COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts Inc. f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic – Massachusetts	Case No. D.T.E. 02-45

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I. Introduction.

The shocking thing about *Verizon's Brief* [1] is how it avoids the substantive issues of this case and the law governing these issues. Even though many of the key issues in this case center on intercarrier compensation, Verizon Massachusetts, Inc. ("Verizon") selectively ignores the effect of the *ISP Remand Order*[2] *on* intercarrier compensation. Instead of directly addressing the substantive issues, Verizon takes the position that the Department of Telecommunications and Energy ("Department") should focus on the contract language.[3] Verizon is wrong.[4] The point of a contract is to memorialize the parties' intent. Global NAPs, Inc. ("Global") and Verizon are in arbitration not because the companies are unable to compose words that reflect their shared intent, but because they have no shared intent. Global and Verizon **differ on fundamental policy and legal**

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[1] *Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts Inc. f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic – Massachusetts,* D.T.E. 02-45, Post Hearing Brief Of Verizon Massachusetts (Oct. 21, 2002) ("*Verizon's Brief*").

[2] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic,* Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

[3] Verizon may focus more upon the substantive issues in its Reply Brief when Global has no opportunity to respond.

[4] Verizon is also selective. For example, when arguing against Global's ability to provide competitive FX services, it proposes the Department order the implementation of a novel method of rating calls which was not proposed to Global, not negotiated, and even now is not formulated in any proposed contract language for the Department's consideration.

issues. Until these differences are resolved, one cannot deal with contractual language. When these issues are resolved, the contract language naturally follows.

In this reply memorandum, Global will deal with the twelve issues, and associated contract language in order. For clarity, on each issue, Global will present a table setting out the issue, Global's position, Global's Proposal and summarize the basis of Global's Proposal. Global will then address *Verizon's Brief*.

In many cases Verizon objects to the form of Global's proposals, *i.e.*, Global addresses an issue in the wrong section of the contract. Global acknowledges that once the policy issues are resolved, the resolution can be expressed in many different ways in the contract. Global has no pride of authorship in any one way of expressing a policy outcome. Global is only interested in a contract that reflects the law and sound policy. Global has no objection to changing the wording of its proposed revisions to reflect the decisions of this arbitration. In other jurisdictions, arbitrations have resulted in policy decisions and Global and Verizon were simply directed to revise the contract language to effectuate the decision. The parties have had no great difficulties doing this. Thus, Global will focus its response on legal and policy issues. Where Global has dealt with arguments in its initial brief, for brevity it will not repeat its argument here.

II. Argument.

A. SPOI and Transport: Each party should be responsible for the costs associated with transporting its own traffic on its side of the point of interconnection.

Global deals with Issue 1, Global's statutory right to a single point of interconnection ("SPOI"), and Issue 2, transport, together as they are entwined. The

significance of the SPOI disappears if Verizon can insist that Global be financially responsible for transport of its traffic from the SPOI to Verizon designated interconnection points ("IPs").

Issues:

1. Should either party be required to install more than one point of interconnection per LATA?[5]
2. Should each party be responsible for the costs associated with transporting telecommunications traffic to the single point of interconnection?[6]

Global's Position:

Global has the right to designate any technically feasible point at which both parties must deliver traffic to the other party.[7] Each carrier is financially responsible for transporting telecommunications to the single POI.[8]

Global's Proposal:

To revise Section 2.1 to require one initial SPOI and make the establishment of additional points of interconnection ("POIs") subject to Global's approval. To revise Section 2.2 so the SPOI will be the IP making each party responsible for the cost of transporting all traffic to and from the SPOI.

Basis for Global's Proposal:

"Section 251(c)(2) of the Act[9] 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*."[10] The purpose of this section is wholly defeated if Verizon is permitted to create its own IPs and require that Global obtain facilities to deliver traffic to those points or pay Verizon for transporting Global's traffic from the SPOI to those points. Rule 703(a)[11] establishes the inter-carrier compensation rule for terminating the traffic: "Each LEC shall establish reciprocal compensation arrangements *for transport and termination* of

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[5] *Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts Inc. f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic – Massachusetts*, D.T.E. 02-45, Petition for Arbitration (July 30, 2002) at 12 ("*Petition*").

[6] *Id*. at 14.

[7] *Id*. at 12.

[8] *Id*. at 14.

[9] The *Communications Act of 1934* ("*the Act*"), as amended by the *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 ("*1996 Act*"). Hereinafter, all citations to the *Act* or to the *1996 Act* will be to the relevant section of U.S.C. unless otherwise noted.

[10] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, first report and order, 11 FCC Rcd. 15499, ¶ 209 (1996) (emphasis added) ("*Local Competition Order*").

[11] 47 CFR 51.703(a). Hereafter Rule XXX shall mean 47 CFR 51.XXX.

telecommunications traffic with any requesting telecommunications carrier." Verizon receives reciprocal compensation to pay it for transport and termination of telecommunications traffic. Thus, receipt of additional transport charges would constitute a double recovery to Verizon for transport as well as a penalty to Global.[12] The *ISP Remand Order* "mirroring" rule also prohibits Verizon from imposing any additional charges on reciprocal compensation traffic. The FCC stated the rule as follows: "[t]he rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate."[13] There is no exception for extra transport charges if a CLEC elects to exchange traffic at a SPOI. Recently, the Wireline Competition Bureau of the FCC issued the *Virginia Order*[14], which considered the issue of transport. Looking to 47 USC §251(b) and Rule 703, The *Virginia Order* rejected Verizon's similar VGRIPs proposal. Finally, as Global's witness[15] and Verizon's own cost studies[16] determined the cost of transport is *de minimus* so imposition of anything more than *de mimimus* transport charges would be discriminatory and anti-competitive.

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[12] *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Verizon North Inc. f/k/a GTE North Incorporated and Verizon South Inc. f/k/a GTE South Incorporated*, Arbitration Decision, 02-0253 (Ill.C.C. Aug. 22, 2002) at 10 ("*IL Global-Verizon Order*"), which stated that: "[t]he Commission finds that the VGRIP proposal is such a penalty. It is a direct response to Global's single POI proposal and is explicitly intended to increase the cost of that proposal to Global. By choosing the single POI option, Global is doing what the Federal Act allows. The Congress could have established a concomitant compensation scheme for the additional transport that a single POI necessitates, but did not do so." (Footnote omitted).

[13] *ISP Remand Order* ¶89.

[14] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration*, Memorandum Order and Opinion, CC Docket No. 00-218; *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration*, CC Docket No. 00-249; *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc*., CC Docket No. 00-218, DA 02-1731 (Re. July 17, 2002) ("*Virginia Order*").

[15] Direct Testimony of Dr. Lee L. Selwyn (Sept. 10, 2002) at 38-47 ("*Selwyn Direct*").

[16] Department orders have also noted that the cost of transport is not distance sensitive. *Investigation by the Department into the propriety of cost studies filed by New England Telephone and Telegraph Company on April 18, 1986*, D.P.U. 86-33-C (July 31, 1987), which addressed Verizon's predecessor New England Telephone's ("NET") cost of service. In that proceeding, NET asserted that outside plant associated with transport had little sensitivity to distance." *Id.* at 69-70. Although the Department went on to require NET to calculate a distance-weighted per minute of use allocator for interoffice trunks, NET's cost studies presumably reaffirmed that distance was not a significant factor since, in the subsequent order in *Investigation of the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: MDPU Mass. No. 10; Supplement No. 247, et al.* D.P.U. 89-300 (Ma. D.T.E. June 29, 1990) (which set rates based on the Company's fully' distributed (COSS) and marginal cost studies, plus various public policy considerations), the Department stated several times that NET's COSS and marginal cost studies showed that "transport costs are not distance sensitive." *Id.* at 104, 107 and 129. Transport costs have dramatically declined since 1990. If transport costs were not distance sensitive in 1990, they could not be distance sensitive today.

The largest part of Global's business is serving ISPs. Before the new federal rules were adopted in the *ISP Remand Order*, Global was receiving millions of dollars for terminating ISP-bound traffic in many states. Once adopted, these rules put severe caps on Global's compensation for terminating this traffic, and, under these rules Global receives no compensation in states where it was not doing business in the first quarter of 2001. The *ISP Remand Order* was not one sided. The order gave the reciprocal compensation rules broader, non-geographically based, application. As Verizon acknowledged, speaking to issue 5, "**the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation.**"[17] The order also established the "mirroring" rule. Verizon enthusiastically adopted the caps, and has no objection to Global terminating its ISP-bound traffic at cap rates or for free. On the other hand, on the inter-carrier compensation issues, Verizon wants to wholly ignore the broader scope of the reciprocal compensation rules and the "mirroring" rule. To that end, Verizon relies on orders that predate the *ISP Remand Order* to support its positions.

Verizon contends that Global must transport its calls past the SPOI all the way to the terminating end user. For this proposition, Verizon relies upon a March 24, 2000 Department Order, *D.T.E. 98-57 Tariff No. 17 Order,*[18] and a March 15, 2001 Order, *MediaOne Supplemental Order*.[19] As explained in *Global's Brief*,[20] and summarized in

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[17] *Verizon's Brief* at 69-60 (emphasis added).

[18] *See Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone Telegraph Company d/b/a Bell Atlantic - Massachusetts*, D.T.E. 98-57 (March 24, 2000) ("*D.T.E. 98-57 Tariff No. 17 Order*").

[19] *Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement*, D.T.E. 99-42/43-A at n.6, Supplemental order issued March 15, 2001 ("*MediaOne Supplemental Order*").

the text box above, the new federal rules (application of Rule 703 to all telecommunications except exchange access and information access and the "mirroring" rule) came into effect through the *ISP Remand Order* on April 27, 2001, **after** *D.T.E. 98-57 Tariff No. 17 Order* and *MediaOne Supplemental Order*. As the new federal regime occurred after these two Department Orders, the Orders do not reflect the new federal rules, and, of course, the new federal rules take precedence.

Verizon claims "GNAPs now seeks to collaterally attack the recently established rates in this two-party arbitration."[21] Verizon refers to rates set in *MA TELRIC Proceeding, DTE 01-20.*[22] Verizon is wrong. Global does not collaterally attack rates set in *MA TELRIC Proceeding, DTE 01-20* but rather points to the findings of this proceeding to document its point that the incremental transport costs at issue are, in fact, *de minimus* although Verizon proposes to impose charges far in excess of those incremental costs.[23] The incremental cost of Verizon handling additional traffic is minimal due to its ubiquitous network which provides considerable scope and scale. Global will not realize similar scale economies unless and until it achieves sufficient customer mass. Thus, although Verizon's costs are *de minimus*, Global's costs would be considerable. Verizon, however, does not offer facilities on this incremental cost basis.

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[20] *Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts Inc. f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic – Massachusetts,* Initial Brief of the Petitioner, Global NAPs, Inc., D.T.E. 02-45 (Oct. 21, 2002) ("*Global's Brief*").

[21] *Verizon's Brief* at 13.

[22] *See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided-Cost Discount for Verizon New England, d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts, Order,* D.T.E. 01-20 (July 11, 2002) ("*MA TELRIC Proceeding, DTE 01-20*").

[23] *Selwyn Direct* at 38-46.

Instead, it is requiring Global to lease dedicated transport. Where Global is developing its customer base, it is being required to lease facilities which have inordinately large capacity and associated rates. In the most extreme example, therefore, Dr. Selwyn has indicated the incremental costs would be less than two thousandths of a cent.[24] In contrast, Verizon proposes to charge $148.19 per month to lease a dedicated transport to handle this call (not including any tandem switching or other costs).[25] Clearly, Verizon proposes to price Global out of the market by asking the Department to ignore federal law and allow it to impose excessive rates on Global, notwithstanding the fact that if it carried the traffic originated by its customers to Global's POI, its own costs would be *de minimius* costs.[26]

Verizon also disputes, at length, the Global's revisions of its proposed contractual language, to give effect to the federal rules. As stated above, what matters is a determination of the parties' transport obligations. Once that it done, it can be memorialized in the agreement in many different ways.

After filing the initial briefs in this case, the Pennsylvania Public Utility Commission issued a *Recommended Decision* in its Verizon/Global arbitration.[27] The Commission ruled in Global's favor on SPOI and Transport:

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[24] *Id.* at 42.

[25] *Id. citing* Verizon New England, Inc. DTE MA Tariff No. 17, Miscellaneous Network, Services, Part M Section 2.2.1, Page 2, Effective September 14, 2000. Dr. Selwyn indicates the average transport distance would be 7.25 miles. At the tariffed rate of $20.44 per mile for dedicated DS-3 transport, leasing transport would cost $148.19 per month.

[26] Verizon failed to provide any affirmative testimony regarding its costs. Verizon also failed to respond to Global discovery requests for this cost information. The only cost data on the record was provided by Dr. Selwyn in his direct testimony.

[27] *Petition of Global NAPs South, Inc. for Arbitration pursuant to 47 USC §252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania, Inc.* Docket No. A-310771F7000, Recommended Decision, (Pa. P.U.C. October 10, 2002)("*PA Recommended Decision")*. A copy is appended.

> Global's position in the instant matter is consistent with the FCC's interpretation of the relevant governing laws. Moreover, its position is consistent 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." The New York Commission explained "that a carrier is responsible for the costs to carry costs on its own network." The Illinois Commerce Commission also found "… that Ameritech and Global should be responsible both financially and physically on its side of the single POI." [28]

Like the FCC[29], and the Illinois,[30] New Jersey,[31] New York,[32] Pennsylvania[33] and Rhode Island[34] commissions, the Department should conclude that each party is responsible financially and physically for traffic on its side of the single POI.

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[28] *Id*. at 9-10.

[29] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration*, Memorandum Order and Opinion, CC Docket No. 00-218; *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration*, CC Docket No. 00-249; *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc*., CC Docket No. 00-218, DA 02-1731 (Re. July 17, 2002) ("*Virginia Order"*) at § 52.

[30] *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 Arbitration Decision, (Ill.C.C. May 14, 2002) ("*Global Illinois Order"*) at 8; *Global NAPs Illinois, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc. f/k/a GTE North Incorporated and Verizon South, Inc. f/k/a GTE South Incorporated*, Docket No. 02-0253, Arbitration Decision, (Ill.C.C. Oct. 1, 2002) at 11.

[31] *In The Matter Of The Petition Of Cablevision Lightpath-N. J., Inc. For Arbitration Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996 To Establish Interconnection Agreement With Verizon New Jersey, Inc*., Docket No. TO 01080498, Order Approving Interconnection (N.J.B.P.U. Jan. 9, 2002) ("*Cablevision Order"*).

[32] *Joint Petition of AT&T Communications o f New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095, Order Resolving Arbitration Issues, (N.Y.P.S.C. July 30, 2001) ("*NY AT&T Order*") at 27-28. *See also 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"*).

[33] *PA Recommended Decision* at 9-10; *see Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No.

B. Local Calling Area: Global should be permitted to broadly define its own local calling areas without imposition of access charges.

Issue:

3. Should Verizon's local calling area boundaries be imposed on Global, or may Global broadly define its own local calling areas?[35]

Global's Position:

Global has the right to define its own local calling area on a LATA wide basis.[36] This means that Verizon cannot be permitted to impose access charges on Global's non-toll traffic simply because it crosses a Verizon local calling area boundary as that would make it economically impossible for Global to offer LATA wide local calling to its customers.

Global's Proposal:

Global proposes to eliminate the language in §2.52 which would impose access charges on all traffic that traverses Verizon local calling areas regardless of whether that traffic is toll traffic or not.

Basis for Global's Proposal:

Rule 701(b)(1) states: "[f]or purposes of this subpart, *telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." So, reciprocal compensation traffic, *i.e.*, traffic subject to Rules 701-717, is all telecommunications traffic except exchange access traffic and information access traffic. Exchange access is "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[37] The term "telephone toll service" means "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[38] The term "information access" means all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.[39] Consequently, traffic is reciprocal compensation traffic unless it is toll traffic or is routed to an information service provider. Whether traffic traverses ILEC local calling area boundaries is totally irrelevant to this statutory definition. Where Global defines a LATA wide local calling area, Global imposes no toll charge on traffic originated by Global customers destined for termination within the LATA. This is not toll traffic so reciprocal compensation, not access charges, is the appropriate inter-carrier

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A-310814F7000 Recommended Decision, (Pa. P.U.C. Sept. 13, 2002)("*PA US LEC Recommended Decision")* at 9-17.

[34] *In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon-Rhode Island*, Docket No. 3437, Arbitration Decision (R.I.P.U.C. Oct. 16, 2002) at 26.

[35] *Petition* at 18.

[36] *Id.*

[37] 47 USC § 153 (16).

[38] *See* 47 USC §§ 153 (48).

[39] *ISP Remand Order* ¶ 44 (emphasis added). The *Order* goes on to explain, "others have argued that the 'information access' definition engraphs a geographic limitation that renders this service category a subset of telephone exchange service...[w]e reject that strained interpretation." *Id.* n. 82.

[40] *Id.* ¶89.

compensation for terminating the call. The rate Verizon can charge is capped by "the mirroring" rule.[40] This does not harm Verizon. Wherever a call originates, Verizon picks up the call at the SPOI, delivers it to its customer and is wholly compensated for its transport and termination by reciprocal compensation. Finally, Verizon is offering what Global proposes to offer, local calling services that exceed the sort of basic home-and-contiguous or Boston-metropolitan-exchange type of local calling services.[41] Global's proposal simply permits it to compete with Verizon's offerings.

Verizon looks to the Department's long-standing policy that interconnection agreement arbitrations are not the proper proceedings for reviewing Verizon's local calling areas as authority for its claim that it can impose access charges on any Global originated traffic that crosses its local calling area boundaries even if it is **not toll traffic**. This completely misses the point. Global has absolutely no interest in a review of Verizon's local calling areas. Instead, Global seeks to exercise its rights under the new federal rules.

To justify its claim that it can impose access charges on non-toll traffic, Verizon relies on the portions of the FCC's original 1996 *Local Competition Order* in which the FCC addressed how to apply the term "local" as it existed in the rules it was then promulgating for the first time.[42] Yet it is precisely that portion of its rules that the FCC has now expressly abandoned and modified to clarify the confusion and ambiguity that arose from relying on the non-statutory term.[43] As a result, the FCC's earlier and now-repudiated discussion from 1996 of how the term "local" should be used is — in the classic law school phrase — no longer "good law."

Verizon contends "the intrastate access regime for purposes of intercarrier compensation and the dramatic alteration GNAPs proposes (which it also alleges would

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[41] Tr. at 110 (Selwyn).

[42] *See Local Competition Order* at ¶ 1035 (stating that states can decide what is "local" for purposes of implementing the FCC's rules).

[43] *See ISP Remand Order* at ¶¶ 45-46.

have far-reaching impact on all Massachusetts carriers[44]) should not be considered in this two-party arbitration."[45] Verizon misses the point. Global seeks no "dramatic alteration" in the instant arbitration. The "dramatic alteration" took place on April 27, 2001 when the FCC revised the reciprocal compensation rules and adopted the "mirroring" rule in the *ISP Remand Order*. Global only asks that the controlling federal law be applied.[46]

Verizon claims that Global seeks to change rates established in the *MA TELRIC Proceeding, DTE 01-20*. Verizon is wrong. Global makes no argument regarding access charge rates. Rather, under the *ISP Remand Order*, access charges do not apply to telecommunications which are not information access traffic or toll traffic. Reciprocal compensation applies and the FCC defined the rate in the "mirroring" rule.

Verizon suggests that Global will be charging a "flat rate" toll on its calls so they are "exchange access." Recall the definition of "toll," "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[47] How can there be a "flat rate toll" when toll, by definition, requires a separate charge?

Verizon claims "[e]very state Commission that has considered GNAPs' proposal with respect to Issue 3 has rejected that proposal in its entirety."[48] This is sophistry.

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[44] Haynes Direct at 4:8-10; 7:12-23 - 9:1-8; 18:13-18 - 19:1-4; MA Hearing Tr. at 131:1-16.

[45] *Verizon's Brief* at 30.

[46] Verizon failed to show how Global's proposal would impact Massachusetts consumers. It provided no testimony on whether or not universal service required a subsidy; if there was a subsidy how much a universal fund might be; whether access revenue was required to fund universal service; if access revenue was required, how much of the per minute access charge was used to subsidize such fund; how much of its own FX service revenue is used to subsidize universal service and how a fixed charge for the FX service approximated the per minute access revenues which might otherwise fund universal service requirements; and, whether access was required to fund universal service or whether other revenue sources were available to implicitly fund universal service requirements.

[47] *See* 47 USC §§ 153 (48).

[48] *Verizon's Brief* at 36.

Verizon knows perfectly well that Florida,[49] New York,[50] and most recently the Pennsylvania Recommended Decision[51] allow LATA wide local calling areas without imposition of access charges. The Pennsylvania opinion is particularly eloquent:

> 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 than 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 proposals on this issue.[52]

Similarly, there is no reason to retard competition in Massachusetts. The Commonwealth and its consumers should be able to reap the benefits of Global's proposals on this issue.

C. VNXX: Global should be permitted to assign its customers VNXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides without imposition of origination charges.

Issue:
4. Can Global 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?[53]
Global's Position:
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 physical customer location and Global should be allowed to assign NXX codes in a manner that fosters competitive choices for customers.[54]

[49] *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-TP (Phases II and IIA), Order No. PSC-02-1248-FOF-TP (Fl. P.S.C. Sept. 10, 2002) (*Florida Order*).

[50] *Id.* at 53. The New York Commission also approved LATA wide local calling areas. *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*").

[51] *PA Recommended Decision.*

[52] *Id.* at 12-13.

[53] *Petition* at 21.

Global's Proposal: To revise sections 2.70 through 2.73 of the proposed agreement to allow VNXX.
Basis for Global's Proposal: VNXX traffic is reciprocal compensation traffic (unless the traffic is exchange access or information access traffic). Rule 703(b) applies. This Rule states: "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." Similarly, the "mirroring" rule applies mandating that the originating carrier pay the terminating carrier the FCC rate.[55] This means that Verizon cannot charge transport or access charges for VNXX traffic. Verizon has never looked at the street addresses (physical locations) of the customers involved in a particular call for rating, but instead to the NPA-NXXs, which identify the rate centers to which the calling and called NPA-NXXs are associated.[56] This is consistent with how Verizon currently treats its own FX traffic as local and why Verizon offers its FX service in its local tariff. VNXX service is functionally identical to FX service to the end-users, and Global defines it as local, without assessing toll charges making it "telephone exchange service"[57] to which access charges can never apply. VNXX service imposes no additional transport costs on the originating carriers. Thus, there is no cost justification to saddle VNXX traffic with access charges. Whether a call from a Verizon customer to a Global customer is terminated by Global in the Verizon local calling area where it was originated or in a different local calling area, Verizon's responsibility is exactly the same. Verizon just delivers the call to the SPOI.[58] Global does the rest. VNXX causes no loss of toll revenue for Verizon as there is no reason to assume that this traffic would exist if it required a toll call. Verizon is paid by its customers to complete their calls to VNXX numbers. It is completely inconsistent with common sense and the present "calling party's network pays" system to make Global pay Verizon access charges for the privilege of completing Verizon originated calls. Global's ability to utilize virtual NXX numbers enables Global to compete with Verizon's IPRS/SNS service.

Verizon states, "[t]he Commission should clarify that calls which are made from non-geographically correlated NXX codes, (or "Virtual NXX" calls), **just like any other interexchange call** from a customer in one local calling area to a customer in a different

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[54] *Id.*

[55] *ISP Remand Order* ¶ 89.

[56] "[T]elephone numbers traditionally also have identified the exchanges of both the originating caller and the called party to provide for the proper rating of calls – *i.e.*, the determination of whether and how much the calling party should be billed for a call." *Direct Testimony of Terry Haynes* (Sept. 10, 2002)("*Haynes Direct*") at 22.

[57] 47 U.S.C. §153 (47) provides: "[t]he term 'telephone exchange service' means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."

[58] Tr. at 172-173 (Haynes); s*ee also, Haynes Direct* at 24 verifying that the routing of the call is identical when using VNXXs. Thus, as Dr. Selwyn asserted, since the routing of the call is identical, so are its costs. Indeed, there are no cost differences to Verizon whether the cost is a "local" call in the traditional sense of

local calling area, shall be subject to exchange access charges, not reciprocal compensation.[59] Verizon's entire position is premised on the assumption that an "interexchange call" is subject to exchange access charges simply because it is an "interexchange call." Verizon never explains why the Department should ignore the *Act* and come to this conclusion. As explained above, the *Act* defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[60] The *Act* defines "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[61] Under the *Act*, toll traffic is exchange access traffic. Traffic that is not toll traffic, *i.e.*, traffic for which a separate charge not included in contracts with subscribers is not made, is simply not exchange access traffic.[62]

Access charges and toll charges work symbiotically. The toll that carriers assess their end-users provides the revenue necessary to fund access charges to the IXC. Where there are no toll charges to the end-users, there is no revenue pool for the carriers to

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originating and terminating in the same rate center, or whether the call is "local" by virtue of the use of VNXXs.

[59] *Verizon's Brief* at 42.

[60] 47 USC §153 (16).

[61] *See* 47 USC §§153 (48).

[62] As explained in detail in *Global's Brief*, pages 7-9, prior to April 27, 2002, the reciprocal compensation rules only applied to *local* telecommunications traffic. State commissions were free to apply access charges on traffic that was not *local* telecommunications traffic. The term "*local telecommunications traffic"* was not defined in the *Act*. The FCC defined the term in Rule 701(b)(1): "[f]or purposes of this subpart, *local telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider *that originate and terminates within a local service area established by the state commission*." On April 27, 2001, the FCC issued its *ISP Remand Order*. In the *ISP Remand Order* the FCC expressly rejected the past focus on "local" traffic and adopted a non-geographic definition of reciprocal compensation traffic: "section 251(b)(5) [reciprocal compensation] applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider." *Id.* ¶89 n. 177.

divide. The determining factor for application of access charges is not whether a call passes between two Verizon local calling areas, but whether Global assesses its customers a toll. Thus, the practical funding consideration of access charges is entirely consistent with the controlling federal law, discussed above, explaining that where the originating caller does not assess toll charges, the call is not subject to access charges.

Verizon claims state commissions have repeatedly rejected Global's proposal and similar proposals by other CLECs.[63] This claim ignores the fact that VNXX is nothing more than a different way to provide FX service. No state has prohibited Verizon from offering FX service. Does Verizon suggest that Global should be permitted offer its VNXX service only if Global provides it the same way as Verizon provides its FX service, even though Global has a more efficient alternative?[64] Does Verizon contend that competition is served if the competitive firm is compelled by the Department to provide services inefficiently to protect the monopolist? Verizon simply wants the Department to prohibit Global from competing with its present FX service. This is completely inconsistent with the purposes of the *Telecommunications Act*. Recall, as explained in *Global's Brief* and summarized above, Global's VNXX service imposes no costs on Verizon and deprives Verizon of no toll charges.

Verizon has not offered a specific plan, or proposed contract language, for rating VNXX traffic differently than telephone exchange service traffic. (Of course, that may be because VNXX traffic is telephone exchange service traffic.) Verizon's billing system does not identify each physical service location belonging to a single retail customer.

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[63] *Verizon's Brief* at 41.

[64] Although Verizon's FX service ostensibly relies on dedicated transport, there is no reason that Verizon itself cannot, and does not, provision its FX service through common transport in a manner similar to which Global proposes.

There is, therefore, no reason to believe that carriers could readily obtain the information on which Verizon proposes to rely and no reason to create this functionality. This was the basis upon which the FCC's *Virginia Order* rejected Verizon's proposal to rate calls based not upon the originating and terminating central office codes, or NPA-NXXs, associated with the call but upon the geographic originating and end points of the call.[65]

Finally, Global reiterates that in the *ISP Remand Order*, the FCC determined that inter-carrier compensation for ISP-bound traffic is solely within the jurisdiction of the FCC and that on a going forward basis, state commissions have been preempted from addressing the issue.[66] Thus, the Department has no jurisdiction to impose access charges or other limitations on ISP in-bound traffic.[67] Similarly, inter-carrier compensation for ISP bound traffic is not an appropriate subject for an interconnection agreement.[68] The Arbitration Order should be clear that the Interconnection Agreement is not intended to regulate inter-carrier compensation for ISP-bound traffic. Global carries most of the dial up ISP bound traffic in the state using VNXX. Any order that purported[69] to interfere with this, such as an order imposing access charges on VNXX which included ISP-bound traffic, would make the service prohibitively expensive. This would be an economic catastrophe for the state. Presumptively, such an order would also cover Verizon's 500

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[65] *Virginia Order* ¶¶ 286-288.

[66] *ISP Remand Order* ¶ 82.

[67] Similarly, the Commission has no jurisdiction to determine who can or cannot terminate ISP-bound traffic. 47 CFR § 63.01(a) states that "[a]ny party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any point and to construct, acquire or operate any domestic transmission line...."

[68] *ISP Remand Order* ¶ 82.

[69] Again the Department has no jurisdiction over intercarrier compensation for ISP-bound traffic so any such order would be illegal.

number IPRS/SNS service, leaving no economically viable means for ISPs to serve people throughout the state.

D. It is reasonable for the parties to include language in the agreement that expressly requires them to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised.

Issue:
5. Is it reasonable for the parties to include language in the Agreement that expressly requires them to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?[70]
Global's Position:
Global requests a policy determination from the Department that a change in the *ISP Remand Order* will require renegotiation of those parts of the agreement affected by the change.
Global's Proposal:
Global did not provide explicit language concerning the recognition of ISP Remand Order but instead requests a policy determination from the Department and will negotiate with Verizon based on such ruling.
Basis for Global's Proposal:
Unlike other possible changes in the law, the parties know that there will be a revision of the *ISP Remand Order*. On May 3, 2002, the United States Court of Appeals for the District of Columbia Circuit in the *Worldcom ISP Decision*[71] rejected the FCC's conclusion that § 251(g) provided a basis for the actions taken by the FCC in the *ISP Remand Order*, but expressly recognized that other legal bases for the FCC's action may exist, expressly declined to vacate the rules established by the *ISP Remand Order*[72] and remanded back to the FCC for further action. Sometime this year or early next year there will be a revised order. Knowing that there will be a revised order, the parties should agree, or at least acknowledge, that they will promptly renegotiate when it is issued.

Verizon states:

> The parties do not dispute that the interconnection agreement shall be subject to future changes in law. Their agreed change-in-law provisions are contained in §§ 4.5 and 4.6 of the General Terms and Conditions.[73] This language will

[70] *Petition* at 24.

[71] *WorldCom, Inc. v. Federal Communications Comm'n., et al.*, No. 01-1218, Slip. Op. (D.C. Cir. May 3, 2002) ("*Worldcom ISP* Decision") at 6-7.

[72] *Id*.

[73] *See* General Terms and Conditions §§ 4.5 and 4.6. The parties have agreed that they "shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law." *Id*. § 4.5. Section 4.6 contains a virtually identical obligation for "any legislative, regulatory, judicial or other

> 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.*[74]

Global urges that the Department acknowledge Verizon's admission that "any future reversal or modification to the *ISP Remand Order"* will trigger the change in law provision.

Verizon's admission should resolve issue 5 completely. However, Verizon uses issue 5 to attempt to revise the definition of "reciprocal compensation traffic" to engraft its inter-exchange definition which is wholly at odds with the *Act's* definitions and the *ISP Remand Order*.

Verizon begins its argument by accurately stating the law:

> That Order [the *ISP Remand Order*] not only prescribed a mandatory intercarrier compensation rate regime with regard to the treatment of Internet-bound traffic but also, consistent with its statutory interpretation, amended the definition of traffic that is subject to reciprocal compensation under § 251(b)(5) of the Act.[75] Indeed, **the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation.** In short, in order to be eligible for reciprocal compensation, traffic now must meet two requirements. It must be "telecommunications traffic," which is defined as:
>
> (1) traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see, FCC 01-131, ¶¶ 34, 36, 39, 42-43) . . . *See* 47 CFR § 51.701(b)(1), and
>
> (2) the traffic must originate on the network of one carrier and terminate on the network of the other carrier.[76]

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governmental decision, order, determination or action ..." Thus, the parties' contract language already addresses the issue that GNAPs raised in its Petition.

[74] *Verizon's Brief* at 59.

[75] *See* 47 CFR § 51.701(e).

[76] *Verizon's Brief* at 59-60 (emphasis added).

Then, Verizon proposes its definition of "reciprocal compensation traffic."[77] The definition begins well:

> Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, information access, or exchange services for Exchange Access or information access.

Then Verizon provides its **own** definition of "exchange access" based not upon whether traffic is "toll" traffic as required by the *Act* and the *ISP Remand Order*, but based upon Verizon local calling areas, in clear contradiction to its own acknowledgement that "**the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation**."

> The determination of whether Telecommunications traffic is Exchange Access or information access **shall be based upon Verizon's local calling areas** as defined by Verizon. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic; (2) **traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon**; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; or, (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment). **For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement**.[78]

Global urges that the Department not allow Verizon to unilaterally repeal the statutory definitions of "exchange access"[79], "telephone toll service[80] or unilaterally rewrite the reciprocal compensations rules by adopting this definition.

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[77] *Verizon's Brief* at 60 (emphasis added).

[78] Global's proposal simply refers to 47 U.S.C. §251(b)(5).

[79] 47 USC § 153 (16).

E. Two-way trunking should be available to Global at Global's request.

Issue:
6. Whether two-way trunking is available to Global at Global's request?[81]
Global's Position:
Global should be afforded two-way trunking as requested just as if there was a "normal" customer relationship, *i.e.*, not an unwilling monopoly provider selling to its nascent competitor.[82] Two-way trunking is the most efficient way to provision trunking between the parties and avoids the potential necessity to make future software changes to convert one-way to two-way trunking.
Global's Proposal:
Global proposes revisions to Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9. Adoption of Global's proposed contract language allows the CLEC to request the most efficient method of provisioning transport and avoid charges in the future for conversion of one-way trunks. Requiring Verizon, when it is the customer's carrier for originating traffic to forecast traffic is reasonable and equitable as it is in a better position to forecast this traffic than Global is.
Basis for Global's Proposal:
Equity and law dictate that "the customer is right". Notwithstanding this mantra, Verizon continues to exert its monopoly position to either deny adequate trunking facilities, or place the burden on Global to request provisioning in a manner that is burdensome and inefficient.

Verizon does not deny that it must provide two-way trunking when requested. Global does not seek to "dictate" terms and conditions to Verizon.[83] It will request trunking, and to the extent that trunking is unable to be provisioned, *i.e.*, it is technically infeasible, Verizon may reject such request with cause and explanation. However, its terms and conditions are prohibitive in that they require Global to negotiate conditions for each trunking facility provisioned. Global should be able to rely on Verizon providing sufficient transport at the appropriate service quality level without being

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[80] *See* 47 USC §§ 153 (48).

[81] *Petition* at 26.

[82] *See Petition* at 24.

[83] Verizon Initial Brief at 73.

unduly delayed in its request by being forced to negotiate relatively standard arrangements.

Good Faith Trunk Forecasts (Interconnection Attachment § 2.4.4). Global is not trying to avoid providing traffic forecasts. Consistent with its arrangements with Verizon in other states, and in its currently in-place agreement with Verizon-MA, it provides forecasts. Global does, however, believe that Verizon is also obligated to provide traffic forecasts.[84] This is especially the case because currently Verizon's customers are the chief source of Global's traffic.

Monitoring Two-Way Interconnection Trunks (Interconnection Attachment § 2.4.11). In this section, Global proposes that Verizon be responsible for provisioning trunks on its side of the point of interconnection, rather than Global. Verizon often complains of interference by CLECs in its network provisioning. Here, however, because ordering places burdens on CLECs such as Global, it proposes that Global assume all of the burden associated with ordering trunking.

Disconnecting Underutilized Trunks (Interconnection Attachment § 2.4.12). Verizon argues that it can impose an excessively high target capacity to unilaterally declare a trunk to be "underutilized." In this instance, Verizon is clearly trying to interfere in the management of Global's network. As long as Global is in any way financially responsible for the trunks in question, it should be allowed to retain them, rather than surrendering them. In the event Verizon requires the trunks to prevent blockage and/or outages, it can discuss this with Global, seek redress at the Department and/or augment its facilities.

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[84] The New York Commission agreed that Verizon should be equally obligated to provide trunking forecasts. *Global New York Order* at 16.

Recurring and Non-Recurring Charges (Interconnection Attachment § 2.4.16). Verizon proposes to both charge Global as a provider and share costs as a co-customer. As a provider, it has an incentive to maximize costs-notwithstanding its agreement to share these costs as a co-customer based on the proportionate percentage of use. Currently, Verizon's customers originate more traffic than Global and as such, the amount in contention is *de minimis.*

F. It is inappropriate to incorporate by reference other documents, including tariffs into the agreement instead of fully setting out those provisions in the agreement.

Issue: 7. Is it appropriate to incorporate by reference other documents including tariffs, into the Agreement instead of fully setting out those provisions in the Agreement?[85]
Global's Position: As a basic tenet of contract law, all elements which may be necessary to control the interaction between parties should be elaborated and provided for within the four corners of the document.
Global's Proposal: Global has not proposed specific language as Verizon's tariff and other references are pervasive. Instead, Global asks that the Department render a policy ruling that to the greatest degree possible, the contract should be self-contained and references to tariffs and other documents such as the CLEC handbook.
Basis for Global's Proposal: The interconnection agreement should be the controlling document governing arrangements between the parties. Tariffs and other Verizon documents in no way represent a "meeting of the minds" between the parties. In contrast, they represent Verizon's sole opinion as to what terms and conditions should apply to the carriers' relationship and provide opportunities to alter the terms and conditions set forth between the parties.

Verizon paints its argument as an attempt by Global to engage in regulatory arbitrage. In fact, Global's proposal attempts to constrain Verizon from engaging in

[85] *Petition* at 27.

regulatory arbitrage to defeat contract language negotiated between the parties or resulting from the Department's Order in this proceeding. For example, Verizon claims that Global seeks to enjoy the lower of its interconnection prices or more recently determined prices set by the Department. In fact, when and if prices change subject to the determination of the Department, this would be a "change in law" which can then be implemented pursuant to operation of the change in law provision of the contract.[86] Thus, Verizon's arguments are misplaced. Notwithstanding, Global remains unwilling to accept unilateral changes made by Verizon which may affect its relationship with Verizon, such as alterations to its CLEC handbook-which are subject neither to Department review or approval.

G. Global's insurance requirements should be reasonable.

Issue: 8. Should the Interconnection Agreement require Global to obtain excess liability insurance coverage of $10 million and require Global to adopt specified policy forms?[87]
Global's Position: Insurance requirements should be reasonable, *i.e.,* sufficient to cover potential losses while not imposing an inordinate burden on Global as an insurance purchaser.
Global's Proposal: The Agreement should be modified to include more reasonable insurance limits that reflect the relative economic position of interconnecting CLECs. No insurance limit should exceed $1,000,000. Global's proposed language can be found at G T&C Section 21of Global's Ex. B the "red-lined" contract.
Basis for Global's Proposal: Verizon is obligated to provide just cause why its insurance requirements are reasonable, especially since SBC has come to terms with Global at lower levels. Verizon has failed this burden.

[86] §§ 4.5 and 4.6 of the General Terms and Conditions.

[87] *Petition* at 29.

Verizon attempts to impose burdensome insurance limits as a means to stifle competition by virtue of adding costs to make Global non-competitive. There is simply no reason why Verizon should require that Global carry more insurance than SBC requires. For example, SBC considers sufficient Global's current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage.[88] Verizon has yet to file any claims against Global throughout its territory and has no basis to assert that its limits are anything other than excessive. Indeed, because Global and Verizon interconnect through end point fiber meets, there is little risk to destruction of Verizon property and/or network facilities.

H. Audits should only be permitted when required and should be limited to traffic reports necessary to verify the underlying support for intercarrier compensation.

Issue:
9. Should the Interconnection Agreement include language that allows Verizon to audit Global's "books, records, documents, facilities and systems?"[89]
Global's Position:
The audit provisions proposed by Verizon are not necessary to verify information for billing purposes because Global already provides this and Verizon has an independent method of verifying call data. Verizon's proposed audit provisions are onerous[90] and intended to derive competitively sensitive information.[91]

[88] In addition to such general liability coverage, Global agrees that if it operates vehicles in the state, it will purchase sufficient insurance to conform to all of the state's legal requirements for insurance coverage. Direct Testimony of William J. Rooney at 7 (August 13, 2002).

[89] *Petition* at 30.

[90] Direct Testimony of William J. Rooney at 10 (August 13, 2002).

[91] Verizon's proposal includes "[t]he right to audit books, records, facilities and systems ***for the purpose of evaluating the accuracy of the audited party's bills***." Direct Testimony of Jonathan B. Smith at 4 (May 16, 2002)(emphasis added); *see also* Verizon's Proposed Interconnection Agreement at § 7 General Terms and Conditions.

Global's Proposal:
Global proposes deletion of Verizon contract provisions which allow it to audit Global's confidential books as found at Global Ex. B the red-line contract, GT&C § 7, Interconnection Attachment Section 6.3, 10.13. Additional Services Attachment Section 8.5.4.
Basis for Global's Proposal:
The Agreement should not authorize or permit either Party to audit, review or otherwise access the other Party's confidential records and systems. Global provides traffic reports and voluntarily agrees to have these subject to audit; Verizon currently verifies these traffic reports independently through its own facilities.

Verizon argues it should gain access to Global's records to verify bills. It states that "[t]he supplier (billing party) reasonably should be expected to carry the burden to justify its charges to the customer (the billed party)." On the face of it, this is reasonable. However, it ignores three important facts: first: **Verizon only pays Global based on Verizon's count of MOUs.** When there are billing disputes, it is Global disputing Verizon's count of MOUs. If anything, Global should be requesting audit rights. Second, the parties already have in place a system of exchanging CDRs so the parties can verify each other's records of MOUs. Finally, Verizon already keeps computer records of call traffic exchanged between the parties, on which it presumably bases its CDRs. In sum, Verizon does not need to audit Global's sensitive competitive information to verify traffic for billing purposes.

It is truly amazing that Verizon claims it needs these audit rights because Global cannot be trusted. Verizon's proof: Verizon's unproven allegations in a complaint it filed against Global. Verizon never actually explains why it needs more than an exchange of CDRs to resolve the only meaningful factual billing dispute the parties may have, the count of MOUs.

I. Global should not be mandated to provide collocation to Verizon on the terms and conditions that Verizon dictates.

Issue: 10. Should Global be mandated to provide collocation to Verizon on the terms and conditions Verizon dictates?[92]
Global's Position: There are no federal or state law requirements mandating that a CLEC provide collocation facilities. Nonetheless, Global makes available facilities for collocation by Verizoan at market rates in a non-discriminatory fashion.
Global's Proposal: Global provides no terms relating to collocation but offers this as to the public and seeks to limit Verizon's proposal at § 2.1.5 of the Interconnection Attachment.
Basis for Global's Proposal: Global needs no basis; the burden is upon Verizon to provide a basis in law for mandating collocation.

Global has volunteered to provide collocation at its facilities despite the lack of legal requirement. This is not appropriate for the interconnection agreement as Global is offering it voluntarily in the ordinary course of business and the terms and conditions under which the offering is made may vary, while the terms of the interconnection agreement remain static. Verizon asserts that Global has changed its proposal to an unwary Verizon undoing agreed upon language elsewhere.[93] This is not true. The language Global advocates providing that collocation shall be provided in Global's sole discretion was always part of the negotiation process, and was a simple and effective method for protecting Global from providing collocation in a manner that would discriminate between customers or otherwise subvert an open market.

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[92] This issue was framed by Verizon.

[93] *Verizon's Brief* at 114.

J. No party should be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action.

Issue:
11. Should GNAPs be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action?
Global's Position:
The parties' should each obey the law.

K. No party should be permitted to insert itself into the other party's network management.

Issue:
7. Should GNAPs be permitted to insert itself into Verizon's network management or contractually eviscerate the "necessary and impair" analysis to prospectively gain access to network elements that have not yet been ordered unbundled?
Global's Position:
Global wants some protections that as a customer it will (a) have access to the same technologies deployed in Verizon's network and (b) Verizon will not deploy new technologies which will affect Global's service quality without notice and adequate joint testing.

III. Conclusion.

The Department should rule in Global's favor on the issues listed above.

Respectfully submitted,

Global NAPs, Inc.

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