BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 and Interconnection Agreement With Verizon North Inc.	)))))	Case No. 02-876-TP-ARB

ARBITRATION AWARD

Upon consideration of all of the pleadings as well as the record as a whole, the Commission hereby issues its arbitration award:

APPEARANCES:

Mr. James R.J. Scheltema, 5042 Durham Road West, Columbia, Maryland 21044; Mr. William J. Rooney, Jr., 89 Access Rd., Norwood Massachusetts 02062; and Bricker & Eckler, LLP, by Mr. Thomas O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of Global NAPs, Inc.

Thompson Hine, LLP, by Mr. Thomas E. Lodge and Ms. Carolyn S. Flahive, 10 West Broad Street, Columbus Ohio 43215; Mr. A. Randall Vogelzang, 600 Hidden Ridge, Irving Texas 75038; Hunton and Williams, by Ms. Kelly L. Faglioni and Mr. Edward P. Noonan, Riverfront Plaza, East Tower, 951 East Byrd Street; and Mr. David K. Hall, 1515 North Court House Road, Arlington, Virginia 22201, on behalf of Verizon North Inc.

I. BACKGROUND:

On April 10, 2002, Global NAPS, Inc. (Global or GNAPs) filed in this case, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),[1] a petition for Commission arbitration of unresolved issues arising out of interconnection agreement negotiations between itself and Verizon North Inc. f/k/a GTE North Incorporated (Verizon). Formal negotiations regarding the terms of an interconnection agreement between the two parties to this case commenced on January 19, 2001. Section 252(b)(4)(C) of the Act requires the Commission to conclude the resolution of the unresolved issues not later than nine months after the date on which the local exchange company (LEC) receives the request for interconnection. In this case, however, the parties have mutually agreed both to extend the negotiation window and to allow the Commission to have until September 12, 2002, to issue its arbitration award.

The Commission has established guidelines in order to carry out its duties under Section 252 of the Act, which apply in arbitration cases such as this one. See, *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Case No. 96-463-TP-UNC (entry issued July 18, 1996). Under those guidelines, an arbitration panel, composed of members of the Commission's staff, is assigned to recommend a resolution of the issues in dispute if the parties cannot

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1 Codified at 47 U.S.C. 151 et. seq.

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reach a voluntary agreement. Also, certain procedural requirements are normally observed: e.g., the nonpetitioning party may formally respond to the arbitration petition; a procedural conference is held between the panel and the parties; arbitration packages are filed; an arbitration hearing (with opportunity for cross-examination of witnesses) is held; parties are extended a chance to make post-hearing arguments, either through oral argument or by filing formal briefs; a panel report, setting forth the panel's recommended resolution of outstanding issues is submitted to the Commission for consideration; and the parties are provided an opportunity to file exceptions to the panel report and/or replies to any such filed exceptions.

Indeed, in this case, each of these procedural safeguards have been observed. Notably, a panel report was issued in this case on July 22, 2002, which made recommendations on each of the 12 issues presented for arbitration in this case, numerically identified as issues 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, and 14. Exceptions to the panel report were filed on July 29, 2002, by both GNAPs and Verizon. GNAPs took exception to the panel's recommendation on issues 1, 2, and 4. Verizon took exception to the panel's recommendation on Issue 7 and, in addition, through its filed exceptions, is seeking to have the Commission make clarifications to the panel's recommendations on issues 1 and 2. Verizon, on August 7, 2002, filed a reply in response to GNAPs' exceptions. GNAPs has chosen not to file a reply to Verizon's exceptions.

II. ISSUES FOR ARBITRATION:

Neither party took exception to the panel's recommendations on issues 3, 4, 5, 8, 10, 11, 12, 13, and 14. Accordingly, the Commission will, with regard to each of those nine issues, adopt by reference both the panel's discussion and its substantive recommendations, as set forth in the panel report issued on July 22, 2002. What follows, immediately below, is a substantive discussion of the panel's recommendations, the exceptions, and any filed replies to the exceptions pertaining to the four remaining issues, namely, issues 1, 2, 4, and 7.

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

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

The Panel's Recommendation

The panel determined Issue 1 to be largely resolved, but noted the parties had not agreed on the contract language relative to this issue. The panel recommended Global not be required to establish more than one POI per LATA within the carrier's network. The panel noted that its recommendation was consistent with Commission awards in Case Nos. 01-2811-TP-ARB and 01-3096-TP-ARB,[2] Case No. 00-1188-TP-ARB,[3] and the Commission's Local Service Guidelines (LSG) adopted in Case No. 95-845-TP-COI (845).

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2 *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company dba Sprint and Ameritech Ohio, Arbitration Award,* Case Nos. 01-2811-TP-ARB and 01-3096-TP-ARB ("*GNAPS Consolidated Arbitration*").

The panel noted that Issue 2 in this proceeding is the same Issue 2 the Commission decided in the *GNAPs Consolidated Arbitration*, and recommended the Commission determine Verizon is permitted to charge its TELRIC rate to transport traffic beyond a local calling area where Global has no POI, to a distant POI in another local calling, provided the call does not originate and terminate in the same local calling area.

GNAPs' Exceptions

In its Exceptions, Global combines Issues 1 and 2 and initially addresses Issue 1 for the most part, then mostly moves on to Issue 2. First, Global takes exception to essentially both of the panel's recommendations for Issues 1 and 2, stating the panel erred because it did not have the benefit of the Federal Communications Commission's (FCC's) *Virginia Arbitration Order*,[4] issued by the FCC's Wireline Competition Bureau (WCB), which clarifies federal law governing these issues. Global asserts that federal law mandates that Global is entitled to establish a single point of interconnection ("POI") per LATA and that Verizon is financially responsible for delivering Global bound traffic from Verizon's customers to the single POI (Global's Exceptions at 3). Global states that its assertions were confirmed by the FCC in the *Virginia Arbitration Order* (*Id.* at 3-4).

Global argues that while Verizon does not directly deny Global's right to interconnect at a single POI in a LATA, Verizon indirectly prevents Global's ability to do so by imposing financial burdens when it elects to do so (*Id.* at 4). Global maintains that Verizon's proposed imposition of additional transport charges based on a fictional interconnection point precludes Global from interconnecting solely at a single POI in a LATA (*Id.* at 5). Also, Global argues the implementation of Verizon's interconnection agreement language would be a violation of Section 253 of the Act (*Id.*). In addition, Global cites the *Local Competition Order*[5] and the *Texas 271 Order*[6] in support of its argument that Verizon must provide Global with a single point of interconnection per LATA under federal law *(Id.)*. Further, Global claims the FCC WCB specifically examined Verizon's proposed Verizon geographically relevant interconnection point (VGRIPs) proposal and rejected it in the *Virginia Arbitration Order* (Global's Exceptions at 6).

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3 *In the Matter of AT&T Communication of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 00-1188-TP-ARB.

4 Memorandum Opinion and Order, *In the Matter of 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; *In the Matter of 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; *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.*, CC Docket No. 00-251; DA 02-1731 (July 17, 2002).

5 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96-98, FCC 96-325.

6 *Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65.

Next, Global argues Verizon is prohibited by federal law from charging Global "for costs on its side of the network as determined by the point of interconnection between the carriers" (*Id.* at 7). Specifically, Global states "each party is responsible for transporting traffic on its 'side' of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user via reciprocal compensation" (*Id.*). Global argues the panel's recommendation should not be accepted in light of 47 C.F.R Sections 51.305(a)(2) and 51.703(b), the FCC's Order approving SBC's 271 application for Kansas and Oklahoma, and its Intercarrier Compensation NPRM (*Id.* at 7-8).

Global asserts that since these same two issues were disputed in the *Virginia Arbitration Order,* the Commission's award for Issues 1 and 2 should be identical to the FCC WCB's award in the aforementioned order (*Id.* at 8). Global directly cites language from the *Virginia Arbitration Order*'s paragraphs 52 and 53, in which the FCC WCB is discussing issues related to the financial implications of establishing only a single POI in a LATA (*Id.* at 8-9). Global states that it "bases its argument against the imposition of transport costs, at least in part, on section 51.703(b), just as the FCC WCB did in footnote 119 (*Id.* at 9). Also, Global argues that its position is virtually the same as the one arrived at by the FCC WCB in the *Virginia Arbitration Order* (*Id.* at 10). In addition, Global states this interpretation of federal law by the FCC WCB "removes the premise on which the Commission relied on to issue its decision in the *GNAPs Consolidated Arbitration* (*Id.* at 11). As Global argues:

> When issuing its award in the *GNAPs Consolidated Arbitration,* the Commission and the panel in that litigation relied heavily upon an answer provided by Global's witness, Scott Lundquist, that there was no specific language by the FCC to the effect than an ILEC is required to transport traffic to the CLECs' POI in a different local calling area for no charge. Since then, the FCC has clarified federal law with respect to this issue.

Further into its exceptions, Global argues that the panel's recommendation in the *GNAPs Consolidated Arbitration* was flawed for two reasons (*Id.* at 11-12). First, Global states the panel in that proceeding should not have relied on Ohio LSG IV.A.3 because it is inconsistent with 47 CFR Section 51.703(b), which reads "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network" (*Id.*). Then, Global argues the panel should not have relied on the Commission's award for Case No. 96-1011-TP-ARB (96-1011) because the issues presented in this proceeding were not fully vetted in the 96-1011 case.

In closing, Global states that for the Commission to issue an award consistent with federal law, Global's proposed contract language relative to these two issues should be adopted. Global did not submit a reply to the exceptions of Verizon.

Verizon's Reply

Verizon states that it primarily filed its exceptions in order to request clarification, to assist the Commission in issuing its award, and to assist the parties in implementing their interconnection agreement (Verizon's Exceptions at 1). Verizon first requests a

clarification that Verizon's proposed contract language should be adopted for Issue 1 because Global's proposed language is "problematic and confusing" (*Id.* at 1-2). Verizon is confused by Global's Network Interface Device reference in its definition of POI, as well as Global's definition of POI as a whole (*Id.* at 2).

Next, Verizon requests the Commission to clarify that Verizon's proposed contract language for Issue 2 is being adopted as well (*Id.* at 3). Verizon states that its proposed contract language is consistent with the Commission's award and entry on rehearing in the *GNAPs Consolidated Arbitration* and should be adopted (*Id.* at 4). Also, Verizon requests clarification of the panel's recommendation because it believes the panel recommendation may not be consistent with the Commission's entry on rehearing in the *GNAPs Consolidated Arbitration* because of the confusing relationship between "exclusively local traffic" and "long haul calls" (*Id.*).

In its reply to Global's exceptions, Verizon argues that Global, in comparing the panel report to the *Virginia Arbitration Order*, inaccurately cites deficiencies in the panel's recommendations (Verizon's Reply, at 1-8). Verizon asserts that "[t]he *Virginia Arbitration Order* is not 'definitive' authority that controls the Commission's resolution of Issue 2" (*Id.* at 3). Verizon contends the *Virginia Arbitration Order* is still subject to review by the FCC and is not yet final, and, therefore, the Commission should not ignore Ohio's own rules and precedent in an effort to mirror the *Virginia Arbitration Order* (*Id.* at 4-6).

Further, Verizon states that, unlike Global, the various petitioners in the *Virginia Arbitration Order* recognized Verizon may deliver its originating traffic to a point that is different from where the CLECs would deliver their originating traffic (*Id.* at 7). Verizon asserts the FCC WCB recognizes this is permissible under FCC rules as well (*Id.*). In the *Virginia Arbitration Order*, Verizon states the WCB "emphasized that the single POI rules benefit[s] a CLEC by allowing it to 'interconnect for delivery of *its* traffic to the incumbent LEC network at a single point' and that this rule 'does not prevent the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it'" (*Id.*) Verizon argues that Global, in contrast, refuses to recognize that Verizon may deliver traffic to a point different from where Global would (*Id.*).

In conclusion, Verizon states this Commission's rules and precedent compels the Commission to adopt Verizon's proposed contract language as Global provides no basis to do otherwise (*Id.* at 8).

Arbitration Award

The FCC has promulgated rules and addressed a variety of issues related directly or indirectly to reciprocal compensation since the passage of the Act. These rules and guidelines, while complex, do give the state commissions a reasonable framework against which to decide arbitrated issues. These rules and guidelines cannot be easily nor properly applied or examined outside of the context of each other. It is important for this Commission to apply certain of the FCC's guidelines in a manner that does not interfere with other FCC guidelines. This can be difficult, especially when it is not always clearly

evident where the intentions of existing federal guidelines intersect with each other, and when we are obligated to apply Ohio's own local service guidelines as well.[7]

In our arbitration award in the *GNAPs Consolidated Arbitration* for Issues 1 and 2, we agreed with the panel, which concluded that Issue 1 was resolved and recommended that Global be permitted to establish one POI per LATA, and adopted its recommendation, recognizing that it was consistent with previous Commission arbitration awards[8] and 47 C.F.R. Section 51.305 (*GNAPs Consolidated Arbitration* Award, at 3-4). This finding is analogous to the panel's recommendation in this proceeding, and both are consistent with the WCB's *Virginia Arbitration Order;*[9] thus, we adopt the panel's recommendation. To be clear, Global may designate one POI within Verizon's network per LATA;[10] however, the transport obligations associated with transporting traffic to the POI are addressed by Issue 2.

Global is correct in citing the WCB's *Virginia Arbitration Order* discussion relative to Issue 2, but fails to identify the other discussion in the order relevant to Issue 2. Apparently, Global did not recognize how the WCB's decision on Issue V-4 (LATA-Wide Reciprocal Compensation) related to its position. In its discussion of this issue at paragraph 549, the FCC WCB states:

> Telecommunications traffic subject to reciprocal compensation under section 251(b)(5) excludes, *inter alia,* "traffic that is interstate or intrastate exchange access." The Commission has previously held that state commissions have authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where the LECs' service areas do not overlap.

Also in paragraph 549, the WCB notes that carriers may advocate alternative payment regimes in the *Intercarrier Compensation NPRM.*[11]

This Commission has thoroughly explained the relationships of 47 C.F.R Sections 51.701 and 51.703, and Ohio's access regime in the *GNAPs Consolidated Arbitration* award. In our finding in this award relative to this same issue addressed in the aforementioned proceeding, we reminded the parties that traffic from one local calling area to another local calling area in the same LATA is normally intraLATA exchange access, and traffic from

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7 The Commission issued local service guidelines in *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Related Matters,* Case No. 95-845-TP-COI (Appendix A, Entry on Rehearing issued February 20, 1997).

8 In the *GNAPs Consolidated Arbitration* Award and Entry on Rehearing we laid the correct foundation for our conclusions (*GNAPs Consolidated Arbitration* Award, at 6-8; *GNAPs Consolidated Arbitration* Entry on Rehearing, at 3-4).

9 Although we are not obligated to be consistent with the WCB's *Virginia Arbitration Order,* we compare what we find to the WCB's Order in an attempt to provide depth and clarity to our Award.

10 See Finding 10 in the August 15, 2002, Commission Entry for *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio,* Case No. 01-3096-TP-ARB.

11 *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

one local calling area to another local calling area in a different LATA *is interLATA* exchange access (*GNAPs Consolidated Arbitration* Award at 7). Also, we stated that exchange access traffic is subject to intrastate and interstate transport and termination charges in the State of Ohio (*Id.*). Thus, Verizon may charge its TELRIC rate for transport, which is actually an access charge for compensation purposes, from a local calling area where Global has no POI to Global's POI in a distant local calling area. The only safe harbor from this is when a call is originated and terminated in the same local calling area, and exchanged at the LECs' POI(s) within the same LATA. As LSG IV.C states:

> As NECs establish operations within individual ILEC service areas, the *perimeter of ILEC local calling areas, as revised to reflect EAS, shall* constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline. Nothing in these guidelines would preclude the Commission from deciding on a case-by-case basis that an ILEC's local calling area should be expanded, thereby expanding the definition in the section for what should be treated as *a local call for traffic termination compensation purposes.*

For the reasons discussed above, the panel's recommendation for Issue 2 is consistent with our award and entry on rehearing in the *GNAPs Consolidated Arbitration* and the rules and precedent upon which they are based. Therefore, we adopt the panel's recommendation. Accordingly, Verizon is permitted to charge its TELRIC rate to transport traffic beyond a local calling area where Global has no POI to a distant POI in another local calling area, provided the call does not originate and terminate in the same local calling area.[12]

Regarding the disputed interconnection agreement language for Issues 1 and 2, we decline to adopt either party's proposed language in its entirety as neither of the proposals is entirely compliant with our award and the rules, guidelines, and precedent upon which it is based. Therefore, Verizon and Global are directed to develop interconnection language consistent with our award above, and then submit it to the Commission for approval within the applicable time frame.

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12 To address Verizon's exception related to "exclusively local traffic" and "long haul calls," although it was not explicitly stated in that Award, LSG IV.C., our rule detailing local and toll traffic determination for reciprocal compensation purposes still applied. Also, as outlined earlier, pursuant to LSG IV.C, calls originating and terminating in the same local calling area are to be treated as local for reciprocal compensation purposes, even if they are "long haul calls."

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

The Panel's Recommendation

The panel found that this issue is tied to Issue 3. In Issue 3 the panel recommended that GNAPs could define its own local calling areas consistent with the Commission's Local Service Guideline II.D.2. In this issue, the panel found that one way that GNAPs plans to define its own local calling areas is through the use of NXX codes homed in central office switches outside of the customer's local calling area also known as virtual NXX. The panel recommended, consistent with several previous arbitration decisions, that the appropriate intercarrier compensation for the use of virtual NXX can be found in the Commission's Local Service Guideline IV(C) which, as pertinent, states:

C. Local and Toll Traffic Determination

> As NECs establish operations within individual ILEC service areas, the perimeter of ILEC local calling area, as revised to reflect EAS [extended area service], shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end-user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end shall be treated as a local call.

Furthermore, the panel found that Verizon's local calling areas, as revised to reflect EAS, shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation. The panel also agreed with GNAPs that the language in the FCC's *ISP Remand Order* specially preempts state commissions from addressing creating new compensation arrangements for intercarrier compensation ISP-bound traffic (as opposed to interpreting and enforcing pre-existing contractual provisions). Accordingly, the panel maintains that the local service guidelines are the appropriate demarcation of intercarrier compensation for all non-ISP calls. The panel noted its concerns with number portability with virtual NXX service and reminded GNAPs that it is required to provide local number portability consistent with the Commission's Local Service Guideline XIV(A), and that GNAPs must deploy its virtual NXX services in a manner compliant with this rule and the FCC rules regarding number assignment and number pooling in FCC Docket 99-200.

GNAPs' Exceptions

In its exceptions, GNAPs argues that the panel erred by not recommending that GNAPs be allowed to assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides (GNAPs Exceptions at 13). GNAPs applauds the panel for acknowledging that the language in the FCC's ISP Remand Order specially preempts state commissions from addressing intercarrier compensation ISP-bound traffic (*Id.* at 13). GNAPs exception is, therefore narrowed to non-ISP bound traffic only. According to GNAPs, the panel's decision was consistent with prior decisions made in Ohio. GNAPs believes however, that these

decisions are out of step with the FCC's interpretations and the policies in effect in other states (*Id.*).

GNAPs argues that the panel report is inconsistent with the FCC WCB's Virginia Arbitration Order (*Id.* at 13). It urges the Commission to issue an award consistent with that decision, in which the FCC WCB authorized CLECs to use non-geographically correlated NXXs (*Id.* at 14). GNAPs contends that there is no reason to ignore the guidance the FCC WCB provided in its Virginia Arbitration Order, but there is sufficient reason to vary from Ohio precedent in light of the FCC's order providing additional guidance in interpreting federal law (*Id.* at 15). In addition, GNAPs claims the panel report conflicts with the goal of promoting competition (*Id.* at 16).

Verizon's Reply

In its reply, Verizon contends that neither the Virginia arbitration order nor GNAPs' arguments provide a basis for disregarding the Commission's rules requiring use of ILEC calling areas to distinguish local and toll calls for purposes of intercarrier compensation (Verizon's Reply at 8). According to Verizon, both federal and Ohio law require carriers to look behind the NPA-NXX to the actual originating and terminating points of the call to determine intercarrier compensation (*Id.*). Verizon asserts that GNAPs' arguments confuse the rating of calls for the purpose of assessing retail end-user charges and the treatment of calls for intercarrier compensation purposes (*Id.*).

In Verizon's view, GNAPs's contention that the Virginia arbitration order amounts to a binding legal precedent that would require a change in the panel's recommendation regarding Issue 4 is simply mistaken (*Id.* at 9). In the Virginia arbitration order, says Verizon, the WCB based its decision to adopt the petitioner's proposed use of NPA-NXX codes to rate calls on its review of the record, which it mistakenly claimed lacked a basis for concluding that the parties had identified any other viable way to rate calls (*Id.* at 10). However, the WCB, notes Verizon, did not suggest that the legal standard, which looks to the actual originating and terminating points of the complete end-to-end communication, had changed. Verizon observes that this Commission's policy and precedent require the parties to use the physical end points and not the NPA-NXX codes alone. Noting that this policy is consistent with federal law, Verizon argues that it need not and should not be replaced by the GNAP's proposal (*Id.*). Moreover, Verizon points out that the WCB's decision is subject to review by the FCC (*Id.* at 4).

In its reply, Verizon disputes GNAPs' contention that the application of the Commission's rules and of the panel's recommendations would somehow place GNAPs at a competitive disadvantage in offering its customers a toll-free calling service (*Id.* at 11). With respect to its virtual NXX service, says Verizon, GNAPs uses Verizon's network to provide toll-free calling service without providing any compensation to Verizon for use of its network while charging both its customers and Verizon (*Id.*). Verizon believes that GNAPs' proposal thus does not seek fair competition, but instead an opportunity for regulatory arbitrage (*Id.*).

Arbitration Award

The Commission finds that the panel's recommendation is consistent with the Commission's Local Service Guidelines and Commission's awards in Case No. 01-724-TP-ARB, *In the Matter of Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio,* and the GNAPs' Consolidated Arbitration. Therefore, we agree with, and will adopt, the panel's recommendations on Issue 4. Accordingly, we find that Verizon's local calling area, as revised to reflect EAS, shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation for non-ISP bound virtual NXX calls.

We reject GNAP's arguments that we must fashion our award in such a way as to be consistent with the FCC WCB's Virginia Arbitration Order, rather than follow our own past precedents and the panel's recommendations in this case. As discussed above in connection with Issues 1 and 2, the FCC WCB's Virginia Arbitration Order is neither a final decision nor a legally binding precedent in this case. We find that our Local Service Guidelines are the appropriate demarcation of intercarrier compensation for all non-ISP bound local calls. In fact, we note that the FCC's own rules specifically allow state commissions to define local calls for intercarrier compensation purposes.[13] This rule is cited by the WCB in a subsequent section of the WCB's Virginia Arbitration Order in its rejection of AT&T's proposal for LATA-wide reciprocal compensation.[14] The WCB further states that, "Accordingly, we decline to disturb the existing distinction in Virginia between those calls subject to access charges and those subject to reciprocal compensation."[15] Thus, while the Commission is not prohibiting the use of virtual NXX, subject to the requirements for number pooling and portability, the Commission is affirming that the intercarrier compensation for such calls are based on the geographic end points of the call as required by the Commission's local service guidelines and as permitted by the FCC rules.

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

Panel Recommendation

The panel agreed with both parties that GNAPs can use two-way trunks for interconnection. As to the operational and engineering aspect of two-way trunks between the parties, the panel noted that GNAPs did not provide any detailed testimony to support its proposed contract language for the operational and engineering aspect of two-way trunking. Therefore, the panel agreed with the testimony of Verizon's witness D' Amico which points out that because two carriers are sending traffic over the same trunk from the two ends, the actions of one affects the other. For that reason, concluded the panel, there must be a mutual agreement on the operational responsibilities and design parameters. Furthermore, the panel recommended that the parties should adopt the two-way trunking language that Verizon has proposed, finding it to be both nondiscriminatory and reasonable, and noting that it would delineate the same terms and conditions already

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13 *Local Competition First Report and Order,* 12 FCC Rcd. at para. 1035.

14 FCC *Virginia Arbitration Order,* para. 549.

15 *Id.*

established in a number of other Verizon interconnection agreements in Ohio. The panel found it necessary, however, to modify Verizon's operational and engineering requirements for two-way trunks in one respect. Consistent with the Commission's award in 00-1188 (00-1188, at 40), the panel recommended that because an exchange of forecasts by both companies would help both parties in understanding traffic volumes, the reciprocal exchange of traffic forecasts on a regular basis should be adopted in the contract.

Verizon's Exceptions

Verizon takes issue with the panel's recommendation that the Commission should not adopt language, as set forth in Verizon's proposed Interconnection Attachment Section 2.4.4, that would require Global to forecast both its inbound and outbound traffic to Verizon (Verizon's Exceptions at 5). In its exceptions, Verizon argues in favor of this provision which the panel rejected, explaining that the reason it has proposed that Global should forecast both its inbound and outbound traffic to Verizon, is because Global would be the carrier in the best position to do so, while Verizon would have no basis for doing so (*Id.*). Verizon points out that its witness, Mr. D' Amico, testified that a CLEC, like Global, should provide Verizon with good-faith, non-binding forecasts of its inbound and outbound traffic forecasts to assist Verizon in planning and engineering Verizon's network for the benefit of all carriers that use Verizon's network and services (*Id.*). Mr. D' Amico provided uncontradicted testimony, notes Verizon, that this information is only available from the CLEC and that, without it, Verizon may not be able to meet all the demands for trunks and other interconnection services. Verizon believes the panel should recommend adoption of Verizon's proposed language because: (1) this information, a forecast of inbound traffic Global expects to receive from Verizon, is necessary to ensure Verizon has adequate facilities in place, and (2) Global provided no factual basis to support its position (*Id.*).

Arbitration Award

The Commission agrees with the panel's recommendation on Issue 7. With regards to Verizon's exception to the panel's modification of the operational and engineering requirements for two-way trunks, the Commission takes this opportunity to clarify that each company is responsible for its own traffic forecast of its inbound and outbound traffic. Furthermore, the Commission notes that GNAPs did not provide any exceptions or replies to support its proposed contract language for the operational and engineering aspect of two-way trunking. Therefore, after considering all arguments raised as well as the panel's recommendation, and consistent with 00-1188, the Commission agrees that the reciprocal exchange of traffic forecasts by each party for its own inbound and outbound traffic on a regular basis should be adopted in the contract.

III. CONCLUSION:

We adopt all panel recommendations to which the parties did not file exceptions. Any exceptions raised that were not specifically addressed herein are denied. Based on the foregoing, Global and Verizon should incorporate the directives set forth within this

arbitration award within their interconnection agreement. Within 14 days of this arbitration award, Global and Verizon shall file in this docket their entire interconnection agreement for our review. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each shall file for Commission review of its version of the language that it believes should be used in a Commission-approved interconnection agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On April 10, 2002, Global filed with the Commission its petition for arbitration with Verizon pursuant to Section 252(b) of the Act. On May 6, 2002, Verizon filed its response to the arbitration petition.

(2) On May 30, 2002, the parties timely filed their arbitration packages.

(3) On June 6, 2002, the arbitration hearing was held. Post hearing briefs were filed on June 27, 2002.

(4) On July 22, 2002, the arbitration panel report was filed. It contained the panel's recommendations on each of the 12 issues presented for arbitration in this case.

(5) On July 29, 2002, Global and Verizon each timely filed their exceptions to the panel report. Verizon filed a reply to Global's exceptions on August 7, 2002.

(6) To the extent set forth in this arbitration award, we adopt the recommendations of the arbitration panel as reasonable and just resolutions of the arbitration issues to which the parties took exception. All other panel recommendations to which the parties did not take exception should be adopted as just and reasonable resolutions to those issues. Any exceptions raised that we did not specifically address in this arbitration award are denied. Based on the foregoing, Global and Verizon should incorporate the directives set forth in this arbitration award within their interconnection agreement.

V. ORDER:

It is, therefore,

ORDERED, That Global and Verizon incorporate the directives as set forth in this arbitration award within their interconnection agreement. It is, further,

ORDERED, That, on or before September 19, 2002, Global and Verizon file in this docket their entire interconnection agreement for our review. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall

file for Commission review its version of the language that it believes should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That any motions not expressly ruled on in this arbitration award are denied. It is, further,

ORDERED, That nothing in this arbitration award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this arbitration award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate either party to the contract from the provisions of any state or federal law that prohibits the restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this arbitration award be served upon Global and its counsel, Verizon and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

Entered in the Journal

SEP 5 2002

A True Copy

Gary E. Vigorito
Secretary

DEF/LAS/CW/RM/geb