

Ruth Nettles

From: Woods, Vickie [vf1979@att.com]
Sent: Thursday, July 09, 2009 4:30 PM
To: Filings@psc.state.fl.us
Subject: 090246-TP AT&T Florida's Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective's CLEC Certificate No. 8736
Importance: High
Attachments: Document.pdf

A. Vickie Woods
Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,
and Manuel A. Gurdian,
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
150 South Monroe Street, Rm. 400
Tallahassee, FL 32301-1558
(305) 347-5560
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B. Docket No.: 090246-TP: Notice of Adoption of Existing Interconnection Agreement
between BellSouth Telecommunications, Inc. and Cbeyond Communications, Inc. by
Clective Florida, LLC

C. AT&T Florida
on behalf of Manuel A. Gurdian

D. 28 pages total in PDF format (includes letter, certificate, pleading, Exhibit A and Exhibit B)

E. Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective Telecom
Florida, LLC's CLEC Certificate No. 8736

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DOCUMENT NUMBER-DATE

06906 JUL-9 8

7/9/2009

FPSC-COMMISSION CLERK



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July 9, 2009

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 090246-TP: Notice of Adoption of Existing Interconnection Agreement between BellSouthTelecommunications, Inc. and Cbeyond Communications, Inc. by Clective Florida, LLC**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective Telecom Florida, LLC's CLEC Certificate No. 8736, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

cc: All parties of record
Jerry Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Docket No. 090246-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Electronic Mail, (**) Facsimile and First Class U.S. Mail this 9th day of July, 2009 to

the following:

Teresa Tan (*)
Victor McKay (*)
Staff Counsels
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
vmckay@psc.state.fl.us
ltan@psc.state.fl.us

Clective Telecom Florida, LLC (**)
2090 Dunwoody Club Drive, #106-257
Atlanta, GA 30350
Tel. No. (404) 272-0445
Fax. No. (203) 547-6326



Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of Adoption of Existing Interconnection) Docket No. 090246-TP
Agreement between BellSouth)
Telecommunications, Inc. and Cbeyond)
Communications, Inc. by Clective Florida, LLC) Filed: July 9, 2009

**AT&T FLORIDA'S NOTICE OF FILING ADDITIONAL DOCUMENTATION IN
SUPPORT OF ITS OBJECTION AND PETITION TO CANCEL CLECTIVE
TELECOM FLORIDA, LLC'S CLEC CERTIFICATE NO. 8736**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida"
hereby files the attached documentation in support of its Objection and Petition to Cancel
Clective Telecom Florida, LLC's ("Clective Florida") CLEC Certificate No. 8736.

1. Correspondence between Clective Georgia, Inc. and Clective Florida and
AT&T Florida/AT&T Georgia, attached hereto as Exhibit "A", indicating that Jeffrey
Noack and Joseph Nichols (listed on Clective's CLEC Application as "Director of Carrier
Interconnection for Clective GA, Inc.") are the same person and that "Mr. Noack utilizes
the alias Joseph Nichols because of the extreme prejudice that Mr. Noack believes would
be associated with his employment at GlobalNaps."¹

2. Reply Testimony of Jeffrey Noack, attached hereto as Exhibit "B", filed
on behalf of Global Naps Maryland, Inc. indicating that Mr. Noack is the "Director of
Network Operations of Global Naps, Inc." and that he has held this position since 1999.
Noack Testimony at p. 1, lines 3-5.

¹ Global NAPs is an entity, which after protracted litigation, was disconnected by AT&T for nonpayment
of charges in excess of \$20,000,000 in the states of Florida, Georgia and North Carolina.

DOCUMENT NUMBER-DATE
06906 JUL-98
FPSC-COMMISSION CLERK

Respectfully submitted this 9th day of July, 2009.

AT&T FLORIDA



E. EARL EDENFIELD JR.

TRACY W. HATCH

MANUEL A. GURDIAN

c/o Gregory R. Follensbee

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EXHIBIT A



Michael M. Turbes
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AT&T Services, Inc.
Legal Department
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Atlanta, GA 30375-0001

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February 17, 2009

VIA OVERNIGHT DELIVERY

Ms. Patricia Morris
President
Clective GA, Incorporated
2090 Dunwoody Club Drive, Suite 106-257
Atlanta, GA 30350

Dear Ms. Morris,

As BellSouth Telecommunications, Inc., d/b/a AT&T Georgia and AT&T Florida (collectively "AT&T") continues to review the adoption requests for Interconnection Agreements with Clective GA, Incorporated and Clective Telecom Florida, LLC., (collectively, "Clective") in Florida and Georgia, AT&T has compiled the following list of questions for Clective. Please respond to these questions so that AT&T can move forward with its review of Clective's adoption requests.

1. Is Clective, any of its principles or its managerial team in any way associated or affiliated with one or more of the following entities: Global NAPs, Inc.; Ferrous Miner Holdings, Inc.; Global NAPs Realty; Global NAPs New Hampshire, Inc.; Global NAPs Networks; Chesapeake Investment Services; Heisenburg Communications; MyBell, Inc.; Convergent Networks, Inc.; Broadvoice, Inc.; Select & Pay Inc.; RJ Equipment; Global NAPs (with any state inserted here); Global NAPs Equipment Leasing Corporation, Inc.; Global NAPs Financial Services, Inc.; KB Graphics Aviation, Inc.; Litigation Management Services, Inc.; Malibu Mirage Music, Inc.; Omega III G.G., Inc.; Sahara & Arden, Inc.; Workstation Wizard, LTD; or Workstation Wizard, Inc?
2. Please provide a detailed explanation of any associations or affiliations identified in response to question number one above.
3. Describe Jeffrey Noack's current or past associations with Clective, including, but not necessarily limited to, the following:
 - (a) The length of Mr. Noack's association with Clective.
 - (b) The nature of Mr. Noack's association with Clective – e.g., employee, independent contractor, or other relationship.
 - (c) Whether Mr. Noack's experience is being relied upon by Clective to ensure compliance with the state and federal regulations applicable to telecommunications providers.

Michael Turbes, Esq.
February 17, 2009
Page 2 of 2

4. Describe Joseph Nichols's current or past associations with Clective, including, but not necessarily limited to, the following:
 - (a) The length of Mr. Nichols's association with Clective.
 - (b) The nature of Mr. Nichols's association with Clective – e.g., employee, independent contractor, or other relationship.
 - (c) The relationship between Joseph Nichols and Jeffery Noack, including, for absolute clarity, whether Joseph Nichols and Jeffrey Noack are the same person.

5. Describe the organizational structure of Clective, specifically identifying all officers, parent companies and affiliates. Please provide copies of Exhibits A and B that were to be submitted along with Clective GA, Incorporated's CLEC certificate application, along with confirmation that the information contained in those Exhibits is accurate and complete as of the date of its submission to the commission.

6. Clarify whether Clective will rely solely upon revenues derived from its operations as a CLEC in the States of Georgia and Florida for payment of all invoices submitted by AT&T pursuant to the terms of the ICAs and relevant tariffs? If not, please identify all other sources of income that will be relied upon to satisfy these financial obligations incurred under the ICAs and relevant tariffs.

Thank you in advance for taking the time to respond to these questions. The response can be sent to Michael Turbes at the address in this letter.

Sincerely,



Michael M. Turbes

cc: Brad N. Mondschein, Esq., Pullman & Comley, LLC, 90 State House Square
Hartford, CT 06103

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

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February 19, 2009

Michael M. Turbes, Esq. (via email michael.turbes@att.com)
General Attorney
AT&T Services, Inc.
Legal Department
675 West Peachtree St., NE
Suite 4213
Atlanta, GA 30375-0001

Re: CLECTIVE, GA, Inc. and CLECTIVE Telecom Florida, LLC

Dear Mr. Turbes:

I am in receipt of your letter dated February 17, 2009 directed to CLECTIVE GA, Inc. and CLECTIVE Telecom Florida, LLC. CLECTIVE has asked me to respond to your letter. While CLECTIVE believes that it is entirely inappropriate for AT&T to require CLECTIVE to respond to the questions, CLECTIVE is doing so with the expectation that its interconnection agreement will be expedited once the responses are received. In response to your questions, CLECTIVE states the following:

1. CLECTIVE is not associated or affiliated with any of the entities listed in Question #1. CLECTIVE is 100% owned and operated by Ms. Morris.
2. See Answer to #1.
3. Mr. Noack has been retained by CLECTIVE as a consultant relating to network architecture and interconnection issues. Mr. Noack has been associated with CLECTIVE for approximately three years and is an independent contractor. While CLECTIVE utilizes Mr. Noack's expertise in a variety of ways, CLECTIVE relies upon its legal counsel for compliance with state and federal regulations.
4. Mr. Noack and Mr. Nichols are indeed the same person. Mr. Noack utilizes the alias Joseph Nichols because of the extreme prejudice that Mr. Noack believes would be associated with his employment at GlobalNaps.

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

Page 2

5. CLECTIVE GA and CLECTIVE Telecom Florida are 100% owned by Ms. Morris. Ms. Morris and myself (Brad Mondschein) are officers of CLECTIVE GA. Ms. Morris is the sole member of CLECTIVE Telecom Florida. After searching the Georgia PSC website, it does not appear that Exhibits A and B were filed with the CLEC certificate application. However, Ms. Morris is the sole stockholder of CLECTIVE and the sole Board member.

6. CLECTIVE GA will rely on its revenues from Georgia for payment of its debts while CLECTIVE Telecom Florida will rely on its revenues from Florida for payment of its debts. In addition, to the extent that Ms. Morris invests capital into either of these companies, such capital may be used to pay debts as well as purchase equipment.

This letter should satisfy your inquiry. We expect that the fully executed Interconnection Agreement will be forwarded to Ms. Morris and filed with the Florida and Georgia PSCs immediately.

Sincerely,



Brad N. Mondschein, Esq.

cc: Patricia Morris

Hartford/72618.1/BMONDSCHN/353390v1

EXHIBIT B

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of the Investigation, Examination)
and Resolution of Payment Obligation of)
Global NAPS - Maryland, Inc. for Intrastate)
Access Charges Assessed by Armstrong Telephone) Case No. 9177
Company - Maryland)
)

REPLY TESTIMONY OF JEFFREY NOACK
ON BEHALF OF GLOBAL NAPS MARYLAND, INC.

June 10, 2009

26 the meaning of Armstrong's tariff, nor interexchange traffic, and, how it is, therefore, not subject
27 to the tariff provisions addressing local traffic, nor to tariff provisions addressing intrastate
28 traffic, nor to tariff provisions addressing interstate traffic, nor to the provisions setting rates for
29 transit traffic.

30 **II. SUMMARY OF TESTIMONY AND CONCLUSION**

31 **Q. Will you please summarize the findings and conclusions of your testimony.**

32 **A. Yes. Mr. Mitchell's and Mr. Wilson's testimony is both inaccurate and incomplete. As a**
33 **consequence, his conclusions are either unsupported or, in certain important cases, contradicted**
34 **by his own testimony and analysis.**

35 A central recurring flaw in Mr. Mitchell's testimony and evidence arises out of his failure
36 to carefully distinguish between the several types of traffic that he discusses by applying
37 traditional measures, (e.g., billing based on geographically correlated NXXs) to Global's non-
38 traditional traffic (e.g., non-geographically correlated traffic including "nomadic" ESP traffic).
39 Before legal issues can be addressed, the traffic, real or potential, exchanged between Armstrong
40 and Global NAPs must be carefully defined on the basis of the network architecture involved.

41 **Q. How many possible types of traffic are at issue?**

42 **A. There are, at least theoretically, six different types of traffic arrangements involved in this**
43 **dispute; three involving local and three involving interexchange traffic. However, while all six**
44 **architectures are theoretically possible, not all of them exist.**

45 **Q. Please describe these arrangements.**

46 **A. First, there is traditional local traffic that originates and terminates on the PSTN.**
47 **Traditional local traffic may be carried entirely on the local network of the Incumbent Local**
48 **Exchange Carrier ("ILEC") – a call from an Armstrong customer to another Armstrong**

49 customer. Or a traditional local call may originate on the local network of a Competitive Local
50 Exchange Carrier ("CLEC") and traverse an interconnection facility to the ILEC's network.
51 Second, there is local traffic that both originates and terminates on the PSTN but is routed
52 through an intervening ESP.
53 Third, there is local traffic that originates off the PSTN in Internet Protocol ("IP") format, is then
54 routed through an ESP and, commonly, an intermediate CLEC to be terminated over an
55 interconnection facility to the ILEC's network.
56 Fourth, there is what can be termed "traditional long distance traffic" which is classifying as toll
57 traffic any call that has an NXX code outside the Armstrong local calling area.
58 Fifth, there is long distance traffic that originates and terminates on the PSTN, but is routed
59 through the switching facilities of an Enhanced Service Provider ("ESP") in between.
60 Sixth, there is traffic that originates off the PSTN in IP format and is converted to TDM format
61 to be terminated on the PSTN (e.g., Vonage-type traffic).

62 **Q. How are Mr. Mitchell's and Mr. Wilson's testimonies inaccurate when discussing**
63 **the type of subject traffic at issue?**

64 **A. These witnesses, especially Mr. Mitchell, assume that all traffic is necessarily toll traffic.**
65 **Mr. Mitchell's analysis is incomplete because he lumps together several classes of service that**
66 **involve different types of technology and different classes of carriers. Mr. Wilson consistently**
67 **fails to apply the data contained in his study in a fashion that properly describes the traffic being**
68 **measured, the measurements that are missing from the study and the conclusions that properly**
69 **can be drawn from it.**

70 Below, I will carefully define each of these six categories of traffic in terms of network
71 architecture. I will then examine Exhibit TSW-3 data to show what conclusions can and cannot

72 be drawn from those data with respect to each type of service. Finally, I will provide
73 supplemental data developed by Global NAPs that fills in some of the critical evidentiary gaps
74 left blank by Armstrong and show what conclusions follow.

75 In summary, this report will prove the following:

76 1. None of the traffic delivered by Global to Armstrong is traditional local traffic.

77 2. All or substantially all of the traffic delivered by Global to Armstrong that
78 Armstrong characterizes as "local" originates on broad band facilities and is what is
79 commonly called VoIP traffic.

80 3. None of the traffic delivered by Global to Armstrong is traditional long distance
81 traffic.

82 4. All or substantially all of the traffic delivered by Global NAPs to Armstrong of
83 the type measured in Armstrong's Three Minute Reports is delivered through the switching
84 functions of an ESP. Global is unaware of any traffic delivered by other means.

85 **Q. Please describe each of the traffic categories involved in this dispute and explain the**
86 **network architecture that applies to each.**

87 A. I would begin by noting that the fact that a category of traffic is discussed here does not
88 mean that any traffic exchanged between Global and Armstrong actually falls into that category.
89 Some categories are discussed, directly or implicitly by Armstrong, for which there is no traffic.
90 With that caveat, the following traffic categories are at issue.

91 **Q. What is "Traditional Local Exchange Traffic."**

92 A. Traditional local exchange traffic is defined as traffic that originates and terminates on
93 the PSTN in a single local exchange. It either is carried by a single local carrier, *i.e.*,
94 ARMSTRONG, or is directly exchanged by interconnected local carriers.

95 Traditional local calls, like all traditional calls, begin by the routing of a call from an
96 originating customer's telephone over a local loop to a PSTN local switch. Mr. Mitchell
97 indicated there is a single class 5 switch in his testimony on page 5. As such, all Armstrong local
98 switched calls are Time Division Multiplex ("TDM") switches. TDM switches -- or at least
99 ARMSTRONG's TDM switches -- cannot receive call traffic in IP format. As a result, all
100 traditional local traffic both originates and terminates on TDM switches. The PSTN is a TDM
101 based network.

102 **Q. What is local TDM to IP to TDM traffic?**

103 **A.** TDM to IP to TDM traffic is one of the classes of calls that could exist but, to the best of
104 my knowledge, doesn't, because it makes no sense from either a cost or a network design
105 perspective. By definition, this class of local call is initiated by a phone company offering local
106 service over a TDM-based switch. Also by definition -- because this case is only about calls that
107 terminate to Armstrong local customers in Maryland -- the call terminates to an Armstrong local
108 TDM switch. On the originating end, the local TDM switch must be owned by Armstrong
109 because as discussed previously, it classifies any call it does not both originate and terminate as
110 a toll call, e.g., any call received from Verizon.

111 Every call will be transported directly from the originating Armstrong switch to the terminating
112 Armstrong switch. Global believes Armstrong local switches are not programmed to transmit
113 locally dialed calls outside the PSTN.

114 The circumstance doesn't change if the originating TDM switch is owned by a CLEC offering
115 retail local service. The key fact here is that no locally dialed call initiated on a CLEC network
116 can terminate to an Armstrong local switch except by passing over an interconnection
117 arrangement established by Armstrong and another LEC (such as Verizon) and in TDM format.

118 Hence, the originating LEC has two choices. (1) It can enter into an interconnection arrangement
119 directly with Armstrong and route all locally dialed calls from its TDM switch to the Armstrong
120 network. Alternatively, it can route the call from its TDM switch over transport facilities (either
121 built by it or leased) to an ESP switch, where the signal can be converted to IP format. Then the
122 call will need to be transported to an intermediate CLEC that has an interconnection arrangement
123 with Armstrong and that can convert the call back into TDM format. The call will then travel
124 over the intermediate LEC's interconnection arrangement with Armstrong for termination.
125 What should be immediately obvious about this second arrangement is that it imposes substantial
126 needless costs on the originating LEC. In both the direct interconnection arrangement and the
127 interconnection through an ESP arrangement, some LEC must have an interconnection
128 agreement with Armstrong and must construct facilities to transport calls between the Armstrong
129 and CLEC networks in TDM format. With direct interconnection, however, there are no other
130 network costs. In contrast, if the CLEC elects to route TDM to TDM local calls through an IP
131 carrier, it must incur at least three other classes of costs -- the cost of transporting the call to the
132 ESP, the cost of having the ESP convert the signal to IP and route it to an intermediate CLEC
133 and the cost of have the signal reconverted to TDM. As a consequence, I can see no reason
134 why a CLEC that chooses to build a TDM based network to provide local exchange service
135 would ever route locally dialed calls through an IP switching system. I know of no carrier that
136 does this.

137 **Q. How can a local call originate on the PSTN and terminate on the PSTN via Global**
138 **NAPs?**

139 **A. The only way a local call could originate on the PSTN, terminate on the PSTN to an**
140 **Armstrong local customer and still be routed through an IP switch would be if the originating**

141 customer dialed the call using a 1010NXX prefix – in short, converted the call from a local to an
142 interexchange call by directing that it be routed to an IXC. I can think of no reason why any
143 customer would ever choose to do this since it is both inconvenient and expensive. In any event,
144 I do not believe that Armstrong is asserting that this traffic pattern is prevalent or even existent in
145 the traffic actually exchanged between Armstrong and Global. For the same reason, I cannot
146 think of a reason why a CLEC would construct a TDM-based switching network and not
147 program its switches to directly interconnect with the Armstrong network to complete local calls.
148 Further, Global receives no traffic from IXCs; all its customers are ESPs. Thus, there simply is
149 not, to the best of my knowledge and belief, any IP routed PSTN to PSTN local calls.

150 **Q. Is There a Class of IP-Originated Local Calls?**

151 **A.** Yes, this class of calls unquestionably exists. Such calls are usually called VoIP calls and
152 originate from retail VoIP service providers like Vonage, Packet 8 and many cable modem
153 service providers like Comcast and Time Warner. However, the designation of such calls as
154 “local” is misleading. As Mr. Mitchell describes it, whether a traditional call is a local or an
155 interexchange call can generally be determined by comparing the NPA-NXXs of the originating
156 and terminating numbers. And, because Armstrong Maryland serves a single local calling area,
157 all traffic is toll in his view. However, as the Federal Communications Commission and several
158 courts have determined, that methodology does not work reliably for IP initiated calls. IP calls
159 can, and often are routed from locations that are physically remote from the geographic location
160 traditionally associated with the dialing number. Such traffic is called “nomadic.” Nomadic IP-
161 based calls are generally treated as a separate category of traffic, neither local nor interexchange,
162 but simply called “VoIP.” The FCC has ruled that they are jurisdictionally interstate, precisely
163 because NPA-NXXs do not reliably define the end points. Carriers that negotiate ICA

164 agreements regarding the proper treatment of VoIP calls routinely set rates for terminating VoIP
165 traffic, both nomadic and fixed, without regard to definitions of local, intrastate or interstate.
166 Nevertheless, some VoIP calls do originate in locations that are in the same physical exchange as
167 the customer receiving the calls and a VoIP retail service provider must construct a method for
168 completing these calls. Unlike a TDM based local CLEC, the IP based VoIP provider cannot
169 simply interconnect directly with Armstrong to terminate calls, because the Armstrong TDM
170 switches don't accept such traffic. Hence, while the TDM based CLEC would be irrational if it
171 routed its locally dialed calls off the PSTN, the VoIP based CLEC has no choice but to do so.
172 A VoIP-initiated call does not begin in TDM format, and therefore is not sent over a local loop to
173 a local TDM switch. Instead, it begins in IP format, is carried over a broadband facility such as
174 DSL or cable modem service and may be routed to an IP switch several states away from either
175 its origination or termination point. Because IP technology permits calls to travel over the
176 internet to locations far more remote than local switches providing TDM service, call routing of
177 IP calls pay no attention to local network architecture.
178 Furthermore, many retail providers of VoIP service have few network facilities of their own. It
179 is therefore common for VoIP carriers to lease network and switching facilities from two or three
180 categories of carrier in order to complete any one call. First, some VoIP carriers purchase
181 transport facilities to get traffic to the ESP providing IP switching facilities. Alternatively, the
182 VoIP company can simply route traffic directly to the ESP over the internet.
183 Second, the VoIP provider will lease switching capability from an ESP. Among the companies
184 that provide IP switching are Transcom, CommPartners and Point One. The ESP may enhance
185 the signal or provide other services to its retail VoIP customer. In all cases, however, the ESP
186 will determine a route for terminating the call, usually sending it to an intermediate carrier that

187 has an interconnection arrangement with the ILEC serving the end user receiving the call. The
188 intermediate carrier receives the traffic from the switching carrier either in TDM or IP format. It
189 converts the signal to TDM if necessary, and routes it over its own interconnection facilities to
190 the local carrier serving the customer receiving the call.

191 The FCC has recognized that intermediate carriers play a critical role in the handling of VoIP
192 traffic. Global NAPs is not the sole intermediate carrier in Maryland; there are more.

193 **Q. Can you summarize your analysis of the types of local traffic possible in the**
194 **Armstrong territory?**

195 A. Yes. There are two types of local calling: Traditional TDM based calls, and IP to TDM
196 calls. There is no such thing as a TDM to IP to TDM call.

197 The sole role that Global NAPs plays in the termination of voice traffic is that of an intermediate
198 CLEC carrying traffic sent to it by ESPs. It, therefore, not only does not but cannot carry
199 "traditional" local traffic. VoIP is the only local traffic that has need, either for an ESP to
200 perform switch conversions or for an intermediate LEC to terminate the calls. Put simply, the
201 category of PSTN originating local traffic that is terminated through Global NAPs is a null set.
202 There is no such traffic.

203 **Q. Please describe the network architecture of traditional long distance.**

204 A. Mr. Mitchell has asserted that all of the traffic that Armstrong receives from Global NAPs is
205 traditional long distance traffic. Traditional long distance traffic is well understood. Prior to
206 passage of the Telecommunications Act, an originating ILEC, which served the party making the
207 call, delivered the call to an interexchange carrier ("IXC"), which in turn carried the call to the
208 terminating LEC, which finally delivered the call to the party being called. Under the access charge

209 rules, the IXC pays access charges to both the originating LEC and the terminating LEC. The IXC
210 then recovers its costs entirely from the calling party who selected the IXC for long distance services.
211 Traditional long distance calls, like traditional local calls, originate and are delivered in TDM format.
212 The IXC is selected by the originating caller, usually as its 1+ Primary Interexchange Carrier ("PIC")
213 but sometimes by dialing an access code to reach a specific IXC. The LEC's local TDM switch
214 identifies the customer-selected IXC by its Carrier Identification Code ("CIC") and routes the call
215 over Feature Group D ("FGD") trunks to the IXC's Point of Presence ("POP"). FGD trunks were
216 designed by the ILECs to capture the information necessary to properly bill switched access charges.
217 The IXC then carries the call, either over its own facilities or on facilities leased from another
218 transport provider, to a POP located near the terminating point. The process is there reversed when
219 the call is routed over FGD trunks to the local TDM switch (or more likely its tandem) for
220 termination. In this arrangement, financial responsibilities are clear and well-established. There are
221 only three participants in the call, and only one payor, the IXC.

222 **Q. Please describe IP-routed PSTN to PSTN long distance calls.**

223 **A.** From a network architecture perspective, IP-routed PSTN to PSTN calls are significantly
224 different from "traditional" TDM-based interexchange calls. Mr. Mitchell's testimony refers to calls
225 that were terminated by Global NAPs to Armstrong local customers as originating on another,
226 affiliated Armstrong network and presumes these are all out of region traditional IXC calls.
227 Armstrong apparently made no effort to determine who the IXC was, how it routed the call once it
228 received it, what was done to the call en route and how the call got to Global NAPs. This should
229 have been important to Armstrong because the one thing it knew for certain was that these were *not*
230 "traditional long distance calls." Traditional long distance calls would have been routed to an IXC
231 POP and then delivered from that POP directly to Armstrong over FGD trunks. These calls, as
232 Armstrong knew, were somehow delivered to Global NAPs, who routed them to Armstrong over its

233 interconnection facilities with Verizon. There apparently was no other identifier other than Global's
234 CIC, that is, no IXC identifier. Notwithstanding, Armstrong classifies all of Global's calls as toll.

235 **Q. Please provide analysis of exhibit TW-3.**

236 A. That is difficult. Apparently, on the basis of three calls, a "sample" which we don't have any
237 parameters or any indication of statistical verifiability and lack of bias, Armstrong bases its request
238 for two hundred seventy odd thousand dollars.

239 Global NAPs can not even attempt in this proceeding to fill in the blanks of Armstrong's incomplete
240 analysis. Such a miniscule sample is not adequate upon which to base Armstrong's claims.

241 **Q. If Global can not analyze Armstrong's claim, then how can the Commission make a
242 factual determination of the accuracy of Armstrong's claim?**

243 A. Just as Global can not analyze Armstrong's claims with any degree of accuracy, neither can
244 the Commission. As such, any finding granting Armstrong's claim would be purely speculative.

245 **Q. How can Global refute Armstrong's claim if it can't analyze Armstrong's claim based
246 on its miniscule 3 call sample?**

247 A. In order to prevail, Global merely need prove that its traffic is from qualified ESPs. It has
248 supplied numerous documents to Staff including but not limited to Orders and customer agreements
249 supporting such contentions.

250 **Q. Please describe some of your ESP customers.**

251 A. **Transcom:** Public record documents establish that Transcom is an ESP and enhances every
252 call that it handles. In 2005, AT&T asserted claims against Transcom in a bankruptcy proceeding.
253 In summary, however, as the Court explained it, AT&T argued in that case what Armstrong is
254 apparently trying to argue here: that any call that originates and terminates on the PSTN is not an
255 enhanced service but is "traditional long distance" no matter what is done to the traffic in between.
256 Opinion, p. 3. The Court explained that, among the issues before it were whether Transcom "is an

257 enhanced service providers (ESP") and is thus exempt from the payment of certain access charges. .
258 ." Id. p. 4. The Court allowed full discovery by AT&T against Transcom and then heard several
259 witnesses. With a full litigation record before it, the Court concluded:

260 the Court finds the Debtor's system fits squarely within the definitions of "enhanced
261 service" and "information service, as defined above. Moreover, the Court finds that
262 the Debtor's system routinely makes non-trivial changes to user-supplied information
263 (content) *during the entirety of every communication*. Such changes fall outside the
264 scope of the operations of traditional telecommunications networks, and are not
265 necessary for the ordinary management, control or operations of a
266 telecommunications system or the management of a telecommunications service. As
267 such, Debtor's service is not a "telecommunications service" subject to access
268 charges, but rather is an information service and an enhanced service that must pay
269 end user charges. Id. p. 11. (Emphasis supplied).
270

271 It is my understanding that several other courts have examined Transcom's IP switching services and
272 have reached the identical conclusion. Indeed, this Court makes reference to "Judge Felsenthal's
273 [similar finding" in another Transcom case. Id.

274 Whether Armstrong has the right to reopen the question of whether Transcom is an "enhanced
275 service provider" who "changes both the form and content of every call it receives" is a question for
276 the attorneys. I am offering the Opinion of the Court, not for its legal rulings, but for its findings of
277 fact. Among those factual findings which the Court concluded make the service provided by
278 Transcom "distinguishable from AT&T's specific [IP-in-the-middle] service" are:

279 "The efficiencies of Debtor's network result in reduced rates for its customers
280 Debtor's system provides its customers with enhanced capabilities
281 Debtor's system changes the content of every call that passes through it." Id. p. 9.

282 My review of the record of this case indicates that AT&T has declined to reexamine the facts of
283 Transcom's operations. The Court is quite clear in rejecting AT&T's argument that a call that
284 originates and terminates on the PSTN is therefore a traditional "telecommunications service" no
285 matter what happens to it during its IP phase. By ignoring that ruling, Armstrong's Three Sample

286 Calls Report never actually provides any evidence that would show whether any of the traffic
287 reported in its Three Minute Reports was, or was not, "traditional long distance" if such was a
288 Transcom call. Although Transcom is but one, it is the largest, Global ESP customer.
289 **CommPartners:** Global's second largest IP switching customer is CommPartners.
290 CommPartners provided a written response to Global NAPs' request for information in a New
291 York investigation similar to this one. It identifies Vonage as CommPartner's largest customer
292 and reports that its other customers are similar providers of nomadic VoIP services.
293 CommPartners concludes: "This is the type of IP-originated traffic that CommPartners sends to
294 Global NAPs for termination in New York. I would note that our contract with CommPartners
295 requires Global to terminate traffic anywhere in the country, [including Maryland]. Nothing in
296 our agreement with CommPartners would make the traffic it sends Global in [Maryland]
297 different from the traffic it sends Global in New York.
298 Moreover, less than two months ago, David S. Clark, the Chief Executive Officer of
299 CommPartners, filed an Affidavit in a litigation in the Federal District Court for the District of
300 Columbia, addressing a central factual issue in this case. In it, Mr. Clark stated:

301 CommPartners makes intercarrier-compensation payments to other local exchange
302 carriers and competitive local exchange carriers for terminating CommPartners' VoIP-
303 originated calls via interconnection agreements and commercially negotiated contracts.
304 CommPartners does not pay any carrier that terminates CommPartners' VoIP originated
305 calls through the payment of tariffed access charges. For example, CommPartners has
306 been delivering its customers' VoIP-originated traffic to AT&T . . . pursuant to
307 interconnection agreements. Under those interconnection agreements that CommPartners
308 has with the nation's largest local exchange carriers, the parties terminate each other's
309 VoIP traffic either for free, or at rates that are less than \$.0006 per minute, a rate that is
310 more than ten times less than Paetec's interstate tariffed access charges.

311
312 **PointOne:** Subsequent to the New York investigation, Global received a letter from PointOne,
313 another of its customers. PointOne confirms that it operates "a significant North American IP
314 network that is 100% VOIP." Collectively, Transcom, CommPartners and PointOne represent

315 about 85% of all of the terminating traffic that Global NAPs sends to ILECs, including
316 Armstrong Maryland. We have no reason to believe that the remaining 15% is any different.
317 Finally, I would note that all of the Global NAPs contracts with its customers require it to
318 terminate any calls received from these carriers at the locations nationwide that Global NAPs
319 serves. The PointONE letter also makes this point. This means that there is no difference
320 between the traffic that Global receives from Transcom or CommPartners and terminates in New
321 York and the traffic that it receives from these same firms and terminates in Maryland. There is
322 no special routing to Maryland
323 In sum, all of the traffic at issue here is terminating VoIP traffic.

324 **Q. Are there any other arguments that may prohibit application of access charges to the**
325 **subject traffic if the traffic was found not to be sent by an ESP, but instead deemed to be toll**
326 **traffic from an IXC?**

327 **A. Yes. Another important difference between a traditional long distance call and an IP routed**
328 **call is that traditional long distance calls have only a single company between the originating and**
329 **terminating LECs, the IXC. In Global's case, however, there are at least three and commonly four**
330 **companies between the originating and terminating LECs. If there was an IXC in this chain, it would**
331 **presumably be prior to the ESP and thus be the carrier of the traffic to an IP switching company (such**
332 **as, hypothetically a carrier like Level 3) the IP switching company (for example, Transcom) and an**
333 **intermediate LEC who routes the call to the terminating LEC (in this case, Global to Verizon to**
334 **Armstrong). Thus, even assuming that switched access charges are applicable to IP routed calls,**
335 **determining which carrier is responsible for such charges raises an issue that "traditional long**
336 **distance" does not.¹ If some carrier is responsible for paying terminating switched access charges,**

¹ There can actually be cases where there are two carriers – when the call is terminated through an ILEC to a smaller LEC. However, in these cases, there is still only one access payer, the IXC. The ILEC and terminating LEC

337 which carrier is it? If one carrier is determined to be responsible, and to be responsible for switched
338 access charges, what are the consequences for the other carriers involved in the transmission?

339 Because Global does not provide IXC services, it would not be an originating carrier. Further,
340 Global does not even provide dial tone services. Indeed, by definition, there would need to be a
341 carrier prior to Global, and as such, Global would be an intermediate carrier.

342 In sum, IP-routed PSTN traffic is not "traditional long distance" traffic, even if some of it is subject
343 to switched access charges. It is different because it is routed through an IP switching process that
344 can and often does, enhance the service provided. No traditional long distance service offers this. It
345 is also different because it is routed through a multiplicity of carriers only one of which, at most, can
346 be liable for access charges even if they apply.

347 **Q. Is there any other evidence supporting your contention that Global's customers are**
348 **ESPs?**

349 **A. Yes. I would note that all of the Global NAPs contracts with its customers require it to**
350 **terminate any calls received from these carriers at the locations nationwide that Global NAPs**
351 **serves. The PointONE letter also makes this point. This means that there is no difference**
352 **between the traffic that Global receives from Transcom or CommPartners and terminates in New**
353 **York and the traffic that it receives from these same firms and terminates in Maryland. There is**
354 **no special routing to Maryland**

355 **Q. Can you summarize your testimony?**

356 **A. Yes.**

share the IXC revenues pursuant to a meet point billing arrangement. I am aware of no switched access tariff that differentiates between the several classes of carriers described above in an IP routed PSTN to PSTN interexchange call.

357 1. The Armstrong witnesses fail to address the crucial issue regarding the type of traffic in
358 question. This, of course, raises certain legal implications regarding rates, etc. which are not
359 specifically my area of expertise.

360 2. The evidence provided in TSW-3 is so scant as to be irrelevant.

361 3. Global does not provide IXC services. As such, none of its traffic is toll traffic subject to
362 access charges.

363 4. Global's customers are enhanced service providers. This has been verified by the
364 customers themselves in their agreements, by court decrees and even a casual investigation of their
365 offerings will confirm such.

366 5. In sum, all of the traffic at issue here is terminating VoIP traffic and all should be
367 exempt from access charges.

368 6. Global is an intermediary carrier. It does not provide originating dial tone services and
369 does not accept traffic from IXCs. Even if some of the traffic at issue was not Enhanced traffic, it
370 would still be IP switched traffic and it would still have traveled over the kind of multi-party
371 routing arrangement described above. In short, even if such traffic were subject to access
372 charges, it would still not be "traditional long distance" because of the very different multi-party
373 transport arrangements that IP in the middle traffic can have.

374 7. In any event, Armstrong has put so little effort into discovering the facts at issue here,
375 that there is nothing on the record that would support a finding that any of the traffic sent to
376 Global NAPs is not enhanced service voice traffic, otherwise known as VoIP.

377 Q. Does that conclude your testimony?

378 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that I have served by e-mail to all representatives listed on the service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of June, 2009.


James R. Schellma