COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In the Matter of	)	
	)	
Global NAPs, Inc.	)	
	)	
Petition for Arbitration Pursuant to Section 252(b)	)	
of the Telecommunications Act of 1996 to	)	D.T.E. 02-45
Establish an Interconnection Agreement with	)	
Verizon New England Inc. d/b/a Verizon	)	
Massachusetts f/k/a New England Telephone	)	
and Telegraph Company d/b/a Bell	)	
Atlantic-Massachusetts	)	

POST HEARING BRIEF OF VERIZON MASSACHUSETTS

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I. INTRODUCTION

The Massachusetts Department of Telecommunications and Energy (the "Department") should reject the contract language proposed by Global NAPs, Inc. ("GNAPs") for the contemplated interconnection agreement between Verizon and GNAPs at issue in this case because GNAPs' proposed language: (1) is unsupported by the record, (2) reflects GNAPs' inappropriate attempt to shift its costs and business risks to Verizon, (3) alters the existing law of intercarrier compensation, and 4) ignores basic principles of law established by the Telecommunications Act of 1996 (the "Act") [1] and this Department.

As became apparent during this case, GNAPs intends to minimize its investment in the Massachusetts communications infrastructure by relying on Verizon's network to transport calls over great distances to GNAPs' customers. GNAPs, however, does not want to pay for the use of Verizon's network so it intends to assign NXX codes in a manner such that Verizon's network does not assess toll charges on interexchange calls that would otherwise be subject to access charges pursuant to federal and state law. In furtherance of its scheme, GNAPs hopes to obtain reciprocal compensation from Verizon even though Verizon is performing the bulk of the work in transporting these *interexchange* calls to GNAPs' customers. Such blatant attempts at regulatory arbitrage are not permitted by the Act, or the Departments orders, and if implemented, would have significant and detrimental effects on consumers and bona fide local competition in Massachusetts.

Additionally, GNAPs articulated only nine issues for arbitration, admitting that it seeks resolution of issues "on a policy level," even though it disputes much of Verizon's proposed

[1] *See* U.S.C. § 251 *et seq.*

contract language.[2] According to GNAPs, the Department's resolution of these "policy" issues will dictate resolution of all the disputed contract language. GNAPs is wrong. Although GNAPs concludes its discussion of the open "policy" issues with a string cite to various disputed contract sections, a great many of these contract sections are unrelated to either the issues GNAPs articulated or to its supporting explanation. GNAPs also did not provide witnesses who were able to discuss the vast majority of GNAPs' proposed changes.[3] Accordingly, GNAPs has provided the Department with no basis to adopt many of GNAPs' disputed contract provisions. Verizon, in contrast, has explained and supported its contract proposals, which implement Verizon's duties and obligations under the Act in a commercially reasonable manner. Verizon's witnesses were familiar with the specific contract language at issue and were able to provide support for Verizon's positions.[4] Consistent with applicable law and good policy, the Department should adopt Verizon's proposed contract language and resolve each disputed issue in its favor.

Furthermore, the proposals GNAPs presents in this case (and would have the Department adopt) are nearly identical to issues that state commissions across the country have already considered and rejected. For example, Verizon and GNAPs recently concluded arbitrations in California, New York, Ohio, and Illinois,[5] where the commissions rejected the vast majority of

[2] GNAPs' Petition at 6 ¶ 13.

[3] GNAPs' witness Mr. Lee Selwyn testified that he was only familiar with GNAPs' proposed contract language on a "very general level" and that he did not participate in any of the negotiations with respect to that language. *Petition of 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 f/k/a New England Telephone & Telegraph Co., Inc. d/b/a Bell Atlantic Massachusetts*, Arbitration Hearing Transcript, D.T.E. 02-45 at 15: 22-24; 16: 1-4 (MA. DTE Oct. 9, 2002) ("MA Hearing Transcript").

[4] *See e.g.*, Direct Testimony of Peter J. D'Amico, Terry Haynes, William Munsell, Karen Fleming, and Jonathan B. Smith (discussing in detail both Verizon's and GNAPs' contract language proposals).

[5] *See e.g., In re Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Arbitration Order,

(continued…)

GNAPs' positions and proposed language. Just five days ago on October 16, 2002, the Arbitrator in Verizon's and GNAPs' Rhode Island case found for Verizon on every enumerated issue in that case that is also an issue here.[6] For example, with respect to the identical "virtual" NXX code proposal GNAPs submits here, the Arbitrator found:

> GNAPs' VNXX proposal **is *not in the public interest because it encourages rate arbitrage and may undermine universal service***. GNAPs' VNXX proposal will allow GNAPs to receive reciprocal compensation in some cases while allowing GNAPs to *avoid paying access charges* in other cases. Also, GNAPs' VNXX proposal could ***adversely impact VZ-RI's financial ability to satisfy its obligations as the carrier of last resort and providing affordable phone service to rural and low income customers***. In addition, GNAPs' VNXX proposal could effectively increase a VZ-RI retail customer's local calling area because the VZ-RI customer could call a GNAPs VNXX customer without paying access charges. This development would further undermine VZ-RI's ability to obtain access charges for intraLATA calls.[7]

State commissions have also considered and rejected proposals by other CLECs similar to those GNAPs proposes here. The South Carolina Commission, for example, recently found that a "virtual FX" scheme identical to GNAPs' proposal for Issue 4:

> [A]mount[s] to ***an extraordinarily clear example of attempted regulatory arbitrage*** -- that is, a situation in which [the CLEC] will earn revenues (both from its subscribers and

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Case No. 02-C-0006 (N.Y. PSC May 22, 2002) ("*New York Verizon/GNAPs Arbitration Order*"); *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Application No. 01-12-026, Decision 02-06-076 (Cal. PUC May 15, 2002) ("*California Verizon/GNAPs Arbitration Order*"); *In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 02-876-TP-ARB, at 6 (Ohio P.S.C. Sept. 5, 2002) ("*Ohio Verizon/GNAPs Order*"); *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*, Order, Docket No. 02-0253, at 3 (Ill. PUC Oct. 1, 2002) ("*Illinois Verizon/GNAPs Arbitration Order*").

[6] *In re: Arbitration of the Interconnection Agreement Between Global Naps and Verizon-Rhode Island, Arbitration Decision*, Docket No. 3437 (R.I. PSC Oct. 16, 2002) ("*Rhode Island Verizon/GNAPs Initial Arbitration Order*"). The arbitration decision of Steven Frias adopts for Rhode Island nearly all of Verizon's proposed language that is either identical or substantially similar to the language Verizon proposes in this case.

[7] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 33-34 (emphasis added).

from Verizon) while Verizon is forced to bear the bulk of the real costs of providing the service and is deprived of toll revenues to boot.[8]

Therefore, consistent with applicable law, recent state commission decisions, and sound public policy, the Commission should adopt Verizon's proposed contract language and resolve each disputed issue in Verizon's favor.

II. SUMMARY OF RECOMMENDATIONS

The Department should resolve each of the issues in Verizon's favor and adopt Verizon's proposed contract language. Verizon's recommendations are summarized below.

Issues	Related / Unrelated	Contract Sections	Summary of Rationale
1	Related	Glossary §§ 2.46 and 2.67; Interconnection Attachment §§ 2.1, 2.1.2, and 7.1	Verizon's proposal contemplates that the parties will interconnect their networks in accordance with applicable law, including the Department's orders.
	Unrelated	Interconnection Attachment §§ 2.3, 2.4, 3, 5.2.2, 5.3	GNAPs' proposed changes to these sections are unrelated to this Issue and are unsupported by the record. Sections 2.3 and 2.4 are addressed in the context of Issue 6. Verizon's proposal in the remaining sections retains the status quo of the parties' existing arrangement and implements requirements to ensure proper routing of traffic.
2	Related	Glossary §§ 2.46 and 2.67; Interconnection Attachment §§ 2.1, 2.1.2, and 7.1	Verizon's proposal contemplates that the will interconnect their networks in accordance with applicable law, including the Department's orders.
	Unrelated	Interconnection Attachment §§ 2.3, 2.4, 3, 5.2.2, 5.3	GNAPs' proposed changes to these sections are unrelated to this Issue and are unsupported by the record. Sections 2.3 and 2.4 are addressed in the context of Issue 6. Verizon's proposal in the remaining sections retains the status quo of the parties' existing arrangement and implements requirements to ensure proper routing of traffic.

[8] *Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Order on Arbitration, Docket No. 2002-181-C (S.C. PSC Aug. 30, 2002) ("*South Carolina Verizon/US LEC Arbitration Order*").

Issues	Related / Unrelated	Contract Sections	Summary of Rationale
3	Related	Glossary §§ 2.34, 2.57, 2.76, 2.92; Interconnection Attachment § 7.3.4	Verizon's local calling areas should apply for purposes of intercarrier compensation.
	Unrelated	Glossary §§ 2.48, 2.84; Interconnection Attachment §§ 2, 6, 7.1 and 13.3	GNAPs' proposed changes to Glossary §§ 2.48 and Interconnection Attachment § 13.3 are related to Issue 4. Sections 6 does not contain disputed language and §§ 2 and 7.1 were address in Issues 1 and 2.
4	Related	Glossary §§ 2.48, 2.72- 2.74, 2.77, 2.84; Interconnection Attachment §§ 2.2.1.1, 2.2.1.2, 9.2, 13	GNAPs' proposed changes to these sections are unsupported by the record. Verizon's proposals properly reflect applicable law applicable to reciprocal compensation and access charges including the Department's current IntraLATA access requirements, and maintain the status quo in Massachusetts.
5	Related	General Terms and Conditions §§ 4.5, 4.6; Glossary §§ 2.75, 2.76	Verizon's proposal eliminates a duplicative "applicable law" provision for the treatment of ISP traffic.
	Unrelated	Glossary §§ 2.57, 2.75, 2.76, 2.92, 2.94, 2.95; Interconnection Attachment §§ 7.3., 7.4; Additional Services Attachment § 5.1	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration and unsupported by the record. Verizon's language properly reflects the reciprocal compensation requirements for ISP-bound traffic consistent with the FCC's *ISP Remand Order*.
6	Related	Interconnection Attachment §§ 2.2.3, 2.2.4, 2.4.1 - 2.4.3, 2.4.10	Verizon's proposal preserves GNAPs' option to use two way-trunks, but provides necessary and reasonable detail to ensure mutual consultation and agreement.
	Unrelated	Glossary § 2.96, Interconnection Attachment §§ 2.3, 2.4.4, 2.4.8, 2.4.9, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.16, 9	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration and unsupported by the record. Verizon's language incorporates reasonable requirements for interconnection of the parties' respective networks.
7	Related	General Terms and Conditions §§ 1.1, 1.2, 6.5, 47; Glossary § 2.74; Additional Services Attachment §§ 9.1, 9.2; Interconnection Attachment §§ 2.1.3.3, 2.1.4, 2.1.6, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 9.2.2, Resale §§ 1, 2.1, 2.2.4; Unbundled Network Elements §§ 1.1, 1.8, 4.3, 4.7.2.	Verizon's references to tariffs establish that effective tariffs are the first source for applicable prices while ensuring that the interconnection agreement's terms and conditions take precedence over conflicting tariffed terms and conditions. Verizon's references to tariffs are reliable and the tariff process that this Department oversees is not unilateral.

Issues	Related / Unrelated	Contract Sections	Summary of Rationale
8	Related	General Terms and Conditions § 21	Verizon's insurance requirements reasonably protect its network, personnel, and other assets in the event GNAPs has insufficient resources.
9	Related	Additional Services Attachment § 7 Interconnection Attachment § 10.13	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.
10	Related	Interconnection Attachment § 2.1.5	Verizon should be permitted to collocate at GNAPs' facilities as a fair and equitable option to interconnect with GNAPs. GNAPs did not respond at all to this supplemental issue, providing no basis to reject Verizon's proposal.
11	Related	General Terms and Conditions § 4.7	Verizon's proposal gives effect to a change in law, while GNAPs improperly attempts to delay implementation of the law even if the change is not subject to a stay. GNAPs did not respond at all to this supplemental issue, providing no basis to reject Verizon's proposal.
12	Related	General Terms and Conditions § 42	Verizon's proposal ensures that Verizon will provide interconnection and UNEs consistent with applicable law. GNAPs provided no meaningful response to this supplemental issue, providing no basis to reject Verizon's proposal.

III. DISCUSSION OF ISSUES

Issue 1: Verizon's Proposal Permits GNAPs To Physically Interconnect With Verizon At A Single Point On Verizon's Existing Network.

Previous State Commission Decisions (see explanatory footnote)[9]:
Adopted Verizon's Proposal: *New York, Ohio, Illinois (mix), California (with modifications), Rhode Island*[+]*, South Carolina**
Adopted GNAPs' Proposal: *None*

Issue 2: GNAPs Should be Responsible for the Costs Associated with Transporting its Telecommunications Traffic All The Way to The Destination End-user.

Previous State Commission Decisions:
Issue 2 as considered by other state commissions in the context of recent arbitrations between Verizon and GNAPs concerned Verizon's VGRIPs proposal. Verizon is not proposing VGRIP in this case.

GNAPs' proposed contract language for Verizon's Redline Agreement, Glossary §§ 2.46 and 2.67[10] as well as Interconnection Attachment §§ 2.1, 2.1.2, 2.3, 3, 5.2.2, 5.3, and 7.1 should not be adopted. Aside from the substantive reasons for rejecting GNAPs' language (discussed below), the arbitration issues GNAPs identifies in its Petition as Issues 1 and 2 bear no relation to GNAPs' proposed contract changes for these sections. The Department should reject GNAPs' language for this reason alone. In the few instances where GNAPs' proposed changes do relate to either Issue 1 or 2, GNAPs has provided little, if any, rationale or support for why its changes

[9] To assist the Commission in quickly identifying how other state commissions have resolved issues similar to those GNAPs presents here, Verizon has included summaries appearing in boxed sections under Issues that identify how particular commissions have resolved the applicable issue. Unless otherwise noted by an asterisk "*", the references are to decisions in recent Verizon/GNAPs arbitrations in New York, California, Ohio and Illinois and Rhode Island. With the exception of Rhode Island, each of these decision is final. References to Rhode Island are marked with a "[+]" to denote that the decision is an initial arbitration decision which the Rhode Island Commission is currently reviewing. *See Rhode Island Verizon/GNAPs Initial Arbitration Order*.

[10] Contrary to GNAPs' assertions during this case, it has not proposed language and disputed text does not appear in Glossary Sections 2.45 or 2.66. Verizon assumes that GNAPs' references to these sections is an error, and that GNAPs intended to refer to its edits for Sections 2.46 and 2.67 of the Glossary.

are necessary or even prudent and it did not provide a witness who was able to discuss GNAPs' language.[11] The Department should reject all such changes as well.

Contrary to GNAPs' initial suggestion,[12] Verizon does not dispute that GNAPs has the option to designate a single point of interconnection ("POI") in the LATA within Verizon's network. The Parties appear to have reached substantive agreement on this issue. GNAPs need only interconnect "at any technically feasible point within" Verizon's network, as required by applicable law.[13] Indeed, even the testimony of GNAPs' witness Lee Selwyn supports Verizon's proposal on this point. In his direct testimony, Mr. Selwyn testified that the Act gives CLECs the right to "establish interconnection 'at any technically feasible point' ***on the ILEC's network***."[14] Despite the parties' apparent agreement on this issue, GNAPs' contract proposals discussed below do not confine GNAPs' choice of point of interconnection ("POI") to any technically feasible point ***on*** Verizon's network.[15]

Verizon also does not dispute that the Parties will establish interconnection points ("IPs") for purposes of determining financial responsibility in accordance with the Department's decisions in prior proceedings. Verizon's Redlined Agreement contains very specific language stating that the Parties shall follow the Department's earlier directives on these issues.[16] The issue in dispute is whether GNAPs must compensate Verizon in accordance with the

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[11] GNAPs' witness for these Issues, Mr. Lee Selwyn, admitted that he was only aware of GNAPs' contract language proposals on a "very general" level and that he did not participate in negotiations with respect to that language. MA Hearing Transcript at 15: 22-24; 16: 1-4.

[12] GNAPs' Petition at 6 ¶ 14.

[13] *See* 47 U.S.C. § 251(c)(2)(B).

[14] Selwyn Direct Testimony at 6 (no line numbers) (emphasis added).

[15] *See* Verizon's Response at 11-12; D'Amico Direct Testimony at 4:7-19 - 5:1-2.

[16] *See, e.g.*, Interconnection Attachment Section 7.1.1 clearly stating in undisputed text that the Parties shall establish Reciprocal Compensation Traffic Interconnection Points in accordance with the Department's Orders in D.T.E. 98-57 (3/24/00) and D.T.E. 99-42/43, D.T.E. 99-52 (3/24/00) and (8/25/99).

Department's orders for GNAPs' originated traffic that Verizon transports over Verizon's network to destination end-users.

A. Pursuant to Valid Department Orders GNAPs Is Responsible for Transporting its Originating Traffic or to Pay for Transporting its Over Verizon's Network All the Way to the Terminating End User

The Department has previously found and again affirmed that all local exchange carriers in Massachusetts are responsible for transporting their originating traffic all the way to the terminating end user or paying for transport provided by another carrier to accomplish the same. Specifically, in *D.T.E. 98-57 Tariff No. 17 Order*,[17] the Department stated that:

> CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic *all the way to the terminating end user*.[18]

The Department later affirmed that decision in its *MediaOne Supplemental Order*.[19] There, the Department stated:

> Both carriers are responsible for delivering their traffic (either through self-provisioning or leasing another carrier's transport) from the Mid-Span Meet to the terminating carriers' appropriate interconnection point ("IP"), which may be located at a remote tandem or end office.[20]

The *MediaOne Supplemental Order* is exactly on point in this case. Verizon and GNAPs are currently interconnected via an End Point Fiber Meet ("EPFM") at GNAPs' Quincy switch.[21] An

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[17] *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*").

[18] *D.T.E. 98-57 Tariff No. 17 Order* at 132.

[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*").

[20] *MediaOne Supplemental Order* at n. 6.

[21] GNAPs Response to Verizon's Discovery Request No. 8 filed 9/25/02.

EPFM is a type of mid-span meet whereby Verizon builds new fiber optic facilities all the way from Verizon's serving wire center to the CLEC's central office location.[22] Verizon provisioned these facilities to meet its obligations under the Department's orders. In accordance with the *D.T.E. 98-57 Tariff No. 17 Order,* Verizon transports its traffic all the way from its end users to GNAPs' End Point Fiber Meet located at GNAPs' central office and then compensates GNAPs at the applicable rate depending on the type of traffic delivered.[23]

Going forward, GNAPs proposes that, for GNAPs originated telecommunications traffic destined to Verizon's end-users, it deliver such traffic to Verizon at the established EPFM. Contrary to the Department's orders, however, it proposes to compensate Verizon at only the tandem reciprocal compensation rate. Pursuant to GNAPs' proposal, Verizon would be responsible for transporting GNAPs' traffic all the way from the EPFM to each tandem serving the terminating end user, but it would receive no compensation from GNAPs for providing that service. GNAPs' proposal is directly contrary to the *MediaOne Supplemental Order*. Consistent with that order, GNAPs is responsible for compensating Verizon for the transport of GNAPs' traffic that Verizon provides between the EPFM (a type of mid-span meet) and Verizon's "IP" which, pursuant to Verizon's proposed contract language,[24] will be located at Verizon's tandems or end offices serving the terminating end user.[25]

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[22] D'Amico Direct Testimony at 16: 18-22.

[23] Historically, the balance of traffic from Verizon to GNAPs has been several hundred thousand minutes to GNAPs for every single minute GNAPs returns. Thus, pursuant to the Department's orders and *the ISP Remand Order,* this traffic is presumed to be Internet Traffic and is exchanged on a bill and keep basis in Massachusetts pursuant to the Department's directives. *See In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,* Order on Remand, 16 FCC Rcd 9151 ¶ 80 (the *"ISP Remand Order"*) (FCC rate caps have no effect to the extent state have ordered LECs to exchange ISP-bound traffic on a bill and keep basis).

[24] Verizon's Redlined Agreement, Interconnection Attachment §§ 7.1.2 - 7.1.4. Section 7.1.4, which GNAPs does not dispute clarifies that GNAPs shall be responsible for delivering its Reciprocal Compensation Traffic to Verizon's IPs. As discussed below, however, GNAPs proposes contract language elsewhere in the agreement that appears inconsistent with this undisputed provision. *See e.g*., GNAPs' proposed Interconnection

(continued…)

B. The Department Recently Established TELRIC-based Rates for Verizon's Dedicated and Common Transport Elements and This Two-Party Arbitration is Not the Appropriate Proceeding to Reconsider Those Rates.

Pursuant to the five-year cycle established the 1996 Consolidated Arbitrations, the Department recently concluded its second comprehensive investigation into Verizon's unbundled network element rates (the "*MA TELRIC Proceeding, DTE 01-20*").[26] In excess of twenty-five carriers, mostly CLECs, participated in that proceeding including GNAPs. At the conclusion of the proceeding, the Department established new rates for unbundled dedicated common transport. Apparently not satisfied with the results of that proceeding, GNAPs now seeks to collaterally attack the recently established rates in this two-party arbitration. Specifically, GNAPs witness Mr. Selwyn files pages upon pages in his direct testimony of what he purports is a cost study demonstrating that Verizon's transport costs in Massachusetts are "de minimis". If his cost study was correct and in fact Verizon's costs were in fact "de minimis" then surely GNAPs would not be arguing so strenuously to avoid them.

Nevertheless, as the extensive review performed during the *MA TELRIC Proceeding, DTE 01-20* and Verizon witness Mr. D'Amico's testimony indicates,[27] Verizon's transport costs

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Attachment § 2.1.1 (inconsistent to the extent GNAPs intends for its language to limit GNAPs' responsibility for its own traffic).

[25] As clarified by Verizon witness Peter J. D'Amico, there are two reciprocal compensation rates established in Massachusetts, a tandem rate and an end office rate. MA Hearing Tr. at 54:20-24; 55:1-5. The tandem rate applies to traffic delivered to the particular Verizon tandem subtended by the end office serving the terminating end user, and the end office rate applies to traffic delivered directly to the end office serving the end user. Neither the tandem rate nor the end office rate compensates Verizon for the transport function at issue here -- that is, transport of GNAPs' traffic from the POI to the Verizon IPs at the applicable tandem or end offices.

[26] *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*").

[27] D'Amico Direct Testimony at 14: 6-13.

are not de minimis. Rather, they are quite substantial and Verizon is entitled to recover these costs under the Act to the extent it incurs them on GNAPs' behalf. In any event, this two-party arbitration of interconnection agreement terms and conditions is not an appropriate proceeding in which to conduct another comprehensive review of Verizon's costs and, in any case, GNAPs should not be permitted to collaterally challenge conclusions regarding transport costs that the Department has already addressed during a proceeding in which GNAPs had an ample opportunity to participate. The Department should not reach conclusions in this proceeding contrary to those it recently reached in the rate proceeding specifically designed to examine Verizon's costs.

C. Comments on Specific Contract Language Disputes

1. GNAPs Proposed Changes Related to Issues 1 and 2.

GNAPs identified several of its contract changes as related to Issues 1 and 2, but failed to explain why such edits are necessary or related to the stated issues. In fact, GNAPs' edits are inconsistent with agreed portions of the contract and if included, would serve only to create confusion and inconsistencies within the document:

Verizon Redline Agreement, Interconnection Attachment §§ 2.1.1, 2.1.2, Glossary § 2.46, 2.67: Without explanation or support, GNAPs proposes to add language to §§ 2.1.1 and 2.1.2 of the Interconnection Attachment. As originally drafted, § 2.1.1 states that the Parties shall provide interconnection of their networks to the extent required by Applicable Law at any technically feasible point as specified in the Agreement.[28] GNAPs, however, seeks additional language addressing the issue of how many physical points of interconnection ("POIs") may be established per LATA. As noted above, Verizon does not dispute GNAPs' ability under current

[28] Verizon Redlined Agreement, Interconnection Attachment, § 2.1.1.

law to designate only one POI within Verizon's network per LATA, but that right is already covered by Verizon's language which incorporates an applicable law standard.[29] If the law were to require additional POIs, the language as originally drafted would automatically incorporate that standard. GNAPs' language, however, attempts to "lock-in" the current state of the law into a contract that may continue after the law changes. Verizon is not required to do more than that which the law requires and it is not obligated to agree to language that would cause the contract to deviate from those legal requirements.

GNAPs' language in § 2.1.1 regarding responsibility for costs of transporting traffic to a POI is misplaced. As explained by Verizon witness Mr. D'Amico,[30] Verizon's Proposed Agreement defines "POI" as the physical location where one Party's facilities connect with the other's for purposes of exchanging traffic.[31] Thus, "POI" as that term is used in the Agreement — primarily in § 2 of the Interconnection Attachment — identifies the geographic points at which the parties will physically connect their networks. That point may or may not be the same

[29] The FCC's Wireline Competition Bureau recently endorsed inclusion of similar applicable law references:

> We also feel it necessary to comment on a theme running through many of the issues in this proceeding. In response to a petitioner's proposal that simply paraphrases or quotes a particular Commission rule, Verizon often indicates that its proposed language requires it to comply with the requirements of 'applicable law,' and argues that the petitioner's language is therefore unnecessary. We generally determine that Verizon should prevail on such issues.

See Petition of WorldCom, Inc. pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporate Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; 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 Nos. 00-218, 00-249, 00-251 at ¶¶33, 34, 477 (rel. July 17, 2002) ("*Virginia Arbitration Order*").

[30] D'Amico Direct Testimony at 7:11-16; MA Hearing Tr. at 53:24 - 54:1-14.

[31] Verizon Redlined Agreement, Glossary, § 2.67.

as an Interconnection Point or "IP" of either party.[32] The Agreement defines Interconnection Point or "IP" as the point at which a Party who receives Reciprocal Compensation Traffic from the other Party assesses Reciprocal Compensation charges for further transport and termination of that traffic.[33] In other words, "IP" is the term the Agreement uses to identify the point at which the terminating party becomes responsible for transporting and terminating the other party's originating traffic and the originating party becomes financially responsible for applicable charges associated with that termination.[34] The term "IP" appears primarily in § 7 of the Interconnection Attachment and is separate and distinct from the term "POI".

GNAPs' changes to § 2.1.1, however, confuse "POI" and "IP" by introducing concepts related to financial responsibility into a section of the Agreement intended to define, and containing terminology only to define, physical points of interconnection.[35] Section 2.1.1 is not the appropriate place in the Agreement to be addressing financial responsibility. That issue is already addressed in § 2.1.2, which clearly states that each party "at its own expense" shall provide for the delivery of Reciprocal Compensation Traffic and Measured Internet Traffic to the "IP" of the other party. In turn, the Agreement defines the location of each party's "IP" in § 7 of the Interconnection Attachment. Apparently this is the Section GNAPs has chosen to advance its arguments that the Department's *D.T.E. Tariff No. 17 Order* and *MediaOne Supplemental Order* no longer apply, but §§ 2.1.2 and 7 are the proper sections to address concepts of financial responsibility. GNAPs' changes would only result in a poorly drafted and confusing agreement.

[32] D'Amico Direct Testimony at 7:9-16; MA Hearing Tr. at 54:5-8.

[33] Verizon Redlined Agreement, Glossary, § 2.46.

[34] D'Amico Direct Testimony at 7:13-16; MA Hearing Tr. at 54:5-8.

[35] D'Amico Direct Testimony at 7:7-21- 8:1-2; MA Hearing Transcript at 54:11-18.

GNAPs' proposed changes to § 2.1.2 are similarly confusing. Here, GNAPs apparently attempts to do in § 2.1.2 that which § 7 of the Agreement already accomplishes. Specifically, after having confused points of physical interconnection with points of financial responsibility with its changes to § 2.1.1, GNAPs now attempts to define in § 2.1.2 the location of each party's "IP". That task, however, falls squarely within the purpose and intent of § 7.1.1, which requires "IPs" to be established in accordance with the orders of the Department in two previous cases. GNAPs' changes, if included in the final agreement, would result in two different sections of the agreement attempting to accomplish the same thing, but with different terminology. Such a result would only lead to confusion and possibly even inconsistent terms.

Finally, GNAPs also proposes changes to the definitions of "POI" and "IP" as they appear in the Glossary portion of the Agreement that again confuse "POI" and "IP". *First*, GNAPs adds language to the definition of "IP" that states that all references to "IP" shall refer to the "*point of interconnection* for determining the demarcation of financial responsibility."[36] *Second,* GNAPs strikes Verizon's entire definition of "POI" and inserts in its place a reference to 47 C.F.R. § 51.319(b). As explained above, "POI" and "IP" are not synonymous terms as they are used in the agreement. FCC Rule 319(b), moreover, addresses unbundling requirements related to Network Interface Devices ("NIDs") and has nothing to do with defining points of interconnection for either physical or financial purposes.[37] With respect to this issue, the Illinois Commission found "Global's proposal to use the definition of 47 CFR 51.319(b) is misplaced an unnecessary to Global's objective of establishing only a single POI per LATA."[38]

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[36] *Id.* (emphasis added).

[37] *See* 47 C.F.R. 51.319(b) (establishing specific unbundling requirements applicable to network interface devices).

[38] *Illinois Verizon/GNAPs Arbitration Order* at 3.

In sum, GNAPs' proposed changes to Interconnection Attachment §§ 2.1.1, 2.1.2, and Glossary §§ 2.46 and 2.67 are nonsensical. If included in the final agreement, GNAPs' changes would result only in conflicting terms and confusion. Neither GNAPs' Petition nor its testimony provides any support for its proposed changes and they should not be considered by the Department.

Verizon Redline Agreement, Interconnection Attachment §§ 7.1.1.1, 7.1.1.2, 7.1.1.3**:** GNAPs' proposed changes to Interconnection Attachment §§ 7.1.1.1, 7.1.1.2, and 7.1.1.3 are also unsupported by its Petition and do not reflect the requirements of applicable law. For example in § 7.1.1.1, GNAPs proposes to add a statement that would require Verizon's IPs to be the same as GNAPs' IPs for purposes of determining intercarrier compensation.[39] GNAPs' edit however, is misplaced and assumes facts that have yet to be determined. As Verizon's witness Mr. D'Amico explained,[40] the edit is misplaced because § 7.1.1.1 of the agreement governs only establishment of GNAPs' IPs. Section 7.1.2, in turn, governs the establishment of Verizon's IPs. Any statement with regard to Verizon's IPs should be addressed in § 7.1.2, not § 7.1.1.1. GNAPs' change is also inappropriate because each party is responsible for configuring its own network and making the network architecture decisions associated therewith. As a result of those decisions, the GNAPs-IPs and the Verizon-IPs may or may not be at the same location. Pursuant to § 7.1.2, for example, which GNAPs does not dispute, the Verizon-IPs shall be at Verizon's tandem or end office switches.[41] Thus, notwithstanding GNAPs' stated opposition to abiding by the Departments' *D.T.E. Tariff No. 17 Order* and *MediaOne Supplemental Order*, for GNAPs originated Reciprocal Compensation Traffic, GNAPs will compensate Verizon at the

[39] Verizon Redlined Agreement, Interconnection Attachment, § 7.1.1.1.

[40] D'Amico Direct Testimony at 9:4-14.

[41] *See* Verizon Redlined Agreement, Interconnection Attachment, § 7.1.2.

applicable reciprocal compensation rate for transport and termination of its traffic from the applicable Verizon tandem or end office to the end user. For Verizon originated traffic, Verizon will similarly compensate GNAPs at the appropriate rate depending on the location of the GNAPs-IPs. The location of the GNAPs IPs, however, will be established in accordance with the Department's directives and will be a function of each party's decisions as to its efficient network configuration. The GNAPs-IPs will not necessarily mirror the Verizon-IPs.[42]

Similarly without justification or support in its Petition, GNAPs seeks to delete Verizon's § 7.1.1.2 in its entirety and substantial portions of § 7.1.1.3. As witness Mr. D'Amico also explained, § 7.1.1.2 provides that if at any time GNAPs establishes a collocation site for interconnection with Verizon at a Verizon end office, Verizon may request that the site serve as a GNAPs IP. In other words, if GNAPs established a collocation site, presumably for delivering its originated traffic to Verizon's end office, Verizon should also be able to deliver its originating traffic to GNAPs at that same point. Verizon will then compensate GNAPs at the applicable reciprocal compensation rate for terminating that traffic. Moreover, the parties have already agreed in the collocation attachment to Verizon's Redlined Agreement that GNAPs will provide collocation to Verizon on a non-discriminatory basis.[43] GNAPs offers no explanation as to why it seeks to delete this section. The only possible explanation is that GNAPs seeks to renege on its bargained-for contract language with Verizon in order to increase Verizon's costs of delivering traffic to GNAPs. If GNAPs refuses to accept Verizon's originating traffic at the collocation site, Verizon will have to route that traffic to GNAPs via a less direct route thus incurring additional costs. Such a result is contrary to GNAPs' obligation under the Act to

[42] D'Amico Direct Testimony at 14:17-21.

[43] *See* Verizon Redlined Agreement, Collocation Attachment, § 2.

negotiate agreements in good faith and stand by those agreements. The Department should reject GNAPs' changes to this section.

GNAPs deletes additional language in § 7.1.1.3, again without any support or rationale in its Petition. The language GNAPs removes provides that in the event GNAPs refuses to accept Verizon's originated traffic at the IPs established in §§ 7.1.1.1 or 7.1.1.2, GNAPs shall charge the applicable intercarrier compensation rate less Verizon's incremental costs of routing traffic to a different point on GNAPs' network. In effect, § 7.1.1.3 clarifies that Verizon shall not be forced to bear the cost of GNAPs' unreasonable refusal to accept traffic at the IPs established pursuant to the Department's earlier orders. Thus, §§ 7.1.1.1, 7.1.1.2, and 7.1.1.3 as originally drafted work in conjunction to ensure *first*, that IPs shall be established in accordance with the Department's directives including at collocation sites at Verizon end offices, and *second*, in the event GNAPs establishes an IP for purposes of delivering its own traffic to Verizon but then refuses to accept Verizon's traffic at that same point, Verizon will not be forced to bear the cost of such an unreasonable decision.

GNAPs offers no support or rationale for its changes to any of these sections and Verizon's language as originally drafted is inherently reasonable and in accordance with applicable law. For these reasons, the Department should reject GNAPs' changes to these sections in their entirety.

2. GNAPs Proposed Changes Identified as Related to Issues 1 or 2 That Are Related to Other Arbitration Petition Issues.

GNAPs identifies its proposed changes to Interconnection Attachment Sections 2.3 and 2.4 as related to Issue 1 when in fact such changes are related only to Issue 6. Each of these sections addresses the obligations of the Parties with respect to interconnection trunking and have no relation to GNAPs' ability to designate a POI or responsibility for transport charges

resulting from that decision. Considering that GNAPs' changes are more closely related to the trunking arrangement issues raised by Issue 6, and GNAPs specifically identifies these changes as related to that Issue 6,[44] Verizon will address GNAPs' changes to these sections in its Verizon response to that Issue.

3. GNAPs Proposed Changes Identified as Related to Issues 1 or 2 but that Are Not Related to Any Arbitration Issue.

In several instances, the contract language GNAPs identifies as related to Issues 1 or 2 does not relate either to issue 1, 2, or any other issue described in GNAPs' Petition. As such, the changes are not properly presented for arbitration and the Department cannot decide them. If, however, the Department decides to address GNAPs' extensive redlined changes, they should be rejected for the following reasons.

Verizon Redline Agreement, Interconnection Attachment §§ 3, *et. seq.* - Alternative Interconnection Arrangements: GNAPs' edits to this section indicate that it wants the unilateral ability to select how, when, and where to deploy the end point fiber meet arrangements between the companies. GNAPs' proposal would also dictate to Verizon the technical and operational details of the end point fiber meet arrangement and requires Verizon to construct new facilities. An end point fiber meet arrangement is a type of mid-span fiber meet arrangement whereby Verizon uses existing fiber optic cable and builds additional new fiber optic facilities from Verizon's central office all the way to the GNAPs' central office location.[45] Verizon acknowledges the Department's rulings with respect to mid-span meets generally[46] and is not

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44 GNAPs Petition at 26, ¶ 59.

[45] D'Amico Direct Testimony at 16:21-22.

[46] *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 and Petition of Greater Media Telephone, Inc. for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an*

(continued…)

opposed to implementing mid-span meets via end point fiber meet arrangements.[47] However, as the Department has recognized, specific mid-span meet arrangements require reasonable accommodation on behalf of both parties and such accommodations are best determined on a case-by-case basis.[48] That is exactly what Verizon proposes here. Verizon's language provides for end point fiber meets but contemplates further agreement once the technical and operational details associated with a particular location can be determined with greater specificity.[49] This is the approach the Parties have already used to establish fiber meets at two locations in Massachusetts.[50] In contrast, GNAPs proposes to include in the interconnection agreement very specific and highly technical language reflecting operational aspects that are better left to discussion after a particular location for the meet has been identified.[51] GNAPs' approach ignores the extensive coordination required to implement end point fiber meets.[52]

Nearly *all* aspects of each end point fiber meet arrangement are negotiated and can vary significantly from installation to installation.[53] Some notable variables requiring joint consideration are: the terminating electronic equipment at each party's end (*e.g.*, their compatibility and upgrade policy); the end point fiber meet's transmission capacity; the Parties' diversity requirements; and the physical environment, suitability and availability of the desired location for the end point fiber meet. Indeed, some of the additions that GNAPs has inserted into

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Interconnection Agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, D.T.E. 99-42/43, 99-52 (August 25, 1999) ("*MediaOne Decision*")

[47] D'Amico Direct Testimony at 17:2-7.

[48] *See MediaOne Decision* at 39.

[49] *See* Verizon's Redlined Agreement, Interconnection Attachment § 3 (contemplating establishment of end point fiber meet arrangements); *see also* D'Amico Direct Testimony at 17:4-7.

[50] D'Amico Direct Testimony at 19:9-20.

[51] *Id*. at 17:2-7; See GNAPs' proposed Interconnect Attachment, §§ 3.4 - 8.

[52] *Id*. at 17:11-12.

[53] *Id*. at 18:16-21; 19:1-7.

the Verizon agreement would bind the Parties to deploy equipment and software that may not generally be utilized by Verizon and may become outdated over the term of this interconnection agreement.[54]

GNAPs' proposal would graft a boilerplate agreement onto an arrangement that must, in practical terms, be reviewed on a case-by-case basis. Verizon will establish end point fiber meet arrangements with GNAPs. Because these are specialized arrangements, however, the Parties will need to define the details outside of the interconnection agreement before the end point fiber meet work begins. The most reasonable way of doing so is through a memorandum of understanding. After the details are defined through the memorandum of understanding, Verizon can start building the end point fiber meet.[55]

Verizon's position is consistent with the FCC's holding that, because each carrier derives benefit from the mid-span meet, "each party should bear a reasonable portion of the economic costs of the arrangement."[56] In addition, because the mid-span meet requires the ILEC to build new fiber optic facilities to the CLEC's network, the FCC has determined that parties should mutually determine the distance of this build-out.[57]

The New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to Verizon Redline Interconnection

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[54] *Id*. at 17:18-21; 18:1-2, 16-21; 19:1-7.

[55] *Id*. at 19:9-20.

[56] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 ¶ 553 (1996) ("*Local Competition Order*"); see D'Amico Direct Testimony at 18:4-14.

[57] *See id*.

Attachment § 3 – because GNAPs did not properly present or explain them.[58] Specifically, in the *New York Verizon/GNAPs Arbitration Order*, the New York Commission found:

> 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.[59]

The California Commission found in Verizon's favor on § 3, stating, "Verizon's proposed language is adopted. It is consistent with the FCC's discussion in ¶ 553 of the *Local Competition Order*."[60]

GNAPs and Verizon have already successfully deployed three end-point fiber meets in Massachusetts as well additional fiber meets in other jurisdictions. The fiber meets were deployed not pursuant to interconnection agreements, but pursuant to operational memoranda of understanding that the parties were able to reach with respect to the technical and operational details of particular end point fiber meet arrangements. GNAPs has offered no persuasive explanation as to why the Parties should deviate from this successful practice. If the Department should decide to rule on this issue, it should adopt Verizon's proposal and require the Parties to

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[58] *New York Verizon/GNAPs Arbitration Order* at 4.

[59] *New York Verizon/GNAPs Arbitration Order, at 4*

[60] *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Public Utilities Commission of the State of California, Application No. 01-12-026, Decision 02-06-076 (May 15, 2002) at 81 ("*California Verizon/GNAPs Arbitration Order*"). The full California Commission reaffirmed this Order in its final decision in the Verizon/GNAPs proceeding. *See In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Adopting Final Arbitrator's Report with Modification, Public Utilities Commission of the State of California, Application No. 01-12-026, Decision 02-06-076 (June 27, 2002) at 36 ("*California Verizon/GNAPs Final Decision*"). For ease of reference, Verizon will refer to the *California Verizon/GNAPs Arbitration Order* throughout this Response, unless the full California Commission specifically amended that Order in the *California Verizon/GNAPs Final Decision* (in which case, the *California Verizon/GNAPs Final Decision* will be cited).

abide by their mutual agreement on fiber meet details prior to deploying an end point fiber meet arrangement.

Verizon Redline Agreement, Interconnection Attachment §§ 5.2.2, 5.3 - Ordering, Switching System Hierarchy, and Trunking Requirements: GNAPs makes a number of inappropriate edits to §§ 5.2.2 and 5.3.[61] Again, these edits do not affect GNAPs' ability to designate the POI, so they have nothing to do with either of Issues 1 or 2. In § 5.2, GNAPs deletes a section that addresses the ordering of transport facilities. Interconnection trunks ride over transport facilities. With trunking interconnection, the carrier orders interconnection trunks separately from transport facilities.[62] GNAPs' deletions eliminate the description of the ordering of these facilities (the process described in § 5.2.2 is the one currently used by CLECs and IXCs doing business in Massachusetts).[63]

Finally, with its edits to § 5.3 (concerning Verizon's switching system hierarchy and trunking requirements), GNAPs has deleted provisions that are necessary for the proper routing of traffic between the Parties. GNAPs' edits conflict with the Local Exchange Routing Guide ("LERG"), which is used by all carriers – ILECs, CLECs, and IXCs – as a basis for routing terminating traffic.[64] GNAPs' proposed changes, on their face, make no sense. To further exacerbate the confusion, GNAPs has provided no justification as to why it made these changes, how these edits affect Issues 1 and 2, or how the Parties would route traffic between their respective switches. If the Department rules on this issue, GNAPs' modifications should be

[61] D'Amico Direct Testimony at 20:24-5 - 21:1-11.

[62] *Id.* at 20:24-25 - 21:1.

[63] *Id.* at 21:2-3.

[64] *Id.* at 21:6-11.

rejected because they leave the contract without necessary detail about how the Parties will route and deliver terminating traffic.

For the reasons stated above, the New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to Verizon Redline Interconnection Attachment §§ 5.2.2 and 5.3 – because GNAPs did not properly present or explain them.[65] The California Commission found in Verizon's favor on § 5.3, stating "Verizon's proposed language in § 5.3 is adopted. As Verizon says, § 5.3 does not affect GNAPs' ability to select the POI; it simply lists Verizon's switching hierarchy."[66]

[65] *New York Verizon/GNAPs Arbitration Order* at 4.

[66] *California Verizon/GNAPs Arbitration Order* at 34.

Issue 3: **Verizon's Interconnection Agreement Permits GNAPs To Define Its Local Calling Areas For GNAPs' Customers.**

Previous State Commission Decisions: Rejected GNAPs' Proposal: *New York, California, Ohio, Illinois, Rhode Island*[+]*, Pennsylvania*, Maryland*, Massachusetts*, Texas*, Virginia**. Adopted GNAPs' Proposal: None[67]

GNAPs' presentation of Issue 3 is misleading and none of the proposed contract language GNAPs identifies as related to this issue should be adopted.[68] Aside from the substantive reasons for rejecting GNAPs' language (discussed below), the language GNAPs identifies in its Petition as related to Issue 3 in many instances bears no relation to the issue. The Department should reject GNAPs' language for this reason alone. In the few instances where GNAPs' proposed changes do relate to Issue 3, GNAPs has provided little, if any, rationale or support for why its changes are necessary or even prudent and it did not provide a witness who was able to discuss GNAPs' language.[69] The Department should reject all such changes as well.

GNAPs portrays this issue as a contractual dispute regarding each party's ability to define its own retail calling areas. It asks the Commission to allow GNAPs to "broadly define its own local calling area, possibly as large as a single LATA," and claims that such LATA-wide local calling areas "serve the public interest."[70] As Verizon witness Terry Haynes explained,

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[67] Verizon has not included a reference here to a Florida generic proceeding upon which GNAPs' witness Mr. Selwyn relies because that proceeding was a generic proceeding and the parties do not agree as to the requirements of the orders issued as a result of that proceeding.

[68] GNAPs identifies its changes to Glossary Sections 2.34, 2.47, 2.56, 2.77, 2.83, 2.91 and Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4 and 13.3 as related to Issue 3. GNAPs here again appears to have provided incorrect references to the sections for which it actually proposes changes. GNAPs' references to Glossary Sections 2.47, 2.56, 2.77, 2.83, 2.91 appear to have been intended to reference the changes GNAPs proposes for Glossary Sections 2.48, 2.57, 2.76, 2.84, and 2.91 respectively. Verizon assumes that these are the sections and changes to which GNAPs' Petition refers.

[69] As previously noted, GNAPs' witness for this Issue, Mr. Selwyn, admitted that was only aware of GNAPs' contract language proposals on a "very general" level and that he did not participate in negotiations with respect to that language. MA Hearing Transcript at 15: 22-24; 16: 1-4.

[70] GNAPs' Petition at 18-21.

however,[71] and as GNAPs witness Mr. Selwyn agreed,[72] what really is at the heart of GNAPs' proposal is not the public interest but intercarrier compensation – and GNAPs' belief that the "originating" carrier's "local calling area" should dictate whether reciprocal compensation or access charges are due on a particular telephone call. Contrary to applicable law, including this Department's long-standing policy that interconnection agreement arbitrations are not the proper proceedings for reviewing Verizon's local calling areas,[73] GNAPs' proposal would allow GNAPs to unilaterally ***abolish*** intraLATA access charges applicable to GNAPs originated traffic. As every state commission to have considered GNAPs' proposal has recognized, not only is this illegal but it is also bad policy.

GNAPs' presentation of Issue 3 during this case and its proposed contract changes add nothing to the Department's previous analysis. Verizon's proposal, in contrast, permits GNAPs to define its local calling areas for retail customers without impermissibly altering and undermining current law and policy governing intercarrier compensation.[74] The Department should reject GNAPs' misleading and misguided contract edits and adopt Verizon's proposal in it entirety.

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[71] Haynes Direct at 3:21-22 - 4:1-2; 4:5-23 - 5:1-22; 7:12-23 - 9:1-8; MA Hearing Tr. at 140:16-24 - 131:1-16.

[72] MA Hearing Tr. at 81:8-12.

[73] For example, GNAPs seeks a right to establish local calling areas as they would apply to both parties, a request directly contrary to the Department's policy on this issue. *See Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between NYNEX and the aforementioned companies*, Order on Motion by TCG for Reconsideration, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 2-B) (Phase 4-B), at 9 (May 2, 1997) ("*Consolidated Arbitrations Phase 4-B Order*" or "*Phase 4-B Order*") (rejecting proposal of TCG nearly identical to that of GNAPs' proposal for Issue 3 in this case).

[74] *See* Verizon Response at 24-34; Haynes Direct Testimony at 2:2-6 - 3:1-8; 3:13-22 - 19:1-20; MA Hearing Tr. at 130:16-24 - 131:1-18; *see also* MA Hearing Tr. 81:8-12; 83:17-24 - 84:1-18 (witness Selwyn responding to cross-examination on Issue 3).

A. Applicable Law, Not GNAPs' Business Plan, Sets The Parameters For Intercarrier Compensation.

GNAPs' retail calling areas may include whatever geographic area it deems appropriate. GNAPs may even offer a flat-rated calling plan to its customers for calls originating and terminating in an entire LATA. GNAPs cannot, however, circumvent the existing access charge regime through its unilateral definition of "local calling areas." The FCC has made clear that "the Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."[75] Indeed, the FCC reiterated in the *ISP Remand Order* that § 251(b)(5) excludes from reciprocal compensation traffic subject to the intrastate access regime.[76] The FCC further "expects" states choosing to adopt regulatory regimes that allow LECs to have varying calling areas to "determine whether intrastate transport and termination of traffic between competing LECs . . . should be governed by Section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to those portions of their local services areas that are different."[77] Thus, Federal law allows the Department to change how it draws the line between traffic that is subject to an intrastate access regime and traffic that is subject to reciprocal compensation. However, the FCC has also made clear that "the Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance

[75] *Local Competition Order* at ¶ 1033.

[76] *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand, 16 FCC Rcd 9151 ¶ 38 n.66 (citing *Local Competition Order* 11 FCC Rcd at 15869) (the "*ISP Remand Order*"). The FCC looks to states to determine what geographic areas should be considered "local calling areas" for purposes of applying reciprocal compensation obligations under § 251(b)(5) of the Act. *Local Competition Order at* ¶¶ 1034, 1036. That determination, however, must be "consistent with the state commission's historical practice of defining local service areas for wireline LECs." *Id*. at ¶ 1035.

[77] *First Report and Order* at ¶ 1035.

traffic . . . transport and termination of local traffic are different services than access service for long distance communications."[78]

The Department has not altered the intrastate access regime for purposes of intercarrier compensation and the dramatic alteration GNAPs proposes (which would have far-reaching impact on all Massachusetts carriers[79]) should not be considered in this two-party arbitration — a fact expressly recognized by the Department.[80] Even if the Department were to consider altering the intrastate access regime, which it should not, the Act and the FCC's implementing rules would further require the Department to establish reciprocal compensation rates that are symmetrical and that provide for the mutual and reciprocal recovery by each carrier of its costs.[81] Costs must be based on a reasonable approximation of the additional cost of terminating the other carrier's calls.[82] ILEC's reciprocal compensation rates are to be set pursuant to the methodologies set forth in Rule 51.705[83] and that a competing carrier's rates generally must mirror the ILEC's. A competing carrier may charge different rates than those applicable to the ILEC *only* if the competing carrier proves to the state commission on the basis of specific cost studies that its costs of transporting and terminating calls are higher than those of the ILEC.[84] GNAPs, however, has submitted no studies or any evidence whatsoever with respect to its own costs. Notwithstanding GNAPs' witness Mr. Selwyn's attempts to re-argue rates established in the *MA TELRIC Proceeding, DTE 01-20*, he admittedly had no knowledge with respect to

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[78] *Local Competition Order* at ¶1033; *see Consolidated Arbitrations Phase 4-B Order* at 7 (quoting portions of Local Competition Order at ¶ 1033).

[79] 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.

[80] *Consolidated Arbitrations Phase 4-B Order* at 8.

[81] 47 U.S.C. § 252(d)(2)(A); 47 C.F.R. §§51.701-717.

[82] 47 U.S.C. § 252(d)(2)(A)(ii).

[83] 47 C.F.R. § 51.705.

[84] 47 C.F.R. §§ 51.705, 711(b).

GNAPs' network or GNAPs' corresponding costs.[85] GNAPs cannot now be heard in its attempts to unilaterally supersede the FCC's and this Department's historic determinations delineating what traffic will be subject to access charges.

B. This Department Has Correctly Recognized that Two-Party Interconnection Agreement Arbitrations are Not the Proper Proceedings to Consider Modifications to Verizon's Local Calling Areas for Purposes of Intercarrier Compensation or Otherwise.

Verizon recognizes that GNAPs and every other CLEC may define the retail local calling areas for its own customers as it sees fit. Verizon has never tried to impose its local calling areas on GNAPs. Fortunately, the real issue in this case of how GNAPs' local calling areas will be defined for purposes of wholesale intercarrier compensation has already been decided by Department. The Department has a long-standing policy that the ILEC's local calling areas are to apply for intercarrier compensation purposes in interconnection agreements. The Department has made clear that CLECs like GNAPs cannot seek to unilaterally obliterate the access charge regime for intercarrier compensation in the context of proceedings designed to establish terms and conditions for interconnection agreements.

The Department's policy in this regard resulted from its recognition of the complexities involved in altering Verizon's local calling areas established by the Department's primary calling area ("PCA") framework:

> We do, however, agree with NYNEX that changing [NYNEX's] local calling areas is an issue of great complexity, with ramifications beyond this arbitration proceeding. This is a policy issue that must be viewed in a broader forum than this kind of arbitration, such as in New England Telephone and Telegraph, ("NET"), D.P.U. 89-300, at 52-73 (1990), where the Department considered the primary calling area ("PCA") issue on a comprehensive, state-wide basis and developed the existing PCA framework."[86]

[85] MA Hearing Tr. at 16:8-24 - 18:1-21.

[86] *Consolidated Arbitrations Phase 4-B Order* at 8.

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> We understand, too, that the community of interest of customers solicited and acquired by TCG might be different from the more widespread monopoly-service-based community of interest employed in recent determinations of NYNEX's local calling areas.[87]

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> However, this arbitration proceeding is not designed to handle such extensive public policy reviews, or provide a broad opportunity for public comment and intervention by affected parties.[88]

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> TCG is free to establish whatever local calling area it wants, but we will not permit it to use an interconnection agreement arbitration proceeding under the Act to have us require NYNEX to change its local calling areas, either for TCG alone or for the variety of local calling areas that might be desired by each possible competitor. Accordingly, the reciprocal compensation arrangement for terminating and transporting calls will be based on existing NYNEX tariffs, in this case, the ones defining local calling areas and those defining the applicability of intraLATA toll access charges[89]

The Department similarly recognized the complexities involved in changing Verizon's local calling areas when it considered rate center consolidation ("RCC") as one possible solution to address number exhaust issues.[90] The Department ultimately abandoned consolidated rate centers because it agreed with Verizon that "implementation of RCC involves considerable time and expense, and would likely lead to sharp increases in local rates."[91] After weighing the likely cost and complexities of single-LATA rate centers against possible benefits, the Department

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[87] *Id.* at 8, n. 2.

[88] *Id.* at 9.

[89] *Id.*

[90] *Investigation by the Department of Telecommunications and Energy on its own motion to determine the need for new area codes in Eastern Massachusetts and whether measures could be implemented to conserve exchange codes within Eastern Massachusetts*, Order to Close Investigation, D.T.E. 98-38 (Jan. 24, 2002) ("RCC Order").

[91] *RCC Order* at 21-22.

found that the public interest would be better served by alternative number conservation methods and it closed its investigation into consolidated rate centers.[92]

Given the Department's decisions with respect to RCCs and more importantly, its policy with respect to reviewing ILEC's local calling areas for intercarrier compensation purposes in the context of two-party arbitrations, it is inappropriate for GNAPs to ask the Department to abandon Verizon's local calling areas in this proceeding. Moreover, permitting GNAPs to eviscerate the intraLATA access regime in Massachusetts would have wide ranging effects extending far beyond the constraints of this arbitration proceeding.[93] Not only would such a policy decision impact the support that has helped to keep Verizon's basic services rates low in Massachusetts, but it would also impact all intraLATA toll providers throughout the state.[94] Consideration of policies involving such wide-ranging ramifications should only be considered in the context of a general proceeding in which all affected parties may participate.

C. Analysis of GNAPs' Proposal

GNAPs' self-proclaimed "local calling area" is nothing more than a LATA-wide, flat rated toll service.[95] However, GNAPs' unilateral selection of the geographic area in which it will offer flat, monthly rates does not amount to a "local calling area" for purposes of intercarrier compensation. Nor does GNAPs' proposed LATA-wide, one-price offering equate to "local service" as defined by the Department. GNAPs is free to offer this service, but not to alter state and federal law on intercarrier compensation by its unilateral declaration of its marketing plan.

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[92] *Id.* at 22.

[93] Haynes Direct at 4:8-10; 7:12-23 - 9:1-8; 18:13-18 -19:1-4.

[94] *Id.*

[95] GNAPs' proposed "local calling area" is similar to the single LATA rate center concept ("RCC") the Department declined to adopt in its review of RCCs.

For both practical implementation and for compliance with federal mandates, local calling areas of all carriers in Massachusetts must be symmetrical for purposes of intercarrier compensation. Asymmetrical calling areas for reciprocal compensation purposes, as GNAPs proposes, permit a competing carrier to pay one low reciprocal compensation rate for its customer's outbound calls while collecting a much higher access rate for its customer's inbound calls, a classic rate arbitrage scenario.

According to GNAPs, its decision to charge or not to charge "toll" to its retail end-users, or its decision to assign NXX codes in a manner such that Verizon's switches do not recognize "toll" calls (discussed in Issue 4), rather than applicable law, including this Department's determinations, dictates the distinction between traffic subject to reciprocal compensation and traffic subject to access charges. Effectively, GNAPs proposes to step into the shoes of the Department and supersede its historic determinations delineating what traffic will be subject to access charges. GNAPs originating carrier proposal puts the proverbial fox in charge of the henhouse – not only by allowing GNAPs to decide what it wants to pay to use Verizon's network, but also by allowing GNAPs to determine what it wants Verizon to pay to GNAPs. GNAPs' proposal would lead to illogical and unfair asymmetrical payments between these carriers, unless Verizon – and eventually every other carrier that interconnects with Verizon – matches the geographic areas that GNAPs selects. GNAPs' proposal would make the same call subject to reciprocal compensation when GNAPs originates the call but subject to access charges when Verizon originates the call, a result that, as discussed above, would be directly contrary to the Act's symmetrical reciprocal compensation requirements.

Moreover, as recently recognized in Rhode Island, implementation of GNAPs' plan would significantly impact Verizon's financial compensation structure and therefore its ability to

satisfy its obligations as the carrier of last resort.[96] As noted by the Department, changes of this magnitude are not appropriately considered in a § 252 arbitration between two carriers.

Contrary to GNAPs' suggestions, using Verizon's local calling areas as the basis for assessing reciprocal compensation does ***not*** force GNAPs to adopt Verizon's local calling scopes. GNAPs' arguments in this regard are a red herring. 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 its customers. GNAPs could, for example, define the entire state as a local calling area, even though Verizon's local calling area definition remains the standard for applying reciprocal compensation. To the extent establishing such wide local calling areas for retail purposes would still require GNAPs to participate in the intrastate access regime for purposes of intercarrier compensation, GNAPs should factor that reality into its marketing plan. It cannot simply usurp important public policies and regulatory mandates by unilaterally defining away access charges.[97] To the extent the scope of Verizon's local calling areas is called into question for purposes of intercarrier compensation, it should be reviewed by the applicable federal and state authorities in the context of the proper generic proceeding, not this two-party interconnection agreement arbitration. GNAPs' proposal ignores controlling law and should be rejected.

[96] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 28.

[97] Because access rates are generally higher than reciprocal compensation rates, GNAPs seeks to avoid paying access charges by "defining away" toll calling. That is, if GNAPs uses the entire state as its local calling area for retail purposes, it contends that the entire state should be the local calling area for reciprocal compensation purposes.

D. Every State Commission to Have Considered GNAPs' Proposal Has Rejected That Proposal

Every state Commission that has considered GNAPs' proposal with respect to Issue 3 has rejected that proposal in its entirety. [98] Notably, in the recent arbitration proceeding between Verizon and GNAPs in California, for example, the California Commission summarized its holding as follows:

> GNAPs is correct that the FCC leaves to the states the right to establish local calling areas within its boundaries. While that right rests with the Commission, the Commission has refused in other arbitrations to set new policies that impact on other entities that are not parties to the ICA. Under our rules, other entities that are not parties to an ICA are precluded from proceeding in an arbitration proceeding before this Commission. Since that is the case, they would have no voice in setting the local calling areas for the ILECs. *I agree with Verizon that this type of decision should not be made in the context of two-party arbitrations, but should be the subject of a Commission rulemaking where all interested parties have an opportunity to be heard.* ***Therefore, I find that while GNAPs can establish what the local calling area can be for its own customers, it may not unilaterally set the local calling areas for ILEC customers***.[99]

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[98] *See e.g.,* **New York:** *New York Verizon/GNAPs Arbitration Order* at 12; **California:** *California Verizon/GNAPs Arbitration Order* at 34; **Ohio:** *Ohio Verizon/GNAPs Arbitration Order* at 11; **Illinois:** *Illinois Verizon/GNAPs Arbitration Order* at 14; *Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech,* Arbitration Decision, Docket No. 01-0786 (Ill. Commerce Comm'n May 14, 2002) at 12 ("*Illinois GNAPs/Ameritech Arbitration Order*"); **Texas:** *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecomm. Act of 1996*, Arbitration Award, Tex. P.U.C. Docket No. 21982, 2000 Tex. PUC Lexis 95; 203 P.U.R. 4th 419 (2000); **Pennsylvania:** *Pennsylvania Verizon/Sprint Arbitration Order* at 77 (rejecting CLEC offering that would "disrupt the manner in which the local network portion and switched access portion of the public switched network operate until such time that the FCC makes further rulings on this issue'"); *Petition of Sprint Communications Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Verizon Pennsylvania, Inc.,* Opinion and Order, Pennsylvania Public Utilities Commission Case No. A-310183F0002 (Dec. 7, 2001) at 23-24 (affirming same) ("*Pennsylvania Verizon/Sprint Arbitration Final Decision*"); **Rhode Island:** Rhode Island Verizon/GNAPs Initial Arbitration Order at 28-29; **Maryland:** *Petition of Sprint Communications Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Verizon Maryland Inc.*, Case No. 8887, Order No. 77320 (Md. PUC Oct. 24, 2001) at 23-24 ("*Maryland Verizon/Sprint Arbitration Order*"); **Virginia:** *Memorandum Opinion and Order, 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,* CC Docket Nos. 00-218 et al., DA 02-1731, ¶ 549 (Wireline Comp. Bur. rel. July 17, 2002) ("*Virginia Arbitration Order*").

[99] *California Verizon/GNAPs Arbitration Order* at 56; *California Verizon/GNAPs Final Decision* at 36.

In its final decision on this issue, the full California Commission concurred with this ruling and disallowed GNAPs' local calling area plan.[100]

The New York Commission similarly agreed with Verizon's position finding that GNAPs' proposal would actually result in Verizon providing a subsidy to GNAPs' business operations: "We see little necessity to arbitrate this conceptual dispute."[101] "Allowing GNAPs to establish geographically large local dialing areas, which also have the effect of eliminating Verizon's entitlement to access charges and increase its obligation to pay reciprocal compensation, could amount to a Verizon subsidy of GNAPs' operations."[102] The Rhode Island arbitrator recently similarly found:

> If GNAPs proposal is adopted, GNAPs could have VZ-RI pay it reciprocal compensation for toll calls while GNAPs could avoid paying VZ-RI access charges for toll calls. . . . Accordingly, GNAPs proposal seems to be contrary to federal law or, at a minimum, enter into a gray area of federal law. . . .GNAPs local calling area proposal is rejected and VZ-RI's position for issue three is adopted.[103]

Additionally, the Ohio Commission also recently rejected GNAPs' proposal to circumvent the existing access charge regime through its unilateral definition of local calling areas in the context of an arbitration between GNAPs and Ameritech.[104] There, the Ohio Commission expressly held that customer calls that originate or terminate outside and ILEC's local calling area are toll or interexchange calls and compensation is based on the originating or

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[100] *Id.*

[101] *New York Verizon/GNAPs Arbitration Order* at 12.

[102] *Id.*

[103] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 28-31.

[104] *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint; In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Arbitration Panel Report, Ohio PUC Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB, at 11 (May 9, 2002) ("*Ohio GNAPs/Ameritech/Sprint Arbitration Award*") (adopting arbitration panel report).

terminating party's access charge.[105] Subsequently, the Ohio Commission reached this very same conclusion in the recent Verizon/GNAPs arbitration when it adopted the *Ohio Verizon/GNAPs Arbitration Panel Report* on Issue 3 without modification.[106]

Likewise, the Illinois Commission rejected GNAPs' request to define its own local calling areas for purposes of intercarrier compensation. In its recent GNAPs/Ameritech arbitration, the Illinois Commission ruled:

> The Commission rejects Global's request that it be allowed to define its own local calling area. At the present time [April 19,2002], the Commission has approved one LCA in Illinois that is currently used by Ameritech. While there may be technological changes since the Commission last visited the LCA issue, it would be inappropriate to reconsider the issue in this docket. The commission agrees with Ameritech and Staff that to recognize any other arrangement would be inappropriate in light of these factors, but would also cause confusion in the area of intercarrier compensation.[107]

In the recent Verizon/GNAPs arbitration, the Illinois Commission similarly found:

> [I]ntercarrier compensation for traffic across the boundaries of Verizon's LCAs will be accomplished through intraLATA access charges. Global will not be harmed, since it will receive access charges in the same manner as Verizon.[108]

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[105] *See In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint; In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Arbitration Panel Report, Ohio PUC Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (March 28, 2002) ("*Ohio GNAPs/Ameritech/Sprint Arbitration Panel Report*"). Notably, GNAPs never filed exceptions to the Ohio Arbitration Panel's resolution of Arbitration Issue 3 in the *GNAPs/Ameritech/Sprint* proceeding.

[106] *In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Public Utilities Commission of Ohio Case No. 02-876-TP-ARB, Arbitration Panel Report at 8 (July 22, 2002) at 6-7 ("*Ohio Verizon/GNAPs Arbitration Panel Report*").

[107] *In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252 Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech*, Illinois Commerce Commission Case No. 01-0786, Arbitration Decision at 12 (May 14, 2002) (*"Illinois GNAPs/Ameritech Arbitration Order"*).

[108] *Illinois Verizon/GNAPs Arbitration Order* at 14.

For all of these reasons, while GNAPs is free to define it own local calling areas in Massachusetts for its own retail customers, Verizon's local calling areas must continue to serve as the basis for assessing reciprocal compensation and other applicable charges between the Parties.

E. GNAPs' Changes to Verizon's Redline Agreement Should Be Rejected.

GNAPs identifies its changes to Glossary Sections 2.34, 2.47, 2.56, 2.77, 2.83, 2.91 and Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4 and 13.3 as related to Issue 3.[109] GNAPs does not, however, provide any specific support, rationale or comment as to why any of its proposed contract changes are necessary or even related to Issue 3. The Department should reject GNAPs' changes for this reason alone. If the Department addresses any of GNAPs' changes, which it should not, it should reject those unexplained changes for the reasons discussed above and for the additional reasons below:

Verizon's Redline Glossary §§2.34, 2.57, 2.76**:** GNAPs' changes to Glossary §§ 2.34, 2.57, and 2.76 all appear to turn on the issue of which Parties' local calling areas will apply under the Agreement for purposes of determining intercarrier compensation. For example, in Glossary Section 2.34, GNAPs adds language that would enable GNAPs to determine whether its customers' calls fall within or without Verizon's Optional Calling Services.[110] Similarly, in the definitions of "Measured Internet Traffic" and "Reciprocal Compensation Traffic" in Glossary §§ 2.57 and 2.76 respectively, GNAPs attempts to delete all references to Verizon's

[109] GNAPs here again appears to have provided incorrect references to the sections for which it actually proposes changes. GNAPs' references to Glossary Sections 2.47, 2.56, 2.77, 2.83, 2.91 appear to have been intended to reference the changes GNAPs proposes for Glossary Sections 2.48, 2.57, 2.76, 2.84, and 2.91 respectively. Verizon assumes that these are the sections and changes to which GNAPs' Petition refers.

[110] These optional Calling Services are also referred to in the proposed Agreement as Verizon's Optional Extended Local Calling Scope Arrangements.

local calling areas.[111] For the many reasons discussed above, the Department should not change its existing policy that in interconnection agreement arbitrations, Verizon's local calling areas are to apply. Each of GNAPs' changes to these sections is directly contrary to that policy.

GNAPs' Changes to Verizon Redline Glossary §§ 2.92 and Interconnection Attachment § 7.3.4: GNAPs' changes to Glossary § 2.92 and Interconnection Attachment § 7.3.4 further attempt to implement GNAPs' attempts to avoid paying access charges.[112] As explained above and in Issue 4 below, GNAPs apparently intends to declare very large areas as "local" for purposes of intercarrier compensation. To ensure that it will not have to pay access charges for traffic it delivers to Verizon within these large areas, GNAPs refuses to agree to the inclusion of any language in the Agreement that would define toll traffic consistent with approved tariffs on file with the Department. For example, Glossary § 2.92 as originally drafted provides that Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are in the same LATA. GNAPs, however, strikes the reference to originating and terminating points inserting in its place, a reference to whether the party providing the service actually imposes a toll charge on its customer.[113] GNAPs' edit is part of its larger plan to eviscerate access charges. It intends to do so by delivering traffic to Verizon that would be toll traffic but for the fact that GNAPs does not impose a toll charge on its customers. GNAPs' duty to pay access charges in accordance with applicable law, however,

[111] *See* Munsell Direct Testimony at 11: 2-25; 13:13-23 - 15: 1-8 (discussing GNAPs' changes).

[112] Munsell Direct Testimony at 21:3-5

[113] GNAPs' change to Interconnection Attachment § 7.3.4, likewise strikes language stating that reciprocal compensation shall not apply to Optional Extended Local Calling Traffic — traffic to which toll charges would normally apply. GNAPs' unstated purpose behind these edits is its attempt to avoid paying access charges required by law on toll traffic its customers originate.

does not turn on whether GNAPs assesses toll charges on its customers and neither should the definition of toll traffic as it appears in the Agreement.

GNAPs' Changes to Verizon Redline Glossary §§ 2.48, 2.84 and Interconnection Attachment §§2, 6, 7.1, 13.3: GNAPs' changes to Glossary §§ 2.48, 2.84 and Interconnection Attachment § 13.3 appear more directly related to Issue 4 and Verizon addresses those changes in its response to that Issue. GNAPs' changes to Interconnection Attachment §§ 2, 7.1 and 13.3 all appear unrelated to Issue 3[114] and as with the other sections GNAPs identifies as related to Issue 3, GNAPs provides no support, rationale or comment as to why its changes are necessary or even prudent. In fact, Interconnection Attachment § 6 as it appears in Exhibit B to GNAPs' Petition does not contain any proposed changes at all. Interconnection Attachment §§ 2 and 7.1 were discussed in Verizon's Response to Issues 1 and 2 and Verizon incorporates that response herein by reference.

[114] Munsell Direct Testimony at 4.

Issue 4: **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.**

Previous State Commission Decisions:
Rejected VFX Proposal (access charges, no recip. comp.): *Ohio, Rhode Island*[+]*, South Carolina*, Georgia*, Tennessee*, Nevada,* Florida**
Rejected VFX Proposal (no recip. comp.): *Illinois, Maine*, Texas*, Connecticut*, Missouri**
Rejected VFX Proposal (transport charges + recip comp): *California*
Rejected VFX Proposal (NXX codes must be homed to physical location): *Pennsylvania**
Adopted VFX Proposal in part: *New York (pre-Act LATA-wide calling, access charges continue to apply beyond LATA boundaries), Virginia* (VFX permissible pending further review in FCC NPRM)*[115]
Adopted GNAPs' VFX Proposal: *None*

Verizon's proposal ensures that GNAPs does not impermissibly alter current law and policy regarding intercarrier compensation through targeted misassignment or "virtual" assignment of NXX codes.[116] With this issue, GNAPs asks the Commission to sanction GNAPs' practice of assigning NXX codes to Massachusetts customers who are not physically located within the exchange to which such NXX codes are homed. Additionally, although it is not apparent from the issue as framed, GNAPs wants the Commission to treat "virtual NXX" calls as local for purposes of reciprocal compensation.[117]

[115] The South Carolina Commission properly distinguished the *Virginia Arbitration* decision as follows:

> The Bureau never addressed the basic question whether Virtual FX traffic is subject to reciprocal compensation under federal law. Instead the Bureau simply suggested that, in the absence of a concrete proposal for distinguishing Virtual FX traffic from local traffic for billing purposes, the parties would not be compelled to give effect to that distinction, irrespective of the requirements of federal law. The Bureau's failure to respect the limitations on Verizon's reciprocal compensation obligations was both inconsistent with federal law and unsupported on the record, but in any event it has no application here, because, as discussed below, Verizon *has* presented evidence that carriers *can* accurately estimate the volume of FX and Virtual FX traffic exchanged between them. Thus, the *Virginia Arbitration* provides no basis for failing to implement the clear requirements of federal law in South Carolina.

South Carolina Verizon/US LEC Arbitration Order at 26 (citations omitted) (emphasis in original).

[116] *See* Verizon Response at 35-58; Haynes Direct Testimony at 3:2-8; 20-24; MA Hearing Tr. at 131:19-24; 139:1-19.

[117] Haynes Direct at 3:4-85; MA Hearing Tr. at 132:11-24 - 134:1-14.

The traffic the Parties address in connection with Issue 4 is traffic with end points in different Verizon local calling areas, but with NPA-NXX codes associated with the same Verizon local calling area.[118] GNAPs' proposed use of virtual NXX assignments is a substitute toll-free calling service. By assigning virtual NXX codes, GNAPs seeks to 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, just as if GNAPs had assigned its customer an 800 number.[119] This effectively expands the Verizon end-user's local calling area without providing ***any*** compensation to Verizon for the transport outside the local calling area.[120] The virtual NXX scheme tricks Verizon's billing systems into failing to levy toll charges on the Verizon end-user and into payment of reciprocal compensation to GNAPs.[121] And because it relies on mis-locating local NXX codes instead of using an 800 number, it also prevents Verizon's switch from automatically assessing switched access charges.

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. If GNAPs foregoes use of these alternative services, and instead relies on assignment of virtual NXX codes to provide such "toll-free" services to its customers, GNAPs nevertheless must provide fair compensation for use of Verizon's network in providing what amounts to an inbound "toll-free" service.

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[118] Haynes Direct Testimony at 23:21-23 - 24:1-6.

[119] Haynes Direct at 29:2-5 - 31:1-14.

[120] *See* MA Hearing Tr. at 98:8-23 (GNAPs witness Selwyn agreeing that virtual NXX assignment is intended to expand the local calling area of Verizon's customers with respect to calls to virtually assigned NXX codes).

[121] Haynes Direct at 30:13-16.

A. Argument

State commissions have repeatedly rejected GNAPs' proposal and similar proposals by other CLECs and this Commission should do the same. The Commission should clarify that Virtual NXX calls, just like any other interexchange call from a customer in one local calling area to a customer in a different local calling area, shall be subject to exchange access charges, not reciprocal compensation. Pursuant to Section 251(b)(5) of the Act and the FCC's implementing rules there under, reciprocal compensation simply does not apply to exchange access or information access traffic.[122] An interexchange call otherwise subject to access charges does not miraculously become a "local" call subject to reciprocal compensation simply because GNAPs' assigns an NXX code to the dialed party that matches the NXX code of the originating party. Rearranging NXX codes does not move localities closer together nor does it change the local calling areas upon which the Massachusetts intrastate access charge regime has historically been based.[123] Changing NXX codes is nothing more than a regulatory arbitrage scheme designed to disguise toll calls as "local" calls such that Verizon continues to perform the vast majority of the work in switching and transporting the call to its final destination, GNAPs avoids

[122] *See* 47 U.S.C. § 251(b)(5); 47 C.F.R. §§ 51.701- 51.717. The FCC's rules have always made clear that reciprocal compensation under Section 251(b)(5) "do[es] not apply to the transport and termination of interstate or intrastate interexchange traffic." Local Competition Order ¶ 1034. The FCC confirmed that result in its ISP Remand Order in which it held that reciprocal compensation does not apply to "interstate or intrastate exchange access, information access or exchange services for such access." 47 C.F.R. 51.701(b)(1). The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange," it is providing and access service. ISP Remand Order ¶ 37 (emphasis added). "Congress excluded all such access traffic from the purview of section 251(b)(5)." *Id.*

[123] At the arbitration hearing Verizon demonstrated that its local calling areas are defined in terms of localities or exchanges set forth in Verizon's D.T.E. Tariff No. 10. MA Hearing Tr. 93:12-14 - 95:1-6. Such localities and exchanges are not defined by NXX codes but rather by exchange maps and metes and bounds descriptions. MA Hearing Tr. 95:7-24 - 97:1-21; *see also* exchange maps in Verizon's Tariffs. Local calling areas are defined by geography, not GNAPs' number assignment schemes.

access charges on interexchange calls and charges Verizon for reciprocal compensation for calls that it then claims are "local" calls.

Notwithstanding GNAPs latest numbers game, actual physical end points of call, not NXX codes, determine the jurisdictional nature of calls and thus, whether such calls are subject to access charges, reciprocal compensation under § 251(b)(5), or where applicable, other forms of compensation.[124] In its recent *Mountain Communications*[125] decision, the FCC made clear yet again that number assignment does not and cannot control inter-carrier compensation obligations. There, as here, the interconnecting carrier had a practice of assigning telephone numbers without regard to the customer's physical location. That assignment practice, the FCC explained, "prevents [the originating carrier] from charging its customers *for what would ordinarily be toll calls.*"[126] For that reason, the FCC ruled that the receiving carrier was required to compensate the originating carrier for facilities used to transport such calls to its switch.

As all of these state commissions to have considered Virtual NXX assignment would likely agree, the problem with GNAPs' proposal for virtual NXX service is that GNAPs is demanding that Verizon provide this service totally free of charge to GNAPs. Neither federal or state law, nor sound public policy require such a patently unfair result. GNAPs instead relies on the fact that these virtual NXX calls are "rated" as "local calls" to Verizon's end-users, ignoring the actual end points of the call, to propose that Verizon pay GNAPs reciprocal compensation for this traffic. GNAPs' retail marketing of a toll-free calling product to its customers in the guise of

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[124] *See ISP Remand Order*, ¶¶ 56-59 (FCC determines jurisdictional nature of call based on end points of the communication).

[125] Order on Review, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642, ¶ 6 (rel. July 25, 2002), *aff'g Memorandum Opinion and Order, Mountain Communications, Inc. v. Qwest Communications International, Inc.*, 17 FCC Rcd 2091 (Chief Enf. Bur. 2002).

[126] *Id.* ¶ 5.

virtual NXX does not change the nature of the underlying traffic as *inter*exchange for purposes of determining intercarrier compensation. In short, 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.

GNAPs also attempts to argue that Verizon's IPRS and PRI-Hub offerings somehow justify GNAPs' seeking free use of Verizon's network. GNAPs' witness Mr. Selwyn revealed GNAPs real intentions when claimed at the hearing that ***non***-facilities based CLECs such as GNAPs need to use virtual NXX "service" to compete with Verizon's offerings. Apparently GNAPs has no intention to invest in the telecommunications network infrastructure in Massachusetts. It intends to compete with Verizon by simply using Verizon's network for free.[127] What it ignores is that whether transport is provided to Verizon's customers over Verizon's network or over Verizon's network to GNAPs' customers, that transport is being provided by Verizon in both instances. Verizon is entitled to compensation for functions it performs in both scenarios. Numbering schemes designed to trick Verizon into providing free use of its network are not legitimate forms of competition that the Department should encourage; they are regulatory arbitrage, plain and simple. Verizon witness Mr. Haynes could not have made Verizon's point more clearly when he responded to the question from GNAPs' counsel as to whether Verizon could compete on the same terms as GNAPs, when he answered that he was unaware of any carriers that would be willing to provide transport services to Verizon for free.[128]

[127] Haynes Direct at 30:10-20 - 31:1-14; 32:14-20; MA Hearing Tr. at 136:16-24 - 137:1-5.

[128] MA Hearing Tr. 160:11-21. In response to an assertion from GNAPs' counsel that Verizon could compete with GNAPs by using number assignment schemes similar to those proposed by GNAPs, witness Haynes replied: "You're saying can I go and get from somebody else free transport and compete equally and we can't. We don't have anybody else providing us free transport." *Id.* at 160:18-21.

GNAPs also attempts to analogize its "virtual" FX "service" to Verizon's Department approved true "FX" offering.[129] As Mr. Haynes' testimony demonstrated, however, Verizon offers true FX service to customers as a service that allows the terminating end user to provide payment to Verizon for transport beyond the originating caller's local calling area instead of the calling party being assessed toll charges.[130] Verizon's FX product offers the ability to shift payment responsibility from one Verizon end user to another as a convenience to the second party.[131] The service typically exists between only two exchanges and if the party obtaining the service wished to receive FX service from additional exchanges, it would compensate Verizon for the additional transport from each exchange.[132]

GNAPs' "virtual" FX service contrasts sharply with Verizon provided FX service. With GNAPs' proposed "virtual" FX, Verizon would continue to provide the vast majority of the switching and transport functions necessary to transport calls normally subject to interexchange access charges to GNAPs' customers.[133] However, whereas in the true FX scenario, Verizon would receive compensation from the terminating end user for such a service, with "virtual" FX GNAPs receives all of the compensation.[134] In short, Verizon provides the transport yet GNAPs collects the compensation. The South Carolina Commission could not have been more accurate when it recognized "virtual" FX as a classic regulatory arbitrage.

Finally, GNAPs attempts to argue that an important public interest would be served by adopting GNAPs' proposal. GNAPs' proposal is nothing more than a proposal to use Verizon's

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[129] GNAPs' Petition at 23, ¶ 53; Selwyn Direct at 81; MA Hearing Tr. at 72:9-14; 74:13-24 - 77:1-18.

[130] Haynes Direct at 42:8-21 - 43:1-3; MA Hearing Tr. at 133:1-15.

[131] Haynes Direct at 42:8-21 - 43:1-3.

[132] *Id.* at 42:13-16; see also Exhibit 1 to Haynes Direct, "Call Scenario #2."

[133] Haynes Direct at 26:16-20 - 30:4-20; 31:1-14; MA Hearing Tr. at 133:16-24 - 134:1-14.

[134] *Id.*; see also Exh. 1 to Haynes Direct, "Call Scenario #3."

network for free and to charge Verizon for providing it. The interest served by GNAPs' proposal is not the public's but its own. GNAPs' witness Mr. Selwyn claimed that rejecting GNAPs' proposal could have wide-reaching consequences in Massachusetts.[135] However, when questioned about the basis for his conclusions he provided none and admitted that he had little or no knowledge about GNAPs' customers or its network in Massachusetts.[136] The only certain aspect of adopting GNAPs' proposal is that it would require Verizon to subsidize GNAPs' business from revenues provided by Verizon's customers. Clearly that result is not in the public interest.

B. An Overwhelming Majority of State Commissions That Have Considered the Virtual FX Issue Have Held that Reciprocal Compensation Does Not Apply to Virtual NXX Traffic Because Such Traffic Does Not Physically Originate and Terminate In the Same Local Calling Area

The vast majority of state commissions that have considered the virtual FX issue have held that reciprocal compensation does not apply to virtual NXX traffic because such traffic does not physically originate and terminate in the same local calling area.[137] Most recently, the South

[135] Selwyn Direct at 79-81; MA Hearing Tr. at 79:9-24 - 80:1-2.

[136] MA Hearing Tr. at 64:7-21 - 67:18-21.

[137] *See e.g.*, **Ohio:** *Ohio Verizon/GNAPs Arbitration Order* at 10 (permitting use of virtual NXX assignments but affirming that the intercarrier compensation for such calls are based on the geographic end points of the call); *Ohio GNAPs/Ameritech Arbitration Order* at 11; **Illinois:** *Illinois Verizon/GNAPs Arbitration Order* at 16 (finding that the final destination of virtual FX traffic is by its very nature, beyond the caller's local calling area "with virtual NXX being simple a device to relieve the caller of toll charges"); *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, Docket No. 00-0332, 2000 Ill PUC LEXIS 676 at *7 (Ill. Commerce Comm'n 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"); **California:** *California Verizon/GNAPs Arbitration Order* at 26-28 (finding that ILECs should be compensated for virtual FX calls because FX customers do not receive service at no charge and virtual FX calls are interexchange calls not subject to Rule 51.703(b)); **Florida:** *In re: Investigation Into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation, Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP (Fl. PSC Sept. 10, 2002) ("*Florida Reciprocal Compensation Order*") (intercarrier compensation for calls to VFX numbers to be based on end points of call and are not subject to reciprocal compensation); **Pennsylvania:** *Application of MFS Intelenet of Pennsylvania, Inc.*, Docket No. A-310203F0002, *Application of*

(continued…)

Carolina Commission found a nearly identical proposal from US LEC to be "***an extraordinarily clear example of attempted regulatory arbitrage***"[138] and that "federal law, sound policy, and basic fairness compel adoption of Verizon's proposed language."[139] "Whatever practical difficulties the parties may face in implementing that language would provide no basis for

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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 (Pa. PUC 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 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 (Pa. PUC Aug. 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."); **Connecticut***: DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Decision, Docket No. 01-01-29 (Conn. PUC Jan. 30, 2002) (VFX calls not eligible for mutual compensation); **Texas:** *Proceeding to Section 252 of the Federal Telecommunications Act of 1996*, Revised Arbitration Award, Docket No. 21982 (Tex. PUC 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:** *South Carolina US LEC Arbitration Order*; *In re Petition of Adelphia 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 BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948 (Tenn. PSC June 25, 2001) at 42-44; **Georgia:** *Generic Proceeding of Point of* PSC Docket No. 13542-U (Ga. PSC July 23, 2001) at 10-12 ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.") (" *Georgia Generic Proceeding*"); **Maine:** Public Offices Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber, Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, and Order Disapproving Proposed Service (Me. PUC 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, Case No. TO-2001-455 (Mo. PSC June 7, 2001) at 31 (finding VFX traffic "not classified as a local call"); **Nevada:** *Re: Pac-West Telecomm, Inc.*, Docket Nos. 98-10015, 99-1007, Order Adopting Revised Arbitration Decision, Attach. 1, ¶ 64 (Nev. PUC Apr. 8, 1999) (finding that "a local call is based on the physical location of the originating and terminating parties . . . [t]o define a local call based on the rate center of the NXX codes as proposed by Pac-West and ATG would subvert industry custom and practice. It could allow them to avoid access charges for toll calls and interLATA calls as well").

[138] *South Carolina US LEC Arbitration Order* at 27 (emphasis added).

[139] *Id*. at 28.

permitting the severe market distortions that adoption of the [virtual FX] proposal could cause."[140]

As many state commissions have further agreed, fair compensation for "virtual" FX traffic also involves recognition that carriers traditionally pay access charges for use of the ILECs' network to complete interexchange calls. This should be especially true when GNAPs' use of virtual NXX codes relieves Verizon's end-users from paying toll. Under the virtual NXX scenario, fair compensation policy dictates that GNAPs pay Verizon access. Otherwise, GNAPs' virtual NXX proposal would obliterate the longstanding local/toll distinction that guides telephone service pricing policy. Accordingly, as the Ohio, Georgia, South Carolina, Tennessee and Florida commissions have concluded, and as the Rhode Island arbitrator also recently concluded, access charges should apply to virtual NXX traffic.[141] Moreover, as witness Haynes explained and as the South Carolina Commission recognized, Verizon now also has the ability to exclude virtual FX traffic from reciprocal compensation billing.[142]

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[140] *Id*. at 29. The South Carolina stated three succinct reasons for rejecting US LEC's proposal, a proposal nearly identical to that which GNAPs proposes here:

First, US LEC's proposal is inconsistent with federal law, which explicitly provides that reciprocal compensation does not apply to interexchange traffic as this Commission has recognized. Second, US LEC's proposal would create unacceptable regulatory arbitrage opportunities and discourage true local competition. Third, Verizon has explained that the parties can accurately and inexpensively distinguish FX and Virtual FX traffic from local traffic for intercarrier compensation purposes.

Id.

[141] *Ohio Verizon/GNAPs Arbitration Order* at 7, 10; *Georgia Generic Proceeding* at 11; *South Carolina Adelphia Arbitration Order* at 13; *Tennessee BellSouth/Intermedia Arbitration Order* at 44; *Florida Reciprocal Compensation Order* at 33 (compensation for virtual FX traffic to be based on end points of call).

[142] Haynes Direct at 40: 9-23 - 42: 1-3.

C. GNAPs' Proposed Contract Changes

GNAPs identifies its changes to Glossary §§ 2.71- 2.73, 2.77, and Interconnection Attachment Sections 9.2 and 13 as related to Issue 4.[143] GNAPs changes to Glossary §§ 2.48 and 2.84 also appear related to Issue 4. GNAPs, however, did not provide any specific support, rationale or comment as to why any of its proposed contract changes are necessary or even related to Issue 4. The Department should reject GNAPs' changes for this reason alone. If the Department addresses any of GNAPs' changes, which it should not, it should reject those unexplained changes for the reasons discussed above and for the additional reasons below:

Verizon's Redline Glossary § 2.72 – Rate Center Area: GNAPs' edits would remove from this section the following sentence: "The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA NXX designation associated with the Specific Rate Center Area." The sentence is necessary, however, to make clear that NPA-NXXs are associated with particular geographic areas. Indeed, the Department previously noted that *"[e]ach customer's telephone number is assigned to a particular rate center. . .* The configuration of rate centers thus, determines whether calls are toll or local calls."[144] Verizon's language simply mirrors the Department's recognition that telephone numbers are assigned to particular rate centers. Without such language, and for the reasons discussed above, GNAPs would be able to eviscerate the

[143] Again GNAPs appears to provide incorrect references to the sections for which it actually proposes changes. GNAPs' references to Glossary Sections 2.71-2.73 and Interconnection Attachment Sections 9.2 and 13 appear to have been intended to reference changes GNAPs actually proposes for Glossary Sections 2.72-2.74 and Interconnection Attachment Sections 9.2 and 13.3 respectively. Verizon assumes that these are the sections and changes to which GNAPs' Petition refers.

[144] *RCC Order* at 3, n.4

distinction between local and toll service by merely assigning telephone numbers to customers who do not reside within the rate centers to which such telephone numbers are associated.[145]

Verizon's Redline Glossary § 2.73 – Rate Center Point: GNAPs' edits to this section would replace the terms "Telephone Exchange Service" and "Toll Traffic," both defined elsewhere in the agreement, with the broader term "Telecommunications Service." There simply is no need for this change, because the calls being measured for purposes of this definition are Telephone Exchange Service and Toll Traffic. "Telecommunications Service" is also defined elsewhere in the agreement as well as in the Act itself. GNAPs' edits, however, would serve no purpose and would confuse an otherwise clear definition.[146] The Department should find as did the California Commission that "Verizon's proposed definition is clearer and will be adopted."[147]

Verizon's Redline Glossary §§ 2.48 and 2.84 – IXC and Switched Exchange Access Service: GNAPs' proposed change to the definition of "IXC" is erroneous. Contrary to GNAPs' inserted language, there is nothing that requires an IXC to impose a "toll charge" for its services. For example, AT&T would still be an IXC even if it did not impose a toll charge on telecommunications services. It is commonly understood that as "Long-haul long distance carriers, IXCs include all facilities based inter-LATA carriers . . . IXCs also provide intraLATA toll service and operate as CLECs . . . in many states."[148] As Verizon's definition is the industry standard, it should be adopted.

GNAPs would significantly revise the definition of "Switched Exchange Access" to give this term "the meaning ascribed to it under 47 U.S.C. § 153(16)." This would completely

[145] *See* Munsell Direct Testimony at 23:4-24 - 24:1-2 (discussing GNAPs' proposed changes).

[146] *See* Munsell Direct Testimony at 24:4-22 (discussing GNAPs' proposed changes).

[147] *California Verizon/GNAPs Arbitration Order* at 66. Verizon Redline Glossary Section 2.73 was numbered as Glossary Section 2.72 in California.

[148] *See* Newton's Telecom Dictionary 380-381 (17th ed. 2001).

eliminate Verizon's more complete definition, which defines "Switched Exchange Access" as, "The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access, and 900 access." GNAPs' less precise definition leaves the provision unworkable. An interconnection agreement is meaningless if operational personnel cannot implement it. Pointing non-lawyers to a legal definition ignores this practical concern. Accordingly, GNAPs' edits should be rejected.

For the reasons stated above, the New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to Verizon Redline Glossary §§ 2.48 and 2.84 – because GNAPs did not properly present or explain them.[149] The California Commission found in Verizon's favor with regard to both of these Glossary definitions.[150] With regard to the definition of "IXC," the California Commission stated, "Verizon's definition for IXC is adopted. Whether or not a carrier offers toll service for a specific charge is not the defining factor for an IXC."[151] With regard to the definition of "Switched Exchange Access Service," the California Commission stated "Verizon's definition, which is more precise, is adopted."[152]

Verizon's Redline Interconnection Attachment §§ 2.2.1.1 and 2.2.1.2: GNAPs' changes to these sections misstate the law. As written by Verizon, § 2.2.1.1 establishes that Interconnection Trunks are to be used for Reciprocal Compensation Traffic, translated LEC

[149] *New York Verizon/GNAPs Arbitration Order* at 4.

[150] *California Verizon/GNAPs Arbitration Order* at 66. In California, Verizon Redline Glossary Sections 2.48 and 2.84 were designated as Glossary Sections 2.47 and 2.83, respectively.

[151] *Id.*

[152] *Id.*

IntraLATA toll free service access code traffic, IntraLATA Toll Traffic (between Verizon and GNAPs' respective customers), Tandem Transit Traffic, and Measured Internet Traffic. GNAPs' language would allow other types of traffic to be carried on Interconnection Trunks *based on whether the carrier of the traffic imposes a charge for the traffic*. Likewise, in § 2.2.1.2, GNAPs' changes would limit Exchange Access to that traffic for which the carrier charges from "time to time." The imposition of charges is not the defining criterion for Exchange Access traffic. GNAPs' erroneous edits, therefore, should be rejected.[153]

The New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to Verizon Redline Interconnection Attachment §§ 2.2.1.1 and 2.2.1.1 – because GNAPs did not properly present or explain them.[154] The California Commission likewise found in Verizon's favor with regard to both of these Interconnection Attachment provisions, stating "Interconnection §§ 2.2.1.1, 2.2.1.2: Verizon's proposed language is adopted. Toll traffic does not have to be billed as a separate charge on customers' bills."[155]

Verizon's Redline Interconnection Attachment § 9.2.1: Verizon's proposed Interconnection Attachment § 9.2.1 is necessary to ensure proper routing – not rating – of traffic exchanged between GNAPs and interexchange carriers interconnected at a Verizon tandem.[156] Verizon's function in this regard is solely the provision of tandem switching for exchange access

[153] *See also* D'Amico Direct Testimony at 26:15-21 - 27:1-8 (discussing GNAPs' proposed changes).

[154] *New York Verizon/GNAPs Arbitration Order* at 4.

[155] *California Verizon/GNAPs Arbitration Order* at 33.

[156] Munsell Direct Testimony at 28:8-25 - 29:1-2.

traffic.[157] If an IXC routes traffic to terminate to GNAPs according to the LERG, Verizon should encounter no routing problems.

Some IXCs, however, route according to the rate center assigned to the terminating NPA-NXX. For example, if GNAPs has Access Toll Connecting trunks only at Verizon's Framingham tandem, yet has provided its customers telephone numbers assigned to rate centers served by the Brockton tandem, some IXC's will attempt to route terminating exchange access traffic for GNAPs NPA-NXX codes to the Brockton tandem. Without an Access Toll Connecting trunk group for GNAPS at the Brockton tandem, Verizon has two options. First, it could let the call "die" at the Brockton tandem. Alternatively, Verizon could incur additional transport and tandem switching (for which Verizon would receive no compensation) to (i) route the call from the Brockton tandem to the Framingham tandem on intertandem facilities and (ii) tandem switch the call again at Framingham to route it onto the GNAPS Access Toll Connecting trunks. It is GNAPs' lack of an Access Toll Connecting trunk group at the access tandem serving the rate center(s) to which GNAPs has assigned a telephone number (when combined with the IXC's routing practice, neither of which Verizon controls) that causes the additional transport and tandem switching obligations. Rather than imposing those additional obligations on Verizon, Verizon's proposed § 9.2.1 would ensure proper and efficient routing without impeding GNAPs' ability to assign NPA-NXX codes to whatever rate centers it chooses.

The New York Commission rejected various GNAPs changes to Verizon Redline Interconnection Attachment § 9, including § 9.2.1, noting as follows:

> According to Verizon, GNAPs' contract additions and removals (§§ 9.2.1, 9.2.2, 9.2.3 and 9.2) appear to violate the routing and subtending procedures found in

[157] *Id.*

> the Local Exchange Routing Guide (LERG). In its view, GNAPs should be required to purchase access trunks through Verizon's access tariff.
>
> * * *
>
> We adopt Verizon's position. The import of GNAPs' proposal is unclear; GNAPs' changes may indeed cause severe difficulties for other carriers attempting to route calls, and it appears to undermine the LERG guidelines. Verizon's contract language will prevent network problems, including dropped or misdirected calls.[158]

The California Commission likewise adopted Verizon's proposed language on Interconnection § 9.2.1, stating:

> Interconnection § 9.2.1: In its comments on the DD, Verizon indicates that Verizon's language is necessary to ensure proper routing -- not rating -- of traffic exchanged between GNAPs and the interexchange carriers interconnected at a Verizon tandem. Verizon's language is adopted.[159]
>
> Verizon's Redline Interconnection Attachment § 13.3: GNAPs' edits to this section would render this provision unworkable, making it read, "Unless otherwise required by Commission order, each Party will comply with the Rate Center Areas it has established in its tariffs."[160] This language should be rejected because it is contrary to FCC regulations. The FCC's local number portability guidelines require that companies limit the geography within which telephone numbers are ported to the same rate center. It is essential that all companies operating in the top 100 Metropolitan Statistical Areas ("MSAs") have identical rate center boundaries to ensure compliance with the FCC rules. Verizon's proposed language captures these obligations:
>
> > Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, GNAPs shall adopt the Rate Center Area and Rate Center Points that the

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[158] *New York Verizon/GNAPs Arbitration Order* at 17.

[159] *California Verizon/GNAPs Final Decision* at Appendix A, page 3.

[160] *See* Munsell Direct Testimony at 30:18-22 - 31:1-9 (discussing faults in GNAPs' proposed changes).

> Commission has approved for Verizon within the LATA and Tandem serving area. GNAPs shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.

The New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to Verizon Redline Interconnection Attachment § 13.3 – because GNAPs did not properly present or explain them.[161]

For the reasons stated above, GNAPs' changes would eviscerate the regime described above and should be rejected.

[161] *New York Verizon/GNAPs Arbitration Order* at 4.

Issue 5: GNAPs Has Not Proposed A Specific Change-In-Law Provision For The *ISP Remand Order* Nor Do The Parties Need Such A Separate Provision.

Previous State Commission Decisions:
Adopted Verizon's Proposal: *Illinois, New York, Ohio (with modification), Rhode Island*[+]
Adopted GNAPs' Proposal: *California*

A. The *ISP Remand Order* Should Not Be Carved Out From All Other Authorities Potentially Subject to a Future Change in Law.

Issue 5, as articulated by GNAPs, raises only the issue of whether additional change-in-law language should be included in the interconnection agreement to specifically address changes to the *ISP Remand Order*.[162] Despite raising this issue, GNAPs offers no contract provision for Verizon's or the Department's consideration. The only arguably applicable contract language GNAPs proposes is in Glossary § 2.76, where GNAPs inserts the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation." In light of the parties' agreed change-in-law provision and the FCC's move away from the use of the term "local" to describe traffic subject to reciprocal compensation, GNAPs' proposed addition to Glossary § 2.76 is unnecessary and inappropriate.[163]

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[162] *See* GNAPs' Petition at 24. Specifically, GNAPs' Issue 5 states: "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?" *See In the Matter of the Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). Additionally, Verizon's Response to the Department's Record Request No. 5 notes that GNAPs proposes a number of changes that appear intended to either avoid the requirements of the ISP Remand Order or avoid subsequent changes to that order. Although those changes do not appear directly related to Issue 5 as that issue appears in GNAPs' Petition, Verizon incorporates herein by reference its response to Record Request No. 5 to the extent the Department considers such changes in the context of its review of Issue 5.

[163] While the Ohio Commission did permit the inclusion of two GNAPs references to "applicable law," apparently regarding reciprocal compensation and the FCC Internet Order, including a reference in Glossary § 2.76, and Interconnection Attachment § 7.3.2.1, the Ohio Commission stopped there. *Ohio Verizon/GNAPs Arbitration Panel Report* at 11-12*; aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12. It did not grant GNAPs the right to create an express requirement for the parties "to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised" – precisely what GNAPs was seeking all along. As noted above, GNAPs never offered any language in that regard during or after the parties' negotiations.

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.[164] This language will 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*. Furthermore, because the parties did not exchange any traffic in Massachusetts prior to the adoption of the *ISP Remand Order*, the parties must exchange Internet traffic on a bill-and-keep basis.[165] If and when there is a change in law, the parties' agreement already provides an appropriate vehicle to implement that change in law. GNAPs' counsel conceded as much during the arbitration hearing:

> MR. ALLEN: Let me ask it [the question] again, and perhaps you've already answered it. Let me ask it this way: If there is a change, whether or not it's anticipated or not anticipated, would Verizon's change-of-law language that they have submitted in this proceeding encompass -- or would it accomplish what you're trying to do insofar as changing the law, as the FCC has seen fit?
>
> MR. SCHELTEMA: In other states where we have not prevailed on this issue for one reason or another, ***we are of the opinion that Verizon's language will still enable us to enforce Federal law in terms of the arbitrated contract, yes***.[166]

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

[165] *See ISP Remand Order* ¶ 81 ("Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served). In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period").

[166] MA Hearing Tr. at 179:8-20 (emphasis added).

Those "other states" where GNAPs has not prevailed on this issue include Illinois, New York, Ohio and Rhode Island.[167] Consistent with Verizon's position on this issue, and consistent with the majority of state commissions that have ruled on this issue, the Department should reject GNAPs' proposed language in Glossary § 2.76.[168]

B. The Department Should Adopt Verizon's Proposed Language Pertaining to Compensation for Internet-Bound Traffic.

Verizon's proposed terms pertaining to compensation for Internet-bound traffic are completely consistent with the *ISP Remand Order* and the Department's orders with regard to Internet-bound traffic.[169] State commissions have no authority to depart from the FCC's intercarrier compensation rate regime, [170] although, as the Department has already recognized, state commission policies that do not conflict with the *ISP Remand Order* may remain in effect.[171] GNAPs' unexplained edits to Verizon's proposed terms either ignore the *ISP Remand Order*, leave explanations within the interconnection agreement vague, or make no sense at all. A full understanding of Verizon's position in this area is necessary in order to put Verizon's proposed terms into context.

The *ISP Remand Order* again confirmed that Internet-bound traffic is not subject to the reciprocal compensation requirements of § 251(b)(5). As the FCC explained, it has "long held" that enhanced service provider traffic – which includes traffic bound for Internet Service

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[167] Illinois Verizon/GNAPs Arbitration Order at 18-19; New York Verizon/GNAPs Arbitration Order at 21-22; Rhode Island Initial Arbitration Order at 36-37.

[168] Notably, even though it did submit testimony of its own lawyer, GNAPs did not submit testimony on the change-of-law issue.

[169] *See Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, D.T.E 97-116 (1998); D.T.E. 97-116-A (1999); D.T.E. 97-116-B (1999); D.T.E. 97-116-C (19999); D.T.E. 97-116-D/99-39 (2000); D.T.E. 97-116-E (2000); and D.T.E. 97-116-F (2001).

[170] *See ISP Remand Order* at ¶¶ 39, 52.

[171] *See DTE 02-21 Order* at *4.

Providers ("ISPs") – is interstate access traffic.[172] Consequently, these services are excluded from the scope of the reciprocal compensation requirements of § 251(b)(5).

The *ISP Remand Order* also sets forth the presumption that traffic from one carrier to another that exceeds a 3:1 ratio is Internet-bound traffic.[173] The FCC's interim rate regime will apply to this traffic. The determination of whether the 3:1 ratio has been exceeded rests upon a consideration of all traffic (except Toll Traffic) exchanged between the Parties pursuant to the agreement.[174]

Verizon's contract language correctly embodies these principles. Specifically, Verizon has addressed the new regime in its proposed definitions of "Reciprocal Compensation" (Verizon's Redline Glossary § 2.75) and "Reciprocal Compensation Traffic" (Verizon's Redline Glossary § 2.76), as well as in §§ 6 and 7 of Verizon's Redline Interconnection Attachment, clarifying what traffic types qualify for reciprocal compensation and which do not.

Furthermore, Verizon's closely related definitions of both "Reciprocal Compensation" and "Reciprocal Compensation Traffic" embody the *ISP Remand Order*'s intercarrier compensation obligations as they relate to Internet-bound traffic. That 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.[175] Indeed, the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation. In short, in

[172] *See ISP Remand Order*. at ¶ 28.

[173] *Id*.

[174] *Id.* at ¶ 79.

[175] *See* 47 CFR § 51.701(e).

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.

In view of this plain language, Verizon has proposed a definition of "Reciprocal Compensation Traffic" that is consistent with the FCC's ruling and captures these two key requirements for eligibility for reciprocal compensation:

> 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. 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.[176]

[176] *See* Verizon Redline Agreement, Glossary § 2.76.

Verizon's definitions of "Reciprocal Compensation" and "Reciprocal Compensation Traffic" are necessary to clarify what traffic is subject to reciprocal compensation and what traffic is not. Verizon's definition of "Measured Internet Traffic" in Verizon's Redline Glossary § 2.57 likewise identifies traffic that is subject to the interim compensation regime adopted by the FCC. This definition is reflected in Verizon's Redline Interconnection Attachment, §§ 6 and 7, as well as in the definitions of "FCC Internet Order" (Verizon's Redline Glossary § 2.36) (left undisturbed by GNAPs); "Internet Traffic"(Verizon's Redline Glossary §2.43); "Toll Traffic" (Verizon's Redline Glossary § 2.92); "Traffic Factor 1" (formerly "Percent Interstate Usage") (Verizon's Redline Glossary § 2.94), and "Traffic Factor 2" (formerly "Percent Local Usage") (Verizon's Redline Glossary § 2.95).[177] GNAPs has not offered any reason why the FCC's regime should not be so reflected. GNAPs' unexplained edits to these and other terms, however, create the following problems in specific contract sections:

Verizon's Redline Glossary § 2.75 – Reciprocal Compensation: GNAPs proposes to define "Reciprocal Compensation" simply by referring to § 251(b)(5) of the Act. GNAPs' proposed contract language is far too limited in the wake of the *ISP Remand Order*, and does not incorporate the principles of that Order. It is unclear why GNAPs opposed Verizon's definition, but at a minimum, the definition of Reciprocal Compensation should specify that reciprocal compensation provides recovery of costs incurred for transport and termination of reciprocal compensation traffic.

[177] The Department also should adopt the following Verizon-proposed terms, which GNAPs has inexplicably and inappropriately attempted to alter: Verizon's Redline Glossary, §§ 2.46 ("IP"), and 2.92 ("Toll Traffic"); Verizon's Redline Additional Services Attachment, § 5.1 ("Voice Information Services Traffic"); and Verizon's Redline Interconnection Attachment, §§ 2.2.1.1, 3.3, 6.2, and 7.3.2.1. These provisions reflect changes to terminology that would be necessitated by the adoption of Verizon's proposed definitions and terms addressed above and/or changes necessitated by conforming the terms of this agreement to the reciprocal compensation regime established by the FCC.

The New York Commission explicitly rejected GNAPs' edits to Verizon's proposed "Reciprocal Compensation" definition, stating "GNAPs' proposed edits to various definitions, which GNAPs indicates are related to this issue and to which Verizon objects, are either ambiguous or inconsistent with existing definitions of toll service. Thus, these proposed contract changes are not adopted."[178] The California Commission, in turn, adopted Verizon's proposed definition, changing only Verizon's reference to "the FCC Internet Order" with a specific citation to that Order.[179]

Verizon's Redline Glossary § 2.76 – Reciprocal Compensation Traffic: In this section, GNAPs adds language that contemplates changes in law that might require certain types of traffic to be subject to reciprocal compensation that, under current law, are not subject to reciprocal compensation. GNAPs' language is likely intended either to cloud which types of traffic are currently subject to reciprocal compensation, or to automatically implement future changes to the *ISP Remand Order* (notwithstanding the agreement's change of law renegotiation provisions in General Terms and Conditions § 4).

GNAPs' edits also attempt to define traffic subject to reciprocal compensation by the originating party's local calling area. This change is part of GNAPs' scheme to avoid access charges. For example, as noted above, Plymouth and Boston are not in the same Verizon tariffed local calling area. Both cities, however, could be in the same GNAPs local calling area. Under GNAPs' proposal, then, when a Verizon Plymouth subscriber calls a GNAPs Boston subscriber,

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[178] *New York Verizon/GNAPs Arbitration Order* at 21.

[179] *California Verizon/GNAPs Final Arbitrator's Report* at 72, *aff'd by California Verizon/GNAPs Arbitration Order* at 2. Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

Verizon would be required to pay GNAPs access charges to terminate this intraLATA toll call (based on Verizon's definition of the local calling area). However, when a GNAPs customer in Boston calls a Verizon customer in Plymouth, GNAPs would avoid paying Verizon access charges and instead would pay only the lower reciprocal compensation rate (based on GNAPs' geographically broader definition of the local calling area). Thus, for identical calls between Plymouth and Boston, GNAPs would collect a higher rate for calls from Verizon customers, but pay a lower rate for calls by GNAPs customers.

This is not only unworkable but also, as the Department has recognized, would be contrary to the FCC's intent for state commissions to use a uniform, historically defined local calling area for purposes of applying reciprocal compensation.[180] The Department has already made very clear that local calling areas for reciprocal compensation purposes shall be based on existing Verizon tariffs.[181] As the *ISP Remand Order* clarified, moreover, calls originating and terminating in different exchange areas are a type of access traffic. Whether a call is exchange access or information access is not defined by whether the local calling area assigned by the

[180] *See Consolidated Arbitrations Phase 4-B Order* at 7 (quoting FCC's *First Report and Order* "[S]tate commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.") The Department further quoted the portion of the First Report and Order stating "We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for long-distance traffic." *Id.* (quoting *Local Competition Order* at ¶ 1033. The FCC also noted that "Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges." *Local Competition Order* at ¶ 1035. Thus, the FCC necessarily intended to provide that the geographical areas for two service providers under which traffic is considered to be 252(b)(5) traffic should be consistent.

[181] *Consolidated Arbitrations Phase 4-B Order* at 9 (noting that "the reciprocal compensation arrangement for terminating and transporting calls with be based on existing [Verizon] tariffs, in this case, the ones defining local calling areas and those defining the applicability of intraLATA access charges").

originating carrier but rather by the calling areas historically defined by the state commissions. In short, GNAPs' edits are intended to reclassify traffic that normally would be subject to access charges as reciprocal compensation traffic, contrary to Department and FCC precedent.

As the Department is well aware, arbitrage opportunities arise in the absence of a uniform geographical area for determining whether a call in either direction constitutes "Reciprocal Compensation Traffic." Requiring GNAPs to abide by Verizon's local calling area boundaries for reciprocal compensation[182] does not prevent GNAPs or Verizon from providing their respective customers larger local calling areas, but does fairly define the parameters for intercarrier compensation. Verizon accordingly incorporates by reference all of its prior arguments in this regard from Arbitration Issues 3 and 4. For all of those reasons, the Department should reject GNAPs' changes.

The New York Commission rejected GNAPs' edits to Verizon's proposed "Reciprocal Compensation Traffic" definition.[183] The California Commission likewise adopted Verizon's proposed definition, except insofar as "FX-type" calls (virtual NXX calls) are concerned.[184] For the reasons stated in Issue 4, the California Commission should have made no exclusion for "FX-type" or virtual NXX calls.[185]

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[182] GNAPs also proposes to delete Verizon's definition of a Verizon local calling area in the definition of "Reciprocal Compensation Traffic" as it applies to Extended Local Calling Areas. Such a definition is necessary to ensure that the local calling areas setting the boundaries for determining what constitutes reciprocal compensation traffic are clear. GNAPs' proposed deletion accordingly should be rejected.

[183] *New York Verizon/GNAPs Arbitration Order* at 4, 21.

[184] *California Verizon/GNAPs Arbitration Order* at Appendix, page 2.

[185] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

Verizon's Redline Glossary § 2.57 – Measured Internet Traffic: Both Internet Traffic and Measured Internet Traffic are excluded from compensation pursuant to § 251(b)(5) of the Act. Verizon's use of the two terms, however, distinguishes Internet traffic that is subject to the FCC's interim rate cap regime and Internet traffic that is not. As used by Verizon, "Measured Internet Traffic" is that traffic that is locally rated and thus is subject to the FCC's interim rate cap regime. It is necessary to make this distinction for measurement and billing purposes because the FCC's *ISP Remand Order* only concerns locally rated Internet-bound traffic and does not displace the pre-existing toll and access regimes.[186] This distinction is also reflected in Verizon's definitions of "Toll Traffic" (Glossary § 2.91), "Traffic Factor 1" (Glossary § 2.93), and "Traffic Factor 2" (Glossary § 2.94).

GNAPs' edits to the definition of "Measured Internet Traffic" in Glossary Section 2.57 present the same problems as its edits to the definition of "Reciprocal Compensation Traffic." GNAPs' edits remove references to historical local calling areas in Massachusetts in an attempt to permit GNAPs to single-handedly redefine which calls will and will not be subject to interexchange access charges. GNAPs is free to do this for retail purposes but not for purposes of wholesale intercarrier compensation. The *ISP Remand Order* does not permit CLECs to unilaterally define which calls are subject to 251(b)(5) compensation and which calls are exchange access or information access.

The New York Commission rejected GNAPs' edits to Verizon's proposed "Measured Internet Traffic" definition.[187] The California Commission explicitly adopted Verizon's definition for "Measured Internet Traffic."[188]

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[186] *See ISP Remand Order* ¶ 36 and n. 66.

[187] *New York Verizon/GNAPs Arbitration Order* at 4, 21.

Verizon's Redline Glossary § 2.43 – Internet Traffic: Verizon's proposed definition for "Internet Traffic" is straightforward and consistent with the *ISP Remand Order.* It provides:

> Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

Verizon's proposed definition of "Internet Traffic" encompasses the "new forms of communications such as e-mail, instant messaging, and other forms of digital, IP-based services."[189] Verizon's definition does not limit the category of traffic to technologies that only exist today. Instead, it is meant to cover the traffic that will be broadcast to and from the Internet in the future.

GNAPs has yet to explain why it seeks to exclude CMRS traffic from the definition of "Internet Traffic." Nothing in the *ISP Remand Order*, however, excludes CMRS traffic from the Order's discussion of ISP-bound traffic, including the presumption applicable to determining whether traffic is ISP-bound. GNAPs' edits appear intended to carve out CMRS traffic from traffic otherwise subject to the requirements of the *ISP Remand Order*.

The New York Commission rejected GNAPs' edits to Verizon's proposed "Internet Traffic" definition.[190] The California Commission also rejected GNAPs' edits, noting: "Verizon's language is adopted. GNAPs does not explain why it deleted references to CMRS providers."[191]

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[188] *California Verizon/GNAPs Arbitration Order* at Appendix A, page 2. Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

[189] *See ISP Remand Order* at ¶ 18.

[190] *New York Verizon/GNAPs Arbitration Order* at 4, 21.

[191] This provision in California is the same as Verizon Redline Glossary § 2.43 in the Massachusetts proceeding. The full California Commission specifically reaffirmed this conclusion in the *California Verizon/GNAPs Arbitration Order* at Appendix A, page 3, stating "Verizon's proposed language is adopted. It

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Verizon's Redline Glossary § 2.92 – Toll Traffic: In Glossary § 2.92, GNAPs attempts to add language to the agreement's definition of "Toll Traffic" that would define Toll Traffic by whether the party providing the service assesses a toll charge. However, as the *ISP Remand Order* made clear, the jurisdictional nature of a call is determined by the originating and terminating points of the call, not whether the originating carrier imposes a certain type of charge or another. GNAPs' edit appears intended to facilitate its scheme to circumvent access charges by mis-assigning NXX codes such that Verizon's switches do not recognize the interexchange nature of certain calls. It should be rejected.

The New York Commission rejected GNAPs' edits to Verizon's proposed "Toll Traffic" definition.[192] The California Commission also reviewed GNAPs' edits to Verizon's proposed definition of "Toll Traffic," and ordered the Parties to adopt Verizon's language.[193]

Verizon's Redline Glossary §§ 2.94 and 2.95 – Traffic Factors 1 and Traffic Factor 2: GNAPs appears to use Verizon's proposed term "Traffic Factor 1" to quarrel with the *ISP Remand Order.* For example, each of GNAPs' changes to these definitions appears to remove any concession that Measured Internet Traffic is not interstate in nature (*e.g.*, deleting the

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explains the use of Traffic Factors and deletes GNAPs' language related to its defined calling areas. The reference to applicable tariffs is appropriate. That tariff section explains the measurement of billing minutes for toll traffic." . Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

[192] *New York Verizon/GNAPs Arbitration Order* at 4, 21.

[193] *California Verizon/GNAPs Final Arbitrator's Report* at 66. The California Commission specifically reaffirmed this holding in the *California Verizon/GNAPs Arbitration Order*, stating "Verizon's proposed definition of "Toll Traffic" is adopted. It is more precise, and eliminates GNAPs' requirement that toll traffic relate to whether or not the carrier imposes a toll charge." *See California Verizon/GNAPs Arbitration Order* at Appendix A, page 2. . Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

exclusion of Measured Internet Traffic from a calculation based on "interstate traffic" in the definition of Traffic Factor 1). Obviously, the Glossary of the Parties' interconnection agreement is not the place for GNAPs to continue its argument with the FCC on the nature of Internet Traffic. GNAPs' changes to "Traffic Factor 2," moreover, only muddy the waters. Changing the term "intrastate" traffic to "other" traffic makes the definition vague and unworkable.

The New York Commission rejected GNAPs' edits to Verizon's proposed "Traffic Factor 1" and "Traffic Factor 2" definitions.[194] The California Commission addressed these provisions specifically and found in Verizon's favor:

> T&C Glossary §§ 2.93 and 2.94: Verizon's proposed language is adopted. GNAPs does not explain the reason for its proposed language, and Verizon terms GNAPs' language vague and unworkable. Verizon indicates that the terms "Traffic Factor 1" and "Traffic Factor 2" are used to separate types of traffic exchanged via interconnection trunks for purposes of rating and billing. It makes sense to include those definitions in the ICA.[195]

Verizon's Redline Interconnection Attachment §§ 7.3 and 7.4: Section 7.3 appropriately references the *ISP Remand Order* as governing the parties' rights and obligations with respect to intercarrier compensation. As the New York Commission observed, the *ISP Remand Order* "speaks for itself" on this issue.[196] The parties need only to reference the order instead of trying

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[194] *New York Verizon/GNAPs Arbitration Order* at 4, 21.

[195] *California Verizon/GNAPs Final Arbitrator's Report* at 81; *aff'd by California Verizon/GNAPs Arbitration Order* at 2. Verizon Redline Glossary Sections 2.94 and 2.95 were numbered as Glossary Sections 2.93 and 2.94, respectively, in California. Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

[196] *See Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Order Resolving Arbitration Issues at 43, Case No. 01-C-0095 (Issued and Effective on July 30, 2001) ("*NY (AT&T/Verizon) Arbitration Order*") ("The Commission finds

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to paraphrase it in their interconnection agreement. Verizon Redline Interconnection Attachment §§ 7.3.3 through 7.3.7 specifically list the traffic that is not subject to the parties' reciprocal compensation obligations.

For example, § 7.3.3 provides that "Toll Traffic" is exempt from reciprocal compensation. As defined by Verizon, "Toll Traffic" (Verizon Redline Glossary § 2.92) is traffic that originates from a customer of one party on that party's network and terminates to the customer of the other party on that party's network and is neither Reciprocal Compensation nor Measured Internet Traffic.[197] That is, the traffic is "intraLATA Toll Traffic" as defined by the FCC, or "interLATA Toll Traffic" as defined by the Act.[198] GNAPs' proposal, however, would seem to subject "Toll Traffic" to reciprocal compensation. Similarly, the remainder of Verizon Redline Interconnection Attachment § 7.3 also describes categories of traffic that are not subject to § 251(b)(5) in accordance with applicable law, including, Optional Extended Local Calling Area Traffic, special access traffic, Tandem Transit Traffic and Voice Information Service Traffic.[199]

GNAPs likewise deletes the reference to calls originated on a 1+ presubscription or casual dialed call in the same inappropriate way as it did in the Glossary definition of "Toll Traffic." In Verizon Redline Interconnection Attachment § 7.3.4, GNAPs incorrectly proposes to delete, in the same manner as it does in the Glossary, Verizon's explanation on the type of its

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that the FCC's order speaks for itself, and there is no need for the agreement to include any terms, conditions or rates for internet traffic that the FCC order addresses").

[197] *See* Verizon Redline Glossary § 2.76.

[198] *See ISP Remand Order* ¶¶ 37-39. The *ISP Remand Order* again made clear that access traffic and services for access traffic are excluded from § 251(b)(5). *ISP Remand Order* ¶¶ 37-38. This would also include the intrastate access charge regime because it "would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." *Id*. at ¶ 37 n. 66 (quoting *Local Competition Order*, 11 FCC Rcd at 15896).

[199] *See* Verizon Redline Interconnection Attachment §§ 7.3.4 through 7.3.7.

local calling areas that should govern whether a call constitutes reciprocal compensation traffic.[200] For the reasons stated above and in response specifically to Arbitration Issue 3, these changes must be rejected.

Verizon's Redline Interconnection Attachment § 7.4 simply states that the parties will charge one another symmetrical reciprocal compensation rates. This provision embodies the *ISP Remand Order*'s declaration that the interim regime "affects only the intercarrier *compensation* (*i.e.*, rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51."[201] Accordingly, § 7.4 merely provides that both parties pay and receive the same rate for the same category of traffic in accordance with 47 C.F.R. § 51.711. GNAPs would delete the requirement for symmetrical reciprocal compensation rates between the parties in contravention of 47 C.F.R. § 51.711.

The New York Commission rejected various GNAPs' changes to these sections as unripe for consideration because GNAPs did not properly present or explain them.[202] The California Commission also found in Verizon's favor on §§ 7.3 and 7.4, adopting most of Verizon's proposed language in § 7.3 and adopting all of Verizon's proposed language in § 7.4, stating, "Verizon's proposed language is adopted. While the section does restate federal law, it could be important to have the provision there, if there is a future change in the requirements of the *ISP Remand Order*."[203]

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[200] *See id*.

[201] *See ISP Remand Order* ¶ 78 n. 149.

[202] *New York Verizon/GNAPs Arbitration Order* at 4.

[203] *California Verizon/GNAPs Final Arbitrator's Report* at 74, *aff'd by California Verizon/GNAPs Arbitration Order* at 2. Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

Verizon's Redline Additional Service Attachment § 5.1: GNAPs' edits to this section are erroneous. First, and contrary to GNAPs' suggestion, voice information services (which are provided by third party service/content providers) are not limited to those where providers assess a fee, whether or not the fee appears on the calling party's telephone bill. Indeed, since Verizon may not bill for such services, many providers typically charge the calling party's credit card bill when assessing charges. Some providers do not even do that, opting to recoup their expenses instead through the sale of advertising (often 900 type services). GNAPs' edits, therefore, do not reflect industry practice in this area. Second, for the purposes of this local interconnection agreement, voice information service traffic necessarily must be intraLATA (rather than exchange access) traffic. GNAPs' edits do not recognize this plain fact. Third, and despite GNAPs' edits to the contrary, Voice Information Service Traffic is, like Internet traffic, information access traffic that is not subject to reciprocal compensation. On the contrary, both Verizon and GNAPs recoup their costs via arrangements with the third party service/content provider. Verizon's proposed contract language for all of the above-discussed sections would effectively implement the *ISP Remand Order* and should be adopted.

The New York Commission rejected GNAPs' changes to this section as unripe for consideration because GNAPs did not properly present or explain them.[204] The California Commission found in Verizon's favor on this contract Section Specifically, stating as follows:

> Additional Services § 5.1: Verizon's proposed language is adopted. As Verizon states Voice Information Service is not subject to reciprocal compensation provisions. Both Verizon and GNAPs recoup their costs via arrangements with the third-party service/content provider.[205]

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[204] *New York Verizon/GNAPs Arbitration Order at 4*.

[205] *California Verizon/GNAPs Final Arbitrator's Report at 73*, aff'd by California Verizon/GNAPs Arbitration Order at 2. Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrators addressed this language specifically, although all three adopted Verizon's Position on Issue 5 (with the minor modification by the Ohio Commission indicated above). Illinois Verizon/GNAPs Arbitration Order at 18-19; Ohio Verizon/GNAPs

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Issue 6: **The Department Should Adopt Verizon's Proposed Language On Two-Way Trunking.**

Previous State Commission Decisions:
Adopted Verizon's Proposal: *California (with minor modification), Illinois, New York, Ohio (with modification), Rhode Island[+] (with modification)*
Adopted GNAPs' Proposal: *None*

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, the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them. Because two-way trunks present operational issues for Verizon's own network, it is imperative that Verizon have some say as to how this impact is assessed and handled.[206] Verizon's proposal does not "mandate" that two-way trunks will be installed only upon mutual agreement. Instead, Verizon's contract language in Verizon Redline Interconnection Attachment §§ 2.2.3, 2.2.4, and 2.4 identifies operational areas the parties must address to achieve a workable interconnection arrangement.[207] GNAPs, however, would like to dictate those terms to Verizon. As demonstrated by Verizon witness D'Amico, this approach presents operational and technical problems for Verizon.[208]

For instance, in § 2.4.2, GNAPs deleted the requirement that both parties agree on the initial number of two-way trunks that the parties will use. GNAPs' proposal would permit it to dictate to Verizon how many interconnection trunks will be deployed between the parties. Because two-way trunks carry both Verizon's and GNAPs' traffic on the same trunk group, this

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Arbitration Panel Report at 11-12, aff'd by Ohio Verizon/GNAPs Arbitration Order at 12; Rhode Island Verizon/GNAPs Initial Arbitration Order at 37.

[206] *See* D'Amico Direct at 24-36.

[207] *See id*. Verizon witness D'Amico testified at the arbitration hearing that while Verizon and GNAPs have not yet implemented two-way trunking, Verizon has done so successfully with other carriers. MA Hearing Tr. at 186:15-24; 187:1-7. Specifically, Verizon witness D'Amico testified that Verizon has been able to work out ground rules with other carriers that have protected the integrity of Verizon's network. *Id*. at 187:2-7.

[208] *See* D'Amico Direct at 24-36.

affects network performance and operation on each party's network.[209] Thus, it is reasonable that GNAPs and Verizon should mutually agree on this initial arrangement. Verizon currently uses two-way trunking with several CLECs in Massachusetts, and they have agreed to the same terms and conditions for two-way trunking that Verizon has proposed to GNAPs. GNAPs has offered no explanation as to why it should be treated differently than other CLECs in Massachusetts on this issue.[210]

Additionally, almost every other state has adopted Verizon's language related to Issue 6 in arbitrations with GNAPs, including Illinois, California, New York, Rhode Island and Ohio.[211] In a ruling later approved by the full Ohio Commission, for example, the Ohio Arbitration Panel stated as follows:

> 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.[212]

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[209] *See* D'Amico Direct at 28.

[210] *See id*. at 28.

[211] *Illinois Verizon/GNAPs Arbitration Order* at 19; *California Verizon/GNAPs Final Arbitrator's Report* at 81, *aff'd by California Verizon/GNAPs Arbitration Order* at 2; *New York Verizon/GNAPs Arbitration Order* at 16; *Ohio Arbitration Panel Report* at 6-7, *aff'd by Ohio Verizon/GNAPs Arbitration Order Award* at 12; *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 37.

[212] *Ohio Verizon/GNAPs Arbitration Panel Report* at 13 (emphasis added), *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12. 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.

Most recently, the Rhode Island arbitrator in his initial ruling in the Verizon/GNAPs arbitration in that state also ordered the parties to adopt Verizon's proposed language.[213]

Furthermore, many of GNAPs' proposed contract changes raise issues on which the parties disagree but that are not addressed in GNAPs' Petition. These matters cannot be resolved by merely resolving the open "policy" issue articulated by GNAPs in Issue 6.

A. Interconnection Attachment § 2.4.4: Good faith trunk forecasts.

Verizon Redline Interconnection Attachment § 2.4.4 addresses the provisioning of trunk forecasts. Verizon uses trunk forecasts from CLECs to assist Verizon in determining the timing and sizing of switch capacity additions. GNAPs' customer information has its greatest impact upon the determination of the need for interconnection trunks that are required to carry calls from Verizon's network to GNAPs' network. However, that customer information is known only to GNAPs. For example, GNAPs in Massachusetts has historically targeted customers who primarily receive calls, like ISPs, and GNAPs therefore knows that most of those calls will originate from Verizon's network. Only GNAPs can forecast the timing and magnitude of traffic that originates on Verizon's network. Obviously, GNAPs is in a better position to forecast its own growth. Accordingly, in order for Verizon to do a more effective job in maintaining its network, Verizon needs GNAPs to provide a good faith, non-binding traffic forecast.

The Department and other state commissions – including California, Illinois, New York, Ohio, and the Rhode Island arbitrator in their own state Verizon/GNAPs arbitrations – have recognized this reality.[214] The Department previously examined the issue of forecasts in

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[213] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 37.

[214] *California Verizon/GNAPs Final Arbitrator's Report* at 81, *aff'd by California Verizon/GNAPs Arbitration Order* at 2; *Illinois Verizon/GNAPs Arbitration Order* at 19; *New York Verizon/GNAPs Arbitration Order* at 4; *Ohio Verizon/GNAPs Panel Arbitration Report* at 13-14, *aff'd by Ohio Verizon/GNAPs Arbitration*

(continued…)

arbitrations involving Verizon, MediaOne and Greater Media. There, the Department concluded that the carriers should forecast interconnection-related products by wire center because this information is useful in deciding what additional facilities Verizon may need to engineer its network.[215] The South Carolina Public Service Commission also has recognized that CLECs should provide forecasts to Verizon to assist it in making "decisions regarding infrastructure planning, operational support readiness, human resources planning, and capital/expense budgeting."[216] Therefore, in order for Verizon to do a more effective job in managing its network, Verizon needs good faith, non-binding traffic forecasts from CLECs – including GNAPs.

Finally, by striking Verizon's proposed § 2.4.4 and inserting additional language, it appears that GNAPs wants to use trunk forecasts as a means to reserve facilities without paying for those facilities through firm service orders. In other jurisdictions, however, GNAPs provides Verizon with semi-annual forecasts of its inbound and outbound traffic in accordance with Verizon's proposed § 2.4.4. GNAPs' changes would also require Verizon to provide GNAPs a forecast, which is contrary to the agreements GNAPs and Verizon have in other jurisdictions.

Order at 12; *Rhode Island Initial Arbitration Order* at 37. The California and Ohio Commissions and the Rhode Island wrongly made the forecasting obligation reciprocal for the reasons stated herein.

[215] *See 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 and Petition of Greater Media Telephone, Inc. for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts*, Massachusetts Department of Telecommunications and Energy, D.T.E. 99-42/43, 99-52; 1999 WL 1067508 at *48 (August 25, 1999); *see also In re AT&T Communications of Midwest, Inc., Final Arbitration Decision on Remand*, 1998 WL 316248 *10, Iowa Utilities Board (rel. May 15, 1998) (holding that when U.S. West Communications is responsible for transport network planning, the CLECs should provide trunk forecast information to U.S. West because it is in all the carriers' and customers' best interests).

[216] *In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Order, Docket No. 2002-66-C Order No. 2002-450, at 24, South Carolina Public Service Commission (rel. June 12, 2002).

B. Interconnection Attachment § 2.4.11: Monitoring Two-Way Interconnection Trunks.

Interconnection Attachment § 2.4.11 addresses Verizon's right to monitor two-way interconnection groups to detect blocking. GNAPs attempts to make this a mutual obligation, inserting the terms "originating party" and "terminating party." Because both parties originate and terminate traffic on a two-way trunk, however, using the terms "originating party" and "terminating party" makes no sense. Moreover, GNAPs proposes that both parties submit access service requests ("ASRs") on one another for the same trunk group. This proposed change is inconsistent with GNAPs' modifications to Interconnection Attachment §§ 2.4.2 and 2.4.10 in which GNAPs is the only party that would submit ASRs.

Both the New York and California Commissions adopted Verizon's proposed language for this section.[217] Since GNAPs did not properly present or explain its proposed changes, the New York Commission rejected them as unripe for consideration.[218] The California Commission ruled in Verizon's favor with regard to GNAPs' proposed changes, with one minor modification to Verizon's language:

> Interconnection § 2.4.11: Verizon's proposed language is adopted, with modification. There is no reason why both parties should not monitor the operation of two-way trunk groups. However, it is Verizon who will issue a Trunk Group Service Request to GNAPs, directing GNAPs to submit an ASR to augment the trunk group. If GNAPs discovers a blocking problem, it can submit an ASR to Verizon on its own. GNAPs' references to "receiving party" and "originating party" are confusing.[219]

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[217] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally. *Illinois Verizon/GNAPs Arbitration Order* at 19; *Ohio Verizon/GNAPs Arbitration Panel Report* at 13-14, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 37.

[218] *New York Verizon/GNAPs Arbitration Order* at 4.

[219] *California Verizon/GNAPs Final Arbitrator's Report* at 82, *aff'd by California Verizon/GNAPs Arbitration Order* at 2.

C. Interconnection Attachment § 2.4.12: Disconnecting Underutilized Trunks.

In Verizon's Redline Interconnection Attachment § 2.4.12, GNAPs rejects a Verizon proposed process that would enable Verizon to disconnect trunks that are operating under 60% utilization. Underutilized trunk groups inefficiently tie up capacity in Verizon's network. The 60% utilization criteria ensure that Verizon only disconnects trunk groups that are significantly underutilized. Verizon's ability to disconnect underutilized trunks ensures that it will be able to manage its network in an efficient manner so all carriers enjoy the benefit of Verizon's network. If Verizon is unable to disconnect underutilized trunks, other carriers' access to Verizon's existing trunks will be compromised. Verizon's 60% utilization standard is consistent with the standard it applies to itself and other CLECs.

Both the New York and California Commissions adopted Verizon's proposed language for this section.[220] Since GNAPs did not properly present or explain its proposed changes, the New York Commission rejected them as unripe for consideration.[221] The California Commission also ruled in Verizon's favor, stating as follows:

> Interconnection § 2.4.12: Verizon's proposed language is adopted. As Verizon states, when trunk groups are significantly underutilized, Verizon only disconnects enough excess trunks to ensure that Verizon will be able to manage its network in an efficient manner. This will allow those underutilized trunks to be used by Verizon or other carriers.[222]

[220] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally. *See supra* note 216.

[221] *New York Verizon/GNAPs Arbitration Order* at 4.

[222] *California Verizon/GNAPs Arbitration Order* at 82; *aff'd by California Verizon/GNAPs Arbitration Order* at 2.

D. Interconnection Attachment § 2.4.16: Recurring And Non-Recurring Charges For Two-Way Trunks.

Verizon's recurring and non-recurring charges, described in its proposed § 2.4.16, are meant to compensate Verizon for the work Verizon performs on those two-way trunks on a monthly (recurring) basis and on a one-time (non-recurring) basis. Under its proposal, Verizon would assess a recurring charge that is commensurate with the traffic that GNAPs originates to Verizon. That recurring charge would derive from a billing factor, a proportionate percentage of use ("PPU"), which would be calculated using the total number of minutes each party sends over a facility on which each two-way trunk rides. Accordingly, GNAPs would pay Verizon a monthly recurring charge equal to the percentage of use for that facility.

Verizon proposes to bill GNAPs a monthly recurring charge for these facilities because GNAPs has actually placed an order with Verizon for them. However, because Verizon also shares these facilities with GNAPs, it only charges GNAPs the proportionate percentage of use that is attributed to GNAPs. This is a standard arrangement in Verizon's interconnection agreements with other CLECs.[223] Verizon's proposal is fair and equitable and should be adopted.

For the non-recurring portion of § 2.4.16, Verizon proposes that when GNAPs orders a two-way interconnection trunk from Verizon, GNAPs should pay for half of Verizon's non-recurring charges. When GNAPs orders two-way trunks from Verizon, Verizon essentially wears "two hats." First, Verizon is the supplier of the two-way trunk and performs work on behalf of GNAPs. Because GNAPs is Verizon's customer, GNAPs should reimburse Verizon for the work Verizon performs for its customer. As a co-user of that facility, however, Verizon wears a "second hat." Therefore, Verizon derives a benefit from the service it provided to

[223] MA Hearing Tr. at 184:5-17.

GNAPs when it installed the two-way trunk and discounts the non-recurring charge it would have assessed on GNAPs by 50%. Verizon's non-recurring charge for two-way interconnection trunks is reasonable and should be adopted.

For the reasons stated previously, the New York Commission rejected various GNAPs changes to the Verizon Proposed Agreement as unripe for consideration – including changes to § 2.4.16 – because GNAPs did not properly present or explain them.[224] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally.[225]

E. GNAPs' Changes to Provisions Outside of § 2.4 (Interconnection Attachment §§ 2.2.4, 2.3, 9.2).

GNAPs has proposed many changes outside of § 2.4 of Verizon's Redline Interconnection Attachment which deal with two-way trunking. For example, in Verizon's proposed § 2.2.4 of that attachment, GNAPs added the phrase "originating party" to § 2.2.4(b). As in GNAPs' edits to Verizon's proposed § 2.4.11, this addition is nonsensical (and both the New York and California Commissions already have rejected it for that reason, as described above). When the Parties use two-way trunk groups, both GNAPs and Verizon "originate" and "terminate" traffic. Thus, by inserting "originating party," GNAPs does not describe the parties with any specificity. This change is also vague because when either party originates traffic on a two-way trunk, either party could issue the ASR.

GNAPs also made extensive changes to § 2.3 of Verizon's Redline Interconnection Attachment, Verizon's one-way trunking provisions, even though GNAPs maintains that it would prefer to use two-way interconnection trunks between it and Verizon. As with the

[224] *New York Verizon/GNAPs Arbitration Order* at 4.

[225] *See supra* note 175.

deployment of two-way interconnection trunks, the parties need to mutually agree on the terms and conditions relating to the deployment of one-way trunks. Verizon's proposed §§ 2.2.3 and 2.3 recognize this operational reality.

Both the New York and California Commissions adopted Verizon's proposals regarding § 2.3.[226] Again, since GNAPs did not properly present or explain its proposed changes to Verizon Interconnection Attachment § 2.3, the New York Commission rejected them as unripe for consideration.[227] The California Commission, in turn, adopted all of Verizon's proposed language, with the exception of Interconnection Attachment § 2.3.1.1, which would have required GNAPs to provide Verizon with collocation at its facilities in California.[228]

Finally, in § 9.2 of Verizon's Interconnection Attachment, GNAPs' additions and deletions appear to violate the routing and tandem subtending arrangements contained in the LERG. Verizon does not understand what GNAPs is attempting to accomplish by deleting these provisions. Verizon's access toll connecting trunk groups connect GNAPs' customers from its switch through Verizon's tandem to the IXC that chooses to connect to that tandem. Thus, the traffic that rides over these trunks is exchange access traffic. This traffic is not "local" and reciprocal compensation does not apply to it. Because the service Verizon is providing is exchange access, § 251(g) of the Act applies and Verizon is entitled to charge access rates.[229]

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[226] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally. *See supra* note 212.

[227] *New York Verizon/GNAPs Arbitration Order* at 4.

[228] *California Verizon/GNAPs Final Arbitrator's Award* at 33; *California Verizon/GNAPs Arbitration Order* at 2.

[229] *See* 47 U.S.C. § 251(g); *CompTel v. Federal Communications Comm'n*, 117 F.3d 1068, 1072 (8th Cir. 1997), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999); *ISP Remand Order* at ¶ 39.

Verizon's position with regard to § 9.2 also is consistent with the FCC's *ISP Remand Order*. There, the FCC held that § 251(g) "preserved pre-Act regulatory treatment of all access services."[230] As described above, Verizon's access toll connecting trunk is an "exchange service for such access to interexchange carriers."[231] Accordingly, Verizon's access tariffs govern the provisioning of this service, and the references to Verizon's access tariffs are appropriate. In addition to the improprieties that GNAPs creates by deleting most of § 9.2, GNAPs changes would appear to require Verizon to carry "local," intraLATA toll and interLATA toll traffic over one trunk group.

Both the New York and California Commissions adopted Verizon's proposed language for § 9.2 as well.[232] Specifically, the New York Commission agreed with Verizon's assessment of GNAPs' proposed changes, holding as follows:

> We adopt Verizon's position. The import of GNAPs' proposal is unclear; GNAPs' changes may indeed cause severe difficulties for other carriers attempting to route calls, and it appears to undermine LERG guidelines. Verizon's contract language will prevent network problems, including dropped or misdirected calls.[233]

For the same reasons, the Department should order the parties to adopt Verizon's proposed language here.

F. "Trunk Side" Definition (Verizon Glossary § 2.96).

Verizon does not understand what GNAPs is attempting to accomplish with its edits to the definition of "Trunk Side." In addition, the changes GNAPs makes to this definition are not

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[230] *See ISP Remand Order* ¶ 39.

[231] 47 U.S.C. § 251(g).

[232] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally. *See supra* note 212.

[233] *New York Verizon/GNAPs Arbitration Order* at 17; *California Verizon/GNAPs Final Arbitrator's Report* at 34; *California Verizon/GNAPs Arbitration Order* at 2; Appendix A at 3.

related to GNAPs' ability to use two-way trunks. Without knowing GNAPs' intentions for making these edits, Verizon cannot assess GNAPs' position.

Both the New York and California Commissions addressed GNAPs' proposed changes to this term in their respective Verizon/GNAPs arbitrations.[234] Since GNAPs did not properly present or explain its proposed changes to Verizon Glossary § 2.96, the New York Commission again rejected them as unripe for consideration.[235] The California Commission did directly address GNAPs' proposed changes, however, and ruled in Verizon's favor, stating "Verizon's more detailed definition is adopted. It is clearer than GNAPs' definition."[236]

[234] Neither the Illinois nor the Ohio Commissions nor the Rhode Island arbitrator specifically addressed this language, although they all indicated that they were adopting Verizon's position and language generally. *See supra* note 212.

[235] *New York Verizon/GNAPs Arbitration Order* at 4.

[236] *California Verizon/GNAPs Final Arbitrator's Report* at 32; *California Verizon/GNAPs Arbitration Order* at 2. The identical definition of "Trunk Side" in the California interconnection agreement is numbered "2.95."

Issue 7: **Verizon's References To Tariffs Establish That Effective Tariffs Are The First Source For Applicable Prices While Ensuring That The Interconnection Agreement's Terms And Conditions Take Precedence Over Conflicting Tariffed Terms And Conditions.**

Previous State Commission Decisions: Adopted Verizon's Proposal: *New York, Ohio, Illinois, Rhode Island*[+] Adopted Combination of Verizon's Proposal and GNAPs' Proposal: *California*

GNAPs generally opposes Verizon's incorporation by reference of tariff terms, conditions, rates and prices.[237] GNAPs bases its opposition on a misunderstanding of both Verizon's proposal and the tariffing process. As a result, GNAPs has proposed wholesale deletions of almost every reference to a tariff in the interconnection agreement.

A. Verizon's Proposal.

GNAPs misapprehends the fundamental distinction Verizon makes in its proposed interconnection agreement. Under § 1.2 of Verizon's proposed General Terms and Conditions, the parties would rely on the appropriate Verizon tariff for applicable prices or rates. Conversely, when there is a conflict between the terms and conditions of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement would supercede those contained in the tariff. Thus, tariff terms and conditions will only ***supplement*** the terms and conditions of the interconnection agreement; they will not ***alter*** the interconnection agreement's terms and conditions.[238] As such, Verizon's language is consistent with the

[237] GNAPs does not object to references to tariffs as a source of prices. *See* GNAPs' Petition at 28: "For this reason, Global requests that the Commission allow Verizon to cross reference solely for the purpose of utilizing its tariffed rates for UNEs or collocation." (Emphasis in original). *See also*, § 1.3 of the Pricing Attachment, which is an undisputed provision referencing tariffs as the source of charges for a service provided under the agreement.

[238] *See, e.g.,* Verizon Redline General Terms and Conditions § 1.2.

Department's policy that interconnection agreement provisions will control unless the parties agree otherwise.[239]

GNAPs' opposition to any reference to a tariff is shortsighted, restrictive, and inconsistent with language upon which the parties already agree. In § 1.3 of the Pricing Attachment, GNAPs and Verizon agreed that applicable tariffs are the first source of prices for services provided under the agreement. Despite this agreement, GNAPs' proposed contract changes would "freeze" any current tariff prices, preventing any amendments or changes to tariff prices from becoming effective. GNAPs' proposal unacceptably creates an arbitrage opportunity by locking Verizon into contract rates, while GNAPs remains free to purchase from future tariffs should the tariff rates prove more favorable.

GNAPs' proposal would allow all CLECs to circumvent the official tariff process by claiming the benefit of frozen interconnection agreement rates. This unilateral right to veto Verizon's Department-approved tariff rates could render the tariff process moot.

Verizon's proposal ensures that prices are set and updated in a manner that complies with Department guidelines. It also is efficient, consistent, fair, and non-discriminatory to all CLECs. Verizon's proposed references to tariffs also justifiably eliminate any arbitrage opportunity that would result from GNAPs' proposal. In fact, Verizon's proposal would not only apply consistently to all CLECs, including GNAPs, but also it would conserve the Department's resources by relying on prices and rates that the Department has already approved. This is exactly what the New York Commission concluded in considering the same dispute over tariff references between Verizon and GNAPs, observing that "the interplay between tariffs and

[239] *See D.T.E. 98-57 Tariff No. 17 Order* at 22 (noting that tariff provisions shall be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that the tariff shall control).

interconnection agreements, while without guarantees, establishes nondiscriminatory pricing consistent with § 251 of the 1996 Act."[240] Indeed, prior to the New York Verizon/GNAPs arbitration, the New York Commission rejected arguments similar to those GNAPs makes here, stating that "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship . . . we will conform the new agreement to Verizon's tariff where it is possible to do so."[241]

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, which addresses the recurring and non-recurring rates for interconnection services, UNEs, and the avoided cost discount for resale. This process is not "open-ended," as GNAPs asserts in its Petition.[242] Verizon's proposed language precisely implements Department guidance and provides for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and efficient.

B. The Tariff Process.

The tariff process that this Department oversees is not unilateral. When Verizon elects to make a service offering through a tariff, it files a proposed tariff with the Department, and then GNAPs and all other CLECs have the opportunity to protest that tariff. Thus, Verizon is not requiring GNAPs to act as a "tariff police." By using its tariff for prices, Verizon is not relying on or referring to documents that GNAPs could not access. Instead, Verizon is relying on a

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[240] *New York Verizon/GNAPs Arbitration Order* at 23.

[241] *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues, at 4 (July 30, 2001) ("*New York Verizon/AT&T Arbitration Order*").

[242] *See* GNAPs' Petition at 27.

document that must be approved by the Department in a proceeding in which any interested party can comment. Every CLEC with whom Verizon interconnects would be entitled to participate in the tariff process as an interested party. Moreover, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs need not feel compelled to review the details of every tariff filing in fear that it may contradict the terms of the interconnection agreement.[243]

The Illinois,[244] New York, and Ohio Commissions, and most recently, the Rhode Island arbitrator have agreed with Verizon's position. As referenced above, and contrary to the assertion in the testimony of GNAPs witness Rooney,[245] the New York Commission in fact adopted Verizon's tariff language in the Verizon/GNAPs arbitration in that state.[246] This final ruling was in keeping with its past precedent from an arbitration between Verizon and AT&T, where the New York Commission concluded that tariff provisions provide a reasonable basis for establishing a commercial relationship and accordingly conformed the parties' interconnection agreement to Verizon's tariff:

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[243] GNAPs' counsel, conceded at the hearing that he was not familiar with the tariff approval process in Massachusetts. MA Hearing Tr. at 190:7-17. Be that as it may, keeping track of tariff changes proposed by Verizon would hardly be the onerous task of which GNAPs complains. During the period from July 1, 2002 to October 15, 2002, Verizon MA filed 38 tariffs in Massachusetts. They encompassed approximately 430 pages in total. However, 380 of those pages were included in one tariff filing that reformatted the pages of VZ D.T.E. Tariff #12 and made no substantive changes to services or rates. The remaining 37 tariffs encompassed approximately 50 pages. Those 37 tariffs, moreover, included 24 customer contract tariffs that would have no impact on any interconnection agreement between Verizon MA and GNAPs. Of all the tariffs Verizon MA has filed, since July 1, 2002, moreover, Verizon MA has requested expedited treatment of only one.

[244] The Illinois Commission noted that GNAPs did not dispute Verizon's specific assertions about GNAPs' unexplained edits, and therefore ordered that Verizon's language be adopted. *Illinois Verizon/GNAPs Arbitration Order* at 19-20.

[245] Although Verizon questions whether Mr. Rooney, as GNAPs General Counsel and having represented GNAPs at the Pre-Hearing Conference can also appropriately serve as a fact witness, it is notable that his testimony with respect to the New York commission's decision is incorrect: "Consistent with the position of the New York Commission on this matter, the interconnection agreement should be the sole determinant of the rights and obligations between the parties to the greatest extent possible." Rooney Direct at 2.

[246] *New York Verizon/GNAPs Arbitration Order* at 23.

> as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship…. We will conform the new agreement to Verizon's tariff where it is possible to do so.[247]

In a ruling later affirmed by the full Ohio Commission, the Ohio Arbitration Panel likewise held:

> 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 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.'[248]
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> * * *
>
> 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.[249]

Finally, in his initial ruling on the subject, the Rhode Island arbitrator agreed that GNAPs' concerns were overblown:

> GNAPs opposes VZ-RI's proposal to incorporate by reference other documents, such as tariffs, into the ICA. Incorporation by reference of other documents into a contract between two commercial entities is not uncommon. The documents VZ-

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[247] *New York Verizon/AT&T Arbitration Order* at 4.

[248] *Ohio Verizon/GNAPs Arbitration Panel Award* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12.

[249] *Id.*

> RI seeks to incorporate will only supplement the ICA and not supplant it. If VZ-RI could not incorporate by reference these tariffs, the ICA would have to be expanded to specifically include portions of tariffs, or if there was a dispute, this Commission would likely review tariffs to determine the meaning of contract language. Tariffs can explain and supplement an ICA just as course of dealings or usage of trade can explain and supplement a contract for sale of goods. In addition, the tariffs indicate the UNE prices. If there is a change in price, whether to GNAPs' advantage or disadvantage, the ICA should allow for the pricing change to be implemented. It is not clear GNAPs' proposal would provide that flexibility. Also, tariff revisions are reviewed by the Division and can be opposed by CLECs prior to Commission approval. It is GNAPs' discretion to decide whether to monitor tariff revisions in Rhode Island. Accordingly, VA-RI's position for issue seven is adopted with the exception of the CLEC handbook into the ICA.[250]

C. GNAPs Fails To Support Its Proposed Contract Changes.

GNAPs has broadly challenged the appropriateness of referencing tariffs in the parties' interconnection agreement. GNAPs' rationale, however, does not apply to many of the contract sections containing deletions of tariff references, as shown in the filed redline agreement. GNAPs' failure to address each section in detail leaves many proposed contract changes unsupported. GNAPs also leaves many of these contract provisions unspecified in its Petition and pre-filed testimony. Because GNAPs does not bother to list the particular contract provisions or address its rationale for deletion, the Department should reject GNAPs' proposed changes. The specific contract sections in which GNAPs has proposed deletion of a tariff reference are highlighted below:

GENERAL TERMS AND CONDITIONS

§§ 1 (1.1 through 1.2): GNAPs' proposal to strike a reference to tariffs in these sections is discussed above. Verizon's reference to tariffs in these sections sets up the order of precedence discussed above. As noted above, the Illinois, New York, and Ohio Commissions,

[250] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 37-38.

and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for these sections.[251]

§§ 6.5: Verizon's reference to tariffs in this section ensures that Verizon's practice of requiring cash deposits or letters of credit is consistent for all carriers and with any practice sanctioned by the Department.[252]

§ 41.1: Verizon's reference to tariffs in this section ensures that Verizon's practice of collecting taxes from the purchasing party is consistent for all carriers and with any practice sanctioned by the Department. The Illinois, New York, and Ohio Commissions and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for this section.[253] The California Commission also adopted Verizon's proposed language, stating "GT&C § 41.1: Verizon maintains a list of taxes and surcharges in its tariff. It is appropriate to refer to that tariff section in the ICA, since the taxes or surcharges could change during the life of the ICA."[254]

§ 47: Verizon's reference to tariffs in this section ensures that restrictions on use of Verizon's services, whether in the agreement or a tariff, will be enforced by GNAPs when Verizon no longer has the relationship with the end-user. For example, if GNAPs purchases a retail telecommunications service for resale, restriction on that service will only be articulated in Verizon's retail tariff. GNAPs should not evade its responsibility to prevent improper use of

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[251] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[252] *See, e.g.*, Verizon's M.D.T.E. Tariff No. 17, Part A, § 4.1.6.

[253] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[254] *California Verizon/GNAPs Final Arbitrator's Report* at 91*; California Verizon/GNAPs Arbitration Order* at 2.

retail services by its end-users by deleting reference to the only document that would contain restrictions. The general concerns GNAPs discussed in connection with this issue do not apply to the reference in this section. The Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for this section.[255]

ADDITIONAL SERVICES ATTACHMENT

§§ 9.1 and 9.2: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections dealing with GNAPs' access to Verizon's poles, ducts and rights-of-way. In Massachusetts, Verizon does not provide Poles, Ducts, Conduits and Rights-of-Way pursuant to tariffs. The language GNAPs seeks to delete is applicable only to the handful of states in which Verizon does offer such services pursuant to tariff. In those states, Verizon's tariff references ensure that that its practices for granting access to its poles, conduits and rights-of-way are consistent for all carriers and any Department-sanctioned practices.

The Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for these sections.[256] The California Commission also adopted Verizon's proposed language, stating "Additional Services §§ 9.1 and 9.2: Verizon's proposed language is adopted. GNAPs did not proffer any language relating to

[255] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[256] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

access to rights of way. Without detailed terms and conditions relating to that access, the parties could end up with disputes."[257]

INTERCONNECTION ATTACHMENT

§§ 1, 2.1.3.3, 2.1.4, 2.1.6, 2.3, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, and 9.2.2: Verizon's reference to tariffs ensures that the parties interconnect with one another in accordance with their respective tariffs when appropriate. For example, in § 2.1.3.3, entrance facilities are available to all carriers pursuant to Verizon's applicable access tariff. This ensures consistency for all telecommunications carriers that wish to purchase an entrance facility from Verizon. Moreover, because the parties may exchange or deliver exchange access traffic, and other traffic that is not covered by the parties' interconnection agreement, the reference to the parties' respective tariffs properly informs the parties that the rates, terms and conditions for this traffic are addressed in their tariffs.

The Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position, and accordingly, its proposed language for all of these sections in the Verizon/GNAPs arbitration proceedings in those states.[258] The California Commission adopted Verizon's proposed language for §§ 2.1.3.3, 2.1.4, 2.1.6, 2.4.1, 5.4, 8.2, 8.4, 8.5.2, and 9.2.2.[259] Several of these provisions merit special attention:

§ 2.1.6: GNAPs deletes the reference to its applicable tariffs in § 2.1.6. The reference to GNAPs' tariff is appropriate because not all of its rates, terms and conditions may be contained

[257] *California Verizon/GNAPs Final Arbitrator's Report* at 91, *California Verizon/GNAPs Arbitration Order* at 2, Appendix A at 3.

[258] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[259] *California Verizon/GNAPs Final Arbitrator's Report* at 91, *aff'd by California Verizon/GNAPs Arbitration Order* at 2.

in this interconnection agreement. Moreover, GNAPs may offer more favorable terms or conditions in its tariffs than it offers Verizon in this interconnection agreement. GNAPs should not be permitted to discriminate against Verizon relative to terms offered to other carriers in a tariff.

§ 8.2: Exchange access, information access, exchange services, and toll traffic are all forms of traffic for which compensation is ***not*** governed by the terms of the interconnection agreement. Thus, the reference to the parties' respective tariffs properly informs the parties that the rates, terms and conditions for this traffic are addressed in their tariffs. Deleting reference to tariffs for the very traffic that is excluded from reciprocal compensation pursuant to § 251(b)(5) of the Act, and the associated reciprocal compensation regulations, simply makes no sense.

§ 9.2.2: Striking the references to Verizon's applicable access tariffs is inconsistent with the industry standard and applicable law. For instance, parties to an interconnection agreement refer to their applicable access tariffs in meet point billing arrangements because the "customer" is the toll provider – the "customer" is usually not GNAPs or Verizon. In addition, when GNAPs purchases access toll connecting trunks for the transmission and routing of traffic between GNAPs' "local" customer and an IXC, GNAPs purchases these trunks from Verizon's applicable access tariff because it is an access service. The reference to Verizon's access tariff is consistent with the FCC's *ISP Remand Order*, in which the FCC held that § 251(g) "preserved pre-Act regulatory treatment of all access services."[260] Because Verizon's access toll connecting trunks are an "exchange service for such access to interexchange carriers," the reference to Verizon's applicable access tariff is appropriate.[261]

[260] *See ISP Remand Order* ¶ 39.

[261] 47 U.S.C. § 251(g).

RESALE

§§ 1, 2.1, and 2.2.4: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections, dealing with resale of Verizon's telecommunications services. The general objections are particularly inappropriate in light of the fact that it is Verizon's ***retail*** telecommunications services, as set forth in Verizon's ***retail*** tariff, that are resold. There will be no separate list of retail telecommunications services within the agreement. In addition to providing the reference point for the services available for resale, Verizon's reference to tariffs in these sections ensures that restrictions on use of Verizon's services, whether in the agreement or a tariff, will be enforced by GNAPs when Verizon no longer has the relationship with the end-user. For example, if GNAPs purchases a retail telecommunications service for resale, restriction on that service will only be articulated in Verizon's retail tariff. The general concerns GNAPs discussed in connection with this issue simply do not apply to the references in this section.

The Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for these sections in their separate Verizon/GNAPs arbitrations.[262] The California Commission also adopted Verizon's proposed language, stating:

> Resale §§ 1, 2.1 and 2.2.4: Verizon's proposed language is adopted. As Verizon says, its retail communications services are set forth in its tariff, along with any restrictions that apply to use of those services. GNAPs should be held accountable for ensuring that restrictions on the use of Verizon's services will be enforced by GNAPs.[263]

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[262] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[263] *California Verizon/GNAPs Final Arbitrator's Report* at 92, *California Verizon/GNAPs Arbitration Order* at 2.

UNBUNDLED NETWORK ELEMENTS

§§ 1.1: The reference to tariffs in this section ensures that if the parties' interconnection agreement does not address the provisioning of a UNE, Verizon's applicable tariff may address the subject. The Illinois, New York, and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for this section.[264]

§ 1.4.1: GNAPs' general objections to tariffs are out of place in this section, since Verizon's tariffs only apply when and if a change in law dictates that Verizon is no longer required to provide GNAPs a UNE or UNE Combination. Should this event come to pass, and GNAPs would like to receive a similar service, Verizon will provide it in accordance with its tariff. In any event, the Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator adopted Verizon's position and, accordingly, its proposed language for this section in their separate Verizon/GNAPs arbitrations.[265]

§ 1.8: The reference to Verizon's tariff in this section ensures that Verizon's premises visit charge is uniform for all customers as set forth in Verizon's tariffs. The California, Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator all adopted Verizon's position and accordingly, its proposed language for this section in their separate Verizon/GNAPs arbitrations.[266]

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[264] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[265] *Id*.

[266] *California Verizon/GNAPs Final Arbitrator's Report* at 92-92; *aff'd by California Verizon/GNAPs Arbitration Order* at 2; *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38. *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

§ 4.3: Verizon's reference to tariffed pricing is appropriate in light of GNAPs' position that it does not oppose references to tariffs for pricing purposes.[267] The Illinois, New York, and Ohio Commissions, and the Rhode Island arbitrator all adopted Verizon's position and, accordingly, its proposed language for this section in their separate Verizon/GNAPs arbitrations.[268]

§ 4.7.2: The reference to Verizon's applicable tariff is beneficial to GNAPs. That is, if a shorter collocation augment interval exists in Verizon's tariff, Verizon will comply with the shorter interval instead of the longer one contained in the contract. The Illinois, New York and Ohio Commissions, and the Rhode Island arbitrator all adopted Verizon's position and, accordingly, its proposed language for this section in their separate Verizon/GNAPs arbitrations.[269]

[267] *See* GNAPs' Petition at 29, ¶ 60.

[268] *Illinois Verizon/GNAPs Arbitration Order* at 20; *New York Verizon/GNAPs Arbitration Order* at 23; *Ohio Verizon/GNAPs Arbitration Panel Report* at 16-17; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 38.

[269] *Id*.

Issue 8: **Verizon's Insurance Requirements Reasonably Protect Its Network, Personnel And Other Assets In The Event GNAPs Has Insufficient Resources.**

Previous State Commission Decisions:
Adopted Verizon's Proposal: *Illinois (with modification), New York, Ohio, Rhode Island+ (with modification)*
Adopted GNAPs' Proposal in part: *California*

Verizon is required to enter into interconnection agreements and make its network available to CLECs. In light of that requirement, it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a CLEC has insufficient financial resources in the event of loss – as the FCC, the Department, and other state commissions have recognized.[270] GNAPs' proposed amendments to Verizon's insurance requirements, however, would eliminate certain types of insurance and substantially lower insurance amounts. GNAPs' amendments should be rejected because Verizon's proposed insurance requirements are reasonable in light of the risks for which the insurance is procured and are consistent with what

[270] *See, e.g., In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, FCC Docket No. 93-162, FCC 97-208 rel. June 13, 1997 ¶¶ 343-45 ("*FCC Second Report*"). See M.D.T.E. Tariff 17, Part E, §§ 2, 2.3.4; *see also Petition of NEXTLINK Pennsylvania, L.L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-PA, Inc., Pursuant to the Telecommunications Act of 1996*, Docket No. A-310260F0002 (Interconnection Arbitration), Pennsylvania Public Utility Commission, 1998 Pa. PUC LEXIS 208, (May 22, 1998) (approving interconnection agreement containing provision requiring CLEC to maintain commercial general liability insurance, comprehensive automobile insurance, umbrella form excess liability insurance, statutory worker's compensation insurance and employer's liability insurance); *Petition of TCG Pittsburgh 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-310213F0002 (Interconnection Arbitration), Pennsylvania Public Utility Commission, 1996 Pa. PUC LEXIS 119, *30, *60-61, (September 6, 1996) (requiring CLEC to incur expense to procure and maintain specific classes of insurance with a company having a BEST insurance rating of at least AA-12). *Accord Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company*, CASE 96-C-0723, New York Public Service Commission, 1997 N.Y. PUC LEXIS 360, June 13, 1997 (approving an interconnection agreement requiring (1) comprehensive general liability insurance, (2) umbrella/excess liability insurance, (3) all risk property coverage, (4) statutory worker's compensation coverage, and (5) employer's liability coverage).

Verizon requires of other carriers.[271] Accordingly, Verizon's proposed § 21 of the General Terms and Conditions section should be adopted in its entirety.

The FCC has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage," including automobile insurance, workers' compensation and employer liability insurance.[272] The FCC observed:

> [D]ue to the unique circumstances posed by physical collocation, we find that it is not unreasonable for LECs to require interconnectors to maintain a reasonable amount of general liability and excess liability insurance coverage to protect against occurrences that may potentially arise out of the physical collocation arrangement. We disagree with Teleport's argument that the physical collocation arrangement is the equivalent of adding a few racks of multiplexing equipment and therefore poses no additional risk to a central office. We find that the presence of interconnectors in the LECs' central office adds additional risk to the LECs' property and operations because the LECs do not have control over the interconnectors' equipment or the personnel that operate the equipment. In the absence of such control, we find that it is not unreasonable for LECs to require general liability insurance to protect against property damage to the LECs' equipment, personal injury to the LECs' employees, and losses to the LECs' customers because of service interruptions caused by interconnectors.[273]

With regard to insurance amount, the FCC found that "a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average,"[274] which the FCC calculated as $21.15 million (in 1997).[275] The aggregate amount of insurance Verizon seeks from GNAPs falls below this measure of reasonability. Furthermore, Verizon's proposal is reasonable in light of the risks for which insurance is procured and is consistent with what Verizon requires of other carriers, as set

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[271] The Department has recently recognized the increased risk to telephone equipment, plant, and property in today's post-9/11 and Enron environment, as evidenced by the Department's opening of a collocation security proceeding in Docket D.T.E. 02-8.

[272] *See FCC Second Report* at ¶ 345.

[273] *Id.* at ¶ 345.

[274] *Id.* at ¶ 346.

[275] *Id.* at ¶ 348.

forth in M.D.T.E. Tariff 17, Part E §§ 2, 2.3.4. By contrast, GNAPs' proposed insurance levels fall far below the minimum amounts provided for in Tariff 17.[276]

Contrary to GNAPs witness Rooney's testimony, which completely misstates Verizon's insurance proposals,[277] Verizon's insurance provisions include the following reasonable requirements:

- GNAPs shall maintain appropriate insurance or bonds during the term of the interconnection agreement. Specifically, GNAPs shall maintain at least:
    1. Commercial general liability ("GCL"): $2,000,000.
    2. Commercial motor vehicle liability insurance: $2,000,000.
    3. Excess liability insurance (umbrella): $10,000,000.
    4. Workers' compensation insurance, as required by law, and employer's liability insurance: $2,000,000.
- all risk property insurance (full replacement cost) for GNAPs' real and personal property located at a collocation site or on Verizon premises, facilities, equipment or rights-of-way.
- GNAPs shall disclose deductibles, self-insured retentions or loss limits to Verizon.
- GNAPs shall name Verizon as an additional insured.
- GNAPs shall provide proof of insurance and report changes in insurance periodically.

[276] For example, and as discussed more fully below, GNAPs proposes to maintain only $1,000,000 in excess liability insurance, far below Tariff 17's current minimum. Likewise, Tariff 17 currently requires $2,000,000 in employer's liability coverage. GNAPs proposes only $1,000,000.

[277] Again, although Verizon maintains that it is inappropriate for GNAPs' counsel to submit fact testimony, Rooney completely ignores the contract the parties have negotiated in Massachusetts in his recitation of Verizon's proposal. Rooney cites to Section 4.7 of the Terms and Conditions for the insurance proposals, while the insurance proposals for Massachusetts are set forth in Section 21. Rooney Testimony at 5. He further misstates the coverage sought by Verizon. It is evident that GNAPs' General Counsel has submitted Direct Testimony in this proceeding that in several instances bears no relationship to the arbitration issues before the Department. For example, in Section III of his testimony, Rooney opines that the parties' interconnection agreement should not bind parties to specific remedies for breaches "such as requiring the parties to use alternative dispute resolution." Rooney Direct at 9. "Alternative dispute resolution" procedures are not in issue in this proceeding, and Rooney's testimony in this regard should be disregarded. Indeed, the dispute resolution provisions contained in General Terms and Conditions § 14 by their plain terms allow either party to pursue any remedies available to it. Rooney's concerns about an unwarranted "imposition" of alternative dispute resolution terms are, as with all of GNAPs' arguments in this proceeding, completely baseless.

?? GNAPs shall require contractors that will have access to Verizon premises or equipment to procure insurance.

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 facilities-based interconnection agreement that will result from this proceeding will provide GNAPs the ability to collocate at a Verizon facility. Collocation increases Verizon's risk and exposure to loss in many ways, including: (1) the risk of injury to its employees, (2) possible damage to or loss of its facilities and network, (3) the risk of fire or theft, (4) the risk of security breaches, and (5) possible interference with, or failure of, the network.

In § 20 of the General Terms and Conditions section, GNAPs agrees to indemnify Verizon. A natural extension of this indemnification, Verizon's proposed § 21 requiring insurance, provides the financial guarantee to support the promised indemnifications.

Verizon maintains an extensive insurance program that is financially sound and protects both parties should they be liable jointly and severally for the wrongful acts of the other.[278] GNAPs' proposed insurance coverage, however, is inadequate. For example, GNAPs proposes that the general commercial and excess liability coverage be limited to $1,000,000 rather than the $10,000,000 proposed by Verizon. Verizon witness Karen Fleming points out in her testimony that $1,000,000 is simply inadequate in light of the risk to the Verizon network, personnel and assets. Damage to Verizon's network or assets or injury to even one Verizon employee resulting from any single occurrence could easily and significantly exceed the limits of GNAPs proposed coverage.

[278] *See* Fleming Direct at 5.

Verizon also believes that automobile liability insurance should also be provided by GNAPs to assure that GNAPs vehicles used in proximity to Verizon's network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to performance of the agreement. An employer's liability limit of $2,000,000 rather than the $1,000,000 proposed by GNAPs is standard in the industry and is an area of increased claims activity. GNAPs should provide coverage for any real and personal property located on Verizon's premises.

Moreover, GNAPs' proposal throughout § 21 to make the insurance requirements provision a mutual obligation makes no sense. First, as noted above, Verizon maintains an extensive insurance program that is financially sound.[279] Second, the risks associated with the interconnection agreement are increased primarily for Verizon. Third, for certain provisions, such as the "additional insured" provision, it would counteract the benefits to have both parties name each other as additional insureds. Other problems with GNAPs' proposed edits are highlighted below:

§ 21.1.2 Although GNAPs proposes to delete the reference to vehicle insurance entirely, commercial automobile liability insurance should be provided by GNAPs to assure that GNAPs' vehicles used in proximity to Verizon's network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to the performance of the agreement.

§ 21.1.3 Excess liability insurance should be provided with limits of not less than $10,000,000 and not the $1,000,000 that GNAPs proposes for exposures associated with Verizon's property and equipment, activities of GNAPs subcontractors or GNAPs' related activities occurring while on Verizon's premises.

[279] GNAPs operates under the misunderstanding that Verizon self-insures. As Verizon witness Fleming testified, that is not the case. *See* Fleming Direct at 3.

§ 21.1.4 An employer's liability limit of $2,000,000 rather than GNAPs $1,000,000 is standard in the industry and is an area of increased claims activity.

§ 21.1.5 GNAPs should provide coverage for any real and personal property located on Verizon's premises. It is a good business practice to adequately insure your property and that of your employees.

§ 21.3 In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense. This will not ultimately determine which parties' insurance policy will provide coverage – that question is tied to the fact-specific analysis of the event giving rise to a loss and a coverage question – but it will avoid having two insurance companies point their finger at each other rather than move forward to resolve the underlying claims. The additional insured provision makes clear that one company must assume the notice of claim and defend.

In addition, if Verizon is listed as an "additional insured" on GNAPs' policies, Verizon will have less difficulty in obtaining recovery when appropriate. Recently, Verizon experienced several CLEC bankruptcies. In these types of cases, the "additional insured" provision is especially important. Without the provision, Verizon has little or no access to the CLEC's insurance program. As an additional insured, however, Verizon is entitled to the benefits of coverage in the event a bankrupt CLEC causes the loss.

Verizon's insurance requirements impose reasonable, necessary and minimal requirements on GNAPs. They are not, as GNAPs argues, a "covert barrier to competition." The New York Commission rejected GNAPs' "barrier" claim in the recent Verizon/GNAPs arbitration in New York, observing that Verizon's proposal "does not in itself create a competitive advantage, in light of Verizon's substantial exposure as the network provider."[280] The California and Ohio Commissions also dismissed GNAPs' assertion in this regard, ruling

[280] *New York Verizon/GNAPs Arbitration Order* at 18.

that GNAPs would be required to maintain a $10 million excess liability insurance policy and include Verizon as an additional insured under its policies in those states.[281]

Accordingly, the state commissions that have ruled on this issue between Verizon and GNAPs have found largely in Verizon's favor.[282] The New York Commission, for example, ruled as follows:

> We adopt Verizon's position. ***The insurance levels proposed by Verizon are reasonable in light of the potential for network damage or tort liability when network interconnection or physical collocation takes place.*** These are the same levels of insurance required of other CLECs. Under opt-in provisions of interconnection agreements, if the levels are lowered here, any CLEC could take advantage of the lowered levels. ***Moreover, listing the other party to a contract as an additional insured is common practice to avoid fingerpointing among insurers in the event of a claim.*** The fact that Verizon has sufficient assets to self-insure within limits does not in itself create a competitive advantage, in light of Verizon's substantial exposure as the network provider.[283]

Also ruling in GNAPs' favor, the Ohio Commission rejected GNAPs' argument that Verizon was bound to accept GNAPs' proposals because another ILEC in another state had done so:

> 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 that should be considered to offset the increased risk and exposure to

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[281] *California Verizon/GNAPs Final Arbitrator's Report* at 97, *aff'd by California Verizon/GNAPs Final Arbitration Order* at 2; *Ohio Verizon/GNAPs Arbitration Panel Report* at 20, *aff'd by Ohio Verizon/GNAPs Arbitration Award* at 11. In addition, according to the testimony of Verizon witness Fleming, GNAPs has agreed to provide excess liability coverage of $10,000,000 to other carriers, specifically to Pacific Bell Telephone Company in California. Fleming Direct at 8. Because GNAPs must already procure excess liability coverage of $10,000,000 to Pacific Bell, there is no reason that GNAPs should not provide that coverage to Verizon if not for the sole reason that it would not cause GNAPs to incur any additional expense to do so.

[282] The Illinois Commission, like the other state commissions described herein, also adopted Verizon's position and required GNAPs to obtain the levels of insurance proposed by Verizon. *Illinois Verizon/GNAPs Arbitration Order* at 22. However, the Illinois Commission erroneously required the parties to make the insurance provisions reciprocal, which, in the case of the additional insured provision, is nonsensical. *Id.* An additional insured provision by its very nature only requires that one party name the other on a policy and is *not* reciprocal by its very nature. Verizon is presently contemplating a motion for rehearing on this point. Citing the *Illinois Verizon/GNAPs Arbitration Order*, the Rhode Island arbitrator also ordered the parties to adopt Verizon's proposed language but erroneously recommended that those insurance requirements be made reciprocal as well. *Ohio Verizon/GNAPs Initial Arbitration Order* at 39.

[283] *New York Verizon/GNAPs Arbitration Order* at 18 (emphasis added).

> loss that Verizon (i.e., not PacBell) will face when the interconnection agreement under consideration in this case is consummated. ***On balance, Global has failed 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.***[284]

The California Commission also adopted key portions of Verizon's proposed insurance language:

> Verizon also states that the symmetrical outcome with respect to the "additional insured" provision at § 21.3 is problematic. In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense. Because GNAPs' risk is significantly less than Verizon's the FAR [Final Arbitrator's Report] should eliminate the "symmetry" and instead adopt Verizon's proposed § 21.3. Verizon's proposed language in § 21.3 is adopted.[285]

Finally, GNAPs' contention that Verizon gains a competitive advantage since it does not have to pay for similar insurance likewise is unfounded. As Verizon witness Fleming states in her testimony, Verizon maintains an extensive insurance program. Moreover, "given the difference in the parties' respective networks, Verizon faces a much greater risk than GNAPs. It is appropriate for the parties' agreement to reflect this asymmetrical risk."[286] Fleming points to the billion dollars in property damage that Verizon facilities sustained as a result of the September 11 attacks to demonstrate the disparity in loss a CLEC sustains.[287]

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[284] 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. *Ohio Verizon/GNAPs Arbitration Panel Report* at 20 (emphasis added), *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 11.

[285] *California Verizon/GNAPs Final Arbitrator's Report* at 97, *aff'd by California Verizon/GNAPs Arbitration Order* at 36.

[286] *See* Fleming Direct at 10.

[287] *Id.*

Because Verizon's proposed insurance requirements are reasonable and GNAPs' are inadequate, GNAPs' revisions to § 21 of the General Terms and Conditions section should be rejected.

Issue 9: Verizon's Audit Provisions Are Reasonable Because They Would Apply Equally To Both Parties And Would Be Conducted By A Third Party For A Limited Purpose.

Previous State Commission Decisions:
Adopted Verizon's Proposal: *California, Illinois (with modification) New York, Ohio, Rhode Island*[+]
Adopted GNAPs' Proposal: *None*

Verizon proposes audit provisions in § 7 of the General Terms and Conditions and § 10.13 in the Interconnection Attachment. GNAPs proposes to entirely delete all of Verizon's proposed audit provisions. GNAPs' proposal completely eliminates either party's ability to evaluate the accuracy of the other's bills. GNAPs' opposition to Verizon's audit provisions is once again based on a misunderstanding of Verizon's proposal, as the New York Commission recently recognized when considering the same issue in the GNAPs/Verizon arbitration there. The New York Commission ordered the parties to adopt Verizon's proposed audit provisions observing that GNAPs "misconstrued the breadth of the audit provisions."[288]

As explained in Verizon witness Jonathan Smith's testimony, Verizon's proposed General Terms and Conditions § 7 provides a mechanism for Verizon and GNAPs to ensure the accuracy of each other's bills. The highlights of Verizon's audit provisions include:

- The right to audit books, records, facilities and systems ***for the purpose of evaluating the accuracy of the audited party's bills.***
- No more than annual audits generally, with an exception if previous audit found uncorrected net billing inaccuracies of at least $1,000,000 in favor of the audited party.
- Audit performed by independent certified public accountants selected and paid by the auditing party, but acceptable to the audited party.
- Confidentiality agreement to protect the confidentiality of the information disclosed by the audited party to the accountants.

[288] *New York Verizon/GNAPs Arbitration Order* at 19.

?? Audits at the auditing party's expense (insuring that audits will not be requested without reasonable cause).[289]

There are three misconceptions inherent in GNAPs' assertion that Verizon's proposed audit rights would force GNAPs "to provide ***Verizon*** access to ***all*** of its 'books, records, documents, facilities and systems.'"[290]

First, Verizon's proposal applies equally to both parties, not just GNAPs.

Second, pursuant to § 7.2, GNAPs would not be providing records to ***Verizon***; instead the "audit shall be performed by independent certified public accountants" selected and paid by the Auditing Party who are also acceptable to the Audited Party. If GNAPs believes it is providing competitively sensitive information, it can request a protective agreement or order.

Third, the auditing *accountant* would not have access to ***all*** records. The audit is limited to records, documents, employees, books, facilities and systems "necessary to assess the accuracy of the Audited Party's bills."[291] In short, Verizon's audit provisions are not the "unreasonably broad" mechanism that opens GNAPs' "proprietary business records to Verizon" that GNAPs claims. Rather, Verizon's proposal (1) places financial responsibility for audits on the Auditing Party (GTC § 7.4); (2) allows an audit only once a year, unless a previous audit revealed discrepancies and then no more than once per quarter (GTC § 7.1); and (3) circumscribes the parties' audit rights and obligations (Additional Services Attachment § 8.5.4 and Interconnection Attachment § 10.13).[292]

[289] *See* Smith Direct at 2.

[290] *See* GNAPs' Petition at 29 (emphasis added).

[291] *See* Verizon Redline General Terms and Conditions Attachment § 7.3.

[292] *See* Smith Direct at 2.

Verizon's proposal is directed at evaluating the "accuracy of the Audited Party's bills" and ensuring that rates are being applied appropriately.[293] Verizon does not seek audit rights as a competitor of GNAPs, but as a customer. It is reasonable to expect a supplier (the billing party) to carry the burden of justifying its charges to the customer (the billed party). Without audit rights, Verizon is asked to accept GNAPs' charges without the ability to verify their accuracy or appropriateness. This is unacceptable from a business perspective. Contrary to GNAPs' resistance to Verizon's audit provisions, such provisions are common in the industry. In accordance with established practice in Massachusetts and other states, Verizon has audit provisions that allow either carrier to audit the books and records of the other pertaining to the services provided under the interconnection agreement.[294]

Moreover, Verizon's Redline Additional Service Attachment § 8.5.4 not only protects Verizon's interest – to make certain that GNAPs is using OSS in the manner it was intended – but this provision ensures that all CLECs, not just GNAPs, can use Verizon's OSS to place an order or support a customer. In his testimony, Verizon witness Smith points out that literally hundreds of CLECs, CMRS providers, and IXCs rely on access to Verizon's OSS. Section 8.5.4 provides Verizon with the right to monitor its OSS so that all carriers alike can receive uninterrupted access to this system.[295] In addition, as Verizon witness Smith points out in his testimony, customer proprietary network information ("CPNI") resides in Verizon's OSS database. To ensure that Verizon is meeting its obligations to protect CPNI, which includes the release of this information to authorized parties, Verizon must be able to monitor or audit

[293] *See* Verizon Redline General Terms and Conditions § 7.1; Interconnection Attachment § 6.3.

[294] *See* Smith Direct at 5.

[295] *Id.* at 6.

GNAPs' use of Verizon's OSS.[296] By monitoring or auditing a carrier's use of Verizon's OSS, Verizon can maintain the system integrity of its OSS for the nondiscriminatory benefit of all users in accordance with federal law.[297]

As GNAPs is seeking to use Verizon's OSS, Verizon will already have the information that GNAPs fears Verizon will obtain. Verizon merely seeks the ability to confirm that GNAPs is not obtaining information from Verizon about an end user's service without proper authorization. Without the ability to audit GNAPs' use of Verizon's OSS and the information obtained from the OSS, Verizon cannot insure that it is in compliance with its obligations to safeguard end user CPNI data that resides in Verizon's OSS. Verizon should be able to confirm that it is only releasing CPNI to GNAPs for which GNAPs has obtained authorization from the end user. Verizon should not be required to merely rely on GNAPs' assertion (by virtue of initiating an OSS transaction) that it has authorization to retrieve the requested CPNI.

GNAPs claims that the "terms of the proposed Template Agreement are sufficiently clear to ensure compliance with the Agreement for the purposes of billing and record keeping purposes"[298] and points to "the right to pursue good faith negotiations in the first instance, and failing that, [Verizon] may seek legal or equitable relief in the appropriate federal or state forum."[299] It is plainly unreasonable and bad public policy to expect a carrier to resort to litigation just to verify the appropriateness of a bill.

It is no mystery why GNAPs hopes to deprive Verizon of the audit rights it seeks. Indeed, Verizon's proposed audit provisions are especially necessary in this case given the

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[296] *Id.*

[297] *See* 47 U.S.C. § § 222, 251.

[298] *See* GNAPs' Petition at 31.

[299] *Id*.

troubled history of both GNAPs and its Chairman and President, Frank T. Gangi. As Verizon witness Smith points out in his testimony,[300] Verizon's affiliate in New York uncovered what it believed to be an illegal billing scheme that a GNAPs affiliate implemented to overcharge the Verizon affiliate millions of dollars under the guise of reciprocal compensation.[301] The specifics of that investigation demonstrate the particular need for the audit provisions proposed by Verizon in this case. Verizon's New York Complaint, also referenced in Verizon witness Smith's testimony, explains Verizon's concerns:

> Bell Atlantic seeks to recover over $18,000,000 stolen through a massive fraud scheme conceived by Defendant Gangi, and implemented by him and the other Individual Defendants through his telecommunications and Internet service company, Defendant GNAPs. This is an audacious scheme, extending over three years, in four states, and involving several enterprises and dozens of instances of mail, wire and common law fraud.
>
> ***Gangi -- through GNAPs -- has billed Plaintiffs tens of millions of dollars in reciprocal compensation charges for telephone calls that were never made, or that if made, were of substantially shorter duration than claimed on GNAPs' bills. Bell Atlantic uncovered the scheme in 1999 when it implemented a computer system to keep track of the number and duration of calls its customers made to customers served by GNAPs network. Plaintiffs' computer tracking system revealed a huge disparity between the number and duration of telephone calls billed by GNAPs and the number and duration of calls tracked by the system.*** When Bell Atlantic confronted Defendants with these facts, Defendants denied any wrongdoing and claimed falsely that GNAPs' "technical personnel" would produce documentary evidence supporting GNAPs' reciprocal compensation charges for the local telephone calls supposedly made by Bell Atlantic's customers to GNAPs' customers. No such "technical personnel" were ever identified, and no such supporting documentation was ever provided to Plaintiffs . . .Recently, GNAPs' counsel and one of its contract negotiators admitted that no such records exist."[302]

[300] *See* Smith Direct at 5.

[301] *See* Verizon's Complaint filed in *New York Telephone Company, et al. v. Global NAPs, Inc., et al.,* No. 00 Civ. 2650 (FB) (RL) (E.D. N.Y.) at Tab 1.

[302] *See* Verizon's Complaint at ¶¶ 1, 4-5.

Verizon witness Smith's testimony about the New York case thus legitimizes Verizon's concern about GNAPs' trustworthiness and highlights the consequent need for Verizon to protect itself from any similar behavior by GNAPs in the future. The parties subsequently settled the New York case to Verizon's satisfaction, as the parties' joint press release at the time provided:

> The settlement was entered into without any determination of the merits of the parties' claims, and without any admission of liability by either party. *Pursuant to the settlement, the parties agreed on the amount of a refund* ***by GNAPs*** *based on a 'true-up' using SS7-based traffic systems developed by each of the parties.* The specific terms of the settlement are confidential.[303]

In this proceeding, Verizon rightly wants to avoid history repeating itself. Rather than having to install computer software to track GNAPs' billing practices and then having to initiate litigation in order to obtain the information it needs (which is what already has occurred in New York and other states), Verizon would prefer to have an independent third-party accountant, agreed upon by both parties, audit GNAPs' records as appropriate. In this way, Verizon can be assured that GNAPs is living up to its contractual obligations. Verizon witness Smith's testimony simply provides the context for why this is so important to Verizon. Furthermore, Verizon is not the only beneficiary of the proposed audit provisions. By their terms, they would extend to GNAPs as well, providing GNAPs with the same audit rights.[304]

Verizon witness Smith also references Mr. Gangi's conduct in a California federal court proceeding, in which he was found to have "acted in bad faith, vexatiously, wantonly and for oppressive reasons" and to have "perpetrated a fraud on the Court."[305] Verizon's New York

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[303] *See* Verizon and GNAPs Joint Press Release at Tab 2.

[304] *See* Verizon's proposed General Terms and Conditions §§7.1-7.3.

[305] *See* Smith Direct Testimony at 3 (citing August 31, 1995 Order of the United States District Court for the Central District of California in *CINEF/X v. Digital Equipment Corporation*, No. CV 94-443 (SVW (JRx)) at 31). Verizon has attached a copy of the California Order at Tab 3.

Complaint directly links GNAPs' behavior in New York to Gangi's behavior in California. Specifically, that Complaint states as follows:

> The disparity between the amount of telephone traffic that Defendants claim Plaintiffs handed off and the actual figures as recorded by Plaintiffs' computer system is no accident. *Strikingly, the instant scheme is but the latest in a series of similar acts perpetrated by Gangi. As set forth below, Gangi is a sophisticated, professional racketeer, and an adjudged fraud and perjurer who has made a career of creating fictitious customers, non-existent products and false documents to defraud others.* ***The United States District Court for the Central District of California referred Gangi to the U.S. Attorney for possible prosecution based upon a prior fraudulent scheme he orchestrated in that court. The court there also found that Gangi had obstructed justice by lying under oath, hiring individuals to pose as witness-employees of a non-existent company, and submitting false declarations by individuals who did not exist***.[306]

In short, GNAPs' Chairman and President, Mr. Gangi, has twice been involved in serious, publicly vetted, unethical behavior that reflects upon not only his personal trustworthiness but also the trustworthiness of the company he leads. Indeed, the California court's referral of Mr. Gangi to the U.S. Attorney for possible criminal prosecution for his fraudulent action served as a backdrop for Verizon's claims in the New York case. Under these circumstances, Verizon's concerns about GNAPs' future behavior, as directed by Mr. Gangi, are entirely valid and merit a preventive mechanism like Verizon's proposed audit provisions.

In view of these facts, other state commissions have adopted Verizon's audit proposals.[307] In the very recent initial arbitration ruling in Rhode Island, the arbitrator stated, "If you have done no wrong, you should have no fear of any audit. Accordingly, VZ-RI's position . . . is

[306] *See* Verizon Complaint at ¶ 6 (emphasis added).

[307] While adopting almost all of Verizon's proposed audit provisions, the Illinois Commission specifically excluded audits as they related to OSS, contained in Verizon's Additional Services Attachment § 8. *Illinois Verizon/GNAPs Arbitration Order* at 23. As discussed herein, the Illinois Commission's OSS concerns were misplaced. Since GNAPs is seeking to use Verizon's OSS, Verizon will already have the information that GNAPs fears Verizon will obtain. The Illinois Commission's decision to omit OSS leaves Verizon significantly exposed in terms of its obligation to protect CPNI.

adopted."[308] The California Commission, in turn, adopted Verizon's audit proposals with only minor modifications.[309] The New York Commission, in its final ruling, ordered the parties to adopt Verizon's proposed audit provisions without change, holding:

> We adopt the Verizon position. Audit procedures are, of course, standard language in contracts of this type. GNAPs appears to have misconstrued the breadth of the audit provisions; reasonable protections are built in.[310]

The Ohio Commission also ordered the parties to adopt Verizon's proposed language without change, holding that it:

> 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 defined 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.[311]

The Ohio Commission continued:

> 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; (3) to maintain the integrity of Verizon's OSS for the nondiscriminatory benefit of all carriers who use it, including Global.[312]

The Ohio Commission concluded:

> 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

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[308] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 40.

[309] *California Verizon/GNAPs Final Arbitrator's Report* at 100-101, *aff'd by California Verizon/GNAPs Arbitration Order* at 2 (adopting Verizon's language with modification, allowing one audit per year rather than two, and leaving the door open for more audits "if the preceding audit disclosed material errors or discrepancies.")

[310] *New York Verizon/GNAPs Arbitration Order* at 19.

[311] *Ohio Verizon/GNAPs Arbitration Panel Report* at 22-23; *aff'd* by *Ohio Verizon/GNAPs Arbitration Order* at 12.

[312] *Id.* at 23.

> sensitive information that Global believes should be entitled to such protection…. Upon review of the parties' arguments on issue 11, the panel recommends that the Commission should adopt Verizon's proposed language, as set forth in section 7 of the GTC attachment, section 8.6.4 of the additional services attachment, and sections 6.3 and 10.13 of the interconnection attachment.[313]

Just as the New York Commission recognized and the Rhode Island, California and Ohio Commissions have agreed, the Department should recognize that "audit procedures are, of course, standard language" in interconnection agreements and that "reasonable protections are built in" Verizon's proposal.[314] Consistent with Verizon's position on this issue, the Department should order inclusion of Verizon's proposed language in General Terms and Conditions § 7 and Interconnection Attachment § 10.13.

[313] *Id.*

[314] *New York Verizon/GNAPs Arbitration Order* at 19.

IV. VERIZON'S SUPPLEMENTAL ISSUES

Issue 10: Verizon Should Be Permitted To Collocate At GNAPs' Facilities In Order To Interconnect With GNAPs.

Previous State Commission Decisions:
Adopted Verizon's Proposal: *New York, Ohio, Illinois, Rhode Island*[+]
Adopted GNAPs' Proposal: *California*

In the Collocation Attachment to Verizon's Redlined Agreement, the Parties have already agreed to the following language:

> Upon request by Verizon, GNAPs shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of GNAPs. GNAPs shall provide collocation on a non-discriminatory basis in accordance with GNAPs' applicable Tariffs, or in the absence of applicable GNAPs accordance with terms, conditions and prices to be negotiated by the Parties.

Thus, to the extent GNAPs has in a place its own Collocation tariff, the Parties have agreed that GNAPs will make collocation available to Verizon according to the terms and conditions of that tariff. If, however, GNAPs does not yet have a tariff in place, the Parties will negotiate the terms upon which Collocation will be provided if Verizon requests collocation. This contract language is not in dispute.

Notwithstanding that agreement, GNAPs seeks additional language in § 2.1.5 of the Interconnection Attachment that would deny Verizon the benefit of its bargain. Specifically, Section 2.1.5.1 of the Interconnection Attachment states that Verizon may establish an interconnection point ("IP") at a collocation arrangement Verizon has established pursuant to the Collocation Attachment. However, GNAPs now seeks additional language subjecting the entire section to "GNAPs' sole discretion." In essence, GNAPs' language seeks to undo the undisputed text in the Collocation Attachment. This kind of negotiation tactic, although not unusual, is unproductive. GNAPs should not be permitted to undo that to which it has already agreed in one section of the Agreement by adding language in another portion of the Agreement.

Notwithstanding GNAPs' misguided efforts to back out of undisputed text, GNAPs did not identify its proposed language for § 2.1.5 of the Interconnection Attachment as related to any of the Issues described in its Petition. The Department, therefore, should not now address that language.

Even if GNAPs had not already agreed to permit collocation, however, Verizon nevertheless should be permitted to do so. Verizon recognizes that § 251(c)(6) of the Act applies to ILECs, and not CLECs. Nothing in the Act, however, prohibits the Department from allowing Verizon to interconnect with GNAPs via a collocation arrangement at its premises to ensure fair terms for interconnection between the parties. Pursuant to GNAPs' interconnection proposal, all of the interconnection locations are determined by GNAPs.[315] Rather than allow GNAPs to unreasonably limit the terms and conditions for Verizon's interconnection with GNAPs, the Department should present GNAPs with a choice. If GNAPs will not allow Verizon to collocate at its facilities, then it should be prohibited from charging Verizon distance-sensitive transport rates to get Verizon's traffic to those facilities.[316]

Without the option to collocate, Verizon cannot evaluate whether it is more cost-effective to purchase transport from GNAPs or build its own facilities to GNAPs.[317] Indeed, the New York Commission recognized that permitting Verizon to collocate at GNAPs' facilities, provided there is space and power available, affords Verizon "more flexibility to establish efficient

[315] *See* GNAPs' Interconnection Attachment §§ 2.1 - 2.1.5.

[316] *See* D'Amico Direct at 44.

[317] *See id* at 43-44.

interconnection."[318] The Illinois and Ohio Commissions and the Rhode Island arbitrator agreed and also ruled in Verizon's favor on this issue.[319]

Fairness dictates that Verizon should have comparable choices to those of GNAPs. Verizon's proposal gives Verizon reasonable interconnection choices, while GNAPs' proposal does not. Accordingly, the Department should order inclusion of Verizon's proposed language in Interconnection Attachment § 2.1.5 for this second reason as well.

[318] *New York Verizon/GNAPs Arbitration Order* at 20.

[319] *Illinois Verizon/GNAPs Arbitration Order* at 24; *Ohio Verizon/GNAPs Arbitration Panel Report* at 23-24; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 40.

Issue 11: The Parties' Agreement Should Recognize Applicable Law.

Previous State Commission Decisions:
Adopted Verizon's Proposal: *California, New York, Ohio, Illinois, Rhode Island*[+]
Adopted GNAPs' Proposal: *None*

Consistent with Verizon's general approach to make "applicable law" the cornerstone of its proposed interconnection agreement, Verizon's proposed § 4.7 of the General Terms and Conditions section ensures that the contract reflects changes in law. GNAPs proposes to delay implementation of a change of law until appeals are exhausted, even if the change of law is not subject to a stay.[320] This is patently unreasonable. If a change in law is effective, the Parties' agreement must recognize it rather than try to predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay.

GNAPs further proposes contract language that address discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier."[321] GNAPs' language is superfluous and, thus, undesirable from a contract drafting standpoint. The parties have agreed that "Verizon will provide thirty (30) days prior written notice to GNAPs of any such discontinuance of a Service, unless a different notice ***period*** or ***different conditions*** are specified in this Agreement . . . or ***Applicable Law*** for termination of such ***Service in which event such specified period and/or conditions shall apply***."[322]

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[320] In § 4.7 of the General Terms and Conditions section, GNAPs proposes to add the underlined phrase: "Notwithstanding anything in this Agreement to the contrary, if, as a result of any final and non-appealable legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit. . . ."

[321] *See* GNAPs' General Terms and Conditions § 4.7

[322] *Id*. (emphasis added).

It is critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to so under applicable law.[323] In such case, Verizon will comply fully with any legal requirements governing the timing or other procedures relating to discontinuance of the service or benefit. Accordingly, the Department should adopt Verizon's proposed General Terms and Conditions § 4.7.

Other state commissions have ruled in Verizon's favor on this issue, most recently the Rhode Island arbitrator in the Verizon/GNAPs arbitration in that state.[324] Both the New York and California Commissions rejected GNAPs' proposed changes to Verizon's proposals in the Verizon/GNAPs arbitrations in those states. In its final order, the New York Commission ruled:

> Whether to maintain the status quo following a judicial, legislative, or regulatory decision is the prerogative of those decisionmakers. 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.[325]

The California Commission also agreed with Verizon in its own final order, 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."[326] The Illinois and Ohio Commissions also ruled in Verizon's favor on this issue in their final arbitration order.[327]

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[323] *New York Verizon/GNAPs Arbitration Order* at 21-22.

[324] *Rhode Island Verizon/GNAPs Initial Arbitration Order* at 40-41.

[325] *New York Verizon/GNAPs Arbitration Order* at 21.

[326] *California Verizon/GNAPs Final Arbitrator's Report* at 73, *aff'd by California Verizon/GNAPs Arbitration Order* at 2.

[327] *Illinois Verizon/GNAPs Arbitration Order* at 24-25; *Ohio Verizon/GNAPs Arbitration Panel Report* at 25, *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12.

Issue 12: **GNAPs Should Only Be Permitted To Access UNEs That Have Been Ordered Unbundled Or Be Allowed Access To Verizon's Existing Network.**

Previous State Commission Decisions:
Adopted Verizon's Proposal: *New York, Ohio, Illinois, Rhode Island*[+]
Adopted Verizon's Alternate Proposal: *California*
Adopted GNAPs' Proposal: *None*

Verizon's proposed General Terms and Conditions § 42 is necessary to memorialize Verizon's right to upgrade and maintain its network, ensure that GNAPs does not force Verizon to unbundle its network absent a requirement to do so, and make GNAPs financially responsible for interconnecting with Verizon's network. There is no disagreement that Verizon may "deploy, upgrade, migrate and maintain its network."[328] Nothing in the Act requires Verizon's network to remain static simply because other carriers have chosen to interconnect with Verizon. In fact, denying Verizon the ability to upgrade and maintain its network jeopardizes service quality in Massachusetts and defeats the purpose of the Act to encourage the "rapid deployment of new telecommunications technology."[329] The parties' dispute relates to the consequence of such upgrades.

In the event of an upgrade, GNAPs proposes to specifically address Verizon's obligation to provide access to fiber as an unbundled network element as well as access to next generation technology. GNAPs' proposal is unnecessary, because the parties have reached agreement regarding Verizon's provision of UNEs.[330] If and when any "next generation technology" (a term undefined by GNAPs) must be unbundled, Verizon has agreed to do so in accordance with applicable law. GNAPs appears to assume that "applicable law" requires "reasonable and non-

[328] *See* Verizon Redline General Terms and Conditions § 42.

[329] Preamble to the Act.

[330] *See* Verizon's Redline Unbundled Network Elements Attachment.

discriminatory access to ***all*** next generation technology for the purpose of providing telecommunications services."[331] However, applicable law only obligates Verizon to provide GNAPs unbundled access to network elements that have been declared UNEs and that pass the necessary and impair test.[332]

Also, in the event of an upgrade, GNAPs disputes its responsibility for the cost and activities associated with accommodating such changes in its own network. If GNAPs wishes to interconnect with or take services or facilities from Verizon, then GNAPs must ensure that its network is compatible with Verizon's network as it may change from time to time. If Verizon were forced to upgrade all interconnecting CLECs as Verizon upgraded it network, its ability to "deploy, upgrade, migrate and maintain its network" in accordance with the Department's service quality standards would be jeopardized. There is no justification for imposing this financial burden on Verizon's customers. Verizon interconnects with many CLECs, IXCs and CMRS carriers, and it must do so in a non-discriminatory manner. Thus, it cannot be forced to tailor its network to the network design and technology choices of multiple interconnecting parties or maintain varying facilities depending on the carrier with which it interconnects. Verizon designs its network according to its standards, which are consistent with industry standards, to meet service quality requirements of the Department as well as its obligations under the Act. It cannot be required to change its network design – or forego changing its network – for CLECs that do not want to keep up with such changes.

[331] *See* GNAPs' General Terms and Conditions § 42 (emphasis added).

[332] *See Iowa Utilities Bd.*, 219 F. 3d at 757-58.

The Department examined these very issues in its *Tariff No. 17 Phase Orders.*[333] In that proceeding, the Department found that Verizon has "the authority to make all final decisions with regard to its planned network changes and upgrades."[334] It further noted that Verizon is the "owner and manager of its network" and has primary authority in maintaining that network.[335] The Department acknowledged, however, that CLECs should be able to provide input in the network planning process and found that "Verizon's willingness to incorporate the FCC's rules on notification to CLECs of planned network changes is a sufficient way to comply that requirement."[336] This is precisely what Verizon's Redlined Agreement provides consistent with the Department's prior ruling. Section 28 of the General Terms and Conditions, "Notice of Network Changes" expressly incorporates FCC Rules 51.325 through 335.[337] Verizon's proposed language on this issue tracks the Departments findings and should be adopted in its entirety.

In each of the states that GNAPs and Verizon have arbitrated this issue – California, Illinois, New York, Ohio, and most recently, Rhode Island – the state commission or arbitrator has adopted language identical to Verizon's proposed language here or a compromise proposal

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[333] *See D.T.E. Tariff No. 17 Order at 164-70; 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 Phase I, 2001 Mass. PUC LEXIS 26 (May 24, 2001) ("*D.T.E. 98-57 Phase I Order*").

[334] *D.T.E. 98-57 Tariff No. 17 Order* at 170.

[335] *Id.* at 169.

[336] The Department found that CLECs should have the opportunity to provide comments to Verizon on planned network changes in accordance with the rules established by the FCC in 47 C.F.R. § 51.325 through § 51.335. *D.T.E. 98-57 Phase I Order* at part III (E)(i)(b). .

[337] The Department also addressed CLEC concerns with respect to the costs they may incur as a result of Verizon's network changes and found that "by allowing CLECs greater input into the planning process, their concerns about [Verizon] unilaterally imposing unnecessary costs on CLECs are lessened. As a result, the Department does not consider there to be sufficient evidence to require [Verizon] to reimburse CLECs for costs associated with network changes and upgrades." *D.T.E 98-57 Tariff No. 17 Order* at 170.

offered by Verizon.[338] The New York Commission, for example, rejected GNAPs' proposed language on the ground that it was overly broad:

> We adopt Verizon's position. The Global provision regarding next generation technology is overly broad. Adoption of GNAPs' proposed language could have the effect of forcing Verizon to deploy new technology that it otherwise would have no intention of incorporating into its network. To the extent next generation technology is deployed by Verizon in its network, under applicable law GNAPs would be entitled to access to such technology on the same basis as other CLECs.[339]

Moreover, in a Verizon arbitration with HTC over a similar issue, the South Carolina Public Service Commission held that HTC should have access to Verizon's current network at the time such access is requested.[340] The South Carolina Commission explained further that "Verizon shall not be required to construct facilities on HTC's behalf, and HTC shall not dictate to Verizon how to update Verizon's network."[341]

The Department should reach the same conclusion and reject GNAPs' changes to Verizon's § 42 of the General Terms and Conditions section.

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[338] *California Verizon/GNAPs Final Arbitrator's Report* at 102-103, *aff'd by California Verizon/GNAPs Arbitration Order* at 2; *Illinois Verizon/GNAPs Arbitration Order* at 25; *New York Verizon/GNAPs Arbitration Order* at 22; *Ohio Verizon/GNAPs Arbitration Panel Report* at 26; *aff'd by Ohio Verizon/GNAPs Arbitration Order* at 12; *Rhode Island Initial Arbitration Order* at 40-41. In California, in an effort to reach a compromise on this issue, Verizon offered new language making it clear that applicable law does not require access to next generation technology. Despite GNAPs' continuing objections to Verizon's proposals, the California Commission adopted Verizon's compromise language.

[339] *New York Verizon/GNAPs Arbitration Order* at 22.

[340] *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, South Carolina Public Service Commission (rel. June 21, 2002).

[341] *Id.* at 10.

IV. CONCLUSION

Verizon's contract proposals are reasonable and supported by law and the record of this proceeding. GNAPs' proposals are not. Accordingly, the Department should adopt Verizon's proposed contract language as noted in the Summary of Recommendations (Part II, *supra*).

DATED: October 21, 2002

Respectfully submitted,

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I hereby certify that I have on this 21st day of October, 2002, served a true and correct copy of the foregoing Post-Hearing Brief of Verizon Massachusetts upon the persons listed below via overnight mail.

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