

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Petition By Global NAPs, Inc. for)
Arbitration Pursuant to 47 U.S.C. 252(b))
of Interconnection Rates, Terms, and) Docket No. 011666-TP
Conditions with Verizon Florida Inc.)

**SURREBUTTAL TESTIMONY
OF TERRY HAYNES ON BEHALF OF
VERIZON FLORIDA INC.**

February 14, 2003

DOCUMENT NUMBER-DATE

01531 FEB 14 8

FPSC-COMMISSION CLERK

1 Q. ARE YOU THE SAME TERRY HAYNES WHO OFFERED MAY 8, 2002
2 DIRECT TESTIMONY, DECEMBER 18, 2002 SUPPLEMENTAL
3 DIRECT TESTIMONY, AND JANUARY 16, 2003 REBUTTAL
4 TESTIMONY ON BEHALF OF VERIZON FLORIDA INC.
5 ("VERIZON")?

6 A. Yes, and my education and background are described in my May 8,
7 2002 direct testimony.

8

9 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

10 A. The purpose of my surrebuttal testimony is to respond to two new issues
11 raised in the January 16, 2003 "rebuttal" testimony of Lee L. Selwyn filed
12 on behalf of Global NAPs, Inc. ("Global"). For the first time in this
13 proceeding, Dr. Selwyn suggests that the inquiry into what
14 compensation applies to virtual NXX traffic destined to the Internet is
15 separate and distinct from the inquiry into what compensation applies to
16 virtual NXX traffic not destined to the Internet. See Selwyn Rebuttal
17 Testimony at 14-16. Moreover, Dr. Selwyn introduces for the first time
18 in rebuttal testimony his proposal that the Commission adopt a "local
19 from everywhere" NXX code for use in Florida to allow access to
20 Internet Service Providers ("ISP"). *Id.* at 17-19, 37.

21

22 Q. WHAT IS THE VIRTUAL NXX ISSUE PRESENTED FOR
23 COMMISSION DECISION IN THIS ARBITRATION?

24 A. Issue 5 is the only virtual NXX issue presented for Commission decision:
25 "Should GNAPs be permitted to assign NXX codes to customers that do

1 not physically reside in the local calling area associated with that NXX
2 code?" Despite the narrow issue articulated for arbitration, Global's
3 Petition for Arbitration made clear that it was not complaining about any
4 Verizon-proposed contract provision preventing it from assigning virtual
5 NXX codes--Verizon has never proposed any contract language
6 preventing Global from doing so. The parties' dispute relates not to
7 Global's ability to assign virtual NXX codes, but to appropriate
8 intercarrier compensation for virtual NXX traffic--an issue that Global did
9 not properly present for arbitration and that is not designated for
10 resolution in this arbitration. Thus, the Commission need not resolve the
11 compensation issue here. If it is inclined to do so, however, Verizon
12 must be given an opportunity to respond to Dr. Selwyn's new positions
13 on intercarrier compensation for virtual NXX traffic. Specifically, Dr.
14 Selwyn now suggests for the first time that this broad intercarrier
15 compensation question is really two questions. The first is: What
16 intercarrier compensation applies to virtual NXX traffic? The second is:
17 What intercarrier compensation applies to virtual NXX traffic destined to
18 the Internet?

19

20 **Q. IS THE INQUIRY INTO WHAT COMPENSATION APPLIES TO**
21 **VIRTUAL NXX TRAFFIC DESTINED TO THE INTERNET SEPARATE**
22 **AND DISTINCT FROM THE INQUIRY INTO WHAT COMPENSATION**
23 **APPLIES TO VIRTUAL NXX TRAFFIC NOT DESTINED TO THE**
24 **INTERNET?**

25 **A. No. As I discussed in my direct and supplemental direct testimony,**

1 virtual NXX traffic is *interexchange* traffic; by definition, it does not
2 physically terminate in the exchange area in which it originated. When
3 delivering virtual NXX traffic to an ALEC, Verizon is providing *access*
4 *services*. Indeed, the entire purpose of Global's virtual NXX scheme is
5 to deprive Verizon of the ability to detect this interexchange traffic and to
6 collect appropriate access charges for it. Global's assignment of
7 telephone numbers, however, cannot change the essential nature of this
8 interexchange, access traffic. The fact that the access traffic happens to
9 be destined to an Internet provider, also does not change the essential
10 nature of this interexchange, access traffic. Thus, there are not two
11 separate issues that depend upon whether the traffic is Internet-bound
12 or not. The only inquiry is whether Global's assignment of telephone
13 numbers can convert interexchange, access traffic into reciprocal
14 compensation traffic. As this Commission already has recognized in the
15 generic docket, it does not.

16
17 In the generic docket, the Commission permitted carriers to assign
18 virtual NXX numbers, but held that, as a matter of law, reciprocal
19 compensation does not apply to virtual NXX calls. The Commission
20 agreed with Verizon that virtual NXX traffic "would be considered
21 *intrastate exchange access*" under federal law and noted that "it seems
22 reasonable to apply access charges" to virtual NXX traffic. Order No.
23 PSC-02-1248-FOF-TP, at 31-32 (emphasis in original). At the same
24 time, the Commission left it to the parties to implement the specific
25 compensation method under their interconnection agreements, noting

1 that they might find it mutually advantageous to apply bill-and-keep to
2 virtual NXX traffic. *Id.* at 33. The Commission's reasoning indicates
3 that, although parties might voluntarily agree to forgo originating access
4 charges on virtual NXX traffic, access charges apply to such traffic in the
5 absence of a contrary agreement. Although the Commission appeared
6 to limit its generic decision to traffic delivered to non-ISP customers, the
7 Commission's legal analysis there necessarily applies to Internet-bound
8 traffic as well. The Commission should make that clear in this
9 arbitration—provided that the Commission decides to rule on the
10 compensation issue at all.

11

12 **Q. DO YOU AGREE WITH DR. SELWYN'S ASSERTION ON PAGES 14-**
13 **15 OF HIS "REBUTTAL" THAT THE *ISP ORDER ON REMAND***
14 **PROHIBITS IMPOSITION OF ACCESS CHARGES ON VIRTUAL NXX**
15 **TRAFFIC DESTINED TO THE INTERNET?**

16 **A.** No. Although I am not a lawyer (and neither is Dr. Selwyn), and I defer
17 to briefs to be filed by Verizon's counsel, it is my understanding that the
18 *ISP Order on Remand* does exactly the opposite of what Dr. Selwyn
19 asserts. That *Order* expressly states that it is *not* displacing the
20 preexisting access regime and reaffirms that existing interstate and
21 intrastate access charge regimes apply to *all* traffic, including Internet-
22 bound traffic:

23 Congress preserved the pre-Act regulatory treatment of all
24 the access services enumerated under Section 251(g).
25 These services thus remain subject to Commission

1 jurisdiction under Section 201 (or, to the extent they are
2 intrastate services, they remain subject to the jurisdiction
3 of state commissions) . . . *This analysis properly applies to*
4 *the access services that incumbent LECs provide (either*
5 *individually or jointly with other local carriers) to connect*
6 *subscribers with ISPs for Internet-bound traffic.*

7 *ISP Order on Remand* ¶ 39 (emphasis added).

8
9 Thus, in the *ISP Order on Remand*, the FCC emphasized that the
10 reciprocal compensation provisions in § 251(b)(5) of the Act do *not*
11 apply to ILEC access services, and that Congress “did not intend to
12 disrupt these pre-existing [access] relationships.” *Id.* ¶ 37. The FCC
13 also cited the Eighth Circuit’s decision in *Competitive*
14 *Telecommunications Ass’n v. FCC*, in which the court held that “LECs
15 will continue to provide exchange access ... for long-distance service,
16 and continue to receive payment, under pre-Act regulations and rates.”
17 *Id.* at 9168-69, *citing* 117 F.3d 1068, 1073 (8th Cir. 1997). Furthermore,
18 the FCC left intact its previous holding, which preserves state authority
19 to establish local calling areas and to assess access charges on calls
20 that cross exchange boundaries. *In the Matter of Implementation of the*
21 *Local Competition Provisions in the Telecommunications Act of 1996*,
22 First Report and Order, 11 FCC Rcd 15,499 at ¶ 1035 (1996).

23
24 Contrary to Dr. Selwyn’s assertion, it is my understanding that the *ISP*
25 *Order on Remand* affirms, rather than removes, the state commissions’

1 authority to maintain intrastate access charges where they had that
2 authority before the *ISP Order on Remand*, including the case of
3 Internet-bound calls.

4

5 **Q. WOULD YOU PROVIDE AN EXAMPLE TO ILLUSTRATE YOUR**
6 **UNDERSTANDING OF THE *ISP ORDER ON REMAND*?**

7 Yes. Keeping in mind that Congress did not intend to disrupt pre-
8 existing access relationships, the first part of my example focuses on the
9 intercarrier compensation associated with a call from a Verizon
10 residential customer in Sarasota to an ISP served by BellSouth in Miami
11 prior to the Act. The Verizon customer would have made a "1+" toll call
12 and Verizon would have carried that call from the customer's premises
13 to the customer's preferred interexchange carrier ("IXC"). The IXC then
14 would have carried the call to BellSouth for delivery to the ISP. The
15 Verizon residential customer would have paid the IXC for the toll call,
16 the IXC would have paid originating access to Verizon and terminating
17 access to BellSouth (even though the call does not "terminate" with the
18 ISP, but travels on to the World Wide Web). This is the way such calls
19 are handled today, and nothing in the FCC's *ISP Order on Remand*
20 changes this access arrangement; in fact, as noted above, the *Order*
21 expressly *preserves* this arrangement. Global's position, however, is
22 that intrastate access charges no longer apply to the toll call described
23 above because it is "ISP-bound."

24

25 Now assume that the Verizon residential customer in Sarasota dials a

1 virtual NXX to reach an ISP served by Global in Miami. As I discussed
2 in my direct testimony, Verizon's system is currently programmed to
3 treat this call as a "local" call, so Verizon delivers it to Global at the
4 parties' point of interconnection and forgoes the otherwise applicable toll
5 charge. Global then delivers the call to the ISP in Miami. Because
6 neither the Act nor the *ISP Order on Remand* displaces the preexisting
7 access regime, a call with the same "end points" in Sarasota and Miami-
8 -although the ISP's modem bank in Miami is not technically an "end
9 point"-is still an interexchange access call in a post-Act, post-*ISP Order*
10 *on Remand* environment, even if the call is destined to an Internet
11 provider.

12
13 It is clear from the hypothetical that the *same* customer is calling the
14 *same* ISP, *i.e.*, the customer is making the same call, but Global has
15 disguised the "1+" toll call as a local call through the use of a virtual NXX
16 arrangement. Should Global be allowed to bypass originating access
17 charges simply by assigning telephone numbers in this manner? Of
18 course not. Nothing in the *ISP Order on Remand* permits this regulatory
19 arbitrage, and the Commission should not allow it. Indeed, it was my
20 understanding that one of the principle purposes behind the FCC's *ISP*
21 *Order on Remand* was to *prohibit* carriers from engaging in regulatory
22 arbitrage with respect to locally-rated Internet-bound calls. Global's
23 position, if adopted, would allow it (and other carriers) to engage in a
24 different-but equally damaging-form of arbitrage.

25

1 Q. HAVE ANY OTHER STATE COMMISSIONS CONSIDERED
2 WHETHER VIRTUAL NXX TRAFFIC THAT IS BOUND FOR THE
3 INTERNET IS SUBJECT TO THE STATES' INTRASTATE ACCESS
4 REGIME?

5 A. Yes. The Massachusetts Department of Telecommunications and
6 Energy and the Vermont Public Service Board rejected the same claim
7 that Dr. Selwyn makes here.

8
9 In Massachusetts, as Dr. Selwyn advocates here, Global claimed that it
10 was not required to pay Verizon access charges when it used virtual
11 NXX service to deliver Internet-bound calls. Global argued that the *ISP*
12 *Order on Remand* "changed everything" regarding inter-carrier
13 compensation and the distinctions between local and toll traffic. *Petition*
14 *of Global NAPS, Inc. for arbitration with Verizon Massachusetts*, D.T.E.
15 02-45, Final Order at 29 (Mass. Dep't of Telecommunications and
16 Energy, Dec. 12, 2002). The Massachusetts Department rejected
17 Global's argument, holding that the *ISP Order on Remand* did not
18 change or preempt state commission findings regarding local calling
19 areas. It explained that the FCC's *Order* "explicitly recognized that
20 intrastate access regimes in place prior to the Act remain unchanged
21 until further state commission action" and "continues to recognize that
22 calls that travel to points beyond the local exchange are access calls."
23 *Id*

24
25 The Massachusetts Department further considered Global's claim that it

1 serves a large number of ISPs in Massachusetts and that it would have
2 to stop serving these ISPs if it is prevented from offering locally-rated
3 virtual NXXs, as Dr. Selwyn likewise asserts in his rebuttal testimony
4 here. Nevertheless, the Massachusetts Department found that Global's
5 "ability to serve ISPs is the result of merely shifting transport costs to
6 other LECs and of billing reciprocal compensation for completing calls
7 that are properly rated as toll." *Id.* at 36-37. The Department concluded
8 that Global's preferred result "would be a considerable market distortion
9 based on an implicit Verizon subsidy of GNAPs' operations." *Id.* at 37.

10
11 Similarly, the Vermont Public Service Board found "no basis for Global's
12 assertion" that the FCC's *ISP Order on Remand* preempted the Board
13 and held that access charges applied to virtual NXX traffic destined for
14 the Internet. The Board concluded that its decision would "bar the use
15 of VNXX's for the purpose of completing calls to ISPs." *Petition of*
16 *Global NAPs, Inc., for Arbitration Pursuant to § 252(b) of the*
17 *Telecommunications Act of 1996 to Establish an Interconnection*
18 *Agreement with Verizon New England Inc.*, Docket No. 6742, Final
19 Order at 36-38 (Vermont Public Service Board).

20
21 **Q. WHAT IS DR. SELWYN'S NEW PROPOSAL WITH RESPECT TO**
22 **VIRTUAL NXX TRAFFIC DESTINED TO THE INTERNET?**

23 **A.** Dr. Selwyn introduces for the first time in rebuttal testimony his proposal
24 that the Commission adopt a "local from everywhere" NXX code for use
25 in Florida to allow access to ISPs. Selwyn Rebuttal Testimony at 17-19,

1 37. Specifically, he suggests that the Commission should assign blocks
2 of telephone numbers that may be used for Internet-bound traffic to
3 ensure the availability of access to the Internet on a "local call basis"
4 throughout the state. *Id.* at 6-17. Dr. Selwyn refers to these blocks of
5 numbers as "Information Access NXXs" or "IANXXs." He further
6 suggests that the Commission should establish these Information
7 Access NXXs in each LATA so that calls to these numbers will be "*rated*
8 as local when originated from any exchange within Florida" *Id.* at
9 37 (emphasis added). According to Dr. Selwyn, this approach "should
10 be adopted for Global NAPs in this arbitration and, more generally, for
11 all LECs in the generic proceeding." *Id.* at 17.

12

13 In support of his new proposal, Dr. Selwyn cites an ongoing generic
14 proceeding in New Hampshire. *Id.* at 16-17, citing *Investigation as to*
15 *Whether Certain Calls Are Local, Independent Telephone Companies*
16 *and Competitive Local Exchange Carriers - Local Calling Areas*, Final
17 Order, Order No. 241080, New Hampshire PUC at 44-45 (Oct. 28, 2002)
18 ("NH Local Calls Order"). The NH Local Calls Order to which Dr.
19 Selwyn refers, however, was stayed on January 24, 2003.

20

21 **Q. DOES THE NH LOCAL CALLS ORDER PROVIDE THE COMMISSION**
22 **AN APPROPRIATE BASIS TO ADOPT IN THIS ARBITRATION DR.**
23 **SELWYN'S NEW INFORMATION ACCESS NXX PROPOSAL?**

24 **A. No. As an initial matter, the proposal is simply not necessary. Global**
25 **already can assign virtual NXX codes to its ISP customers and the effect**

1 of this assignment is to allow end users to “dial up” the ISP on a locally
2 rated basis to the retail end user. Global needs no further Commission
3 action to provide this option. Whether through its usual unspecified
4 virtual NXX assignment or Dr. Selwyn’s late proposal to assign blocks of
5 telephone numbers for assignment to ISPs, the fact remains that the
6 traffic is interexchange access traffic—Global would not otherwise need a
7 *virtual* NXX assignment.

8
9 Dr. Selwyn implies that assigning ISPs special blocks of numbers will
10 change the intercarrier compensation otherwise due on the virtual NXX
11 traffic, claiming that the FCC preempted intercarrier compensation for *all*
12 Internet-bound traffic in its *ISP Order on Remand*. At page 15 of his
13 rebuttal testimony, he asserts that “*all* information access traffic is
14 subject to the intercarrier compensation regime established by the FCC
15 in the *ISP Remand Order*.” Selwyn Rebuttal Testimony at 15 (emphasis
16 in original). Again, neither I nor Dr. Selwyn is a lawyer, but my
17 understanding from reading the *Order* and discussing it with Verizon’s
18 attorneys is that Dr. Selwyn’s interpretation of the *Order* is wrong. The
19 FCC’s preemption was only of Internet-bound traffic that otherwise
20 would have been subject to reciprocal compensation, specifically
21 Internet-bound traffic (i) that is dial-up (see e.g., ¶¶ 59 or 69 of the *ISP*
22 *Order on Remand*), (ii) that is originated on a non-toll dialing basis (e.g.,
23 7 digit as referenced at ¶¶ 8 or 61 of the *ISP Order on Remand*), and
24 (iii) in which the calling party and the ISP modem bank are in the same
25 local calling area (e.g., ¶ 13 of the *ISP Order on Remand*). Verizon will

1 fully brief this point in its post-hearing statement.

2

3 Second, even with Dr. Selwyn's late proposal, the record is completely
4 devoid of any facts demonstrating that there is merit in reserving blocks
5 of telephone numbers for assignment to ISPs. If the Commission were
6 to inquire into the merit of such a proposal, the Commission's own
7 generic docket, in which Global participated, would have been the more
8 appropriate forum to introduce and consider such a proposal—which
9 Global asks the Commission to adopt not just for itself, but “for all LECs
10 in the generic proceeding.” In fact, the *NH Local Calls Order* to which
11 Dr. Selwyn cites arises out of just such a generic docket. As Global
12 itself recognizes here, its proposal for a “local from anywhere” virtual
13 NXX number is not carrier-specific, but rather, industry-wide. Obviously,
14 this Commission cannot consider industry-wide action in a bilateral
15 arbitration proceeding.

16

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 **A. Yes.**

19

20

21

22

23

24

25