DT 02-107

GLOBAL NAPS, INC.

Petition for Arbitration of an Interconnection Agreement with Verizon New England d/b/a Verizon New Hampshire

Final Order

O R D E R N O. 24,087

November 22, 2002

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I. PROCEDURAL HISTORY AND BACKGROUND

In 1996, Congress passed the Telecommunications Act (TAct) in an effort to encourage competition in the telecommunications industry, particularly in the local telecommunications market. The TAct gives state commissions the responsibility for reviewing interconnection agreements reached between an incumbent local exchange carrier (ILEC) and a competitive local exchange carrier (CLEC). More specifically, section 252 of the TAct gives state commissions the authority and responsibility for mediating and arbitrating interconnection agreements between the ILEC and a CLEC if so requested by either party. The New Hampshire Public Utilities Commission (Commission) responded by issuing Order No. 22,177, *Re*

Implementation of the Telecommunications Act of 1996, 81 NH PUC 431 (1996), on June 3, 1996, and by issuing Order No. 22,236, *Re Implementation of the Telecommunications Act of 1996*, 81 NH PUC 549 (1996), on July 12, 1996. In the July 1996 order, the Commission enumerated its responsibilities under the TAct for mediating and arbitrating of interconnection agreements and described the process and the standards it intended to use to fulfill those responsibilities.

Since that order, the Commission has rarely been asked to mediate or arbitrate interconnection agreements. The Commission has, however, approved numerous interconnection agreements that have been negotiated between Verizon and a number of different CLECs and wireless companies.

On June 3, 2002, Global NAPs, Inc. (GNAPs or Global) filed with the Commission a Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Hampshire Inc. f/k/a Bell Atlantic - New Hampshire, Inc. (Petition). In its Petition, GNAPs specifically raised a number of issues which it said needed to be arbitrated by the Commission. On June 27, 2002, Verizon New Hampshire (Verizon) filed its Response of Verizon New England Inc. d/b/a Verizon New Hampshire to Global NAPs, Inc.'s Petition for Arbitration

(Response). Verizon rebutted each of the issues raised by GNAPs and listed a few additional issues for arbitration. Verizon also argued that there were some other issues raised by changes to the draft interconnection agreement (Agreement) which GNAPs had suggested, but because GNAPs did not list them as issues in its Petition, the Commission should not address those issues. However, Verizon argued that, if the Commission decided to address those issues on their merits, then the GNAPs proposals should be rejected.

On August 1, 2002, the Commission issued an Order of Notice (OON) opening Docket No. DT 02-107, identifying the issues that were raised by the Petition and Response, and ordering that a prehearing conference be held on August 27, 2002. The Commission also indicated in the OON that it had hired the law firm of Orr & Reno, P.A., and attorneys Douglas L. Patch and Jeffrey C. Spear, to act as Arbitrator, and that the parties had agreed to designate November 15, 2002 as the date by which the Commission must issue an order concerning arbitrated issues in accordance with the TAct.[1] In the OON, the Commission noted that the parties had agreed to defer the request for

[1] This date was later changed to November 22, 2002 by agreement and to accommodate the parties.

arbitration of two issues concerning local calling area boundaries and the assigning of NXX codes which were being litigated in Docket Nos. DT 00-054 and DT 00-223 and were under consideration by the Commission.[2]

The prehearing conference was held on August 27, 2002. The New Hampshire Office of Consumer Advocate (OCA) indicated that it intended to participate fully in the proceeding. By letter dated September 26, 2002, the Commission adopted the schedule for the proceeding that was agreed to and outlined in the Arbitrator's Report on the prehearing conference.

On August 21, 2002, GNAPs filed a Motion for Summary Judgment on the first two issues raised in the Petition.[3] Verizon filed a response on September 4, 2002. In a report dated September 12, 2002, the Arbitrator recommended that the Commission deny the Motion for Summary Judgment without prejudice, pending the submission of testimony on both issues. Although the Commission never formally adopted the Arbitrator's recommendation, the Arbitrator heard testimony on both issues and submitted a recommendation on those issues to the

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[2] The Arbitrator later decided, in response to Verizon's request, that testimony should be filed addressing these issues, numbered 3 and 4, and that they should be included in the hearing before the Arbitrator.

[3] These two issues were: Should either party be required to install more than one point of interconnection?; and Should each party be responsible for the costs associated with transporting telecommunications traffic to the single point of interconnection?

Commission.

Pre-hearing briefs were submitted addressing all but four of the issues. The Arbitrator held a hearing on the other four issues on October 11, 2002, and the parties submitted post-hearing briefs on the issues included in the hearing.

On October 28, 2002, the Commission issued an order in DT 00-054 and DT 00-223.[4] On that same day the Commission issued a letter saying that because it was issuing an order one day before the Arbitrator's report was due and because of the similarities between the issues raised in that order and two of the issues that were to be addressed by the Arbitrator, the Arbitrator had until November 1, 2002 to submit his recommendation on those two overlapping issues. The Arbitrator submitted both reports as scheduled, though the November 1, 2002 Supplemental Report and Recommendation was subsequently corrected and a new version dated November 7, 2002 was submitted to the Commission at the hearing.

On November 7, 2002, the Commission held a hearing on the Arbitrator's reports. During the hearing the Arbitrator summarized his recommendation on each of the issues, the parties

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[4] *Investigation as to Whether Certain Calls are Local*, DT 00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers - Local Calling Areas*, DT 00-054, New Hampshire Public Utilities Commission, Final Order, Order No. 24,080 (October 28, 2002).

were given an opportunity to argue for or against the Arbitrator's recommendation on each issue, and the Commissioners asked questions of the Arbitrator and the parties.

In response to the Arbitrator's recommendation, GNAPS submitted proposed language to address certain issues the day before the November 7 hearing. Some record requests were made at the hearing and answers were submitted on November 15, 2002.

II. POSITIONS OF THE PARTIES, ARBITRATOR'S RECOMMENDATION AND COMMISSION ANALYSIS

A. Issue 1: Should either party be required to install more than one point of interconnection?

1. GNAP's Position

GNAPs argued that federal law, 47 U.S.C. § 1(c)(2)(B), authorizes a CLEC to interconnect with an ILEC at any single, technically feasible point on the ILEC's network and that it is therefore not required to install more than one point of interconnection (POI) per local access and transport area (LATA) and may in fact establish a single POI per LATA. This POI serves as the point at which the ILEC delivers CLEC-bound traffic and the CLEC delivers ILEC-bound traffic. GNAPs maintained that although the parties may agree to multiple POIs, GNAPs is not required to establish more than one POI per LATA.

2. Verizon’s Position

Verizon did not dispute that GNAPs has the option of designating a single POI per LATA within Verizon's network, but Verizon argued that GNAPs must make economically efficient decisions about where to interconnect. The real issue according to Verizon is issue #2, which concerns who has financial responsibility for transporting calls to the POI.

3. Arbitrator's Recommendation

The Arbitrator recommended that the Commission find that a CLEC has the right to request a single POI within a LATA at any technically feasible point. According to the Arbitrator, this result comports with federal law and decisions in other jurisdictions. Insofar as the contract language was concerned, the Arbitrator recommended that the language which Verizon proposed to include in the Agreement to address this issue was simpler and clearer and that it should be adopted.

4. Commission Analysis

Federal law is clear on this issue, CLECs have the right to request a single POI within a LATA at any technically feasible point. 47 U.S.C. § 251(c)(2)(B). As noted by the Arbitrator, many decisions in other jurisdictions have come to the same conclusion. The parties do not dispute this issue, though they argue that it is related to the subsequent

compensation issue. We agree with the Arbitrator's recommendation on this issue and that the Agreement should incorporate Verizon's proposed language to address this issue.

B. Issue 2: Should each party be responsible for the costs associated with transporting telecommunications traffic to the single point of interconnection?

1. GNAPs' Position

GNAPs argues that each carrier currently is and should continue to be financially responsible for transporting telecommunications traffic to the single POI on its side of the POI. GNAPs wants the Commission to find that it is not responsible for the transport costs associated with Verizon's originating traffic. Verizon's proposal that CLECs should have to pick up traffic from the ILEC at some point close to the location where the traffic originates, according to GNAPs, is simply an anti-competitive attempt to shift costs to the CLEC which the ILEC should have to bear. GNAPs asserts that if it had to bear these costs it would undermine its right to establish a single POI and could force GNAPs to exit the New Hampshire market. According to GNAPs, Verizon incurs *de minimis* costs to transport GNAPs-destined calls beyond local calling area boundaries. In response to Verizon’s position on the status quo of interconnection agreements, that the majority of

interconnection agreements contain terms similar to what Verizon is proposing here, GNAPs raises the question of whether carriers who agree to such terms are actually financially affected by the terms because of the specific type of interconnection implemented.

2. Verizon's Position

Verizon argued that GNAPs' designation of a single POI in a LATA imposes additional costs that GNAPs is trying to force Verizon to bear. According to Verizon, this position is inconsistent with the Federal Communications Commission Local Competition Order[5] and several recent federal court decisions and is basically unfair. Under GNAPs' proposal, when a Verizon customer calls a GNAPs customer Verizon must carry the call to GNAPs' POI, which is frequently outside the originating local calling area. Verizon claims that GNAPs wants Verizon to bear all of the costs of this transport and to pay reciprocal compensation as well. While Verizon recognizes that GNAPs has the option of interconnecting at a single point on Verizon's network per LATA, Verizon argues that GNAPS must be expected to make economically efficient decisions about where to interconnect. While GNAPs would have the Commission believe

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

that the cost of transport to a POI is small, Verizon argues real costs are imposed by GNAPs' election as to where to interconnect with Verizon and over time this would result in significant additional costs to Verizon because Verizon will be delivering a substantial amount of traffic to GNAPs, rather than the other way around. Also, because Verizon interconnects with facilities-based CLECs in New Hampshire, it asserts that absorbing these costs for all of the CLECs is a significant burden.

Verizon made an alternative proposal that the Agreement incorporate a virtual geographically relevant interconnection point or VGRIP which would distinguish a physical point of interconnection from designated points where financial responsibility would transfer from one carrier to another. In Verizon's proposal, an interconnection point (IP) is the place where one local exchange carrier would hand over financial responsibility for traffic to another local exchange carrier. While the POI and IP could be at the same place, they would not have to be. Under the proposal, GNAPs would accept financial responsibility for Verizon-originated traffic at a collocation arrangement in a Verizon designated VGRIP tandem wire center, which could be located outside the local calling area where the call originated. In this case, Verizon would be

willing to absorb some of the additional costs for transporting the call to that VGRIP tandem. GNAPs would then have the option of purchasing transport from Verizon, self-provisioning the transport to the POI, or purchasing the transport from a third party. Verizon maintained that the IP must be located so that the transport costs are fairly allocated between the carriers. As an alternative, if GNAPs chose not to collocate and establish an IP at the Verizon VGRIP tandem, Verizon proposed that the end office serving the Verizon customer who places the call, act as the "virtual IP."

3. Arbitrator's Recommendation

The Arbitrator determined that it would be unfair in the context of an interconnection agreement arbitration without the input from other interested parties, to make a major change in the way these calls are compensated.[6]

While the Arbitrator found merit in Verizon's argument that it is unfair that it be required to subsidize the CLEC's decision about how to configure its network, he determined that this issue is better addressed more generically either by the

[6] Although Verizon argued at the hearing on the Arbitrator's report that the status quo is really more aligned with its position on this issue because that position has been adopted in a large number of approved interconnection agreements, the current situation, absent an interconnection agreement that provides otherwise, is that Verizon is responsible for the costs of transporting Verizon-originated calls to the POI.

Commission or by the FCC in the context of the NPRM.[7] He therefore recommended that the Commission adopt the GNAPs position on this issue pending any determination made in a proceeding at either the state or federal level where there was broader input and a better opportunity and forum to address the underlying public policy issues.

Insofar as Verizon's VGRIP proposal was concerned, the Arbitrator said that while it might provide the basis for a compromise, because its adoption would have broader ramifications VGRIP should only be adopted in the context of a proceeding that gives due consideration to the larger public policy ramifications. The Arbitrator therefore recommended that the Commission not adopt the VGRIP proposal for this Agreement.

On the appropriate language to incorporate into the Agreement, the Arbitrator required GNAPs to file a separate document containing proposed changes to other sections of the interconnection agreement to implement this issue and to do so at least two days before the hearing on November 7. GNAPS filed this language on November 6, 2002.

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[7] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, Federal Communications Commission, 16 FCC Rcd 9610, rel. April 27, 2001.

4. Commission Analysis

This issue was the subject of a number of comments at the November 7 hearing. After considering these comments and reviewing the Arbitrator's report, we agree with his recommendation that it would not be appropriate to adopt either the GRIPs or VGRIPs proposal here. This means that in this Agreement each carrier will be financially responsible for transporting telecommunications traffic to the GNAPs POI on its side of the POI. We agree that any change in this method of compensation should not be made in the context of an individual interconnection agreement without the benefit of a full range of public comment.

Insofar as VGRIP is concerned, since it is not in the SGAT and again since we believe that a full assessment of the impact of adopting such a compromise would be better made in a more generic proceeding we choose not to adopt that proposal for this Agreement. Although Verizon has argued that a large percentage of the existing interconnection agreements with CLECs have a VGRIP or GRIP compensation methodology included in them, the parties to those agreements chose to accept that form of

compensation.[8] This being a case of first impression, we are not persuaded that we should adopt this compensation mechanism in this proceeding.

GNAPs responded a day late to the Arbitrator's request for specific language to incorporate this result into the Agreement and the response was discussed at the hearing. We will approve the language that GNAPs has proposed in order to incorporate our decision on this issue into the Agreement.

C. Issue 3: Should Verizon's local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?

1. GNAPs' Position

Because there is no economic or technical reason for local calling areas to be any smaller than a LATA, GNAPs argues that it should be allowed to define its own local calling area as broadly as it chooses, and that it could be as large as a single LATA. GNAPs says that the distinction between local and toll calls has become artificial. Allowing it to define its own local calling area will give GNAPs the freedom to compete with Verizon by offering wider calling area options than those

[8] In response to a record request made at the November 7 hearing, designated as Exhibit 16, Verizon indicated that there are 60 CLEC interconnection agreements in New Hampshire and of them 51, or 85 percent, contain either VGRIPs or geographically relevant interconnection points (GRIPs), compensation provisions. However, although the Commission asked Verizon to identify in the response how many of the 51 CLECs actually compensate Verizon based on GRIPs or VGRIPs, Verizon could not supply the information requested.

currently offered by Verizon and other CLECs. Forcing GNAPs to conform its network and operations to Verizon's, it asserts, will impose a significant uneconomic expense on GNAPs.

2. Verizon's POSITION

Verizon says its position on this issue is not an attempt to impose its local calling areas on GNAPs or any other CLEC. The real issue, according to Verizon, is how a local calling area will be defined for purposes of reciprocal compensation. Using Verizon's local calling area as the basis for assessing reciprocal compensation does not, according to Verizon, force GNAPs to adopt Verizon's local calling area for retail purposes; GNAPs would remain free to establish its own local calling area. Verizon contends that GNAPs should not be allowed, however, to circumvent the existing access charge regime through its unilateral definition of local calling areas. What GNAPs is really trying to do, according to Verizon, is to avoid paying access charges because access rates are generally higher than reciprocal compensation rates. Allowing GNAPs and other CLECs to do this would undermine the support that access charge revenue provides for basic local services prices.

3. Arbitrator's Recommendation

Based on his reading of the Commission's order in dockets DT 00-223 and DT 00-054, the Arbitrator recommended that

this issue be resolved by making GNAPs compensate Verizon for non-ISP bound traffic in accordance with the existing access charge regime, which relies on Verizon's local calling areas. There would be an exception to this when GNAPs provides service to at least one customer physically located in the exchange from which the FX-like service is requested. Insofar as ISP-bound traffic is concerned, GNAPs would not be subject to Verizon's local calling areas and compensation would be governed by the FCC. This means that while GNAPs could define its own local calling areas as broadly as it liked, particularly for information access, for purposes of compensation for non-ISP bound traffic it would be subject to Verizon's local calling areas other than in the situations noted above.

The Arbitrator recommended that the Commission order the parties to submit language to incorporate into the Agreement to address this issue within 30 days of the date of the Commission's order in this docket.

4. Commission Analysis

We agree with the Arbitrator's interpretation of our recent order in dockets DT 00-223 and DT 00-054 and therefore approve the Arbitrator's recommendation on this issue. GNAPs must compensate Verizon for non-ISP bound traffic in accordance with the existing access charge regime, which relies on

Verizon's local calling areas except when GNAPs provides service to at least one customer physically located in the exchange from which the FX-like service is requested. GNAPS will not be subject to Verizon's local calling areas for ISP-bound information access traffic and compensation for information access traffic will be governed by the FCC. Insofar as language to be incorporated into the Agreement is concerned, we will give the parties two weeks from the date of this order to submit language consistent with our order in dockets DT 00-223 and DT 00-054 (Order No. 24,080, issued October 28, 2002). If further arbitration of that language is needed, we will address that issue at that time.

D. 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?

1. GNAPs' Position

According to GNAPs, the Commission should allow it to utilize NXX codes in an innovative manner and Verizon should not be allowed to restrict this use through language it wishes to incorporate into the Agreement. The Agreement should not contain provisions that link the NXX code (the second three digits in a ten-digit telephone number) assigned to a particular customer with the location of that customer's premises or customer premises equipment (CPE). Restricting the assignment of NXX

codes to the customer's physical location would limit a CLEC's ability to provide new service offerings and to define larger local calling areas. Because, according to GNAPs, ILECs already offer an analogous service, foreign exchange (FX) service, that allows a customer to have a presence in a location other than the one in which the customer is physically located, limiting GNAPs' ability to offer this kind of service, it argues, would be discriminatory and anti-competitive.

In response to our record request, designated as Exhibit 15, GNAPs explained that e-fax traffic is a variant to traditional telecommunications services provided over the public switched network. GNAPs stated the call from the originating caller's fax machine to the e-fax device is routed identically to a voice call and should be billed accordingly.

2. Verizon's POSITION

Verizon argues that a call that originates in one rate center and terminates in a rate center outside of the originator's local calling area but is delivered through the use of an NXX code assigned for rating purposes in the originator's local calling area is not a local call. Verizon asserts that, while GNAPs would like the Commission to treat virtual NXX calls as local for purposes of reciprocal compensation, thereby requiring Verizon to pay reciprocal compensation to GNAPs for

inter-exchange calls, this, Verizon contends, would deprive it of access and/or toll revenue that it is otherwise entitled to receive for such toll calls.

The telephone industry has developed a system for rating and routing all local and toll calls that is based on geographic rate centers. Under this system, when a carrier issues a customer a number with a particular NXX it is telling other carriers that for billing purposes the customer is located within the rate center to which the NXX is assigned. Local calling areas determine whether the call is rated local or toll and whether a separate charge beyond the exchange service charge needs to be applied. Virtual NXX (VNXX) occurs when a carrier assigns a telephone number to a customer who does not physically reside in the rate center associated with the NXX code for that number. Verizon argues that what GNAPs proposes to do is to "eviscerate" the historically and statutorily codified distinction between local and toll calls, a drastic measure that would have grave implications for every carrier and consumer in New Hampshire.

In Verizon's response to the record request designated as Exhibit 15, Verizon explained there are two pieces to an e-fax transmission. The first piece, according to Verizon, is similar to a traditional fax and is not information access. The

second piece of the transmission, from the e-fax equipment to the internet, Verizon stated, is information access.

3. Arbitrator's Recommendation

The Arbitrator interpreted the Commission's order in DT 00-223 and DT 00-054 as providing that NXX codes currently in use for non-ISP bound traffic must remain associated with particular geographic areas. However, a CLEC may offer FX-like service for non-ISP bound traffic when it is providing service to at least one customer physically located in the exchange from which the FX service is requested. Insofar as information access NXX service (IANXX) is concerned, the Arbitrator said that the Commission ruled that specific NXX blocks with statewide EAS would be used for IANXX service. The effect of the Commission's ruling, according to the Arbitrator, is to allow GNAPs to assign its customers specific NXX codes from blocks that have been assigned to be used for IANXX service provided they meet the Commission's requirements for ISP-bound traffic. This ruling would also allow GNAPs to use VNXX for non-ISP bound traffic when GNAPs is providing service to at least one customer physically located in the exchange from which the FX service is requested. Insofar as other non-ISP bound traffic is concerned, GNAPs would not be allowed to use VNXX service for that traffic. As with issue #3, the Arbitrator recommended that

the parties be required to submit interconnection agreement language to address this issue within 30 days of the Commission order.

4. Commission Analysis

We agree with the Arbitrator's interpretation of our order in DT 00-223 and DT 00-054 and how it should affect the Agreement. While NXX codes currently in use for non-ISP bound traffic must remain associated with particular geographic areas, a CLEC may offer FX-like service for non-ISP bound traffic when it is providing service to at least one customer physically located in the exchange from which the FX service is requested. In response to our record request, Exhibit 15, the parties agreed that the transmission from the caller’s fax machine to the e-fax device is not information access. Consistent with the representations made by the parties, calls to e-fax numbers that originate and terminate in New Hampshire will be rated as toll or local pursuant to our Order No. 24,080 for non-ISP bound traffic. Specific NXX blocks with statewide EAS will be set aside for IANXX service. While we recognize that any of the parties may ask us to reconsider that order, the parties should draft language to incorporate into the Agreement based on the order as it currently stands. We would therefore order GNAPS and Verizon to jointly submit modifications to the Agreement to

implement the DT 00-223 and DT 00-054 order within two weeks of the date of this order.

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

1. GNAPs' Position

GNAPs argued that while the FCC has found that ISP-bound calls are not subject to reciprocal compensation under section 251(b)(5) of the TAct, the United States Court of Appeals may modify the FCC's order and the Agreement should recognize that the issue of compensation for ISP bound calls might need to be revisited if the FCC's order is stayed, vacated, reversed or modified. GNAPs also argued that given the importance of reciprocal compensation and the fact that the FCC is addressing the issue and will have new rules, the change of law provision in the Agreement should specifically refer to reciprocal compensation for ISP-bound traffic and require renegotiation once new rules are adopted.

2. Verizon's Position

Verizon argued that although the Court of Appeals remanded the order to the FCC so that it could clarify its reasoning, the Court did not vacate the order and the FCC subsequently reaffirmed its conclusion regarding compensation

for ISP bound traffic. Verizon also argued that GNAPs did not even propose specific language relating to the ISP Remand Order. Verizon said that the standard change-of-law language contained in sections 4.5 and 4.6 would address any future reversal of or modification to the ISP Remand Order and therefore there was no need for a carve-out specific to this issue.

3. Arbitrator's Recommendation

The Arbitrator determined that there would be no harm in including language that would specifically address the FCC Order, but was troubled that GNAPs had not proposed any specific amendment to sections 4.5 and/or 4.6. The Arbitrator therefore required GNAPs to submit specific language to amend these sections at least two days prior to the hearing or accept the change of law language in sections 4.5 and 4.6 as being sufficient to cover this situation.[9] The Arbitrator said that he was particularly interested in the language that was crafted as a result of the order of the New York Commission on this issue. He rejected GNAPs' other proposed changes to address this issue because they were not explained and because he felt the issue could be covered either in the two sections cited above or through the language used in the New York agreement.

[9] On November 7, 2002, GNAPs filed proposed language for sections 2.1 and 7.1 of the interconnection agreement.

4. Commission Analysis

We find GNAPs' request to include specific language in the Agreement recognizing that the issue of compensation for ISP-bound calls might need to be revisited if the FCC's order is stayed, vacated, reversed or modified, reasonable and therefore agree with the Arbitrator's recommendation on how to resolve this issue. In response to a record request at the hearing, (response designated as Exhibit 18), Verizon submitted the language which Verizon and GNAPs agreed to in New York to address this issue and we find that language acceptable.

F. Issue 6: Whether two-way trunking is available to Global at Global's request?

1. GNAPs' Position

GNAPs argued for the right to utilize two-way trunking at its own discretion, citing FCC regulations which it said require ILECs to provide two-way trunking upon request if the trunking is technically feasible. GNAPs asserted that Verizon's proposed language which said that two-way trunking would be installed by mutual agreement and only where appropriate would leave Verizon with too much discretion. GNAPs argued that the Commission should order the parties to implement GNAPs' language so that two-way trunking will be used if GNAPs requests it. GNAPs also said, however, that if mutual agreement was needed to

make two-way trunking operationally effective, it would work with Verizon to achieve an amicable end-result.

2. Verizon’s Position

Verizon agreed that GNAPs has the option under 47 C.F.R. §51.305(f) to decide whether it wants to use one-way or two-way trunks for interconnection. Verizon maintained nonetheless that the parties must come to an understanding about the operational and engineering aspects of the two-way trunks. Because two-way trunks present operational issues for Verizon's network, Verizon must have some say as to how the impact is assessed and handled.

GNAPs' proposed language, according to Verizon, would permit it to dictate how many trunk groups would be deployed between the parties. Because this would affect network performance and operation on each party's network, it is reasonable that the parties should mutually agree on the arrangement. Verizon also argued that GNAPs' proposed edits would mean that it would not have to provide forecasts of inbound and outbound traffic but would require Verizon to provide a forecast. In response to GNAPs’ proposal to eliminate a provision that would allow Verizon to disconnect trunks which were utilized less than 60 percent, Verizon said that it needs the right to disconnect excess trunk groups so that it can

manage its network efficiently.

3. Arbitrator's Recommendation

The Arbitrator said that while CLECs do have a right pursuant to 47 C.F.R. § 51.305(f) to decide whether to use one-way or two-way trunking for interconnection, it seems unreasonable and unrealistic to allow the CLEC to dictate the number of two-way trunks and trunk groups that will be deployed. The Arbitrator said, however, that it is important that the ILEC does not use its control over the trunks or the inability to reach agreement on the numbers of trunks or the operational responsibilities and design parameters to frustrate the CLEC's ability to utilize two-way trunks. He recommended adoption of Verizon's argument on this issue and its proposed language, which has been used successfully with other CLECs, but the Arbitrator further noted that the parties should take advantage of GNAPs' offer to make a good faith effort to work out differences with Verizon. If the parties are unable to come to agreement on this issue they could return to the Commission to ask it for assistance as provided in section 14 of the General Terms and Conditions.

4. Commission Analysis

We agree with Verizon that it needs to have discretion with regard to operational responsibilities and design

parameters applicable to two-way trunks and that 47 C.F.R. § 51.305(f) should not be interpreted as giving a CLEC unfettered discretion over two-way trunking. We caution Verizon, however, not to use its control over the trunks or the inability to reach agreement on the numbers of trunks or the operational responsibilities and design parameters to frustrate GNAPs' ability to utilize two-way trunks. We believe that GNAPs and Verizon should be able to work out their differences on this issue as have so many other CLECs and Verizon. We adopt the Arbitrator's recommendation on this issue and the language proposed by Verizon.

G. Issue 7: Is it appropriate to incorporate by reference other documents, including tariffs, into the agreement instead of fully setting out those provisions in the agreement?

1. GNAPs' Position

GNAPs argues that all terms and provisions that affect the dealings of the parties should be included in the Agreement. If Verizon is allowed to incorporate other documents like tariffs and CLEC handbooks into the Agreement by reference, Verizon will have the ability to unilaterally amend the terms and conditions in the Agreement, making the terms an ever-moving target. GNAPs wants the Commission to allow Verizon to cross-reference its tariffs solely for the purpose of utilizing its

tariffed rates for unbundled network elements (UNEs) or collocation. Thus, according to GNAPs, tariffs should not be permitted to supercede interconnection agreement rates, terms and conditions of the contract unless by mutual agreement. GNAPs pointed out that Verizon had rejected even a minimal notice requirement that GNAPs suggested in connection with Verizon's tariff filings and that it was unreasonable to require GNAPs to become tariff police.

2. Verizon's Position

Verizon argued that under its proposal a tariff reference would supplement the Agreement's terms and conditions, but not alter them with conflicting terms or conditions. The parties would rely on the appropriate tariff for applicable prices or rates and when there was a conflict between the terms and conditions of the tariff and those of the Agreement the terms and conditions of the Agreement would supercede those contained in the tariff. According to Verizon, GNAPs agreed at least in one instance to make applicable tariffs the source of prices for services provided under the Agreement. Verizon's proposal is to establish effective tariffs as the first source for applicable prices, ensuring that the prices are set and updated efficiently, consistently, fairly and in a non-discriminatory manner for all CLECs. According to Verizon,

GNAPs wants to lock it into contract rates, but leave GNAPs free to purchase from future tariffs if those rates are more favorable. This would create an arbitrage opportunity by locking Verizon into contract rates but letting GNAPs purchase from future tariffs should the tariff rates prove more favorable. Because GNAPs has the right to protest any tariff which Verizon files with the Commission, the tariff process is not unilateral.

3. Arbitrator's Recommendation

The Arbitrator said that GNAPs' approach lacked sufficient detail to justify the changes which it appeared to support but which in some instances were not even included in its own Petition. The Arbitrator determined that it would not comport with good contract practice or with good public policy to leave GNAPs free to choose from a contract rate that is essentially a tariffed rate frozen at a particular level or a new tariffed rate if that rate is less. He was concerned about the impact on Verizon's relationship with other CLECs if they could take advantage of a similar arbitrage opportunity. He therefore adopted Verizon's position on this issue and rejected GNAPS' proposed changes to the Agreement with one exception. He agreed that a CLEC handbook, which is not subject to Commission review and approval, should be treated differently and therefore

recommended that the Commission side with GNAPs that the CLEC handbook should not be incorporated into the Agreement by reference.

4. Commission Analysis

We agree with the New York Commission's determination that Verizon's proposal on this issue establishes an interplay between tariffs and interconnection agreements which will lead to nondiscriminatory pricing consistent with section 251 of the TAct.[10] Although it would be difficult for GNAPs to participate in and comment on all relevant tariff filings by Verizon, we believe that Verizon's proposed inclusion of tariff references is reasonable and appropriate. We agree with the Arbitrator and GNAPs that a CLEC handbook, which is not subject to the review and approval of the Commission as are tariffs, should not be incorporated by reference.

H. Issue 8: Should the interconnection agreement require Global to obtain excess liability insurance coverage of $10 million and require Global to adopt specified policy forms?

1. GNAPs' Position

GNAPs argued that the levels of insurance that Verizon would require GNAPs to maintain are excessive and represent a

[10] *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc.,* Order Resolving Arbitration Issues, New York Public Service Commission Case No. 02-C-0006 (May 24, 2002) ("New York Verizon/GNAPs Arbitration Order") at 34.

barrier to competition. GNAPs proposed lower limits and eliminating the auto insurance requirement because it duplicates state law requirements. GNAPs believes as well that it should be permitted to substitute an umbrella excess liability policy for the insurance minimum limits.

GNAPs also argued that requiring the amount of insurance which Verizon proposes will disadvantage competitors since Verizon can self-insure. GNAPs said that its current commercial general liability insurance coverage is adequate and said that Verizon had not cited any circumstance which has resulted in damages or injuries in excess of the amounts which GNAPs was proposing.

At the hearing on the Arbitrator's report GNAPs argued that the Commission should consider naming GNAPs as an insured party on Verizon's policies, just as Verizon was insisting that it be a named insured on GNAPs' policy.

2. Verizon's Position

Verizon argued that it was reasonable for it to seek protection of its network, personnel, and other assets, and that its insurance requirements are reasonable, necessary and minimal. Verizon said that the level of insurance which it proposes provides the financial guarantee to support the proposed indemnification provisions in the Agreement. Verizon

also said that deductibles, self-insured retentions or loss limits must be disclosed to Verizon, that GNAPs must name Verizon as an additional insured, that GNAPs must provide proof of insurance and report changes in insurance periodically, and that it must require contractors that have access to Verizon premises or equipment to procure insurance. Verizon said that the presence of GNAPs' equipment and personnel on Verizon's property puts Verizon's network, personnel and assets at an increased risk for damage and injury and that it is therefore reasonable for Verizon to seek protection of its network, personnel and other assets. Verizon cited recent experience with CLEC bankruptcies as showing that insurance coverage is often the only source of recovery.

Verizon said that GNAPs' proposed insurance amounts were inadequate and that Verizon's proposal would not be any additional expense to GNAPs since GNAPs already is providing coverage to another telecommunications carrier (Pacific Bell) in the amount Verizon is seeking here. In response to GNAPs' claim that it is unreasonable to require it to acquire insurance when Verizon can self-insure, Verizon argued that Verizon does have insurance and that it has a much more extensive network and more employees than GNAPs, thereby having much more risk of damage or injury.

In response to GNAPs' argument that GNAPs should be named as an insured on Verizon's policies, Verizon argued that it would not be appropriate to make additional insured obligations reciprocal because the relationship is not reciprocal and the entities are not similarly situated in that Verizon has much more at risk.

3. Arbitrator's Recommendation

The Arbitrator recommended that the Commission find in favor of Verizon. He agreed with Verizon that it has substantial risks to its network, personnel and assets and that the amount of insurance it is requiring is not unreasonable. The Arbitrator did not agree with GNAPs that what Verizon is proposing is discriminatory, finding instead that it is prudent business practice. He also considered it appropriate to require GNAPs to name Verizon as an additional insured.

4. Commission Analysis

We agree that Verizon has risks that should be recognized and addressed. We find GNAPs' argument that the proposed insurance requirements are excessive and a barrier to entry unpersuasive. The interconnection agreement between Verizon and GNAPs in California, contained as Exhibit C in the GNAPs petition, includes $10,000,000 excess liability insurance as proposed by Verizon in this case. Although GNAPs states in

its petition that it does not agree with all the terms and conditions in the California agreement, GNAPs states it believes the California interconnection agreement embodies arrangements by which GNAPs can continue to provide service in New Hampshire.

We agree with GNAPs, however, that it has risks as well and that it is only fair to require that GNAPs be named as an additional insured, at least for liability policies, not workers compensation or motor vehicle policies. We therefore approve the Arbitrator's recommendation with the additional condition that Verizon name GNAPs as additional insured on excess liability policies.

I. Issue 9: Should the Interconnection Agreement include language that allows Verizon to audit Global's books, records, documents, facilities and systems?

1. GNAPs' Position

GNAPs contends that Verizon's audit provisions would enable it to gain unreasonably broad access to competitively sensitive GNAPs' records, and that this would allow Verizon to access almost any piece of data, analysis or proprietary information that GNAPs has under its control. GNAPs suggested that if Verizon believes Global has not complied with the terms of the Agreement it can pursue negotiations and seek legal or equitable relief. GNAPs argues that the information sought is competitively sensitive, and that the costs of making sure the

confidentiality of these records is not violated would be prohibitive. GNAPs also argues that much of the data relating to call patterns and traffic flow is already available to Verizon through its own records.

2. Verizon's Position

Verizon contends that GNAPs has misconstrued the language and effect of its proposed provision and points out that the audit provision applies equally to both parties. Under the terms of the Agreement, GNAPs would not be providing records to Verizon, but rather would be allowing an audit to be performed by independent certified public accountants selected and paid by the auditing party that are acceptable to the audited party. The Agreement also requires the auditors to execute a confidentiality agreement in a form reasonably acceptable to the audited party. In addition, the audit rights are reasonably circumscribed; the accountant only has access to records necessary to assess the accuracy of the audited party's bills, or to traffic data to ensure that rates are being applied appropriately. Verizon says that it is commercially unreasonable simply to trust that GNAPs is billing correctly, particularly given past billing disputes and improprieties.

3. Arbitrator's Recommendation

The Arbitrator found that the intrusive, anti-competitive effects that GNAPs described did not appear to comport with the language or intent of Verizon's proposed contract provisions. Audit provisions of the type proposed by Verizon, according to the Arbitrator, appear to be standard components of these agreements, and serve important goals. The Arbitrator recommended that the Commission adopt Verizon's position on this issue, as well as the contract language it proposed.

4. Commission Analysis

We believe that the contract language addresses most of GNAPs' concerns. Under the language proposed by Verizon, GNAPs has the authority to veto the third party auditor chosen by Verizon and the auditor must sign a confidentiality agreement. Moreover, the rights given to the auditor are limited to authority to review the records necessary to assess the accuracy of the bills and the traffic data. We agree with the Arbitrator's recommendation and approve Verizon's proposed language addressing this issue.

J. Issue 10: Should Verizon be permitted to collocate at GNAPs' facilities in order to interconnect with GNAPs?

1. GNAPs' Position

GNAPs argued that it is willing to provide collocation to any customer who requests it on a space-available basis and in a non-discriminatory manner. GNAPs said, however, that it would not be appropriate to include in the Agreement what is not required by federal law or regulations.

2. Verizon's Position

Verizon proposed contract language that would give it the option to collocate at GNAPs' facilities. Verizon said that if GNAPs would not allow Verizon to collocate at its facilities it should be prohibited from charging Verizon distance-sensitive transport rates to get Verizon's traffic to those facilities. While Verizon recognizes that section 251(c)(6) of the TAct, which imposes a duty on ILECs to provide collocation, does not apply to CLECs, it contends that nothing in the TAct prohibits the Commission from allowing Verizon to interconnect with the CLECs via a collocation arrangement at their premises. Without the option to collocate, Verizon argues that it cannot evaluate whether it is more cost-effective to purchase transport from GNAPs or build its own facilities to GNAPs. According to Verizon, fairness dictates that it should have comparable

choices to those of GNAPs.

3. Arbitrator's Recommendation

The Arbitrator said that the parties were in agreement that no authority exists supporting imposition of a truly reciprocal collocation obligation that would afford Verizon the same rights to collocate as GNAPs enjoys under the TAct. He pointed to decisions in Maryland[11] and Rhode Island[12] which suggest that such an imposition would be contrary to the purposes of the TAct and the Commission's own regulations. The Arbitrator therefore concluded that Verizon's position reaches too far. Verizon's proposal to place financial consequences on GNAPs' decision not to permit collocation was found by the Arbitrator to be in conflict with the underlying purposes of the TAct. The Arbitrator found that it would be appropriate to include in the Agreement GNAPs' offer to permit collocation on a space-available basis, in a non-discriminatory manner. The Arbitrator found that this would merely add to the Agreement what GNAPs had said it was willing to do and would offer some

[11] *In the Matter of the Arbitration of Sprint Communications Company. L. P. vs. Verizon Maryland Inc., Pursuant to Section 252 (b) of the Telecommunications Act of 1996*, Case No. 8887, Order No. 77320, Public Service Commission of Maryland (October 24, 2001) at 48-49.

[12] *In Re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon-Rhode Island, Arbitration Decision,* State of Rhode Island and Providence Plantations Public Utilities Commission, Docket No. 3437 (October 16, 2002) at 44-45.

protection to Verizon from an arbitrary refusal by GNAPs of a request to collocate.

4. Commission Analysis

We agree that it would not be appropriate or consistent with federal law to impose a reciprocal collocation obligation on GNAPs. We concur, however, with the New York Commission's conclusion that incorporating GNAPs' offer to permit collocation on a space-available basis and in a non-discriminatory manner, or as New York put it "subject to the established restrictions as to technical feasibility and space", is appropriate.[13] We therefore approve the Arbitrator's recommendation on this issue.

K. Issue 11: Should GNAPs be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action?

1. GNAPs' Position

GNAPs did not raise this issue in its petition; the issue was implicated by certain changes to the contract GNAPs suggested during negotiations, and which Verizon enumerated as an issue in its Response. GNAPs argues that changes under the Agreement should only be permitted based on "final" decisions or judgments. They contend that Verizon has, in the past, shown a

[13] New York Verizon/GNAPs Arbitration Order at 30.

tendency to take action based on unsettled law when it suits Verizon and to the detriment of CLECs.

2. Verizon's Position

Verizon contended that GNAPs did not comply with section 252(b)(2) of the TAct, which requires a party that petitions a state commission to provide the unresolved issues to the commission. Verizon argued that the Commission should not address this issue because it was not properly raised by the Petition. If the Commission is inclined to decide the issue on the merits, Verizon contended that the parties must abide by a change in law rather than predict the result of further proceedings or substitute their judgement for that of a governmental decision-maker who chose not to grant a stay. Verizon said that it should have the right to cease providing a service or benefit if it is no longer required to do so under applicable law.

3. Arbitrator's Recommendation

The Arbitrator pointed out that section 252(b)(4)(A) of the TAct explicitly requires the Commission to "limit its consideration of any petition . . . to the issues set forth in the petition and in the response." Although the Commission should not shy away from deciding issues of genuine merit, the Arbitrator said that procedural requirements are in place for a

reason, and where a party cannot comply with the simple expedient of listing issues in dispute, particularly where the issue has arisen in prior arbitrations, he believed the procedural rules should be invoked. If the Commission decided to reach the merits of the issue, the Arbitrator said that Verizon's position should be adopted. The Arbitrator cited to a New York decision that determined whether a stay occurs in any given case is beyond the power of the parties to decide, and does not provide a compelling reason for departing from standard change of law provisions.[14]

4. Commission Analysis

We consider the language in the TAct that specifically limits state commissions to considering the issues presented in the petition and response to be controlling. We see no reason to make an exception here for a CLEC and decline to adopt any contract language that pertains to standard change of law provisions. We note, however, as a matter of law, decisions not stayed by their own terms or by a higher authority, remain in effect and must be observed until such time as they are stayed or reversed. We therefore adopt the Arbitrator's recommendation and deny GNAPs' position on this issue for failure properly to raise it.

[14] New York Verizon/GNAPs Arbitration Order at 33.

L. Issue 12: Should GNAPs be permitted to insert itself into Verizon's network management or contractually eviscerate the "necessary and impair" analysis to prospectively gain access to network elements that have not yet been ordered?

1. GNAPs' Position

GNAPs did not raise this issue directly in its Petition, but rather indirectly through suggested changes to the Agreement. GNAPs contended that allowing Verizon to implement new technologies without allowing GNAPs to review such technology in advance would increase the risk of network incompatibilities and potential service outages for New Hampshire customers.

2. Verizon's Position

Verizon again argued that the Commission should not reach the merits of this issue because GNAPs did not raise the issue in its Petition. If the Commission decided to address the merits of the issue, however, Verizon contended that its proposed language appropriately recognizes its right to deploy, upgrade, migrate and maintain its network at its discretion and preserves its right to deploy fiber throughout its network. GNAPs' proposed language, according to Verizon, would give it access to all of Verizon's next generation technology. Verizon said that it was unclear whether GNAPs was seeking interconnection with the network or access to a specific

element. According to Verizon, applicable law only requires reasonable and nondiscriminatory interconnection to Verizon's network and to items that have been declared to be UNEs.

3. Arbitrator’s Recommendation

The Arbitrator decided that GNAPs' failure to raise this issue in the Petition meant that the changes it proposed should, as a procedural matter, be rejected by the Commission. If the Commission decided to address the issue on the merits, the Arbitrator recommended that Verizon’s position and contract language be adopted. GNAPs provided no authority to support its position that it be entitled to all next generation technology.

4. Commission Analysis

As in issue #11, we consider the language in the TAct which specifically limits state commissions to considering the issues presented in the petition and response to be controlling. We see no reason to make an exception here for a CLEC that has considerable experience with arbitrations in other states and we see no evidence that Congress intended that there be any exceptions. We deny consideration of the merits of GNAPs' position on this issue and conclude that we are precluded by federal law from doing so because GNAPs failed to include this issue in its Petition. We therefore adopt the Arbitrator's recommendation on this issue.

Based upon the foregoing, it is hereby

ORDERED, that the Arbitrator's recommendations on each of the issues described above are approved, subject to any further conditions articulated in this order; and

FURTHER ORDERED, that GNAPs and Verizon shall jointly submit within two weeks of the date of this order language to incorporate into the Agreement the Commission's determination on issues 3 and 4.

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 2002.

Thomas B. Getz	Susan S. Geiger	Nancy Brockway
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary