

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Global NAPs Illinois, Inc.	:	
	:	
Petition for Arbitration pursuant to Section	:	
252(b)of the Telecommunications Act of	:	02-0253
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 ON REHEARING

November 7, 2002

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By the Commission:

I. PROCEDURAL BACKGROUND

This proceeding was initiated by a Petition for Arbitration ("Petition") filed with this Commission on April 10, 2002 by Global NAPs Illinois, Inc. ("Global"), pursuant to subsection 252(b) of the federal Telecommunications Act of 1996 ("Federal Act")¹ and 83 Ill.Adm.Code 761, to resolve certain disputed issues with Verizon North, Inc., f/k/a GTE North Incorporated, and Verizon South, f/k/a/ GTE South Incorporated (together: "Verizon"). Verizon is an incumbent local exchange carrier ("ILEC") in certain geographic areas of Illinois. Global is a competitive local exchange carrier ("CLEC") seeking to establish an interconnection agreement with Verizon in order to provide telecommunications services in areas in which Verizon also provides serves.

During negotiations preceding the filing of the Petition, Verizon proposed that the parties execute a Template Agreement that Verizon has presented to other carriers requesting interconnection in Illinois and in other states. In turn, Global proposed certain revisions to the Template Agreement, now set forth in "Exhibit B" attached to the Petition ("Global Revision"). In this proceeding, Global seeks an order from this Commission that, first, resolves disputed issues "on a policy level," and second, compels Verizon to enter into an interconnection agreement that contains contract language "embodying" the aforementioned policy decisions, as well as the revisions appearing in the Global Revision and the undisputed language in the Template Agreement. Petition at 6.

Verizon filed its Response to Global's Petition on May 14, 2002 ("Response"). Verizon's proposed interconnection agreement, without Global's proposed revisions, is attached to the Response as "Exhibit B." Verizon also identified additional disputed

¹ 47 U.S.C. § 252(b).

issues for resolution, as it is permitted to do under subsection 252(b)(4) of the Federal Act².

An Administrative Law Judge (“ALJ”) conducted pre-trial hearings on April 19, 2002 and an evidentiary hearing on June 11, 2002, in Chicago, Illinois. The parties agreed that certain issues would be addressed through written testimony, cross-examination and briefings, while other issues would be addressed only through briefings. Global presented testimony by Scott C. Lundquist (Global Exh’s. 1 and 2) and John E. Rooney (Global Exh. 3). Verizon presented testimony by Pete D’Amico (Verizon Exh. 1), Karen Fleming (Verizon Exh. 2), Terry Haynes (Verizon Exh’s. 3 and 7), William Munsell (Verizon Exh. 4), Jonathan B. Smith (Verizon Exh. 5) and Kevin C. Collins (Verizon Exh. 6). At the conclusion of that hearing, the evidentiary record was then marked “heard and taken.”

Initial and reply briefs were filed by Global and Verizon. An ALJ’s Proposed Arbitration Decision was served on all parties. A Brief on exceptions (“BOE”) was filed by Verizon and a Reply Brief on Exceptions (“RBOE”) was filed by Global.

Verizon filed an Application for Rehearing on October 30, 2002 and an Amended Application for Rehearing on November 1, 2002. On November 7, 2002, the Commission granted rehearing for the sole and limited purpose of revising its discussion of Issue 4, below.

II. JURISDICTION

Subsection 252 of the Federal Act provides that within a specified time period “after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.” Both Global’s Petition and Verizon’s Response assert that there are “open issues” between the parties (e.g., Petition at 7-8; Response at 17). There is no dispute that the Petition was timely filed. Consequently, the Commission has jurisdiction to arbitrate the issues presented.

Section 252 of the Federal Act proscribes certain procedures, standards and outcomes for arbitrations conducted under that section. In addition, the Commission has adopted rules and procedures for such arbitrations in 83 Ill.Adm.Code 761. The foregoing federal and state provisions apply to this proceeding.

III. ISSUES FOR RESOLUTION.

A. Issues Properly Presented

Global states that the Petition “does not necessarily identify” every provision in Verizon’s Template Agreement that “affects” the “key” issues Global presents for resolution in this arbitration. Petition at 6. Thus, as noted above, Global recommends

² 47 U.S.C. § 252(b)(4).

that the Commission address its “key” issues “on a policy level” and order the parties to produce and agree to contract language consistent with such policies.

Global’s recommendation is not entirely clear. We do not, for example, see the distinction between resolving issues at a “policy level” and resolving them in a manner that is consistent with applicable laws and regulations. More importantly, however, Global’s proposal (insofar as we understand it) is not authorized by the Federal Act. Subsection 252(b)(1) directs the Commission to resolve “open” or “unresolved” issues, not “key” issues. Subsection 252(b)(2)(ii) requires the petitioning party to document the parties’ positions with respect to *those* issues. Globalcom has provided such documentation in the Petition for 11 specific issues. It is *those* issues that we are now authorized to decide (along with Verizon’s enumerated issues). We will do so by applying the standards set forth in subsection 252(c), not by acting at a “policy level.” If we conclude that a party’s proposed contract language adequately embodies those standards, we will require its use. Otherwise, we will expect the parties to produce appropriate contract language. To the extent that Global’s procedural recommendation is inconsistent with the foregoing, it is rejected.

B. Open Issues Presented by Global

1. Should either party be required to install more than one point of interconnection (“POI”) per LATA?

Global correctly states that “[u]nder federal law, a CLEC may elect to interconnect with an ILEC at any single, technically feasible point on the ILEC’s network.” Petition at 11, citing subsection 252(c)(2)(B) of the Federal Act. Verizon does not disagree with this principle, although it objects to Global’s proposed allocation of responsibility for associated transportation costs (Issue 2, below). Response at 9. Accordingly, the Commission will require that the parties’ interconnection agreement include Global’s proposed language as it appears in sections 2.1.1 and 2.1.2 of the “Interconnection Attachment” to the Global Revision *except for* the final sentence of section 2.1.1, which will be addressed in our discussion of Issue 2, below).

On exceptions, Verizon charges that Global’s proposed language is not supported by evidence. Verizon BOE at 2-3. This is a puzzling argument, since the language simply reflects the resolution of a *legal* issue (about which the parties concur) concerning the meaning of a subsection in the Federal Act. If Verizon’s point is that Global’s language does not correctly reflect the Commission’s view regarding what the statute allows, Verizon is wrong.

The parties disagree with respect to the appropriate definition of a POI. Verizon’s definition in section 2.66 of the Glossary to the Template Agreement should be used. Global’s proposal to use the definition in 47 CFR 51.319(b) is misplaced and unnecessary to Global’s objective of establishing only a single POI per LATA.

2. Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?

a. Parties' Positions and Proposals

Global proposes that each party assume financial responsibility for transporting traffic on their respective networks to and from a single Global-Verizon POI in a LATA. Petition at 13. Under this proposal, Global would have no obligation to pay Verizon for transporting a call as it moved along Verizon's network between the local exchange and the POI. Verizon counters with a proposal it entitles "virtual geographically relevant interconnection point" ("VGRIP"), which would distinguish the physical POI from a separate point of demarcation called an "interconnection point" ("IP"), where financial responsibility for transport would pass from one carrier to the other. Verizon Ex. 1.0 at 5. The IP would either be at a collocation point at a Verizon tandem wire center or, if Global did not collocate, at the wire center serving the Verizon customer involved in a given call. *Id.* at 8. Global would bear financial responsibility for transporting traffic on Global's side of the IP, even when such traffic is still physically on Verizon's network. *Id.* Global would pay Verizon for transport and any necessary switching that Verizon performs on Global's side of the IP. *Id.*

As noted above, subsection 251(c)(2)(B) of the Federal Act requires an ILEC to provide a requesting carrier with interconnection to the ILEC's network "at any technically feasible point within the carrier's [CLEC's] network." In Global's view, by requiring a CLEC to establish no more than one POI in a LATA, the statute reflects an intention to encourage competitive entry. Petition at 11-12. For that reason, Global maintains, the Federal Communications Commission ("FCC") has expressly limited the financial burden of such entry by ruling "that each interconnecting party must transport its originating traffic to the single POI at its own cost." *Id.* at 14, citing the Intercarrier Compensation NPRM³, para. 70.

Global thus contends that, from a policy perspective, Verizon should not be permitted to, in effect, use transport charges to penalize Global for choosing to interconnect at the single POI allowed by the Federal Act. Otherwise, Global argues, in order to avoid Verizon's proposed transport costs, it would have to mirror Verizon's legacy network, instead of providing a purportedly more efficient alternative.

Global additionally relies on the FCC's Rule 703(b)⁴, which states that an ILEC "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the [ILEC's] network." Global avers that

³ In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, FCC 01-132, CC Dckt. No. 01-92, 16 FCC Rcd 9610 (April 27 2001).

⁴ 47 C.F.R. 51.703(b).

this rule, as applied by the FCC in the Kansas/Oklahoma 271 Order⁵, precludes Verizon from collecting transport costs for traffic between Verizon end users and Global's single POI. Petition at 13.

Further, Global argues that the additional transport cost that its proposal would impose on Verizon is no more than the cost "incurred for transporting calls from the weighted average distance of its subscriber to the ILEC's end office/tandem vs. transporting the call to the weighted average distance to the Global-designated [POI]." Global Init. Brief at 24. Global asserts that this additional cost would be *de minimus* because of "the drastic reductions in unit costs for transport that advances in fiber optic transmission technology have produced." *Id.* Global avers that this Commission expressly found such additional cost to be *de minimus* in Global's arbitration with Ameritech⁶.

Verizon responds that Global's proposal is an "attempt to maximize use of Verizon's network for free in contravention of policy entitling carriers to be compensated for use of their facilities." Verizon Init. Brief at 7. In Verizon's judgment, Global obtains this "free ride" by establishing only one POI in a LATA, then expecting Verizon to bear the burden of getting traffic to and from that point. In essence, Verizon avers, Global achieves its efficiency by shifting most network costs to Verizon. *Id.* at 14. Consequently – and irrespective of the physical location of Global's POI - Verizon proposes that the parties establish the above-described IPs, or "financial demarcation points," at which Global would become responsible for the cost of call transport. Verizon contends that even under its own proposal, it will bear more than its cost of transporting traffic, because it is offering to shoulder the financial responsibility of carrying traffic beyond its local calling area to Verizon tandems at which Global collocates. *Id.* at 9.

Verizon additionally maintains that by electing to establish only a single POI per LATA, Global is creating greater interconnection expense for Verizon than the Federal Act contemplates. According to Verizon, the FCC determined that a CLEC that "wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." Verizon Init. Brief at 17, quoting the Local Competition Order⁷ at para. 199. Verizon believes that Global's single POI would constitute such an "expensive interconnection"

⁵ In the Matter of Joint Application by Sprint-Florida Communications, Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region Inter LATA Services in Kansas and Oklahoma, FCC No. 01-29, CC Dckt. No. 00-127, 16 FCC Rcd 6237 (Jan. 22, 2001).

⁶ Global Naps, Inc., Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Illinois Bell Telephone d/b/a Ameritech, Dckt. 01-0786, Order, May 14, 2002 ("Global-Ameritech Arbitration Order"), at 8.

⁷ In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499 (1996).

Verizon also disagrees that its added transport costs under Global's proposal would be *de minimus*, and challenges the bases for Global's characterization. Verizon Init. Brief at 11-12. Moreover, Verizon argues, even if the subject costs were minimal, it would be unfair to Verizon and its customers to award Global "perverse incentives...to place its POI such that [Global] will incur little or no cost and Verizon's costs would be at their greatest." *Id.* at 12.

b. Commission Analysis and Conclusion

1) FCC Actions

In the Intercarrier Compensation NPRM, *supra*, the FCC noted that carriers have "raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport cost to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to a distant POI." *Id.*, para. 112. The FCC requested comment on this question, *id.*, para. 114, and to date has not promulgated a new regulation.

Accordingly, both parties cite other FCC decisions that provide support for the result they seek in this arbitration. In addition to the Kansas/Oklahoma 271 Order, *supra*, Global relies on the Virginia Order⁸, in which the FCC stated that requiring each carrier to "bear its own cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC" was "more consistent with the right of competitive LECs to interconnect at any technically feasible point." *Id.*, para. 53. Verizon disparages the Virginia Order as a mere product of the FCC's Wireline Competition Bureau and criticizes its analysis. Verizon Reply Brief at 8-9. In Verizon's judgment, the better precedent is the Pennsylvania 271 Order⁹, where the FCC said it "cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the [Federal] Act." Verizon Reply Brief at 16, quoting the Pennsylvania 271 Order at para. 100.

This Commission concludes that, at least until the FCC makes a more definitive statement in the Intercarrier Compensation NPRM, the clearest and most pertinent expression of current FCC policy is in the Virginia Order. The Wireline Competition Bureau was appropriately authorized to render its decision, and Verizon's disagreement

⁸ Memorandum Order and Opinion, Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration, CC Docket No. 00-218; Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration, CC Docket No. 00-249; Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 00-218, DA 02-1731 (released July 17, 2002).

⁹ In the Matter of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania, Memorandum Opinion and Order, CC Docket No. 01-138, FCC 01-269 (Sept. 21, 2001).

with that decision does not diminish its validity. More substantively, we note that in the Virginia Order, the CLEC position was found “more consistent” with the Federal Act, while in the Pennsylvania 271 Order the FCC only said that Verizon’s policy did not “fail to comply” with that Act. Therefore, the guidance we derive from the foregoing FCC rulings inclines us toward Global’s proposal with respect to compensation for transport. Moreover, in this Commission’s own judgment, the policy approved in the Virginia Order is more likely to produce the robust competition that the Federal Act is intended to foster.

2) Proceedings Before This Commission

We addressed the allocation of costs for transporting traffic between ILEC customers and Global’s single POI in the Global-Ameritech Arbitration Order. There, Ameritech raised many of the arguments presented here by Verizon. Nevertheless, the Commission concluded that Ameritech and Global should each be responsible “both financially and physically” for traffic on its side of the POI. Global-Ameritech Arbitration Order at 8. We further found, as noted above, that Ameritech’s increased transport costs would be *de minimus*. Additionally, we determined that Ameritech’s cost allocation proposition “could have the effect of undermining the single POI requirement.” *Id.* The question in the instant case is, therefore, whether this record presents good reason for distinguishing or contradicting the conclusions reached in the Global-Ameritech Arbitration Order¹⁰. Verizon offers three reasons for doing so.

First, Verizon claims that Illinois law “distinguishes Verizon from Ameritech” because Ameritech, unlike Verizon, is subject to alternative regulation under the Illinois Public Utilities Act (“PUA”). Verizon Init. Brief at 20. Verizon is correct that Section 13-801¹¹ of the PUA distinguishes between telecommunications carriers subject to alternative regulation and those that are not. Thus, the prohibition in subsection 13-801(b)(1)(B) – that the ILEC “may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA” – is inapplicable to Verizon. However, Section 13-801 exempts non-regulated carriers only from requirements and obligations “that *exceed or are more stringent than* those obligations imposed by Section 251 of the federal Telecommunications Act of 1996 and regulations promulgated thereunder.”¹² Accordingly, Section 13-801 does not (and could not) block the application of Section 251 to this case and, as the parties agree, subsection 251 (c)(2)(B) permits a CLEC to establish only a single POI.

Perhaps Verizon’s point is simply that Illinois telecommunications law allows different treatment for carriers not subject to alternative regulation. That point is inarguable, since, by definition, an alternatively regulated carrier is distinguished from other carriers with regard to pricing and other matters. That does not mean, though,

¹⁰ The Commission does not mean to suggest that the Global-Ameritech Arbitration Order is a binding precedent for this proceeding. Each arbitration under Section 252 of the Federal Act should be resolved on its own record. Nevertheless, we believe it is appropriate and efficient to consider the legal interpretations and policy decisions we articulated in prior proceedings.

¹¹ 220 ILCS 5/13-801(b)(1)(B).

¹² 220 ILCS 5/13-801(a) (emphasis added).

that alternatively regulated carriers are, or must be, treated differently with regard to *all* matters. Nothing in the PUA distinguishes alternatively regulated carriers from other carriers for purposes of allocating transport costs to and from POIs. Nor does Verizon present any reason why alternative regulation, by itself, would justify disparate treatment with respect to such costs.

Second, Verizon offers several criticisms of Global's demonstration that Verizon's additional transport costs would be *de minimus*. Verizon Init. Brief at 21. Initially, Verizon points out that it would likely have to transport some traffic across other ILECs' territories to reach Global's POI, "implicating other interconnection agreements and compensation issues." *Id.* However, Verizon does not show how this general assertion will be reflected in additional transport costs. Although most Verizon exchanges are contiguous only with other Verizon exchanges, it is true that the configuration of the Verizon companies' networks involves some traversal of unaffiliated territories. Verizon Cross-Exh. 1. Verizon makes no effort to quantify this traffic, however, and does not calculate any incremental transport cost it would incur to move such traffic across unaffiliated territory. (Such quantification would have to be net of traffic that would traverse unaffiliated exchanges even if Global had additional POIs or, in Verizon's parlance, IPs.)

Next, Verizon maintains that Global's business plan contemplates substantial inbound traffic to internet service providers ("ISPs"), resulting in a "large flow of traffic" to Global's "single, distant POI." Verizon Init. Brief at 21. Putting aside the factual question of whether Verizon is accurately describing Global's business plan, the Commission does not find that either the direction of traffic on the carriers' networks is significant. Under Verizon's VGRIP proposal, Global would be financially responsible for traffic on "its" side of the financial demarcation point, regardless of direction and customer identity. The significant issue here is whether the traffic volume to and from a single POI would cause incremental costs to Verizon that are more than trivial. Verizon does not show that this is so. It provides no bases (i.e., estimates of traffic volume, incremental distance¹³ and unit cost) for making a calculation.

Verizon also contends that Global's cost witness (Lundquist) lacked essential information (i.e., "the prices Verizon offered to [Global] to transport this traffic or the applicable cost proceedings") for determining whether the subject transport costs would be *de minimus*. Verizon Init. Brief at 21. The Commission does not believe that Verizon's *prices* are essential to this determination. The important variable is Verizon's *cost* for performing incrementally longer transport of certain traffic. We agree with Verizon that familiarity with Verizon's transport cost studies would increase the weight of Mr. Lundquist's analysis. He apparently had such familiarity¹⁴, but did not purport to base his analysis on that information. We will consider the significance of that omission in connection with our discussion of Verizon's final objection to Global's characterization

¹³ In this context, "incremental distance" refers to the difference between the transport distances with and without Verizon's proposed IPs.

¹⁴ Tr. 76. Verizon claims otherwise, and while it is conceivable that the court reporter heard "I have" when the witness said "I haven't," the Commission must rely on the transcript certified by the reporter.

of Verizon's incremental transport costs as *de minimus* – that is, that Mr. Lundquist's analysis was too flawed to be credible. *Id.*

The principal flaw claimed by Verizon is Mr. Lundquist's use of Verizon's monthly transport rate for a dedicated DS-3 facility for the purpose of deriving a per-minute, per-mile transport cost. Verizon Exh. 6.0 at 4. According to Verizon witness Collins, Mr. Lundquist has "artificially imposed the scale and scope economies of common transport facilities on a dedicated transport application." *Id.*

The critical question, however, is whether Mr. Lundquist has materially understated the cost Verizon will incur for transporting traffic over longer distances to Global's single POI. We do not find that he has done so. By using Verizon's tariffed rate for a DS-3 facility in his estimate, Mr. Lundquist has inherently captured *more than* Verizon's cost for that facility, since some contribution is included in the tariffed rate. While it would have been preferable for Mr. Lundquist to use data from Verizon's actual cost studies (assuming Verizon's confidentiality concerns could have been satisfied), his analysis is not invalidated by his use of a reasonable surrogate. Moreover, Mr. Lundquist adequately justified his choice of a DS-3 and, further, demonstrated that Verizon's resulting cost of transport would have been only 10% greater if based on a smaller-capacity facility (DS-1). Global Ex. 1 at 39-40.

Furthermore, Mr. Lundquist translated Verizon's DS-3 rate into an estimated time-and-mileage cost in order to estimate the magnitude of Verizon's incremental cost of additional transport to a single POI, not to establish Global's cost to lease DS-3 facilities from Verizon (a cost that is already established in Verizon's tariffs). In general, the Commission finds Mr. Lundquist's analysis rational and scrupulous, although less than optimal. Furthermore, Verizon provided no direct analysis of its own¹⁵, and its critique of Mr. Lundquist's methodology was largely rhetorical.

We are left, however, with the question of whether the estimate produced by Mr. Lundquist's processes actually demonstrates that Verizon's additional transport costs would be *de minimus*. As a general approach to defining *de minimus* in this context, Mr. Lundquist looks at whether the transaction costs of recording and billing for the relevant service exceed the cost of the service itself. Tr. 83-84. Using that approach, Mr. Lundquist asserts that his estimated service cost for transport (approximately five one-thousandths of a cent per minute) would be *de minimus*.

Rather than dwelling on the efficacy of Mr. Lundquist's definition of *de minimus*, the Commission prefers to shift the focus to the terms and objectives of pertinent state and federal law. In the Global-Ameritech Arbitration Order, when we concluded that

¹⁵ In its discussion of another issue in this docket, Verizon states that the net sum of its originating and terminating access charges (which include an end-office switching charge, transport charge, carrier common line charge and tandem switching charge) is \$.02/minute. Verizon Exh. 3.0 at 4-5. This is greater than Mr. Lundquist's quantification, but combines two charges (originating and terminating), contains additional cost elements in addition to transport, and is a rate, not a cost. These differences do not permit an apples-to-apples comparison with the Lundquist transport cost quantification.

Ameritech's additional transport costs would be "*de minimus*" and not "significantly" increased by distance, we perceived a legislative intention that the ILECs absorb a minimal degree of added cost to accommodate the introduction of telecommunications competition. Where those costs were likely to become more than trivial, the federal and state legislative branches enacted - or authorized the relevant regulatory bodies to consider - specific compensatory measures¹⁶. Implicitly, trivial cost increases were to be ignored or "written off" as the inevitable consequence of changing market dynamics.¹⁷.

Third, Verizon argues that this case is meaningfully different than the Global-Ameritech arbitration because "Verizon's position in this arbitration will not undermine the single POI requirement." Verizon Init. Brief at 21. Indeed, Verizon stresses, its proposal expressly contemplates a single POI. *Id.* However, Ameritech's proposal in the Global-Ameritech arbitration also included the option of a single POI¹⁸. Moreover, the question is not whether Verizon's proposal prohibits a single POI (it does not), but whether it imposes a penalty on that lawful option, thereby undermining it.

The Commission finds that the VGRIP proposal is such a penalty. It is a direct response to Global's single POI proposal and is explicitly intended to increase the cost of that proposal to Global¹⁹. By choosing the single POI option, Global is doing what the Federal Act allows. The Congress could have established a concomitant compensation scheme for the additional transport that a single POI necessitates, but did not do so. We will not second-guess the Congress on this point.

MCI Telecom v. Bell Atlantic Pennsylvania, 271 F.3d 491 (3rd Cir. 2001), on which Verizon relies, does not compel a contrary result. There, the court said only that the state commission "should consider shifting costs" to the CLEC. 217 F. 3d at 518. At Verizon's request, we have considered shifting costs here and we decline to do so. Furthermore, we note that the court also said that when "only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the [Federal] Act." *Id.* at 517. Here, the options presented in Verizon's VGRIP proposal (that Global either bear the cost of transport over Verizon's network or collocate at Verizon tandems and sub-tending facilities) are analogous to multiple interconnection points, in that each imposes costs that are unnecessary to the lawful establishment of a single POI.

¹⁶ E.g., 220 ILCS 5/13-801(d)(3).

¹⁷ In view of this conclusion, the Commission must acknowledge Verizon's contention that "[i]f such costs were in fact small, [Global] would not be arguing so strenuously to avoid them." Response at 10. That contention ignores that Global would not simply pay Verizon's transport cost, but its transport *rates*, which exceed cost and include profit. Furthermore, we note that Global "has only one switch in the state and must often transport calls great distances." Global RBOE at 8. Global's election to impose a substantial transport obligation on itself is reflective of the negligible incremental cost of moving traffic over additional distance.

¹⁸ Global-Ameritech Arbitration Order at 3-5.

¹⁹ E.g., "Verizon proposes to make [Global] financially responsible for delivery of this traffic in order to place at least a portion of the costs in the hands of the cost-causer...." Verizon Init. Brief at 9.

In addition to rejecting Verizon's three foregoing bases for distinguishing this proceeding from the Global-Ameritech Arbitration, the Commission also rejects Verizon's contention that the FCC was referring to (*inter alia*) increased transport costs when it stated, in the Local Competition Order, that a CLEC must compensate an ILEC for "expensive interconnection."²⁰ The FCC used this phrase during its analysis of what constitutes a "technically feasible" interconnection point within the meaning of subsection 252(c)(2) of the Federal Act. The FCC's discussion pertained to the cost of interconnection itself, not to the collateral economic consequences to the relevant carriers' operations. The FCC said: "to the extent the incumbent LECs incur costs to *provide interconnection*... under section 251(c)(2)... incumbent LECs may recover such costs from requesting carriers." Local Competition Order, para. 200 (emphasis added). In our judgment, "expensive interconnection" is simply a more costly version of interconnection and does not include increased transport.

3) Conclusion

Each party here should assume financial responsibility for transport on its side of any POI established for the exchange of telecommunications traffic. Accordingly, the final sentence of section 2.1.1 of the "Interconnection Attachment" to the Global Revision should be included in the interconnection agreement between the parties.

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

a. Parties' Positions and Proposals

Global wants to define its own local calling areas ("LCAs"), without having to conform to Verizon's pre-existing LCA boundaries. Petition at 16. Global apparently intends to establish LATA-wide LCAs. Global Init. Brief at 38. Global argues that "LATA wide local calling areas promote competition and benefit the consumer" and "will allow Global to compete with both local providers as well as IXCs [interexchange carriers]. Most importantly, it exerts downward pressure on the current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product." *Id.* Furthermore, Global insists, "there is no economic or technical reason for local calling areas to be any smaller than a LATA." *Id.* at 39. Global notes that the state commissions in New York and Florida have approved LATA-wide LCAs. *Id.* at 40.

Verizon responds that Global's real intention is to avoid paying access charges by transforming all intraLATA traffic initiated by a Global customer into local traffic. Verizon Init. Brief at 23. Furthermore, Verizon asserts, once Global accomplishes this objective, other CLECs will follow suit, effectively ending intraLATA access charges

²⁰ Ameritech also raised the "expensive interconnection" argument in its arbitration with Global. Global-Ameritech Interconnection Order at 4.

entirely. *Id.* Verizon maintains that the Commission should avoid making “such a dramatic alteration of its rules and local calling areas in this two-party arbitration.” *Id.* at 25.

Additionally, Verizon points out that unless it revises its own LCAs to match Global’s, disparate LCAs “would make the same call subject to reciprocal compensation when GNAPs originates the call but subject to access charges when Verizon originates the call.” *Id.* at 25-26. According to Verizon, this would be unlawful, because the Federal Act and FCC rules “require state commissions to establish reciprocal compensation rates that are symmetrical and that provide for the mutual and reciprocal recovery by each carrier of its costs.” *Id.* at 26, citing Section 252 of the Federal Act and 47 C.F.R. 51.701-717. Further, Verizon charges, “[n]ot even [Global] can explain how this would be implemented in reality.” *Id.* at 26. Accordingly, Verizon proposes that, while Global’s “retail calling areas may include whatever geographic area [Global] deems appropriate,” Global must mirror Verizon’s LCAs for intercarrier compensation purposes. *Id.* at 23.

Global rejoins that it should not be “saddled with ILEC legacy network architecture.” Global Init. Brief at 38. Moreover, Global argues, Verizon can only impose access charges on “exchange access traffic,” as that term is defined in 47 U.S.C. 153(16). Since Global’s intraLATA calls will not be subject to toll charges, they cannot be treated as exchange access traffic. Global Reply Brief at 20. Further, Global insists, Verizon will fully recover its cost of handling Global’s local traffic through reciprocal compensation. *Id.* at 21.

b. Commission Analysis and Conclusion

Our resolution of this dispute will *not* directly determine the configuration of Global’s LCAs for its end-users. Consistent with applicable law, Verizon “agrees that [Global] should remain free to define its retail local calling areas as broadly as it likes.” Verizon Exh. 3.0 at 2. Instead, this dispute concerns the “wholesale” charges these carriers will impose on each other if Global establishes LCAs that are larger than Verizon’s. Except where their retail LCAs coincide, the parties’ intercarrier compensation will be based on access charges if Verizon prevails, or based on reciprocal compensation if Global prevails. Generally, access charges exceed reciprocal compensation payments on a per-unit basis, often significantly. *Id.* at 6. Consequently, if Global does not prevail, it purports that the economics of its proposed LATA-wide LCAs will be altered unfavorably, apparently to the point that Global’s only remunerative recourse will be to mirror Verizon’s smaller LCAs.

The FCC has expressly assigned the resolution of this issue to the state commissions.

“[The FCC] expect[s] *the states* to determine whether intrastate transport and termination of traffic between

competing LECs, where a portion of their local service areas *are not the same*, should be governed by section 252(b)(5) reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas *that are different*.

Local Competition Order, para. 1035 (emphasis added).

In the Global-Ameritech Arbitration proceeding, Global presented this same issue and made essentially the same arguments. In turn, Ameritech offered many of the responses now interposed by Verizon. The Commission concluded there that although “there may be technological changes since the Commission last visited the LCA issue, it would be inappropriate to reconsider the issue in this docket.” Global-Ameritech Arbitration Order at 12. We were also concerned that adopting Global’s proposal would “cause confusion in the area of intercarrier compensation.” *Id.* As we did with regard to the single POI issues, above, the Commission will consider whether this record presents good reason for distinguishing or contradicting the conclusions of the Global-Ameritech Arbitration Order.

On the one hand, the Commission perceives that customers would derive economic benefit if Global (and other CLECs) offered LATA-wide local calling. As Verizon recognizes, it would have to consider responding competitively by re-categorizing its own intraLATA toll traffic as local, thereby lowering consumer costs. Verizon Exh. 7.0 at 4. Indeed, lost toll revenue is Verizon’s principal concern with respect to Global’s proposal²¹. Although Verizon frames its concerns in terms of asymmetrical compensation – that is, where Global pays only reciprocal compensation, based on its expanded LCA, while Verizon pays access charges, based on its smaller LCAs – Verizon could avert asymmetry by expanding its own LCAs.

On the other hand, the situation would become more complicated as other CLECs opted into the provisions of a Global-Verizon interconnection agreement that established reciprocal compensation (rather than access charges) as the basis for intercarrier compensation where LCAs differ. From an operational standpoint, Verizon claims that manually programming its systems to reflect the varying LCAs of a host of CLECs would be “technically very difficult.” Tr. 279 (Haynes).

From a policy perspective, all other CLECs would likely have to establish LATA-wide LCAs to compete for local customers with Global and (if it reconfigured its LCAs) Verizon, irrespective of their cost structures or business plans. A CLEC that elected to expand its retail LCA *beyond* LATA boundaries²² would, in turn, necessitate further competitive response. While these are not necessarily unwelcome developments, they

²¹ While Verizon would also experience reduced access revenues, it would concomitantly avoid access charges for Global-bound traffic – which should be substantial and disproportionate because, according to Verizon, Global “generally markets its services to customers who receive more traffic than they originate.” Verizon Exh. 1.0 at 6.

²² Global acknowledges the possibility of statewide and interstate LCAs. Tr. 194-95 (Lundquist).

– and other – ramifications of expanded LCAs have not been addressed in this two-party arbitration proceeding (in which Commission Staff has not participated). Moreover, since Global's proposal has not been implemented elsewhere, Tr. 227, the Commission cannot take guidance from out-of-state experience.

Accordingly, the Commission, for now, will opt for the status quo. Except as otherwise indicated in this arbitration decision (e.g., Issue 4, below), intercarrier compensation for traffic across the boundaries of Verizon's LCAs will be accomplished through intraLATA access charges. Global will not be harmed, since it will receive access charges in the same manner as Verizon. The time is approaching, however, when the Commission will formally consider whether the benefits of broader LCAs warrant a change of policy.

4. Can Global assign its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

a. Parties' Positions and Proposals

In the telecommunications industry, an "NXX" (a "prefix," or the first three digits of a seven-digit telephone number) is associated ("homed") in the Local Exchange Routing Guide ("LERG") with a specific rate center in a particular geographic location. In this arbitration, Global wants authorization to assign to its customers (upon customer request) telephone numbers that are homed at rate centers beyond their Verizon LCAs. Petition at 19. A customer would typically request such a number when it (usually a commercial enterprise) wants to enable distant callers to reach the customer without incurring toll charges. Global would assign that customer a Global telephone number with an NXX traditionally associated with a Verizon rate center located beyond the Verizon LCA in which the Global customer is physically located. Verizon callers in the same LCA as the "homed" NXX could then reach the Global customer via a local call to that NXX, with the call being transported beyond the caller's Verizon LCA and through the parties' POI to the Global customer's physical location.

ILECs provide the foregoing service to their customers as "foreign exchange" or "FX" service. An ILEC FX customer pays for a dedicated private line between the end office near its physical location and the distant Verizon end office around which the customer wants to facilitate local calling for its clientele. Instead of deploying dedicated private lines, Global would provide an FX-like (or "virtual NXX") service by the way it programs NXXs in its switch. As with an FX call, a call from a Verizon customer to a Global virtual NXX number programmed to the caller's Verizon LCA would be billed to Verizon's customer as a local call. Because of this local billing, Global asserts an entitlement to reciprocal compensation²³ for call completion. Global Init. Brief at 36.

²³ It is doubtful that compensation would be "reciprocal" under Global's proposal, since Global's customer will probably not use a distant NXX for outbound calling.

Verizon “opposes virtual NXX assignments,” Verizon Init. Brief at 27. It complains that virtual NXX deprives it of toll revenues. “The underlying call is clearly an interexchange call, although the virtual NXX assignment prevents Verizon from assessing toll charges on its end user placing the interexchange call.” *Id.* at 30. However, if the Commission approves such assignments, Verizon urges that Global be denied reciprocal compensation. Verizon contends that such compensation is not allowed under subsection 252(b)(5) of the Act because the true physical end-points for NXX traffic are in different exchanges. Verizon Reply Brief at 12. Furthermore, Verizon emphasizes, this Commission has repeatedly held that FX traffic is not subject to reciprocal compensation²⁴.

b. Commission Analysis and Conclusion

This Commission is charged with implementing pro-competitive telecommunications legislation²⁵. We are not charged with preserving an incumbent’s intraLATA toll revenues at present levels. Consequently, in the previous arbitrations on which Verizon relies in its opposition to virtual NXX, the Commission did not bar the subject CLECs from assigning NXXs outside of their “homed” LCAs. Indeed, Ameritech did not request such a prohibition in either the Global-Ameritech arbitration²⁶ or the Level 3 arbitration²⁷. It follows that we will not preclude Global from assigning NXXs in the manner it requests here. Virtual NXXs are beneficial to the customers that want them, provide worthwhile competition to the ILECs’ FX services and contravene no law or regulation.

Intercarrier compensation is another matter. Since “Verizon itself has no way of tracking virtual NXX calls on a call-by-call basis...it has no ability to ‘look behind’ [Global’s] system for assigning NXX codes and no ability to determine where a particular call has actually terminated physically.” Response at 29. Consequently, such

²⁴ Global-Ameritech Arbitration Order, at 15; Essex Telecom, Inc. v. Gallatin River Communications, L.L.C., Docket No. 01-0427 (July 24, 2002) (“Essex Telecom Order”) (“non-ISP bound NXX traffic should be subject to a bill-and-keep regime”); Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Arbitration Decision, Docket No. 00-0332 (Aug. 30, 2001) (“Level 3 Arbitration Order”) (“FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.”); TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Decision, Docket No. 01-0338 at 39 (Aug. 8, 2001) (“TDS Metrocom Arbitration Order”) (“FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation”).

²⁵ E.g., “[I]t is in the immediate interest of the People of the State of Illinois for the State to exercise its rights within the new framework of federal telecommunications policy to ensure that the economic benefits of competition in all telecommunications service markets are realized as effectively as possible.” 220 ILCS 5/13-102(e).

²⁶ Global-Ameritech Arbitration Order at 13.

²⁷ Level 3 Arbitration Order, *supra*, at 7.

calls are recorded by Verizon's systems as local. Verizon collects no toll revenue and neither party collects access charges. This is the present state of the art²⁸.

However, as already noted, Global argues that "a carrier is lawfully entitled to recover its costs to terminate FX-like calls originating on the ILECs' networks." Global Init. Brief at 36. Since FX-like calls are recorded as local by Verizon, Global claims that reciprocal compensation is the proper cost recovery mechanism. It relies on FCC Rules 701-717²⁹, under which reciprocal compensation applies to any telecommunications traffic that is not exchange access (i.e., toll) traffic or information access traffic. *Id.* at 5. Global avers that FX-like traffic would not fall in either of these exempt categories. *Id.* at 6-8. In particular, Global insists that FX-like traffic is not toll traffic within the meaning of 47 USC 153(48) because Verizon does not impose a "separate [toll] charge" on it.

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 device³⁰ 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. This Commission has repeatedly held that FX-like traffic is not subject to reciprocal compensation. Global-Ameritech Arbitration Order at 15; Level 3 Arbitration Order at 9-10; TDS Metrocom Arbitration Order at 39. This record presents no reason to alter that policy so that Global can receive compensation for local call termination that it will not actually perform.

For its part, Verizon maintains that if the Commission approves virtual NXX, it should do so "only under the condition that [Global] pay to Verizon access charges that would otherwise apply ...but for the virtual NXX assignment." Response at 35. However, Verizon recognizes that its automated recording systems will not be able to recognize virtual NXX calls for the purpose of assessing Verizon's originating access charges, any more than they can recognize the same calls for the purpose of imposing Verizon's intraLATA toll charges. Moreover, the Verizon witness who speculated about a costly and cumbersome manual process for distinguishing virtual NXX calls for a *single* CLEC (but not for the multiple CLECs that could opt into the Global-Verizon ICA) advised against such manual intervention. Tr. 278-80 (Haynes). Verizon is also silent with respect to the terminating access charges it would owe Global if virtual NXX calling were treated as toll calling for intercarrier compensation purposes. Additionally, Verizon does not acknowledge that it will also receive compensation, through local service charges, from the Verizon customer that places a local call to a Global virtual NXX.

²⁸ See, e.g., the Virginia Order, para. 301 ("rating calls by their geographic starting and ending points raises billing and technical questions that have no concrete, workable solutions at this time").

²⁹ 47 C.F.R. 701-717.

³⁰ In the Level 3 Arbitration Order, at page 9, we called it a "fiction"

In the recent Essex Telecom Order, the Commission observed that the FCC, in the ISP Remand Order³¹, had identified three categories of telecommunications traffic for intercarrier compensation purposes under the Federal Act: 1) “exchange access”³² traffic; 2) “information access”³³ traffic; 3) traffic that is neither exchange access nor information access – in essence “local exchange telecommunications service” under Section 13-204 of the PUA³⁴ (denominated “exchange service” in the Essex Telecom Order). After stripping away information access traffic (over which the FCC has assumed exclusive authority³⁵), we concluded that FX-like services are exchange services, not exchange access services, and that access charges should not be associated with such services. Essex Telecom Order, at 25. We agreed with the finding of a Texas arbitration panel that FX-like services are analogous to the ILECs’ extended-area services, which expand local calling across traditional LCA boundaries, yet do not trigger access charges. We also noted that “under the FCC’s long-standing separations policies, intrastate retail FX revenue all goes into basic local service (47 CFR 36.212(B)) and revenue from resold FX services are posted under local revenues.” *Id.* at 24. Based on the analysis in the Essex Telecom Order, as well as the deficiencies in Verizon’s access charge proposal recited above, the Commission will not require Global to pay originating access charges for virtual NXX traffic.

Since we will not require either reciprocal compensation payments or access charges, the allocation of cost responsibility for virtual NXX traffic remains before us. In the Essex Telecom Order, the Commission instructed the parties “to adopt a bill-and-keep regime for FX-like calls between the two systems.” *Id.* at 25. We will do the same here. Under bill-and-keep, which is authorized under the Federal Act³⁶, Verizon will retain its local service revenues and Global will keep whatever it is able to charge for a virtual NXX. This arrangement is consistent with our determination, above, that each carrier will be responsible for its own transport to and from the parties’ POI. It is similarly consistent with the Commission’s directive in the Global-Ameritech Arbitration Order, at 15, that “each party should bear its own costs on its side of the POI for FX and FX-like traffic.” As Verizon recognizes, it will incur no more additional cost for transporting a virtual NXX call to the POI than it does for transporting any other Global-bound local call to the POI³⁷, and we have already found that such additional cost will be trivial.

³¹ In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand, FCC 01-131, 16 FCC Rcd 9151.

³² Access “for the purpose of the origination or termination of toll services.” 47 USC 153(16).

³³ Access “to or from the facilities of information services providers.” ISP Remand Order, para. 44.

³⁴ 220 ILCS 5/13-204.

³⁵ ISP Remand Order, para. 82.

³⁶ 47 USC 252d(2)(B)(i).

³⁷ “NXX does *not* affect the routing of the call from the caller to the called party. The ILEC’s network recognizes the carrier-assigned NXX code and routes the call to that carrier’s switch for delivery by the carrier to its end user, the called party.” Verizon Exh. 3.0 at 18 (emphasis in original).

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

Global wants a specific provision in the parties interconnection agreement that will allow renegotiation if the law pertaining to intercarrier compensation for ISP traffic is changed. Petition at 23. 'Because the FCC's most recent ruling on this issue is currently being challenged before federal appellate courts, there is good reason to include specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes.' *Id.*

Verizon replies that the general "change of law" provisions (sections 4.5 and 4.6) in the interconnection agreements proposed by both parties will adequately address any subsequent changes in the law specifically addressing intercarrier compensation. Response at 39. Furthermore, Verizon suggests that a change-of-law provision singling out intercarrier compensation will cast doubt on the breadth of the general change-of-law provisions in the interconnection agreement. "For example, CLECs not familiar with the negotiations in this proceeding might contend that if §§ 4.5 and 4.6 were intended to cover all changes in law, then it would not have been necessary to single out the ISP Remand Order in the first place." *Id.* at 41. Additionally, Verizon maintains that Global has failed to propose actual contract language reflecting the substance of its concerns. Verizon Init. Brief at 34.

Global's apparent concern is that because the proposed interconnection agreement "does not deal with compensation for ISP bound traffic," its general change-of-law provisions will not reach that subject. Global Init. Brief at 41. The Commission disagrees. The change-of-law provisions address not only the explicit contents of the Interconnection Agreement, but materially related matters as well. Proposed Section 4.6 states (with emphasis added):

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, *materially affects any material provision of this Agreement, the rights or obligations of a party hereunder, or the ability of a Party to perform any material provision of this Agreement*, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

The Commission believes that changes to the law governing intercarrier compensation for ISP traffic will materially affect the parties' interconnection agreement.

It follows that the above-quoted language adequately protects Global's interest with respect to that issue. Moreover, we concur with Verizon that a specific change-of-law provision regarding intercarrier compensation will undermine the general applicability of sections 4.5 and 4.6.

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

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

7. Whether two-way trunking is available to Global at Global's request.

Global asserts that it "must have the right to utilize two-way trunking at its own discretion." Petition at 25. Verizon "agrees that, pursuant to 47 C.F.R. § 51.305(f), [Global] has the option to decide whether it wants to use one-way or two-way trunks for interconnection. But the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them." Response at 50. Since the subject trunks are, as the name implies, two-way channels, the Commission agrees with Verizon that operational issues should be resolved by mutual arrangement.

With regard to the specific contract language proposed by the parties, Global has articulated a rationale for only one of its proposals³⁸, concerning forecasts for the number of interconnection trunks needed to accommodate future traffic. Global Init. Brief at 42. Global asserts that Verizon should carry the forecasting burden. *Id.* Verizon disagrees and adds that Global is attempting to deviate from the interconnection agreements between these carriers in other jurisdictions. Response at 53. We find that Verizon has made the clearer and more persuasive case on this issue, and has presented the only case concerning conflicting contract language relating to other trunking issues. It follows that Verizon's language should be utilized in the parties' interconnection agreement.

8. Is it appropriate to incorporate by reference other documents, including tariffs, into the agreement instead of fully setting out those provisions in the agreement

Global objects to provisions in Verizon's Template Agreement under which the contents of Verizon's tariffs and CLEC Handbook would be incorporated into the parties' interconnection agreement. Petition at 26. Global asserts that such incorporation would give Verizon "the ability to unilaterally amend the terms and conditions" of interconnection by simply altering its tariffs. *Id.* Global believes that this would deprive

³⁸ Global Revision, "Interconnection Attachment," section 2.4.4.

it of the “certainty over the very terms it has negotiated and/or arbitrated with Verizon” and create “an ever-moving target.” *Id.* at 27. Global agrees, though, to incorporate Verizon tariffs for the sole purpose of “utilizing [Verizon’s] tariffed rates for UNEs or collocation.” *Id.* (emphasis in original).

Verizon retorts that Global overlooks Section 1.2 in the “General Terms and Conditions” section of the Template Agreement, “which establishes the parties’ interconnection agreement as the governing document in the face of a conflict between the agreement and a tariff...[A] tariff reference generally may *supplement* the agreement’s terms and conditions, but not *alter* it with conflicting terms or conditions. In the event of conflicting terms and conditions, Verizon’s proposal gives the interconnection agreement precedence.” Response at 57-58 (emphasis in original). Verizon also expresses concern about a potential arbitrage scenario in which Verizon is locked into contract rates but Global can “purchase from future tariffs should the tariff rates prove more favorable.” *Id.* at 58. Verizon extends this concerns to other CLECs – “[e]ach carrier that opts into [Global’s] agreement would be given the same right to veto Verizon’s tariffed rates by electing the interconnection agreement’s rates.” *Id.* Additionally, Verizon maintains that Global neglected to discuss or consistently apply its rationale for deleting specific provisions in the Template Agreement. *Id.* at 59-61.

In the Commission’s view, neither party’s concerns are satisfactorily or consistently explicated. Global agrees to the incorporation of tariff prices³⁹, yet opposes changes to those prices as tariffs undergo revision. Also, although Verizon identifies several specific provisions in the Global Revision where the removal of tariff incorporation language is arguably inappropriate, Global makes no response. On the other hand, Verizon worries that Global will select future tariffs rates that are “more favorable,” yet proposes contract language that will guarantee that the interconnection agreement adopts those more favorable rates.

Given this record, and because we are required to resolve each properly presented issue, the Commission will order the parties to use Verizon’s contract terms. Verizon’s proposal gives priority to contract language over conflicting tariff language, thereby vitiating Global’s objections, and Global does not dispute Verizon’s specific assertions about other proposed contract language.

³⁹ Global Revision, Pricing Attachment, section 9.3 (identified as section 1.3 in the Pricing Attachment to Verizon’s Template Agreement).

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

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

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

Global contends that Verizon demands a level of insurance coverage that is "excessive and represents a covert barrier to competition."⁴⁰ Petition at 29. Since, Global charges, Verizon is unwilling to provide Global with insurance of like amount, Verizon "garners a competitive advantage with each dollar of excessive insurance premiums it imposes upon Global." *Id.* Global proposes lower policy limits⁴¹, more discretion in matching coverage and risk, and complete deletion of automobile insurance coverage (because, irrespective of the interconnection agreement, the latter will be required by Illinois law). *Id.*

Verizon replies that its proposal is within industry norms. It points to an FCC pronouncement that "'a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average,' which the FCC calculated as \$21.15 million (in 1997)." Response at 63-64.⁴² Verizon stresses that its proposal is well under this limit. *Id.* at 64. It further asserts that Global's proposal is correspondingly inadequate. "Tort judgments in Illinois, including costs and legal fees, routinely exceed \$1,000,000, making [Global's] proposal

⁴⁰ Specifically, Global objects to the magnitude of the following: "(1) commercial general liability insurance, on a per occurrence basis, with limits of at least \$2,000,000; (2) commercial motor vehicle liability with limits of at least \$2,000,000; (3) excess liability insurance, in the umbrella form, with limits of at least \$10,000,000; (4) worker's compensation insurance with limits of not less than \$2,000,000 per occurrence; and (5) all risk property insurance on a full replacement cost basis for all of Global's real and personal property at a collocation site or otherwise located on or in any Verizon premises, facility, equipment or right-of-way." Petition at 28.

⁴¹ "Commercial General Liability insurance with minimum limits of \$1,000,000, including \$1,000,000 per occurrence; excess liability insurance with a limit of \$1,000,000, and worker's compensation insurance with a limit of \$1,000,000." *Id.* at 29.

⁴² Quoting from In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second Report and Order, rel. June 13, 1997, ¶¶ 343-55.

woefully insufficient.” Verizon Init. Brief at 49. Furthermore, Verizon avers, its “recent experience with CLEC bankruptcies reveals that insurance coverage is often the only source of recovery.” *Id.* Verizon acknowledges that it does not propose to provide as much insurance as Global, but justifies this on the ground that “Verizon typically has a much more extensive network and many more employees than a CLEC, amounting to much more risk of damage or injury.” Verizon Exh. 2.0 at 7.

The Commission agrees with Verizon that Global’s proposed coverage is insufficient. It is not unusual for liability awards to exceed Global’s proposed maximums. However, that proposition is no less applicable to damage caused by Verizon. Thus, when Verizon states, for example, that \$2 million in worker’s compensation coverage “is standard in the industry and is particularly important because this is an area of increased claims activity,” Response at 66, it articulates a principle of general application. Similarly, Verizon’s observation that it has far more employees and facilities than Global is a two-edged sword, establishing both that Verizon has more to lose and more opportunities to cause harm.

Accordingly, the Commission orders both parties to adhere to Verizon’s proposed coverage minima and other insurance terms in their interconnection agreement. This should include coverage for vehicular liability, which will not duplicate general state law requirements because, first, the parties will be specifically named insureds and, second, the contemplated coverage will exceed state requirements.

On exceptions, Verizon asserts that it would be “counterproductive” for each party to become an additional insured on the other’s policies, because it would fail to alleviate “the problem of two insurance companies fighting over which will take initial responsibility for the defense of the claim.” Verizon BOE at 15. However, it is not apparent that Verizon’s asymmetrical proposal, in which Verizon would be an additional insured on Global’s policies but Global would not be additionally insured by Verizon, would alleviate that problem either. A claim solely against Verizon would be insured by two carriers (Verizon’s and Global’s), and Verizon has not established that Global’s carrier would be, or should be, responsible for defense in that instance. Verizon’s proposal places greater insurance costs on Global than Verizon, without avoiding the problem Verizon identifies.

11. Should the interconnection agreement include language that allows Verizon to audit Global’s “books, records, documents, facilities and systems?”

Global objects to several audit provisions included in Verizon’s Template Agreement. Petition at 29. Under Verizon’s proposed section 7.1 of the “General Terms and Conditions” section, either party can, at its own expense, audit the other’s “books, records, documents, facilities, and systems for the purpose of evaluating the accuracy” of the other carrier’s bills. Per section 8.5.4.1 of the “Additional Services Attachment,” Verizon would be authorized to conduct an audit to determine whether

Global “is complying with the requirements of Applicable Law and this Agreement with regard to [Global’s] access to, and use and disclosure of, Verizon OSS [operations support systems] information.” Section 6.3 of the “Interconnection Attachment” empowers each party to perform audits “to ensure that rates are being applied appropriately.” Section 10.13 of the same attachment allows audits of the “various components of access recording.”

Global contends that these audit provisions are unnecessary and “would permit Verizon unreasonably broad access to competitively sensitive Global records.” Petition at 30. Global asserts that “the ILEC already keeps computer records of call traffic exchanged between the parties” Global Init. Brief at 46. Global states that it will provide, on a voluntary basis (i.e., outside of the interconnection agreement), traffic reports and call data records “necessary to verify billing.” *Id.* at 47.

Verizon emphasizes that the proposed billing audits would be conducted by independent certified public accountants, not by the other carrier, with appropriate safeguards against disclosure of competitively sensitive information. Response at 67. Furthermore, Verizon insists, the billing audit is limited to the information necessary to verify bills and is not a general license to examine Global’s information. *Id.* In support of its proposed OSS-related audits, Verizon argues that it is only “ensur[ing] that all CLECs, not just [Global], can use Verizon’s OSS to place an order or support a customer.” Verizon Init. Brief at 52. Additionally, Verizon states that it must protect the customer proprietary network information in its OSS database by auditing Global’s use of Verizon’s OSS. *Id.*

The Commission agrees with Verizon that billing audits are appropriate, particularly between competitors, and that the participation of independent accountants is likely to assure the confidentiality of commercial data. Therefore, the audit provisions in the “General Terms and Conditions” section of the Template Agreement should be included in the parties’ interconnection agreement.

We will not, however, require the parties to adopt Verizon’s other proposed audit provisions. Section 8 of the “Additional Services Attachment” clearly limits Global’s access to and use of Verizon’s OSS facilities and information, and it expressly contemplates remedies for misuse. It also gives Verizon access to pertinent Global information. The Commission sees no need to confer on Verizon the additional and virtually limitless power to “audit GNAPs” for compliance with “Applicable Law.” Similarly, the Commission finds no need to grant either party the broad power to conduct audits to see that rates are being “applied appropriately” or to audit “access components” for no stated purpose. The parties could, of course, agree to such audits, but absent agreement, we will not require them.

C. Open Issues Presented by Verizon

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

Verizon believes that it should have “the option to collocate at [Global's] facilities in order to interconnect with [Global] if and when [Global] deploys facilities in Illinois.” Verizon Init. Brief at 54. Verizon acknowledges that the collocation obligations in subsection 251(c)(6) apply only to ILECs, but nevertheless contends that fairness and efficiency will be promoted by establishing collocation rights for Verizon in the interconnection agreement. *Id.* at 54-55. Global makes no reply to Global's argument and, apparently, relies on the bare text of its proposed revisions to Verizon's Template Agreement.

As Verizon points out, Global does not propose to revise the language in the Template Agreement⁴³ that explicitly requires Global to allow Verizon to collocate. *Id.* at 54, fn. 136. However, elsewhere in the interconnection agreement, Global proposes to retain “discretion” or the right of reasonable “approval” concerning implementation of Verizon's collocation rights⁴⁴. Thus, the principal difference between the parties' proposals with respect to Verizon's collocation rights is Global's reservation of asymmetrical discretion and approval power.

Since Verizon's collocation rights in section 2.1.5 of its proposed “Interconnection Attachment” go no further than Global's collocation rights under section 2.1.3 of that attachment, the Commission perceives no reason to grant Global discretionary powers that Verizon will not have. Although it could have done so, Global neither opposes Verizon's collocation rights in general nor offers explanation for reserving one-sided discretion.

13. Should Global be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order determination or action?

Verizon's proposes that it be relieved of the contractual responsibility to provide Global with a service, payment or benefit if the law requiring such is changed. Response at 70. Global would delay implementation of legal changes until appeals are exhausted, even if the change of law is not subject to a stay. The Commission concurs

⁴³ “Upon request by Verizon, GNAPs shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of GNAPs. GNAPs shall provide collocation on a non-discriminatory basis in accordance with GNAPs' applicable Tariffs, or in the absence of applicable Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties.” Response, Exh. B, “Collocation Attachment,” section 2.

⁴⁴ Global Revision, “Interconnection Attachment,” section 2.1.5.

with Verizon that when a change in law is effective, “the parties’ agreement must recognize it rather than try to predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay.” Verizon Init. Brief at 55.

Global further proposes that when Verizon acts to discontinue a service, payment or benefit in accordance with the preceding language, it must do so “in accordance with state and federal regulations and recognizing [Global’s] state and federal obligations as a common carrier.”⁴⁵ We conclude, as Verizon asserts, that Global’s revision is superfluous. The parties have already agreed that they will “comply with Applicable Law in the course of performing this Agreement.”⁴⁶

14. Should Global 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?

In its Template Agreement, Verizon endeavors to reserve “the right to deploy, upgrade, migrate and maintain its network at its discretion.”⁴⁷ Global proposes, but does not explain, several revisions that would affect Global’s access to Verizon upgrades and Global’s financial responsibility for accommodating Verizon’s network changes⁴⁸. Verizon criticizes Global’s revisions on several grounds. Response at 72; Verizon Init. Brief at 56-58. Global does not reply to Verizon’s criticisms, offer its own rationale or even acknowledge Verizon’s framing of these issues.

The Commission is unwilling to discourse at any length on the important implications of Verizon’s arguments without the benefit of full discussion between competing interests. To fulfill our duty to resolve the open issues in this arbitration, it is sufficient to conclude that Verizon’s proposed language and supporting rationale are not *prima facie* unreasonable and outweigh Global’s silence. The parties’ interconnection agreement should include Verizon’s proposed text.

⁴⁵ Global Revision, “General Terms and Conditions,” section 4.7

⁴⁶ *Id.*, section 4.2.

⁴⁷ Response, Exh. B, “General Terms and Conditions,” section 42.

⁴⁸ Global Revision, “General Terms and Conditions,” section 42.

15. When Global orders trunks to connect its customers from its switch through Verizon's tandem to the IXC that subtends that Verizon tandem, should Global comply with Verizon's ordering requirements for access to toll connecting trunks?

Verizon contends that Global's recommended revisions to section 9.2 ("access toll connecting trunk group architecture") of Verizon's proposed "Interconnection Attachment" will "violate the routing and tandem subtending arrangements contained in the LERG." Response at 73. Verizon explains that access toll connecting trunk groups connect Global's customers, from Global's switch and through Verizon's tandem, to the IXCs that choose to connect to that tandem. Therefore, Verizon states, the traffic that rides over these trunks "is exchange access traffic," and section 9.2 describes the ordering process that Global will use to purchase access toll connecting trunks from Verizon. Verizon Init. Brief at 59. Global says nothing in support of its revisions. Consequently, the Commission concludes that Verizon's proposed language and supporting rationale are not *prima facie* unreasonable and outweigh Global's silence. The parties' interconnection agreement should include Verizon's proposed text.

16. Should Verizon be required to accept Global's changes to the definition of "trunk side?"

Global proposes alterations to the definition of the term "trunk side" in section 2.95 of the glossary of the Template Agreement. Verizon purports to find this proposal unintelligible and, further, maintains that it is unrelated to Global's ability to use two-way trunks (see Issue 7, above, which we have resolved in Verizon's favor). Response at 74. Global does not reply or defend its revisions. Consequently, the Commission concludes that Verizon's proposed definition of "trunks side" is not *prima facie* unreasonable and that the rationale for Global's revision is not apparent. The parties' interconnection agreement should include Verizon's proposed text.

IV. ARBITRATION STANDARDS

Under subsection 252(c) of the Federal Act, the Commission is required to resolve open issues, and impose conditions upon the parties, in a manner that comports with three standards. The Commission holds that the analysis in this arbitration decision satisfies that requirement.

First, subsection 252(c)(1) directs the state commissions to "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251." In this arbitration, the Commission has directed the parties to include provisions in their interconnection agreement that fully comport with Section 251 requirements and FCC regulations.

Second, subsection 252(c)(2) requires that we “establish any rates for interconnection, services or network elements according to subsection [252(d)].” Here, most of the pertinent rates were already established by the parties through mutual agreement. Insofar as the Commission’s resolution of open issues will affect those or other rates in the parties’ interconnection agreement, we require, and expect the parties to establish, rates that are in accord with subsection 252(d) of the Federal Act.

Third, pursuant to subsection 252(c)(3), the Commission must “provide a schedule for implementation of the terms and conditions by the parties to the agreement.” Therefore, the Commission directs that the parties file, within 15 calendar days of the date of service of this arbitration decision, their complete interconnection agreement for Commission approval pursuant to subsection 252(e) of the Federal Act.

By Order of the Commission this 7th day of November, 2002.

(SIGNED) KEVIN K. WRIGHT

Chairman