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RECORDS AND  
REPORTING

Before the  
STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION

Global NAPs, Inc.,  
Petitioner,  
  
versus  
  
BellSouth Telecommunications, Inc.  
Respondent.

Docket No. 991220-TP

**GLOBAL NAPs, INC.'S MOTION FOR RECONSIDERATION  
AND/OR CLARIFICATION**

Pursuant to Section 25.22.059 of the Commission's rules, Global NAPs respectfully requests reconsideration and/or clarification of the Commission's final order in this matter in two respects: (a) the local call termination rates applicable to ISP-bound and other local calls; and (b) the language to be included in the parties' agreement regarding interconnection architecture for local traffic.

**1. The Commission Should Modify The Rate Structure Applicable To Local Calls (Including ISP-Bound Calls) In A Manner Consistent With The Record Evidence On Which It Relied.**

The Commission relied on evidence from BellSouth that the \$0.002 end office switching rate for local traffic was based on an average local call length of 2.708 minutes, and evidence from BellSouth that (a) a typical ISP-bound call is 20 minutes long and (b) a 20-minute average call reduces per-minute rates by 36%, to conclude that the appropriate rate for ISP-bound calls would be \$0.00128 per minute. See Order No. PSC-00-1680-FOF-TP ("Order") at 13 (citing Mr. Varner's discussion of average length of ISP-bound calls); *id.* at 21 (citing Mr. Varner's discussion of average length of non-ISP-bound calls of 2.708 minutes); *id.* at 21-24 (setting \$0.00128 rate for ISP-bound calls).

APP \_\_\_\_\_  
CAE \_\_\_\_\_  
CMP 3  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG 1  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC 1  
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FPSC-RECORDS/REPORTING

As a matter of mathematics, the Commission's determination is that the available cost and call length data support equally support the conclusions that (a) a charge of \$0.00128 per minute is appropriate for a 20-minute call and (b) a charge of \$0.002 per minute is appropriate for a 2.708 minute call. It turns out that this is sufficient information, using basic algebra, to determine an appropriate two-part call termination rate structure that would apply to a locally-dialed call of any length, whether it is a 1-minute call to an ISP (that is terminated almost immediately because the user enters an invalid password) or a 100-minute call between two teenaged friends (discussing who is taking whom to the prom). Global NAPs did not present this analysis earlier (although it did suggest in testimony that a two-part rate structure would not be unreasonable) because it did not understand that the Commission was interested in making an adjustment to the per-minute rate to reflect variability in call length.

The actual mathematics is set out in the Attachment to this filing. The result is a charge of \$0.00342 for the first minute, and \$0.00117 for each subsequent minute. For a 3 minute call, this rate structure would lead to an inter-carrier charge of \$0.00576 (slightly below the charge at the current rate of a flat \$0.002 per minute).<sup>1</sup> For a 20-minute call, this rate structure would lead to an inter-carrier charge of \$0.0256 — exactly the result of applying the Commission-determined \$0.00128 per minute rate to a 20-minute call.

Global NAPs submits that the Commission would better serve its own apparent purpose of recognizing the differences in lengths of different calls do affect the costs of the carriers terminating the calls. In this regard, there are two main difficulties with what the Commission actually did in its order. First, by establishing a separate, lower rate for ISP-bound calls, the Commission has inadvertently created an incentive on BellSouth to claim that as much as possible of the traffic that it sends to Global NAPs is, in fact, ISP-bound. Given the contentious nature of the issue, creating such opportunities for disputes about classification is probably ill-advised. Second, unless the average length of ISP-bound calls remains completely stable over time, the \$0.00128 rate will become increasingly inaccurate over the life of the contract. On the

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<sup>1</sup> The lower figure reflects the fact that a call that is literally three minutes long is actually a bit *longer* than the 2.708 minute length apparently actually underlying the \$0.002 rate.

other hand, a two-part rate structure automatically compensates for any changes in call length that may occur.

For these reasons, Global NAPs urges the Commission to replace its decision to establish separate, lower rate for ISP-bound calls with a more flexible two-part rate structure that is based on the very same date, and which is economically identical, but which automatically accommodates whatever changes in call length may occur, for whatever reason.

**2. The Commission Should Clarify Or Reconsider Its Determination Regarding Issue No. 13.**

One of Global NAPs' overall concerns regarding its new interconnection agreement with BellSouth was that BellSouth, rather than identifying changes needed in the parties' existing, functioning interconnection agreement, dumped hundreds of pages of paper on Global NAPs, containing literally thousands of new and different provisions, and simply told Global NAPs that the new matter was BellSouth's proposal. This put an enormously unfair burden on Global NAPs, as described in Mr. Rooney's testimony.

Once BellSouth's Mr. Varner took the time to explain *why* the numerous new provisions it had proposed were necessary, Global NAPs was able to respond, and the parties were able to settle most of their disagreements about particular provisions.

One area where Global NAPs was unable to agree with BellSouth was the terms and conditions of the agreement used to describe the actual physical interconnection architectures that the parties would use to connect their networks. The parties had been working under the applicable terms of the DeltaCom contract for more than a year, and there were no obvious problems with it — putting aside the separate question of whether ISP-bound traffic was subject to compensation. BellSouth certainly did not identify any specific problems. For this reason, Global NAPs originally objected, and continued to object, to the wholesale substitution of BellSouth's new "standard" interconnection language ("Attachment 3" to the standard contract) for the already-working, sensible language in the DeltaCom document.

It does not appear that the Commission actually resolved this specific issue. *See* Order at 24-27. The Commission did clarify how “local traffic” should be defined, and that it included ISP-bound traffic. Global NAPs does not find in the Order any determination that the portions of the parties existing agreement regarding the mechanics of interconnection (selecting points of interconnection, trunking requirements, etc.) should be superceded, or should remain the same. As described below, this matters a great deal, because — although BellSouth did not even try to explain or justify this — it has now come to Global NAPs’ attention that BellSouth asserts the right to interpret its “standard” language in a way that contradicts the requirements of the Telecommunications Act of 1996 and applicable FCC rulings.

The absence of any discussion of this point in the Order suggests that the Commission had no intention to upset the parties existing technical arrangements for physical interconnection. Even more sure is that the Commission would not have inadvertently intended to violate applicable legal standards. Global NAPs requests clarification of this important point, *i.e.*, that the modified definition of “local traffic” discussed in the Commission’s order is the *only* change from the parties’ existing agreement on this topic that the Commission intended to order, and that the Commission did *not* intend to require Global NAPs to adopt BellSouth’s revised language on network interconnection architecture.

The specific problem of which Global NAPs has become aware arises in connection with Section 1.7 of “Attachment 3” to the BellSouth’s “standard” agreement. (Attached to Mr. Varner’s testimony.) That section says — innocuously enough on the surface — that when BellSouth originates traffic to the CLEC, BellSouth has the right to select the location(s) at which it will hand off that traffic. (A copy of the page of Attachment 3 containing this provision is attached to this pleading as Attachment B.)

This language authorizes BellSouth to take actions expressly prohibited under binding federal rules. The Commission needs to clarify that it had no such intention in its Order.<sup>2</sup>

The legal provision bearing directly on interconnection architecture — the nuts and bolts of which trunks run where — is Section 251(c)(2). Under Section 251(c), a CLEC has the right to interconnect with an ILEC's network "at any technically feasible point." Because this provision comes in Section 251(c), it reflects a duty of ILECs, *not* a duty of LECs generally (which are contained in Section 251(b)).

Simply stated, this means that the CLEC, not the ILEC, gets to decide where the two networks will physically interconnect. That is, the ILEC has a duty to let the CLEC connect at any technically feasible point, while the CLEC has no corresponding duty to the ILEC. As a result, the ILEC does not have the right to select among multiple interconnection points under the law.

Moreover, while states have a great deal of individualized authority under Sections 251 and 252, one thing that states cannot do is impose on CLECs the burdens that Congress chose to uniquely impose on ILECs in Section 251(c). This conclusion was established early after the passage of the 1996 Act and is embodied in a binding FCC rule. 47 C.F.R. § 51.223(a) expressly states that a state "may not impose the obligations set forth in Section 251(c) ... on a LEC that is not classified as an incumbent LEC ... ."<sup>3</sup> Furthermore, the FCC has expressly ruled that ILECs

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<sup>2</sup> Because the language in question only gives BellSouth the "option" to select interconnection points, it is not impossible that BellSouth would only exercise that right in a manner that is consistent with the underlying federal rules discussed below. But Global NAPs submits that the *point* of the language is to give BellSouth "cover" for violating those rules at any time it becomes convenient for BellSouth to do so. For this reason, among others, clarification of the Commission's order on this point is required.

<sup>3</sup> The FCC stated:

[A]llowing states to impose on [CLECs] obligations that the 1996 Act designates as "Additional Obligations on Incumbent Local Exchange Carriers," distinct from obligations on all LECs, would be inconsistent with the statute. Some parties assert that certain provisions of the 1996 Act, such as sections 252(e)(3) and 253(b), explicitly permit states to impose additional obligations. Such additional obligations, however, must be consistent with the language and purposes of the 1996 Act.

(note continued)...

may not charge CLECs directly or indirectly for the privilege of receiving ILEC-originated traffic.<sup>4</sup>

What BellSouth's seemingly innocuous language might do (at least, based on some informal conversations relating to other states, what BellSouth apparently thinks it might do) is to give BellSouth the right to demand that Global NAPs establish any number of separate points of interface and/or points of presence (locations where Global NAPs is obliged to pick up traffic and be responsible for getting it from there to its destination) for traffic that BellSouth originates. In other words, BellSouth could require that Global NAPs pick up traffic from one BellSouth end office at that end office location; to pick up traffic from another end office at a *that* location, and so on. This apparent "right" would exist not merely if Global NAPs already had a collocation arrangement at the affected end office, but simply at BellSouth's whim.

A moment's reflection shows why this is illegal under the Act and the FCC's rulings. Under Section 251(c)(2), a CLEC does not have an unlimited right to tell an ILEC where the two networks will interconnect. The CLEC can only demand interconnection at points on the ILEC's network that are technically feasible (including, for example, end offices and tandems). But under BellSouth's language (at least as BellSouth apparently interprets it), the ILEC can demand to interconnect with the CLEC in any number of locations, whether or not those locations are "on" the CLEC's "network" at all, and (apparently) irrespective of the cost or feasibility to the CLEC of establishing such points of interconnection. In other words, under BellSouth's language, not only would the CLEC have the *same* duty as the ILEC faces under Section 251(c)(2) (allow interconnection at any technically feasible point on the network), the CLEC would actually have a *broader* duty than the ILEC faces under Section 251(c)(2) (allow

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...(note continued)

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499(1996) ("*Local Competition Order*") at & 1247 (footnotes omitted).

<sup>4</sup> The FCC has held that the "interconnecting carrier should not be required to pay the providing carrier for one-way trunks ... which the providing carrier owns and uses to send its own traffic to the interconnecting carrier." *Local Competition Order* at ¶ 1062.

interconnection at *any* location designated by the ILEC). This plainly cannot stand in the face of 47 C.F.R. 51.223(a).

There is an additional, and financially equally important, conflict between BellSouth's seemingly innocuous language and the FCC's requirements. As noted above, in the *Local Competition Order* the FCC expressly addressed the question of which carrier should bear the cost of facilities used to haul traffic from the network of the originating carrier to the network of the terminating carrier. It held that responsibility for that cost lies with the originating carrier. *Id.* at ¶ 1062. What BellSouth's seemingly innocuous language does (or might do) is to allow BellSouth to escape the costs of handling the traffic that it originates that the FCC has determined the originating carrier should bear. This result would be accomplished by the simple expedient of BellSouth designating one or more points *convenient to BellSouth, but inconvenient to the CLEC* for the "points of interface" and "points of presence" to be used for BellSouth-originated traffic. That is, BellSouth could demand that the CLEC pick up the BellSouth originated traffic just outside (or perhaps inside) one or more BellSouth central offices, thereby imposing on the CLEC the cost of the facilities needed to haul the traffic back to the CLEC's own network — in direct contravention of the *Local Competition Order*.

\* \* \* \* \*

Global NAPs is confident that the Commission — which did not actually address the question of which parties' preferred version of the language dealing with interconnection architecture should prevail — had no intention of ordering Global NAPs to accept contract language that so plainly violates the affected federal standards. From that perspective, Global NAPs simply seeks clarification from the Commission that it did not intend to upend Global NAPs' existing rights regarding interconnection architecture, contained in the DeltaCom agreement, and replace them with something that violates the law.

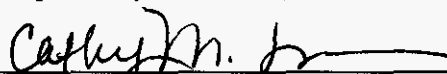
Global NAPs notes, however, that this issue is a prime example of a negotiating problem that Global NAPs was concerned about in its testimony in this case. BellSouth and Global NAPs have a contract — the DeltaCom contract — that has been governing their relationship for more

than a year. Global NAPs explained in its testimony that it is unfair and unreasonable to permit BellSouth to take that entire working relationship and throw it in the trashcan by handing a CLEC hundreds of pages of material and saying, "This is what I want now." Instead, real good-faith negotiation requires that BellSouth actually identify problems or difficulties in the current arrangements and make proposals for changing them.

In some cases, it indeed seemed to Global NAPs that BellSouth's suggested new contract language really was (essentially) an updated version of the older contract, reflecting various new rulings from the FCC and this Commission. But BellSouth's bland testimony suggesting that the parties' entire agreement regarding interconnection architecture be replaced with new, BellSouth-drafted and BellSouth-biased language in order to "clarify" matters did not begin to explain the significant changes BellSouth was trying to impose on the parties' relationship.

Again, the Commission's Order did not actually address the question of what language regarding interconnection architecture would apply at all. And, again, Global NAPs is confident that the Commission would never have intended to impose contract language in an arbitration that so plainly authorizes the violation of applicable binding statutory and regulatory requirements. That said, Global NAPs respectfully requests clarification on this point so that the parties will know how to proceed in finalizing their contract.

Respectfully submitted,



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**ATTACHMENT A:  
DERIVATION OF TWO-ELEMENT RATE STRUCTURE FROM DATA THE  
COMMISSION ACCEPTED**

1. The Commission found that its established rate of \$0.002 per minute was based on an average call length of 2.708 minutes.
2. The Commission found that an average ISP-bound call could be assumed to be 20 minutes in duration.
3. The Commission found that this justified a 36% reduction in the \$0.002 rate, down to \$0.00128.
4. A reasonable two-element rate structure would have a charge for the initial minute of a call, and then a lower charge for each subsequent minute. Call the initial minute charge "x" and the subsequent minute charge "y."
5. In the case of a 2.708 minute call, we know the average per-minute rate is \$0.002. This means that the cost of a 2.708 minute call is \$0.005416. (2.708 times \$0.002). Restating that to reflect an initial minute and subsequent minute charge gives:
  - a.  $x + 1.708y = \$0.005416$
6. In the case of a 20-minute call, we know that the average per-minute rate is \$0.00128. This means that the cost of a 20-minute call is \$0.025600 (20 times \$0.00128). Restating that to reflect an initial minute and subsequent minute charge gives:
  - b.  $x + 19y = \$0.025600$
7. Steps 5 and 6 show that the available information gives us two variables ("x", the initial minute charge, and "y", the subsequent minute charge) and two equations (labeled a and b). One can use simple algebra to solve these two equations and determine the values of "x" and "y":
  - b.  $x + 19.000y = \$0.025600$
  - a.  $x + 1.708y = \$0.005416$

Subtracting equation a from equation b eliminates variable "x", and yields:

- c.  $17.292y = \$0.020184$

8. Equation c above allows us to find the value of "y", the subsequent minute charge:

c.  $17.292y = \$0.020184$

Dividing each side of this equation by 17.292 yields:

d.  $y = \$0.001167$

9. Now that we know the value of "y", the subsequent minute charge, we can calculate the value of "x", the initial minute charge. Equation a is:

a.  $x + 1.708y = \$0.005416$

This translates to:

a.'  $x + (1.708)*(\$0.001167) = \$0.005416$ , or

a.''  $x + \$0.001994 = \$0.005416$

subtracting \$0.001994 from each side of this equation yields:

a.\*\*\*  $x = \$0.003422$

10. We can check the result by inserting the values of both "x" and "y" into equation b:

b.  $x + 19.000y = \$0.025600$

substituting the values,

b.'  $\$0.003422 + (19)*(\$0.001167) = \$0.025600$ , or

b.''  $\$0.003422 + \$0.022178 = \$0.025600$ ,

which is correct.

11. This shows that a two-part rate structure of \$0.003422 per initial minute, and \$0.001167 per subsequent minute, properly reflects the cost data accepted by the Commission, but eliminates the need for separate rates for ISP-bound and other local traffic. As discussed in the text, it also establishes a rate structure that automatically accounts for the different lengths of different calls.

access to the other Party's network. The POP is the physical location within which the Point of Interfaces occur.

- 1.4 A **Point of Interface** is the physical telecommunications interface between BellSouth and CLEC-1's interconnection functions. It establishes the technical interface and point of operational responsibility. The primary function of the Point of Interface is to serve as the terminus for the interconnection service. The Point of Interface has the following main characteristics:
1. It is a cross-connect point to allow connection, disconnection, transfer or restoration of service.
  2. It is a point where BellSouth and CLEC-1 can verify and maintain specific performance objectives.
  3. It is specified according to the interface offered in the tariff or local interconnection agreement (for example: for DS1 service the FCC # 1 tariff specifies that the interface meets the technical specifications detailed in Generic Requirements GR-342-CORE, Issue 1, December 1995.)
  4. The Parties provide their own equipment (CPE) to interface with the DS0, DS1, DS3, STS1 and/or OCn circuits on the customer premises.
- 1.5 The **Point of Interconnection** is the point at which the originating Party delivers its originated traffic to the terminating Party's first point of switching on the terminating Party's common (shared) network for call transport and termination. Points of Interconnection are available at either Access Tandems, Local Tandems, or End Offices as described in this Agreement. CLEC-1's requested Point of Interconnection will also be used for the receipt and delivery of transit traffic at BellSouth Access and Local Tandems. Points of Interconnection established at the BellSouth Local Tandem apply only to CLEC-1-originated local and local originating and terminating transit traffic.
- 1.6 CLEC-1, at its option, shall establish Points of Presence and Points of Interface for the delivery of its originated local and intraLATA toll traffic to BellSouth. The Point of Interface may not necessarily be established at the Point of Interconnection.
- 1.7 BellSouth, at its option, shall designate the Points of Presence and Points of Interface for the delivery of its originated local and intraLATA toll traffic to CLEC-1 for call transport and termination by CLEC-1. The Point of Interface may not necessarily be established at the Point of Interconnection.
- 1.8 Interconnection via Leased Dedicated Transport Facilities
- 1.8.1 The originating Party may purchase Local Channel facilities from the terminating Party from the originating Party's specified Point of Interface to its serving wire

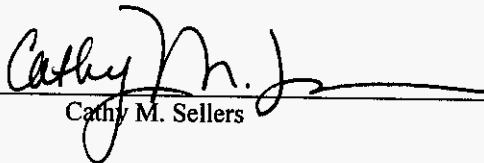
## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished this 4th day of October, 2000 by U.S. Mail to:

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