision in the above referenced docket.

If you have any questions concerning this filing or the waiver requested, please do not hesitate to contact me at the above.

Sincerely,

Read and Approved



James R. J. Scheltema  
Director - Regulatory Affairs  
Global NAPs, Inc.  
5042 Durham Road West  
Columbia, MD 21044  
jscheltema@comcast.net



Kimberly Newman  
Counsel for Verizon PA Inc.  
Hunton & Williams  
1900 K Street, NW  
Washington, DC 20006  
Knewman@Hunton.com

cc: Julia A Conover, Esq.  
Anthony Gay, Esq.  
William J. Rooney, Jr.