

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 08-0105

**Rebuttal Testimony of Patricia H. Pellerin
On Behalf of AT&T Illinois**

AT&T Illinois Exhibit 1.1

(Public Version)

July 14, 2008

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REBUTTAL TESTIMONY OF PATRICIA H. PELLERIN
ON BEHALF OF AT&T ILLINOIS

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Patricia H. Pellerin.

Q. ARE YOU THE SAME PATRICIA H. PELLERIN THAT PROVIDED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to Global NAPs Illinois, Inc.’s (“Global Illinois”) testimony proffered by its witnesses Jeffrey Noack (“Noack Direct”) and James Scheltema (“Scheltema Direct”). I explain that neither witness is able to overcome AT&T Illinois’ evidence regarding the location of the parties’ point of interconnection, neither denies that Global Illinois sent AT&T Illinois the traffic in the quantities AT&T Illinois billed, and neither is able to prove that Global Illinois’ traffic to AT&T Illinois qualifies for the Enhanced Service Provider (“ESP”) exemption. In

23 addition, I demonstrate that Global Illinois lacks the managerial and financial competence
24 to retain its certificates to provide telecommunications services in Illinois.

25

26 Much of Mr. Scheltema's testimony is legal in nature and because I am not an attorney, I
27 will endeavor to limit my rebuttal testimony to the facts as I understand them. AT&T
28 Illinois' attorneys will address Mr. Scheltema's legal arguments through motions and/or
29 briefs.

30

31 **III. DS3 SPECIAL ACCESS**

32

33 **Q. WHERE DOES GLOBAL ILLINOIS INTERCONNECT WITH AT&T**
34 **ILLINOIS?**

35 A. Global Illinois interconnects with AT&T Illinois at AT&T Illinois' La Grange tandem
36 building. That is the parties' single physical Point of Interconnection ("POI") for traffic
37 exchanged between the parties' networks.

38

39 As I explained in my direct testimony and Mr. Scheltema confirmed in his direct
40 testimony, Global Illinois does not actually have telecommunications equipment or a
41 telecommunications network (*i.e.*, it has no assets) (Scheltema Direct, p. 26, lines 594-
42 595), but "uses" the equipment and network of its affiliate, Global NAPs Networks, Inc.
43 ("Global Networks"). In his direct testimony, Mr. Scheltema uses the term "Global" to
44 refer to either Global Illinois or Global NAPs, Inc. (Scheltema Direct, footnote 1), but

45 neglects to mention Global Networks at all, the only Global entity that apparently owns
46 any telecommunications equipment or telecommunications network outside of
47 Connecticut. Mr. Scheltema's attempt to blur or gloss over these facts is not surprising,
48 given that it is only Global Illinois that holds certificates to provide telecommunications
49 services in Illinois and is party to the ICA with AT&T Illinois.

50

51 **Q. DOES GLOBAL ILLINOIS OFFER COHERENT TESTIMONY REGARDING**
52 **THE LOCATION OF THE PARTIES' SINGLE POI?**

53 A. No. Mr. Noack states that "Global chose to connect to the Illinois Bell network by
54 connecting at a single point – the Illinois Bell tandem switch in LaGrange." (Noack
55 Direct, p. 1, lines 18-20.) AT&T Illinois agrees with Mr. Noack on this point.¹

56 However, Mr. Noack proceeds to contradict himself by claiming that the single POI is
57 actually the SONET "ring" constructed between Oak Brook and La Grange. (Noack
58 Direct, p. 1, line 23 to p. 2, line 25.)

59

60 **Q. DOES IT MAKE SENSE THAT THE POI COULD BE A SONET RING, AS MR.**
61 **NOACK ASSERTS?**

¹ AT&T Illinois' disagreement with Global Illinois on this particular admission by Mr. Noack is one of semantics only. The POI is a physical connection in AT&T Illinois' La Grange tandem *building*, not at its switch. If, as Mr. Noack mistakenly suggests, the La Grange tandem *switch* (as opposed to the tandem *building*) were the proper designation for Global Illinois' point of interconnection with AT&T Illinois, it would not be a "single point," because Global Illinois has established trunk groups that run through the POI at the tandem building to many AT&T Illinois switches -- not only to AT&T Illinois' La Grange tandem switch, but to other AT&T Illinois switches in LATA 358 as well. (Hamiter Direct, p. 10, lines 258-266.)

62 A. No. As discussed further in Mr. Hamiter’s rebuttal testimony, and as Mr. Noack has
63 conceded in other forums, a POI is a *physical point* on AT&T Illinois’ network – not a
64 *ring* (which connects four points in a network). As stated in the parties’ interconnection
65 agreement, “[a] Point of Interconnection (POI) is a *point* in the network where the Parties
66 deliver Interconnection traffic to each other, and also serves as a demarcation point
67 between the facilities that each Party is responsible to provide.” Appendix NIM, § 1.11
68 (emphasis added).

69

70 **Q. DOES MR. NOACK OFFER ANY TESTIMONY THAT REFUTES AT&T**
71 **ILLINOIS’ SHOWING THAT THE POI IS AT AT&T ILLINOIS’ LA GRANGE**
72 **TANDEM BUILDING?**

73 A. No. Mr. Noack offers no credible evidence refuting AT&T Illinois’ position that the POI
74 is at AT&T Illinois’ La Grange tandem building. Instead, he offers only unsupported
75 argument suggesting that somehow the entire SONET fiber chain can be considered a
76 single point of interconnection.

77

78 **Q. WHAT ARGUMENT DOES MR. NOACK MAKE TO SUPPORT HIS CLAIM**
79 **THAT THE POI IS NOT AT&T ILLINOIS’ LA GRANGE TANDEM?**

80 A. Although Mr. Noack’s testimony is unclear, he appears to assert that the La Grange
81 tandem is not the POI because the parties jointly constructed a SONET ring between the
82 La Grange and Oak Brook locations. This assertion is wrong on many levels. First, as
83 Mr. Hamiter testifies, there is no SONET ring – there is a Point-to-Point Linear Chain
84 SONET. Second, this Point-to-Point Linear Chain SONET was not “jointly

85 provisioned”, “jointly funded” and is not “jointly owned”. It is a facility that AT&T
86 Illinois constructed. Third, the Point-to-Point Linear Chain SONET has nothing to do
87 with the location of the POI, as shown by the Interim Interconnection Agreement. There,
88 AT&T Illinois and Global Illinois agreed to establish the Point-to-Point Linear Chain
89 SONET *and further agreed that unless Global Illinois sought a different determination*
90 *from the Commission, AT&T Illinois’ La Grange tandem building would be the POI.* In
91 other words, because the parties’ agreed POI was the La Grange tandem building, it was
92 Global Illinois’ responsibility to establish (by self-supplying or by purchasing from
93 another carrier) whatever physical transport infrastructure (*i.e.*, copper wires or optical
94 fiber) and whatever services/facilities riding over that infrastructure that were needed to
95 transport traffic between the La Grange tandem building and Global Illinois’ Oak Brook
96 location. Thus, Mr. Noack is completely wrong when he argues that the existence of the
97 SONET fiber chain somehow negates the fact that the agreed-upon POI is AT&T Illinois’
98 La Grange tandem building.

99

100 **Q. IS MR. NOACK’S ASSERTION THAT THE POI IS NOT AT THE LA GRANGE**
101 **TANDEM CONSISTENT WITH THE PARTIES’ ICA?**

102 A. No. As I explained in my direct testimony (pp. 9-10), Global Illinois was obligated to
103 seek a ruling from the Commission that the POI was at the Global Illinois Oak Brook
104 location. Global Illinois did not seek such a ruling (or any other determination) regarding
105 the location of the POI. Moreover, Mr. Noack conveniently ignores the plain language in
106 the parties’ ICA that specifically establishes the POI at an AT&T Illinois location
107 (Appendix NIM, Section 3.4.7.4):

108 Design Four: Both CLEC and SBC-13STATE each provide two
109 fibers between their locations to terminate at each parties' FOT. This
110 design may only be considered where existing fibers are available and
111 there is a mutual benefit to both Parties. SBC-13STATE will provide
112 the fibers associated with the working side of the system. CLEC will
113 provide the fibers associated with the protection side of the system.
114 The Parties will work cooperatively to terminate each other's fiber in
115 order to provision this *joint point-to-point linear chain SONET system*.
116 Both Parties will work cooperatively to determine the appropriate
117 technical handoff for purposes of demarcation and fault isolation. *The*
118 *POI will be defined as being at the SBC-13STATE location.*
119 (Emphases added)

120 Mr. Noack's assertion that Global Illinois is not responsible for the DS3 special access
121 services it ordered and AT&T Illinois provisioned because the parties purportedly built a
122 joint SONET fiber ring (Noack Direct, pp. 3-4, lines 54-73) goes nowhere when placed in
123 the context of the parties' ICA. Furthermore, even if the POI were at Global Illinois' Oak
124 Brook location (which it is not), Global Illinois ordered special access DS3 services from
125 AT&T Illinois pursuant to AT&T Illinois' state tariff, and AT&T Illinois provisioned
126 those services. While I am not an attorney, it is my understanding that Global Illinois is
127 obligated to pay for those services pursuant to the tariff.

128

129 **Q. DOES MR. NOACK MAKE ANY OTHER ARGUMENTS TO SUPPORT HIS**
130 **CLAIM?**

131 A. Yes. Ms. Moore testified that the Access Service Requests ("ASRs") submitted by
132 Global Illinois for the four DS3s demonstrate Global Illinois' understanding that it would
133 be paying for the DS3s and its agreement to pay. Mr. Noack tries to side-step this
134 objective evidence by claiming that Global Illinois was "forced" to submit those ASRs.

135

136 **Q. DID AT&T ILLINOIS “FORCE” GLOBAL ILLINOIS TO SUBMIT ASRS FOR**
137 **DS3 SERVICES, AS MR. NOACK CLAIMS? (NOACK DIRECT, P. 4, LINES 93-**
138 **94.)**

139 A. No. Not only did AT&T Illinois not “force” Global Illinois to submit ASRs (nor could
140 AT&T Illinois actually force Global Illinois to do anything), AT&T Illinois did not force
141 Global Illinois to populate the ASRs in the manner submitted. If Global Illinois truly
142 believed it was not obligated to and should not submit ASRs for DS3 services, it should
143 not have submitted them. Global Illinois could have sought assistance from the
144 Commission to resolve the matter regarding which party was responsible for providing
145 the functions performed by those DS3 services. It did not do so, but instead submitted
146 the ASRs voluntarily. No one forced Global Illinois to submit ASRs, and no one forced
147 Global Illinois to make the representations it made in those ASRs.

148

149 **Q. DOES MR. SCHELTEMA OFFER ANY TESTIMONY THAT REFUTES AT&T**
150 **ILLINOIS’ SHOWING THAT THE POI IS AT AT&T ILLINOIS’ LA GRANGE**
151 **TANDEM BUILDING?**

152 A. No. Mr. Scheltema offers no evidence refuting AT&T Illinois’ position that the POI is at
153 AT&T Illinois’ La Grange tandem building.

154

155 Moreover, Mr. Scheltema appears to be confused about what is actually in dispute with
156 respect to DS3 services Global Illinois ordered on its side of the POI. For example, he
157 states on page 4, lines 66-67, that “AT&T has invoiced Global NAPs for trunks ordered.
158 Global counters that it made no orders for special access but instead was forced to order

159 trunks that put them in billing jeopardy.” That is patently wrong – AT&T Illinois did not
160 invoice Global Illinois for trunks, and AT&T Illinois does not seek to recover any trunk
161 charges in this proceeding.

162

163 **Q. PUTTING ASIDE THE FACT THAT AT&T ILLINOIS DID NOT CHARGE**
164 **GLOBAL ILLINOIS FOR THE TRUNKS GLOBAL ILLINOIS ORDERED, DID**
165 **AT&T ILLINOIS FORCE GLOBAL ILLINOIS TO ORDER TRUNKS?**

166 A. No. AT&T Illinois did not “force” Global Illinois to order trunks. Nor was Global
167 Illinois’ ordering of trunks only an “act[] of professional courtesy,” nor were the orders
168 merely “to inform AT&T how to properly ‘right-size’ its network to accommodate
169 Global NAPs traffic,” nor is it true that “the trunks would be part of the network whether
170 Global ‘ordered’ them or not,” as Mr. Scheltema asserts. (Scheltema Direct, pp. 3-4.)
171 Mr. Scheltema does not explain the basis for any of these statements, and in any event,
172 they are refuted by the parties’ ICA (*i.e.*, the binding contract that Global Illinois signed).
173 Global Illinois ordered trunks pursuant to the terms and conditions of its ICA. In
174 Appendix ITR, the parties agreed to establish trunks to exchange traffic, and they
175 specifically agreed on what types of trunks could be used and for what types of traffic.
176 *See* Appendix ITR, § 5.1 (“The following trunk groups *shall* used to exchange various
177 types of traffic between CLEC and SBC-13STATE.” (emphasis added)). Global Illinois
178 thus ordered particular kinds of trunks pursuant to the ICA, indicating that it would use
179 the trunks for the particular purposes as specified in the ICA. Mr. Scheltema’s complaint
180 (Scheltema Direct, p. 4, lines 72-74) that “the ASR system did not allow offer [sic] a
181 trunk classification appropriate to its traffic” is beside the point – if Global Illinois did

182 not like the menu of trunks available, it should have negotiated or sought to arbitrate
183 different ICA provisions. That Global Illinois may have decided it did not like the
184 arbitration results or its ICA does not mean it is free to disregard its binding agreement.

185

186 **Q. IS MR. SCHELTEMA CORRECT IN ASSERTING THAT AT&T ILLINOIS HAS**
187 **MADE CLAIMS WITH RESPECT TO TRUNK CHARGES?**

188 A. No. Mr. Scheltema's sole basis for his incorrect claim is a blatant mischaracterization of
189 my direct testimony regarding DS3 facilities, which, as a federal district court judge
190 already has held and as Global NAPs and Mr. Noack conceded in Connecticut, are not
191 trunks. In particular, Mr. Scheltema offers the following inaccurate testimony on page 4,
192 lines 78-87:

193 **Q. BUT ISN'T ILLINOIS BELL CLAIMING THAT GLOBAL**
194 **ORDERED SPECIFIC TRUNKS AND HAS NOW FAILED TO PAY**
195 **FOR THEM?**

196

197 A. Yes. Illinois Bell makes that allegation, but mere allegation is not
198 tantamount to misappropriation. According to Ms. Pellerin:

199

200 Global Illinois is obligated by its ICA with AT&T Illinois to transport
201 its own traffic to the point of interconnection ("POI"). Global Illinois
202 elected to satisfy this obligation by ordering 11 special access DS3
203 facilities from its Oak Brook location to the POI at AT&T Illinois' La
204 Grange tandem building. Four of these DS3 facilities are intrastate
205 services.

206 But as the quoted portion of my direct testimony demonstrates, what Global Illinois
207 ordered and what AT&T Illinois has billed Global Illinois for under the ICA and under
208 AT&T Illinois' state tariffs were specific special access DS3 *services/facilities* – not
209 trunks. There is no such thing as either a special access *trunk* or a DS3 *trunk*. Mr.
210 Scheltema's entire argument about why Global Illinois is not liable for access charges on

211 trunks merely retreads assertions that have already been refuted by at least one federal
212 court and by Mr. Scheltema's fellow witness, Mr. Noack. Mr. Hamiter fully explained
213 the difference between special access facilities and trunks that ride over those facilities in
214 his direct testimony ("Hamiter Direct"). See Hamiter Direct, p. 5-6 and associated
215 Exhibits JWH-1 and JWH-2.² Mr. Scheltema appears to be purposely confusing the
216 Commission regarding Global Illinois' responsibilities with respect to the DS3 services
217 for which AT&T Illinois seeks payment.

218

219 **Q. IN THE CONTEXT OF MS. MOORE'S DIRECT TESTIMONY REGARDING**
220 **GLOBAL ILLINOIS' ASRS FOR DS3 SERVICES, MR. NOACK CLAIMS THAT**
221 **AT&T ILLINOIS "PROHIBITED GLOBAL FROM IDENTIFYING THE**
222 **NATURE OF THE TRAFFIC IT INTENDED TO TRANSMIT." (NOACK**
223 **DIRECT, P. 7, LINES 160-163.) DO YOU AGREE?**

224 **A.** No. AT&T Illinois utilizes industry standard ASRs, which include a Remarks field. The
225 Remarks field is free form (*i.e.*, not subject to mechanized system error check) and can be
226 populated with whatever information the requesting carrier deems relevant. Of the four
227 intrastate DS3 ASRs Global Illinois submitted to AT&T Illinois, Global Illinois

² Mr. Scheltema further distorts and ignores the terms and conditions of the parties' network interconnection under the parties' ICA when he states that "what Global NAPs did is to use the ASR process to inform AT&T how to 'right-size' its network to accommodate Global NAPs' traffic in order to live up to AT&T's responsibilities." (Scheltema Direct, p. 3, lines 60-62.) Global Illinois ordered DS3 special access services to satisfy its own obligation to provide transport functions on its side of the POI. Global Illinois could have self-provisioned its own DS3 circuits to perform these functions or obtained them from a third party, but elected instead to order DS3 special access services from AT&T Illinois. As for trunks, Appendix ITR of the ICA requires Global Illinois to establish (at no charge to Global Illinois) dedicated trunk groups to AT&T Illinois' network – these are not trunk groups that would exist absent Global Illinois' interconnection with AT&T Illinois.

228 populated the Remarks field of three of them, requesting AT&T Illinois to build
229 “MUXED DS3” (*i.e.*, multiplexed DS3). The Remarks field was blank on the fourth
230 ASR. Global Illinois clearly understood that the Remarks field was available for it to
231 provide additional information with respect to the special access services being ordered.
232 If Global Illinois believed that it was being “forced” to submit ASRs, it could surely have
233 noted its objection in the Remarks field. AT&T Illinois is not responsible for how Global
234 Illinois elected to utilize (or not) this ASR field.

235

236 With respect to the designation of traffic, the only relevance regarding traffic designation
237 for special access DS3 services concerns which tariff will apply – state tariff or FCC
238 tariff. Beyond jurisdiction for tariff application, the traffic type is irrelevant.

239

240 **Q. IS AT&T ILLINOIS ASSESSING SPECIAL ACCESS CHARGES FOR THE**
241 **TRAFFIC GLOBAL ILLINOIS DELIVERS TO AT&T ILLINOIS, AS MR.**
242 **SCHELTEMA CLAIMS? (SCHELTEMA DIRECT, P. 6, LINES 133-139.)**

243 A. No. The special access charges included in AT&T Illinois’ complaint are for the DS3
244 services Global Illinois ordered via ASRs and that AT&T Illinois provisioned – not for
245 trunk groups placed on those DS3s and not for the traffic that flows over the trunk groups
246 placed on those DS3s (*i.e.*, usage). Special access is not a type of traffic, but is a
247 channel-based service ordered from AT&T Illinois’ tariff – regardless of the type of
248 traffic the service is used for. AT&T Illinois’ special access tariff provides for several
249 types of channel-based service, including the DS3 channel-based services Global Illinois

250 ordered. The tariff does not limit the customer to certain use of the channel-based service
251 and makes no mention of traffic types:

252 For purposes of ordering channels, each has been identified as a
253 type of Special Access Service. However, such identification is
254 not intended to limit a customer's use of the channel nor to imply
255 that the channel is limited to a particular use. For example, if a
256 customer's equipment is capable of transmitting voice over a
257 channel that is identified as a Metallic Service in this tariff, there is
258 no restriction against doing so.³

259
260 There is no such thing as "special access traffic."

261

262 **Q. WOULD THE ESP EXEMPTION, IF IT ACTUALLY APPLIED TO THE**
263 **TRAFFIC AT ISSUE, RELIEVE GLOBAL ILLINOIS OF ITS OBLIGATION**
264 **FOR THE DS3 SERVICES IT ORDERED FROM AT&T ILLINOIS?**

265 A. No. Whether or not the ESP exemption applies to the traffic Global Illinois sends to
266 AT&T Illinois has no bearing on Global Illinois' responsibility for DS3 special access
267 services it ordered and AT&T Illinois provisioned. The ESP exemption applies
268 specifically to usage charges, not to the underlying services/facilities over which the
269 trunk groups that carry the traffic are placed.⁴ (I discuss the ESP exemption in more
270 detail later in my testimony in the context of the parties' dispute regarding usage
271 charges.) And while the FCC is currently reviewing the application of access charges to
272 Voice over Internet Protocol ("VoIP") traffic *that originates in an IP format with the*
273 *calling party*, it is not considering whether carriers that serve alleged VoIP providers can

³ ILL. C.C. No. 21, Section 7.1.1, page 232.1.

⁴ *First Report and Order, Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd 15982, ¶ 343 (1997) ("Access Charge Order").

274 demand special access *services* (or any other services or facilities) from local exchange
275 carriers for free.

276

277 **Q. GLOBAL ILLINOIS ORDERED SOME DS3 SERVICES FROM THE FEDERAL**
278 **TARIFF WHILE ORDERING OTHERS FROM THE STATE TARIFF. MR.**
279 **NOACK ASSERTS THAT THIS DEMONSTRATES “THE DIFFICULTY OF**
280 **USING THE ASRS,” SINCE GLOBAL ILLINOIS INTENDED THAT ALL DS3**
281 **SERVICES BE “LOCAL.” (NOACK DIRECT, PP. 7-8, LINES 168-179.) HOW**
282 **DO YOU RESPOND?**

283 A. As explained in Ms. Moore’s direct testimony (p. 4), AT&T Illinois utilizes standard
284 industry forms that have been in use for many years throughout the telecommunications
285 industry. The Access Services Ordering Guide (“ASOG”) is a comprehensive guide
286 created by the Ordering and Billing Forum (“OBF”) and made available for subscribing
287 carriers to use when populating ASRs. Contrary to Mr. Scheltema’s claims (Scheltema
288 Direct, p. 10, line 217), these forms are not created by AT&T Illinois. And, there is
289 nothing mysterious about the portion of the ASR that requests the carrier to identify the
290 percent interstate use of traffic. If Global Illinois does not know how to properly fill out
291 an ASR, that demonstrates a lack of managerial and technical competence.

292

293 Additionally, with respect to the ASRs submitted by Global Illinois for trunks used to
294 exchange local and intraLATA toll traffic (discussed by Ms. Harlen in her direct

295 testimony), Mr. Scheltema complains that AT&T Illinois' ASR form requires that
296 "Global must choose to put an 'X' in one of two boxes – local or intraLATA toll – when
297 in fact, none of its traffic is either." (Scheltema Direct, p. 10, lines 212-214.) This, of
298 course, is completely inconsistent with Mr. Noack's testimony that Global Illinois
299 intended the four DS3 services it ordered under AT&T Illinois' state tariff (over which
300 the trunk groups would be established so actual calls could be completed) be designated
301 as "local." (Noack Direct, p. 8, lines 172-173.)
302

303 **Q. GLOBAL ILLINOIS' TESTIMONY SUGGESTS THAT IT EXPECTED ALL**
304 **ALONG THAT THERE WOULD BE NO CHARGE FOR THE DS3 SERVICES IT**
305 **ORDERED AND AT&T ILLINOIS PROVISIONED, BECAUSE ALL TRAFFIC**
306 **IT WOULD DELIVER TO AT&T ILLINOIS WOULD BE ELIGIBLE FOR THE**
307 **ESP EXEMPTION. (SCHELTEMA DIRECT, P. 15, LINES 328-330; NOACK**
308 **DIRECT, PP. 3-4, LINES 67-73.) IS THIS SUGGESTION CONSISTENT WITH**
309 **THE ASRS GLOBAL ILLINOIS ACTUALLY SUBMITTED?**

310 A. No. The special access DS3 ASRs Global Illinois submitted to AT&T Illinois reflect
311 *** .**** (Moore Direct, p. 6, lines 121-126.) When
312 populated, the VTA field indicates a commitment for a specified number of months,
313 *** .****. The carrier is billed a lower
314 monthly rate for a longer term commitment – *e.g.*, the 60-month rate is lower than the 36-
315 month rate. When the VTA field is blank, the carrier is billed at the tariffed month-to-
316 month rate. Since Global Illinois' ASRs ***

317 .**** If Global

318 Illinois actually believed it would not and should not be billed for the DS3 services it
319 ordered and AT&T Illinois provided, ***

320

321 ***. Global Illinois' testimony that it did not expect to pay for the DS3
322 services it ordered *** *** is either not credible, or it is an
323 indication that Global Illinois lacks technical and managerial competence.

324

325 **IV. USAGE CHARGES – SWITCHED ACCESS, RECIPROCAL COMPENSATION,**
326 **TRANSITING**
327

328 **Q. DOES GLOBAL ILLINOIS DENY THAT IT HAS DELIVERED (AND**
329 **CONTINUES TO DELIVER) TRAFFIC TO AT&T ILLINOIS IN THE**
330 **QUANTITIES AT&T ILLINOIS HAS ASSERTED?**

331 A. No. Neither Mr. Scheltema nor Mr. Noack present any evidence that Global Illinois did
332 not deliver traffic to AT&T Illinois in the quantities AT&T Illinois has claimed. Instead,
333 Mr. Noack asserts that Global Illinois' traffic to AT&T Illinois is ESP traffic (Noack
334 Direct, p. 5, lines 105-106), and Mr. Scheltema claims that, therefore, 100% of Global
335 Illinois' traffic is exempt from "reciprocal compensation, access and transit traffic
336 charges." (Scheltema Direct, p. 15, lines 328-330.)

337

338 **Q. MR. SCHELTEMA PROVIDES A LIST OF GLOBAL ILLINOIS' CUSTOMERS**
339 **AS REVISED JS EXHIBIT 1. ARE THESE REALLY CUSTOMERS OF**
340 **GLOBAL ILLINOIS?**

341 A. No. As a general matter, Mr. Scheltema states that he uses the name “Global” in his
342 testimony to mean either Global NAPs, Inc. or Global Illinois. (Scheltema Direct,
343 footnote 1.) Since Global Illinois has no customers, one presumably might infer that all
344 companies identified are customers of Global NAPs, Inc. – except that Global NAPs, Inc.
345 has previously admitted that it also has no customers and that the only Global entity that
346 has contracts with customers is Global Networks. The corporate entity web becomes
347 even more tangled when you consider other claims and proceedings regarding Global
348 NAPs, Inc. (which I address later in my rebuttal regarding Global Illinois’ certifications).

349

350 **Q. WHAT POINT IS MR. SCHELTMA TRYING TO MAKE WITH THE**
351 **CUSTOMER LIST?**

352 A. Mr. Scheltema offers Global’s customer list as “evidence regarding the nature of traffic it
353 sends to AT&T.” (Scheltema Direct, p. 7, lines 150-152.) He states that a “quick
354 perusal” reveals that all of “Global’s” customers are ISPs/ESPs. Quickly (or even
355 slowly) perusing Mr. Scheltema’s list does not , however, provide any evidence regarding
356 the nature of the traffic delivered by Global Illinois to AT&T Illinois – it is simply a list
357 of companies Mr. Scheltema claims are Internet Service Providers (“ISPs”) and/or ESPs
358 and says nothing about the actual traffic delivered to AT&T Illinois. Furthermore, a
359 company’s classification as an ESP in some circumstances (which AT&T Illinois does
360 not concede here regarding any of the listed companies) does not mean that the traffic
361 Global Illinois carries for them is ISP/ESP traffic, nor does it support Mr. Scheltema’s
362 assertion that Global Illinois’ traffic is therefore eligible for the ESP exemption.

363

364 **Q. MR. SCHELTEMA ALSO PROVIDES LETTERS FROM TWO OF “GLOBAL’S”**
365 **CUSTOMERS INTENDED AS EVIDENCE THAT ALL OF GLOBAL ILLINOIS’**
366 **TRAFFIC TO AT&T ILLINOIS IS ELIGIBLE FOR THE ESP EXEMPTION.**
367 **(SCHELTEMA DIRECT, JS EXHIBIT 1.) DO THOSE LETTERS SUPPORT**
368 **GLOBAL ILLINOIS’ CLAIMS?**

369 A. No. First and foremost, it is my understanding that these letters constitute hearsay and
370 should therefore be disregarded. In the event the Commission elects to take them into
371 account when rendering its decision in this case, there are additional factors the
372 Commission should consider, for example, the relevance and veracity of the information
373 provided.

374

375 **Q. WHAT COMMENTS DO YOU HAVE REGARDING THE FIRST LETTER MR.**
376 **SCHELTEMA PROVIDES?**

377 A. *** attorney claims that four courts have
378 found that *** is an ESP, but offers no specific citations for any such
379 decision. With no way to verify or confirm ***
380 *** status as an ESP, these claims should be disregarded. Mr.
381 Scheltema also refers to a court decision finding that *** is an ESP
382 (Scheltema Direct, p. 7, lines 159-160).

383

384 Importantly, both Mr. Scheltema and *** attorney neglect to indicate that
385 the referenced court decision purportedly finding *** to be an ESP was
386 vacated. See Confidential Schedule PHP-19. In addition, *** attorney

387 states that at least some of *** *** traffic is not broadband-originated, *e.g.*, at
388 least some – and perhaps, possibly all – originates on the public switched telephone
389 network (“PSTN”).

390

391 **Q. HOW DOES *** *** DESCRIBE ITS SERVICES?**

392 A. On its website, *** *** describes its customers as follows:

393 ***

394

395

396

397

398 ***

399 *** *** also describes its “Voice Termination Service”:

400 ***

401

402

403

404

405

406 ***

407 As *** *** itself acknowledges, it provides TDM (Time Division Multiplex)

408 originated, non-IP services to ILECs, interexchange carriers, and/or wireless carriers.

409

410 **Q. WHAT COMMENTS DO YOU HAVE REGARDING THE SECOND LETTER**

411 **MR. SCHELTEMA PROVIDES?**

412 A. Like Global Illinois, *** *** is a CLEC, not an ESP. In its Illinois

413 certification application (which I attach as Confidential Schedule PHP-20),

414 *** *** provided the following information:

415 27. Please describe the nature of service to be provided (e.g.,
416 operator services, internet, debit cards, long distance service, data
417 services, local service, prepaid local service).

418
419 Applicant will be providing circuit-switched long distance and
420 local exchange telecommunications services on a wholesale and
421 retail basis. Applicant will not be providing operator services,
422 Internet services, debit cards, or prepaid local services. Applicant
423 will also be providing network capacity and connectivity for voice
424 over Internet protocol (“VoIP”) providers.

425 *** *** plainly stated its intention to provide circuit-switched (*i.e.*, non-IP)
426 services.

427

428 In addition, as stated by *** *** in its letter to Mr. Scheltema, it is a
429 “carrier’s carrier” that delivers traffic to Global NAPs when *** *** does
430 not have direct interconnection with the terminating carrier. *** *** states
431 that its carrier contracts require that traffic be IP-originated, but there is apparently no
432 method to monitor traffic for compliance. Moreover, *** *** own
433 website states that it also carries non-VoIP traffic:

434 ***

435

436

437

438

439 ***

440

441 **Q. DO YOU HAVE ANY COMMENTS REGARDING ANY OTHER CARRIER**
442 **LISTED ON REVISED JS EXHIBIT 1?**

443 A. Yes. According to its own website, ***

444

445

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463 **Q. MR. SCHELTEMA SUGGESTS THAT WHEN GLOBAL ILLINOIS ORDERED**

464 **TRUNKS, AT&T ILLINOIS HAD BEEN “INFORMED OF THE NATURE OF**

465 **OUR TRAFFIC.” (SCHELTEMA DIRECT, P. 4, LINE 69.) WHAT WAS THE**

466 **NATURE OF GLOBAL ILLINOIS’ TRAFFIC TO WHICH MR. SCHELTEMA**

467 **REFERS?**

468 A. To the extent Mr. Scheltema is referring to alleged VoIP or IP-originated traffic that
469 Global Illinois purportedly has delivered to AT&T Illinois, and for which AT&T Illinois
470 seeks to recover transiting and termination charges, Mr. Scheltema is simply wrong.
471 Neither Global Illinois (nor Global NAPs, Inc. nor Global Networks) was even providing
472 such services at the time Global Illinois ordered trunks. In its testimony in the ICA
473 arbitration proceeding,⁵ Global Illinois testified about its intention to offer “FX-like local
474 service” to customers like ISPs – *i.e.*, to transport dial-up Internet access service calls
475 from AT&T Illinois’ end users to Global Illinois’ ISP customers. (*See* Direct Testimony
476 of Robert Fox, p. 10; Direct Testimony of Scott Lundquist, p. 43.) It appears that some
477 “Global” entity only later began offering to “terminate” traffic for alleged ESPs (more
478 precisely, to deliver traffic to local carriers, such as AT&T Illinois, that must actually
479 terminate or transit the traffic).

480

481 **Q. BESIDES THE ICA ARBITRATION PROCEEDING, WHAT OTHER BASIS DO**
482 **YOU HAVE FOR YOUR CONCLUSION REGARDING THE NATURE OF**
483 **GLOBAL ILLINOIS’ TRAFFIC WHEN IT ORDERED TRUNKS FROM AT&T**
484 **ILLINOIS IN 2002?**

485 A. The Global entities have consistently described their services for the 2002 timeframe
486 until 2005 in a manner that would exclude the type of traffic Global Illinois now claims is
487 subject to the ESP exemption. For example, in Global’s litigation with BellSouth, its

⁵ Docket No. 01-0786, *Global NAPs, Inc. Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech.*

488 litigation with AT&T California, and in Global Illinois' dispute letters to AT&T Illinois,
489 Global has asserted or suggested that in this timeframe it did not provide the type of
490 service Mr. Scheltema now describes.

491

492 **Q. HOW DID GLOBAL NAPS CHARACTERIZE ITS SERVICES IN THE AT&T**
493 **CALIFORNIA LITIGATION?**

494 A. In the Global NAPS / AT&T California litigation, in its July 3, 2008 Appeal From
495 Presiding Officer's Decision Finding Global NAPS California In Breach Of
496 Interconnection Agreement, Global stated (at p. 1) that it signed an interconnection
497 agreement with AT&T California "[i]n early 2003," and that "Global did not transmit
498 Voice over Internet Protocol ('VoIP') traffic at that time."

499

500 **Q. HOW DID GLOBAL NAPS CHARACTERIZE ITS SERVICES IN THE**
501 **BELLSOUTH LITIGATION?**

502 A. In the Global NAPS / BellSouth litigation, Mr. Scheltema explained that Global NAPS'
503 ICAs with BellSouth "were negotiated and executed at a time when Global was providing
504 in-bound dial-up services to competitive Internet Service Providers," that "[f]rom 2000 to
505 early 2005, Global's traffic was primarily inbound-ISP traffic," and then [f]rom early
506 2005 to date, Global's traffic has been primarily outbound ESP traffic" that "comes from
507 Enhanced Service Providers (ESPs)."⁶

508

509 Similarly, in his deposition in that case, Mr. Scheltema testified that at the time it entered
510 into ICAs with BellSouth (which was between 2001 and 2003), Global NAPs “was not
511 carrying any VoIP traffic from ESPs,”⁷ that “we weren’t doing outbound” and that “[a]ll
512 of our traffic was inbound.”⁸

513

514 **Q. ARE MR. SCHELTEMA’S DECLARATIONS IN THE BELLSOUTH**
515 **LITIGATION CONSISTENT WITH HIS DIRECT TESTIMONY IN THIS**
516 **PROCEEDING?**

517 A. No, but they are consistent with Mr. Scheltema’s prior letters to AT&T Illinois on behalf
518 of Global Illinois disputing the DS3 special access charges at the time those disputes
519 arose, and later the reciprocal compensation, transiting, and intrastate switched access
520 charges billed by AT&T Illinois. On November 26, 2003, Mr. Scheltema sent a letter to
521 AT&T Illinois disputing AT&T Illinois’ charges, asserting “[t]he charges relate to
522 transport and facilities necessary to carry Global NAPs’ traffic” and “Global NAPs has
523 made it clear that the traffic carried by the facilities upon which these charges are levied
524 is *ISP-bound* traffic.” (Emphasis added.) Mr. Scheltema made no mention of any
525 “outbound,” “ESP,” or “VoIP” traffic. The same is true of Mr. Scheltema’s letters to
526 AT&T Illinois of December 1, 2003, December 24, 2003, March 30, 2004, June 7, 2004,
527 July 12, 2004, and on August 20, 2004, where Mr. Scheltema made the same assertion

⁶ Schedule PHP-29 (Affidavit of James Scheltema, ¶¶ 7-8, Doc. No. 109, Case No. 04-0096 (E.D. N.C. filed 12/19/06)).

⁷ Schedule PHP-30 (Doc. No. 83-8, Case No. 04-0096 (E.D. N.C. filed 5/18/06) (Def.’s Ex. B, excerpt of Scheltema deposition, p. 21)).

⁸ Schedule PHP-31 (Doc. No. 61, Case No. 04-0096 (E.D. N.C. filed 3/22/06) (Def.’s Ex. F, excerpt of Scheltema deposition, pp. 68-69)).

528 that Global NAPs' traffic was ISP-bound. Not until later (*e.g.*, in Mr. Scheltema's letter
529 of October 4, 2005) did Mr. Scheltema or Global Illinois suggest that "IP" traffic was
530 also at issue. *See* Schedule PHP-21 (copies of letters).

531
532 In short, it appears Global Illinois ordered the DS3 services and the combined
533 local/intraLATA toll trunks riding over those DS3s in order to provide "FX-like local
534 service" to ISPs and to receive dial-up ISP-bound traffic from AT&T Illinois, and not to
535 deliver "IP" traffic to AT&T Illinois for termination. That Global Illinois later may have
536 begun delivering alleged "ESP" traffic to AT&T Illinois over the same DS3s and the
537 same trunks riding over those DS3s does not relieve Global Illinois of its obligation to
538 pay for the DS3s, nor does it relieve Global Illinois of its contractual commitment that it
539 would use the trunks riding over those DS3s only for local and intraLATA toll traffic, as
540 Global Illinois designated in its trunk orders (and as the ICA provides).

541
542 **Q. YOU AND MR. SCHELTEMA BOTH REFER TO THE "ESP EXEMPTION."
543 WHAT DOES THAT TERM REALLY MEAN?**

544 A. The ESP exemption refers to the FCC's long-standing exemption of Enhanced Service
545 Providers from interstate access charges for obtaining access to the ESP's own
546 customers. The ESP exemption applies to a narrow subset of telecommunications
547 activity and traffic – the connectivity between the ESP itself and that ESP's end user
548 customers in instances where the ILEC provides the link between the ESP end user and
549 the ESP.

550

551 **Q. DOES THE ESP EXEMPTION ALLOW ALLEGED DOWNSTREAM**
552 **CARRIERS SUCH AS GLOBAL ILLINOIS TO BE EXEMPT FROM PAYING**
553 **ACCESS CHARGES?**

554 A. Absolutely not, and especially not with respect to the traffic at issue here. As I stated, the
555 ESP exemption is extremely narrow. As a result of the exemption, “enhanced service
556 providers are treated as end users for purposes of applying access charges” and need not
557 purchase switched access products for connecting to their own subscribers; instead ESPs
558 may purchase traditional business lines for such purposes and thus “generally pay local
559 business rates and interstate subscriber line charges for their switched access connections
560 to local exchange company central offices”, rather than access charges.⁹ As the FCC
561 subsequently described its ESP exemption, that exemption carves ESPs out from the
562 access charge obligation when they “use incumbent LEC networks *to receive calls from*
563 *their customers.*”¹⁰

564
565 The ESP exemption does not apply to Global Illinois’ alleged IP transport services, for
566 multiple reasons. First, Global Illinois is not using a retail business product as the ESP
567 exemption allows, but instead uses a local/intraLATA toll trunk, which end users do not
568 purchase. Second, as the FCC itself has stated, the ESP exemption excuses *ESPs* from
569 paying access charges only when they “use incumbent LEC networks to receive calls
570 from their end users.”¹¹ Global Illinois uses the PSTN not to receive calls from its own

⁹ *In re Amendments of Part 69 of the Commission’s Rules relating to Enhanced Service Providers*, 3 FCC Rcd 2631, n. 8 (FCC April 27, 1988).

¹⁰ *Access Charge Order* (emphasis added).

¹¹ *Id.*

571 end users, but to send calls over the PSTN to AT&T Illinois' and third party carriers' end
572 users who are *not* customers of Global Illinois. As the FCC has explained, "enhanced
573 service providers (ESPs) should not be subjected to originating access charges for ESP-
574 bound traffic."¹² But Global Illinois' alleged IP traffic is not ESP-bound; it is PSTN-
575 bound for termination on the PSTN, just like an ordinary long-distance call. Third, as the
576 name suggests, the ESP exemption applies only when the ESP is providing enhanced or
577 information services to its subscribers. Global Illinois is not an ESP, and in addition it
578 uses AT&T Illinois' switching to deliver plain old circuit-switched telephone calls to
579 non-VoIP end users. Therefore, the terminating end user receives nothing more than a
580 traditional telephone service and not an information service. Finally, as I just noted, the
581 ESP exemption applies not to CLECs or IXC's, but to ESPs. The entire point of the
582 exemption is to allow ESPs to provide enhanced services to *their own end users* via a
583 retail product without incurring access charges.

584

585 **Q. MR. SCHELTEMA IMPLIES THAT THE ESP EXEMPTION APPLIES**
586 **BROADLY TO ANY TRAFFIC GLOBAL ILLINOIS SENDS TO AT&T**
587 **ILLINOIS. (SCHELTEMA DIRECT, P. 6, LINES 130-139.) JUST TO BE**
588 **CLEAR, ARE YOU SAYING THAT THE TRAFFIC GLOBAL ILLINOIS**
589 **DELIVERS TO AT&T ILLINOIS DOES NOT QUALIFY FOR THE ESP**
590 **EXEMPTION?**

¹² *In the matter of IP-enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36, ¶ 25.

591 A. That's correct. Global Illinois is a CLEC, not an ESP. The ESP exemption is very
592 limited and only applies to the ESPs themselves, not to downstream carriers delivering
593 traffic from ESPs to third party end users. Global Illinois is not, and does not claim to be,
594 an ESP. Rather, it claims the customers of its uncertificated affiliate, Global Networks,
595 are ESPs. But AT&T Illinois is seeking to recover charges from Global Illinois, not the
596 supposed ESP customers of Global Illinois' affiliate, for services AT&T Illinois provides
597 to Global Illinois. Furthermore, the ESP exemption is an exemption from interstate
598 access charges, not from local and intrastate traffic charges or transiting charges such as
599 those at issue in this case. In any event, as explained in Mr. Hamiter's rebuttal testimony,
600 AT&T Illinois' data demonstrates that much (if not all) of Global Illinois' traffic is not
601 VoIP or IP-originated. The ESP exemption does not apply to Global Illinois or the traffic
602 it delivers to AT&T Illinois.

603

604 It is also noteworthy that in his October 4, 2005 letter to AT&T Illinois, Mr. Scheltema
605 pointed to the pending petition for a declaratory ruling from the FCC regarding
606 intercarrier compensation for "IP-in-the-middle" traffic, and suggested that the FCC's
607 ruling "may alleviate our tasks [in resolving the parties' disputes] considerably." This is
608 significant because it is an indication that any IP traffic Global Illinois was carrying was
609 only "IP-in-the-middle" traffic, which the FCC ruled shortly thereafter is *not* exempt
610 from access charges.¹³

611

612 **Q. IS THIS THE FIRST TIME A GLOBAL CLEC HAS ADVANCED THE THEORY**
613 **THAT ITS TRAFFIC IS EXEMPT FROM ACCESS CHARGES BY VIRTUE OF**
614 **ITS CUSTOMERS' SUPPOSED ESP STATUS?**

615 A. No. Global Illinois' California affiliate advanced the same theory twice before in
616 California, and both times its theory was rejected. As I explained in my direct testimony
617 (p. 46, lines 1024-1034), the California PUC ordered Global to pay Cox California for
618 terminating intraLATA toll calls. The following passage from the California PUC's
619 decision is particularly relevant:

620 In its response to Cox's motion for summary judgment, Global
621 NAPs argues that because the traffic it sent to Cox originated with
622 Internet Service Providers (ISPs), it was exempt from access
623 charges. But this response misreads applicable law. The only
624 relevant exemption from the access charge regime under Federal
625 law is for *ISP-bound traffic* rather than *ISP-originated* traffic, a
626 conclusion we reached in our recent *AT&T-MCI metro* decision
627 [D.06-08-029] involving facts very similar to those in this case.
628 (Emphases in original, footnote incorporated)¹⁴

629
630 In a similar complaint that AT&T California brought against Global California, the
631 PUC's Presiding Officer found that Global California's traffic delivered to AT&T
632 California is not eligible for the ESP exemption and that Global California owes
633 intercarrier compensation for that traffic. I have attached the Presiding Officer's decision
634 as Schedule PHP-22.

635

¹³ *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) ("Access Avoidance Order").

¹⁴ See Schedule PHP-15, page 5.

636 **Q. MR. SCHELTEMA INDICATES THAT GLOBAL ILLINOIS WILL APPEAL A**
637 **COMMISSION DECISION FINDING THAT THE ESP EXEMPTION DOES NOT**
638 **APPLY TO GLOBAL ILLINOIS' TRAFFIC, AS IT HAS DONE IN**
639 **CALIFORNIA. (SCHELTEMA DIRECT, P. 8, LINES 169-173.) DOES THAT**
640 **SURPRISE YOU?**

641 A. Not at all. I am not aware of a single decision or order from any state commission or
642 court that ruled against any Global entity that the Global companies did not appeal in
643 some fashion. Those companies have a well-established pattern of protracted litigation to
644 avoid paying a penny for the services they order and receive from ILECs, to avoid having
645 those services disconnected, and to avoid having their certifications suspended or
646 revoked. The Commission should not be intimidated by Mr. Scheltema's thinly veiled
647 threats of appeal. To be sure, if Global Illinois follows the path of its affiliates, it will
648 appeal any decision that does not absolve it of all financial liability to AT&T Illinois *and*
649 allows it to maintain its state certifications.

650

651 **Q. WHAT IS THE RELEVANCE, IF ANY, OF THE NEW YORK ORDER MR.**
652 **SCHELTEMA PROVIDES AS JS EXHIBIT 2?**

653 A. The New York Public Service Commission ("NY PSC") order Mr. Scheltema attaches to
654 his direct testimony has no relevance to this case, primarily for four reasons.

655 1. The traffic at issue in New York was between Global and a carrier with which
656 it had no direct interconnection and, most importantly, no interconnection or
657 traffic exchange agreement. The NY PSC did not find that the traffic
658 exchanged was eligible for the ESP exemption. Rather, the NY PSC ordered

659 the parties to negotiate a compensation agreement. In this case, AT&T
660 Illinois and Global Illinois have an ICA that governs the traffic exchanged,
661 and it is that ICA that directs the appropriate compensation. The negotiation
662 (and arbitration) have already taken place.

663 2. The NY PSC was addressing only intrastate access charges for the termination
664 of toll calls from Global, and not charges for special access services, local
665 reciprocal compensation charges, or transiting charges.

666 3. The NY PSC's findings with respect to access charges were limited to
667 nomadic VoIP traffic. It did not find that Global's traffic qualifies for the ESP
668 exemption (JS Exhibit 2, footnote 22), as Mr. Scheltema implies. (Scheltema
669 Direct, p. 15, lines 328-330.) There is no evidence that any of the traffic
670 Global Illinois delivers to AT&T Illinois is actually nomadic VoIP traffic,
671 much less that it all is.

672 4. The Commission is not bound by the NY PSC's findings in any event, but
673 especially not in this case where the facts and circumstances are quite
674 different.

675

676 **Q. MR. SCHELTEMA REFERS TO THE NY PSC'S ORDER IN THE CONTEXT OF**
677 ***** (SUPPOSED) STATUS AS AN ESP. (SCHELTEMA**
678 **DIRECT, P. 7, LINES 157-161.) IS THE NY PSC'S ORDER AT ALL RELEVANT**
679 **FOR ***?***?**

680 A. No. There is no evidence that *** is providing nomadic VoIP service (as
681 opposed to fixed VoIP service or other services) in Illinois – the only service the NY PSC

682 considered in its decision. Nor is there any credible and objective evidence that
683 *** *** is an ESP. Moreover, the alleged nature of the purported “VoIP”
684 traffic has no bearing on the limited scope of the FCC’s “ESP” exemption. In defining
685 the narrow contours of that exemption, the FCC made no distinction regarding the type of
686 enhanced service that the ESP was providing, and it did not extend the exemption to
687 downstream carriers for any kind of enhanced services traffic.

688

689 **Q. DOES AT&T ILLINOIS SEEK TO RECOVER ACCESS CHARGES ON ALL**
690 **TRAFFIC FROM GLOBAL ILLINOIS, AS MR. SCHELTEMA CLAIMS?**
691 **(SCHELTEMA DIRECT, P. 24, LINES 527-528.)**

692 A. No. AT&T Illinois is only seeking access charges on intrastate *interexchange traffic* it
693 receives from Global Illinois for termination to AT&T Illinois’ end users. AT&T Illinois
694 assesses reciprocal compensation on local traffic from Global Illinois destined for AT&T
695 Illinois’ end users and transiting charges on traffic destined for other carriers’ end users.

696

697 **V. GLOBAL ILLINOIS’ CERTIFICATIONS**

698

699 **Q. CAN YOU PLEASE SUMMARIZE YOUR DIRECT TESTIMONY ON THE**
700 **CERTIFICATION ISSUE?**

701 A. In my Direct testimony (pp. 29-52) I demonstrated that the representations Global Illinois
702 made to the Commission during the certification process regarding its qualifications were
703 not entirely true, that Global Illinois has not lived up to the obligations the Commission
704 placed in Global Illinois’ certificates, and that Global Illinois does not currently possess

705 the technical, financial or managerial abilities and resources to provide
706 telecommunications services in Illinois because it has no employees, no assets, no
707 financial resources and no customers.

708

709 **Q. HOW DID GLOBAL ILLINOIS RESPOND?**

710 A. Mr. Scheltema briefly discusses the certification issue on pages 24-27 of his direct
711 testimony but does not provide any pertinent facts that dispute AT&T Illinois' evidence
712 supporting its request that Global Illinois' certificates of service authority be revoked. It
713 is revealing that both Mr. Scheltema and Mr. Noack refer to "Global" to indiscriminately
714 mean either Global Illinois or Global NAPs, Inc. (Scheltema Direct and Noack Direct,
715 footnote 1). Neither witness discusses either company separately, but treats them as one
716 and the same entity. It is also interesting to note that neither witness mentions Global
717 Networks – the un-certificated Global entity that apparently owns telecommunications
718 equipment and has a network in Illinois.

719

720 **Q. WHAT SPECIFIC ARGUMENTS DOES MR. SCHELTEMA MAKE?**

721 A. Mr. Scheltema's testimony is surprisingly brief and void of credible support for retention
722 of Global Illinois' certifications. First, he complains that AT&T Illinois' motion for de-
723 certification is inappropriate because 1) Global Illinois is a competitor; and 2) this is a
724 business dispute. (Scheltema Direct, p. 25, lines 558-566.) AT&T Illinois strongly
725 disagrees. The corporate construct and behavior of the Global entities make it clear that
726 one cannot examine Global Illinois in a vacuum if he or she wants to see the true picture.

727 The Global entities are intertwined and void of documentation regarding inter-entity
728 “transactions.” There is a real harm not just to AT&T Illinois but to Illinois consumers
729 generally in allowing alleged telecommunications service providers to engage in such
730 shady and deceptive business practices. The appropriateness of AT&T Illinois’ request
731 that Global Illinois’ certificates of service authority be revoked is for the Commission to
732 decide, not Mr. Scheltema.

733

734 **Q. DOES THE LIST OF CUSTOMERS ATTACHED TO MR. SCHELTEMA’S**
735 **TESTIMONY AS REVISED JS EXHIBIT 1 DEMONSTRATE THAT GLOBAL**
736 **ILLINOIS HAS CUSTOMERS?**

737 A. No. That is a list of customers of Global NAPs Networks, Inc. – not Global Illinois. In
738 any event, the fact that Global Illinois has no *bona fide* customers is corroborated by the
739 June 18, 2008 letter from Global Illinois supplementing its Objections and Responses to
740 Illinois Bell’s First Set of Data Requests via letter from its attorney to AT&T Illinois’
741 outside counsel (provided as Schedule PHP-23). In response to paragraph number 4,
742 Global Illinois states that “Global NAPs Networks, Inc. is Global Illinois’ sole
743 customer.”

744

745 **Q. IS MR. SCHELTEMA’S TESTIMONY REGARDING GLOBAL’S CUSTOMERS**
746 **CONSISTENT WITH OTHER STATEMENTS MADE BY ANY OF THE**
747 **GLOBAL ENTITIES?**

748 A. No. As I established in my direct testimony (p. 38), Global Illinois has admitted in its
749 response to AT&T Illinois Data Request No. 1-10 that all end user customers served by

750 the Global family of companies are “currently customers of Global NAPs Networks,
751 Inc.” Mr. Scheltema has omitted from his testimony any mention of Global Networks.
752 Mr. Scheltema’s testimony that “Global” (which he does not define to include Global
753 Networks) purportedly has customers directly contradicts other admissions by Global
754 Illinois and Global NAPs, Inc. and exacerbates the ongoing obfuscation regarding the
755 relationships between various Global entities.
756

757 **Q. ARE THE GLOBAL ENTITIES CONSISTENT IN THEIR REPRESENTATIONS**
758 **OF WHICH GLOBAL ENTITY PERFORMS WHAT FUNCTIONS?**

759 A. No, and Mr. Scheltema’s testimony only compounds the confusion already created by
760 conflicting Global submissions. Here are some examples of what the Global entities have
761 themselves revealed. (References to my direct testimony are for convenience in
762 reviewing some of the relevant Global attestations cited therein, rather than my personal
763 observations of the Global entities’ operations.)

- 764 1. Global Illinois has no customers. (*See reference in Pellerin Direct, pp. 38-39,*
765 *lines 821-863.*)
- 766 2. Global Illinois has one customer, Global Networks. (*See Schedule PHP-23,*
767 *item 4.*)
- 768 3. Global Illinois provides services to Global Networks. (Global Illinois’
769 response to AT&T Illinois’ Request No. 1-11.)
- 770 4. Global Networks carries customer traffic in Illinois. (*See Schedule PHP-23,*
771 *item 4.*)

- 772 5. Global Networks has *no* customers located in Illinois. (Inferred from
773 Scheltema Direct, footnote 1, and Revised JS Exhibit 1.)
- 774 6. Global Networks has *all* the customers that are served by Global affiliates.
775 (*See reference in* Pellerin Direct, p. 38, lines 833-836.)
- 776 7. When it is deemed convenient by “Global”, “Global” will assert that at least
777 some of Global Networks’ customers that send traffic for termination in
778 Illinois are “Global’s” customers. (Revised JS Exhibit 1.)
- 779 8. Until sometime in 2005 or 2006, Global NAPs, Inc. was the party contracting
780 with customers, but all of those customer contracts were assigned to Global
781 Networks without documentation or compensation. (*See reference in* Pellerin
782 Direct, p. 39, lines 871-873.)

783

784 It is no wonder that it is difficult to discern the Global entities’ roles and responsibilities
785 when there is such conflicting and inconsistent testimony. Most importantly, Global
786 Illinois is the only Global entity certificated to provide telecommunications services in
787 Illinois (Pellerin Direct, pp. 37, lines 800-807; Schedule PHP-11). It is unclear under
788 what authority Global NAPs, Inc. and Global Networks are providing service to
789 customers in Illinois.

790

791 **Q. MR. SCHELTEMA NEXT ASSERTS THAT GLOBAL ILLINOIS’**
792 **OBLIGATIONS ARE “GUARANTEED” BY GLOBAL NAPS, INC.**
793 **(SCHELTEMA DIRECT, P. 26-27, LINES 594-609). DOES THAT ALLEGED**
794 **GUARANTEE HAVE ANY VALUE?**

795 A. None whatsoever. The “unlimited guarantee provided to Global Illinois, Inc. by Global
796 NAPs Inc.” (Scheltema Direct, p. 26, lines 595-596) is not worth the paper it is written
797 on. Even if Global NAPs, Inc. had the assets and revenues listed in the “financial
798 statement” provided by Global Illinois to the Commission in 2001, the managers of
799 Global NAPs, Inc. and Global Illinois thereafter turned Global NAPs, Inc. into an asset-
800 less shell company – just like Global Illinois. And they did this notwithstanding the fact
801 that, as Mr. Scheltema admits, “[t]he Commission relied upon that guarantee when it
802 granted Global its certificates.” (Scheltema Direct, p. 27, line 603.)

803

804 **Q. IN YOUR DIRECT TESTIMONY (PP. 43-45), YOU PROVIDED A SYNOPSIS OF**
805 **AT&T CONNECTICUT’S LITIGATION WITH GLOBAL NAPs, INC. DOES**
806 **GLOBAL NAPs, INC. HAVE ANY ASSETS UPON WHICH THE COMMISSION**
807 **CAN NOW RELY IN EVALUATING GLOBAL ILLINOIS’ FISCAL**
808 **VIABILITY?**

809 A. No. In his May 31, 2006 deposition in the Connecticut case, Richard Gangi, the
810 Treasurer of Global NAPs, Inc. and Global Illinois, stated that “Global [NAPs, Inc.] does
811 not have very many assets,” that he did not believe it ever did, and that “Networks is
812 where most of the assets are.” Schedule PHP 24, p. 57. Mr. Gangi also stated that “all of
813 the equipment that Global – If Global had owned any equipment in the past it has since
814 been transferred to Networks” (*id.*, p. 125), that “Networks has all our switching gear and
815 transport gear” (*id.*, p. 63), and that he was not aware of any consideration for the transfer
816 of these assets from Global NAPs, Inc. to Global Networks (*id.*, p. 128).

817

818 In his May 31, 2006 deposition, Mr. Gangi also stated that after the initial term of Global
819 NAPs, Inc.'s contracts with customers, the contracts were assigned to Global Networks
820 (*id.*, pp. 38-39). And in his June 23, 2006 deposition, Mr. Gangi again stated that Global
821 NAPs, Inc.'s customer contracts are assigned to Global Networks after the first year, and
822 that he did not think Global NAPs, Inc. had any customers left. Schedule PHP-25, pp.
823 53-54. The list of Global NAPs, Inc.'s alleged customers Mr. Scheltema provides as
824 Revised JS Exhibit 1 is directly contradicted by Mr. Gangi's 2006 Connecticut
825 depositions.

826
827 In his May 31, 2006 deposition, Mr. Gangi also stated that Global NAPs, Inc. did not
828 have assets anywhere in the world to satisfy the \$5.25 million prejudgment remedy
829 granted by the Connecticut federal court. Schedule PHP-24, p. 57. Thus, the managers
830 of Global NAPs, Inc. and Global Illinois have managed to dissipate or siphon off to other
831 entities and individuals \$67 million in annual revenues and more than \$100 million in
832 assets – if the 2000 “financial statement” Global Illinois previously provided to the
833 Commission is to be believed. And the Connecticut federal court has now ordered an
834 entry of judgment against Global NAPs, Inc. in the amount of nearly \$6 million (provided
835 as Schedule PHP-26), so whatever few assets Global NAPs, Inc. may have had left, if
836 any, are plainly insufficient to provide any meaningful financial backing to Global
837 Illinois.

838

839 **Q. MR. SCHELTEMA STATES THAT THE GLOBAL ENTITIES' CORPORATE**
840 **STRUCTURE IS IRRELEVANT TO AN ANALYSIS OF GLOBAL ILLINOIS'**

841 **MANAGEMENT EXPERTISE AND THAT AT&T ILLINOIS HAS OFFERED**
842 **NO FACTS TO SUPPORT ITS ALLEGATIONS. (SCHELTEMA DIRECT, P. 26,**
843 **LINES 588-591.) IS HE CORRECT?**

844 A. No. The same facts that demonstrate Global Illinois’ financial shortcomings also show a
845 lack of managerial qualifications. Not only have the managers of “Global” failed to
846 ensure that Global Illinois is financially viable, they apparently never even attempted to
847 make Global Illinois financially viable – to the contrary, they have dissipated or siphoned
848 to other entities and individuals all assets that might be used to satisfy Global Illinois’
849 debts. Global Illinois represented in its certification application that Global NAPs, Inc.’s
850 guarantee was only until Global Illinois could financially meet its own obligations. One
851 could reasonably infer from that qualified guarantee that, in considering Global Illinois’
852 certification application, the Commission contemplated that the managers of “Global”
853 would attempt to make Global Illinois financially viable. In approving Global Illinois’
854 certifications, the Commission plainly did not contemplate that this “guarantee” (which in
855 any event has proven to be illusory) would forever remain Global Illinois’ sole source of
856 financial qualifications.

857
858 In addition, the Connecticut federal court’s decision to enter a default judgment against
859 Global NAPs, Inc. and several related entities (its parent, Ferrous Miner Holdings, and
860 sister companies Global Networks, Global NAPs Realty, and Global NAPs New
861 Hampshire) further demonstrates these companies’ lack of appropriate managerial
862 qualifications. The court entered a default judgment against these companies as a
863 sanction for their misconduct in discovery. The judge concluded that the defendants

864 willfully violated the court's discovery orders, lied to the court about their ability to
865 obtain documents from third parties, and destroyed and withheld documents within the
866 scope of discovery and the court's orders – finding that defendants committed a fraud
867 upon the court. *See* Schedule PHP-27.

868
869 The Court's default judgment against Global NAPs, Inc. in Connecticut is directly
870 relevant to this case – especially since it is the very entity Global Illinois relied on in its
871 certification application and continues to try to rely on today (Scheltema Direct, p. 27,
872 lines 604-611) to guarantee its obligations. Such guarantees are worthless. Moreover, as
873 I explained in my direct testimony (pp. 50-51, lines 1123-1132), all Global entities are
874 managed by the same people.

875
876 **Q. OTHER THAN THESE TWO ARGUMENTS, DID MR SCHELTEMA RESPOND**
877 **TO ANY OF YOUR OTHER POINTS ON THE CERTIFICATION ISSUE?**

878 A. No. His only response was to suggest that Global Illinois really did somehow have
879 customers (apparently because it is an affiliate of Global Networks) and to argue that the
880 alleged “guarantee” of Global NAPs, Inc. is sufficient reason to overlook the fact that the
881 certificate holder has absolutely no assets, no financial resources, and no employees.
882 Beyond that, he did not dispute my testimony that the representations made to the
883 Commission by Global Illinois in its application for its certificates were not entirely true,
884 that Global Illinois is not living up to the obligations in its certificates, and that Global
885 Illinois has no ability to provide and does not provide any services to customers in
886 Illinois.

887

888 **Q. IS THERE ADDITIONAL INFORMATION YOU WOULD LIKE THE**
889 **COMMISSION TO CONSIDER ON THIS ISSUE?**

890 A. Yes. The transcript of the hearing on Global Illinois' application for certificates of
891 service authority in Docket No. 01-0445 shows that the Commission Staff specifically
892 inquired about the amount of capital Global Illinois would have. The witness for Global
893 Illinois told the Commission, under oath, that the capital contribution of \$100,100 "is
894 going to take place." Schedule PHP-28, p.44. Obviously, Global Illinois never honored
895 this commitment. Likewise, Commission Staff specifically inquired about the number of
896 employees that Global Illinois would have. The witness for Global Illinois told the
897 Commission, under oath, that it would have "two employees." *Id.*, p.27.

898

899 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS REGARDING GLOBAL**
900 **ILLINOIS' CERTIFICATIONS.**

901 A. Global Illinois has no assets. (Scheltema Direct, p. 26, lines 594-595.) Global Illinois
902 has no revenues. (Scheltema Direct, p. 27, line 607.) Global Illinois has no customers
903 (as explained above and in my direct testimony). Global Illinois' so-called guarantor,
904 Global NAPs, Inc., has also been turned into an empty shell company by "Global's"
905 managers and is not capable of satisfying Global Illinois' obligations. Global Illinois is
906 nothing more than an empty suit – devoid of any value beyond its certification. Global
907 Illinois fails to satisfy the Commission's requirements of managerial and financial
908 competence in all regards. Accordingly, the Commission should revoke all certificates of
909 service authority held by Global Illinois.

910

911 Moreover, some Global entity (most likely Global Networks) is providing
912 telecommunications services in Illinois without a certificate of service authority and
913 without any oversight by the Commission. The Commission should not tolerate this
914 brazen disregard of Illinois law.

915

916 **VI. CONCLUSION**

917

918 **Q. HAVE YOUR RECOMMENDATIONS TO THE COMMISSION CHANGED AS**
919 **A RESULT OF YOUR REVIEW OF GLOBAL ILLINOIS' DIRECT**
920 **TESTIMONY?**

921 A. Not at all. Rather than reiterate them here, I direct the Commission to my direct
922 testimony at pages 52-53, lines 1163-1181.

923

924 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

925 A. Yes.