

access charges or its supposed right to block Global's traffic prior to prevailing in any forum.

Given the paucity of evidence at this juncture, there are three major reasons why there should be a full hearing with discovery rather than uncritical acceptance of FairPoint's unproven assertions that Global owes it over \$4 million in access charges with an immediate allowance of FairPoint's request to block Global's traffic to New Hampshire: First, FairPoint asserts that it should prevail on its claim because this Commission allowed TDS to disconnect Global based on TDS' access charge claims. But unlike TDS, FairPoint signed an ICA with Global which states "*compensation that may be due in connection with exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations.*" ICA, §8.1.² This key provision, mentioned but barely discussed in the Joint Petitioners' Brief in Support of Joint Petitioners' Requested Relief,³ only gives FairPoint a right to access charges if the traffic it terminated for Global was not internet traffic, a showing it has not yet made or attempted to make.

Thus, the Commission must determine if examination of FP's call detail records reveals, as such examinations have tended to do, before the tribunals such as the Pennsylvania PUC,⁴ that the carriers supposedly originating landline instate calls attributed to Global have sold their phone numbers to nomadic VoIP companies. If this is

² The relevant terms of the ICA are attached as Exhibit 1.

³ (Brief in Support of Requested Relief) (Filed September 29, 2008).

⁴ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc., and other affiliates*, C-2009-2093336, Initial Decision issued August 11, 2009 (*Palmerton*), later modified on findings of law by *Palmerton Telephone Company v. Global NAPs South Inc. and Other Affiliates*, C-2209-2093336, Order dated March 16, 2010.

the case, then the Commission must find, as have recent federal decisions in New York and D.C., that access charges are inapplicable to this VoIP traffic.⁵

Second, Global has protested all of FairPoint's bills on the ground that the VoIP traffic it sends to FairPoint is not subject to the ICA bills. Once a carrier has mounted a protest like this, a utility does not have the right to terminate service without resolution of the dispute by state officials. Under the rule of *Core Communications*,⁶ FairPoint, as a party to a state commission-approved ICA, must prevail in a state commission proceeding on the merits of its claim before it can become entitled to monetary or call-blocking relief, a form of relief which the FCC has made clear ILECs cannot institute on their own say so.

Third, Global has offered to pay FairPoint a cost-based non-discriminatory rate of \$.00045 per MOU for VoIP termination, contemplated for carriers like Global by sections 251(c) and 252(d) of the TCA; an offer which FairPoint rejected.⁷ Given that this raises a further issue of TCA compliance and that the cut off poses a threat of serious injury to Global, it would be unreasonable to allow FairPoint to forego negotiations without delaying its proposed cut off until it can demonstrate that the non-cost-based rates it seeks are allowed under the TCA and the ICA.

I. THE NHPUC MUST HOLD A HEARING TO DETERMINE WHETHER GLOBAL OWES FP THE BILLED ACCESS CHARGES

FP claims that it should be permitted to cut off service to Global because the Commission granted TDS the right to do so. Mot. for Disconnection, at 3-4. But it is

⁵ *Manhattan Telecommunications Corp. (MetTel) v. Global NAPs Inc.*, 2010 WL 1326095 (Findings of Fact and Conclusions of Law issued March 31, 2010, S.D.N.Y.); *Paetec Communications Inc. v. CommPartners, LLC*, Civ. Action No. 08-0397 (filed February 18, 2010, D.D.C.) (*Paetec*).

⁶ *Core Communications, Inc. v. Verizon Pa., Inc.*, 493 F.3d 333 (3d Cir. 2007) (*Core*).

⁷ See Exhibit 2.

clearly incorrect to treat FP's access charge claims on the same basis as those of TDS. FP and Global are parties to an ICA that, by its terms, dictates their whole relationship. There are key sections of the ICA whose import was not resolved in the litigation of TDS' dispute with Global.

Most important is section 8.1 which describes the ICA's treatment of "Internet Traffic." That term is defined as "[a]ny traffic that is transmitted to or returned from the internet *at any point during the duration of the transmission.*" ICA, §2.43 (emphasis added). Section 8.1 provides:

Notwithstanding any other provision of this agreement or any tariff: (a) *the parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations;* (b) a party shall not be obligated to pay intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC Orders and FCC Regulations.

(Emphasis added).

Relevant FCC orders, in turn, explain what compensation is due for the internet traffic Global sends to FP. The FCC has stated, in regard to the applicability of access charges to companies engaging in the IP telephony business:

'[IP] telephony . . . is exempt from the access charges that traditional long-distance carriers must pay.'⁸

The plain meaning of section 8.1, the FCC orders it incorporates and the ICA's definition of "Internet Traffic" is that FairPoint has or had the right to impose access charges only on any portions of Global's traffic that do not touch the internet at all.

⁸ *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, FCC WC Docket No. 02-361, FCC 04-97, ¶ 9 (released April 21, 2004) (*IP-in-the-Middle*) (citing *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 F.C.C. Rcd 9610, 9657, ¶ 133 (2001)).

FairPoint seems not to realize the import of the definition of “Internet Traffic” even though its Brief in Support of Requested Relief states the definition in a footnote. Brief in Support of Requested Relief, at fn. 1. It only once addresses the fact that “Global NAPs apparently claims that . . . the traffic may have utilized internet protocol at some point during its transmission prior to its arrival at Global NAPs.” It does not respond to that argument except to say that Global should not be allowed to use its services “for nothing,” Brief in Support of Requested Relief, at 7, a wholly unpersuasive point, given that it sends dial-up traffic for Global to complete and pays nothing for that service and that Global offered to pay it \$0.00045 for VoIP termination.

FP mainly focuses on attacking Global for not proving that its traffic is nomadic VoIP and for not knowing the originating format of its traffic. Brief in Support of Requested Relief, at 2, 10. It states that Global’s submission of the NYPSC’s *TVC* opinion,⁹ should not be considered because the *TVC* ruling was limited to nomadic VoIP traffic,¹⁰ but it fails to state that the NYPSC found Global’s traffic to be nomadic VoIP and agreed with Global’s interpretation of the FCC *Vonage* order¹¹ and the Eighth circuit decision¹² cited by Global to this Commission, that a finding that a significant portion of Global’s traffic is nomadic VoIP protects all of Global’s traffic from access charges because of the impossibility of separation. *See TVC*, at 14-15. FP’s only other statement in regard to the *TVC* decision is that “[m]ost importantly the New York Commission’s Order starts a process for making sure that compensation is paid to the terminating LEC

⁹ PSC Case No. 07-C-0059, *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications Against Global NAPs, Inc. for Failure to Pay Intrastate Access Charges*, Order dated Mar. 20, 2008 (*TVC*).

¹⁰ *See* Brief in Support of Requested Relief, at 10.

¹¹ *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, 19 F.C.C.R. 22404, 2004 WL 2601194 (2004) (*Vonage*).

¹² *Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570, 574 (8th Cir. 2007).

even for nomadic VoIP traffic.” Brief in Support of Requested Relief, at 10 (citing *TVC* at 15). This is correct, the *TVC* ruling has resulted in Global paying TVC a rate of \$.00045, which it has offered to FP, and TVC accepting a check for that rate, with the statement that it reserves the right to pursue further claims.¹³

The fact that FP fails to meaningfully rebut Global’s proof that it does in fact transmit nomadic VoIP does not matter, however, because neither a showing that Global transmits nomadic VoIP nor a showing that its traffic originates in IP is required in order to prove that pursuant to the term of the ICA, Global’s traffic “is transmitted to or returned from the internet *at any point during the duration of the transmission.*” The standard for exemption from traditional charges under the FP contract turns not on whether the call originated in IP but only whether it was in IP at some point, an issue which the Commission did not analyze in its order authorizing TDS to terminate service and on which there have been no findings. Thus, this Commission’s November 10, 2009 conclusion, that Global’s evidence concerning its VoIP traffic, particularly its evidence on the origin of such traffic, was inadequate to establish a full VoIP defense,¹⁴ does not establish that FP is entitled to access charges.

It is now even more clear that Global can prove that its traffic is not subject to access charges and show not only that its traffic was in IP at some point during its transmission, but also that its traffic originates in IP, as numerous tribunals have found, after conducting hearings on the issue. After this Commission issued its November 10th order and Global filed its December 2, 2009, reconsideration motion, Maryland PSC

¹³ See Exhibits 3 and 4.

¹⁴ Order Addressing Petition for Authority to Block the Termination of Traffic from Global NAPs Inc., No. 25,043 (November 10, 2009) at 22; Order Denying Motion for Stay, Rehearing or Reconsideration, No. 25,088 (April 2, 2010), at 1.

Examiner Paul McGowan issued his Proposed Order, in a proceeding in that commission to determine whether Global's traffic was subject to a local carrier's access charges.¹⁵ He found that Global transports traffic on behalf of ESPs, all of whom serve VoIP providers who exclusively transmit VoIP traffic, Proposed Order at 20. He thus held that a significant portion of Global's traffic is VoIP and nomadic and that it is possible that Global transmits exclusively VoIP, which it converts into TDM prior to transmission to the tandem. *Id.* at 20, 21. He thus concluded that because Global's traffic is largely VoIP, it is exempt from intrastate access charges, and that because Global's nomadic VoIP cannot be separated from its non-nomadic VoIP, charging Global local access charges violates federal law. *Id.* at 19, 22, 23.

Then, in February of this year, Judge Robertson found that CommPartners, one of Global's main suppliers, transmits traffic which undergoes a net protocol conversion from VoIP to TDM and is thus not telecommunications, but information services which are not subject to tariffs on standard toll traffic. *Paetec*, at 5, 7, 9, 11. Judge Rakoff in the *MetTel* case, between Global and Metropolitan Telephone Company, found that "[s]ome of Global's biggest customers, including Vonage and BroadVoice, are VoIP providers who calls do not begin in TDM." He thus came to the following conclusion, in his findings of fact and conclusions of law:

Finding that Global has successfully shown that a significant percentage of the (undifferentiated) calls for which it was billed are VoIP, and given the FCC's authority in this area and its limited pronouncements, the Court declines to apply the filed rate doctrine to the facts of this case.

MetTel, at 2.

¹⁵ *Proposed Order In The Matter Of The Investigation, Examination And Resolution Of Payment Obligation Of Global NAPs - Maryland, Inc. For Intrastate Access Charges Assessed By Armstrong Telephone Company - Maryland* (December 30, 2009) (Proposed Order).

Global has proffered to the Commission the evidence which persuaded Judge Rakoff to come to the above conclusions. Global submitted the testimony of a Vonage witness, who testified that Vonage sent traffic to Global's suppliers and that two of Vonage's biggest traffic forwarders were Transcom and CommPartners, who are Global's major suppliers of VoIP and enhanced traffic. (Mulligan, Trial Tr. 327, 333-34, Sept. 10, 2009) (Ex. H to Motion for Stay, Rehearing and Reconsideration (Mot. for Rehearing)) (Filed December 2, 2009)). Vonage also testified in that proceeding all its traffic was computer (IP) originated and that all of its subscribers could have phone numbers from any state and could call from any state or country using portable broadband equipment. *Id.* Also, Global proffered testimony from a witness from Transcom, a major ESP supplier of Global's traffic, who described the traffic it receives from nomadic VoIP companies, the enhancement it engages in, and its forwarding of such VoIP and enhanced traffic to Global. (Johnson, Trial Tr. 352-60, Sept. 10, 2009) (Ex. I to Mot. for Rehearing). Other testimony in New York showed that Global forwards traffic from Vonage, as well as several other known VoIP carriers, such as BroadVoice and YMAX. (Masuret, Trial Tr. 186, Sept. 9, 2009) (Ex. J to Mot. for Rehearing); (Berry, Trial Tr. 239, 243, 244, 246, Sept. 10, 2009) (Ex. K to Mot. for Rehearing).¹⁶

But even without these facts, it is clear, based on Global's and its customers' business models, that all of its traffic is internet traffic. Because Global can only be

¹⁶ Global explained that its Vonage testimony was available in New York but not in New Hampshire because Vonage's New Jersey headquarters are within 100 of the New York City court room, but not within 100 miles of this Commission in New Hampshire. *See* (Mot. for Rehearing, at 11). Global also explained that its other key witness Transcom, headquartered in Texas, also could not be made to appear before this Commission because it is not subject to the subpoena power of this Commission.

reached through the internet companies whose traffic it forwards, it is not possible for it to have transmitted any calls that did not touch the internet (the fact that Global knows the format of the traffic delivered to its by its customers is acknowledged in Global's reply to stipulation 13, where it states that it knows the format of the traffic coming from the ESPs to whom it is connected). Furthermore, two of Global's suppliers, magicJack and Broadvoice, are traffic originators who send Global only broadband-originated traffic. The other four companies who supply Global's traffic are enhanced service providers, which are hired because of their ability to handle and enhance internet traffic, and for no other reason.

Had the Commission held a hearing like the tribunals described above, Global would have presented live witnesses employed by its suppliers, who could provide specific information about their VoIP businesses and the techniques they use for call enhancement.

Further, even if the Commission is uncertain about whether access charges can be assessed on Global's traffic, based on federal law on the issue, this Commission would have no jurisdiction to assess access charges on Global for traffic which touches the internet. In the *SNET* case, Judge Hall stayed Southern New England's claims relating to Global's IP traffic, holding that it was inappropriate for a district court to make "the determinations described in *Frontier* and *Southwestern Bell*" (two cases that were similarly stayed) namely, determinations on telecommunications issues, which are within the FCC's jurisdiction:

Accordingly, this court stays, under the doctrine of primary jurisdiction, SNET's... *causes of action regarding traffic that*

*involves IP at some point in its transmission.*¹⁷

In addition to stating that its treatment of internet traffic is consistent with FCC orders on the issue, the ICA also defines billable traffic in a way that prevents FP from being able to assess access charges on Global. In its description of how access charges will be billed, the ICA states that “switched exchange access” is defined as “The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic.” §2.84. The ICA further states that “Toll may be either ‘IntraLATA Toll Traffic’ or ‘InterLATA Toll Traffic’ depending on whether the originating and terminating points are in the same LATA.” §2.92. IntraLATA traffic is defined in turn, as “Telecommunications that originate and terminate in the same LATA” §2.45, and according to the ICA, “InterLATA traffic” “Shall have the meaning set forth in the Act.” §2.44. 47 U.S.C. 153(21) states “The term ‘interLATA service’ means telecommunications between a point located in a local access and transport area and a point located outside such area.”

“Telecommunications” is not defined in the ICA, but according to section 1.2, “terms that are not defined in this glossary or elsewhere in the principal document shall have the meaning stated in the Act.” TCA, §153(43) defines “telecommunications” as the “transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content of the information as sent and received.*” (Emphasis added).

¹⁷ *Southern New England Telephone Co. v. Global NAPs, Inc., (SNET)*, Civ. Action No. 3:04-CV-2075 (JCH) 2005 WL 2789323 (D. Conn. 2005) (citing *Frontier Tel. of Rochester, Inc. v. USA Datanet Corp.*, No. 05- CV-6056 (CJS), 2005 WL 2240356 (W.D.N.Y. August 2, 2005) (staying action for access charges by ILEC against VoIP provider under the primary jurisdiction doctrine); *Southwestern Bell Telephone LP v. Vartec Telecom, Inc.*, 2005 WL 2033416 (E.D.Mo.) (staying access charge claims against Vartec, Transcom (one of Global’s providers) and Unipoint, who asserted that they transmitted VoIP)).

As shown above, in the *Paetec* and *MetTel* decisions, Global's traffic is changed in form and content, when it is enhanced by Global's providers and when it is converted from broadband to TDM at the completion of its journey. Thus, it is clearly excluded from access charges by the ICA.

If FairPoint wishes to collect access charges on Global's traffic it must prove that traffic is telecommunications, that it is not changed in form and content and that it is not VoIP. Although FP styled itself as an "intervenor" in the TDS proceeding, it presented no evidence in that proceeding as to whether Global's traffic was enhanced or changed from IP to TDM at any point. There were no FP witnesses to be cross-examined and FP did not adequately explain how its reading of the contract allowed the imposition of access charges on Global's traffic, having failed to analyze the meaning of sections 8.1 and 2.43.

Additionally, it is clear even without extra evidence that the calls at issue cannot be traditional unchanged landline calls, because, as FP and Verizon would readily admit, they do not need Global to move a call from one point in New Hampshire to another, and would never hire Global, Transcom or CommPartners for such a purpose. The only reason Global would be involved is that the calls came from out of state and were transmitted from Global's suppliers, who received them in IP and enhanced them.

II. FAIRPOINT IS NOT ENTITLED TO IGNORE PROTESTS RAISING SERIOUS CONTRACT AND FCC ISSUES AND CUT OFF SERVICE TO GLOBAL WITHOUT FIRST OBTAINING A RULING FROM THE COMMISSION THAT IT IS ENTITLED TO THE CHARGES AND TERMINATION REMEDY IT SEEKS

Global has lodged a valid protest against FairPoint's bill. However, FairPoint insists on requesting that this Commission permit a cut off, violating Section 253(a) of

the TCA, which prohibits state commissions from taking action to impair the ability of any entity to provide interstate telecommunications service. FairPoint's justification for its request is based on the claim that Global has violated the parties' ICA. But in order to enforce its ICA, FairPoint is required by federal law to bring the merits of the dispute before a state commission and to then, as the moving party, meet its burden¹⁸ to show that it was entitled to its disfavored cut off remedy.

Fourteen federal cases have held that disputes over ICA interpretation must be analyzed before the cognizant state commissions before any enforcement of the ICAs can begin and before any breach can be remedied.¹⁹ The main case on this issue is *Core Communications, Inc. v. Verizon Pa., Inc.*, where the Third Circuit held:

[I]nterpretation and enforcement actions that arise after a state commission has approved an interconnection agreement *must be litigated* in the first instance before the relevant state commissions. A party may *then proceed* to federal court to seek review of the commission's decision or move on to the appropriate trial court to *seek damages for a breach, if the commission finds one.*

Core, at 344 (emphasis added).

¹⁸ *All American Telephone Company, Inc. v. AT&T Inc.*, 2009 WL 691325 at*3 (S.D.N.Y.); *Advantel v. AT& Corp.*, 118 F.Supp.2d 680, 683 (E.D.Va. 2000) (citing 47 U.S.C. §203(c)); *Frontier Communications of Mt. Pulaski, Inc. v. AT&T & Corp.*, 957 F.Supp. 170, 175-76 (C.D.Ill. 1997); Proposed Order, *supra*.

¹⁹ See, e.g., *AT&T Communications v. Illinois Bell Telephone Co.*, No. 97C 0886, 1998 WL 525437, at *5 (N.D.Ill.); *AT&T Communications of Ohio, Inc. v. Ohio Bell Telephone Co.*, 29 F.Supp.2d 855, 856 (S.D. Ohio 1998); *Intermedia Communications Inc. v. Bellsouth Telecomm., Inc.*, 173 F.Supp.2d 1282, 1287 (M.D. Fla. 2000); *Contact Communications v. Qwest Corp.*, 246 F.Supp.2d 1184, 1189 (D. Wyo. 2003); *Pacific Bell Telephone Co. v. Global NAPs California, Inc.*, 05-CV-7734, 7 (C.D.Ca. 2007) (PACER); *Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, No. 06-C-3431, 2007 WL 4531790, at *9 (N.D. Ill., Dec. 17, 2007); *Bell Atlantic Virginia, Inc. v. WorldCom Technologies of Virginia*, 240 F.Supp.2d 620, 624 (E.D. Va. 1999); *E. Spire Communications, Inc. v. Baca*, 269 F.Supp.2d 1310 (D.N.M. 2003), *aff'd* on other grounds, 392 F.3d 1204 (10th Cir. 2004); *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 549 (E.D. Tex. 2004); *GTE Southwest, Inc. v. Public Utility Comm'n*, 102 S.W.3d 282 (Tex. App. Austin 2003); See also *Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F. 3d 587, 593-595 (7th Cir. 2008) (Posner, J.); *Southwestern Bell Tel. Co. v. PUC*, 208 F.3d 475, 479-80 (5th Cir. 2000); *Southwestern Bell Telephone Co. v. Connect Communications Corp.*, 225 F.3d 942 (8th Cir. 2000); *Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493 (10th Cir. 2000).

The Eleventh Circuit has also held that Congress intended state agencies to interpret and enforce all provisions of the ICAs they have approved. *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc.*, 317 F.3d 1270 (11th Cir. 2003) (*en banc*). As the court explained there:

[T]he language of §252 persuades us that in granting to the public service commissions the power to approve or reject interconnection agreements, Congress intended to include *the power to interpret and enforce in the first instance*. . . .

Id. at 1277 (emphasis added).

Obviously, this Commission cannot enforce the parties' ICA if it has not interpreted the meaning of its terms.

Furthermore, the parties' ICA does not permit FairPoint to cut off service to Global as a remedy for protest of its bills. "Suspend[ing] the provision of any and all Services" is mentioned as a remedy for "Default" ICA, §12, but not for disputed bills. Had the ICA intended discontinuance of service to be a remedy for disputed bills, it would have used in section 14, the same language that it used in section 12. But the dispute resolution section of the ICA, Section 14, never mentions termination as a self-help remedy for an unresolved dispute.

The ICA could not allow such a termination anyway because parties to an ICA cannot agree to carry out such a self-help remedy in circumvention of the appropriate procedure for ICA enforcement. *See e.g. Bell Atlantic-Virginia v. Worldcom*, 70 F.Supp.2d 620, 626 (E.D.Va. 1999) (duty to comport with procedure required by the TCA cannot be contracted away) (citing *Ohio, Inc. v. Ohio Bell Tel. Co.*, 29 F.Supp.2d 855, 855-56 (S.D. Ohio 1998)).

Any termination by FairPoint would violate not only the procedural rules governing ICA enforcement but also the substantive federal rules controlling cut offs.

Section 214(a) of the TCA prohibits diminution of service without FCC approval:

No carrier shall discontinue, reduce, or impair service to a community or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby . . .

The FCC recently extended the obligations of § 214 to “providers of interconnected VoIP service,” which includes transmitters of VoIP traffic. *In the Matter of IP-Enabled Services*, 24 F.C.C.R. 6039; 2009 WL 1362812 (F.C.C. 2009) (*2009 IP-Enabled Services Ruling*).

Moreover, the FCC has long prohibited call blocking as a remedy in access charge disputes. *See In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 F.C.C.R. Rcd 11629 (2007) (*Local Exchange Carriers Order*). In the *Local Exchange Carriers Order*, the FCC held that when there are access charge disputes, carriers “may not engage in self-help actions such as call blocking.” *Id.*, at 11629. The Order states that the blocking of interstate traffic violates 47 U.S.C. § 201(b) and the “Commission’s general prohibition on call blocking.” *Id.* at 11631. Thus, the *Local Exchange Carriers Order* takes call-blocking off the table as a possible response to any billing dispute.

Given the above rulings, it is apparent that sections 251 and 252, when read in conjunction with Section 214 and the *2007 Local Exchange Carriers Order*, demonstrate that federal telecommunications law, in addition to creating an ILEC duty to interconnect

and also creates a ban on an ILEC's use of cut offs and blocking of traffic as a self-help measure in access charge disputes.

**III. A DELAY OF CUT OFF IS PROPER UNTIL THE FACTS CAN BE
SUBJECTED TO DISCOVERY AND THE CONTRACT CAN BE
SUBJECTED TO A HEARING GIVEN THAT FAIRPOINT HAS FAILED
TO NEGOTIATE RATES THAT COMPORT WITH TCA
REQUIREMENTS AND GLOBAL WILL SUSTAIN SERIOUS INJURY IF
ITS TRAFFIC FLOW IS CUT OFF**

FairPoint's cut off should be delayed for two reasons: (1) It has not yet attempted to negotiate a VoIP rate with Global, as required by the TCA, (2) FairPoint's proposed cut off would cause greater harm to Global than delaying the cut off would cause to FairPoint.

Given that the parties had not negotiated a rate for Global's VoIP traffic, Global has offered to pay FP a VoIP termination rate of \$.00045 per MOU, pursuant to the TCA requirement that the parties negotiate reasonable, non-discriminatory cost-based rates. 251(c)(2)(D), 252(d)(1)(A)(i)-(ii). But FP has consistently refused to negotiate and maintained that it will only continue to provide service to Global if Global pays its full tariff rate. However, FP has made no effort to demonstrate that its rate is based on its out-of-pocket costs for terminating Global's traffic or that it is non-discriminatory, and compliant with the TCA protections Global is entitled to as a negotiating party. Verizon has testified in the *MetTel* case that it charges \$.00045 per MOU for VoIP termination, meaning that it accepts that rate as being an above-cost figure. See TCA, 252(d)(1)(A)(i). That rate is significantly lower than the standard tariff rate that FP seeks. The propriety of FP's unnegotiated, non-cost-based rate is thus currently unresolved, so simply cutting off Global based on non-payment of FP's rate would be erroneous and premature.

Due to the lack of evidence in this case and the uncertainty regarding the legality of FairPoint's proposed cut off, it is appropriate for this Commission to engage in a balancing of harms to determine whether to grant FairPoint's request for prejudgment relief. In determining whether to allow the cut off on June 22, the Commission must look at how much injury the proposed action would cause each party.

The injury to FairPoint is unquantifiable, as evidenced by the fact that FP has not even stated how much it costs to terminate Global's traffic. On the other hand, allowing FairPoint to proceed with its cut-off would result in serious harm to Global. Such a cut off would leave Global with no revenues and no business in the state, which in addition to depriving it of profits, could potentially make it unattractive to those suppliers who want it to serve a package of states. A cut off would also inconvenience Global's dial-up customers in New Hampshire, who would experience a disruption in service and may have difficulty finding another provider. That injury would be not only harmful, but also unjustified because there is currently no dispute between Global and FairPoint about Global's dial-up traffic, which Global terminates (the dispute is only about the traffic which FairPoint terminates for Global). Finally, Global would suffer a statutory injury from the blockage of its interstate telecommunications, carried out in violation of section 253, which itself is a cognizable harm. *See Bedford Stone Cut Co. v. Journeyman Stone Cutters' Ass'n of North America, et al.*, 274 U.S. 37, 54 (1927) (overruled on other grounds by the Norris-LaGuardia Act) (“ . . . whether petitioners at the time of bringing suit had suffered actual injury . . . is not material. An intent to restrain interstate commerce being shown, it is enough to justify equitable interposition . . .”).

It should be noted that in Vermont, Vermont Public Service Board Commissioner John Burke denied the Ludlow Petitioners' request for a preliminary injunction to cut off service to Global primarily because that cut off would cause economic injury to Global that would be greater than the injury the petitioners would incur by continuing to terminate Global's traffic.²⁰

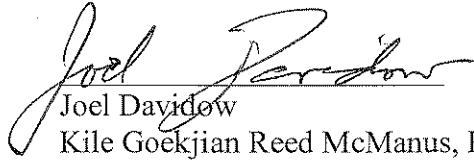
This Commission must similarly deny FP's request, because Global's injury can be easily avoided and the issue can be quickly resolved without any such damaging cut off being carried out now. Global believes that an adequate fact hearing on the issues in dispute could be conducted in three days, provided it were begun two weeks after FP supplies Global with the relevant documentation supporting its case and all other documentation concerning how it has handled claims by other companies supplying VoIP traffic and demanding rates lower than the tariffs.

CONCLUSION

For all of the above reasons, Global respectfully requests that this Commission deny FairPoint's request to terminate service to Global until full discovery and a fact hearing can be conducted.

²⁰ Order Denying Preliminary Injunction (Entered December 7, 2009) at 14 (Filed with this Commission on December 17, 2010). The Commissioner also noted that the petitioners did not have a likelihood of success on the merits due to the unsettled nature of Vermont law governing traffic such as Global's. *Id.*, at 7-8.

Respectfully Submitted,



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Dated: May 25, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing to be served on the attached service list.

Executed this day, May 25, 2010.


Victoria Romanenko

State of New Hampshire
Before the New Hampshire Public Utilities Commission

DT 08-028

Joint Petition of Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc., for Authority to Block the Termination of Traffic from Global NAPs, Inc. to Exchanges of the Joint Petitioners in the Public Switched Telephone Network

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EXHIBIT 1

AGREEMENT

by and between

GLOBAL NAPS, INC.

and

VERIZON NEW ENGLAND INC., d/b/a VERIZON NEW HAMPSHIRE, f/k/a NEW ENGLAND
TELEPHONE AND TELEGRAPH COMPANY, d/b/a BELL ATLANTIC - NEW HAMPSHIRE

FOR THE STATE OF

NEW HAMPSHIRE

reasonable efforts to give adequate notice of the requirement to the Disclosing Party in order to enable the Disclosing Party to seek protective arrangements.

- 10.5 Notwithstanding the provisions of Sections 10.1 through 10.4, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.
- 10.6 The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.
- 10.7 The provisions of this Section 10 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to the use, or protection of the confidentiality of, CPNI provided by Applicable Law.
- 10.8 Each Party's obligations under this Section 10 shall survive expiration, cancellation or termination of this Agreement.

11. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

12. Default

If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.

13. Discontinuance of Service by GNAPS

- 13.1 If GNAPS proposes to discontinue, or actually discontinues, its provision of service to all or substantially all of its Customers, whether voluntarily, as a result of bankruptcy, or for any other reason, GNAPS shall send written notice of such discontinuance to Verizon, the Commission, and each of GNAPS's Customers. GNAPS shall provide such notice such number of days in advance of discontinuance of its service as shall be required by Applicable Law. Unless the period for advance notice of discontinuance of service required by Applicable Law is more than thirty (30) days, to the extent commercially feasible, GNAPS

shall send such notice at least thirty (30) days prior to its discontinuance of service.

- 13.2 Such notice must advise each GNAPS Customer that unless action is taken by the GNAPS Customer to switch to a different carrier prior to GNAPS's proposed discontinuance of service, the GNAPS Customer will be without the service provided by GNAPS to the GNAPS Customer.
- 13.3 Should a GNAPS Customer subsequently become a Verizon Customer, GNAPS shall provide Verizon with all information necessary for Verizon to establish service for the GNAPS Customer, including, but not limited to, the GNAPS Customer's billed name, listed name, service address, and billing address, and the services being provided to the GNAPS Customer.
- 13.4 Nothing in this Section 13 shall limit Verizon's right to cancel or terminate this Agreement or suspend provision of Services under this Agreement.

14. Dispute Resolution

- 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
- 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

15. Force Majeure

- 15.1 Neither Party shall be responsible for any delay or failure in performance which results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such Party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other Party, and acts of God.
- 15.2 If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure Event. The non-performing Party shall use

GLOSSARY

1. General Rule

- 1.1 The provisions of Sections 1.2 through 1.4 and Section 2 apply with regard to the Principal Document. Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.2 Unless the context clearly indicates otherwise, when a term listed in this Glossary is used in the Principal Document, the term shall have the meaning stated in this Glossary. A defined term intended to convey the meaning stated in this Glossary is capitalized when used. Other terms that are capitalized, and not defined in this Glossary or elsewhere in the Principal Document, shall have the meaning stated in the Act. Additional definitions that are specific to the matters covered in a particular provision of the Principal Document may appear in that provision. To the extent that there may be any conflict between a definition set forth in this Glossary and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision.
- 1.3 Unless the context clearly indicates otherwise, any term defined in this Glossary which is defined or used in the singular shall include the plural, and any term defined in this Glossary which is defined or used in the plural shall include the singular.
- 1.4 The words "shall" and "will" are used interchangeably throughout the Principal Document and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.

2. Definitions

2.1 Act.

The Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996).

2.2 ADSL (Asymmetrical Digital Subscriber Line).

A transmission technology on twisted pair copper Loop plant, which transmits an asymmetrical digital signal of up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer, as specified in ANSI standards T1.413-1998 and Bell Atlantic Technical Reference TR-72575.

2.3 Affiliate.

Shall have the meaning set forth in the Act.

2.4 Agent.

An agent or servant.

2.5 Agreement.

This Agreement, as defined in Section 1 of the General Terms and Conditions.

The unstayed, effective regulations promulgated by the FCC, as amended from time to time.

2.38 HDSL (High-Bit Rate Digital Subscriber Line).

A transmission technology that transmits up to a DS1 level signal, using any one of the following line codes: 2 Binary/1 Quaternary (2B1Q), Carrierless AM/PM, Discrete Multitone (DMT), or 3 Binary/1 Octal (3B0).

2.39 IDLC (Integrated Digital Loop Carrier).

A subscriber Loop carrier system that integrates within the switch at a DS1 level, which is twenty-four (24) Loop transmission paths combined into a 1.544 Mbps digital signal.

2.40 ILEC (Incumbent Local Exchange Carrier).

Shall have the meaning stated in the Act.

2.41 Information Access.

The provision of specialized exchange telecommunications services in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services, including a provider of Internet access or Internet transmission services.

2.42 Inside Wire or Inside Wiring.

All wire, cable, terminals, hardware, and other equipment or materials, on the Customer's side of the Rate Demarcation Point.

2.43 Internet Traffic.

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

2.44 InterLATA Service.

Shall have the meaning set forth in the Act.

2.45 IntraLATA.

Telecommunications that originate and terminate within the same LATA.

2.46 IP (Interconnection Point).

For Reciprocal Compensation Traffic, the point at which a Party who receives Reciprocal Compensation Traffic from the other Party assesses Reciprocal Compensation charges for the further transport and termination of that Reciprocal Compensation Traffic.

2.47 ISDN (Integrated Services Digital Network).

~~Integrated Services Digital Network~~
Integrated Services Digital Network.

A switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for digital transmission of two (2) 64 kbps bearer channels and

Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or (8) Virtual Foreign Traffic (or V/FX Traffic) (as defined in the Interconnection Attachment) except as otherwise provided in the Interconnection Attachment. For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.

2.77 Retail Prices.

The prices at which a Service is provided by Verizon at retail to subscribers who are not Telecommunications Carriers.

2.78 Routing Point.

A specific geographic point identified by a specific V&H coordinate. The Routing Point is used to route inbound traffic to specified NPA-NXXs. The Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Routing Point corresponding to each unique and separate Rate Center Area.

2.79 Service.

Any Interconnection arrangement, Network Element, Telecommunications Service, Collocation arrangement, or other service, facility or arrangement, offered by a Party under this Agreement.

2.80 SS7 (Signaling System 7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). Verizon and GNAPS currently utilize this out-of-band signaling protocol.

2.81 Subsidiary.

A corporation or other person that is controlled by a Party.

2.82 Switched Access Detail Usage Data.

A category 1101XX record as defined in the EMI Telcordia Practice BR-010-200-010.

2.83 Switched Access Summary Usage Data.

A category 1150XX record as defined in the EMI Telcordia Practice BR-010-200-010.

2.84 Switched Exchange Access Service.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature

Group D, 700 access, 800 access, 888 access and 900 access.

2.85 Tandem Switch.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among End Office Switches and between and among End Office Switches and carriers' aggregation points, points of termination, or points of presence, and to provide Switched Exchange Access Services.

2.86 Tariff.

2.86.1 Any applicable Federal or state tariff of a Party, as amended from time-to-time; or

2.86.2 Any standard agreement or other document, as amended from time-to-time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service.

The term "Tariff" does not include any Verizon statement of generally available terms (SGAT) which has been approved or is pending approval by the Commission pursuant to Section 252(f) of the Act.

2.87 Telcordia Technologies.

Telcordia Technologies, Inc., formerly known as Bell Communications Research, Inc. (Bellcore).

2.88 Telecommunications Carrier.

Shall have the meaning set forth in the Act.

2.89 Telecommunications Services.

Shall have the meaning set forth in the Act.

2.90 Telephone Exchange Service.

Shall have the meaning set forth in the Act.

2.91 Third Party Claim.

A Claim where there is (a) a claim, demand, suit or action by a person who is not a Party, (b) a settlement with, judgment by, or liability to, a person who is not a Party, or (c) a fine or penalty imposed by a person who is not a Party.

2.92 Toll Traffic.

Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Measured Internet Traffic, or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA.

2.93 Toxic or Hazardous Substance.

7.3.8 Reciprocal Compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic), defined for use in this Agreement as calls in which a GNAPS Customer is assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such Customer's station, except as provided in the next sentence. Pursuant to the Arbitration Order and the Final Order, Order No. 24,080, in DT 00-223 and 00-054 dated October 28, 2002 ("Generic Order") to the extent that the Generic Order remains Applicable Law, and for purposes of this Agreement only, Reciprocal Compensation shall apply (and access charges shall not apply to) to non-Internet traffic originated by Verizon to a GNAPS V/FX number if GNAPS is providing facilities-based local dial-tone service (as specified in the Arbitration and Generic Orders) to, and has certified to the Commission that it is providing such service to, at least one Customer physically located in the Verizon exchange in New Hampshire to which the called number is rated, as reflected in the LERG. For the avoidance of any doubt, and except as provided in the previous sentence, GNAPS shall pay Verizon's originating access charges for all V/FX Traffic originated by a Verizon Customer, and GNAPS shall pay Verizon's terminating access charges for all V/FX Traffic originated by a GNAPS Customer.

7.4 The Reciprocal Compensation rates (including, but not limited to, the Reciprocal Compensation per minute of use charges) billed by GNAPS to Verizon shall not exceed the Reciprocal Compensation rates (including, but not limited to, Reciprocal Compensation per minute of use charges) billed by Verizon to GNAPS.

8. Other Types of Traffic

- 8.1 Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations; and, (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations.
- 8.2 Subject to Section 8.1 above, interstate and intrastate Exchange Access, information access, exchange services for Exchange Access or information access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.
- 8.3 For any traffic originating with a third party carrier and delivered by GNAPS to Verizon, GNAPS shall pay Verizon the same amount that such third party carrier would have been obligated to pay Verizon for termination of that traffic at the location the traffic is delivered to Verizon by GNAPS.
- 8.4 Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic.

EXHIBIT 2

Joel Davidow Esq

From: jdavidow [jdavidow@kgrmlaw.com]
Sent: Monday, June 15, 2009 12:57 PM
To: 'Heins, Jeff (So. Portland, ME)'
Cc: 'Frank Gangl'; 'William Rooney'
Subject: RE: Documents for FairPoint

The typical approach in the industry is to put up , or start paying, a typical VoIP rate such as \$.00045 per MOU, plus some time payment at that rate for past MOU, while stating that the numbers and result may change upon FCC release of its inter-carrier compensation report. We know of no intermediate VoIP forwarder who has ever paid anything other than numbers in such range. Access charges of a penny a minute or more are ten or more times higher than Global can get paid for forwarding the calls it receives from Vonage through CommPartners and Transcom.

Thus, we are forced to litigate these matters to the last detail rather than concede the applicability of a payment structure that would doom us to instant bankruptcy. If you check out fn. 92 in the IP in the Middle FCC ruling, you will see the Commission stating that intermediate carriers are not the ones who pay access charges. Thus, we believe that litigation would show that most of our traffic ins net protocol shift traffic immune from access charges and that the rest involves an IXC who took the call from some ported number and sent it to Transcom, thus meaningt that such IXC, should pay the access charges (or, if Transcom has significantly enhanced such call by use of its Verras converters, that the call is not telecommunications.)

-----Original Message-----

From: Heins, Jeff (So. Portland, ME) [mailto:jheins@fairpoint.com]
Sent: Monday, June 15, 2009 12:30 PM
To: jdavidow@kgrmlaw.com
Cc: Morrissey, Michael (So Portland, ME)
Subject: RE: Documents for FairPoint

Joel: if your client is prepared to make a substantial payment towards it's A/R balance with FairPoint Communications I would be happy to discuss.

Jeff

Jeffrey J. Heins - Assistant General Counsel
 FairPoint Communications | 1 Davis Farm Road Portland, ME 04103 | jheins@Fairpoint.com
 207-648-3048 (office) | 207-233-7660 (cell) | 207-797-5022 (fax)

From: jdavidow [mailto:jdavidow@kgrmlaw.com]
Sent: Friday, June 12, 2009 5:50 PM
To: Heins, Jeff (So. Portland, ME)
Cc: Morrissey, Michael (So Portland, ME)
Subject: RE: Documents for FairPoint

Would there be any point in a meeting about this?

-----Original Message-----

From: Heins, Jeff (So. Portland, ME) [mailto:jheins@fairpoint.com]
Sent: Friday, June 12, 2009 2:29 PM
To: jdavidow@kgrmlaw.com
Cc: Morrissey, Michael (So Portland, ME)

EXHIBIT 3

Harry M. Davidow, Esq.
685 West End Avenue
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New York, NY 10025

Keith J. Roland
Herzog Law Firm P.C.
7 Southwoods Boulevard
Albany, NY 12211

January 25, 2010

Re: TVC Albany, INC. d/b/a Tech Valley Communications v. Global NAPs

Dear Keith,

It was a pleasure to see you face to face again after so much time. I hope you found our discussions productive, and it is my understanding that you intend to return with some additional thoughts after conferring with your client.

I have also conferred with my client. I have focused particularly on the suggestions from staff that, while they were skeptical about the applicability of access charges to terminating VoIP traffic, they were also uncomfortable with Global NAPs continuing to receive service from Tech Valley without paying something.

It was and remains my legal conclusion that Global NAPs is not obligated to pay Tech Valley unless and until the parties enter into a voluntary agreement governing the parties' traffic exchange, or the Commission or some other appropriate authority rules on the rights and obligations of each side. However, responding to staff's urging, I see nothing in this analysis that precludes Global NAPs from volunteering to pay an appropriate rate, pending any necessary further negotiations or litigation.

As you are aware, it is Global's view that its interconnection rights derive from section 251 of the Telecommunications Act, particularly section 251(b)(5), which entitles Global to obtain interconnection at negotiated rates. Tech Valley and Global have not reached agreement on such rates at this juncture, but other firms have. In particular, Verizon has entered into interconnection agreements with a number of companies to terminate VoIP traffic at a rate of \$0.00045 cents per minute. You have seen Verizon's agreement with AT&T and the testimony of Verizon's witness in district court in the Southern District of New York, confirming this fact.

Tech Valley may not agree with Global that this is a rate it is currently prepared to agree to in settlement of this dispute. However, it cannot deny that it is the prevailing rate in the market in New York. Moreover, there is no reason to believe that this rate is inadequate to cover the actual costs of providing terminating service for VoIP traffic. Verizon makes this rate generally available. Knowing Verizon well, as you do, I think it would not agree to accept below-cost rates for any interconnection arrangement, for both commercial and antitrust reasons. Tech Valley, as I understand it, operates off of the Verizon network and therefore is presumed to have the same costs as Verizon.

Hence, Global NAPs has decided to pay Tech Valley in full for all past traffic identified in Tech Valley's New York PSC complaint, but at the prevailing VoIP rate of \$0.00045. My calculations indicate that this payment should amount to \$3,555. Enclosed, please find a check made out to Tech Valley in this amount. Global makes this payment without prejudicing its right to argue in either settlement or litigation for a different (including lower) rate, and I expect that Tech Valley will accept the payment without prejudice to its rights to argue for a different rate or further compensation.

Global NAPs is also prepared to pay Tech Valley's bills on a going forward basis at the Verizon rate. I would request, however, that, in addition to sending bills in the usual fashion, copies of each bill be sent to me at the address above, so that I can insure that payment is made in the manner outlined here. I would also suggest, as a purely commercial matter that, given the small amounts of traffic that Global sends to Tech Valley and the likely small monthly charges that will result, Tech Valley may wish to simplify its billing by sending a quarterly or semi-annual bill. In any event, if the bills are sent on a monthly basis and are as small as forecast, Global reserves the right to make payment on such a basis in order to control its own operational costs. I believe this is both a sensible and a reasonable request, particularly as Global's payments are made voluntarily, without any agreement by Tech Valley that they constitute payment in full.

Finally, I would like to ask your client to revisit the issue of entering into a true, physical interconnection arrangement with Global. As I have indicated in previous discussions, Global would very much like to interconnect directly with Tech Valley. Indeed, Global is willing to discuss doing so by providing the necessary equipment and facilities at its own expense.

You have indicated that Tech Valley is uninterested in this proposal because of its belief that the revenue it would derive, even with Global NAPs' offer to provide the operating equipment, would not cover the costs of a switch port.

Let me suggest two reasons why Tech Valley might want to rethink this. First, while the tariff rates for switch ports tend to be very high, the incremental costs are very low, approaching zero unless Tech Valley is operating a switch near capacity. Second and more interesting from a commercial standpoint, if Global NAPs and Tech Valley enter into such an arrangement, there is no reason why use of the interconnection arrangement and facilities needs to be restricted to Global NAPs' traffic.

As I have pointed out to you and as I am sure your client knows, VoIP is a large and growing segment of the voice communications market. Moreover, Global NAPS is only a small carrier in a market that includes Verizon, AT&T, Sprint, Level 3, and a dozen other firms. It is certain that Tech Valley is receiving and terminating far more VoIP traffic from these carriers than it is terminating from Global. You have told me that Tech Valley has no terminating traffic arrangements with any of these firms.

A central characteristic of VoIP traffic is that it can easily be routed to any IP address anywhere. Tech Valley's problem is that it does not receive VoIP traffic until it is converted into TDM. If, as is the industry practice, the traffic is labeled "local," Tech Valley is probably terminating much more VoIP traffic that Global sends it and is doing so on a bill and keep basis.

While most carriers recognize that they are entitled to some form of interconnection agreement with respect to VoIP, I do not see any obvious reason why Tech Valley could not require all carriers sending traffic to it to identify their VoIP traffic and route it through the Tech Valley/Global NAPs interface. That would identify the traffic volumes and both allow and entitle Tech Valley to negotiate rates with the companies whose traffic it is terminating.

There are, plainly, many questions and issues to be addressed before any such arrangement could be executed. However, there may be more opportunity here than Tech Valley has fully realized. I ask that you share these ideas with your client and send me their response. Global's business and technical people are ready to meet with Tech Valley whenever is convenient.

Very truly yours,

Harry Davidow, Esq.
On behalf of:
Global NAPs

Cc: Hon. J. Brillling
Brian Ossias
Tim Zakriski
Bob Lorenzo

EXHIBIT 4

-----Original Message-----

From: Keith J. Roland [mailto:kroland@herzoglaw.com]
Sent: Wednesday, February 03, 2010 5:30 PM
To: Harry Davidow
Subject: RE: TVC v. Global NAPs

Harry:

I, too, enjoyed seeing you at the Commission. You get younger every day.

I appreciate your forwarding the check payable to Tech Valley. I will forward it to the company, and they will deposit it without waiver or prejudice of any claim.

I have also forwarded your letter with the various proposals to Tech Valley, and company management is reviewing it.

I'll be back when Tech Valley determines the course it wishes to take.

Best regards.

Keith J. Roland

KJR:tlm