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RECORDS AND REPORTING

June 29, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 991220-TP (Global NAPs)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver (PW)

J. Phillip Carver

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
Petition of GLOBAL NAPs SOUTH, INC.,	)	
for Arbitration of Interconnection Rates,	)	Docket No. 991220-TP
Terms, and Conditions and Related Relief	)	
of Proposed Agreement with BellSouth under	)	Filed: June 29, 2000
the Telecommunications Act of 1996	)	

BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF THE EVIDENCE

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STATEMENT OF THE CASE

On August 26, 1999, Global NAPs, Inc. ("GNAPs") filed a Petition for Arbitration of the Interconnection Agreement with BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act"). On September 20, 1999, BellSouth timely filed its response to the Petition. On January 31, 2000, the parties filed a Joint Motion in which they requested that the Florida Public Service Commission ("Commission") resolve as a matter of law (i.e., without the submission of evidence) the issue identified as issue 1 in this proceeding. This issue involved the question of whether the Interconnection Agreement between DeltaCom and BellSouth, which was adopted by Global NAPs on January 18, 1999, was in effect until January of 2001 or had expired on July 1, 1999. On March 20, 2000, the Commission entered Order No. PSC-00-0568-FOF-TP, in which it determined that the previously adopted Interconnection Agreement had, in fact, expired on July 1, 1999.

The hearing on the remainder of the issues in the docket was scheduled for June 7, 2000. By agreement of the parties, the pre-filed testimony of the witnesses was inserted into the record as though read, but the witnesses did not take the stand to summarize their testimony, and the witnesses were not cross-examined. BellSouth's single witness in this proceeding was Alphonso J. Varner. The hearing produced a transcript of 155 pages and 7 exhibits. The parties also stipulated that the evidence and decision in Docket No. 991267-TP ("the Global NAPs Complaint") may be used by either party in this proceeding without objection by the other party.

This Brief of the Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each issue to be resolved in this docket is set forth in the following pages and marked with an asterisk. In some instances, there is a single discussion of BellSouth's positions on two related issues in order to avoid repetition. A number of the identified issues in this docket were resolved by the parties prior to the time of hearing. In these instances, the resolution by the parties is indicated after the statement of the Issue.

STATEMENT OF BASIC POSITION

Many of the issues in this case involve the treatment of ISP traffic. This traffic is not local traffic, and should not be subject to the reciprocal compensation provisions of an Interconnection Agreement that apply to local traffic. Further, the Commission need not take action at this time to develop a compensation mechanism for this traffic; the FCC currently has a rulemaking under way for this purpose. In past arbitrations involving the same ISP issue, the Commission has appropriately determined that it should wait for a decision by the FCC, rather than make a ruling as to how to treat this traffic that could well conflict with the result of the FCC rulemaking. BellSouth believes that this is an appropriate approach. However, in the past, this Commission has directed parties in similar circumstances to continue to operate under the terms of their current interconnection agreement until the FCC makes a final decision. To do so in this case would have the effect of treating this traffic in a manner that is not proper, while compensating the termination of this traffic at a rate that violates the requirement of the Act that rates be cost-based. The better alternative is to order as an interim mechanism a more neutral approach that preserves the positions of the parties without prejudice while awaiting a decision by the FCC. Two such mechanisms proposed by BellSouth are a bill-and-keep arrangement and the tracking of ISP traffic with a "true-up" at a future time.

Each of the remaining individually numbered issues in this docket represent a dispute between BellSouth and Global NAPs as to whether the Interconnection Agreement between the parties should be BellSouth's Current Standard Agreement or the Agreement that BellSouth entered into with DeltaCom in 1997. BellSouth's Standard Agreement is more consistent with the Act, the pertinent rulings of the FCC, this Commission's previous orders, and the appropriate current practices in the various subject areas covered by the Agreement. Therefore, each of BellSouth's position should be sustained by the Commission.

STATEMENT OF POSITIONS ON THE ISSUES

Issue 1: Is the Interconnection Agreement between DeltaCom, Inc. and BellSouth Telecommunications, Inc., which was adopted by Global NAPs (GNAPs) on January 18, 1999, valid and binding on GNAPs and BellSouth until January 2001, or did it expire on July 1, 1999?

**Position: By Order No. PSC-00-0568-FOF-TP, issued March 20, 2000, the Commission has determined that the Interconnection Agreement did, in fact, expire on July 1, 1999.

Issue 2: Should dial-up connections to an ISP (or "ISP-bound traffic") be treated as "local traffic" for purposes of reciprocal compensation under the new Global NAPs/BellSouth Interconnection Agreement or should it be otherwise compensated?

**Position: No. Dial-up connections to an ISP ("ISP-bound traffic") should not be treated as local traffic for purposes of reciprocal compensation. Instead, local traffic should be defined in the manner described below in response to Issue 5.

Issue 5: What is the appropriate definition of local traffic to be included in the Interconnection Agreement?

**Position: Local traffic should be defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other local calling area associated with the originating exchange. Local traffic should not include traffic that originates from, is directed to (or through) an ESP or ISP.

If there is anything that both parties to this proceeding can agree to concerning ISP traffic, it is that this traffic has been (and will continue to be), the subject of both FCC Orders and a pending FCC rulemaking.[1] In light of this fact, this Commission has consistently ruled on compensation for ISP traffic in the last year by electing not to undertake to determine how (or whether) to compensate for this traffic, but rather to await a decision by the FCC. For example, in the recent arbitration between BellSouth and ITC^DeltaCom, the Commission determined the parties should "operate under the terms of their current interconnection agreement regarding reciprocal compensation until the FCC issues its final ruling on whether ISP bound traffic should be defined as local or whether reciprocal compensation is otherwise due for this traffic." (Order No. PSC-00-0537-FOF-TP, issued March 15, 2000, p. 35). This Commission further noted the following:

> The FCC has . . . determined that a rule concerning prospective intercarrier compensation for this traffic would be in the public interest. To this end, it has

[1] Global NAPs' witnesses, Mr. Rooney and Mr. Goldstein, readily admitted this fact in their respective depositions. (Rooney Deposition, Hearing Exhibit 5, p. 35; Goldstein Deposition, Hearing Exhibit 6, p. 24).

> issued a Notice of Proposed Rulemaking seeking comments on two proposals for such a rule. Therefore, any decision this Commission makes presumably will be pre-empted if it is not consistent with the FCC's final rule.

(Id.).[2]

The only pertinent event that has occurred since the entry of the FCC's Order is the decision of the D.C. Circuit Court, which remanded this matter to the FCC for further action. (Bell Atlantic Telephone Companies v. Federal Communications, 2000 US App. LEXIS 4685 (D.C. Cir. March 24, 2000)). In so doing, the Federal Court found that the FCC's decision did not contain a satisfactory explanation as to why ILECs that terminate calls to ISP are not properly seen as terminating local telecommunications traffic. The Federal Court, however, did not reverse the FCC's decision and substitute its own determination, but rather remanded the case to the FCC for further consideration.

Global NAPs' witnesses in this proceeding have chosen to act as if the Federal Court decision were a reversal of the FCC. In other words, GNAPs argues that this Commission should reach conclusions that are precisely the opposite of those contained in the FCC's Order. However, even Global NAPs' witnesses concede that the Federal Court decision is not a reversal, and that the case has been remanded to the FCC for further proceedings. (Ex. 5, p. 35; Ex. 6, p. 24). Further, as Mr. Varner testified, "the FCC has already indicated informally that it believes that it can provide the requested clarification and reach the same conclusion that it has previously—that is, that Internet bound calls do not terminate locally. (Tr. 39). As Mr. Varner also noted in his testimony, the industry press has quoted the Chief of the FCC's Common Carrier Bureau as stating that he "still believes calls to ISP are interstate in nature and that some

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2 The Commission reached the same conclusion in BellSouth's recent arbitrations with MediaOne (See, Order No. 990149-TP) and ICG (See, Order No. 990691-TP).

fine tuning and further explanation should satisfy the court that the agency's view is correct." (Id., quoting TR Daily). Finally, as Mr. Varner also noted, "even though the [FCC's] Declaratory Ruling [has been] vacated, numerous other FCC decisions [have] consistently found that ISP bound traffic is interstate in nature. Those rulings are not affected by the D.C. Order." (Tr. 38).

Given the above, BellSouth does not take issue with the previous decisions of this Commission to await further action by the FCC.[3] However, given this Commission's ruling in 991267-TP (the Global NAPs Complaint) simply directing the parties to continue in the interim under the terms of the expired DeltaCom Agreement would perpetuate this contract under circumstances that weigh heavily against this result, and would further compensating the termination of this traffic at a rate that does not meet the requirements of the Act.[4]

This case presents a unique set of circumstances that militate heavily against having the parties continue under the previous agreement as an interim means to deal with reciprocal compensation for ISP traffic. In the typical situation, parties enter into an agreement through a voluntary process of negotiations, or failing successful negotiations, through arbitration. As the Commission is well aware, however, the circumstances under which Global NAPs came to have the benefit of the DeltaCom agreement until it expired in July of 1999 are somewhat atypical. The now-expired agreement, and whether reciprocal compensation for ISP traffic was due under that agreement, has already been the subject of Docket No. 991267-TP. As the evidence in that case established, Global NAPs opted-into the pre-existing

[3] Also, this Commission has recently opened Docket No. 000075-TP, Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996. The Commission could develop a mechanism for compensation of ISP traffic in that docket without waiting

interconnection agreement between DeltaCom and BellSouth, which had a two-year term, from July 1997 until July 1999. DeltaCom opted-into this agreement in January of 1998. In the complaint proceeding, BellSouth took the position that the language of the contract could not be held to reflect an intent to pay compensation for ISP traffic because Global NAPs opted-into the pre-existing DeltaCom agreement "some time after BellSouth had publicly stated that it would not pay reciprocal compensation to traffic to ISPs." (Order No. PSC-00-0802-FOF-TP, p. 5). In fact, Global NAPs witness in the earlier proceeding, Mr. Rooney, readily admitted that at the time Global NAPs adopted the DeltaCom agreement, Global NAPs was well aware of BellSouth's position that the language of the Agreement did not require the payment of reciprocal compensation for ISP traffic. (Docket No. 991267-TP, Tr. 31). Nevertheless, Global NAPs reviewed a number of different agreements in order to find one to adopt, under which ISP traffic would arguably be payable. (Id., Tr. 29). Global NAPs argued that, specific intent aside, it was entitled to be compensated for this traffic because the language that it opted-into was the same as the language in the DeltaCom Agreement.

The fact that the Commission found Global NAPs argument troubling was evidenced by the discussion of the case at two different Agenda Conferences. At the first Agenda Conference, Commission Clark commented on one of the inequities of this situation:

> Commissioner Clark: Here's my concern. . . . [W]here it appears we may be heading is that if you have an agreement that was entered into by two parties and its later adopted, whatever confusion or interpretation results from that first document is forever perpetuated. I reviewed my notes on this case, and what I understood the testimony to be—I believe it was the general counsel was aware of DeltaCom's viewpoint that reciprocal compensation for ISP traffic was

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on the FCC. However, in either event, the mechanism would be set at some future time, either by this Commission or the FCC, a fact that weighs heavily in favor of only taking interim action in this docket.

[4] The question of the appropriate rate is addressed further in response to Issue 3.

required. He was also aware that BellSouth was contending that the agreements, including this one, did not require a payment.

(Agenda Conference, March 28, 2000, Item No. 48, p. 7).

At the same conference, Commissioner Deason stated that he shared the concerns expressed by Commissioner Clark (Id., p. 20). However, Commissioner Deason also stated the following:

> I'm comforted to some extent also that this contract has expired. So to some extent, the inequity has ceased, if you want to term it an inequity. And I don't think that's too harsh of a term for what's happening with this type traffic.

(Id, pp. 19-20).

Ultimately, Commissioner Clark moved that the item be deferred to the next agenda, and this motion was granted.

At the Agenda Conference of April 4, 2000, the Commission voted to adopt the Staff Recommendation. Before the vote was taken, however, Staff stated the following:

> . . . [W]e emphasize that while it may be troubling how GNAPs came to adopt this agreement, this agreement has terminated, and we believe that any adopted agreement terminates on the date the underlying agreement terminates, in accordance with the FCC statements on this issue. To allow otherwise would be a modification of a term of the agreement and thus would establish a new agreement. This interpretation will prevent what may be a troubling situation from being perpetuated.

(Agenda Conference, April 4, 2000, Item No. 16A, p. 5).

According, the Commission found that compensation for ISP traffic was due under the Interconnection Agreement. In reaching this conclusion, the Commission stated the following:

> Although we need not look beyond the plain language in the Agreement in this instance, we note that we do not believe that the intent of the parties at the time of the adoption is the relevant intent when interpreting an Agreement adopted pursuant to Section 252(i) of the Act. Rather, we believe the intent of the original parties is the determining factor when the Agreement language is not clear. Otherwise, original and adopting parties to an Agreement could receive

> differing interpretations of the same Agreement, which is not consistent with the purpose of Section 251(i) of the Act. We also note that we believe the underlying Agreement negotiated by the original parties terminates on the date established by the original parties to the Agreement. Therefore, adopting an Agreement under Section 251(i) cannot perpetuate the terms of an agreement beyond the life of the original agreement.

(Order No. PSC-00-0802-FOF-TP, pp. 7-8).

Thus, this Commission reached the conclusion that Global NAPs was entitled to the same treatment under the Agreement as was DeltaCom, but this entitlement ended at the expiration date of the DeltaCom Agreement in July, 1999. However, if this Commission directs the parties to continue under the DeltaCom agreement while awaiting a decision by the FCC, then this would perpetuate an inequitable situation in which Global NAPs would continue to have the benefit of the DeltaCom Agreement long after it has expired.

In this proceeding, Global NAPs has already attempted to perpetuate this inequity by taking the position that the DeltaCom Agreement did not expire on July 1999, but rather continues in effect until January of 2001. The Commission specifically rejected this interpretation when it ruled on Issue 1 of this proceeding on March 20, 2000. If, however, the Commission deals with ISP traffic on an interim basis as it has in the past, then this will obviously perpetuate an inequitable situation that would otherwise be remedied (or at least minimized) by the previous ruling that the DeltaCom Agreement has expired. In light of this, the need for a different interim treatment of ISP traffic while awaiting a decision from the FCC is compelling.

In his testimony, Mr. Varner proposes several alternatives to the approach that the Commission has previously taken. First, Mr. Varner states that, "intercarrier sharing of revenues for ISP traffic is not an obligation under Section 251 of the Act." (Tr. 54). Further, the FCC is addressing through a rulemaking the prospect of establishing a mechanism to compensate for ISP-bound calls. Thus, Mr. Varner testified, "in the meantime, BellSouth agrees that it would be appropriate for the parties to negotiate compensation mechanisms for ISP bound traffic, though not within negotiations pursuant to 252." (Id.). In other words, one alternative would be for the Commission to simply note that ISP bound traffic is in a unique category separate from local traffic, and to allow the parties to attempt to negotiate a compensation rate in light of this fact.

Mr. Varner also testified that "although action by this Commission is not appropriate, if the Commission wishes to establish an interim inter-carrier compensation mechanism for ISP traffic, BellSouth suggests three possible options, any of which would be interim until such time as the FCC completes its rulemaking proceeding on inter-carrier compensation." (Tr. 55). In his testimony, Mr. Varner explained each of these alternatives as follows:

> 1) The Commission could direct the parties to create a mechanism to track ISP-bound calls originating on each parties' respective networks on a going-forward basis. The parties would apply the inter-carrier compensation mechanism established by a final, nonappealable order of the FCC retroactively from the date of the Interconnection Agreement approved by the Commission, and the parties would "true-up" any compensation that may be due for ISP-bound calls.
>
> 2) A second option proposed by BellSouth is an inter-carrier revenue sharing compensation arrangement for ISP-bound access traffic that is consistent with the proposal BellSouth filed with the FCC. This proposal is also consistent with the inter-carrier compensation mechanisms that apply for other access traffic. This option is based on apportionment of revenues collected for the access service among the carriers incurring costs to provide the service. The revenue to be apportioned among carriers is the charge for the business exchange service that the ISP pays.
>
> 3) The Commission could direct the parties to implement a bill-and-keep arrangement as the inter-carrier compensation mechanism for ISP-bound traffic

until such time as the FCC's rulemaking on inter-carrier compensation is completed. By definition, a bill-and-keep arrangement is a mechanism in which neither of the two interconnecting carriers would charge the other for ISP-bound traffic that originates on the other carrier's network.

(Tr. 55-6).

Although BellSouth believes that each of these options is both theoretically correct and workable from a practical standpoint, perhaps Option 1 is most consistent with what the Commission has sought to accomplish in its prior orders. In the Arbitration Orders that the Commission has entered in the treatment of ISP traffic in the last year, a consistent theme appears: there is a recognition that the FCC is largely responsible for creating the current situation, and that only the FCC can ultimately resolve the situation. In light of this, as noted above, this Commission has specifically stated that any decision that it would make in the interim has the prospect of being in conflict with a future decision by the FCC. Given this, the most logical alternative is to simply instruct the parties to track the traffic exchanged between them, while awaiting decision by the FCC. This approach will also avoid perpetuating the application of the DeltaCom Agreement in a way that is patently unfair.

An additional reason to avoid the continuation of the DeltaCom Agreement has recently come to light. Global NAPs decision to opt into the DeltaCom Agreement in Florida is very similar to the approach Global NAPs has taken throughout the states in Bell Atlantic's region.[5] Bell Atlantic recently filed a complaint against Global NAPs in Federal Court in which Bell Atlantic alleges that Global NAPs has stolen $18 million through a massive fraud scheme involving ISP traffic (a copy of the Complaint is attached hereto as "Exhibit A"). Specifically, Bell Atlantic contends that Global NAPs billed it for "tens of millions of dollars in reciprocal compensation charges for telephone calls that were never made." (Complaint, p. 4). It will likely be some time before this case reaches a final judgment and a determination as to whether Global NAPs did as BellSouth alleges. Even the prospect that these charges may be true, however, provides additional support for the interim use of a "track and true" or "bill and keep approach."

Issue 3: If ISP-bound traffic should be compensated, what compensation rate should apply?

**Position: ISP-bound traffic is not subject to the reciprocal compensation obligations contained in Section 251 of the Act and should not be compensated in the Agreement. However, if the Commission orders compensation for ISP traffic, it should direct the parties to implement either a track and "true-up" or a bill-and-keep arrangement until such time as the FCC's rulemaking on inter-carrier compensation is completed.

Again, this Commission has, in previous proceedings, made the determination that until the FCC rules on the appropriate compensation mechanism for reciprocal compensation, the parties should continue to operate under the previous agreement. For the reasons set forth above, the Commission should take a different approach in this case. Moreover, this approach would lead to a potently untenable result for a different reason. It would lead to the adoption, even if only for a limited time, of a rate that does not comply with the requirements of the Act.

[5] In fact, many of the cases that arose from this process were cited in BellSouth's briefs on Issue One in this proceeding.

As BellSouth's witness, Mr. Varner, testified, ISP bound traffic is access traffic, not local traffic. Accordingly, it is not subject to the reciprocal compensation obligations of Section 251 and should not be compensated in the agreement (Tr. 55). However, even if the Commission were to set a compensation mechanism for the termination of ISP traffic, the applicable rate should be lower than for other local traffic for reasons that will be discussed below.

Global NAPs takes the position that it would prefer to have the rate of $.009 that is set forth in the DeltaCom Agreement. At the same time, Global NAPs witness, Mr. Rooney, also testified that "if BellSouth objects to including that figure in a new agreement, then the per-minute rate should be no lower than a rate that this Commission has established based on the FCC's TELRIC methodology." (Tr. 20). Thus, not even Global NAPs advocates with any vigor the use of the $.009 rate in the DeltaCom Agreement. Nevertheless, if this Commission orders the parties to operate for some period of time under the expired agreement, the $.009 rate will necessarily be imposed for that period of time.

The expired DeltaCom Interconnection Agreement was a negotiated Agreement that was executed in 1997. When the Commission approved that Agreement, the Commission did not determine that the reciprocal compensation rate of $.009 per minute complied with Section 252(d) of the 1996 Act or applicable FCC rules. Instead, since the expired agreement was a negotiated agreement, the Commission had the power to approve the agreement so long as it was nondiscriminatory and not "inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 252(e)(2)(a). The Commission was not required to, nor did it, determine that the rates in the voluntarily negotiated agreement complied with the pricing standards of the 1996 Act. On the other hand, when approving an arbitrated Agreement, a State

Commission must comply with the pricing rules of the Act. The 1996 Act requires that in an arbitration a state commission establish "just and reasonable" terms for reciprocal compensation, which means that rates must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" of local traffic and that such rates be determined "on the basis of a reasonable approximation of the additional cost of terminating such calls." 47 U.S.C. § 252(d)(2)(A). When approximating the costs of the transport and termination of local traffic, the FCC rules require a state commission to apply the FCC's forward-looking economic cost-based pricing methodology. *See* 47 C.F.R. §§ 51.501 *et seq.; see also* 47 C.F.R. § 51.705.

It is clear that \$.009 is not a cost-based rate. To the contrary, as Mr. Varner testified, this Commission has previously held that the appropriate rate for the termination of local traffic is \$.002 per minute. (Tr. 66).[6] Thus, if this Commission were to order the parties to continue under the terms of the previous agreement (including the reciprocal compensation rates), this would constitute a requirement that the termination of traffic be compensated at a rate that is more than four times the rate that the Commission has previously found to be an appropriate cost-based rate. An Order that has this effect, even for a short period of time, does not comply with the requirements of the Telecommunications Act.

Moreover, the Commission approved rate of \$.002 is for local traffic, not ISP traffic. As Mr. Varner testified, from a cost standpoint, "there is little similarity between local exchange traffic and ISP bound traffic." (Tr. 64). Mr. Varner testified that the call set up is the most costly portion. In his deposition, Global NAPs' witness, Mr. Goldstein, agreed that as a

6 A more complete discussion of the previously approved Commission rates appears below in response to Issue 4.

result of this fact, "the longer the call, the lower the per-minute rate." (Tr. 72). Further, Mr. Varner testified that typical local call is three to four minutes in duration. (Tr. 64). The average duration of ISP calls is 20 minutes.[7] Therefore, "using the same reciprocal compensation rate for local and ISP calls means that call set up cost would be over recovered. Therefore, any per minute reciprocal compensation rate, if applied to ISP-bound traffic, should be a much lower per minute rate to account for the longer call duration." (Id.). In his testimony, Mr. Varner quantified the amount of the overstatement in an attempt to arrive at a compensation rate that would be more appropriate for the termination of ISP traffic. Specifically, he testified as follows:

> The Commission's previously approved reciprocal compensation rates are clearly overstated for a carrier, such as Global NAPs, that is predominately, if not entirely, serving ISPs. The effect is reflected most in the costs for end office switching. The Commission approved a rate of $.002 per minute to recover end office switching. The cost study for that rate included call setup costs to be recovered on a per minute of use basis; the more minutes that a call takes, the lower the per minute setup cost. The cost of $.002 per minute was based on local calls only with an average call duration of 2.708 minutes per call. Using an average call duration of 20 minutes, which more closely resembles ISP calls, would reduce costs by 36%. This reduction would result in a cost of $.00128 for ISP calls using the Commission's approved methodology. The Commission's approved reciprocal compensation rates for tandem switching and common transport would also overstate cost; however, the magnitude would be much less than the impact on end office switching costs. Again, BellSouth is not proposing to apply reciprocal compensation to ISP traffic. This analysis is provided to show that the previously adopted rates for reciprocal compensation would overstate costs of ISP traffic.

(Tr. 65).

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7 See Varner Testimony, p. 32; See Also, Impacts of Internet traffic on LEC Switching Systems, p. 3, Exhibit 1, to the Deposition of Varner (Hearing Exhibit 4).

Thus, even the Commission-approved termination rate for local traffic of $.002, overstates the actual cost of terminating ISP traffic. Given this, it is obvious that the $.009 rate in the DeltaCom Agreement grossly overstates the cost to terminate this traffic.

This Commission has properly observed in the past that any decision that it makes regarding reciprocal compensation may conflict with future FCC decisions. Thus, if the Commission is inclined to order a rate, the rate should involve some sort of true-up provision in order to minimize the potential for conflict with the FCC, assuming the FCC will order compensation at a particular per-minute rate in the future. At the same time, as Mr. Varner also notes, the use of any minute-of-use pricing structure may conflict with future decisions by the FCC. (Tr. 146). Mr. Varner testified that, "in the FCC's Notice of Proposed Rulemaking (ISP Declaratory Ruling at para. 29), the FCC noted that 'efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures. In particular, pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic. For example, flat-rate pricing based on capacity may be more cost-based.'" (Id.). Therefore, a true-up provision may not be capable of rendering any given rate that this Commission sets consistent with the compensation mechanism that is ultimately set by the FCC. Accordingly, as Mr. Varner testified, if ISP-bound traffic is to be compensated, one of the three previously-described mechanisms is the most appropriate.

However, the worst possible scenario would be to direct the parties to utilize, pending an FCC decision, the minute-of-use rate from the expired DeltaCom Agreement of $.009. This result would not comply with the requirements of the Act to set a cost-based rate, and would likely render an interim decision inconsistent with what the FCC ultimately orders. This result would perpetuate the specific inequities that exist in this case, and which the

Commission has, to date, been able to minimize by its ruling that Global NAPs' adoption of the DeltaCom Agreement expired in July 1999. To prevent this inequity, the Commission must adopt a method for dealing with ISP traffic on an interim basis that is different from what it has ordered in other cases. For this reason, BellSouth, once again, submits that the best means to deal with ISP traffic in the interim is either to use a bill and keep approach or for the parties to track their usage while awaiting a decision by the FCC.

Issue 4: What are the appropriate reciprocal compensation rates to be included in the new Global NAPs/BellSouth Interconnection Agreement?

**Position: The appropriate rates for reciprocal compensation of local, non-ISP traffic, are the Commission-approved elemental rates for reciprocal compensation, specifically the rates for end office termination, tandem switching and common transport.

At the outset, it is important to note that the rates discussed herein should not be the rates for compensation of ISP traffic. Rather, discussed below are the rates that should apply to the non-ISP traffic, i.e., that both parties agree is truly local traffic. With this qualification, the answer becomes relatively straightforward. As Mr. Varner testified, "the appropriate rates for reciprocal compensation on local, non-ISP traffic are the Commission-approved elemental rates for reciprocal compensation, specifically the rates for end-office termination, tandem switching and common transport." (Tr. 66). As Mr. Varner also stated, these rates were set by the Commission on December 31, 1996, in Order No. PSC-96-1579-FOF-TP. (Id.). Based on the Commission's ruling in that docket, Mr. Varner included in his testimony a chart that sets forth the appropriate rates. Specifically:

Rate Element	Rate
Tandem Switching, Per MOU	$.00125
End Office Termination	$.002
Common Transport-Per Mile, Per MOU	$.000012
Common Transport-Facilities Termination, Per MOU	$.0005

(Tr. 67).

Global NAPs presented no testimony as to the appropriate cost based rate for reciprocal compensation. Instead, Global NAPs took the position that the rate of $0.009 per minute is appropriate. (Pre-Hearing Order, p. 8). Global NAPs also stated, however, in its Pre-Hearing Statement that "if BellSouth objects to the inclusion of that rate in the new interconnection agreement, then the per-minute rate should be no lower than a rate that this Commission has established based on the FCC's TELRIC methodology." (Id.).
The Commission has set a rate that complies with the TELRIC methodology, as described in Mr. Varner's testimony. Thus, both parties agree that, at least as to the non-ISP, local traffic, the rates previously set by the Commission are appropriate.

Issue 6: What are the appropriate UNE rates to be included in the Interconnection Agreement?

**Position: The appropriate UNE rates to be included in the Interconnection Agreement are those set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1.

BellSouth's witness, Mr. Varner, set forth the UNE rates that BellSouth advocates in AJV-1. Global NAPs' response to this proposal, as set forth in its Pre-Hearing

Statement, is that it is agreeable to the rates proposed by BellSouth with two exceptions. As to the first of these, Global NAPs states that "if Global NAPs needs to order UNEs at some future time, it . . . [should be able to] . . . do so at the then prevailing rates, terms and conditions, taking into account of the orders of the FCC and/or this Commission that might not yet be fully reflected in BellSouth's standard UNE language." (Pre-Hearing Order, p. 9).

It is difficult to understand Global NAPs' limitation of its acceptance of the rates proposed by BellSouth. To the extent that rates are set in the contract between Global NAPs and BellSouth, these are the rates that will apply to Global NAPs. There are essentially two exceptions to this. One, if the Commission sets different rates in a subsequent generic docket, Global NAPs (like any ALEC) could elect to have the new, Commission-approved rates. Two, if BellSouth negotiates a different rate with a different ALEC in Florida, then Global NAPs would have the right to opt into that rate under the circumstances contemplated by the Act and the FCC's rules. Thus, Global NAPs' right to amend its contract in the future is fairly well defined by law. To the extent this is what Global NAPs is seeking, it is certainly entitled to the same treatment in this regard as any other ALEC. If Global NAPs is suggesting that it is entitled to something more, then, legally, this suggestion is simply wrong.

Beyond this, Global NAPs takes issue with specific language of Attachment 2 to BellSouth's standard UNE language and requests that this language be deleted. BellSouth has no objection to this request.

Issue 7: What are the appropriate collocation provisions to be included in the Interconnection Agreement?

**Position: The appropriate collocation provisions are those set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1. The Standard Agreement provides a current, detailed collocation offering that is consistent with the FCC's Order on collocation. The DeltaCom Agreement does not reflect the FCC's recent Order.

Again, Global NAPs has taken the position that it will agree to the language proposed by BellSouth, with the understanding that it can "update" this language under certain conditions. As stated in the response to Issue 6, Global NAPs' ability to opt-into terms and conditions other than those set forth in its agreement are established as a matter of law. To the extent that Global NAPs is suggesting that it should be given something that goes beyond that to which it, like any other ALEC, is legally entitled, that suggestion should be rejected.

Issue 8: What is the appropriate language concerning order processing to be included in the Interconnection Agreement?

**Position: This issue has been resolved by the parties.

Issue 9: What is the appropriate language relating to conversion of exchange service to network elements to be included in the Interconnection Agreement?

**Position: This issue was withdrawn at the prehearing conference.

Issue 10: What are the appropriate service quality measurements to be included in the Interconnection Agreement?

**Position: This issue has been resolved by the parties.

<u>Issue 11:</u> What is the appropriate language relating to network information exchange to be included in the Interconnection Agreement?

**<u>Position</u>: This issue has been resolved by the parties.

<u>Issue 12:</u> What is the appropriate language relating to maintenance and trouble resolution to be included in the Interconnection Agreement?

**<u>Position</u>: This issue has been resolved by the parties.

<u>Issue 13:</u> What is the appropriate language relating to local traffic exchange to be included in the Interconnection Agreement?

**<u>Position</u>: The appropriate language concerning local traffic exchange is set forth in the Standard Agreement attached to the testimony of BellSouth's witness, Alphonso J. Varner, as AJV-1. The Standard Agreement more clearly defines the terms and compensation for local traffic exchange than does the DeltaCom Agreement.

The crux of Issue 13, which relates to the exchange of local traffic, is, of course, the definition of precisely what constitutes local traffic. Thus, the Commission's determination on Issues 2 and 5 will largely determine what language regarding the exchange of local traffic should be included in the agreement. However, Global NAPs has taken the position in the rebuttal testimony of Mr. Rooney that, aside from the ISP-related dispute, "Global NAPs wishes to keep the language in the existing agreement concerning local traffic exchange." (Tr. 90). This statement, of course, partakes of the fiction that there is a currently "existing" agreement. To the contrary, the Commission has ruled that the two-year agreement between DeltaCom and

BellSouth entered into in 1997 expired almost a year ago. Thus, there is no question of continuing an existing agreement. Instead, the Commission's decision should be made by a neutral comparison between the provisions of the current standard agreement proposed by BellSouth and of the now, year old DeltaCom agreement.

As Mr. Varner testified, "the standard agreement has been rearranged to more clearly define the terms of the Agreement." (Tr. 76) Comparing the two, the DeltaCom agreement has only three paragraphs that address local traffic exchange. The current standard agreement has been expanded to include an entire attachment that is devoted to local interconnection. (Id.) This new section (much like all the entire current standard agreement) contains more detailed and clearer language than did the standard agreements offered by BellSouth three or more years ago. In his testimony, Mr. Rooney offers no specific objection to the portions of this section of the agreement that do not relate specifically to ISP traffic, but instead simply states that Global NAPs would prefer to have the Agreement that was current several years ago. Global NAPs' preferences aside, the BellSouth current standard agreement is more detailed, clearer and more up to date than the DeltaCom agreement that is now more than three years ago. For these reasons, the local exchange traffic language in BellSouth's current standard agreement should be ordered.

Issue 14: What is the appropriate language relating to telephone number portability arrangements to be included in the Interconnection Agreement?

**Position: This issue has been resolved by the parties.

CONCLUSION

For the reasons set forth above, this Commission should accept each of BellSouth's positions on the issues in this case and enter an Order to that effect.

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEW YORK TELEPHONE COMPANY and NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY, *Plaintiffs,* -against- GLOBAL NAPs, INC., FRANK T. GANGI, WILLIAM J. ROONEY, JR. and JANET LIMA, *Defendants.*	Civil Action No. 00 Civ. **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs New York Telephone Company and New England Telephone & Telegraph Company (collectively "Bell Atlantic" or "Plaintiffs"), for their complaint against Defendants Global NAPs, Inc. ("GNAPs"), Frank T. Gangi, William J. Rooney, Jr. and Janet Lima (together with Gangi and Rooney, the "Individual Defendants" and the Individual Defendants together with GNAPs collectively "Defendants"), allege as follows:

NATURE OF THE ACTION

1. Bell Atlantic seeks to recover over $18,000,000 stolen through a massive fraud scheme conceived by Defendant Gangi, and implemented by him and the other Individual Defendants through his telecommunications and Internet service company, Defendant GNAPs. This is an audacious scheme, extending over three years, in four states, and involving several enterprises and dozens of instances of mail, wire and common law fraud.

2. Plaintiffs are telecommunications carriers that sell telecommunications services in New York and New England. Gangi schemed to take advantage of Plaintiffs' responsibilities under the Telecommunications Act of 1996 (the "Telecom

Act"), 47 U.S.C. §§ 201, *et. seq.*, which requires incumbent local exchange carriers such as Bell Atlantic to permit competing local exchange carriers to interconnect with Plaintiffs' telephone networks to allow the customers of each carrier to connect to the customers of the other. The Telecom Act also requires local exchange carriers to enter into "reciprocal compensation arrangements" with one another. In a typical reciprocal compensation arrangement, when the customer of one local exchange carrier makes a call to the customer of a competing local exchange carrier, the carrier on whose network that call has originated must compensate the competing carrier for the costs the latter incurs in handing off that call to its own customer, the called party.

3. Gangi created GNAPs and has held it out to be a competitive local exchange carrier, or "CLEC." GNAPs entered into various interconnection agreements with Bell Atlantic, pursuant to which Bell Atlantic connected GNAPs to its network, and paid GNAPs reciprocal compensation for local telephone calls supposedly made by Bell Atlantic customers to GNAPs customers.

4. GNAPs is simply a criminal enterprise operated by Gangi. Gangi -- through GNAPs -- has billed Plaintiffs tens of millions of dollars in reciprocal compensation charges for telephone calls that were never made, or that if made, were of substantially shorter duration than claimed on GNAPs' bills. Bell Atlantic uncovered the scheme in 1999 when it implemented a computer system to keep track of the number and duration of calls its customers made to customers served by the GNAPs network. Plaintiffs' computer tracking system revealed a huge disparity between the number and duration of telephone calls billed by GNAPs and the number and duration of calls tracked by the system. When Bell Atlantic confronted Defendants with these facts, Defendants denied any wrongdoing and claimed falsely that GNAPs' "technical personnel" would produce documentary evidence supporting GNAPs' reciprocal compensation charges for the local telephone calls supposedly made by Bell Atlantic's

customers to GNAPs' customers. No such "technical personnel" were ever identified, and no such supporting documentation was ever provided to Plaintiffs.

5. Recently, GNAPs' counsel and one of its contract negotiators admitted that no such records exist.

6. The disparity between the amount of telephone traffic that Defendants claim Plaintiffs handed off and the actual figures as recorded by Plaintiffs' computer system is no accident. Strikingly, the instant scheme is but the latest in a series of similar acts perpetrated by Gangi. As set forth below, Gangi is a sophisticated, professional racketeer, and an adjudged fraud and perjurer who has made a career of creating fictitious customers, non-existent products and false documents to defraud others. The United States District Court for the Central District of California referred Gangi to the U.S. Attorney for possible prosecution based upon a prior fraudulent scheme he orchestrated in that court. The court there also found that Gangi had obstructed justice by lying under oath, hiring individuals to pose as witness-employees of a non-existent company, and submitting false declarations by individuals who did not exist. (*See* Exhibit 1).

7. Gangi has also injured Bell Atlantic through a scheme abusing the Massachusetts school system.

8. Among other things, Defendants' conduct violates the Telecom Act, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*, the Massachusetts Deceptive Trade Practices Act, MGLA Chapter 93A, and constitutes fraud and breach of contract against Bell Atlantic.

PARTIES

A. Plaintiffs

1. New York Telephone Company, d/b/a Bell Atlantic-New York ("Bell Atlantic-NY"), is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1095 Avenue of the Americas, New

York, New York. Bell Atlantic-NY provides telecommunications services to residential and business customers in New York and Connecticut.

2. New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic-MA"), Bell Atlantic-New Hampshire ("Bell Atlantic -NH"), Bell Atlantic-Vermont ("Bell Atlantic-VT"), Bell Atlantic-Maine ("Bell Atlantic-ME"), and Bell Atlantic-Rhode Island ("Bell Atlantic-RI"), is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 185 Franklin Street, Boston, Massachusetts. New England Telephone and Telegraph Company provides telecommunications services to residential and business customers in New England.

3. B. **Defendants**

4. Frank T. Gangi ("Gangi") is the Chairman, President and controlling shareholder of GNAPs, nominally a telephone company and internet service provider. Gangi is a natural person domiciled in Massachusetts.

5. William J. Rooney, Jr. is an attorney who has worked closely with Gangi in the conception, preparation and concealment of his various rackets. Rooney's legal training is an integral part of the criminal enterprises they operate. He uses his legal expertise to enhance the sophistication of the various rackets in which the Defendants engage. He also prosecutes and coordinates litigation and other legal maneuvers on behalf of the Defendants, as a means of intimidating and confusing the victims of Defendants' schemes. Rooney is the vice-president and general counsel of the corporate Defendant. Rooney is a natural person domiciled in Massachusetts.

6. Janet Lima heads up the "back office" of the Defendants' enterprise. She oversees the generation and mailing of the false invoices. Lima is the accounts manager of the corporate Defendant. Lima is a natural person domiciled in Massachusetts.

7. GNAPs is one of the corporate vehicles through which the Individual Defendants perpetrate and behind which they conceal their racketeering activity. Nominally a telephone company and Internet service provider, GNAPs actually pursues these activities as a front for criminal schemes. Organized by Gangi, GNAPs is ostensibly a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 10 Merrymount Road, Quincy, Massachusetts.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331, because the claims herein arise under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, the Telecommunications Act of 1996, 47 U.S.C. §§ 201, *et seq.*, and federal common law.

2. In addition, the Court has supplemental subject matter jurisdiction over the pendent claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), because subject matter jurisdiction is not founded upon diversity and Defendants reside in this district, as that term is defined in 28 U.S.C. § 1391(c).

4. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because subject matter jurisdiction is not founded upon diversity and a substantial part of the events or omissions giving rise to the claim occurred in this district.

BACKGROUND

I. THE TELECOMMUNICATIONS ACT OF 1996

1. Bell Atlantic's primary business is the provision of local telephone service. For many years, Bell Atlantic was the sole local exchange carrier in each of the areas it served, and has constructed and operated a multi-billion dollar telecommunications infrastructure for local telephone service in those areas.

2. In 1996, Congress adopted the Telecom Act, which was designed to foster competition in many aspects of the telecommunications industry, including local telephone service.

3. Under the Telecom Act, carriers like Bell Atlantic are classified as ILECs, and, as ILECs, are obliged to fulfill certain duties, including the duty to permit interconnection with other carriers so that users of one network may communicate with users of another. The Telecom Act was intended, in part, to foster the creation of private competitors to ILECs. Under Congress' plan, these new telephone companies, the CLECs, would compete with the ILECs for the provision of local telephone service.

4. Currently, Bell Atlantic is an ILEC serving areas of New York, Massachusetts, New Hampshire and Rhode Island, among other states.

A. Interconnection Agreements

1. Under the Telecom Act, virtually any CLEC that wishes to compete with a particular ILEC is entitled to an interconnection agreement. The ILEC must enter into an interconnection agreement in a given state with each CLEC requesting such an agreement, and these agreements are filed with and approved by the state regulatory commission in each such state.

2. These interconnection agreements impose two categories of obligations relevant here: the responsibility to physically connect the CLEC's network with the ILEC network; and the obligation to pay "reciprocal compensation."

3. Prior to the Telecom Act, most telephone users in a local exchange area were ILEC customers, and were connected by wires owned by the ILEC to the ILEC's network. Thus, each call placed by one of these customers within the local exchange area to another ILEC customer in the same local exchange area began, traveled along and was handed off to the called party over the ILEC's network.

4. CLECs do not currently have their own proprietary network running to all users in a local exchange area. Rather, CLECs have much smaller networks that connect only their own customers.

5. While this structure allows CLECs to enter the telephone industry for a fraction of the amount invested by the ILEC, it would not allow the CLECs' customers to call or receive calls from any other telephone company=s customers. Thus, interconnection requires that the ILEC permit the CLEC to interconnect to its network by installing circuits between the networks and transmitting calls over those circuits. In this way, the CLEC's customers can receive the same access to users of the ILEC=s network that the ILEC's customers receive, and vice versa.

6. Typically, when a CLEC's customer calls an ILEC customer in the same local exchange area, the call begins on the CLEC's network, is transmitted by the CLEC to the ILEC's network, and is handed off to the ILEC's network. Conversely, when an ILEC customer calls a CLEC customer in the same local exchange area, the call begins on the ILEC's network, travels along that network, and then is handed off to the CLEC's network.

7.

B. <u>Reciprocal Compensation</u>

1. The Telecom Act and interconnection agreements also require local exchange carriers to pay reciprocal compensation to one another. Reciprocal compensation is a charge paid by one local exchange carrier to another local exchange carrier to cover the latter's costs of handling local calls that originated on the paying carrier's network. In other words, as noted in the examples above, when an ILEC customer calls a CLEC customer, the ILEC must pay the CLEC reciprocal compensation to cover the CLEC's costs of handling that call.

2. As the name suggests, this arrangement is reciprocal, and the CLEC must also pay the ILEC to cover the ILEC's costs of handling calls that originate on the

CLEC's network and are then handed off to the ILEC. These reciprocal compensation charges typically are based on the duration of the call as measured in minutes of use ("MOUs"); that is, a charge for each minute that the call lasts.

3. Because most retail billing for local telephone service is not tied to the duration of the calls made, the ILEC cannot pass this charge on to its customers.

4. With respect to reciprocal compensation, the rate for MOUs in each state is set by the interconnection agreements and tariffs as approved by the public utility commission ("PUC") or public service commission ("PSC") for each state.

5. C. **Reciprocal Compensation and ISPs**

6. Theoretically, reciprocal compensation between the ILEC and the various CLECs should roughly balance out. Assuming that typical telephone customers of both the ILEC and the CLECs in a particular local exchange area place their calls without regard to whether they are calling a customer of the local exchange carrier they use, their calls will be distributed proportionately among each local exchange carrier's customers. Thus, if the ILEC has 90% of the customers in the area, and the CLEC has 10%, 10% of the ILEC customers' MOUs will be to CLEC customers, and 90% of the CLEC customers' MOUs will be to ILEC customers. Each company will then have 9% of the total MOUs for the local exchange area delivered to the other's network. Theoretically then, each will owe the other the same amount of reciprocal compensation.

7. However, this paradigm fails if one local exchange carrier predominantly services only dial-up Internet service providers ("ISPs") and is able to charge reciprocal compensation for calls to these customers. An ISP is a company, such as America Online or CompuServe, that provides connections to the Internet that its customers use through a "dial-up service." If the CLEC mainly serves ISPs, and charges reciprocal compensation for calls to these ISPs, the balance of "reciprocal compensation" traffic is materially skewed for two reasons.

8. First, a typical customer will spend many more minutes "online," that is, calling his ISP, than talking to any particular individual. In those states that include calls to ISPs as ones for which reciprocal compensation should be paid, this fact tips the balance of reciprocal compensation strongly in favor of the local exchange carrier that provides local telephone service to ISPs.

9. Second, while the ISPs receive a very large number of incoming calls, they typically do not make a significant number of outgoing calls. The calls (and therefore the reciprocal compensation) flow almost entirely in one direction -- from the ISP's customer, over the network of the carrier that provides local telephone service to that ISP customer, to the network of the carrier serving the ISP, and from there to the ISP and the Internet.

10. To the extent calls to ISPs are subject to reciprocal compensation, therefore, a local exchange carrier that sells local exchange service only to ISPs will collect large amounts of reciprocal compensation from the local exchange carrier that serves the ISP's subscribers, but will pay almost no reciprocal compensation to the other carrier because the ISPs make virtually no outbound calls.

11. Bell Atlantic and GNAPs in the past have taken adverse positions before federal and state regulators regarding the applicability of reciprocal compensation to calls made to ISPs, and continue to do so. That dispute is not an issue in this case, and Bell Atlantic is not requesting this Court to decide it.

II. DEFENDANTS CONCEIVE THE "CLEC" RACKETS

A. GNAPs Becomes a CLEC

1. From its creation, GNAPs has been owned, controlled and dominated by Gangi. Initially, Gangi held the company out as an ISP. However, in or about 1995, the text of the new Telecom Act became public. Gangi saw an opportunity to profit, not only through legitimate exploitation of the opportunities created by that Act, but through a series of far more lucrative criminal schemes.

2. The essential first step in the scheme was to remake GNAPs into a CLEC so that it would be eligible to receive reciprocal compensation. For this, Gangi reached out to Rooney, his attorney and his confederate in a prior fraud, as set forth in detail below. With Rooney overseeing the regulatory strategy and Gangi the business side of the venture, the two established GNAPs as a CLEC.

B. The Interconnection Agreements

1. Once GNAPs set itself up as a CLEC, it was entitled to the mandatory interconnection provided for under the Telecom Act. The next phase in the scheme was for GNAPs to expand rapidly into as many states as possible.

2. Defendants pressed for and obtained interconnection agreements in eight states in Bell Atlantic's footprint, including the four states at issue in this case, over a two year period. Bell Atlantic is an ILEC in each of these areas, and GNAPs became a CLEC in each.

3. On or about July 24, 1998, Bell Atlantic-NY and GNAPs entered into an Interconnection Agreement covering each "Local Access and Transport Area," or "LATA," in which both parties operate within the State of New York. (*See* Exhibit 2).

4. On or about April 1, 1997, Bell Atlantic-MA (then called "NYNEX") and GNAPs entered into an Interconnection Agreement covering each LATA in which both parties operate within the Commonwealth of Massachusetts. (*See* Exhibit 3).

5. On or about September 1, 1998, Bell Atlantic-NH and GNAPs entered into an Interconnection Agreement covering the State of New Hampshire. (*See* Exhibit 4).

6. On or about October 1, 1998, Bell Atlantic-RI and GNAPs entered into an Interconnection Agreement covering the State of Rhode Island. (*See* Exhibit 5).

7. While the specific rights and obligations created by these agreements varied in certain respects from state to state, as filed with and approved by the appropriate state commission, they each contain provisions relating to the

establishment of rates and charges for reciprocal compensation and to procedures for billing and paying such rates and charges as incurred.

1. Payment

1. Each of the interconnection agreements between Bell Atlantic and GNAPs contained provisions setting forth the rate and payment terms for reciprocal compensation. The precise rate varied from state to state. In each case, that rate is expressed as a charge of some fraction of a cent for each MOU that is handed off to the other company's network.

2. GNAPs sent invoices to Bell Atlantic each month listing the MOUs it claimed to have received for a particular state, the rate of reciprocal compensation claimed by GNAPs, and the total amount of reciprocal compensation allegedly due.

3. GNAPs had the obligation to record and report the number of MOUs for calls from Bell Atlantic customers that are handed off to GNAPs' network. GNAPs was aware that -- consistent with the custom in the telecommunications industry -- Bell Atlantic did not record this information for billing purposes, and that Bell Atlantic would rely upon the MOUs reported in the invoices sent by GNAPs.

C. The Phantom MOUs Scheme

1. Defendants caused GNAPs to bill Bell Atlantic for over a billion phantom MOUs, representing tens of millions of dollars in reciprocal compensation. From the inception of each of the interconnection agreements, Defendants invoiced Bell Atlantic for approximately twice the actual number of MOUs handed off to GNAPs' network.

2. This scheme was conceived by Gangi and Rooney, and executed and concealed by all of the Defendants. Gangi and Rooney realized they could get away with so massive a fraud because of: (a) the novelty of the CLEC

industry; (b) the nature of the ILECs, as large, heavily regulated corporations; and (c) the uncertainty and tension in the new ILEC-CLEC relationships imposed by the Telecom Act.

3. Defendants correctly foresaw that the nascent CLEC industry would provide a fertile environment for a racket of this type. The Telecom Act created enormous new responsibilities for the ILECs. It forced them to create new divisions and entirely new business organizations to manage the new and complex interconnection relationships with CLECs. Because CLECs were a new creation, Defendants realized that no one at Bell Atlantic had any experience in dealing with CLECs or interconnection under the Telecom Act. Defendants realized that the people they would be dealing with at Bell Atlantic would be in new jobs, dealing with novel issues, with little historical reference for the nature or volume of growth or billing by the CLECs. The very novelty of the new Telecom Act regime provided cover for the frauds.

4. Defendants further exploited this confusion by hiring away the Bell Atlantic employees charged with dealing and negotiating with GNAPs on Bell Atlantic's behalf. Just as a sense of normalcy and standard operating procedures were developing in ILEC-CLEC relations, GNAPs hired Robert Fox -- Bell Atlantic's account manager for GNAPs -- to join GNAPs as "Vice President of Industry Relations." This bought GNAPs many additional months to perpetrate its schemes.

5. After Fox left Bell Atlantic to become a GNAPs employee, his replacement needed time to come up to speed on the relationship and issues between the two companies, which bought the defendants more time to work their fraud. When the confusion generated by Fox's departure began to dissipate, Defendants repeated the tactic by recruiting his replacement, Jeffrey Noack. Noack left his position as Bell Atlantic's new account manager overseeing its affairs with GNAPs to join GNAPs.

6. Moreover, as set forth in detail below, both Fox and Noack dealt directly with their replacements at Bell Atlantic on, *inter alia*, billing issues on behalf of GNAPs. In their new roles as GNAPs employees, Fox and Noack provided Plaintiffs with false justifications for and false assurances concerning Defendants' fraudulently inflated bills. They made excuses and played upon their personal relationships with Bell Atlantic personnel to persuade Plaintiffs to pay the invoices.

7. Defendants took full advantage of the rapid growth of the CLEC industry. GNAPs, itself an ISP, has in practice accepted almost exclusively ISPs as its customers, and has targeted this customer base. In this way, it would owe virtually no reciprocal compensation to Bell Atlantic, but Bell Atlantic would expect to and did receive invoices for reciprocal compensation from GNAPs, claiming a very large amount of MOUs. This imbalance and anticipated high volume of MOUs in GNAPs' favor further helped to conceal the fraudulent nature of Defendants' scheme.

8. The regulatory and statutory regime the Telecom Act created has given rise to substantial litigation, lobbying and administrative proceedings. Throughout, the ILECs and CLECs – each pursuing their legitimate economic interests – have been on opposite sides of a number of issues relating to billing, rates and reciprocal compensation. Defendants saw this as a highly hospitable environment for their rackets. Gangi and Rooney, in a previous fraud, detailed below, attempted to conceal their schemes by suing their victims.

9. Defendants employed this very stratagem in this case. As set forth in detail below, in the section on Bell Atlantic's discovery of the fraud, when Bell Atlantic began to suspect that the reciprocal compensation bills sent by GNAPs were false, it withheld payments for overbilled MOUs. Defendants then commenced a nonpayment proceeding before the New York PSC to obtain these monies. After repeated failures to produce any documentation to support the MOUs

claimed on GNAPs' bills, GNAPs withdrew its formal claims relating to phantom M[illegible], but continues to press Bell Atlantic for payment of those charges.

10. In this environment, Defendants were able to perpetrate their bald-faced fraud on an enormous scale. Each month, GNAPs invoiced Bell Atlantic for reciprocal compensation. Defendant Lima was in charge of and oversaw the actual preparation and transmission of the invoices. Each month, Lima prepared and sent to Bell Atlantic invoices which fraudulently overstated, by a factor of about two, the true number of MOUs handed off to GNAPs. The result is dozens of instances of mail and wire fraud, relating to false invoices arising from reciprocal compensation in all four states, over the course of three years, pursuant to which Bell Atlantic was defrauded of at least approximately $18 million.

11.

D. The Massachusetts School Scheme

1. Defendants parlayed a portion of their ill-gotten gain into additional millions of dollars from Bell Atlantic, by reinvesting part of the proceeds from the Phantom MOUs Scheme into a second scheme to bilk Bell Atlantic. This was the Massachusetts School Scheme, in which Defendants used innocent Massachusetts public school teachers to generate additional reciprocal compensation for GNAPs from Bell Atlantic.

2. In or about early 1998, GNAPs, in its guise as an ISP, made a proposal to the Massachusetts Department of Education ("MaDOE") to provide Internet service for all public school teachers in the state system for grades K-12. In order to make this proposal attractive, GNAPs offered MaDOE this service for $60 per teacher per year. As MaDOE stated in a letter to the Federal Communications Commission ("FCC"), this was one third of the market price for this service. (*See* Exhibit 6).

3. MaDOE accepted the proposal, and entered into a contract with GNAPs to provide Internet service through a domain called "mass.edu.net."

4. The GNAPs ISP is a customer of the GNAPs CLEC. The vast majority of the school teachers who accepted this offer were local exchange customers of Bell Atlantic. Therefore, their calls to the GNAPs ISP originated on Bell Atlantic's network, and were handed off to the GNAPs CLEC network.

5. Pursuant to this scheme -- which was in effect from approximately the fall of 1998 to the fall of 1999, when MaDOE replaced GNAPs -- GNAPs took part of the illegal proceeds from its Phantom MOUs Scheme, and reinvested them into its ISP business. It used these reinvested proceeds of the Phantom MOUs Scheme to sign up this enormous block of ISP customers at a huge discount for its service, which discount was funded by the ill-gotten gains of the first racket.

6. Using the discount, GNAPs was able to sign up thousands of additional ISP customers, who would then use its ISP service for millions of minutes.

7. Accordingly, each MOU of those GNAPs ISP accounts earned GNAPs reciprocal compensation from Bell Atlantic. This is true without regard to any fraudulent overstatement of those MOUs, and thus makes this a distinct racket, causing a distinct injury to Bell Atlantic.

8. Bell Atlantic does not allege, and has no information upon which to allege, that either MaDOE or any of the individual education professionals utilizing the mass.edu.net domain in any way knowingly aided or understood Defendants' scheme or are culpable in any fashion.

E. Bell Atlantic Discovers the CLEC Rackets

1. In or about mid-1997, Hewlett Packard began marketing a software system called AcceSS7 that allowed ILECs to monitor the number of MOUs being sent to the networks of each of the CLECs with which they were interconnected.

2. Defendants confidently conceived and executed the Phantom MOUs Scheme to take advantage of the sweeping changes ushered in under the Telecom Act. When Defendants began their scheme, Bell Atlantic made no measurements of the relevant MOUs for billing purposes, but relied in good faith on the CLECs to provide this information. Thus, Bell Atlantic was not in a position to learn of the fraud. Defendants did not anticipate the effect of the new technology that became available in 1997.

3. Bell Atlantic obtained and began implementing the AcceSS7 software in or about late 1998. Using AcceSS7, Bell Atlantic began monitoring CLEC MOUs in mid-1999. Immediately, it noticed an enormous disparity between the MOUs invoiced by GNAPs and the true number measured by AcceSS7. Further monitoring showed continued, massive overbilling of MOUs by GNAPs.

4. AcceSS7 software is recognized and accepted throughout the telecommunications industry as the standard for measuring the number and duration of calls. The AcceSS7 software provided an accurate measurement of the MOUs for which GNAPs was legitimately entitled to receive reciprocal compensation for the periods during which it was used to measure GNAPs' MOUs. The results obtained by use of the AcceSS7 software also provided an accurate basis upon which to estimate the true number of MOUs for which GNAPs was entitled to reciprocal compensation for all other periods.

F. <u>The Rackets Begin to Unravel</u>

1. <u>Bell Atlantic Discovers the Phantom MOUs Scheme</u>

1. In or about late 1998, Bell Atlantic acquired and began utilizing the AcceSS7 software.

2. Bell Atlantic first measured GNAPs' MOUs in April 1999, in the heavily trafficked Boston, Massachusetts LATA. That check revealed a staggering disparity between the number of MOUs GNAPs invoiced to Bell Atlantic for that LATA during that month, and the actual number of MOUs for calls handed off to the GNAPs network.

3. In response, Bell Atlantic focused more of its monitoring efforts onto GNAPs, extending its scrutiny to other LATAs and other states. Over the following months, these examinations demonstrated a consistent pattern of massive overstatement of MOUs by GNAPs.

4. From these discoveries, it became clear that GNAPs was systematically and massively overbilling Bell Atlantic for billions of phantom MOUs. Moreover, from the systematic nature of the fraudulent overbilling, it is now clear that GNAPs has been engaged in this scheme from the outset of its interconnection relationship with Bell Atlantic. At least half of the tens of millions of dollars Bell Atlantic paid GNAPs for reciprocal compensation in 1997 and 1998 was for phantom MOUs.

5. In mid-1999, Bell Atlantic began discussions with GNAPs concerning the discrepancies in the MOUs claimed by GNAPs versus the MOUs measured by AcceSS7. At this time, Bell Atlantic revealed that it had begun monitoring the Bell Atlantic MOUs handed off to the GNAPs network, and that these measurements revealed gross disparities.

6. In one communication after another, the Individual Defendants insisted that the number of MOUs in GNAPs' invoices were correct. When Bell Atlantic requested back-up data or inquired how GNAPs collected and processed its MOU data, GNAPs employees repeatedly referred to nameless "technical personnel" who could provide the data supporting GNAPs' bills. However, despite repeated written

requests from Bell Atlantic, neither the data nor the technical employees were ever produced.

7. It eventually became clear from GNAPs' continued evasions that these "technical employees" -- like their counterparts in Defendants' California Scheme described below -- simply did not exist.

8. In the months immediately following Bell Atlantic's disclosure, the MOUs for which GNAPs was billing Bell Atlantic began increasing at a markedly slower rate of growth. This flattening of its growth rate occurred at a time when the industry in general continued its rapid expansion. Concerned about Bell Atlantic's scrutiny, Defendants began generating a smaller percentage of phantom MOUs in each invoice.

9. Just as in the California Scheme described below, once Defendants realized that the victim suspected the fraud, Defendants took the offensive. GNAPs brought an administrative complaint before the New York PSC seeking payment of the reciprocal compensation relating to phantom MOUs withheld by Bell Atlantic for the New York State LATAs in which it operates. While the complaint covered other reciprocal compensation issues, the gravamen of the proceeding was in substantial part for payment for the phantom MOUs.

10. Throughout the New York PSC proceeding, Bell Atlantic demanded that GNAPs produce the factual basis for the MOUs billed to Bell Atlantic. GNAPs repeatedly evaded the request. Finally, GNAPs' counsel in that proceeding admitted to Bell Atlantic that GNAPs does not have any data to support the MOUs claimed. Thereafter, GNAPs withdrew the portion of its complaint related to these MOUs, but has continued to press Bell Atlantic for payment.

11. Just days ago, Ed White, a consultant negotiating with Bell Atlantic on GNAPs' behalf, made the same admission. He stated that GNAPs

does not "retain" the MOU data upon which each invoice is supposedly based after the invoice goes out.

12. Defendants' prosecution and maintenance of the New York PSC proceeding relating to the number of MOUs involved was itself a fraud, designed to confuse Bell Atlantic and conceal the nature of Defendants' racketeering activity. Gangi and Rooney in particular submitted papers, and directed GNAPs' counsel to submit papers and take positions, that Defendants knew were false and misleading.

2. Bell Atlantic Discovers the Massachusetts School Scheme

1. While Bell Atlantic had known about Defendants' discount program with the Massachusetts schools since in or about late 1998, it had never connected the discount scheme to its own losses, until it learned about the Phantom MOUs Scheme. Once the Phantom MOUs Scheme came to light, it became clear that GNAPs funded the Massachusetts School Scheme by reinvesting a portion of the ill-gotten gain from the Phantom MOUs Scheme.

2. In a letter MaDOE wrote to the FCC on GNAPs' behalf, MaDOE stated that it was the income from reciprocal compensation for ISP traffic that allowed GNAPs to offer the 66% discount to public educators. Upon information and belief, MaDOE made that statement in reliance on information provided to it by GNAPs, which failed to disclose the Phantom MOUs Scheme.

3. Bell Atlantic does not allege, and has no information upon which to allege, that either MaDOE or any of the individual education professionals utilizing mass.edu.net domain in any way knowingly aided or understood Defendants' scheme or are culpable in any fashion.

III. DEFENDANTS' RACKETEERING HISTORY

A. The California Scheme

1. Defendant Gangi has been engaged in racketeering activity since at least 1992, when he defrauded Digital Equipment Corporation ("Digital"), a large computer hardware company. The allegations of this portion of the complaint are taken from the findings of fact and conclusions of law of the United States District Court for the Central District of California in *CineF/X, Inc. v. Digital Equipment Corporation*, 94 Civ. 4443 (C.D.Cal. Aug. 31, 1995), *aff'd.*, 108 F.3d 336, 1996 WL 733171 (9th Cir. 1996). (*See* Exhibit 1).

2. Digital is one of the nation's largest manufacturers of computer hardware. During the period of the California Scheme, Digital had a discount program, known as the "Independent Software Vendor" or ISV program. Under this program, Digital offered its hardware products at a substantial discount to software development companies, because it wished to encourage software developers to create software compatible with Digital's hardware.

3. In the early 1990's, Gangi formed, acquired and/or took control of a company called Norwood Technologies ("Norwood"). Norwood was never engaged in software development. However, under Gangi's control, Norwood falsely stated to Digital that Norwood was a software developer, so that it would qualify for the ISV discount. From 1992 through 1993, Norwood purchased computer equipment at a substantial discount from Digital, through its fraudulent representations concerning the nature of its business. Its actual business was the resale of these discounted computer components to third parties at or close to market price. Norwood pocketed the fraudulently obtained discount as profit.

4. In 1993, Digital became suspicious of Norwood's standing as an ISV, and began an investigation. In response, Gangi directed Norwood to cancel its ISV contracts with Digital. He also directed one of its employees to assist in setting up a bogus corporation, CineF/X, so that he could continue the racket.

5. Gangi, together with CineF/X's "counsel," Rooney, created CineF/X as a vehicle for continued racketeering activity in fraudulently obtaining the ISV discount for Digital components, and jobbing them to third parties for an illegal profit. The two executed and concealed the continued ISV racket through a series of mail frauds, wire frauds, perjury, fabricated documents and records, phantom products and non-existent employees.

6. Gangi caused CineF/X to apply for the ISV discount online, submitting information to Digital over the interstate wires. According to that information, CineF/X was actively engaged in the software development business. Gangi and Rooney concealed the fact that Gangi controlled CineF/X because they realized that Digital would not do business with a company affiliated with Gangi, in light of Digital's discovery of the Norwood ISV scam. Gangi and Rooney also concocted a bogus business address for CineF/X in Marina Del Rey, California, as well as a phony telephone number in the 213 (Los Angeles area) area code.

7. Gangi and Rooney caused CineF/X to put out a false press release in 1993, discussing its work in developing new software.

8. Using CineF/X as a front, Gangi and Rooney purchased Digital components at the ISV discount, and resold them to third parties, just as they had through Norwood.

9. This time, Digital became suspicious more quickly, and rescinded certain orders placed by CineF/X. Gangi and Rooney, in a tactic that would mark their later rackets, took the offensive, and sued Digital for breach of contract. Digital counterclaimed for fraud.

10. The parties submitted cross-motions for summary judgment. CineF/X's papers included sworn declarations from its supposed president, John Mehoff, and its assistant secretary, Scott Levine.

11. In deciding those motions along with Digital's motion for sanctions, the Court set forth in detail the fraudulent acts by Gangi, CineF/X and its counsel in connection with the execution and cover-up of the ISV scheme. *See* Exhibit 1.

12. In reality, CineF/X never had any software development business or business operations of any kind, other than the resale of the illegally-obtained Digital components to third parties.

13. Gangi caused CineF/X to file interrogatory responses identifying the persons knowledgeable about CineF/X's software development business as it president, John Mehoff, its systems manger, John Carlos, and its assistant secretary, Scott Levine. Indeed, Gangi handled the review of Mehoff's declaration, and arranged to have it executed and sworn.

14. However, as the court found, Mehoff and Carlos *did not exist*. Levine, who was deposed, admitted that he had no personal knowledge of any activities by CineF/X, and had no personal knowledge of the statements in his declaration.

15. It also turned out that the supposed business address of CineF/X was actually a residential apartment. The resident of the apartment had no involvement with the business affairs of CineF/X. Rather, he had a contractual arrangement with Gangi to forward packages for CineF/X to Gangi in Massachusetts.

16. The 213 area code telephone number was also false.

17. The information in the 1993 CineF/X press release was wholly fabricated.

18. Indeed, Gangi and Rooney are so sophisticated in the ways of fraud, that even after the suit began, they directed outside counsel for CineF/X to write to Digital and warn Digital not to harass any of CineF/X's customers. In reality, CineF/X had no customers and no business.

19. The Court dismissed CineF/X's claims and granted summary judgment and $212,000 in sanctions in favor of Digital and against CineF/X and Gangi. In imposing sanctions against Gangi personally, the Court set forth in detail the false statements, fraud on the court, perjury and obstruction of justice Gangi committed in his attempt to perpetuate and conceal the racket. The Court also referred the matter to the United States Attorney's Office for a criminal investigation.

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IV. RICO ALLEGATIONS

1. Gangi, assisted by Rooney, has operated a criminal syndicate, engaging in mail and wire fraud in a number of states, since at least 1992. This syndicate, of which Gangi is head, has operated through, obtained and maintained control of and victimized others through multiple acts of racketeering activity, including mail and wire fraud, obstruction of justice, and violations of the Travel Act.

2. In particular, Defendants conducted the Phantom MOUs Scheme, the Massachusetts School Scheme and the California Scheme through a series of enterprises they either controlled, corrupted and/or injured through their racketeering activity.

3. While each racket involved different, though overlapping, enterprises, and a different set of predicate acts, together they demonstrate a continuous course of racketeering conduct by Defendants. In addition, each of the three rackets described herein individually exhibits a continuous pattern of racketeering acts, and individually states a claim under RICO.

A. The Phantom MOUs Scheme

1. As set forth above, the Phantom MOUs Scheme was a racket devised by Defendants which generated fabricated invoices seeking payment

for billions of MOUs that never existed, and obtained payment for these phantom MOUs from Bell Atlantic in the amount of at least approximately $18 million. To facilitate and perpetuate this fraudulent overbilling scheme, Defendants committed a number of additional acts of racketeering.

1. Enterprise

1. Through their acts of racketeering, Defendants participated in the affairs of Bell Atlantic and caused employees of Bell Atlantic's Wholesale Division to process for ultimate payment GNAPs' fraudulently inflated invoices. Bell Atlantic's Wholesale Division is a group of individuals both associated in fact and legally associated under the corporate control of Bell Atlantic and its affiliates. In particular, Defendants' fraud concerning the number of MOUs terminating on GNAPs' network caused Bell Atlantic's agents and employees to pay GNAPs at least approximately $18 million in unearned reciprocal compensation.

2. Alternatively, the enterprise for the Phantom MOUs Scheme was an association in fact of GNAPs, the Individual Defendants and Bell Atlantic's Wholesale Division. This is an association in fact of persons and entities controlled and directed by Gangi, either directly or through the deceit that Defendants perpetrated through the predicate acts of racketeering set forth herein.

3. Bell Atlantic does not allege, and has no information upon which to allege, that its Wholesale Division, or any employees in it, acted unlawfully in any way or is in any way culpable. Rather, the Wholesale Division was the victim of Defendants' scheme, which Defendants carried out in part through their fraudulent manipulation of the Wholesale Division to obtain unearned payments for themselves.

2. Predicate Acts

1. Defendants manipulated, controlled, conducted and participated in the affairs of the enterprise (defined in either of the ways set forth above)

through a pattern of racketeering activity. The heart of the scheme was the generation, submission and collection of fraudulent invoices for reciprocal compensation. Each of the Defendants participated in the conception, generation and the collection of these invoices. The fraudulent invoices are set forth below. Each was transmitted using either the mails or interstate wires and constitutes mail and/or wire fraud. Bell Atlantic paid GNAPs at least approximately $18 million dollars in reliance on the legitimacy of the invoices.

2. Starting in October 1998 and continuing through at least February 1999, GNAPs billed Bell Atlantic $1,061,882.24 in reciprocal compensation charges for MOUs in New Hampshire. (*See* Exhibit 7). Of that billed figure, no less than approximately $500,000 constituted an overcharge for MOUs that did not exist. GNAPs billed Bell Atlantic for New Hampshire as follows:

(a) On or about November 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of October 1998 for 21,056,912 MOUs for $168,455.30. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 11,500,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $100,000.

(b) On or about December 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of November 1998 for 27,854,628 MOUs for $222,837.03. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 15,300,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $125,000.

(c) On or about January 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of December 1998 for 38,587,624 MOUs for $308,700.99. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 20,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $170,000.

(d) On or about February 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of January 1999 for 45,236,115 MOUs for $361,888.92. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 25,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $200,000.

1. Defendants continue to transmit fraudulently overstated invoices for phantom MOUs for New Hampshire to Bell Atlantic each month using the mails and/or interstate wires through the present. However, since Bell Atlantic has begun monitoring the actual MOUs, and in light of regulatory decisions, Bell Atlantic is disputing portions of those invoices.

2. Starting in September 1998 and continuing through at least September 1999, GNAPs billed Bell Atlantic $11,094,295.64 in reciprocal compensation charges for MOUs in New York. (*See* Exhibit 8). Of that billed figure, at least approximately $5,900,000 constituted an overcharge for MOUs that did not exist. GNAPs billed Bell Atlantic for New York as follows:

(a) On or about October 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of September 1998 for 33,254,812 MOUs for $266,038.50. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 15,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $125,000.

(b) On or about November 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of October 1998 for 41,029,584 MOUs for $328,236.67. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 19,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $150,000.

(c) On or about December 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of November 1998 for 56,841,255 MOUs for $454,730.04. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 25,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $200,000.

(d) On or about January 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of December 1998 for 67,555,237 MOUs for $540,441.90. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 31,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $250,000.

(e) On or about February 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of January 1999 for 89,757,194 MOUs for $718,057.55. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 40,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $350,000.

(f) On or about March 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of February 1999 for 101,232,741 MOUs for $809,861.93. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 45,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $375,000.

(g) On or about April 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of March 1999 for 124,222,659 MOUs for $993,781.27. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 55,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $450,000.

(h) On or about May 3, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of April 1999 for 148,783,221 MOUs for $1,190,265.77. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 70,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $550,000.

(i) On or about June 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of May 1999 for 189,631,110 MOUs for $1,517,048.88. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 90,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $700,000.

(j) On or about July 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of June 1999 for 242,705,337 MOUs for $1,941,642.70. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 125,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $1,000,000.

(k) On or about September 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of August 1999 for 291,773,802 MOUs for $2,334,019.42. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 135,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $1,000,000.

1. Defendants continue to transmit fraudulently overstated invoices for phantom MOUs for New York to Bell Atlantic each month using the mails and/or interstate wires through the present. However, since Bell Atlantic has begun monitoring the actual MOUs, and in light of regulatory decisions, Bell Atlantic is disputing payment of portions of those invoices.

2. Starting in October 1997 and continuing through at least February 1999, GNAPs billed Bell Atlantic $19,372,719.02 in reciprocal compensation charges for MOUs in Massachusetts. (*See* Exhibit 9). Of that billed figure, at least approximately $10,000,000 constituted an overcharge for MOUs that did not exist. GNAPs billed Bell Atlantic for Massachusetts as follows:

(a) On or about November 14, 1997, GNAPs sent an invoice through the mail to Bell Atlantic for the month of October 1997 for 2,851,201 MOUs for $22,801.61. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 1,400,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $10,000.

(b) On or about December 1, 1997, GNAPs sent an invoice through the mail to Bell Atlantic for the month of November 1997 for 32,652,017 MOUs for $261,216.13. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 15,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $125,000.

(c) On or about January 2, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of December 1997 for 59,129,861 MOUs for $473,038.89. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 30,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $225,000.

(d) On or about February 2, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of January 1998 for 77,452,159 MOUs for $619,617.27. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 35,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $300,000.

(e) On or about March 3, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of February 1998 for 94,868,372 MOUs for $758,946.97. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 45,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $375,000.

(f) On or about April 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of March 1998 for 113,575,322 MOUs for $908,602.58. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 55,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $450,000.

(g) On or about May 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of April 1998 for 125,864,179 MOUs for $1,006,913.43. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 60,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $500,000.

(h) On or about June 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of May 1998 for 138,824,711 MOUs for $1,110,597.69. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 70,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $550,000.

(i) On or about July 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of June 1998 for 146,392,806 MOUs for $1,171,142.45. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 70,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $550,000.

(k) On or about August 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of July 1998 for 162,549,711 MOUs for $1,300,397.69. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 80,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $625,000.

(l) On or about September 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of August 1998 for 201,710,223 MOUs for $1,613,681.78. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 100,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $800,000.

(m) On or about October 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of September 1998 for 209,552,167 MOUs for $1,676,417.34. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 100,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $800,000.

(n) On or about November 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of October 1998 for 222,423,817 MOUs for $1,779,390.54. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 105,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $840,000.

(o) On or about December 1, 1998, GNAPs sent an invoice through the mail to Bell Atlantic for the month of November 1998 for 245,813,751 MOUs for $1,966,510.01. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 120,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $1,000,000.

(p) On or about January 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of December 1998 for 280,158,658 MOUs for $2,241,269.26. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 135,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $1,100,000.

(q) On or about February 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of January 1999 for 312,259,606 MOUs for $2,462,175.38. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 150,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $1,200,000.

1. Defendants continue to transmit fraudulently overstated invoices for phantom MOUs for Massachusetts to Bell Atlantic each month using the mails and/or interstate wires through the present. However, since Bell Atlantic has begun monitoring the actual MOUs, and in light of regulatory decisions, Bell Atlantic is disputing payment of portions of those invoices.

2. Starting in May 1999 and continuing through at least January 2000, GNAPs billed Bell Atlantic $3,201,650.60 in reciprocal compensation charges for MOUs in Rhode Island. *(See* Exhibit 10). Of that billed figure, at least

approximately $2,000,000 constituted an overcharge for MOUs that did not exist.

GNAPs billed Bell Atlantic for Rhode Island as follows:

(a) On or about June 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of May 1999 for 6,875,132 MOUs for $55,001.06. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 2,500,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $20,000.

(b) On or about July 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of June 1999 for 27,104,528 MOUs for $216,836.22. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 9,500,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $80,000.

(c) On or about August 3, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of July 1999 for 32,153,877 MOUs for $257,231.02. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 11,500,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $90,000.

(d) On or about September 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of August 1999 for 37,500,239 MOUs for $300,001.91. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 13,500,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $100,000.

(e) On or about October 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of September 1999 for 52,144,793 MOUs for $417,158.34. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 18,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $150,000.

(f) On or about November 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of October 1999 for 68,271,114 MOUs for $546,168.91. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 25,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $200,000.

(g) On or about December 1, 1999, GNAPs sent an invoice through the mail to Bell Atlantic for the month of November 1999 for 80,107,774 MOUs for $640,862.19. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 30,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $250,000.

(h) On or about January 1, 2000, GNAPs sent an invoice through the mail to Bell Atlantic for the month of December 1999 for 96,048,869 MOUs for $768,390.95. Bell Atlantic paid in full in reliance on this invoice. In reality, GNAPs knew that the actual number of MOUs was no more than approximately 35,000,000 and that the non-fraudulent charge to Bell Atlantic should have been no more than approximately $275,000.

1. Defendants continue to transmit fraudulently overstated invoices for phantom MOUs for Rhode Island to Bell Atlantic each month using the mails and/or interstate wires through the present. However, since Bell Atlantic has begun monitoring the actual MOUs, and in light of regulatory decisions, Bell Atlantic is disputing payment of portions of those invoices.

2. In addition to the invoices themselves, Defendants engaged in repeated acts of mail and wire fraud by asserting the legitimacy of the invoices in letters and interstate telephone calls. Each of these representations was transmitted through the mail and/or interstate wire, and constituted an act of mail and/or wire fraud.

3. Defendants' Participation in Predicate Acts

a. Gangi

1. Defendant Gangi is the head of the criminal gang that has perpetrated each of the schemes described herein. He has organized and

bankrolled GNAPs, Norwood and CineF/X, and has controlled the actions of each of the other Defendants. He has planned each of the acts of fraud set forth herein. Each of the fraudulent invoices described in paragraphs 115 to 123 were prepared at his direction, as part of a scheme that he conceived. Each of the false statements attributed to the other Defendants and other employees of GNAPs was directed, conceived and approved by Gangi. Gangi paid each of the other Defendants to participate in the racketeering activities described herein. Thus, he has directly participated in each and every one of these predicates.

2. Gangi signed the interconnection agreements between GNAPs and each of the Plaintiffs as described in paragraphs 43 to 46 on or about the date set forth therein. On or about those respective dates, he returned the executed signature pages to Bell Atlantic through the mail.

3. Gangi knew when he executed and caused to be mailed each of the agreements that GNAPs had no intention of honoring its terms. Gangi knew that the interconnection agreements were merely an essential part of Defendants' scheme to qualify for reciprocal compensation from Bell Atlantic and to fraudulently overbill Bell Atlantic for it.

4. Bell Atlantic relied on the representations and provisions in the interconnection agreements with GNAPs, and paid GNAPs reciprocal compensation thereunder, even though -- as it turned out -- Bell Atlantic did not owe the amounts fraudulently overbilled by GNAPs.

5. Each occasion on which Gangi executed and mailed one of the interconnection agreements constituted an act of mail fraud in furtherance of Defendants' racketeering scheme.

b. **Rooney**

1. Rooney has been Gangi's lieutenant and co-racketeer since at least 1992. He uses his legal expertise to create, plan and enhance the sophistication of Defendants' schemes. He also threatens legal action, commences and prosecutes regulatory and court proceedings against the Defendants' victims and manufactures evidence and bogus allegations to harass, confuse and further deceive the victims, and to prolong and conceal Defendants' schemes.

2. In this role, Rooney was a participant in the planning of the false invoices, and assisted Gangi in supervising Lima, Fox and Noack in the execution and coverup of the scheme. As such, he is a participant with regard to each of the acts of racketeering alleged herein. In addition, he has personally committed multiple mail and wire frauds against Bell Atlantic, in furtherance of the Defendants' Phantom MOUs Scheme.

(i) **Rooney's Other Acts In Furtherance of the Rackets**

1. On or about September 3, 1999, Rooney prepared a complaint for filing with the New York PSC in which GNAPs demanded payment for reciprocal compensation pursuant to the invoices it had sent to Bell Atlantic. (*See* Exhibit 11). Upon information and belief, Rooney caused this complaint to be sent to the PSC through the mails, and mailed it to Joseph A. Post, Esq., counsel for Bell Atlantic, under cover of a letter dated September 7, 1999. In that complaint, Rooney claims that GNAPs is entitled to the full amount of the unpaid invoices, even though he knew that approximately one half of the amount sought arose from the Defendants' criminal fraud involving phantom MOUs, and not from any actual use by or non-fraudulent charge to Bell Atlantic. Rooney wrote and sent the complaint -- and thereby commenced the proceeding -- with the intention of concealing the fraud from Bell Atlantic, so that GNAPs could continue to collect reciprocal compensation while the

MOU dispute dragged on, and with the intention of persuading the PSC to become an unwitting accomplice to Defendants' Phantom MOUs Scheme.

2. On September 7, 1999, Rooney wrote a letter, which he caused to be transmitted through the mail to Nancy Banks of Bell Atlantic. (*See* Exhibit 12). In that letter, Rooney demanded payment for earlier invoiced reciprocal compensation from Bell Atlantic, and represented those invoices as legitimate. In reality, Rooney knew that the invoices were based upon phantom MOUs, and that the amounts demanded were not in fact owed.

3. On November 3, 1999, Rooney wrote a letter, which he caused to be transmitted through the mail, to Tom Nolting of Bell Atlantic. (*See* Exhibit 13). In that letter, Rooney blamed the disparity of MOUs on the inaccuracy of the AcceSS7 software used by Bell Atlantic, and refused to produce any back-up data. In reality, Rooney knew that the disparity was a result of Defendants' criminal scheme, and not because of any inaccuracies of the AcceSS7 software.

4. On November 19, 1999, Rooney wrote a letter, which he caused to be transmitted through the mail, to Tom Nolting of Bell Atlantic. (*See* Exhibit 14). Rooney retransmitted this letter through the mail to the Hon. Joel A. Linsider, administrative law judge with the New York PSC, under cover of a letter dated November 22, 1999. In that letter, Rooney blames the disparity of MOUs on a plot by Bell Atlantic to harass GNAPs. In reality, Rooney knew that the disparity was a result of Defendants' criminal scheme, and not because of any plot to harass GNAPs.

5. On February 15, 2000, Rooney wrote a letter, which he caused to be transmitted over the interstate wires via telecopier to Nancy Banks of Bell Atlantic. (*See* Exhibit 15). In that letter, Rooney blamed the disparity of MOUs on Bell Atlantic's failure to include MOUs from a lightly trafficked LATA in upstate New York. In reality, Rooney knew that the disparity was a result of Defendants' criminal scheme, and not because of any failure to include MOUs from that LATA.

6. On March 9, 2000, Rooney wrote a letter, which he caused to be transmitted through the mail, to Nancy Banks of Bell Atlantic. (*See* Exhibit 16). In that letter, Rooney performed an elaborate and wholly fraudulent analysis of the MOU discrepancies, and attributed the disparity to, *inter alia*, the inaccuracy of the AcceSS7 software. Rooney wrote and sent this letter, knowing that, in reality, the discrepancies arose solely from Defendants' criminal fraud involving phantom MOUs, and not from any inaccuracies of the AcceSS7 software.

7. On April 5, 2000, Rooney wrote a letter, which he caused to be transmitted through the mail, to Nancy Banks of Bell Atlantic. (*See* Exhibit 17). In that letter, Rooney performed an elaborate and wholly fraudulent analysis of the MOU discrepancies, and attributed the disparity to, *inter alia*, the inaccuracy of AcceSS7. Rooney wrote and sent this letter knowing that, in reality, the discrepancies arose solely from Defendants' criminal fraud involving phantom MOUs, and not from any inaccuracies of the AcceSS7 software.

8. Rooney wrote and sent the letters described in paragraphs 131 to 137 above, knowing that, in reality, the MOU discrepancies arose from the Defendants' criminal fraud involving phantom MOUs, and not from any actual MOUs or reciprocal compensation owed. Rooney wrote and sent the letters with the intention of concealing the fraud from Bell Atlantic, so that GNAPs could continue to collect reciprocal compensation while the MOU dispute dragged on.

c. <u>Lima</u>

1. Lima ran the "back office" operations of the Defendants. She personally calculated and caused to be invoiced the phantom MOUs. She generated and sent out the fraudulent invoices each month, for each state in which Bell Atlantic and GNAPs had an interconnection agreement. As such, she was directly involved in each of the frauds enumerated in paragraphs 115 through 123.

d. <u>GNAPs</u>

1. GNAPs is a corporation that employs each of the Defendants. Because the Defendants performed the acts alleged above in the course of their employment by and in the interests of GNAPs, GNAPs is liable for all of the predicate acts by each of the Individual Defendants.

4. **Pattern**

1. The predicate acts alleged herein in connection with the Phantom MOUs Scheme form a pattern of racketeering activity that has injured Bell Atlantic in the amount of at least approximately $18 million. The heart of the scheme was the generation, issuance and collection of the fraudulent invoices.

2. In order to support the collection of those invoices, and to conceal the nature of the scheme, Defendants sent letters and made statements in meetings with Plaintiffs to the effect that the invoices were genuine, and that these monies were actually owed to GNAPs for real MOUs handed off to GNAPs' network. This accounts for the letters from Rooney, and the statements that GNAPs employees Fox and Noack were directed to make to Bell Atlantic.

3. An additional aspect of the scheme was to conceal the nature of the fraud and thereby prolong its life through the baseless MOU claim before the New York PSC. The papers submitted by Rooney and the other Defendants in that matter were further incidents of mail and wire fraud to this end.

4. The Phantom MOUs acts of racketeering form a pattern without reference to the Defendants' other schemes. They also form a part of the larger pattern of Defendants' racketeering conduct, as evidenced by the similarities with the California Scheme:

5. a. Defendants based both schemes on a non-existent product: the phantom software in California, the phantom MOUs here.

6. b. Defendants attempted to justify both schemes with reference to phantom employees: Mehoff and Carlos (the non-

existent individuals) in California, and the unnamed, non-existent "technical personnel" referred to by Fox and Noack here.

7. c. Defendants conducted both schemes using fake and fabricated records: in California, the phony press release and the discounted purchase orders, here, the phony invoices.

8. d. When the victim of each scheme became suspicious, Defendants brought actions against the victim: in California in the United States District Court, in New York, before the PSC.

5. Continuity

1. Defendants' conduct is continuous in two ways. First, the Phantom MOUs Scheme was an open-ended fraud, designed to continue indefinitely. Had it not been for the invention and implementation of the AcceSS7 software, the scheme would almost certainly never have been uncovered. This was an event that the Defendants could not and did not foresee. Rather, it is clear from the carefully orchestrated implementation of the fraud that Defendants intended to carry it forward indefinitely.

2. Bell Atlantic may not be the only victim of this racket. Because there is only one ILEC in any given area, Bell Atlantic's MOU calculations pertain only to GNAPs' overbilling for Bell Atlantic. However, GNAPs also operates in Florida, which is served by other ILECs. GNAPs also has announced plans to expand into areas served by other ILECs. As such, this was a scheme that GNAPs planned not only to continue with regard to Bell Atlantic, but also to expand to include other ILECs as victims.

3. Even now that Bell Atlantic has discovered the fraud, Defendants continue to submit fraudulent invoices monthly and brazenly deny wrongdoing even though their representatives admit they do not have any

data or even a single document to support the number of MOUs claimed on their invoices.

4. Defendants' conduct is also continuous in that Gangi and Rooney have been operating a criminal syndicate by acts of mail and wire fraud for eight years. When the ISV discount scheme was uncovered at Norwood, Defendants shifted it to CineF/X. When that fraud was discovered, the Defendants obstructed justice and committed perjury in an attempt to conceal it. When the Norwood/CineF/X scam ended, Defendants entered into their far more lucrative CLEC rackets. Defendants' criminal organization has continued and will continue to victimize legitimate businesses through this extended pattern of racketeering activity until stopped by this Court.

B. The Massachusetts School Scheme

1. The Massachusetts School Scheme, as set forth in detail above, consists of Defendants' reinvestment of a portion of the proceeds of the Phantom MOUs Scheme to expand its ISP service, and thus increase the amount of reciprocal compensation GNAPs could claim from Plaintiffs.

1. Enterprise

1. Defendants have reinvested the proceeds from the Phantom MOUs Scheme into a new racket conducted through an enterprise consisting of the Individual Defendants, GNAPs, and GNAPs' ISP division.

2. Defendants obtained and maintained control of this enterprise through the reinvestment of their gains from the Phantom MOUs Scheme into GNAPs' ISP division. In particular, by using some of those proceeds to fund an enormous discount on ISP service, (a) they caused MaDOE to award them the contract for creating and operating the mass.edu.net domain; (b) they induced thousands of individual educators to become unwitting accomplices in their scheme to profit through the generation of millions of additional MOUs that would be

handed off to the GNAPs CLEC network; and (c) they expanded their enterprise substantially, through a new scheme wholly separate from the harm inflicted upon Bell Atlantic from the predicate acts of the Phantom MOUs Scheme.

3. Bell Atlantic does not allege, and has no information upon which to allege, that either MaDOE or any of the individual education professionals utilizing the mass.edu.net domain in any way knowingly aided or understood Defendants' scheme or are culpable in any fashion.

2. Predicate Acts

1. The predicate acts for this scheme consist of the reinvestment of a portion of the income from the Phantom MOUs Scheme. The details of the predicate acts of racketeering activity and the participation of the Defendants in each is set forth above.

3. Investment Injury

1. By reinvesting the proceeds of the Phantom MOUs Scheme into obtaining the contract for the Massachusetts schools ISP service, Defendants realized that GNAPs would obtain a substantial return on that reinvestment. Using the money stolen from Bell Atlantic, Defendants obtained a contract that provided them with thousands of new customers for their ISP service. The GNAPs ISP is a customer of the GNAPs CLEC. The overwhelming majority of the education professionals who participated in the mass.edu.net plan are Bell Atlantic customers in local telephone service. As such, each MOU that the educators spend online to the GNAPs ISP is another MOU resulting in additional reciprocal compensation that Bell Atlantic paid to the GNAPs CLEC.

2. Moreover, as is typical of ISPs, the GNAPs ISP makes virtually no outgoing calls. Thus, it does not generate reciprocal compensation that GNAPs, the CLEC, must pay to Bell Atlantic.

3. This disparity was exacerbated because, as is typical, GNAPs offered the ISP service on a flat fee basis. Thus, the users have no incentive not to remain online for extremely long periods of time. Moreover, GNAPs structured the deal so that the professionals could use the service at home. In this way, GNAPs got not only thousands of new accounts, but because the account holders' friends and family could use their accounts, GNAPs actually generated tens of thousands of new users for its ISP service.

4. Virtually all of the education professionals utilized the GNAPs ISP service from home. Therefore, almost all of them generated MOUs through a telephone line for which they have flat rate residential service. As such, despite the huge cost in MOUs that Bell Atlantic has to pay GNAPs for reciprocal compensation, Bell Atlantic cannot fully recoup this usage sensitive cost from its customers.

5. Thus, Bell Atlantic has suffered an out-of-pocket loss estimated to be in the millions of dollars as a result of Defendants' reinvestment of the Phantom MOUs Scheme income into the Massachusetts School Scheme.

6. Moreover, this loss is wholly independent (except for the reinvestment of GNAPs' illegal profit obtained by the Phantom MOUs Scheme) of the injury Defendants inflicted on Bell Atlantic through the predicate acts that underlie the Phantom MOUs Scheme. Indeed, even if Defendants did not falsely inflate the number of MOUs arising from the School Scheme, Bell Atlantic would still suffer the injury set forth above. Defendants never would have been able to obtain the MaDOE contract without the massive discount funded by the reinvestment of proceeds from this Phantom MOUs Scheme.

C. The California Scheme

1. As set forth above, the California Scheme was the racket by Gangi and Rooney to fraudulently obtain Digital computer components at the ISV discount, and resell them at a profit. Gangi and Rooney successfully maintained the racket from 1992 through 1994, profiting by a substantial but undisclosed amount.

1. Enterprise

1. Defendants Gangi and Rooney conducted the California Scheme through an enterprise of persons associated in fact through Gangi's control and influence over them. This enterprise consisted of Norwood Technologies, CineF/X, Gangi, Rooney, Scott Levine, Rees (CineF/X's local counsel) and the victim, Digital.

2. Through said Defendants' acts of racketeering, they conducted the affairs of Norwood and CineF/X. Further, through the racketeering acts of fraud, Defendants Gangi and Rooney participated in the affairs of Digital, becoming part of its ISV discount program, and causing Digital's employees to sell equipment to first Norwood and then CineF/X at a discount.

2. Predicate Acts of Racketeering

a. In General

1. The acts of racketeering by Gangi and Rooney are set forth in detail above and in Judge Wilson's decision, annexed hereto as Exhibit 1. Those acts include sending false information over the wires to Digital's online store to become eligible for the ISV discount, sending purchase orders through the mails to obtain the equipment under false pretenses, communicating false information from Massachusetts to CineF/X's counsel in California using the mails and interstate wires, and obstructing justice in the litigation following the scheme in order to conceal it. In traveling from Massachusetts to California to falsely testify at the hearing in that litigation, as part of said Defendants' plan to conceal the fraud and to obstruct justice, Gangi also violated the Travel Act.

3. **Pattern**

1. The predicates in the California Scheme are not random or isolated, but part of a pattern of racketeering activity. The acts were all aimed at a common objective, the maintenance of the scheme to fraudulently obtain Digital components at a discount, in order to resell them for a substantial profit. The frauds on Digital were also closely connected. The false application information deceived Digital into the belief that Norwood, and later CineF/X, was an ISV entitled to the discount. The manufactured press release and letter about harassing customers were designed to further this illusion, as were the invention of the phantom software development employees.

2. The fraudulent purchase orders submitted to Digital to obtain the components were essential to the overall scheme. Further, the purchase orders relied upon and reasserted the false representation to the effect that Norwood, and later CineF/X, were *bona fide* software development companies.

3. The conduct by Gangi and Rooney in the California Scheme also fits into a larger pattern of racketeering activity, extending through the CLEC rackets set forth herein. In the California Scheme, said Defendants used a phantom product (there the software they were allegedly developing); referred to phantom employees who would

establish the existence of the product (Mehoff and Carlos); used litigation as a tactic to intimidate and confuse its victim; and conducted that litigation through fraudulent assertions and fabricated evidence in an attempt to conceal the scheme.

4. As set forth above, each of these hallmarks of Defendants' racketeering is also present in the Phantom MOUs Scheme perpetrated against Bell Atlantic.

4. Continuity

1. The California Scheme was an opened-ended scheme that survived even the discovery of the initial frauds by Norwood. Defendants Gangi and Rooney intended that the scheme continue indefinitely. The scheme was set up in such a way that, unless discovered, it could have continued as long as the ISV program existed, and it could have expanded to other computer hardware manufacturers, if they offered programs similar to the ISV program. Indeed, the smooth transition from Norwood to CineF/X as the front for the fraud demonstrates both Defendants' intention and ability to continue the scheme.

2.

3.

4.

5.V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Against All Defendants
(18 U.S.C. § 1962(c) – Racketeering)

1. The allegations contained in paragraphs 1 through 168 are repeated and incorporated by reference herein.

2. Each of the Defendants are "persons" within the meaning of 18 U.S.C. §§ 1961(3), as that term includes "any individual or entity capable of holding a legal or beneficial interest in property."

3. At all relevant times herein, the Bell Atlantic Wholesale Division constituted an "enterprise," that is, an entity associated in fact with other individuals and legal entities within the meaning of 18 U.S.C. § 1961(4). Bell Atlantic is a corporation; the Wholesale Division is an association in fact under the corporate control of Bell Atlantic and its affiliates. This enterprise is one that engaged in, or the activities of which affect, interstate commerce.

4. Alternatively, at all relevant times, GNAPs, the Individual Defendants and Bell Atlantic's Wholesale Division, constituted an "enterprise," that is, a group of individuals and legal entities associated in fact within the meaning of 18 U.S.C. § 1961(4). This enterprise is one that engaged in, or the activities of which affect, interstate commerce.

5. Bell Atlantic does not allege, and has no information upon which to allege, that the Wholesale Division, or any employees in it, acted unlawfully in any way or is in any way culpable. Rather, the Wholesale Division was the victim of Defendants' scheme, which Defendants carried out in part through their fraudulent manipulation of the Wholesale Division to obtain unearned payments for themselves.

6. At all relevant times herein, each of the Defendants was and still is associated with the enterprise described above within the meaning of 18 U.S.C. § 1962(c).

7. From in or about 1996 up to and including the date of the filing of this Complaint, the dates being approximate and inclusive, Defendants conducted the affairs of the enterprise alleged above through a pattern of racketeering activity, that is predicate acts of mail and wire fraud, to facilitate the racketeering activity described above.

8. Plaintiffs have been injured in their business or property by Defendants' conduct of a racketeering enterprise through a pattern of racketeering activity, and by each of the specific RICO predicates identified above.

9. The foregoing acts of racketeering activity constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5), in that said acts had related or similar purposes, participants, victims and methods of commission, and were part of Defendants' continuing scheme and artifice to defraud Plaintiffs and others.

10. The acts of racketeering activity have been committed over a long period of time, across four states, having begun on a date to be determined, but in any even no later than 1996, and are continuing to date. The threat of future misconduct is apparent. Alternatively, Defendants' conduct has been continuing since at least 1992 when they commenced their California Scheme. Defendants' criminal organization has continued and will continue to victimize legitimate businesses through their extended pattern of racketeering activity until stopped by this Court.

11. By reason of the foregoing violations, Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c), and have sustained damages in an amount to be determined at trial. Plaintiffs are entitled to recover treble damages, reasonable attorneys' fees, and the cost of this action pursuant to 18 U.S.C. § 1964(c).

SECOND CAUSE OF ACTION
Against All Defendants
(18 U.S.C. 1962(a) – Racketeering)

1. The allegations contained in paragraphs 1 through 179 are repeated and incorporated by reference herein.

2. Each of the Defendants is a "person" within the meaning of 18 U.S.C. §§ 1961(3), as that term includes "any individual or entity capable of holding a legal or beneficial interest in property."

3. At all relevant times herein, the Defendants, including GNAPs, Gangi, Rooney and Lima, together with non-parties Fox and Noack, constituted an "enterprise":

that is, a group of individuals and legal entities associated in fact within the meaning of 18 U.S.C. § 1961(4).

4. At all relevant times herein, each of Defendants was and still is associated with the enterprises described above, within the meaning of 18 U.S.C. § 1962(c).

5. From in or about 1997 up to and including the date of the filing of this Complaint, the dates being approximate and inclusive, Defendants participated in the Phantom MOUs Scheme, and conducted the affairs of that enterprise through a pattern of racketeering activity including predicate acts of mail and wire fraud to facilitate the racketeering activity alleged above.

6. Defendants have reinvested the proceeds of the Phantom MOUs Scheme in obtaining the contracts for the Massachusetts schools ISP service. This reinvestment, as alleged above, has caused Bell Atlantic a distinct injury from that caused to it by the predicate acts. As a result, Plaintiffs have suffered an injury because of Defendants' violation of 18 U.S.C. § 1962(a). The threat of future misconduct is apparent.

7. Bell Atlantic does not allege, and has no information upon which to allege, that either MaDOE or any of the individual education professionals utilizing the mass.edu.net domain in any way knowingly aided or understood Defendants' scheme or are culpable in any fashion.

8. By reason of the foregoing violations, Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. 1964(c) and have sustained damages in amount to be determined at trial. Plaintiffs are entitled to recover treble damages, reasonable attorneys' fees, and costs to this action pursuant to 18 U.S.C.
9.§ 1964(c).

10.

<u>THIRD CAUSE OF ACTION</u>

Against All Defendants
(18 U.S.C. § 1962(d) – Racketeering)

1. The allegations contained in paragraphs 1 through 187 are repeated and incorporated herein by reference.

2. By reason of the foregoing, Bell Atlantic's Wholesale Division constituted an "enterprise." Alternatively, at all relevant times, GNAPs, the Individual Defendants and Bell Atlantic's Wholesale Division constitute an "enterprise."

3. Bell Atlantic does not allege, and has no information upon which to allege, that the Wholesale Division, or any employees in it, acted unlawfully in any way or is in any way culpable. Rather, the Wholesale Division was the victim of Defendants' scheme, which Defendants carried out in part through their fraudulent manipulation of the Wholesale Division to obtain unearned payments for themselves.

4. Bell Atlantic's Wholesale Division was the victim of Defendants' scheme, which Defendants carried out in part through their fraudulent manipulation of the Wholesale Division, to obtain unearned payments for themselves.

5. By reason of the foregoing, each of the Defendants conspired to violate 18 U.S.C. §§ 1962(a) and (c), by conspiring with each other.

6. Each of the Defendants personally agreed with each other: (a) to acquire or maintain an interest in the enterprises described above; (b) to conduct or participate in the affairs of each of these enterprises through a pattern of racketeering; (c) that each Defendant would commit at least two of the predicate acts described above to accomplish these goals; and (d) to reinvest the proceeds of these racketeering acts with the GNAPs ISP enterprise.

7. Each Defendant was aware of the purpose of the conspiracy, and knowingly committed overt acts in furtherance of that conspiracy, in the form of the predicate acts described above.

8. Plaintiffs have been injured in their business or property by Defendants' conspiracy to conduct a racketeering enterprise through a pattern of racketeering

activity, by the reinvestment of the proceeds in their racketeering activity, and by each of the specific RICO predicates identified above.

9. By reason of the foregoing violations, Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c) and have sustained damages in an amount to be determined at trial. Plaintiffs are entitled to recover treble damages, reasonable attorneys' fees, and the cost of this action pursuant to 18 U.S.C. § 1964(c).

FOURTH CAUSE OF ACTION
Against Defendants
Gangi, Rooney, Lima and GNAPs
(Fraud)

1. The allegations contained in paragraphs 1 through 196 are repeated and incorporated herein by reference.

2. Since 1997, Gangi, Rooney, Lima and GNAPs have generated, produced and transmitted to Bell Atlantic letters, invoices and other communications as described above demanding payment from Bell Atlantic for amounts that each of the Defendants knew were not due.

3. As described above, each of the Defendants produced false invoices, correspondence, and/or other communications containing misrepresentations with the intent to defraud Bell Atlantic by inducing Bell Atlantic to reasonably rely on those misrepresentations.

4. Bell Atlantic did in fact reasonably rely on the misrepresentations to its detriment by paying an amount to be determined at trial, but which it did not owe GNAPs.

5. Bell Atlantic is also entitled to punitive damages for these acts of fraud because they were wanton, malicious, and directed at the community at large.

6.

FIFTH CAUSE OF ACTION
Against Defendant GNAPs
(Breach of Contract)

1. The allegations contained in paragraphs 1 through 201 are repeated and incorporated by reference herein.

2. On or about July 24, 1998, Bell Atlantic-NY and GNAPs entered into an Interconnection Agreement covering each LATA in which both parties operate within the State of New York.

3. On or about April 1, 1997, Bell Atlantic-MA (then operating under the name "NYNEX") and GNAPs entered into an Interconnection Agreement covering each LATA in which both parties operate within the State of Massachusetts. (*See* Exhibit 3).

4. On or about September 1, 1998, Bell Atlantic-NH and GNAPs entered into an Interconnection Agreement covering LATA in which both parties operate within the State of New Hampshire. (*See* Exhibit 4).

5. On or about October 1, 1998, Bell Atlantic-RI and GNAPs entered into an Interconnection Agreement covering the LATA in which both parties operate within the State of Rhode Island. (*See* Exhibit 5).

6. Each of these agreements was valid, binding and enforceable.

7. Bell Atlantic fully performed each of its material obligations under each of these agreements.

8. GNAPs materially breached each of these agreements. Each of the Interconnection Agreements required GNAPs to provide Bell Atlantic with accurate information so as to obtain accurate reciprocal compensation from Bell Atlantic. GNAPs deliberately failed to record and report the true number of MOUs for calls from Bell Atlantic customers that were handed off to its network.

9. GNAPs also breached the covenant of good faith and fair dealing, which was implicit in all of these contracts. As a result of these breaches, Bell Atlantic was directly injured in an amount to be determined at trial, and should be awarded compensatory and consequential damages.

SIXTH CAUSE OF ACTION
Against All Defendants
(Unjust Enrichment)

1. The allegations contained in paragraphs 1 through 210 are repeated and incorporated by reference herein.

2. GNAPs received millions of dollars to which it was not entitled from Bell Atlantic. As a result of the payments based on false invoices and misrepresentations contained in correspondence, GNAPs was unjustly enriched at Bell Atlantic's expense, and it would be inequitable to permit GNAPs to retain these funds.

3. To the extent that each of the Individual Defendants received the proceeds from GNAP's wrongful conduct, it would likewise be inequitable to permit them to keep such money, and each of these Defendants have been unjustly enriched.

4. Each of the Defendants have been unjustly enriched in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
Against Defendant GNAPs

(Violation of the Telecom Act)

1. The allegations contained in paragraphs 1 through 214 are repeated and incorporated by reference herein.

2. GNAPs violated the applicable provisions of the Telecom Act, 47 U.S.C. §§ 201 *et seq.*, by the acts described above.

3. In particular, under the regulatory schemes established by the Telecom Act, and the tariffs and Interconnection Agreements approved by the various state public utility commissions, GNAPs was required to provide Bell Atlantic with accurate invoices and charge Bell Atlantic a particular amount, set by tariff and Interconnection Agreements, per MOU.

4. GNAPs intentionally violated the Telecom Act by invoicing Bell Atlantic, and receiving reciprocal compensation from Bell Atlantic, for MOUs that did not exist.

Thus, GNAPs charged a higher price for the actual MOUs of its customers than permitted by the Interconnection Agreements or the tariffs.

5. Bell Atlantic was directly injured by this violation of the Telecom Act in an amount to be determined at trial, and is also entitled to recover its reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

Against All Defendants

(Massachusetts Deceptive Practices Act)

1. The allegations contained in paragraphs 1 through 219 are repeated and incorporated by reference herein.

2. Each of the Defendants took actions or were involved in transactions constituting an unfair method of competition or an unfair or deceptive act or practice, a substantial portion of which occurred within the Commonwealth of Massachusetts. In particular, each of the Defendants conspired with the other Defendants and each of them committed overt acts to falsely bill Bell Atlantic for reciprocal compensation in the Massachusetts LATAs.

3. GNAPs is headquartered in Massachusetts, and all of the Individual Defendants live and work in that state. The false invoices and correspondence were generated, produced and sent from GNAPs in Massachusetts to Bell Atlantic in Massachusetts, or Bell Atlantic in New York. Payments pursuant to the deceptive scheme were received by GNAPs in Massachusetts and paid in part by Bell Atlantic in Massachusetts. Each of the Individual Defendants was involved or knowingly benefitted from this conduct.

4. As a result of this practice of deception and bad faith, Bell Atlantic has been injured in an amount to be determined at trial, and Bell Atlantic is entitled to recovery of its attorneys' fees and a judgment for "up to three, but not less than two

times the amount of its actual damages," because of each of the Defendants' "willful or knowing" violation of the Massachusetts statute.

NINTH CAUSE OF ACTION

Against Defendant GNAPs
(Declaratory Judgment)

1. The allegations contained in paragraphs 1 through 223 are repeated and incorporated by reference herein.

2. By letter dated April 5, 2000, GNAPs gave notice that it intended to assert a violation of the Massachusetts Deceptive Practices Act ("MDPA") (Chapter 93(A)) by Bell Atlantic, in that Bell Atlantic has withheld reciprocal compensation on ISP bound traffic relating to Massachusetts. (*See* Exhibit 17).

3. GNAP's assertion of a violation by Bell Atlantic of the MDPA and its demand for money to which it is not entitled has created a controversy ripe for adjudication under the Federal Declaratory Judgment Act.

4. Bell Atlantic seeks a judgment declaring that it has not violated the MDPA in any way.

WHEREFORE, Plaintiffs, New York Telephone Company and New England Telephone and Telegraph Company demand judgment in their favor and against Defendants as follows:

On the First Cause of Action, against all Defendants, for violation of 18 U.S.C. § 1962(c), compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest, treble damages, costs and attorneys' fees, and a permanent injunction prohibiting Defendants,,or any of them, from violating the statute in the future.

On the Second Cause of Action, against all Defendants, for violation of 18 U.S.C. § 1962(a), compensatory damages in an amount to be determined at trial, but currently believed to exceed $1,000,000, plus interest, treble damages, costs and attorneys' fees, and a permanent injunction prohibiting Defendants, or any of them, from violating the statute in the future.

On the Third Cause of Action, against all Defendants, for violation of 18 U.S.C. § 1962(d), compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest, treble damages, costs and attorneys' fees, and a permanent injunction prohibiting Defendants, or any of them, from violating the statute in the future.

On the Fourth Cause of Action, for fraud, against all Defendants, compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest, punitive damages, costs and attorneys' fees.

On the Fifth Cause of Action, for Breach of Contract, against Defendant Global NAPs, Inc., compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest.

On the Sixth Cause of Action, against all Defendants, for unjust enrichment, compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest.

On the Seventh Cause of Action, against Defendant Global NAPs, Inc., pursuant to 47 U.S.C. § 207, compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest, costs and attorneys' fees.

On the Eighth Cause of Action, against all defendants, for violation of the Massachusetts Deceptive Trade Practices Act, MGLA Chapter 93 A, compensatory damages in an amount to be determined at trial, but currently believed to exceed $18,000,000, plus interest, treble damages, costs and attorneys' fees.

On the Ninth Cause of Action, against Defendant Global NAPs, Inc. for declaratory relief, a declaration that neither New York Telephone Company nor New

England Telephone and Telegraph Company have violated the Massachusetts Deceptive Trade Practices Act with regard to any conduct concerning Global NAPs, Inc.

On All Causes of Action, such other and further relief as to this Court seems just and proper.

Dated: New York, New York,
May 8, 2000

SCHLAM STONE & DOLAN
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