

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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

**REPLY BRIEF OF VERIZON MASSACHUSETTS**

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## I. INTRODUCTION

Pursuant to the Arbitration Schedule established by the Department, Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) submits this brief in reply to the Initial Brief of Global NAPs, Inc. (“GNAPs”) dated October 21, 2002 (“GNAPs’ Initial Brief”). GNAPs’ Initial Brief grossly mischaracterizes and inaccurately portrays facts and law applicable to this proceeding, including mutually-agreed portions of the parties’ pending interconnection agreement (the “Agreement”) and the FCC’s ISP Order on Remand (“*ISP Remand Order*”).<sup>1</sup> A substantial portion of GNAPs’ Initial Brief is irrelevant to the disputes currently before this Department in that it discusses at length the impact of the *ISP Remand Order* on portions of the Agreement that are not in dispute and issues that GNAPs’ did not raise in its arbitration Petition (“GNAPs’ Petition”).

Apparently recognizing that various positions it took during the case conflict with applicable law and that the record does not support its claims, GNAPs changes course in its Initial Brief by arguing entirely different issues than it identified in its Petition and that it raised during the course of contract negotiations. In addition, where applicable law requires that the Department find against GNAPs, GNAPs erroneously argues that the law no longer applies. GNAPs’ constant and chameleon-like recharacterizations of the facts, applicable law, and the issues in this arbitration reveal the lack of merit of its claims.

By confusing the issues, GNAPs apparently hopes to distract the Department from its schemes as a pure regulatory arbitrageur. The Department should not be diverted by this tactic. GNAPs is not the legitimate economically efficient competitor it portrays itself to be. Its

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<sup>1</sup> 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*”).

principal proposals in this arbitration are intended solely to exploit differences between the existing access charge regime applicable to *interexchange* traffic and intercarrier compensation for *intraexchange* traffic subject to reciprocal compensation. In short, GNAPs hopes to collect reciprocal compensation on *interexchange* calls by using “virtual” NXX number assignment schemes designed to trick Verizon MA’s switches into not assessing toll charges on toll calls. Verizon MA’s proposals, in contrast, are designed to implement the requirements of applicable law while maintaining the status quo with respect to intercarrier compensation for interexchange and intraexchange traffic.

As discussed below, applicable law, the record in this case and prudent public policy require that the Department adopt Verizon’s proposed language on each of the enumerated arbitration issues in this case.

**II. SUMMARY OF ISSUES, FACTS AND APPLICABLE LAW.**

**A. The Arbitration Issues**

GNAPs identified only nine issues for arbitration in its Petition, and Verizon MA submitted three additional issues in response. The following are, therefore, the only unresolved issues properly before the Department pursuant to 47 U.S.C. § 252(b) that the Department should resolve in this arbitration:

<i>Issue 1: Should Either Party be Required to Install More Than One Point of Interconnection Per LATA?</i>
<i>Issue 2: Should Each Party be Responsible for the Costs Associated with Transporting Telecommunications Traffic to the Single POI?</i>
<i>Issue 3: Should Verizon’s Local Calling Area Boundaries be Imposed on Global or May Global Broadly Define its Own Local Calling Areas?</i>
<i>Issue 4: Can Global Assign to Its Customers NXX Codes That are “Homed” in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides?</i>
<i>Issue 5: Is it Reasonable for the Parties to Include Language in the Agreement that Expressly Requires the Parties to Renegotiate Reciprocal Compensation Obligations if Current Law is Overturned or Otherwise Reversed?</i>

<i>Issue 6: Whether Two-Way Trunking Is Available to Global At Global's Request?</i>
<i>Issue 7: Is It Appropriate to Incorporate by Reference Other Documents, Including Tariffs, Into the Agreement Instead of Fully Setting Out Those Provisions in the Agreement?</i>
<i>Issue 8: Should the Interconnection Agreement Require Global to Obtain Excess Liability Insurance Coverage of \$10,000,000 and Require GNAPs to Adopt Specified Policy Forms?</i>
<i>Issue 9: Should the Interconnection Agreement Include Language That Allows Verizon to Audit GNAPs' "Books, Records, Documents, Facilities and Systems"?</i>
<i>Issue 10: Should Global be Permitted to Avoid its Agreement to Permit Collocation in Accordance with Tariffed Terms?.</i>
<i>Issue 11: Should GNAPs be Permitted to Avoid the Effectiveness of Any Unstayed Legislative, Judicial, Regulatory or Other Governmental Decision, Order, Determination or Action?</i>
<i>Issue 12: Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management or Contractually Eviscerate the "Necessary And Impair" Analysis to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled?</i>

All of the contract language the parties identified as related to the 12 arbitration issues appears in Exhibit B to GNAPs' Petition and Exhibit A of Verizon MA's Response to GNAPs' Petition ("Verizon's Response"). The Parties do not appear to dispute which language is resolved and which is not. Thus, contract language in the draft agreements that is not marked as disputed has been resolved and is not at issue in this case. The Department should, accordingly, adopt this undisputed contract language.<sup>2</sup>

Verizon MA notes, however, that in many instances the arbitration issues GNAPs identified do not reflect the actual substantive disputes between the parties or the contested contract language. Rather, GNAPs erroneously identifies as arbitration issues, issues that are not contested between the parties. It also identifies contract sections as related to an issue, when in fact such sections have nothing to do with the actual dispute, or are only tangentially related such

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<sup>2</sup> See GNAPs' Petition at 6 ("Global requests that this Commission resolve this dispute by (i) adopting an interconnection agreement between Global and Verizon reflecting the undisputed contract language shown in Exhibit B").

that resolution of the stated issue would not resolve the actual dispute. For example, with respect to arbitration Issues 1, 2, 4, 6 and 9 respectively, Verizon MA does not dispute that GNAPs may establish a single POI per LATA; Verizon MA does not dispute that each Party should be responsible for the costs of transporting 251(b)(5) traffic to the POI; Verizon MA does not dispute that GNAPs may *assign* NXX codes on a non-geographic basis; Verizon MA does not dispute that two-way trunking is available to GNAPs and; Verizon MA proposes that audits be performed by independent third parties. The Department should not be induced by GNAPs' deceptive framing of the issues into quick rulings that would not resolve the actual disputes in this case.<sup>3</sup>

Throughout this case, Verizon MA has identified and responded to the actual contested issues between the Parties, which must be resolved to achieve a completed interconnection agreement. Verizon MA urges the Department to closely examine the contract language and applicable law. If it does so, Verizon MA believes the Department will find for Verizon MA on every disputed issue.

## **B. Summary of GNAPs' Operations in Massachusetts**

GNAPs asserts that the Department should adopt GNAPs' proposals "on a policy level"<sup>4</sup> to promote competition in Massachusetts. This claim is wrong and is a thinly veiled attempt by simply GNAPs' to cloak its business plan, which is founded on little more than gaming of the

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<sup>3</sup> The Department should beware GNAPs' misleading arguments in its post-hearing brief and, in certain instances, its outright deceptive characterization of the facts and applicable law. Verizon notes, for example, GNAPs' careful but deceptive juxtaposing of dates on page 8 of its post hearing Brief. In the middle paragraph appearing on that page GNAPs notes a May 3, 2002 ruling by the United States Court of Appeals. It then implies that the FCC revised its rules in response to that ruling on May 15, 2001. Obviously May 15, 2001 is nearly a year prior to May 3, 2002 and the FCC's revision of its rules had nothing to do with the court's ruling. Although individually the dates provided by GNAPs are not incorrect, their careful arrangement in GNAPs' Initial Brief are intended lead the reader to an inaccurate conclusion.

<sup>4</sup> See e.g., GNAPs' Initial Brief at nn. 36, 145; see also GNAPs' Petition at 6.

regulatory process, in the mantle of the public interest. As the Department found in its *Phase I Order* in D.T.E. 01-31, there is already substantial and pervasive competition in Massachusetts from numerous carriers that provide exchange and other services to business and residence customers throughout the state. The Department need not “nurture” GNAPs as it suggests to further competition. Indeed, GNAPs operations here and in other Verizon areas bear no resemblance to the type of competition that the 1996 Telecom Act and state and federal regulators have brought to telecommunications markets.

In Massachusetts, GNAPs appears to have constructed a single switch in Quincy<sup>5</sup> and has gone to great lengths to attract ISP-bound or other inward-bound traffic from Verizon’s end-user customers to that switch. Verizon MA’s witness Terry Haynes testified that based on Verizon’s experience, GNAPs’ operations in Massachusetts are similar to GNAPs’ operations in other states, and that in a typical month, Verizon delivers in excess of 215,000 minutes to GNAPs for every minute GNAPs delivers to Verizon.<sup>6</sup> GNAPs has repeatedly attempted to collect reciprocal compensation for such traffic to exploit this type of “arbitrage opportunity”<sup>7</sup> that the FCC has found to have created “severe market distortions”<sup>8</sup> and that undermines the operation of competitive markets.<sup>9</sup> Notwithstanding GNAPs’ efforts, the FCC and this Department have

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<sup>5</sup> See MA Hearing Tr. at 16: 16-19 (Mr. Selwyn testifying “the existing network that GNAPs has deployed in Massachusetts, as I understand it, consists of a single switch located in Quincy that is used to serve GNAPs customers throughout the state); see also GNAPs Response to Verizon’s Discovery Request No. 8 filed 9/25/02.

<sup>6</sup> Haynes Direct at 6:6-10.

<sup>7</sup> *ISP Remand Order* at ¶ 6.

<sup>8</sup> *Id.* at ¶ 76.

<sup>9</sup> *Id.* at ¶ 71. The FCC further found:

There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, we believe that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a carrier could serve an ISP free of

(continued...)

implemented a comprehensive plan to satisfy the “need for immediate action with respect to ISP-bound traffic”<sup>10</sup> and finally end that arbitrage opportunity.

GNAPs now attempts to undermine the *ISP Remand Order* in furtherance of its ISP-bound traffic schemes, and in the hopes of obtaining the Department’s approval of its latest scheme – the unilateral evisceration of intraLATA toll in Massachusetts. It seeks to do so by misapplying the mandates of the *ISP Remand Order* and through definitional games with local calling areas and “virtual” NXX assignments. Contrary to GNAPs assertions, its proposals are contrary to applicable law and are not in the public interest.

### **C. Fundamental Principles of Applicable Law**

Several basic principles of law should guide the Department in resolving the issues in this case. As discussed later in this brief, GNAPs grossly distorts these principles:

*First*, the *ISP Remand Order* changed nothing concerning the compensation between carriers for interstate and intrastate exchange access traffic. Indeed, the FCC affirmed that the reciprocal compensation provision of the 1996 Act did not govern compensation arrangements for such traffic.<sup>11</sup> Interstate and intrastate exchange access traffic remains subject to the access regimes established by the FCC and state commissions prior to the Act.<sup>12</sup>

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charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

*Id.* at ¶ 5.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* at 37.

*Second*, the *end points* of the communication determine the jurisdictional nature of a particular call for intercarrier compensation purposes,<sup>13</sup> not the originating and terminating NXX codes as GNAPs asserts.<sup>14</sup>

*Third*, the FCC's mirroring rule is not automatic as GNAPs suggests. In order for a CLEC to exchange its 251(b)(5) traffic with an ILEC at the interim rates established by the FCC for ISP-bound traffic (or subject to bill and keep where applicable), the ILEC must first *offer* to exchange all 251(b)(5) traffic at the same rate, and the CLEC must *accept* that offer. In establishing the offer and acceptance requirement, the FCC recognized that not all CLECs may wish to exchange 251(b)(5) traffic at the rates applicable to ISP-bound traffic (or subject to bill and keep). Thus, it is essential that the CLEC first *accept* the ILEC's *offer* in order to exchange all 251(b)(5) traffic at the same rates applicable to ISP-bound tariff.

*Fourth*, the FCC's Rules applicable to reciprocal compensation for transport and termination of telecommunications traffic, including FCC Rule 51.703(b),<sup>15</sup> do not apply to *interstate or intrastate exchange access, information access, or exchange services for such access*.<sup>16</sup> Pursuant to 47 U.S.C. 251(g) and FCC Rule 51.701(1)(b)(1),<sup>17</sup> the access regime

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<sup>13</sup> See *ISP Remand Order*, ¶¶ 56-59 (FCC determines jurisdictional nature of call based on end points of the communication).

<sup>14</sup> GNAPs loosely asserts that NXX codes determine the "classification" of calls. GNAPs' Initial Brief at 34. GNAPs claims generically that calls are "classified" as local or toll based on NPA/NXX codes. It does so in support of its misguided argument that intrastate exchange access calls become intraexchange calls when GNAPs misassigns NXX codes. Although, as witness Haynes testified, switches determine whether to assess toll charges based on NXX codes, jurisdictional classification of calls is based on exchange areas and basic local calling scopes. Haynes Direct Testimony at 22:1-21 - 23:1-19. GNAPs cannot change the jurisdictional nature of a call for intercarrier compensation purposes simply by moving an NXX code from one exchange to another.

<sup>15</sup> 47 C.F.R. § 51.703(b).

<sup>16</sup> 47 C.F.R. § 51.701(b)(1).

<sup>17</sup> *Id.*

applicable to interstate and intrastate exchange access traffic prior to the Act, continues to apply to all such traffic.

**Fifth**, state commissions have authority to determine calling areas for purposes of intrastate exchange access requirements:

With the exception of traffic to or from a CMRS network, state 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 commission’s historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges.<sup>18</sup>

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The reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of intrastate interexchange traffic.<sup>19</sup>

**Sixth**, the Department has expressly recognized that changing an ILEC’s local calling areas is an issue of great complexity with ramifications beyond the scope of a two-party interconnection agreement arbitration proceeding.<sup>20</sup> Such issues are to be considered on a generic basis or in response to the concerns of a particular part of the state. “Reciprocal compensation arrangements for terminating and transporting calls are to be based on the ILEC’s tariffs defining local calling areas and the applicability of intraLATA toll access charges.”<sup>21</sup>

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<sup>18</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, First Report and Order, 11 FCC Red 15499 ¶ 1035 (1996) (“*Local Competition Order*”).

<sup>19</sup> *Id.* at 1034.

<sup>20</sup> 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 8 (May 2, 1997) (“*Consolidated Arbitrations Phase 4-B Order*” or “*Phase 4-B Order*”).

<sup>21</sup> *Phase 4-B Order* at 9. On reconsideration the Department further stated:

(continued...)

### III. ARGUMENT: ISSUES 1-4

#### A. Contrary to GNAPs' New Arguments, the Mirroring Rule in the *ISP Remand Order* is Not Applicable to This Case.

For the first time in its post-hearing brief, GNAPs argues that the mirroring rule in paragraph 89 of the *ISP Remand Order* somehow precludes Verizon MA from exchanging GNAPs originated 251(b)(5) traffic at a rate higher than the rates applicable to ISP-bound traffic pursuant to that order.<sup>22</sup> GNAPs claims that the preclusion applies because paragraph 89 of the *ISP Remand Order* requires Verizon to *offer* to exchange all 251(b)(5) traffic subject to the FCC's interim rates for ISP-bound traffic.<sup>23</sup> What GNAPs conveniently ignores, however, is that it repeatedly has *not accepted* Verizon's offer.<sup>24</sup> In fact, GNAPs affirmatively negotiated and accepted contract language that clearly establishes GNAPs' obligation to exchange 251(b)(5) traffic with Verizon subject to the reciprocal compensation rates set forth in Verizon's DTE Tariff No. 17. Specifically, §§ 7.2 and 7.3 of the Interconnection Attachment,<sup>25</sup> and Appendix A to the Pricing Attachment provide:<sup>26</sup>

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We fully understand the difference between retail billing and reciprocal compensation between a CLEC an incumbent carrier. We understand, too, though, the inextricable relationship between the two, a relationship highlighted repeatedly by TCG in its discussion of the "price squeeze" it alleges will occur if its position is not adopted. TCG's current statement that the reciprocal compensation issue is "completely separate from the scope of the retail calling area" flies in the face of its own arguments.

*See Consolidated Arbitrations*, Order on Motion by TCG for Reconsideration, Phase 4-C Order at 3 (June 27, 1997) ("*Phase 4-C Order*").

<sup>22</sup> GNAPs' Initial Brief at 13.

<sup>23</sup> *Id.*

<sup>24</sup> GNAPs did not respond to Verizon's May 14, 2001 offer to exchange all 251(b)(5) traffic subject to bill and keep in Massachusetts. *See* May 14, 2001 letter from Jeffery A. Masoner, Verizon to William Rooney, Global NAPs, Inc., attached as Exhibit A.

<sup>25</sup> *See* §§ 7.2 and 7.3 of the Interconnection Attachment to Verizon's and GNAPs' draft agreements (emphasis added).

<sup>26</sup> *See* Appendix A to the Pricing Attachment to Verizon's and GNAPs' draft agreements (footnote omitted).

Interconnection Attachment:

7.2 Reciprocal Compensation.

The Parties shall compensate each other for the transport and termination of Reciprocal Compensation Traffic delivered to the terminating Party in accordance with section 251(b)(5) of the Act *at the rates stated in the Pricing Attachment*. These rates are to be applied at the GNAPs-IP for traffic delivered by Verizon for termination by GNAPs, and at the Verizon IP for traffic delivered by GNAPs for termination by Verizon.

7.3 Traffic Not Subject to Reciprocal Compensation.

7.3.1 Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access, information access, or exchange services for Exchange Access or information access.

Appendix A to Pricing Attachment:

A. Call Transport & Termination

1.	Rate for Reciprocal Compensation Traffic delivered to a Verizon-IP or to a GNAPS IP	Rates for Reciprocal Compensation are as set forth in Verizon's DTE MA No. 17 Tariff, as amended from time to time
2.	Access charges for termination of intrastate and interstate Toll Traffic	Per Verizon FCC No. 11 interstate and DTE No. 15 intrastate access tariffs (charged in conjunction with Reciprocal Compensation Traffic, using Traffic Factor 1 and Traffic Factor 2, as appropriate) as amended from time to time

These sections and the additional sections in Exhibit B attached hereto<sup>27</sup> clearly reflect the Parties' agreement to exchange 251(b)(5) traffic at the rates set forth in Verizon's DTE MA No 17. Access charges are to apply for termination of intrastate and interstate Toll Traffic per Verizon's FCC No. 11 and DTE No. 15.

Moreover, and notwithstanding the Parties' agreement to exchange Reciprocal Compensation Traffic subject to reciprocal compensation rates, the mirroring rule was not intended to benefit carriers such as GNAPs that only attract inbound traffic to its customers. Rather, the FCC's mirroring rule was designed to prohibit ILECs from benefiting from disparate

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<sup>27</sup> Exhibit B contains the above sections and additional mutually agreed contract provisions that describe rates, terms, and conditions applicable to § 251(b)(5) traffic and for termination of intrastate and interstate Toll Traffic.

rates “when the traffic imbalance is reversed.”<sup>28</sup> The FCC intended the mirroring rule to address situations in which Verizon MA might be terminating more traffic for a particular carrier than it originates to that carrier.<sup>29</sup> In that scenario, the originating carrier would likely *accept* Verizon MA’s *offer* to exchange all 251(b)(5) traffic at either the FCC’s interim rates for ISP-bound traffic, or subject to bill and keep, as the case may be in the particular state.<sup>30</sup>

In no event, however, does the mere existence in the mirroring rule automatically trigger acceptance. The Parties have agreed not to exchange 251(b)(5) traffic at the same rates as ISP-bound traffic, and GNAPs cannot now be heard to argue otherwise. If GNAPs wanted a different result, it should have accepted Verizon’s original offer or it should have identified the issue in its arbitration Petition.<sup>31</sup> GNAPs did not do so, and thus, the mirroring rule is not applicable here.

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<sup>28</sup> *ISP Remand Order* at ¶89.

<sup>29</sup> If a carrier accepts an ILEC’s offer to mirror rates, all traffic is exchanged at the FCC’s interim rates for ISP-bound traffic or such other lower or bill and keep arrangement established by a state commission. If the carrier does not accept the ILEC’s offer, subject to the pre-conditions in the *ISP Remand Order* of a right to any compensation (e.g. growth cap limitations and existing right to compensation during first quarter of 2001), traffic above the 3:1 ratio, or such lower ratio established by a state commission, is exchanged at the FCC’s interim rates, or such lower rate or bill and keep as established by a state commission. Traffic below the ratio would be exchanged subject to the applicable 251(b)(5) rates (again subject to pre-conditions to any compensation). Thus, the carrier receiving the offer has some control over the rates upon which 251(b)(5) traffic will be exchanged. If it does not exercise the option to accept the ILEC’s offer, it will continue to exchange traffic below the 3:1 ratio, or such lower ratio established by a state commission, subject to the 251(b)(5) rates established in the applicable state.

<sup>30</sup> GNAPs’ Initial Brief attempts to mislead the Department into mistakenly concluding that there has been an “offer” and “acceptance” with respect to the FCC’s interim rates for ISP-bound traffic or bill and keep. GNAPs erroneously claims that, since Verizon *accepted* the FCC caps, it must therefore exchange all 251(b)(5) traffic subject only to the FCC’s interim rates. GNAPs’ Initial Brief at 17-18. The offer to be provided by the ILEC pursuant to paragraph 89 is to be accepted by the CLEC or CMRS provider, not the ILEC itself. GNAPs’ logic would have the ILEC make an offer to itself which the ILEC would then necessarily accept. Such logic is pure nonsense.

<sup>31</sup> GNAPs instead raised the issue of whether GNAPs is entitled to designate only one POI per LATA (Issue 1), an issue Verizon does not dispute, and whether each party should be responsible for transporting its traffic to that POI (Issue 2), an issue Verizon also does not dispute with respect to 251(b)(5) traffic. To the extent there is a dispute between the Parties with respect to these issues, it concerns language that GNAPs claims is related but that in fact would require results contrary to applicable law.

**B. Contrary to GNAPs' Assertions, Intrastate Exchange Access Traffic Does Not Become 251(b)(5) Traffic When GNAPs Uses NXX Codes to Trick Verizon's Switch Into Not Assessing Toll Charges.**

GNAPs grossly misinterprets the Act and the FCC's Rules to arrive at its conclusion that intrastate interexchange calls that would otherwise be subject to exchange access charges, are miraculously transformed in to calls subject to 251(b)(5) compensation when GNAPs assigns NXX codes in a manner intended to trick Verizon MA's switch into not creating a toll record. As Verizon MA's witness Terry Haynes explained, GNAPs' "virtual" FX "service" involves a pure rouse. For example, under its VNXX arrangement, GNAPs would assign a Plymouth NXX code to one of its customers that collocates at the GNAPs office in Quincy.<sup>32</sup> When a Verizon MA Plymouth customer calls the GNAPs Quincy customer, the Plymouth NXX code assigned to the Quincy customer tricks Verizon MA's switch into incorrectly recognizing the call as a *intraexchange* Plymouth call. As a result, Verizon MA's switch does not assess a toll charge that would properly have been applied to the call had GNAPs not assigned a Plymouth NXX code to its Quincy customer.<sup>33</sup>

GNAPs asserts, however, that the Plymouth to Quincy call is not in fact an interexchange call and that when the call originates in Verizon MA's Plymouth exchange, Verizon MA is not providing GNAPs with originating access to that Plymouth exchange. GNAPs' argument hangs on a very thin thread of several tortured and incorrect interpretations of definitions contained in the Act.

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<sup>32</sup> Verizon has also used the example of a Plymouth NXX code being assigned to a GNAPs customer physically located in Framingham. Given that GNAPs appears to operate only a single wire center in Quincy, an example using GNAPs customers physically located in Quincy is more directly applicable to GNAPs' current scheme.

<sup>33</sup> See also Verizon's Plymouth/Framingham example. Haynes Direct at 26:15-23; MA Hearing Transcript at 133: 16-24 - 134:1-14; see also Haynes Exhibit 1.

## 1. FCC Rules 51.701 and 51.703 and Applicable Definitions

GNAPs recognizes that its argument depends on a finding that the Plymouth to Quincy call falls within FCC Rule 51.703(b). Rule 51.703(b) prohibits carriers from assessing charges on other carriers for their own originating traffic. Thus, per GNAPs' logic, if it can convince the Department that a Plymouth to Quincy call fits within the scope of Rule 51.703(b), Verizon MA should not be permitted to collect originating access charges on the call.

GNAPs also recognizes, however, that FCC Rule 51.701(b)(1) excludes *interstate* and *intrastate exchange access* from the purview of FCC Rule 51.703(b). Thus, if the Department determines that a Plymouth to Quincy call is an *intrastate exchange access* call, which it historically has been in Massachusetts, Rule 51.703(b) would not apply to the call.

As a result of the strict limitation in Rule 51.701(b)(1) on the application of Rule 51.703(b), GNAPs has concocted a strained and incorrect reading of several definitions in the Act that it argues collectively necessitates a finding that interexchange "virtual" FX calls from Plymouth to Quincy are not, in fact, *intrastate exchange access* calls excluded from Rule 51.703 but rather, are intraexchange calls subject to reciprocal compensation. GNAPs is wrong.

Specifically, GNAPs wrongly interprets and applies the Act's definitions of "Exchange access", "Telephone exchange service" and "Telephone toll service" which are as follows:

The term "exchange access" means the offering of access to *telephone exchange services* or facilities for the purpose of the origination or termination of telephone toll services.<sup>34</sup>

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The term "telephone exchange service" means (A) service *within a telephone exchange*, or within a connected system of telephone exchanges *within the same exchange area* operated to furnish to subscribers intercommunicating service of the character *ordinarily furnished by a single exchange*, or (B) *comparable service* provided through a system of switches, transmission equipment, or other

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<sup>34</sup> 47 U.S.C. § 153 (16) (emphasis added).

facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.<sup>35</sup>

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The term “telephone toll service” means telephone service *between stations in different exchange areas* for which there is made a *separate charge* not included in contracts with subscribers for exchange services.<sup>36</sup>

Thus, as defined by the Act, a *telephone exchange service* is a service provided to subscribers that enables a particular subscriber to originate *and* terminate calls *within a single exchange* or within an area *ordinarily served by a single exchange*, or a *comparable* service. In the Plymouth to Quincy example, this is the basic exchange service which Verizon’s Plymouth customer purchases from Verizon’s MA D.T.E. Tariff No. 10 to place calls within the Plymouth exchange and the designated local calling area without incurring toll charges.<sup>37</sup>

*Telephone toll service*, in contrast, applies when the Plymouth customer places a call to end-users located beyond the calling area covered by his basic exchange service. Such calls are subject to additional charges designed to compensate the toll provider for providing the toll service.

Typically, as Verizon MA witness Haynes explained, the originating customer is responsible for any toll charges for interexchange calls.<sup>38</sup> There are, however, particular service arrangements purchased by the terminating end-user that enable it to receive calls without calling parties located in distant exchanges incurring toll charges. This is the case, for example, where the terminating end-user has purchased Verizon’s tariffed FX service from a particular

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<sup>35</sup> 47 U.S.C. § 153 (47) (emphasis added). Verizon notes footnote 65 of the *ISP Remand Order* which defines “exchange service” within the context of § 251(g) of the Act as meaning “the provision of services in connection with *interexchange* communications.” *ISP Remand Order* at n. 65 (emphasis in original).

<sup>36</sup> 47 U.S.C. § 153 (48) (emphasis added).

<sup>37</sup> For instance, the local calling area for Plymouth set forth in Verizon’s MA D.T.E. Tariff No. 10 includes the Buzzards Bay, Carver, Kingston, Sagamore and Wareham exchanges.

<sup>38</sup> Haynes Direct at 23:1-2.

exchange.<sup>39</sup> If a Verizon end-user located in Framingham, for example, were to purchase FX service from Verizon's Plymouth exchange, customers in the Plymouth exchange could call that Framingham FX customer without incurring toll charges.<sup>40</sup> Thus, in the FX scenario, the toll provider also receives compensation for transporting calls between exchange areas via an additional charge not reflected in either of the basic exchange service charges applicable to the Plymouth and Framingham customers. Regardless of whether the originating or terminating customer provides the actual payment, the service provided between the distant exchanges is *telephone toll service* as that term is defined by the Act.<sup>41</sup>

When Verizon provides access to its network in a particular exchange on either end of a *telephone toll service* for the purposes of originating or terminating a toll call, it provides exchange access as "*exchange access*" is defined by the Act. The FCC's *ISP Remand Order* clarified this point stating that LECs provide access services when they "connect calls that travel to points -- both interstate and intrastate -- beyond the local exchange."<sup>42</sup> Thus, traffic originated from a particular Verizon MA exchange destined for an end-user in another exchange is *exchange access traffic*, the precise traffic excluded from Rule 51.703 by Rule 51.701(b)(1).

Any time Verizon provides access to an exchange, or between two exchanges, for the purpose of originating and/or terminating *telephone toll service*, Verizon is providing an *exchange access* service. Contrary to GNAPs' arguments, which customer actually provides the

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<sup>39</sup> Haynes Direct at 23:2-5.

<sup>40</sup> Haynes Direct at 25:18-23 - 26:1-13; *see also* Haynes Exhibit 1.

<sup>41</sup> GNAPs' Initial Brief asserts that "according to the Act, traffic is only exchange access traffic when it is subject to a separate toll charge *levied by the originating customer's carrier*." GNAPs' Initial Brief at 10 (emphasis added). The Act contains no such limitation. Telephone toll service is "telephone service between stations in different exchanges for which there is made a separate charge . . ." Whether the originating customer's or the terminating customer's carrier would normally levy a charge is of no moment.

<sup>42</sup> *ISP Remand Order* at ¶ 37.

compensation for that exchange access service is irrelevant, as is the issue of whether the carrier providing exchange service to the customer on either end of the call actually assesses a toll charge on its customer. So long as the call travels between points located in two different exchange areas, the call is the type of call for which a charge in excess of the rate for basic exchange service would normally apply and it is *exchange access* that is provided on either end of that telephone toll service.<sup>43</sup>

**2. GNAPs Misinterprets and Manipulates FCC Rules 51.701 and 51.703 and the Act's Definitions to Incorrectly Conclude that Some Intrastate Exchange Access Traffic is 251(b)(5) Traffic**

GNAPs attempts to manipulate the FCC's Rules and the Act's definitions to arrive at the conclusion that some exchange access traffic is not exchange access traffic at all. In fact, according to GNAPs, all GNAPs has to do to change the jurisdictional nature of a call for intercarrier compensation purposes is figure out how to trick Verizon MA's switch into not charging toll on intrastate exchange access calls. Specifically, GNAPs claims that if Verizon MA's switch does not know to assess a charge on a particular interexchange call because GNAPs has manipulated NXX codes to trick Verizon MA's switch into not recognizing calls destined for points beyond the calling scope associated with the originating customer's basic exchange service, then that traffic must be 251(b)(5) traffic for which GNAPs is entitled to reciprocal compensation. GNAPs' argument is yet another attempt to game the regulatory process along the same lines as it previously attempted with its Internet traffic scheme.

Just a few weeks ago, the Illinois Commission found with respect to these precise arguments, that:

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<sup>43</sup> See also *ISP Remand Order* at n. 65 (exchange service in the context of § 251(g) is the provision of services in connection with interexchange communications).

Global is bootstrapping. Verizon presently places toll charges on the pertinent interexchange traffic and would continue to do so, absent Global's effort to make such toll charges inapplicable. Moreover, the final destination of FX-like traffic is, by its very nature, beyond the caller's LCA, with virtual NXX being simply a device to relieve the caller of toll charges. A virtual NXX or FX-like number assignment is a service provided by the customer's LEC and should not be subsidized by a competing LEC. If Global wants compensation for costs incurred in providing that service, it can charge the customer.<sup>44</sup>

The California Commission similarly rejected GNAPs' arguments:

We concur with Pacific's statement that the arbitrator erred in relying on Rule 51.703(b) without taking Rule 51.701 into account. To understand the full picture regarding reciprocal compensation requirements, Rule 703 cannot be viewed in a vacuum; it must be read in conjunction with Rule 51.701.<sup>45</sup>

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While the FCC has moved away from its initial use of the term "local" to differentiate the traffic that is subject reciprocal compensation, the use of the terms "local" and "interexchange" helps us to clarify which traffic is subject to reciprocal compensation.<sup>46</sup>

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The [Arbitrator's Report] erroneously relied on Rule 51.703(b) and failed to look at that rule in conjunction with Rule 51.701. Based on the FCC's interpretation of the Act's meaning in § 251(g), we find that interexchange traffic is not subject to the Act's reciprocal compensation requirements.<sup>47</sup>

The Ohio Commission also agreed with Verizon:

Thus, while the Commission is not prohibiting the use of virtual NXX, subject to the requirement for number pooling and portability, the Commission is affirming that the intercarrier compensation for such calls are based on the geographic end

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<sup>44</sup> *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 16 (Ill. PUC Oct. 1, 2002) ("*Illinois Verizon/GNAPs Arbitration Order*").

<sup>45</sup> *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 at 10 (Cal. PUC June 27, 2002) ("*California Verizon/GNAPs Final Decision*").

<sup>46</sup> *California Verizon/GNAPs Final Decision* at 12.

<sup>47</sup> *Id.*

points of the call as required by the Commission's local service guidelines and *as permitted by the FCC rules*.<sup>48</sup>

Verizon notes that contrary to GNAPs' assertions that every one of these decisions was decided well after the release of the *ISP Remand Order* and they reflect current interpretations of Federal law.<sup>49</sup>

**C. Contrary to GNAPs' Assertions, Intrastate Exchange Access Traffic Does Not Become 251(b)(5) Traffic Simply Because GNAPs Does Not Collect Toll From Its Customers.**

Historically, GNAPs has provided services to customers who generate little, if any, outward calling. Now, GNAPs asserts that it may at some point change its plan and offer what it describes as LATA-wide local calling. GNAPs is, of course, free to offer to its customers whatever retail calling areas 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."

GNAPs sets forth the same arguments in support of avoiding terminating access charges on interexchange access traffic originated by GNAPs customers destined to Verizon MA's end-users as it does in its attempt to avoid application of originating charges properly applicable on "virtual" FX traffic destined to GNAPs' customers. In short, GNAPs argues that when it offers LATA-wide local calling to its customers on a retail basis, it will not be assessing toll charges to its customers on any traffic destined for geographic points throughout a LATA. As a result,

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<sup>48</sup> *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 10 (Ohio P.S.C. Sept. 5, 2002) ("*Ohio Verizon/GNAPs Order*")

<sup>49</sup> GNAPs' Initial Brief at 23.

GNAPs argues that all calls originated by its customers are *intraexchange* calls subject to 251(b)(5) compensation. GNAPs combines this argument with its theory of how the FCC's mirroring rule should apply. The end result of its argument is that GNAPs wants Verizon MA to transport and terminate those calls over great distances at a rate no higher than that which Verizon MA pays to GNAPs for ISP-bound traffic. If successful, GNAPs' arguments would unilaterally eviscerate terminating access charges in Massachusetts. GNAPs' position is simply its latest attempt to open regulatory loopholes in Massachusetts that will, contrary to applicable law, enable it to arbitrage the existing access regime established by the Department.

As Verizon MA explained above, the FCC's mirroring rule is not relevant to this case. GNAPs has had ample opportunity to accept Verizon MA's offer made pursuant to paragraph 89 of the *ISP Remand Order* and it has not done so. Instead, GNAPs negotiated, reached agreement on, and requested Department approval of contract language that clearly and exhaustively describes how, and at which points on Verizon MA's network, GNAPs will compensate Verizon MA for GNAPs' originated reciprocal compensation traffic at Verizon MA's tariffed reciprocal compensation rates.<sup>50</sup> GNAPs' only now raises the mirroring rule in an attempt to justify its unsupportable assertion that it may unilaterally redefine access charges in Massachusetts.

GNAPs also again misreads relevant definitions in the Act to claim that GNAPs alone, by its decisions as to whether to assess toll charges on its customers' interexchange calls, may determine whether traffic originated by its customers is *intrastate exchange access* traffic subject to access charges or *intraexchange* traffic subject to 251(b)(5) compensation.<sup>51</sup>

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<sup>50</sup> See the mutually agreed contract language above quoted from the Interconnection and Pricing Attachments to the draft interconnection agreements each party submitted in this arbitration.

<sup>51</sup> According to GNAPs, once it declares that all of its customers' originating traffic is *intraexchange*, Verizon MA is prohibited from assessing terminating access charges on that traffic because such charges would impermissibly subsidize residential service. GNAPs' arguments are nonsense. When GNAPs delivers traffic to

(continued...)

GNAPs' arguments are pure fiction. Applicable law, including this Department's Orders, establishes the nature of traffic in Massachusetts for purposes of intercarrier compensation – its is not governed by GNAPs' unilateral declarations. As discussed above, *exchange access* pursuant to the Act is the offering of telephone exchange services for the purposes of *origination* or *termination of telephone toll services*. Telephone toll service is service between stations in different exchange areas for which a charge other than the basic exchange service charge normally applies. Whether GNAPs actually assesses a toll charge on its customers is irrelevant. If Verizon MA receives intrastate interexchange access traffic from another carrier, it properly assesses terminating access on that traffic pursuant to its intrastate access tariff, DTE Tariff No. 15. Such charges are not included in the rate customers pay for basic exchange service.

In the Plymouth/Quincy example above, a call originated by an end-user in Plymouth to an end-user in Quincy would be an interexchange call involving two different exchange services, a telephone toll service, and exchange access service to access each exchange. Typically, in addition to each user purchasing basic exchange services for his exchange, the originating Plymouth customer would pay a toll charge for the telephone toll service to Quincy. The LEC originating and the LEC terminating the call would each be entitled to originating access and terminating access respectively, with the carrier collecting the charge for the telephone toll service (which could be a third party, such as IXCs) responsible for compensating the LEC(s) for the applicable access charges.<sup>52</sup>

If, however, the terminating Quincy customer had purchased an “800” number service, for example, or an FX service to the Plymouth exchange, the Quincy customer would

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Verizon MA that originates in one exchange for termination to an end-user in another exchange, GNAPs is delivering exchange access traffic to Verizon MA that is properly subject to access charges.

<sup>52</sup> Haynes Direct at 25:6-16.

compensate the toll provider for providing the telephone toll service from Plymouth to Quincy. Regardless of which end-user compensates the toll provider for the toll service, the originating and terminating LEC(s) would be entitled to collect originating and terminating access respectively, for providing exchange access service to the Plymouth and Quincy exchanges.<sup>53</sup> With the obligation to compensate the access providers, the toll provider sets its toll rates accordingly. GNAPs, however, would have this Department declare that GNAPs is not required to participate in the access charge regime if it unilaterally decides not to collect toll from its customers for exchange access traffic its customers originate. GNAPs reasons that by not collecting toll charges from its customers it may effectively declare an entire LATA as a local exchange area for purposes of reciprocal compensation. Again GNAPs is wrong.

As the Department is well aware, the FCC looks to states to determine what geographic areas should be considered the “local exchange” for purposes of distinguishing between reciprocal compensation and access traffic pursuant to §§ 251(b)(5) and 251(g) of the Act.<sup>54</sup> That determination, however, must be “consistent with the state commission’s historical practice of defining local service areas for wireline LECs.” In Massachusetts, these areas are Verizon MA’s Department-approved local calling areas, which the Department has consistently used in determining what traffic is subject to toll charges (for retail-end-users) or access charges for IXCs. As Verizon MA noted in its post-hearing brief, numerous state commissions have

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<sup>53</sup> Haynes Direct at 25:18-23 - 26:1-13.

<sup>54</sup> 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 ¶549 (rel. July 17, 2002) (“*Virginia Arbitration Order*”) (rejecting AT&T’s proposal for LATA-wide reciprocal compensation).

recognized that it is the ILEC's calling area that provides the distinction between reciprocal compensation and access traffic, including every state commission that has issued a final decision on this issue between Verizon and GNAPs.<sup>55</sup>

Federal law allows the Department to change how it defines local calling areas, but the Department has not done so. Nor, consistent with its precedent, should the Department even consider such a dramatic alteration of its local calling areas in this two-party arbitration. Absent such an alteration, 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."<sup>56</sup> Contrary to GNAPs' misguided assertions, nothing in the *ISP Remand Order* impacts these legal distinctions as they apply to the *intrastate exchange access traffic* at issue in this case.<sup>57</sup>

**D. GNAPs' Assertions With Respect to Verizon's Costs are Irrelevant and Flawed**

Throughout this case and again in its Initial Brief, GNAPs devotes considerable effort to challenging Verizon MA's costs associated with providing with exchange access. GNAPs asserts that Verizon MA's transport costs are *de minimis* or zero and proposes a rate of zero in place of both the existing access charge regime and Verizon MA's unbundled network element transport rates. Notwithstanding the flaws in its analysis,<sup>58</sup> GNAPs hopes the Department will simply abandon its earlier conclusions reached in generic proceedings and decide here that

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<sup>55</sup> Verizon Post-Hearing Brief at 34-37.

<sup>56</sup> See *Local Competition Order* at ¶ 1033; see also *ISP Remand Order* at ¶ 37 (noting that Congress did not intend with the Act to disturb existing interstate and intrastate access regimes); 47 U.S.C. § 251(g) (preserving compensation applicable to exchange access traffic).

<sup>57</sup> The *ISP Remand Order* addressed a sub-set of information access traffic.

<sup>58</sup> Verizon notes that GNAPs appears to be using a Common Transport rate as the backbone of its analysis of transport costs between Verizon's network and GNAPs' serving wire center in Quincy, a route that would necessarily be provisioned using Dedicated Transport. See also D'Amico Direct Testimony at 14:6-13.

Verizon MA's network has no costs. GNAPs hopes that having reached that conclusion the Department will see no harm in allowing GNAPs to trick Verizon MA's network into providing free transport by rearranging NXX codes, or in the evisceration of intraLATA toll by permitting GNAPs to define away the access charge regime via expanded *wholesale* local calling areas.

As the Department is well aware, however, Verizon MA's costs are not zero and GNAPs' proposals would wreak havoc on the financial structure of the carrier of last resort in Massachusetts. Any consideration of proposals that would result in such financial impacts should occur in a generic proceeding, if at all. GNAPs' studies should be given no weight in this two-party arbitration for establishment of terms and conditions for an interconnection agreement.

**E. GNAPs' Virtual NXX Service Is Not Analogous to Verizon MA's 500 Number or IPRS Services**

GNAPs attempts to analogize its virtual "NXX" service to Verizon's 500 number and IPRS services. GNAPs then concludes that the Department should endorse GNAPs' virtual NXX "service" because "Global's ability to utilize virtual NXX numbers enables Global to compete with Verizon's IPRS/SNS service."<sup>59</sup> GNAPs is correct that its virtual NXX service is analogous to Verizon MA's services inasmuch as both Verizon MA's services *and* GNAPs' virtual NXX service rely almost entirely on Verizon MA's network to transport calls for Verizon MA's and GNAPs' customers. However, GNAPs conveniently overlooks a significant difference between its "service" and Verizon MA's services.

With Verizon MA's 500 number and IPRS services, Verizon MA is compensated for use of its network by the customer subscribing to 500 number or IPRS service. With GNAPs' virtual NXX service, GNAPs receives all of the compensation for use of Verizon MA's network.

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<sup>59</sup> GNAPs' Initial Brief at 42.

GNAPs is not competing with Verizon MA when it uses Verizon MA's network but then retains all of the compensation for that use for itself, it is simply shifting its cost of doing business to Verizon MA. As the FCC recognized with respect to ISP-bound traffic, business strategies that shift recovery of a carrier's costs away from its customers and to other carriers, create incentives that undermine the operation of competitive markets.<sup>60</sup> There is no public policy rationale that would support such a result.<sup>61</sup>

Moreover, if GNAPs seeks to provide toll-free inbound calling to its customers, other services, such as Verizon's FX service or 800 number services are widely available. These services allow GNAPs to offer its customers 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" service to its customers, GNAPs should provide compensation to Verizon for use of Verizon's network in providing what amounts to an inbound "toll-free" service. It should not simply attempt to use Verizon's network for free.

#### **F. GNAPs' Initial Brief Grossly Mischaracterizes Recent Arbitration Decisions in Other States**

GNAPs' Initial Brief grossly mischaracterizes many of the arbitration decisions upon which it relies and completely ignores the vast majority of decisions that have rejected GNAPs' positions. The cases GNAPs cites do not provide the support GNAPs seeks and in several instances the decisions GNAPs cites did not even address the applicable issue. In at least one case GNAPs cites a decision as emanating from the FCC when in fact it was only a decision by

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<sup>60</sup> *ISP Remand Order* at ¶¶ 69-71. Permitting carriers to shift the costs of serving customers with large volumes of inward traffic to other carriers encourages such carriers to target those customers with little regard to the costs of serving them. *Id.* at 69.

<sup>61</sup> *Id.* at ¶ 87.

the FCC's Wireline Competition Bureau standing in the stead of the Virginia State Corporation Commission.

### **1. The Virginia Arbitration Order**

On July 17, 2002, the FCC's Wireline Competition Bureau (the "Bureau") released its order in a consolidated arbitration among AT&T, Cox Communications, WorldCom and Verizon over which the Virginia State Corporation had refused to exercise jurisdiction (the "*Virginia Arbitration Order*"). Although the Bureau found for Verizon on many of the arbitration issues in that proceeding, the decision has no binding effect in Massachusetts.<sup>62</sup> It was not an FCC decision but rather was rendered by one of the FCC's Bureaus standing in the stead of the Virginia Commission and, as such, the decisions contained therein are in no way a mandate for this Department to follow. The *Virginia Arbitration Order* is the functional equivalent of a Virginia State Corporation Commission Order. It has no binding precedential effect in Massachusetts.

GNAPs claims, however, that the *Virginia Arbitration Order* supports its virtual FX numbering scheme. GNAPs argues that since "the FCC is charged with interpreting and implementing the 1996 Act, its Order is virtually a mandate for state commissions to following in making their arbitration determinations on the same issues resolved therein."<sup>63</sup> GNAPs is wrong. The Virginia Arbitration Order is not an FCC decision and it is not binding upon the Department. The Department should recognize the deficiencies of that Order, as did the South Carolina Commission. Specifically, the South Carolina Commission found:

The Bureau never addressed the basic question whether Virtual FX traffic is subject to reciprocal compensation under federal law. Instead, the Bureau simply

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<sup>62</sup> D'Amico Direct Testimony at 11:11-16 - 12:1-14.

<sup>63</sup> GNAPs' Initial Brief at 18.

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.<sup>64</sup>

The Department should find, as did the South Carolina Commission, that “it would be deeply inconsistent with regulatory policy and basic fairness to require Verizon to pay [CLECs], when Verizon continues to bear the same costs of originating the interexchange call, when Verizon is deprived of the toll charges that would ordinarily apply and when [CLECs are] already receiving compensation from [their] customers.”<sup>65</sup> As in South Carolina, the Department has before it evidence presented by Verizon MA witness Haynes that Verizon MA and GNAPs can accurately estimate the volume of FX and virtual FX traffic exchanged between them.<sup>66</sup> GNAPs’ position is simply not justified by the record or applicable federal law.

## 2. VGRIP Decisions

Amazingly, GNAPs brief relies upon the *Virginia Arbitration Order* and other state decision with respect to Verizon MA’s VGRIP proposal for support of GNAPs’ position on Issues 1 and 2 in this arbitration. As Verizon MA has repeatedly made clear throughout this

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<sup>64</sup> *Petition of US LEC of South Carolina Inc. for Arbitration of Interconnection Agreement with Verizon South, Inc.*, Order on Arbitration, Docket No. 2002-181-C-Order No. 2002-619 at 25-26 (S.C. PSC Aug. 30, 2002) (“*South Carolina Verizon/US LEC Arbitration Order*”) (italicized emphasis in original) (bold and italicized emphasis added) (citations omitted).

<sup>65</sup> *South Carolina Verizon/US LEC Arbitration Order* at 27. The South Carolina Commission noted that US LEC’s virtual FX proposal, which is virtually identical to GNAPs’ proposal in this case, “amounts to an extraordinarily clear example of attempted regulatory arbitrage.” *Id.*

<sup>66</sup> See Haynes Direct at 40:9-23 - 42:1-3 (describing methods used to properly account for Verizon originated traffic to CLEC virtual FX numbers and CLEC originated traffic to Verizon FX numbers).

proceeding, it is not proposing VGRIP here.<sup>67</sup> In its draft of the Agreement, Verizon MA recognized that the Department has not adopted Verizon's GRIP proposals and modified the template agreement to eliminate the GRIP terms. The draft Agreement now provides that GNAPs-IPs shall be established in accordance with the Department's orders in D.T.E. 99-42/43 and D.T.E. 99-52.<sup>68</sup> Thus, the portion of Issue 2 as stated in GNAPs' Petition pertaining to whether Verizon MA will transport its 251(b)(5) to the POI is not in dispute. That portion of Issue 2 is also the issue Verizon MA's VGRIPs proposal originally addressed.<sup>69</sup>

The dispute in this case is whether GNAPs should be financially responsible for transporting its originating traffic to Verizon MA's IPs. This dispute concerns traffic flowing in the opposite direction than the traffic at issue in VGRIPs and it concerns GNAPs' responsibility for GNAPs' originated traffic, not Verizon MA's. Thus, not only do arbitration decisions in other states with respect to VGRIP have no precedential value in Massachusetts, they do not even address the issue presented in this case. Decisions with respect to VGRIPs concern CLEC responsibility for transport costs associated with ILEC originated traffic, not CLEC responsibility for transport costs associated with CLEC originated traffic.

GNAPs' Initial Brief, however, uses carefully measured words that speak in terms of financial responsibility *between* Verizon MA and GNAPs but that do not distinguish between the direction of traffic flows or the originating carrier. GNAPs likely does so in an attempt to draw parallels between VGRIP and the issues of financial responsibility in this case. The Department

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<sup>67</sup> D'Amico Direct at 12:3-4.

<sup>68</sup> See Verizon's Redlined Agreement, Interconnection Attachment § 7.1.1.

<sup>69</sup> As the Department is aware from its earlier consideration of Verizon's GRIPs proposal, GRIPs concerned the issue of whether CLECs should share in the financial responsibility for the costs of transporting Verizon originated traffic from the originating local calling area to the CLEC's POI. In short, VGRIP concerns traffic flowing in the opposite direction of the traffic at issue in this case.

should not be misled by GNAPs' deceptive tactics. VGRIP concerned Verizon MA originated traffic. The issue here concerns GNAPs' originated traffic.

The Department has ruled that carriers are financially responsible for transporting their traffic all the way to the end-user.<sup>70</sup> If GNAPs does not transport its 251(b)(5) reciprocal compensation traffic to the point on Verizon MA's network at which Verizon MA's reciprocal compensation rates begin to apply, it must compensate Verizon MA for the additional transport Verizon MA uses to deliver GNAPs' traffic to those points.

### **3. Verizon/GNAPs Pennsylvania Recommended Decision**

Only a few days ago the arbitrator in the arbitration between Verizon and GNAPs in Pennsylvania issued his recommended decision to the Pennsylvania Commission on issues nearly identical to those GNAPs presents here. Notably, with respect to Issue 4 which was identical to the issue GNAPs presents here, the arbitrator recommended:

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

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<sup>70</sup> 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*, D.T.E. 99-42/43-A at n.6, Supplemental order issued March 15, 2001, 2001 Mass PUC LEXIS 12 ("*MediaOne Supplemental Order*"); see also *id.* at \*23-26. (adopting UNE IOF rates for interoffice transport).

charges on Verizon end-user and into payment of reciprocal compensation to GNAPs.<sup>71</sup>

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

For all of the foregoing reasons, the Administrative Law Judge recommends that the Commission adopt Verizon's position on this issue.<sup>72</sup>

In addition to recognizing GNAPs' number assignment scheme, the Pennsylvania arbitrator also found for Verizon on Issue 1 clarifying that incumbent LECs are only required to provide interconnection at technically feasible points *within their networks*.<sup>73</sup> The arbitrator did not find for Verizon on its VGRIP proposal, but, as discussed above, that issue is not an issue here.<sup>74</sup>

Wrongly relying heavily on the Florida decision discussed below, the Pennsylvania arbitrator further found that in Pennsylvania, GNAPs' retail local calling areas would govern

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<sup>71</sup> *Petition of Global Naps South, Inc. for Arbitration pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Recommended Decision, Docket No. A-310771F7000 at 13 (PA PUC Oct. 10 2002) ("*Pennsylvania Verizon/GNAPs Recommended Decision*").

<sup>72</sup> *Pennsylvania Verizon/GNAPs Recommended Decision* at 17.

<sup>73</sup> *Id.* at 4.

<sup>74</sup> The Interconnection Attachment §§ 7.1.1 and 7.1.1.2 were much different than the corresponding sections Verizon proposes here. See *Pennsylvania Verizon/GNAPs Recommended Decision* at nn. 6-7 (describing Verizon proposed Pennsylvania Interconnection Attachment).

whether GNAPs should compensate Verizon at terminating access rates or reciprocal compensation rates for calls originated by GNAPs' customers. In issuing his recommendation, the arbitrator likely did not recognize that the Florida decision was the result of a very long generic proceeding in which all Florida carriers were permitted to participate. He also likely did not realize that his recommendation, if implemented, would likely result in GNAPs paying only reciprocal compensation rates to a carrier of last resort whereas that same carrier of last resort would have to compensate GNAPs at terminating access rates on the identical call in the opposite direction. Such a result would be particularly absurd considering that access rates have historically been to assist carriers of last resort in constructing and maintaining the public switched telephone network. The arbitrator's recommendation results in compensation flowing away from the carrier of last resort and to the new entrant who is likely to have lower costs than the incumbent. The Pennsylvania recommendation also cannot be squared with the Act and the FCC's requirement's that intercarrier compensation be symmetrical.

Verizon anticipates that after considering these points, the Pennsylvania Commission will not adopt the arbitrator's recommendation on Issue 3, but will instead consider such issues (if at all) in the context of a generic proceeding as did the New York and Florida Commissions.<sup>75</sup> With respect to Issues 5 through 12, the Pennsylvania arbitrator found for Verizon on all but one of the issues.

#### **4. Florida Generic Proceeding and Other Cited Decisions**

On page 23 of its Initial Brief, GNAPs criticizes Verizon for citing a case in North Carolina in which Verizon did not participate and another case in South Carolina in which

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<sup>75</sup> Due to the timing of the Florida decision, the arbitrator in Pennsylvania decided Issue 3 without the benefit of Verizon's comments with respect to that decision.

GNAPs did not participate.<sup>76</sup> Immediately afterwards, GNAPs cites what it describes as “arbitrations brought by Global in New York, Illinois, Rhode Island, Connecticut and Florida.”<sup>77</sup> Notwithstanding its claim that it “brought” these “arbitrations”, the New York cite GNAPs provides was an arbitration between AT&T and Verizon. The Illinois and Connecticut cites are to arbitrations between GNAPs and carriers other than Verizon.

GNAPs also relies heavily on a recent decision in Florida.<sup>78</sup> That decision, however, was not the result of an arbitration GNAPs brought, but of a massive generic proceeding instituted on the Florida Commission’s own initiative to generically review issues with respect to intercarrier compensation. GNAPs’ cite to the Florida decision illustrates one of Verizon’s most critical points in this arbitration -- that is, such important and complex issues such as rates and calling areas for purposes of establishing intercarrier compensation obligations should be examined in generic proceedings in which all potentially affected carriers, including competitive toll providers, may participate. GNAPs’ reliance on the Florida decision only supports Verizon’s position in this regard.

The only decision GNAPs cites that was actually an arbitration that GNAPs brought with Verizon is the arbitrator’s decision in Rhode Island, a decision that found for Verizon on eleven of twelve issues and which the Rhode Island Commission is currently reviewing.<sup>79</sup> The one issue upon which the arbitrator in Rhode Island did not find in Verizon’s favor was Verizon’s VGRIP proposal, a proposal not at issue in this case.

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<sup>76</sup> GNAPs’ Initial Brief at 23.

<sup>77</sup> *Id* (footnotes omitted).

<sup>78</sup> GNAPs’ Initial Brief at 29.

<sup>79</sup> *In Re: Arbitration of the Interconnection Agreement Between Global Naps and Verizon-Rhode Island, Arbitration Decision*, Docket No. 3437 (R.I. PUC Oct. 16, 2002) (“*Rhode Island Verizon/GNAPs Arbitration Decision*”).

#### IV. ARGUMENT: ISSUES 5-12

With respect to Issues 5 through 12, GNAPs' Initial Brief describes the issues as "brief only" issues.<sup>80</sup> Presumably, it refers to the issues as such because in large part, it provided no evidence in support of its positions. The Department must, however, find a reasonable basis in the record before adopting any of GNAPs' positions. None exists because GNAPs has provided no such record. In contrast, Verizon MA submitted testimony on each of Issues 5-12 that provides the Department with more than an adequate basis to adopt Verizon MA's position on each such issue.

##### A. **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.**

GNAPs still raises the issue of whether additional change-in-law language should be included in the Agreement to specifically address changes to the *ISP Remand Order*.<sup>81</sup> However, GNAPs has offered no contract provision for consideration by the Department or Verizon. The only directly applicable contract language GNAPs proposes is in Glossary § 2.75, 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 § 2.75 is unnecessary and inappropriate.

GNAPs claims remarkably that a change of law provision applicable to the *ISP Remand Order* should be included in the Agreement because "the Interconnection Agreement does not deal with compensation for ISP-bound traffic."<sup>82</sup> Actually, the Agreement does address

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<sup>80</sup> To the extent the Parties reached agreement to treat Issues 5-12 any differently than Issues 1-4, it was only with respect to waiving live cross-examination of direct testimony submitted on these issues.

<sup>81</sup> See GNAPs' Initial Brief at 53-55; GNAPs Petition at 24-26.

<sup>82</sup> GNAPs' Initial Brief at 54.

compensation for ISP-bound traffic. Section 8.1 of the Interconnection Attachment provides that compensation for Internet Traffic “shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations.”<sup>83</sup> The incorporation of applicable FCC orders and regulations, coupled with the general change of law provisions in § 4, more than adequately addresses GNAPs’ concerns.

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

GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection. However, practical considerations require that the parties come to an understanding about the operational and engineering aspects of the two-way trunks between them. As recently noted in an arbitration between GNAPs and Verizon in Ohio, “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.”<sup>84</sup>

Moreover, as Verizon MA’s witness Mr. D’Amico explained, only GNAPs can predict expected call volumes with respect to its customers.<sup>85</sup> Traffic flowing to and from GNAPs’ customers will be a function of the type and volume of customers GNAPs targets and the success of its marketing plan.<sup>86</sup> Verizon MA cannot predict future volumes of traffic to GNAPs’ customers because it cannot predict whom those customers will be or where they will be

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<sup>83</sup> Verizon’s Redlined Agreement, Interconnection Attachment § 8.1.

<sup>84</sup> *Ohio GNAPs/Verizon Arbitration Panel Report* at 13 (footnote omitted) (upheld by *Ohio GNAPs/Verizon Arbitration Award*).

<sup>85</sup> D’Amico Direct Testimony at 30:12-20.

<sup>86</sup> *Id.*

located.<sup>87</sup> Once GNAPs provides information to Verizon with respect to expected traffic volumes, the Parties will need to cooperate to establish the appropriate trunk groups and reach agreement on site specific operation details.<sup>88</sup>

Verizon MA's proposed terms relating to trunking reasonably and appropriately reflect the need for carriers to address operational and technical issues. GNAPs has provided no evidence to support its contract language on this issue. Accordingly, the Department should adopt Verizon MA's contract language with respect to two-way trunking.

**C. Issue 7: Verizon MA's References To Tariffs Establishes 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.**

Contrary to GNAPs' assertions in its Initial Brief,<sup>89</sup> should a conflict arise between the *terms and conditions* of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement govern. This is reasonable and ensures that each party receives the benefit of its bargain.

In addition, Verizon MA's proposal ensures that *prices* are set and updated in a manner that complies with Department rulings and are applied in a non-discriminatory manner to all CLECs. To cover situations in which the price for a Verizon MA product or service is not contained in an appropriate tariff, Verizon MA's proposed agreement contains a price schedule that would apply.<sup>90</sup> GNAPs complains that its right to participate in the regulatory review does

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<sup>87</sup> *Id.*

<sup>88</sup> D'Amico Direct at 22:14-23 – 23:1-3.

<sup>89</sup> GNAPs' Initial Brief at 59-60.

<sup>90</sup> Verizon notes that the CLEC Handbook about which GNAPs complains is provided by Verizon to facilitate the CLEC relationship. The Handbook provides resources for the CLEC in obtaining and maintaining interconnection with Verizon and has been developed overtime to reduce confusion and errors in the ordering process. Moreover, because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs has no basis for concern that it may contradict the terms of the interconnection agreement.

not give it the right to “veto” Verizon MA’s tariffs.<sup>91</sup> But a right to veto Verizon MA’s tariffs or interconnection agreement provisions is not a right GNAPs enjoys. Verizon MA’s language provides for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and efficient, and more importantly, is overseen by this Department.

Consistent with the authority cited previously by Verizon MA, the Department should reject GNAPs’ proposed deletions of tariff references in the interconnection agreement.

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

GNAPs and Verizon MA 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. Verizon MA seeks adequate protection of its network, personnel, and other assets in the event GNAPs has insufficient financial resources.<sup>92</sup> GNAPs has presented no evidence that Verizon MA’s proposed insurance limits are burdensome.

GNAPs’ claim that Verizon MA’s ability to self-insure is discriminatory is clearly without merit. The purpose of insurance is to ensure that adequate compensation is available to an injured party. The size and scope of Verizon MA’s operations in Massachusetts by itself ensures that adequate compensation will be available should Verizon MA be found liable for harm. Requiring Verizon MA to obtain additional insurance would serve no purpose. GNAPs’ position is nothing more than an attempt to impose additional, unnecessary administrative burdens on Verizon MA.

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<sup>91</sup> GNAPs’ Initial Brief at 60.

<sup>92</sup> In its Initial Brief, GNAPs inappropriately states that PacBell and Verizon are “similarly situated” in support of its argument. As PacBell does not do business in the state of Massachusetts, Verizon MA and PacBell are clearly not similarly situated, and therefore it is irrelevant whether PacBell accepted GNAPs’ sparse insurance coverage. *See* GNAPs’ Initial Brief at 62.

In comparison, the size and scope of GNAPs' operations provides no comparable assurance to Verizon MA. Since the damage that could be inflicted upon Verizon MA arising under the Agreement could be substantial, the insurance requirements that Verizon MA proposes are reasonable and consistent with what Verizon MA requires of itself and other carriers, as set forth in its approved tariffs.

**E. Issue 9: Verizon MA'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.**

GNAPs' proposal completely eliminates either party's ability to evaluate the accuracy of the other's bills. GNAPs' opposition to Verizon MA's audit provisions is once again based on a misunderstanding – or misrepresentation to this Department – of Verizon MA's proposal.<sup>93</sup> Contrary to GNAPs' claim,<sup>94</sup> GNAPs would not be providing records to Verizon MA. The audit provisions clearly state that the “audit shall be performed by independent certified public accountants” selected and paid by the Auditing Party.<sup>95</sup> Moreover, neither Verizon MA nor the auditing accountant would have access to all of GNAPs' records, as it erroneously contends. Rather, only those records “necessary to assess the accuracy of the Audited Party's bills”<sup>96</sup> are subject to audit. The audit provisions are reasonable and standard commercial terms. GNAPs provides no principled basis for seeking to shield its billing records from scrutiny by an independent third-party.

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<sup>93</sup> The New York Commission ordered the GNAPs to adopt Verizon's proposed audit provisions observing that GNAPs “misconstrued the breadth of the audit provisions.” *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, N.Y. PSC Case No. 02-C-0006 (rel. May 22, 2002) at 19 (“*New York Verizon/GNAPs Arbitration Order*”).

<sup>94</sup> GNAPs' Initial Brief at 65.

<sup>95</sup> Verizon Redlined Agreement, Interconnection Attachment § 7.2.

<sup>96</sup> Verizon Redlined Agreement, Interconnection Attachment § 7.3.

For these reasons and those stated previously by Verizon MA in this matter, the Department should adopt Verizon's language with respect to audit provisions.

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

Typical of GNAPs' constantly changing position on issues during the arbitration, GNAPs asserts in its Initial Brief that it should not have to provide collocation to Verizon MA because it is not required to under Federal law.<sup>97</sup> However, whether the law requires GNAPs to provide collocation to Verizon is not the issue. GNAPs agreed to this during negotiations and the draft Agreement contains undisputed language in the Collocation Attachment giving Verizon MA that right. Indeed, GNAPs has expressly requested that the Department approve those provisions of the draft Agreement that are noted as not being in dispute, as is the case with the Collocation Attachment.<sup>98</sup> GNAPs effort now to revise § 2.1.5 so that it has the sole discretion regarding Verizon MA collocation should be rejected by the Department. GNAPs reached agreement with Verizon MA on this issue and should not be allowed at the last minute to renege on that agreement. GNAPs' claim that its agreement somehow discriminates between Verizon MA and its other customers is clearly without merit.

The Department should find, as have many other commissions, that Verizon's position on this issue should be adopted.

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

Although Verizon MA has responded fully to every issue set forth by GNAPs in its Petition, GNAPs now claims with respect to this issue that "Verizon framed the issue in such an

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<sup>97</sup> GNAPs' Initial Brief at 67.

<sup>98</sup> GNAPs' Petition at 6.

argumentative and vague manner that Global cannot be expected to reply.”<sup>99</sup> GNAPs is simply wrong; this issue is not argumentative or vague.

As Verizon MA explained in its post-hearing brief, GNAPs unreasonably proposes to delay implementation of a change of law until *all* appeals are exhausted, even if the change of law is not subject to a stay.<sup>100</sup> This is unfounded and reflects GNAPs’ true motive: to base Verizon MA’s obligations on what GNAPs *wants* governing law to be, not what it actually is. If a change in law is effective, the parties’ Agreement should reflect the law as it exists. It is unreasonable for either party to defer implementation of valid and legally effective requirements because there may be further proceedings. If the law changes, either party should have the right to cease providing a service or benefit if it is no longer required to so under applicable law.<sup>101</sup> Accordingly, the Department should adopt Verizon MA’s proposed General Terms and Conditions § 4.7.

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

Again, GNAPs provides this Department with no argument in support of its contract language on this issue.<sup>102</sup> However, Verizon MA’s proposed General Terms and Conditions § 4.2 is necessary to: (1) memorialize Verizon MA’s right to upgrade and maintain its network; (2) ensure that GNAPs does not force Verizon MA to unbundle its network absent any legal

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<sup>99</sup> GNAPs’ Initial Brief at 67.

<sup>100</sup> 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. . . .”

<sup>101</sup> See *New York GNAPs/Verizon Arbitration Order* at 21-22; *Ohio GNAPs/Verizon Arbitration Panel Report* at 25 (upheld by *Ohio GNAPs/Verizon Arbitration Award*).

<sup>102</sup> GNAPs’ Initial Brief at 67.

requirement to do so; and (3) make GNAPs financially responsible for interconnecting with Verizon MA's network. Nothing in the Act requires Verizon MA's network to remain static simply because other carriers have chosen to interconnect with Verizon MA. In fact, denying Verizon MA 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."<sup>103</sup> The Department should reject, as other commissions have, GNAPs' changes to Verizon's § 42 of the General Terms and Conditions section.<sup>104</sup>

## **V. CONCLUSION**

For the reasons stated herein and as explained by Verizon MA throughout this proceeding, Verizon MA's contract proposals are reasonable and are supported by law, the record of the case, and prudent policy. GNAPs' proposals are not. Accordingly, the Department

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<sup>103</sup> Preamble to the Telecommunications Act of 1996. 47 U.S.C. § 153 et. seq.

<sup>104</sup> Ohio GNAPs/Verizon Arbitration Report at 11; New York GNAPs/Verizon Arbitration Order at 22; In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc., Reconsideration Order, Docket No. 2002-66-C Order No. 2002-482 at 10, South Carolina Public Service Commission (rel. June 21, 2002).

should adopt Verizon MA's proposed contract language as noted in the Summary of Recommendations (Part II, *supra*) to Verizon's Post-Hearing Brief.

Respectfully submitted,

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DATED: October 28, 2002

**Exhibit A**

**[attach May 14, 2001 letter to Global Naps]**

## Exhibit B

### Contract Language Reflecting Agreement by GNAPs to Exchange 251(b)(5) Traffic at the Rates Applicable to 251(b)(5) Traffic as Stated in Verizon MA D.T.E. No. 17

#### Interconnection Attachment<sup>105</sup>:

- 7.1.4 Each Party is responsible for delivering its Reciprocal Compensation Traffic that is to be terminated by the other Party to the other Party's relevant IP.
- 7.1.2.1 For Reciprocal Compensation Traffic delivered by GNAPs to the Verizon Tandem subtended by the terminating End Office serving the Verizon Customer, the Verizon-IP will be the Verizon Tandem Switch
- 7.1.2.2 For Reciprocal Compensation Traffic delivered by GNAPs to the Verizon terminating End Office serving the Verizon Customer, the Verizon-IP will be the Verizon End Office.
- 7.2 Reciprocal Compensation.

The Parties shall compensate each other for the transport and termination of Reciprocal Compensation Traffic delivered to the terminating Party in accordance with section 251(b)(5) of the Act *at the rates stated in the Pricing Attachment*. These rates are to be applied at the GNAPs-IP for traffic delivered by Verizon for termination by GNAPs, and at the Verizon IP for traffic delivered by GNAPs for termination by Verizon.

fn. 1 All rates and charges specified herein are pertaining to the Interconnection Attachment.

#### Pricing Attachment:

### 3. **GNAPs' Prices**

Notwithstanding any other provision of this Agreement, the Charges that GNAPs bills Verizon for GNAPs' Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that GNAPs' cost to provide such GNAPs Services to Verizon exceeds the Charges for Verizon's comparable Services and GNAPs has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

#### Pricing Attachment, Appendix A<sup>106</sup>:

### APPENDIX A TO THE PRICING ATTACHMENT

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<sup>105</sup> These sections appear in plain unmarked text in the Interconnection Attachment to both the draft interconnection agreement submitted by GNAPs with GNAPs' Petition and to Verizon's Redlined Agreement submitted with Verizon's Response to GNAPs' petition. Verizon has added emphasis in italics for demonstrative purposes only.

<sup>106</sup> These sections appear in plain unmarked text in the Pricing Attachment to both the draft interconnection agreement submitted by GNAPs with GNAPs' Petition and to Verizon's Redlined Agreement submitted with Verizon's Response to GNAPs' petition.

## VERIZON MASSACHUSETTS AND GNAPS

### I. INTERCONNECTION<sup>1</sup>

#### A. Call Transport & Termination

	Verizon Service	Non-recurring	Recurring
1.	Rate for Reciprocal Compensation Traffic delivered to a Verizon-IP or to a GNAPS IP <sup>16</sup>	Rates for Reciprocal Compensation are as set forth in Verizon's DTE MA No. 17 Tariff, as amended from time to time	
2.	Access charges for termination of intrastate and interstate Toll Traffic	Per Verizon FCC No. 11 interstate and DTE No. 15 intrastate access tariffs (charged in conjunction with Reciprocal Compensation Traffic, using Traffic Factor 1 and Traffic Factor 2, as appropriate) as amended from time to time	
3.	Entrance facilities, and transport, as appropriate, for Interconnection at Verizon End Office, Tandem Office, Serving Wire Center, or other Point of Interconnection	Per Verizon FCC No. 11 interstate and DTE No. 15 intrastate access tariffs for Feature Group D service as amended from time to time.	

fn. 16 See the last page regarding measurement and calculation of Reciprocal Compensation Traffic termination charges.

### Pricing Attachment (last page)<sup>107</sup>

#### RECIPROCAL COMPENSATION TRAFFIC TERMINATION RATES

##### A. Charges by Verizon

(a) Traffic delivered to Verizon Tandem:  
Tandem Rate.

(b) Traffic delivered directly to terminating Verizon End Office: End Office Rate.

##### B. Charges by GNAPS

###### 1. Single-tiered interconnection structure:

GNAPS' rates for the termination of Verizon's Reciprocal Compensation Traffic under the single-tiered interconnection structure shall be recalculated once each year on each anniversary of the Effective Date (the "Rate Determination Date"). The methodology for recalculating the rates is as follows:

*Tandem Minutes* = Total minutes of use of Reciprocal Compensation Traffic delivered by GNAPS to the Verizon Tandem for most recent billed quarter.

*End Office Minutes* = Total minutes of use Reciprocal Compensation Traffic delivered by GNAPS directly to the terminating Verizon End Office for most recent billed quarter.

*Total Minutes* = Total minutes of use of Reciprocal Compensation Traffic delivered by GNAPS to Verizon for most recent billed quarter.

GNAPS Charge at the GNAPS-IP =

$$\frac{(\textit{Tandem Minutes} \times \textit{Tandem Rate}) + (\textit{End Office Minutes} \times \textit{End Office Rate})}{\textit{Total Minutes}}$$

For the first year after the Effective Date, the GNAPS charge shall be calculated based on the traffic data of the quarter immediately preceding such Effective Date, or if no such traffic exists, on the proportion of Reciprocal Compensation Traffic termination trunks to Verizon End Offices and to Verizon Tandems.

<sup>107</sup> These sections appear in plain unmarked text in the last page of the pricing attachment to both the draft interconnection agreement submitted by GNAPS with GNAPS' Petition and to Verizon's Redlined Agreement submitted with Verizon's Response to GNAPS' petition. The formulas listed on this page reflect agreement by the Parties' as to the calculation methods applicable to Reciprocal Compensation Traffic.

2. Multiple-tiered interconnection structure (if offered by GNAPS to any carrier)
  - (a) Reciprocal Compensation Traffic delivered to GNAPS Tandem: Tandem Rate
  - (b) Reciprocal Compensation Traffic delivered to terminating GNAPS End Office/node: End Office Rate
- C. Miscellaneous Notes
  1. The GNAPS termination rate under the single-tiered interconnection structure set forth above is intended to be a Reciprocal Compensation Traffic termination rate for Interconnection to the GNAPS-IP within each LATA that is reciprocal and equal to the actual rates that will be charged by Verizon to GNAPS under the two-tiered Reciprocal Compensation Traffic termination rate structure described above that will apply after the first anniversary of the Effective Date. The single GNAPS termination rate is also intended to provide financial incentives to GNAPS to deliver traffic directly to Verizon's terminating End Offices once GNAPS' traffic volumes reach an appropriate threshold.

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 28th 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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