State of New Hampshire
Before the New Hampshire Public Utilities Commission

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 Plaintiffs, v. GLOBAL NAPS, INC., Defendant	Case No. DT 08-028

MOTION OF GLOBAL NAPS INC. FOR REHEARING OR RECONSIDERATION AND REQUEST FOR CLARIFICATION AND MEDIATION

INTRODUCTION

Global hereby moves, pursuant to RSA §541:3 that this Commission's Order Denying Global's Request for Reconsideration (No. 25-088), dated April 2, 2010 (Order) be reconsidered and clarified.[1] This Order should be reconsidered because it is legally and factually incompatible with two very recent rulings of distinguished federal judges, a well-reasoned ruling of a Maryland Public Service Commission (Maryland PSC) ALJ and parts of a decision of the Pennsylvania Public Utility Commission (PAPUC) all of which hold that Global provides nomadic VoIP and all but one of which hold that nomadic VoIP is not subject to intrastate tariffs.

---

[1] We realize that this motion requests reconsideration of an order denying a motion for reconsideration, however, this motion is permissible under RSA 541:3, which allows for a rehearing request pursuant to *any* order, as long as the standards for reconsideration are met.

All of these rulings are particularly relevant here as one involved Global's supplier, CommPartners, and the other three involved Global itself. In light of the rulings of Judge Robertson and Judge Rakoff in the above-mentioned federal cases, the Commission's order that Global pay all TDS bills regardless of whether they apply to nomadic VoIP is unlawful.

The Order must also be reconsidered because its grounds for refusing to consider the probative new evidence that Global submitted with its Motion for Reconsideration[2] were clearly erroneous. The Commission failed to acknowledge that Global's new evidence showed fatal flaws in TDS' case and demonstrated the need for a hearing to determine the applicability of TDS' intrastate tariffs. The Order also ignored Global's clear explanation of why the proffered evidence was not available for the New Hampshire proceeding.

The Order should also be clarified because, despite admitting that some of the billed traffic is interstate, it orders payment of TDS' bills without setting out a standard for separating out Global's interstate traffic that is compatible with federal law and the economic realities.

Lastly, the Order should deal with Global's Section 251 request and proffered terms of agreement along with TDS' demands and set out a method to mediate and/or arbitrate the propriety of Global's payment offer. In that regard, the Commission should recognize that the negotiation of back payments is part of a Section 251 arbitration and that *Time Warner*[3] prohibits cut off of an intermediate carrier seeking interconnection.

---

[2] Motion for Reconsideration (submitted December 2, 2009) (Motion for Reconsideration).

[3] *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, DA 07-709, Memorandum Opinion and Order,¶ 1 (March 1, 2007) (*Time Warner*).

STANDARD

A motion for rehearing must set out the reasons why an order is unlawful and unreasonable. RSA §§541:3, 541:4. Good cause for rehearing may be shown by demonstrating that evidence was overlooked or misconstrued. *Dumais v. State*, 118 N.H. 309, 312 (1978).

I. THE ORDER SHOULD BE REEXAMINED TO TAKE ACCOUNT OF NEW FEDERAL AND STATE RULINGS THAT RENDER ITS LEGAL CONCLUSIONS ERRONEOUS AND ITS FACTUAL FINDINGS ARBITRARY

Since Global briefed its Motion for Reconsideration in early December 2009, four new rulings have been issued that are of great legal and factual relevance to this proceeding. As ignoring the import of these rulings is unlawful, the Commission should reconsider its order.

In *Paetec Communications Inc. v. CommPartners, LLC*, Civ. Action No. 08-0397 (filed February 18, 2010) (*Paetec*), Judge Robertson granted summary judgment to Global's supplier CommPartners, ruling that CommPartners is entitled to an information services exemption from access charges applicable to all VoIP traffic except that which begins in TDM. *Paetec*, at 7. Faced with *Paetec* tariffs that had been designed to capture VoIP traffic by instructing that access charges be applied to all services provided by Paetec regardless of the technology used in transmission[4] the Judge ruled that the VoIP "net protocol conversion" exemption recognized in two previous federal cases, *Southwestern Bell v. Mo. Pub. Serv. Comm'n*, 461 F.Supp.2d 1055, 1081-82 (E.D.Mo. 2006) and *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F.Supp.2d 993, 999-1001 (D.Minn. 2003), was legally correct and trumped the filed-rate doctrine. He also deferentially cited *INS v. Qwest Corp.*, 363 F.3d 683, 695 (8th Cir. 2004) as reaching a similar outcome. *Paetec*, at 6, 11. He thus concluded that

> [b]ecause the access charge regime is inapplicable to VoIP-originated traffic and because a filed tariff cannot be inconsistent with the statutory framework pursuant

---

4 *Paetec*, at 3.

to which it is promulgated, the filed-rate doctrine must yield in this case.

Id. at 11.

The above holding directly contradicts the Commission's holding that "Global NAPs must abide by the . . . tariffs on file" Order, at 15, and that "those tariffs continue to govern traffic exchanged between TDS and Global NAPs." Order, at 21. Based on Judge Robertson's ruling, the Commission could not come to this conclusion until they knew whether the traffic was of a type that was allowed to be covered by the tariff and whether the tariff is consistent with the TCA. By failing to make these findings the Order did exactly what Judge Robertson cautioned against when he stated

> To treat tariffs as inviolable would create incentives to . . . . expand their rates beyond statutory allowance in the hope that the FCC will not notice.

Paetec, at 10.

A second ruling, *Manhattan Telecommunications Corp. (MetTel) v. Global NAPs Inc.*,[5] even more on point here, deals with Global itself. In it motion for reconsideration to this Commission, Global enclosed sworn testimony in that case from VoIP providers such as Vonage and BroadVoice, and VoIP enhancers who, among other things, forward Vonage traffic to Global for delivery to all the states Global services, such as New Hampshire. We were not able to inform this Commission of Judge Rakoff's evaluation of that evidence, or his legal analysis at that time, however, because his findings of fact and conclusions of law had not yet been issued.

In a March 31, 2010 ruling, Judge Rakoff held that the plaintiff's evidence, which employed telephone numbers to support its claims that Global's calls were intrastate in nature, failed to prove that the calls it billed had actually started and ended in the state and could be

---

[5] 08-civ-3829 (JSR) (Findings of Fact and Conclusions of Law issued March 31, 2010) (Attached hereto as Exhibit A).

subject to intrastate tariffs. His opinion states:

> *The evidence reflects that use of telephone numbers to determine the geographic correspondence of calls is seriously flawed in the context of mobile phones and VoIP calls.* For example, VoIP subscribers may select the area code of their phone numbers regardless of where the subscribers are actually located; and VoIP providers such as Broad Voice make no effort to determine the location of their customers vis-à-vis the selected phone numbers' geographic assignments.

MetTel, at 4 (emphasis added).

The inability of telephone numbers to identify geographic locations was a large problem in that case because as Judge Rakoff stated, *"[s]ome of Global's biggest customers, including Vonage and BroadVoice, are VoIP providers whose calls do not begin in TDM."* *Id.* (emphasis added). Given the facts before him, Judge Rakoff concluded that "*a significant number are likely to be VoIP calls that defy the accuracy of the telephone number-based billing system.*" *Id.* at 5 (emphasis added).

These statements highlight the Order's error in holding that TDS did not have to prove the true geographic origination of the calls at issue in order to bill them as intrastate, Order, at 18, while at the same time stating that "Global NAPs carries both intrastate and interstate communications for its customers who are 'Enhanced Service Providers,'" Order, at 1, admitting that Global asserted that it carries VoIP, *Id.* fn. 1, and being presented with evidence during the proceeding (of the type that other commissions have accepted) showing that Global carries VoIP. *See* Commpartners Letter in Response to Staff Data Request, June 27, 2008. It is clear from *MetTel* that when the traffic at issue is such that its geographic end points cannot be determined through the use of phone numbers, it cannot, under federal law be billed pursuant to intrastate tariffs.

In recognition of the above principle, and having found that a significant portion of Global's calls are VoIP calls whose point of origin cannot be determined by their

beginning and ending phone numbers, Judge Rakoff ruled that those calls may not be subjected to interstate or intrastate tariffed access charges:

> The FCC has preempted state regulation of VoIP services as interfering with 'important federal objectives,' thus effectively declaring VoIP to be jurisdictionally interstate. *In re Vonage Holdings Corp.*, FCC 04-267, 2004 WL 2601194, at *16 (F.C.C. Nov. 12, 2004); *see also Vonage Holdings Corp. v. Nebraska Public Service Comm'n*, 564 F.3d 900 (8th Cir. 2009) (finding preemption of state regulation of VoIP calls). Moreover, the FCC has clarified that so-called information services, unlike telecommunications services, are not subject to access charges under Title II of the Communications of 1934, as amended by the Telecommunications Act of 1996. *See e.g. In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, ¶¶4-6 (Apr. 21, 2004).

Id. at 5.

Thus, given that Global proved that its calls were largely nomadic VoIP and established that governing law did not permit tariffs to be assessed on such calls, Judge Rakoff rejected all of the plaintiff's tariff-based claims, stating:

> 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.

Id. at 6.[6]

In a third ruling, issued in the Maryland PSC,[7] Administrative Law Judge Paul McGowan found as matters of fact that: 1) Global transports traffic on behalf of ESPs

---

[6] Judge Rakoff then employed his equity powers to require Global to pay an unjust enrichment sum equal to the applicable interstate tariff rates. Global has challenged the unjust enrichment claims relying on Second Circuit decisions, including *Marcus v. AT&T Corp.*, 138 F.3d 46 (2d Cir. 1998) ("the filed-rate doctrine . . . bars all of the remaining state law claims for damages . . . because any award of damages would . . . implicate the nondiscrimination and nonjusticiability strands of the filed-rate doctrine.").

[7] *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 Compan –Maryland* (December 30, 2009) (*Proposed Order*).

Proposed Order at 20; 2) the ESPs all serve VoIP providers who exclusively transmit VoIP traffic *Id.*; 3) a significant portion of Global's traffic is VoIP and it is possible that Global transmits exclusively VoIP *Id.*; 4) Global's traffic is a mixture of fixed and nomadic VoIP *Id.* at 22; 5) the ESPs Global serves enhance the VoIP they receive *Id.* at 21; 6) Global converts the VoIP traffic into TDM prior to transmission to the Verizon tandem *Id.* at 21; 7) plaintiff's call sample was unrepresentative of all the calls coming from Global and therefore not useful to indicate which of Global's calls are local and which are interstate *Id.* at 21, 23; 8) plaintiff was not able to separate Global's nomadic from its non-nomadic VoIP *Id.* at 23; 9) Global does not originate calls on the PSTN and does not directly connect with any customer equipment *Id.* at 24.

ALJ McGowan made the following conclusions of law: 1) because Global's traffic is largely VoIP, it is exempt from intrastate access charges *Id.* at 19; 2) the portion of Global's VoIP traffic that is nomadic is preempted from state regulation by *Vonage Id.* at 21; 3) the impossibility doctrine prevents the separation of intrastate nomadic VoIP from interstate nomadic VoIP *Id.* at 22; 4) because Global's traffic is a mixture of fixed and nomadic VoIP, charging Global intrastate access charges violates federal law *Id.* at 22; 5) Global is an intermediate carrier as that term is defined in *IP-in-the-Middle* and thus not subject to local access charges *Id.* at 24; 6) plaintiff had the burden of proof to show factually that the traffic it received from Global was local telecommunications traffic subject to access charges. *Id.*

This opinion's statement that the plaintiff's inability to separate nomadic VoIP from billable intrastate traffic was a bar to its ability to collect tariffs on Globlal's traffic demonstrates the incorrectness of this Order's statement that "a finding as to the split

between interstate and intrastate access minutes of Global NAPs traffic terminated on TDS networks is not a prerequisite for our finding [that Global must pay TDS' tariffs] . . . ." Order, at 3. Clearly, it is a prerequisite to separate the traffic, if possible, because otherwise the Order is requiring payment for traffic not covered by the asserted tariffs.[8]

Lastly, it is useful to review developments in the *Palmerton* proceedings before the PAPUC. As we pointed out in our earlier Motion for Reconsideration, ALJ Weismandel, after allowing cross-examination of Palmerton's witnesses and receiving both fact testimony and expert testimony from Global, ruled for Global on all the factual issues and on the legal grounds, determining that Global owed at most some form of negotiated fee.[9]

In response to Palmerton's appeal, the PAPUC decided that it would accept the ALJ's factual finding that Global's traffic was primarily nomadic VoIP but would nevertheless order Global to pay the full amount of Palmerton's bills for intrastate traffic, due to the Commission's conclusion that federal law and Pennsylvania law allowed it to enforce such tariff charges even on nomadic VoIP.[10] Global then moved for reconsideration based on contrary federal rulings such as that of Judge Robertson, and due to its Section 251 request for interconnection and offer to pay the Verizon unitary rate of $.00045, which the Commission had not yet considered. Lastly, Global suggested that the PAPUC should delay its final order to await the outcome of Global's declaratory and preemptive requests to the FCC.[11] By order of April 16, 2010, the

---

[8] This opinion also directly contradicts the Commission's statement that it properly allocated the burden of proof to Global and not TDS, the billing party. Order, at 17.

[9] *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*).

[10] *Palmerton Telephone Company v. Global NAPs South Inc. and Other Affiliates*, C-2209-2093336, Order dated March 16, 2010.

[11] Petition for Declaratory Ruling and Alternative Petition for Preemption of to the Pennsylvania, New Hampshire and Maryland State Commissions, Docket no. 10-60 (Filed

PAPUC accepted Global's motion for reconsideration and suspended its order.

It cannot be doubted that the first three of the rulings issued after Global's last Motion for Reconsideration strongly support Global's case here both on the law and the facts. The holdings of the two federal judges are particularly important because they are presumed to be more expert on the scope of federal exemptions than state commissions such as this one. The factual findings in New York, Maryland and Pennsylvania carry particular weight because those cases involved a fact hearing where the evidence of both parties was actually investigated and dissected. In fact, the New York decision's factual findings are based exclusively on firsthand evidence. Testimony from that case was submitted to this Commission to consider on reconsideration. Now that testimony has been held by a distinguished judge as proving the crucial factual contentions Global made here. Thus, in light of these rulings, the Commission should reconsider its Order and grant Global a hearing on the issues raised in its first motion for reconsideration.

II. THE COMMISSION'S REASONS FOR REJECTING GLOBAL'S MOTION FOR RECONSIDERATION FAILED TO TAKE INTO ACCOUNT THE PRECISE ARGUMENTS MADE IN THAT MOTION AND THE EVIDENCE SUBMITTED WITH IT

This Commission explained to the FCC why it ordered Global to pay TDS' tariffs in full, with the following statement:

> Because the traffic at issue travels along the TDS networks in *exactly the same manner and format as traditional toll calls*, and Global did not provide evidence to support its arguments to the contrary, the NH Commission found that Global is not entitled to continued termination services without compensation to TDS.[12]

But this statement cannot be grounded in reality, as revealed by the sworn testimony in *MetTel* (most of which was submitted to this Commission) and in Global's initial and

---

March 5, 2010).

[12] NHPUC Comments on Global NAP Inc. Request for Declaratory Ruling and Petition for Preemption, Docket 10-60 at 3 (Submitted April 2, 2010) (emphasis added).

supplemental submissions, which set out how Global's calls travel in a different manner than traditional calls and explain that their ultimate conversion to TDM format for termination purposes does not mean that they can be billed as traditional calls.

Global's Motion for Reconsideration explained the path that any call forwarded by Global must take to get from a New Hampshire caller to TDS, (at 8).[13] It showed that had TDS been compelled to prove its case in an open hearing, it could not have shown that one telephone call billed to Global completed its entire journey from a city in New Hampshire toward the TDS cities in same way as traditional traffic (in landline TDM) and could not have even proven that Global's calls traveled on the TDS wires it the same way as regular traffic. Global stated that it could receive calls from a New Hampshire telephone number only if a long distance company serving that number sent the call to Texas or Nevada (probably in IP) for enhancement there, the call came back to Global in Quincy, then traveled to FairPoint on a jointly-owned line, not a public line which traditional traffic uses, and then went on to the TDS cities by tandem arrangement. *See* Exhibit J to Motion for Reconsideration. Global also explained that its connection to TDS is a private line and not a part of the PSTN, and thus its calls do move on the TDS networks in ways that are different from traditional calls. Motion for Reconsideration, at 6. This evidence showed that Global's calls traveled differently from traditional calls and that Global's calls were interstate not intrastate.

Because Global had submitted evidence that showed that TDS had not proven that its calls traveled in the same ways as traditional traffic, Global requested that, if the Commission did not simply want to issue a new ruling based on that evidence, it should grant Global a hearing to explore flaws in TDS' traffic analysis. The findings in Pennsylvania and New York

---

[13] The path of Global's calls was also explained by a diagram submitted in response to TDS' First Set of Data Requests.

City revealed the importance of examining in an open hearing any contentions that calls were traditional instate traffic.

A hearing would have shown, as it did in Pennsylvania, Maryland and New York, that the fact that Global's traffic was converted to TDM to travel to TDS for termination did not mean that it could be billed as traditional traffic. It would have revealed that a majority of the phone numbers in the ICOs' bills have been sold to nomadic VoIP customers. TDS' testimony or the investigation of its evidence would likely also have shown that many originating numbers were missing for the calls they billed as intrastate (20% was the average for missing data in other states). Given that the most obvious reason for lack of an originating number is that the call began in nomadic VoIP this would have further supported Global's argument that its traffic was largely VoIP. Such testimony would have proven that there is simply no relation between the paths and transformations relative to calls that reach Global and the traditional New Hampshire to New Hampshire landline phone calls that have been or are subjected to legacy intrastate rates.

This would have supported Global's argument to this Commission that since its traffic undoubtedly includes substantial amounts of nomadic VoIP from Verizon, Broadvoice, Skype and the like, any order that it pay for all minutes as if they were intrastate is legally erroneous and seriously excessive. Obviously, this argument and this position were not considered in the Order, as evidenced by the Commission's incorrect statement that Global's argument was that its traffic is "wholly" exempt from access charges. Order, at 16. But that was not Global's argument. Its position is that all its calls either originate from phone numbers sold to nomadic VoIP companies or from traffic sent to be enhanced by Transcom, CommPartners and others in Texas or Nevada, and that under the governing law, manifested in the outcomes of the *MetTel*,

TVC[14] and Maryland cases, once nomadic VoIP is the dominant form of calls, it is neither legal nor economic to examine or bill the non-nomadic minority.[15] This position is clearly enunciated in the FCC's 2004 *Vonage* case where the FCC stated:

> We grant Vonage's petition in part and preempt the *Minnesota Vonage Order*. We find that the characteristics of DigitalVoice [VoIP] preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme, and that permitting Minnesota's regulations would thwart federal law and policy.[16]

We note that Global's position can alternatively be supported by the view of Judge Siragusa in New York, that, if some VoIP calls start in IP and others are changed at all in form or content, such as by packet-switching, the question of whether such change is sufficient to transform the traffic into an information service is for the FCC only.[17]

Given that Global had eventually raised serious issues regarding TDS' bills and its reliance on phone numbers to prove its case, the Commission should have granted a hearing to determine who was right, instead of largely affirming a decision obviously based on faulty evidence.

Instead of granting a hearing, the Order responds to Global's new evidence by stating that that Global is "in a unique position" to answer questions about the nature of its traffic. Order, at 17. That statement misunderstands the nature of VoIP traffic and the limited role of VoIP

---

[14] NYPSC Case No. 07-C-0059, *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications Against Global NAPs, Inc. for Failure to Pay Interstate Access Charges*, Order (*TVC*), dated March 20, 2008.

[15] *See 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*) (Nomadic VoIP is jurisdictionally interstate and cannot be billed under traditional charges); *Vonage Holdings Corp. v. Nebraska Public Service Commission*, 564 F.3d 900 (8th Cir. 2009) (interstate nomadic VoIP cannot be separated out from regular intrastate traffic).

[16] *Vonage*, at ¶14.

[17] *Frontier Tel. of Rochester, Inc. v. USA Datanet Corp.*, No. 05- CV-6056 (CJS), 2005 WL 2240356 (W.D.N.Y. August 2, 2005).

forwarders. Because Global is only a forwarder, it has merely contractual, not affiliation relationships with its main traffic suppliers, Transcom and CommPartners. Global has no direct dealings at all with Vonage or most providers of VoIP services other than BroadVoice and Magic Jack. Hence, it can "prove" that its traffic originated with such carriers only where the discovery rules allow subpoenas to non-parties, such as these firms.

Actually, non-party discovery in the Pennsylvania hearing shows that it is the owners of the intrastate telephone numbers (to whom TDS has access) who are in the "unique position" to reveal who in fact originated the calls and whether they began in the state. In Pennsylvania, Global was allowed to cross-examine Paetec officials, who testified that all calls supposedly traveling from Paetec to Palmerton through Global which were billed as intrastate were really not sent by Paetec or from Allentown, Pennsylvania. All those phone numbers had been sold by Paetec to Vonage and then passed on to Vonage subscribers who might live anywhere and could call from anywhere. In the Pennsylvania proceeding, no telephone company testifying for Palmerton verified that it was the actual sender of any call that reached Global. All of them had either sold the number to a VoIP company or passed the call on to a specialty long distance company that apparently wished to pay for the call-enhancing services of firms like Transcom. So it would have been witnesses from New Hampshire telephone companies who would be in the position to verify or refute the existence of an instate landline call. These are witnesses whom Global was never able to examine due to the lack of an evidentiary hearing.

To contend with this issue at commission proceedings in the New York PSC and the Maryland PSC, Global proved the nature of its traffic by means of letters from its suppliers, which were adjudged to be reliable. In *MetTel*, Vonage and Transcom helped to confirm that the letters (which were accepted by the NYPSC and the Maryland ALJ) were correct in all aspects.

Global made the Commission aware of the NYPSC's holdings in *TVC* and submitted a letter from its supplier, CommPartners, which was like the one it submitted in *TVC*, as well as a list of its customers and its supplier contracts[18] but the Commission failed to acknowledge the issues raised by those submissions, as it continues to do now.

Aside from incorrectly surmising that the new submitted evidence proved that Global had access to information about its traffic, the Order dismisses the submitted testimony, stating "we do not rely on such 'facts' in this order." Order, at 14.

This conclusion contravenes the Commission's rules, which state that it must reopen the record if the "late submission of additional evidence will enhance its ability to resolve the matter in dispute." PUC 203.30. Certainly the submitted evidence helps to resolve the issue of whether or to what extent Global owes money to TDS under the intrastate tariffs, an issue which this Commission acknowledged remains largely unresolved. As this evidence is highly probative on the issue of traffic identification, there is no reason why the Commission should not have treated Global's Motion for Reconsideration as one to reopen the record.

The Order justified ignoring this evidence by stating that "Global NAPs has not demonstrated that *any* evidence it now provides . . . was not available prior to our order." Order, at16. (emphasis added). That statement is demonstrably incorrect. As was explained in our first Motion for Reconsideration, Global was able to obtain Vonage's testimony in New York because Vonage's New Jersey headquarters are within 100 of the New York City courtroom, but not within 100 miles of this Commission in New Hampshire. *See* Motion for Reconsideration at 11. Global's 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.

---

[18] *See* Responses to Second Staff Data Requests, dated June 27, 2008, July 2, 2008.

Transcom agreed to testify only once, in a formal trial in New York, where letters or other arguably hearsay evidence would normally not be admitted.[19] Mr. Redden, a tariff expert, who testified as to the correctness of the plaintiff's bills and Mr. Munsell, a billing witness from Verizon who testified as to VoIP charges, were also unavailable in New Hampshire. It should be noted that since the testimony of all four witnesses was under oath and subject to cross-examination, it is highly reliable.

Further, if it was unsatisfied with Global's explanations as to why the evidence was not available earlier, as stated above, the Commission could have simply re-opened the record, something it was authorized to do without having to evaluate the extent to which the new evidence was previously available to Global, and something it should have been inclined to do given the decisive quality of the evidence.

To highlight the paramount importance of this evidence, we explained then and emphasize now that a key issue in these cases is whether Global delivers Vonage traffic, which the FCC has already held to be virtual, nomadic and interstate. The New York evidence clearly proves this point. As a regulatory agency proceeding is supposed to be a search for truth, the Commission should have considered and evaluated this evidence before making a decision allowing TDS to charge non-cost-based rates or to block interstate calls.

But the Commission stated that Global was not even entitled to a complete evidentiary hearing. Order at 22. This statement is belied by the New Hampshire Administrative Procedure Act, which explicitly contemplates an evidentiary hearing in every contested case: "An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case." RSA §541-A:31. The New Hampshire provision governing

---

[19] Transcom's prior unwillingness to testify is also discussed in Global's first Motion to Reconsider. *See id.* at 12.

adjudicative proceedings states:

> The record in a contested case shall include all of the following: . . . . (g) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, *together with any transcript of all or part of the hearing* considered before final disposition of the proceeding.

(Emphasis added).

RSA §541-A:33 states that "[a]ny *oral* or documentary evidence may be received" and "A party may conduct *cross-examinations required for a full and true disclosure of the facts.*" (Emphasis added).

This Commission justifies depriving Global of an opportunity for a full hearing by stating that it did not take away Global's federal rights and thus, it did not violate its due process right to a hearing. It achieves this outcome by stating that it interprets the TCA as only requiring physical interconnection, which TDS has not taken away and does not threaten to take away. Order at 19. But even this does not comport with this Commission's stance, voiced in other proceedings. In the *IDT* proceeding the Commission's arbitrator stated that

> The Commission in this matter and in other instances has found that a rural ILEC such as Union 'has a duty to provide the *services* required by Sections 251(a) and (b).'[20]

"Services" obviously does not mean simple physical interconnection, but actual termination of the CLECs' traffic. In that same proceeding, the Commission stated

> Section 251(b)(5) specifically imposes on all incumbents, rural or otherwise, the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[21]

---

[20] Arbitrator's Report and Recommendations *In the Matter of Petition of IDT America, Corp. for Arbitration with Union Telephone Company Pursuant to the Communications Act of 1934, as Amended*, Docket No. 09-048 (Filed July 27, 2009) (*Arbitrator's Report*) at 34 (quoting Hearing Examiner's Report at 3, adopted by Secretarial Letter of June, 1, 2009) (Emphasis added).

[21] *Arbitrator's Report* at 37.

Thus, this Commission has clearly voiced its opinion that to satisfy the TCA, an ILEC must do more than physically interconnect.

The FCC has also recognized that the very purpose of interconnection facilities under the TCA is to permit the delivery of traffic between interconnected carriers over those facilities. Addressing charges for the exchange of traffic under Sections 251& 252, the FCC stated

> Commission's rules [47 C.F.R. 51.703(a)] prohibit LECs from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. *Since traffic must be delivered over facilities, charging carriers for facilities...would be inconsistent with the rules.*[22]

The FCC Order makes clear that the TCA contemplates that traffic will ride over interconnection facilities and that such facilities do not fulfill their purpose under the TCA unless and until they permit the exchange of traffic.

III. THE ORDER NEEDS TO BE CLARIFIED AS IT DOES NOT EXPLAIN HOW GLOBAL'S LIABILITY SHOULD BE CALCULATED OR HOW DISPUTES ABOUT RATES OR CLASSIFICATION WILL OR CAN BE RESOLVED

Even if this Commission were to ignore the legal and factual holdings of the above three cases and the import of Global's evidence, it certainly owes Global the due process right to be told how much it owes to the TDS companies under the ruling and what standards should be used to calculate what it "owes." While stating that Global must pay TDS' bills, the Order acknowledges that some of Global's traffic into the state is interstate traffic,[23] and thus implies that the bills are excessive.

The Order does not even estimate whether the amount of intrastate or interstate traffic is 90% or 10% of the total. Nor does it explain how the Commission has authority to cause Global

---

[22] *TSR Wireless, LLC v. US West Communications, Inc.*, 15 F.C.C.R. 11, 166 (2000) (*TSR Wireless*). Federal courts have confirmed the FCC's determination. *MCImetro Access Trans. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872, 881 (4th Cir. 2003) (*MCI metro Access*).

[23] Order, at 15.

to pay local rates for calls that are conclusively demonstrated to be IP-to-PSTN traffic. No feasible standard for segregation or estimation is set out, and no attempt is made to reconcile the calculation method with the *Vonage* opinion. Instead, the command is that the parties should "negotiate" the percentages and the final amount themselves. But such "negotiation" would be a charade, since the Order basically informs Global that no matter how outrageous TDS' estimation or demands are, Global must satisfy TDS or have its traffic blocked. The Commission also sets a 30 day deadline but does not explain whether or under what circumstances it would extend such deadline. Nor does it offer to mediate or arbitrate disagreements among the parties concerning estimations of intrastate traffic or selection of rates.

This outcome not only exposes Global to coercion by TDS, but also leaves this Commission poised to run afoul of federal law. Section 253 of the TCA expresses Congress' mandate that state commissions not engage in practices that have the effect of blocking interstate calls. It states "no state or local statute or regulation or other state or local legal requirement, may prohibit or have the effect of *prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.*" 47 U.S.C. 253(a) (emphasis added). If the Order means that this Commission will allow blockage of interstate traffic whenever the amount a carrier offers does not satisfy local ICOs (even if it cannot determine how much an out-of-state carrier owes) it creates a dynamic that Section 253 prohibits.

The Commission, however, defends TDS' cut off and states that TDS is justified in disconnecting Global because Global should have paid something for TDS' service. *See* Order, at 15. But Global could not have simply offered TDS a lower, more acceptable figure for its termination services as this would have violated the filed-rate doctrine, which does not allow TDS to accept a lower rate, absent an interconnection agreement. *See Davel Commc'ns., Inc. v.*

Qwest Corp., 460 F.3d 1075, 1084 (9th Cir. 2006).

IV. THE ORDER FAILS TO DEAL WITH THE IMPLICATIONS OF THE PENDING SECTION 251 NEGOTIATION

In addition to failing to clarify Global's payment obligations, the Order also fails to take into account what implications Global's registered letter seeking Section 251 interconnection with the TDS companies has for the negotiations that are supposed to ensue.

As stated in the Motion for Reconsideration, Global sent a registered letter to counsel for the TDS companies, exercising its right under Section 251 to interconnect with them.[24] After Global submitted its motion for reconsideration to this Commission, TDS counsel replied to Global's letter, stating that they would not interconnect until and unless Global paid all their outstanding tariff bills in full. [25]

Global sent a second letter to TDS on April 20, 2010, setting forth its offer to pay the Verizon-AT&T industry standard rate of $.00045 for all properly calculated past minutes and all minutes billed in the future, based on the already available "yardstick" Section 251 rate, which is the $.00045 testified to by Verizon witnesses in Global's Pennsylvania and New York cases and contained in publicly available Section 251 agreements involving AT&T, Verizon, Level 3, Sprint and others.[26] Global also offered to provide free equipment to enable IP-interconnection to occur. In light of these events, Global asks the Commission to arbitrate or mediate negotiation of an agreement between the parties. Thus, the Commission should hold a hearing or mediation to discuss the implications of Global's offer.

---

[24] Letter from William J. Rooney, Jr., Esq., General Counsel, Global NAPs, Inc., to Paul Phillips, Esq., Primmer, Piper, Eggleston & Cramer, PC, dated November 17, 2009 (attached to Global's Motion to Reconsider as Exhibit A).

[25] Letter from Linda Lowrance, Manager-Interconnection, TDS Telecom, to William J. Rooney, Jr, Global NAPs, Inc., dated December 9, 2009. attached as hereto as Exhibit B).

[26] Letter from Clifford Williams, Global NAPs Counsel, to Linda Lowrance, dated April 20, 2010 (attached hereto as Exhibit C).

First, the Commission must discuss what TDS' duties are pursuant to Global's offer. Under *Time Warner*, *supra*, ICOs which terminate interstate traffic and receive a request to regularize that flow under a Section 251 agreement are not free to block such traffic at a point when negotiation, mediation or arbitration of such agreement have not yet occurred. The Commission itself has made clear that LECs, including rural LECs, have an obligation to provide interconnection under Sections 251(a) and (b) of the TCA as requested by Global here, a duty not limited or affected by the rural exemption of 251(f).[27] Indeed, this Commission has recognized that, in the absence of the ability to seek mediation and arbitration, a CLEC may be unable to obtain its rightful interconnection under Sections 251(a) and (b).[28] This is consistent with the FCC's ruling in *Time Warner* which prohibits a refusal to connect in the face of a Section 251 request. Creating an alternate process that would allow TDS to reject a request to interconnect unless paid a certain amount for past bills would violate the FCC's ruling. Allowing TDS to make interconnection contingent on payment of its tariffs would also violate the TCA under *Paetec*, because as Judge Robertson held, Sections 251(a) and (b) do not allow tariff charges to be assessed on VoIP, and the Section 251(g) exception does not bring VoIP into the statutory scheme because it did not exist before 1996. *Paetec*, at 7-8, 11.

This Commission has held that a "dispute over an ICA based on Sections 251(a) and (b) is subject to this Commission's arbitration."[29] Thus, if TDS refuses to negotiate further or to postpone its cut off until the negotiation or arbitration is concluded this Commission should begin mediation or arbitration, and should prevent all cut-offs until that process is complete.

---

27 NHPUC DT 09-048, Petition of IDT America Corp.for Arbitration of An Interconnection Agreement with Union Telephone Company, Final Order, Order No. 25.022, dated October 7, 2009 (*IDT Order*) at 18.

28 *IDT Order*, at 18-19.

29 *Arbitrator's Report* at 34.

Second, the Commission needs to discuss whether Global's offer to TDS is "appropriate." This Commission has ruled that when a rural or other LEC interconnects under Sections 251(a) and (b), interconnection rates for transport and termination of traffic exchanged under Section 251(b)(5), are – and must – be subject to the *cost-based* pricing standards of Section 252(d) of the TCA,[30] which makes clear that the rates to be paid are to be cost-based, non-discriminatory and supportive of new technologies and new entrants. The $.00045 rate, having been negotiated at arm's length between Verizon, AT&T, Level 3, Sprint and others and approved by relevant state commissions is thus verified to meet all the pricing standards of Sections 251 and 252. Conversely, there is absolutely no basis for concluding that the rates in the TDS bills are cost-based or average for the industry, generally, or as to VoIP providers in particular. In the *IDT* proceeding, a similar interconnection arbitration, the Commission's arbitrator stated that:

> A price advocated by either party, without presentation of support in the form of a market-based price or an alternative cost basis (i.e., other than the Section 252(d) standard) may not constitute an appropriate basis for establishing a rate.[31]

Global believes, that in a mediation or arbitration it can show that it has offered TDS the "appropriate" rate and thus a rate that this Commission should approve under its Section 251 and 252 powers as being sufficient to satisfy TDS' demands.

CONCLUSION

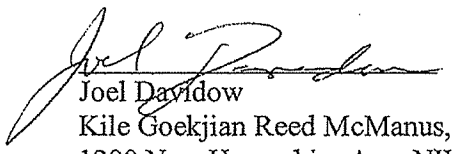
For all of the above reasons, Global requests reconsideration of the Commission's April 2, 2010 order. Global also respectfully requests oral argument.

---

30 *IDT Order* at 23.

31 *Arbitrator's Report* at 44.

Respectfully Submitted,



Joel Davidow
Kile Goekjian Reed McManus, PLLC
1200 New Hampshire Ave. NW
Suite 570
Washington DC 20036
Tel: (202) 659-8000
Fax: (202) 659-8822
Email: jdavidow@kgrmlaw.com
Counsel for Global NAPs, Inc.

William Rooney, Jr.
Global NAPs, Inc.
89 Access Road, Suite B
Norwood, MA 02062
(781) 551-9956
wrooney@gnaps.com

Dated: April 23, 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, April 23, 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

SERVICE LIST
Original + 7 copies + email:

Debra A. Howland
Executive Director & Secretary
N.H. Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Executive.director@puc.nh.gov

Via email

Lynn Fabrizio, Esq.
Staff Attorney & Hearings Examiner
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
Lynn.fabrizio@puc.nh.gov

Meredith A. Hatfield
Office of Consumer Advocate
21 S. Fruit Street, Suite 18
Concord, NH 03301-2429
meredith.hatfield@puc.nh.gov

F. Anne Ross,
Director, Legal Division
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
F.anne.ross@puc.nh.gov

Kathryn M. Bailey
Director of Telecommunications
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
kate.bailey@puc.nh.gov

David Goyette
Utility Analyst II
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
David.goyette@puc.nh.go
v

Joel Davidow, Esq.
Kile Goekjian Reed McManus PLLC
1200 New Hampshire Ave, NW Suite 570
Washington, DC 20036
jdavidow@kgrmlaw.com

Stephen R. Eckberg
Office of Consumer Advocate
21 S. Fruit St., Suite 18
Concord, NH 03301-2429
(603) 271-1174
Stephen.R.Eckberg@oca.nh.gov

William Rooney, Jr., Esquire
Vice President & General Counsel
89 Access Road, Suite B
Norwood, MA 02062
wrooney@gnaps.com

Darren R. Winslow, Controller
Union Communications
7 Central St., PO Box 577
Farmington, NH 03835-0577
dwinslow@utel.com.
(for Union Telephone and BayRing)

Peter R. Healy, Esq.
Corporate and Regulatory Counsel
TDS Telecom
525 Junction Road, Suite 7000
Madison, WI 53717
Peter.healy@tdsmetro.com

Robin E. Tuttle
Fairpoint Communications, Inc.
521 E. Morehead St., Suite 250
Charlotte, NC 28202
rtuttle@Fairpoint.com

Debra A. Martone
Merrimack County Telephone Company
PO Box 337
11 Kearsarge Avenue
Contoocook, NH 03229-0337
Debra.martone@tdstelecom.com

Frederick J. Coolbroth
Devine Millimet & Branch
43 North Main Street
Concord, NH 03301
fcoolbroth@devinemillimet.com

Paul J. Phillips, Esq.
Joslyn L. Wilschek, Esq.
Primmer Piper Eggleston & Cramer,
100 East State St., PO Box 1309 Montpelier
VT 05601-1309
(802) 223-2102
pphillis@ppeclaw.com
jwilschek@ppeclaw.com

Michael C. Reed
Manager, External Relations
TDS Telecom
24 Depot Square, Unit 2
Northfield, VT 05663-6721
mike.reed@tdstelecom.corn

Chris Rand
Granite State Telephone
600 South Stark Highway
PO Box 87
Weare, NH 03281
crand@gstnetworks.com

Patrick C. McHugh
Devine Millimet & Branch
43 North Main Street
Concord, NH 03301
pmchugh@devinemillimet.com

Michael J. Morrissey
Fairpoint Communications, Inc.
521 E Morehead St., Suite 250
Charlotte, NC 28202
mmorrissey@fairpoint.com

William Stafford
Granite State Telephone
600 South Stark Hwy
PO Box 87
Weare, NH 03281
bstafford@gstnetworks.com

Jody O'Marra
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Jody.omarra@puc.nh.gov

Kath Mullholand
Segtel Inc.
PO Box 610
Lebanon, NH 03766
kath@segtel.com

Ben Thayer
Bayring Communications
359 Corporate Drive
Portsmouth, NH 03801-2888
bthayer@bayring.com

Amanda Noonan
Consumer Affairs Director
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Amanda.noonan@puc.nh.gov

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANHATTAN TELECOMMUNICATIONS CORP.,

Plaintiff,

-v-

GLOBAL NAPS, INC.,

Defendant.

08 Civ. 3829 (JSR)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JED S. RAKOFF, U.S.D.J.

On September 8-10, 2009, the Court conducted a three-day bench trial of this controversy. The parties submitted post-trial memoranda in late September and early October 2009, as well as supplemental letter briefs earlier this month. The following constitutes the Court's findings of fact and conclusions of law resulting from that trial.[1]

This action arises out of the complicated legal tangle resulting from the interconnection between traditional telephone service providers and providers of Voice over Internet Protocol ("VoIP"), exacerbated by the years-long failure of the Federal Communications Commission ("FCC") to act in this area, despite soliciting multiple rounds of comments on proposed rule-making. See, e.g., Proposed Rule, 73 Fed. Reg. 66821 (Nov. 12, 2008). Plaintiff Manhattan Telecommunications Corp. ("MetTel") is duly certificated

[1] At the trial, the Court heard testimony from eleven live witnesses and admitted eighteen exhibits into evidence, some of which were voluminous records.

and licensed as a telephone service provider by the FCC and by more than ten states. Pretrial Consent Order ¶¶ 1-2. It has effective tariffs for intra- and interstate access on file with, respectively, the relevant state public service commissions and the FCC. Id.; see also Pl. Exs. 1, 2.[2] From February 2001 through the present, defendant Global NAPs, Inc. ("Global"), a telecommunications carrier, delivered traffic originated by its customers to the Verizon switch; some of that traffic was ultimately destined for MetTel subscribers' phone numbers, for which MetTel provided access services. Pretrial Consent Order ¶¶ 3-5. MetTel invoiced Global for its access services pursuant to its filed tariffs, but Global has not paid any of the charges, claiming that the traffic is VoIP and is not subject to access charges. Id. ¶¶ 4, 7-8. Although Global has an Interconnection Agreement ("ICA") with Verizon,[3] MetTel and Global do not have any agreement between themselves and their networks are not directly interconnected. Id. ¶¶ 3, 9-10; see also Tr. at 103-04.

---

[2] "Pl. Ex." refers to plaintiff's trial exhibits; "Def. Ex." refers to defendant's trial exhibits; and "Tr." refers to the trial transcript.

[3] Defendant contends as a threshold matter that MetTel lacks standing to pursue its claims because MetTel has no rights under Global's ICA with Verizon. See Def. Post-Trial Br. at 3-5. However, the argument is without merit. MetTel brings its claims pursuant to its filed tariffs, or in the alternative, in equity for unjust enrichment; it does not bring its claims pursuant to any contract, including the Global-Verizon ICA.

MetTel has three remaining claims against Global, seeking recovery for breach of federal tariffs and breach of state tariffs, or, in the alternative, unjust enrichment. For the reasons explained below, the Court finds that Global is liable to MetTel on the unjust enrichment claim.

All voice traffic received by MetTel for termination to its subscribers is handled through a format known as time division multiplexing ("TDM"). Tr. at 105-06. Calls that begin in internet protocol are converted to TDM in protocol conversion. See Tr. at 141-42. Calls that begin in TDM may also be switched to internet protocol and back again; as explained by witness Gregory Eccles of Convergent Networks, equipment (that is produced by companies such as his) enables traffic to be switched between traditional voice traffic and internet protocol. Tr. at 263. Thus, from MetTel's perspective, all the traffic it receives is the same, regardless of whether it began in internet protocol. Nor do customers perceive a difference between traditional and VoIP calls. See, e.g., Tr. at 267.

MetTel has billed Global according to its filed federal and state tariffs, using the call detail records provided daily to it by Verizon for calls that cross the leased Verizon network. Calls are classified as intrastate or interstate based on the geographic area corresponding to the originating and terminating telephone numbers. However, it is undisputed that MetTel does not receive origin information on some of the calls that it terminates. See, e.g., Tr.

at 72. For such calls, if the customer does not provide MetTel with a breakdown of its calls' origination, MetTel bills under its percentage-of-interstate-usage ("PIU") default rule, at 50% interstate, 50% intrastate tariff rates. See Tr. at 48-50. Global challenges the bills on a number of related grounds. In essence, Global disputes the application of intrastate rates to its calls, including the application of MetTel's PIU, and the application of any tariff at all to its VoIP calls.

The evidence reflects that use of telephone numbers to determine the geographic correspondence of calls is seriously flawed in the context of mobile phones and VoIP calls. For example, VoIP subscribers may select the area code of their phone numbers regardless of where the subscribers are actually located; and VoIP providers such as Broad Voice make no effort to determine the location of their customers vis-a-vis the selected phone numbers' geographic assignments. Tr. at 238, 249-50. Some of Global's biggest customers, including Vonage and Broad Voice, are VoIP providers whose calls do not begin in TDM. See, e.g., Tr. at 241, 343-44; see also, Pl. Exs. 7-10 (Global customer contracts). However, some of the traffic routed to Global by its customers begins in TDM. See, e.g., Tr. at 361. Jeff Noack, Global's Director of Network Operations, testified that he had observed that some calls classified as "local" by MetTel had, in fact, originated from a VoIP provider or were otherwise routed through an enhanced service

provider. Tr. at 224. It is thus clear to the Court that while neither party has been able to identify the protocol source of the calls at issue, a significant number are likely to be VoIP calls that defy the accuracy of the telephone number-based billing system.

The FCC, although failing to resolve the relevant issues that fall within its authority, has made statements that complicate the issues before the Court. The FCC has preempted state regulation of VoIP services as interfering with "important federal objectives," thus effectively declaring VoIP to be jurisdictionally interstate. In re Vonage Holdings Corp., FCC 04-267, 2004 WL 2601194, at *16 (F.C.C. Nov. 12, 2004); see also Vonage Holdings Corp. v. Nebraska Public Service Comm'n, 564 F.3d 900 (8th Cir. 2009) (finding preemption of state regulation of VoIP calls). Moreover, the FCC has clarified that so-called information services, unlike telecommunications services, are not subject to access charges under Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. See, e.g., In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, FCC 04-97, ¶¶ 4-6 (Apr. 21, 2004). The FCC has thus far "not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act." In re IP-Enabled Services, 24 FCC Reg. 6039, 6043 n.21 (May 13, 2009). Against this backdrop are a host of conflicting court and state

regulatory rulings that have held, inter alia, that access charges are not applicable to VoIP calls and that access charges may be assessed for termination of VoIP calls. Compare Paetec v. CommPartners, No. 08-0397, slip op. at 11 (D.D.C. Feb. 18, 2010) (finding that "the access charge regime is inapplicable to VoIP-originated traffic"), with Palmerton Tel. Co. v. Global NAPS S., Inc., No. C-2009-2093336 (Pa. P.U.C. Mar. 16, 2010). 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 enter the melee and attempt to apply the filed rate doctrine to the facts of this case.[4]

However, although the Court concludes that the filed tariff rates cannot be applied to the facts of this dispute, the Court concludes that the inability to apply the tariff regime as it stands does not preclude MetTel's entitlement to recover in equity. Global contends, both in its summary judgment papers and again in its post-trial briefing, that this state law claim is preempted by the federal tariff regime. The tension inherent in Global's position is obvious: defendant contends that it is not subject to MetTel's filed tariff

[4] Given this determination, the Court need not reach the parties' other subsidiary disputes, including Global's claim that all of its traffic is "enhanced" and not subject to access charges, or the dispute over the significance of the "Feature Group D" designation.

rates, while arguing that the statutory rate system precludes the unjust enrichment claims. The Court rejects Global's contention as legally unsupported. Global relies heavily on the Second Circuit's determination in Marcus v. AT&T Corp., 138 F.3d 46 (2d Cir. 1998), that the filed rate doctrine derived from the tariff-filing requirements of the Federal Communications Act of 1934 ("FCA") preempted certain state law claims that implicated the nondiscrimination and nonjusticiability strands of the doctrine. See 138 F.3d at 62. However, the Marcus Court first concluded, in its removal analysis, that the FCA did not create complete preemption of all state law claims related to telecommunications. Id. at 53-54 (citing, inter alia, 47 U.S.C. § 414 ("Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.")). The nondiscrimination strand, which seeks to "prevent[] carriers from engaging in price discrimination as between ratepayers," id. at 58, is clearly not implicated by MetTel's claim, as MetTel seeks to force Global to pay in accordance with its billing practices for all other ratepayers. Nor is the nonjusticiability strand implicated; the Court is not "undermin[ing] agency rate-making authority" -- the FCC, while fully competent to address this issue, has failed to exercise its authority but remains free (and is encouraged) to do so -- but is merely filling the gap left by the FCC's pronouncements. Marcus, 138 F.3d

at 61. Although Global cites to various cases in which other courts have held that unjust enrichment claims are barred pursuant to the filed rate doctrine, those cases are not binding on this Court and, in any event, given the state of the legal landscape, their analyses as to the implications of the filed rate doctrine are not persuasive to this Court in evaluating the instant facts.

Having thus determined that the unjust enrichment claim is not preempted, the Court emphasizes that Global does not contend that the facts of this case do not satisfy the requirements of an unjust enrichment claim under New York law that it benefitted at MetTel's expense such "that equity and good conscience require restitution." Leibowitz v. Cornell Univ., 584 F.3d 487, 509 (2d Cir. 2009) (internal quotation mark omitted). There is no dispute that MetTel terminated Global's traffic, for which MetTel incurred costs, and that Global has not paid anything for these (ongoing) services. According to MetTel's president, David Aronow, MetTel pays approximately $.001 per minute to Verizon for calls that cross the leased part of the Verizon network, in addition to other costs inherent in the provision of its services. Tr. at 149, 151. Moreover, Global itself profits from its transmission of traffic for its customers. Global's Vice President of Sales, Brad Masuret, testified that an internal study determined an average gross revenue of $0.002 per minute over the last five years. Tr. at 273.

The measure of damages on an unjust enrichment claims is the reasonable value of benefit conferred on Global by the performance of MetTel's termination services. See, e.g., Giordano v. Thomson, 564 F.3d 163, 170 (2d Cir. 2009); see also Pereira v. Farace, 413 F.3d 330, 340 (2d Cir. 2005) ("[R]estitution is measured by a defendant's 'unjust gain, rather than [by a plaintiff's] loss.'" (second alteration in original)). Global contends that MetTel is entitled to, at most, Global's profits. MetTel argues that the reasonable value of its services is best captured by its filed tariff rates, and thus contends that Global has been enrichment in the amount of $453,310.00 plus amounts that have accrued since trial -- the same damages MetTel claims under its tariff-based claims. See, e.g., Pl. Post-Trial Br. at 22. The Court, sitting in this regard as a court of equity, concludes that limiting recovery to Global's profit would be artificially low, but the invoices as billed by MetTel would be too high in light of the various classification concerns. The Court therefore concludes that a fairer measure of the recovery to be awarded MetTel is the services provided as measured by the federal rate.

The Court thus finds defendant liable to plaintiff for unjust enrichment. The parties should submit their separate calculations of that amount, as measured by the federal rate, by April 7, 2010, following which final judgment will be entered.

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
March 31, 2010

EXHIBIT B

9737 Cogdill Road, Suite 230
Knoxville, Tennessee 37932
(865) 671-4758

December 9, 2009

Mr. William J. Rooney, Jr.
Global NAPs, Inc
89 Access Rd, Suite B
Norwood, MA 02062
(617)687-1405

via: Overnight Delivery

Re: Request to Negotiate Interconnection Agreement with various TDS Telecom Companies

Dear Mr. Rooney:

I am in receipt of your request to negotiate an interconnection agreement with the following TDS Telecom subsidiaries or affiliates, Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. (collectively, "TDS Telecom").

Please be advised that each of the above mentioned TDS Telecom operating affiliates qualifies as a rural carrier under the Telecommunications Act of 1996 and two of the TDS Telecom affiliates, Kearsarge Telephone Company and Merrimack County Telephone Company, continue to be exempt from the provisions of 47 U.S.C. 251 (c). TDS Telecom does not waive this exemption, and by this letter, explicitly asserts it.

Any discussions or negotiations between TDS Telecom and Global NAPs, Inc. will take place only with the understanding that such discussions or negotiations do not constitute a waiver of the 47 U.S.C. 251 (f)(1) exemption provisions described above.

Included with this letter is TDS Telecom's standard interconnection agreement which we propose as the starting point for our negotiations. During negotiations, I will serve as the primary point of contact for TDS TELECOM. My contact information is (865)671-4758 or linda.lowrance@tdstelecom.com.

While TDS Telecom is open to beginning negotiations at this time, please be aware that prior to rendering any services under any resulting agreement, TDS Telecom will require that Global NAPs, Inc. be in compliance with all state and federal requirements, and has paid in full any and all outstanding balances owed to TDS Telecom by Global NAPs, Inc. or any of its affiliates.

Sincerely,

Linda Lowrance
Manager-Interconnection

cc: Peter Healy, Esq.- TDS Telecom
Paul Phillips, Esq.- Primer Piper Eggleston & Cramer, PC
Mike Reed- TDS Telecom

EXHIBIT C

KILE
GOEKJIAN
REED
McMANUS PLLC
ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, NW
SUITE 570
WASHINGTON, DC 20036 USA
202.659.8000 FAX 202.659.8822

April 20, 2010

Ms. Linda Lowrence
TDS Telecom
9737 Cogdill Road, Suite 230
Knoxville, Tennessee 37932

Re: Global NAPs, Inc. Request to Negotiate Interconnection Agreement

Dear Ms. Lowrence,

As a supplement to the letter from William J. Rooney, Jr., General Counsel of Global NAPs, Inc. ("Global"), dated November 17, 2009, requesting negotiation of an interconnection agreement with Hollis Telephone Company, Kearsage Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company (the "TDS Companies"), and in response to the letter of the TDS Companies, dated December 9, 2009, responding to Global, enclosed please find a copy of contract provisions in an interconnection agreement that provide a framework for addressing the key issues of termination of Voice over Internet Protocol ("VoIP") and Enhanced Service Provider ("ESP") traffic identified in Global's earlier request for negotiation.

The enclosed contract provisions provide a frequently-utilized and well-balanced approach to establishing unitary rates for VoIP traffic and other terms and conditions governing the treatment of VoIP traffic, that have proven acceptable to many incumbent local carriers. Moreover, as you know, the characteristics of most VoIP traffic are such that legacy terms and conditions for interconnection are uneconomic and inappropriate. The advantages of these contract provisions are that they deal with VoIP issues in a way that is clear and operationally effective. Also, these provisions allow for changes in the treatment of VoIP traffic and in the rates assessed on VoIP if and when the Federal Communications Commission or other competent authority alters the law applicable to VoIP.

Further, these provisions provide for pricing and interconnection without requiring any attempts to identify originating and terminating end points, which can prove impossible or uneconomic for all parties. They will also lead to direct interconnection, eliminating the need for

Global and the TDS Companies to use a third party, FairPoint Communications, to exchange traffic and thus perhaps saving money for TDS. Lastly, to facilitate modern interconnection, Global would be willing to provide Internet Protocol ("IP")-capable switching equipment to the TDS Companies for free.

These contract provisions reflect many of the proposals that counsel for Global has made to counsel for the TDS Companies in discussions regarding interconnection between the carriers. Global remains ready to discuss further and to negotiate the terms of such an interconnection agreement. We are also amenable to mediation or arbitration by the NHPUC.

Please respond promptly to the undersigned, at 718-499-3534, or any of the other counsel for Global noted below.

Sincerely,

C. K. W.R

Clifford K. Williams, Esq.

cc: Joel Davidow, Esq.
1200 New Hampshire Ave., N.W.
Suite 570
Washington, DC 20036

William J. Rooney, Esq.
89 Access Road, Suite B
Norwood, MA 02062

Peter Healy, Esq.
TDS Telecom
525 Junction Road, Suite 7000
Madison, WI 53717

Michael Reed
Manager, External Relations
TDS Telecom
24 Depot Square
Northfield, VT 05663

Paul Phillips, Esq.
Primmer Piper Eggleston & Cramer, PC
421 Summer Street
PO Box 159
St. Johnsbury, VT 05819

Debra Martone
TDS Telecom
PO Box 337
11 Kearsage Avenue
Contoocook, NH 03229

AMENDMENT

to

INTERCONNECTION AGREEMENTS

THIS AMENDMENT (this "Amendment"), effective as of August 1, 2006 (the "Effective Date")(the terms of which originally were effective as of November 1, 2004), amends each of the Interconnection Agreements (the "Interconnection Agreements") by and between each of the Verizon incumbent local exchange carrier ("ILEC") affiliates (individually and collectively "Verizon" or the "Verizon Parties") and each of the AT&T wireline competitive local exchange carrier ("CLEC") affiliates (individually and collectively "AT&T" or the "AT&T Parties"; Verizon and AT&T are referred to herein individually as a "Party" and collectively as the "Parties"), but only to the extent the Interconnection Agreements referenced directly below were not already amended to address the same intercarrier compensation (including, without limitation, reciprocal compensation), interconnection architecture and related matters set forth herein. Attachment 1 hereto lists, to the best of the Parties' knowledge, the Interconnection Agreements in effect as of the Effective Date (the original listing having been of Interconnection Agreements in effect as of November 1, 2004). For the avoidance of any doubt, this Amendment shall also amend each new Interconnection Agreement or adoption in any Verizon ILEC service area in which the Parties did not have an Interconnection Agreement prior to August 1, 2006, provided that in such instances the "Effective Date" of this Amendment shall be the date on which such Interconnection Agreement or adoption becomes effective. The term "affiliates," as used in this Amendment, shall have the same meaning as under Rule 405 of the Rules promulgated pursuant to the Securities Act of 1933, as amended.

WITNESSETH:

WHEREAS, Verizon and AT&T are Parties to Interconnection Agreements under Sections 251 and 252 of the Act.

WHEREAS, the Parties wish to amend the Interconnection Agreements to reflect their agreements on certain intercarrier compensation (including, without limitation, reciprocal compensation), interconnection architecture and related matters, as set forth in Attachment 2 hereto.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and agreements set forth below, the receipt and sufficiency of which are expressly acknowledged, each of the Parties, on its own behalf and on behalf of its respective successors and assigns, hereby agrees as follows:

Attachment 2

Terms and Conditions

1. Definitions.

Notwithstanding anything to the contrary in the Interconnection Agreements, this Amendment, in any applicable tariff or SGAT, or otherwise (including a change to applicable law effected after the Effective Date), the terms defined in this Section (or elsewhere in this Amendment) shall have the respective meanings set forth in this Amendment. A defined term intended to convey the meaning stated in this Amendment is capitalized when used. Other terms that are capitalized, and not defined in this Amendment, shall have the meaning set forth in the Act. Unless the context clearly indicates otherwise, any term defined in this Amendment that is defined or used in the singular shall include the plural, and any term defined in this Amendment that is defined or used in the plural shall include the singular. The words "shall" and "will" are used interchangeably, 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. The terms defined in this Amendment have the meanings stated herein for the purpose of this Amendment only, do not otherwise supersede terms defined in the Interconnection Agreement and are not to be used for any other purpose. By agreeing to use the definitions of terms used in this Amendment, neither Party is conceding the definition of a term for any other purpose.

(a) "Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et. seq.), as amended from time to time (including by the Telecommunications Act of 1996).

(b) "Effective Date" means August 1, 2006.

(c) "End Office" means a carrier switch to which telephone service subscriber access lines are connected for the purposes of interconnection to other subscriber access lines and to trunks.

(d) "End User" means a third party residence or business subscriber to Telephone Exchange Services.

(e) "Extended Local Calling Scope Arrangement" means an arrangement that provides an End User a local calling scope (Extended Area Service, "EAS") outside the End User's basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. "Optional Extended Local Calling Scope Arrangement Traffic" is traffic that, under an optional Extended Local Calling Scope Arrangement chosen by the End User, terminates outside of the End User's basic exchange serving area.

(f) "ISP-Bound Traffic" means any Telecommunications traffic originated on the

public switched telephone network ("PSTN") on a dial-up basis that is transmitted to an Internet service provider at any point during the duration of the transmission, and includes V/FX Traffic that is transmitted to an Internet service provider at any point during the duration of the transmission but, for purposes of this Amendment, does not include Local Traffic or VOIP Traffic (the Parties hereby acknowledging that they shall not be deemed, by virtue of this Amendment, to have agreed for any other purpose whether ISP-Bound Traffic does or does not include Local Traffic or VOIP Traffic).

(g) "LERG" or "Local Exchange Routing Guide" means a Telcordia Technologies publication containing NPA/NXX routing and homing information.

(h) "Local Traffic" consists of Telecommunications traffic for which reciprocal compensation is required by Section 251(b)(5) of the Act or 47 C.F.R Part 51, and is based on calling areas established from time to time by each respective state public service commission (typically based on Verizon's local calling area, including non-optional EAS, except that, as of the Effective Date, in the State of New York reciprocal compensation is required on a LATA-wide basis) but, for purposes of this Amendment, does not include ISP-Bound Traffic or VOIP Traffic (the Parties hereby acknowledging that they shall not be deemed, by virtue of this Amendment, to have agreed for any other purpose whether Local Traffic does or does not include ISP-Bound Traffic or VOIP Traffic).

(i) "NPA/NXX Code" means area code plus the three-digit switch entity indicator (i.e., the first six digits of a ten-digit telephone number).

(j) "Tandem" or "Tandem Switch" means a physical or logical 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.

(k) "Virtual Foreign Exchange Traffic" or "V/FX Traffic" means a call to or from an End User assigned a telephone number with an NPA/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 End User's station.

(l) "VOIP Traffic" means voice communications (including, for this purpose, fax transmissions and other applications, if any, of a type that may be transmitted over voicegrade communications) that are transmitted in whole or in part over packet switching facilities using Internet Protocol, but, for purposes of this Amendment, do not include ISP-Bound Traffic or Local Traffic (the Parties hereby acknowledging that they shall not be deemed, by virtue of this Amendment, to have agreed for any other purpose whether VOIP Traffic does or does not include ISP-Bound Traffic or Local Traffic). For purposes of this Amendment, VOIP Traffic also includes the foregoing communications exchanged between the Parties that are ultimately

originated by, or terminated to, a third party service provider, provided, however, that, in determining responsibility for access charges (if any) associated with VOIP Traffic pursuant to this Amendment, each Party reserves the right to maintain that such access charges are the responsibility of such third party service provider.

(m) "Wire Center" means a building or portion thereof that serves as the premises for one or more End Office switches and related facilities.

2. Conditions Precedent To Applicability of Rates.

(a) In order for the terms set forth in Sections 3 and 4 below to take effect, the following conditions precedent must be satisfied as of November 1, 2004 (i.e., as of the effective date of the like amendment to the predecessor Interconnection Agreement between the Parties in New York) (or, in the case of another carrier adopting any of the Interconnection Agreements, as of the effective date of any such adoption and with respect to such carrier and all of its CLEC affiliates): (i) AT&T shall be in compliance with the terms of Section 8 below regarding interconnection architecture; (ii) there shall be no outstanding billing disputes between the Parties with respect to reciprocal compensation or other intercarrier compensation charges by either Party for Local Traffic, ISP-Bound Traffic or VOIP Traffic; and (iii) the Aggregated Traffic Ratio (as defined in Section 3 below) for the last full calendar quarter prior to November 1, 2004 (or, in the case of another carrier adopting any of the Interconnection Agreements, for the last full calendar quarter prior to the effective date of any such adoption) shall be no greater than five (5) to one (1).

(b) If AT&T had failed to satisfy any of the conditions precedent set forth in Section 2(a) above as of November 1, 2004 (or in the case of another carrier adopting any of the Interconnection Agreements, as of the effective date of any such adoption), then compensation for ISP-Bound Traffic and Local Traffic exchanged between the Parties would have been (or in the case of another carrier adopting any of the Interconnection Agreements, shall be) governed by the following terms: (i) ISP-Bound Traffic shall be subject to "bill and keep" (i.e., zero compensation); and (ii) Verizon's then-prevailing reciprocal compensation rates in each particular service territory (as set forth in Verizon's standard price schedules, as amended) shall apply to Local Traffic exchanged between the Parties. For purposes of the preceding sentence only, all Local Traffic and ISP-Bound Traffic above a 3:1 ratio exchanged between the Parties under an Interconnection Agreement shall be considered to be ISP-Bound Traffic (except in Massachusetts, where a 2:1 ratio, instead of a 3:1 ratio, shall apply).

3. Unitary Rate for ISP-Bound Traffic and Local Traffic.

(a) Except as otherwise set forth in Sections 4, 5 or 6, commencing on the Effective Date, and continuing prospectively for the applicable time periods described below (the "Amendment Term"), when ISP-Bound Traffic or Local Traffic is originated by a Party's End User on that Party's network (the "Originating Party") and delivered to the other Party (the

"Receiving Party") for delivery to an End User of the Receiving Party, the Receiving Party shall bill and the Originating Party shall pay intercarrier compensation at the following equal, symmetrical rates (individually and collectively, the "Unitary Rate"):

- $.0004 per MOU for traffic exchanged beginning on the Effective Date and ending on December 31, 2006 (or ending on a later date if and, to the extent that, this Amendment remains in effect (as set forth in Sections 9 and 10 below) after December 31, 2006);

provided, however, that if for any calendar quarter during the Amendment Term the ratio of MOUs, calculated on an aggregated basis across all jurisdictions, of (i) all traffic subject to the Unitary Rate under this Amendment that is originated on the networks of the Verizon Parties and delivered to the AT&T Parties, to (ii) all traffic subject to the Unitary Rate under this Amendment that is originated on the networks of the AT&T Parties and delivered to the Verizon Parties (the "Aggregated Traffic Ratio"), is greater than five (5) to one (1), then the Unitary Rate applicable to all such traffic above a five (5) to one (1) Aggregated Traffic Ratio shall be zero (i.e., "bill and keep"), and the then-applicable Unitary Rate shall continue to apply to all such traffic up to and including a five (5) to one (1) Aggregated Traffic Ratio. In addition, for the avoidance of doubt, for the purpose of calculating the Aggregated Traffic Ratio, "traffic subject to the Unitary Rate under this Amendment" shall also include VOIP Traffic until such time (if any) as the FCC issues the FCC VOIP Order referred to in Section 5(b) and rules that access charges apply to VOIP Traffic.

(b) Notwithstanding subsection (a) above: (i) for those geographic areas that, as of November 1, 2004, are subject to an Interconnection Agreement between the Parties providing that Local Traffic (or the definitional equivalent thereto) within such geographic areas is to be exchanged on a "bill & keep" basis, the Unitary Rate for purposes of this Amendment shall be deemed to be zero ($0.00) for the duration of the Amendment Term; and (ii) for those geographic areas that, as of November 1, 2004, are not subject to existing Interconnection Agreements between the Parties, the Unitary Rate for purposes of this Amendment shall be deemed to be zero ($0.00) for the duration of the Amendment Term.

(c) Notwithstanding subsection (a) above, the Parties are unable to agree, for purposes of creating a uniform rating methodology under this Amendment, whether V/FX Traffic that is not ISP-Bound Traffic should be treated like toll traffic that is subject to switched access charges, like Local Traffic subject to the Unitary Rate, or in some other manner. Therefore, the Parties agree that V/FX Traffic that is not ISP-Bound Traffic shall continue to be governed by the treatment accorded such traffic under the terms of the existing Interconnection Agreements between the Parties as in effect prior to this Amendment; provided, however, to the extent such Interconnection Agreements subject V/FX Traffic that is not ISP-Bound Traffic to reciprocal compensation, such traffic shall instead be subject to the Unitary Rate as set forth in this Amendment. Notwithstanding the foregoing terms of this subsection, V/FX Traffic that is VOIP Traffic will be governed by the applicable provisions of Section 5.

4. Intentionally left blank.

5. VOIP Traffic.

(a) In accordance with and to the extent required by the FCC's Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC 04-97, WC Docket No. 02-361 (released April 21, 2004) ("AT&T VOIP Order"), any VOIP Traffic exchanged between the Parties that is subject to such AT&T VOIP Order ("Phone-to-Phone VOIP Traffic") shall pursuant to such Order be billed to the responsible Party at the applicable interstate switched access rates as set forth in the Parties' relevant tariffs (including, for the avoidance of any doubt, with respect to both usage and applicable facilities). Should the treatment of traffic subject to the AT&T VOIP Order be modified by the FCC, by a court, or by other applicable federal law, such order or law shall be applied prospectively from the effective date of such order or law to the extent such order or law addresses Phone-to-Phone VOIP Traffic, and each Party reserves all rights to argue for or against retroactive application of that order or law.

(b) Except as provided in subsection (a) above with respect to Phone-to-Phone VOIP Traffic, the Parties do not agree on whether (and, if so, what) compensation is due in connection with the exchange of VOIP Traffic. Accordingly, until such time as the FCC issues an effective order deciding whether reciprocal compensation, access or some other amount (or regime) constitutes the appropriate compensation due in connection with the exchange of VOIP Traffic (the "FCC VOIP Order"), each Party shall, with respect to VOIP Traffic other than Phone-to-Phone VOIP Traffic (which is addressed in subsection (a) above): (i) track and identify to the other Party sufficient information relating to its VOIP Traffic that is terminated to the other Party to enable the terminating Party to rate such traffic, (ii) conspicuously identify any charges it seeks to impose upon the other Party for termination of VOIP Traffic identified by the other Party to the extent such charges are in excess of the Unitary Rate, and (iii) upon receipt of an invoice from the other Party for charges arising from its termination of such VOIP Traffic, pay an amount no less than the amount that would be due if the Unitary Rate were applied to such VOIP Traffic. Without any probative value as to the merits of either Party's position with respect to the appropriate compensation due on VOIP Traffic, the billed Party may dispute (and withhold payment of) any access or intercarrier compensation charges billed by the other Party on such VOIP Traffic in excess of the Unitary Rate. In addition, the billing Party may accept payment of the lower amount without waiving any claims it may have that a higher amount is due, and the Party delivering such traffic shall be deemed to have taken all steps required in order to preserve any right it may have to not pay a higher amount. Upon the effectiveness of the FCC VOIP Order, such FCC VOIP Order shall be applied prospectively from the effective date of the FCC VOIP Order, and each Party reserves all rights to argue for or against retroactive application of that ruling. In the event the FCC rules that access charges do not apply to such traffic, such

traffic shall continue to be subject to the Unitary Rate pursuant to this Amendment.

6. Other Traffic.

Notwithstanding any other provision in the Interconnection Agreements, this Amendment, an applicable tariff or SGAT, or otherwise:

(a) AT&T shall not knowingly deliver to Verizon Local Traffic or ISP-Bound Traffic that originates with a third Telecommunications Carrier, except (i) in exchanges where such Telecommunications Carrier uses AT&T as the sole means of both terminating Local Traffic and ISP-Bound Traffic to Verizon's network and receiving Local Traffic and ISP-Bound Traffic originating on the Verizon network, (ii) where the Parties exchange Local Traffic and ISP-Bound Traffic with such Telecommunications Carrier for purposes of overflow or redundancy, (iii) if AT&T pays Verizon the same amount that such third Telecommunications Carrier would have paid Verizon for that traffic at the location the traffic is delivered to Verizon by AT&T, not to exceed the applicable Tandem or End Office reciprocal compensation charges for such jurisdiction, or (iv) as may be subsequently agreed to in writing by the Parties.

(b) Local Traffic or ISP-Bound Traffic that originates with a third Telecommunications Carrier and is handed off by AT&T to Verizon pursuant to Section 6(a) above, as well as Local Traffic or ISP-Bound Traffic that Verizon hands off to AT&T for delivery to a third Telecommunications Carrier, in each case other than such traffic that is not routed through such Telecommunications Carrier's own switch, shall not be included in the calculation of the Aggregated Traffic Ratio in Section 3(a) above.

(c) Notwithstanding the foregoing provisions of Section 6(a), Verizon, in its sole discretion, may elect to deliver Local Traffic or ISP-Bound Traffic originating on its network directly to any third Telecommunications Carrier that is also exchanging such traffic with Verizon through AT&T's network, provided it has made appropriate arrangements with such third Telecommunications Carrier. In the event Verizon elects to do so, AT&T will be deemed to have satisfied the conditions under Section 6(a)(i) above with respect to such direct-trunked traffic.

(d) In determining whether traffic of a third Telecommunications Carrier exchanged with Verizon under Sections 6(a)(i) and 6(a)(iii) above is Local Traffic/ISP-Bound Traffic or, alternatively, interexchange/toll traffic, the terms and conditions of the applicable interconnection agreement (if any) in effect between such third Telecommunications Carrier and Verizon shall control. By way of example, if such an interconnection agreement provides that V/FX Traffic is subject to switched exchange access charges, it shall continue to be subject to such charges even if exchanged with Verizon through AT&T. Verizon will disclose any such interconnection agreement provisions to AT&T upon request.

(e) AT&T may not charge Verizon any fees for transiting Local Traffic or ISP-Bound Traffic from Verizon to a third Telecommunications Carrier pursuant to Section 6(a)(i) or (ii)

above other than the Unitary Rate. AT&T may not charge Verizon any fees for transiting Local Traffic or ISP-Bound Traffic from Verizon to a third Telecommunications Carriers pursuant to Section 6(a)(iii) above other than the same amount that such third carrier would have charged Verizon for that traffic.

7. Identification and Routing of Calls.

The Parties shall comply with all terms and provisions set forth in the Interconnection Agreements relating to routing and transmission of call record information, as well as with all applicable laws and regulations relating to each Party's routing and identification of its domestic voice traffic, including all FCC rules governing calling party number ("CPN") information and SS7 signaling information. Where call records do not provide an accurate basis for jurisdictionalization of traffic for intercarrier compensation purposes, the Parties shall use other appropriate methods to be agreed upon.

8. Interconnection Architecture.

Notwithstanding any other provision in the Interconnection Agreements, this Amendment, an applicable tariff or SGAT, or otherwise, this Section sets forth the Parties' respective rights and obligations regarding interconnection architecture during the Amendment Term.

(a) Traffic To Which The Interconnection Architecture Applies.

The network interconnection architecture arrangements set forth in this Amendment apply to interconnection facilities used by the Parties to exchange Local Traffic and ISP-Bound Traffic. They also apply to interconnection facilities used by the Parties to exchange translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, IntraLATA Toll traffic, tandem transit traffic, V/FX Traffic that is not ISP-Bound Traffic, and VOIP Traffic, subject, however, to the applicable terms, if any, set forth in the Interconnection Agreements or applicable tariffs (if any) relating to compensation for facilities, as modified by this Amendment. Traffic subject to the Unitary Rate under this Amendment (including VOIP Traffic subject to Section 5(b)) may be routed by either Party in the same manner as required for Local Traffic pursuant to the applicable Interconnection Agreements (as modified pursuant to this Section); provided, however, that use of such arrangements for VOIP Traffic may not be cited by or used against either Party to support either Party's position concerning the applicability of access charges or separate trunking requirements for VOIP Traffic. To the extent (i) the pricing for interconnection facilities may differ depending on the extent to which such facilities are used for Local Traffic or for "toll," "access" or "non-reciprocal compensation" traffic, and (ii) such interconnection facilities are used for the exchange of VOIP traffic (other than traffic subject to the AT&T VOIP Order), until such time (if any) as the FCC determines that access charges apply to such traffic, the Parties shall treat such traffic as Local Traffic, in accordance with the terms of the applicable Interconnection Agreement(s) (as modified pursuant to this Section), for purposes of determining billing and payment for such facilities, but in doing so the billing Party shall not be deemed to have

waived any claims it may have for application of a higher transport rate should the FCC rule that access charges apply to such traffic. In the event the FCC rules that access charges apply to such VOIP traffic, such traffic will be treated as "access traffic" for purposes of determining billing and payment for such facilities.

(b) Terms for Grandfathering of Existing Interconnection Architecture.

(i) Subject to the terms of this Amendment, the Parties shall "grandfather" their carrier-specific point of interconnection ("POI") architecture existing as of November 1, 2004 in any LATA where any of the AT&T Parties is interconnected, as of November 1, 2004, with Verizon on a direct or indirect (i.e., through another local exchange carrier) basis. As such, in those LATAs in which the Parties are interconnected as of November 1, 2004, Verizon shall deliver traffic to AT&T switch(es) in such LATAs where Verizon has an obligation to do so pursuant to the terms of the applicable Interconnection Agreements; and AT&T shall deliver traffic to Verizon Tandems and End Offices in such LATAs where AT&T has an obligation to do so pursuant to the terms of the applicable Interconnection Agreements.

(ii) AT&T shall establish direct end office trunks between any AT&T End Office and any Verizon End Office when traffic between such End Offices reaches 1215 busy hour centium call seconds ("BHCCS") in any two (2) consecutive months (or in any three (3) of six (6) consecutive months). Notwithstanding any other provision of the Interconnection Agreements, this Amendment, an applicable tariff or SGAT, or otherwise, AT&T shall be financially responsible for any transport facilities associated with such direct end office trunking to the Verizon End Office for traffic originating on AT&T's network.

(iii) For the avoidance of any doubt, the term "transport" as used in this Amendment includes transport facilities, as well as any multiplexing and entrance facilities, to the extent applicable.

(iv) In addition to any other interconnection methods set forth in the applicable Interconnection Agreements, both Parties may meet the foregoing interconnection obligations through purchasing transport from the other Party or a third party, or through self-provisioning. AT&T may self-provision via collocation at the applicable Verizon Wire Center (or via collocation at another Verizon Wire Center in the applicable LATA and the purchase of transport from such Verizon Wire Center (at which AT&T collocates) to the applicable Wire Center), subject to the collocation terms of the applicable Interconnection Agreement or Verizon tariff; and Verizon may do so via an arrangement in which Verizon places its equipment in an AT&T Wire Center, and AT&T provides space and power. For such self-provisioning arrangements that Verizon establishes on or after November 1, 2004 at an AT&T premise, AT&T shall provide the arrangements at rates no less favorable (taken as a whole) than Verizon collocation rates, and under terms and conditions subject to negotiation and mutual agreement by the Parties. (For avoidance of doubt, AT&T's collocation rates need not be structured identically to Verizon's rates. For example, AT&T may assess fees for space and power on DS-1 or DS-3 increments

rather than by square footage.) For such self-provisioning arrangements that Verizon established prior to November 1, 2004 at an AT&T premise, if the applicable Interconnection Agreement provides AT&T with the right to charge for such arrangements, and if AT&T was charging Verizon, as of November 1, 2004, for such arrangements, Verizon will continue to have an obligation to pay those charges. Notwithstanding any other provision of the Interconnection Agreements, this Amendment, an applicable tariff or SGAT, or otherwise, Verizon shall not have an obligation to pay any charges associated with the use of AT&T space and power for any such pre-existing arrangements for which AT&T was not charging Verizon as of November 1, 2004.

(v) Where an AT&T switch is outside the originating Verizon Tandem serving area, and where Verizon is purchasing transport from AT&T, then AT&T shall charge Verizon transport mileage charges that are calculated using the lesser of the actual airline mileage for the transport Verizon purchases from AT&T or 10 miles. Where an AT&T switch is within the originating Verizon Tandem service area, and where Verizon is purchasing transport from AT&T, AT&T may charge Verizon transport mileage charges calculated using the actual airline mileage for the transport Verizon purchases from AT&T. Subject to the foregoing, in those jurisdictions where Verizon is providing interconnection transport to AT&T, AT&T shall charge Verizon a transport rate that is no higher than the lower of (A) the transport rate that Verizon charges AT&T in such jurisdictions, subject to application of the available Verizon volume and term pricing requirements as provided below in subsection (vii) (and, for the avoidance of any doubt, Verizon's own volumes of transport obtained from AT&T shall be applied in determining whether Verizon qualifies for any volume and term pricing requirements), and (B) the rate that would be available to Verizon pursuant to the applicable AT&T tariff that corresponds to the tariff providing the basis (i.e., intrastate or interstate special access) for Verizon's rates without regard to this Amendment, subject to application of the available volume and term pricing requirements available under the AT&T tariff as provided below in subsection (vii) based on Verizon's volumes of transport obtained from AT&T. Under each of subsections (A) and (B) above, where Verizon uses Percent Interstate Usage ("PIU") and Percent Local Usage ("PLU") factors for purposes of Verizon's billing of transport to AT&T pursuant to the Interconnection Agreement, AT&T shall apply to such billing of Verizon the same PIU and PLU factors, where applicable, that AT&T provides to Verizon, which factors may be calculated by AT&T on a total volume-weighted statewide or LATA-wide basis as agreed upon by the Parties.

(vi) In those jurisdictions where Verizon is not providing interconnection transport to AT&T, the transport amount that AT&T shall charge to Verizon for purposes of this Section shall be an amount no higher than the Verizon interstate access rates for the applicable jurisdiction, subject to the volume and terms pricing requirements as provided below. At such time that Verizon provides interconnection transport to AT&T in such a jurisdiction, then the terms of the immediately preceding subsection shall apply.

(vii) In all cases described above, each Party shall make available to the other Party any applicable volume and term pricing (subject to the other Party meeting the requirements of the volume and term plan).

(viii) Notwithstanding any other provision of the Interconnection Agreements, this Amendment, an applicable tariff or SGAT, or otherwise, AT&T shall reflect the charges for interconnection transport set forth in this Amendment beginning immediately in its invoices to Verizon.

(c) FCC Interconnection Architecture Rules.

If, prior to the expiration of the Amendment Term, the FCC issues an order, modifying the network interconnection rules, in its Unified Intercarrier Compensation Regime proceeding (CC Docket 01-92), upon a Party's written request, the Parties shall, on a market by market basis, discuss in good faith how, if at all, they wish to conform the existing network interconnection architecture to the newly adopted FCC rules. For the avoidance of any doubt, implementation of such new rules taking effect prior to the expiration of the Amendment Term would be subject to the mutual, written agreement of the Parties, and implementation of such new rules to take effect after December 31, 2006 would be subject to the provisions of any Interconnection Agreement related to modifying an Interconnection Agreement for a change of law.

(d) New Interconnection Architecture Provisions.

(i) The terms set forth above in this Section shall apply to any of the AT&T Parties in any LATA where any of the AT&T Parties is interconnected, as of November 1, 2004, with Verizon on a direct or indirect (i.e., through another local exchange carrier) basis. If none of the AT&T Parties is interconnected either directly or indirectly with Verizon in a LATA, the implementation of any interconnection by either Party shall be pursuant to the mutual POI terms and conditions set forth below. Appendix A sets forth those LATAs where AT&T and Verizon are not interconnected as of November 1, 2004 and for which the mutual POI terms set forth below shall apply, if interconnection is implemented between the Parties in those LATAs.

(ii) AT&T shall establish at least one (1) mutual POI (i.e., a technically feasible point on Verizon's network at which each Party delivers its originating traffic to the other Party) in each of the Verizon Tandem serving areas in each LATA in which either of the Parties wishes to exchange (but is not exchanging as of November 1, 2004) traffic.

(iii) Except for LATAs 132 (in New York) and 224 (in New Jersey), the default mutual POI location(s) shall be (A) at each local Tandem location where Verizon houses separate local and access Tandems in the same Wire Center; and (B) at each Verizon local Tandem location, including those combination Tandems that provide both local and access functionality, provided that the number of mutual POIs established at local-only Tandem locations (i.e., there is no combination access functionality or separate access Tandem in the same Wire Center) does not exceed the number of Verizon access Tandems in the LATA. If the number of Verizon local-only Tandems in a LATA exceeds the number of Verizon access Tandems in a

LATA, then Verizon may designate which local Tandem locations will be mutual POI locations; provided, however, AT&T shall provide separate trunk groups to those local Tandems at which a mutual POI has not been established by AT&T or direct End Office trunks for its originating traffic that is destined for a Verizon End Office that subtends a Verizon local Tandem at which a mutual POI has not been established by AT&T. For LATAs 132 and 224 (to the extent they are not grandfathered pursuant to Section 8(b) above), the default mutual POI location(s) shall be each Verizon local Tandem location irrespective of the number or location of Verizon access Tandems.

(iv) In any LATA in which there are fewer than two (2) Verizon local Tandems, in addition to the mutual POI at the Verizon Tandem Wire Center(s) as described above, AT&T shall establish additional mutual POIs at a Verizon End Office Wire Center when total traffic exchanged between any AT&T End Office and such Verizon End Office reaches 1215 BHCCS in any two (2) consecutive months (or in any three (3) of six (6) consecutive months), unless otherwise mutually agreed to in writing by the Parties. AT&T shall establish direct End Office trunks to such Verizon End Office when total traffic exchanged between any AT&T End Office and that End Office reaches 1215 BHCCS in any two (2) consecutive months (or in any three (3) of six (6) consecutive months). AT&T may meet the direct end office trunking obligation through purchasing transport from Verizon or a third party, or through self-provisioning via collocation.

(v) Where the Verizon End Office subtends a third party carrier Tandem, then subject to the following condition, each Party shall have the right to interconnect via transiting the third party Tandem for traffic originated by such Party. If the total volume of traffic exchanged between a certain AT&T switch and a certain Verizon End Office reaches 1215 BHCCS in any two (2) consecutive months (or in any three (3) of six (6) consecutive months), AT&T shall establish direct End Office trunks between such locations. At its discretion, AT&T also may establish direct End Office trunks between such locations at a lower traffic volume threshold. The mutual POI will be the existing meet point between Verizon and the Tandem transit provider.

(vi) Where a Verizon switch and an AT&T facility have a common location as set forth in Appendix B to this Amendment, the Parties may effect interconnection for their originating traffic where an applicable Interconnection Agreement specifies use of one way trunks, and for both Parties' respective traffic where an applicable Interconnection Agreement specifies use of two way trunks, via direct intrabuilding cable connection pursuant to rates, terms, and conditions comparable to those set forth in the Parties' New York Interconnection Agreement as in effect on November 1, 2004.

9. **Early Termination of Interconnection Agreement.**

Notwithstanding any other provision of the Interconnection Agreements, this Amendment, any applicable tariff or SGAT, or otherwise, the terms contained herein shall govern the relationship of the Parties with respect to the subject matter set forth herein, through December 31, 2006, and

thereafter as well until such time as such terms are superseded by a subsequent Interconnection Agreement effective after December 31, 2006 or are modified pursuant to Section 10 of this Amendment, notwithstanding the fact that an Interconnection Agreement may expire or be terminated prior to that date. In case of the expiration or termination of an Interconnection Agreement prior to December 31, 2006, the terms contained herein shall continue to remain in effect through December 31, 2006 and thereafter until such time as such terms are superseded by a subsequent Interconnection Agreement effective after December 31, 2006, or are modified pursuant to Section 10 of this Amendment.

10. Modification of Terms.

Notwithstanding any other provision of the Interconnection Agreements, this Amendment, any applicable tariff or SGAT, or otherwise, upon thirty (30) days advance written notice, either Party may initiate a request, to take effect at any time after December 31, 2006, for an amendment to the Interconnection Agreement(s) to reflect a change of law, or may request inclusion of new or different terms as part of the negotiation or arbitration of a new interconnection agreement, or may request an amendment to an existing agreement providing new or different terms governing intercarrier compensation and network interconnection architecture, provided that neither Party shall be obligated to agree to any such request, and in the event the Parties are unable to agree upon different terms or an amendment to an existing Interconnection Agreement, either Party may seek to have the issue arbitrated pursuant to applicable procedures governing the Interconnection Agreement. Any such request for an amendment shall be deemed to be a request to negotiate, under Sections 251 and 252 of the Act, the rates, terms and conditions of Sections 4 and 5 of the Interconnection Agreement (as amended hereby) as well as any definitions related thereto.

Appendix A

LATAs Where Verizon and AT&T Are Not Interconnected As of August 1, 2006

Mattoon, IL - LATA 976

Macomb, IL - LATA 977

Louisville, IN - LATA 462

Richmond, IN - LATA 937

Reno, NV - LATA 720

Lima-Mansfield, OH - LATA 923

Blue Field, VA - 932

Appendix B

3D Condo and Shared Network Facility Arrangements ("SNFA") Established Between the Parties as of August 1, 2006

VERIZON 3D CONDO SITES - 28 locations
Mid-Atlantic
1. 30 E Street, S.W., Washington, D.C.
2. 8670 Georgia Avenue, Silver Spring, MD
3. 323 N. Charles Street, Baltimore, MD
4. 65/75 W. Passaic Street, Rochelle Park, NJ
5. 175 W. Main Street, Freehold, NJ
6. 88 Horsehill Road, Cedar Knolls, NJ
7. 1300 Whitehorse Pike, Hamilton SQ, NJ
8. 95 William Street, Newark, NJ
9. 12 N. 7th Street, Camden, NJ
10. 2510 Turner Road, Richmond, VA
11. 900 Walter Reed Drive, Arlington, VA
12. 120-136 W. Bute Street, Norfolk, VA
13. 816 Lee Street, Charleston WV
14. 703 E. Grace Street, Richmond, VA
15. 225 Franklin Street, Roanoke, VA
16. 210 Pine Street, Harrisburg, PA
New England
1. 250 Bent Street, Cambridge, MA
2. 351 Bridge Street, Springfield, MA
3. 425 Canal Street, Lawrence, MA
4. 45-55 Forest Street, Portland, ME
5. 25 Concord Street, Manchester, NH
6. One Greene Street, Providence, RI
7. 29 Gates Street, White River Junction, VT
New York
1. 33 Thomas Street, New York, NY
2. 158 State Street, Albany, NY