

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Petition of)
)
Global NAPs, Inc.)
)
For Arbitration Pursuant to Section 252(b) of) No. 01-0786
The Telecommunications Act of 1996 to)
Establish an Interconnection Agreement with)
Illinois Bell Telephone Company d/b/a)
Ameritech Illinois)

AMERITECH ILLINOIS'
POST-HEARING REPLY BRIEF

Dennis G. Friedman
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, IL 60603
(312) 782-0600

Nancy J. Hertel
AMERITECH ILLINOIS
225 West Randolph Street
Chicago, IL 60606
(312) 727-4517

Illinois Bell Telephone Company (“Ameritech Illinois”) respectfully submits its post-hearing reply brief. On each issue, we reply first to the Initial Brief of the Staff of the Illinois Commerce Commission (“Staff Init. Br.”) and then to the Initial Brief of the Petitioner, Global NAPS, Inc. (“GNAPs Init. Br.”).

We note first, however, that GNAPs’ brief presents some unusual difficulties, in part because it appears to be a not very careful recycling of a brief (or pieces of briefs) GNAPs filed in other proceedings. This is manifest in such mistakes as GNAPs’ repeated request that “the Department” resolve issues in certain ways (*e.g.*, GNAPs Init. Br. at 26, 39, 42)¹ and GNAPs’ citation to the testimony of “Dr. Selwyn” (*id.* at 12), who was not a witness in this case. If GNAPs’ mistakes were limited to minor glitches like these, this Commission would have no great reason for concern. But they are not. GNAPs also, for example, asserts that counsel for Ameritech Illinois acknowledged something that in fact counsel for Ameritech Illinois never mentioned (*id.*); misdescribes Ameritech Illinois’ proposal on Issue 2 (*id.* at 8-9), perhaps having in mind what an incumbent LEC in some other state proposed; places heavy reliance on an FCC rule that the FCC has made clear is irrelevant to the point for which GNAPs cites it; and specially urges the Commission to carefully decide a matter that is not even in issue in this arbitration (*id.* at 13 n.18). Ameritech Illinois does not undertake to enumerate each and every misstatement in GNAP’s brief, but respectfully cautions the Commission, in light of such instances as the foregoing, that any factual assertion made in GNAPs’ brief that the Commission is inclined to rely on needs to be checked against the record, and that any representation of law made in GNAPs’ brief needs to be checked against the authority cited by GNAPs.

¹ The Department is in all likelihood the Department of Utility Control, in Connecticut.

Ameritech Illinois also urges the Commission to decline GNAPs' odd request that it "issue clear policy directives here, and then direct the parties to implement those directives in specific contract language." (GNAPs Init. Br. at 42.) In keeping with its practice in most arbitrations, the Commission should resolve the issues by rendering decisions about what contract language should be included in the parties' interconnection agreement. To be sure, policy determinations will underlie some of the Commission's decisions about contract language. At the end of the day, however, the decisions in this arbitration should be about what words will be included in the parties' interconnection agreement and what words will not. To that end, Ameritech Illinois has identified in both of its briefs the contract language that is at stake on each issue, so the Commission can readily decide contract language questions, rather than unanchored policy questions. Standing alone, policy determinations would likely lead, as the Commission knows from experience, to post-arbitration disputes about contract language when the parties try to prepare a conforming agreement. Accordingly, Ameritech Illinois asks the Commission to resolve the issues by giving the parties direction on what language to include in their agreement and what language to exclude.

Issue 1: Should Either Party Be Required To Install More Than One Point Of Interconnection Per LATA?

Issue 2: Should Each Party Be Responsible For The Costs Associated With Transporting Telecommunications Traffic To The Single POI?

Disputed Contract Language: Appendix NIM, section 1.11 and section 2

Ameritech Illinois agrees that GNAPs may establish a single point of interconnection per LATA or, if it chooses, may establish multiple POIs. If GNAPs elects a single POI, GNAPs thereby increases transport and, therefore, transport costs. (AIT Init. Br. at 2-5.) Basic economic principles and fundamental notions of fairness dictate that if GNAPs makes that choice, GNAPs, and not Ameritech

Illinois, should bear the incremental costs GNAPs has caused. (*Id.* at 9-14.) The FCC, in its *Verizon 271 Order*, squarely held that an incumbent LEC may require a competing LEC that elects a single POI to pay those incremental transport costs, and that such a requirement is not inconsistent with the CLEC's right to elect a single POI (*id.* at 7-8), and the one federal court of appeals that has addressed the subject favors a requirement that the CLEC bear the costs caused by its choice of a single POI (*id.* at 8-9). These and other considerations set forth in Ameritech Illinois' initial brief compel the conclusion that Issue 2 should be resolved in Ameritech's favor.

Moreover, none of the arguments advanced by Staff or GNAPs in opposition to Ameritech Illinois' position is persuasive.

REPLY TO STAFF

Staff recommends that the Commission reject Ameritech Illinois' position, principally on the ground that "[t]he federal and state laws require that Ameritech allow requesting CLECs a single POI arrangement." Staff Init. Br. at 5. *See also id.* at 10, arguing that "Ameritech's position on the financial aspect of interconnection undermines the single POI interconnection requirement and effectively creates multiple POIs." Staff's theory is contrary to controlling federal law. The FCC's holding, in the *Verizon 271 Order*, that an ILEC is in compliance with the law – and, in particular, with the FCC rule that allows CLECs to choose a single POI architecture – when the ILEC allows a CLEC to interconnect at a single POI but requires the CLEC to pay for transport on the ILEC's side of the POI (*see* AIT Init. Br. at 7-8) precludes this Commission from finding, as Staff recommends, that the single POI requirement would be undermined by adoption of Ameritech Illinois' proposal. *See* AIT Init. Br. at 16-

17.² And even if that were not the case, Staff's position would fail, both because it is mistaken in its contention that Ameritech's proposal would have the effect of creating multiple POIs (*id.* at 17) and because it is based on bad public policy (*id.*)

The FCC's *Kansas/Oklahoma 271 Order* (Staff Init. Br. at 6-7) is irrelevant. Staff begins by saying that Southwestern Bell contended that the FCC had previously determined that carriers seeking a single POI should bear the additional cost associated with taking traffic to and from the point of interconnection in the other exchange, and that the FCC disagreed. Staff Init. Br. at 6. That is correct, but irrelevant, because Ameritech Illinois has not contended in this arbitration that the FCC has made such a determination. Indeed, Ameritech Illinois has taken pains to emphasize that while the FCC has ruled (in its *Verizon 271 Order*) that it is *permissible* for an ILEC to require a CLEC to bear such costs, the FCC has not ruled that a CLEC *must* bear such costs.

Staff also points to the *Kansas/Oklahoma 271 Order* for its statement that the FCC's "existing rules prohibit Ameritech from charging CLECs for local traffic that originates on Ameritech's network." (Staff Init. Br. at 6.) The FCC rule to which Staff refers, however, has no bearing here, because it prohibits an incumbent LEC only from charging reciprocal compensation for the termination of calls that originate on the incumbent's network, and Ameritech Illinois is not proposing to charge reciprocal compensation for the termination of calls that originate on its network. We return to this point in our reply to GNAPs' arguments, because GNAPs relies on the same FCC rule.

² Ameritech Illinois does not contend that the *Verizon 271 Order* alone compels the Commission to decide Issue 2 in Ameritech's favor. The *Verizon 271 Order* does, however, preclude the Commission from deciding the issue in GNAPs' favor on the principal ground that Staff urges.

Staff's purpose in referencing the Commission's decision in the Ameritech Illinois/Verizon Wireless arbitration (Staff Init. Br. at 8) is unclear. If Staff means to suggest that that decision sheds light on any issue in this proceeding, however, Staff is mistaken. There was no single POI vs. multiple POI issue in the Verizon Wireless arbitration. Rather, the issue that was the subject of the quote that appears on page 8 of Staff's initial brief was whether Verizon Wireless, having established a point of interconnection at an Ameritech Illinois tandem switch, could be required to take traffic off the switch and establish direct trunking to an Ameritech Illinois end office when the volume of traffic it was sending to that end office exceeded a certain threshold, in order to alleviate the problem of tandem exhaust. *See Order, In the Matter of Verizon Wireless Petition for Arbitration pursuant to Section 252(b) of the Telecomm. Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois*, No. 01-0007 (I.C.C. May 1, 2001), at 3-8. The Commission adopted the requirement proposed by Ameritech Illinois, but with the *caveat*, proposed by Staff (*id.* at 6), that if there were facilities from Verizon to the tandem and from the tandem to the end office, Verizon should not be required to establish direct trunking, but should be permitted to use alternative solutions, such as connecting at the Digital Cross-Connect or at meet points. A benefit of Staff's proposal, the Commission noted, was that it "allows costs to be split." (*Id.* at 8.) The Commission's compromise solution to the problem of tandem exhaust in the Verizon Wireless arbitration has no bearing on the very different question presented here, and certainly does not imply a general rule that each carrier should always bear the cost of transport on its side of the POI. There is no such rule.

Finally, Staff argues that Ameritech Illinois unjustifiably "takes the position that its network architecture . . . is the 'model' or 'starting point' for interconnection arrangements" and, on that basis, proposes to penalize carriers that choose an architecture that is relatively more reliant on transport than

switching, even if that choice would “result in innovative and efficiency enhancing networks.” (Staff Init. Br. at 9.) That simply is not so. Ameritech Illinois is not arguing that its network architecture should be regarded as the baseline against which others should be measured, and is not proposing that anyone be penalized for choosing a different architecture. Rather, Ameritech Illinois has demonstrated that a CLEC (GNAPs in this instance) will not properly determine what architecture is most “efficiency enhancing” (Staff’s term) if, in making that determination, it is allowed to consider an architecture that would reduce *its* switching costs by increasing *Ameritech’s* transport costs. Rather, economic efficiency – *i.e.*, the public good – is best served when the CLEC, in choosing a network architecture, makes the same decision that the CLEC and Ameritech Illinois would make together *if they were both committed to making a decision that would yield the lowest total cost for both parties*. This cannot be accomplished by shifting to Ameritech costs that GNAPs causes (*i.e.*, increased transport costs) when it makes a decision to reduce its own costs (*i.e.*, switching costs). If such cost-shifting were permissible, then carriers in GNAPs’ position would *always* choose a single POI architecture, even if the choice is an inefficient one from the point of view of the network as a whole, because the savings in switching costs (even if modest) would run to the CLEC alone, while the increase in transport costs, (even if enormous) would be borne by Ameritech Illinois, in part or in whole. *See* AIT Init. Br. at 13-14.

In short, the fundamental precept that the cost-causer pays, routinely enforced by this Commission (*see* AIT Init. Br. at 10 n. 5) is not grounded in notions of penalty, as implied by Staff, but in basic principles of sound economics.

REPLY TO GNAPS

GNAPs' discussion of Issue 2 is replete with inaccuracies. Among those that warrant only brief mention, but that underscore the risk of an uncritical acceptance of any assertion in GNAPs' brief on this issue, are:

- GNAPs' statement that a difference in transport costs was "so small that AIT's counsel acknowledged it was *de minimis*." (GNAPs Init. Br. at 12.) AIT's counsel never acknowledged any such thing, which is presumably why GNAPs offers no cite for its assertion.
- GNAPs' request that the "arbitrator's ruling needs to be specific in order to determine an appropriate cost allocation retroactively to the date of the interim interconnection." (*Id.* at 13 n.18.) Though GNAPs does not make at all clear what it is that it is urging the arbitrator to decide specifically, GNAPs is plainly asking the Commission to resolve some issue that is not within the scope of this arbitration, which the Commission may not lawfully do. (*See* 47 U.S.C. § 252(b)(4)(A).)
- GNAPs' statement that "AIT seeks to impose punitive transport costs when Global delivers traffic to any point in the LATA other than the boundary of AIT's defined local calling area." (GNAPs Init. Br. at 6-7.) Putting aside for the moment the fact that any transport costs that GNAPs would pay under Ameritech Illinois' proposal are tariffed, Commission-approved rates, and thus not punitive, GNAPs vastly overstates the universe of traffic that Ameritech's proposal classifies as long haul calls for which GNAPs would bear its share of the transport costs. Long haul calls are not by any means all calls that GNAPs delivers to a point in the LATA other than the boundary of the local calling area. Rather, they are the much smaller set of calls made by a person who is more than 15 miles from the single POI *and* not in the same tandem sector as the single POI.
- The statement that if GNAPs selects a single POI, Ameritech "can require [GNAPs] to either interconnect at each of AIT's local calling area tandems, or alternatively, pay AIT to transport traffic at excessive rates from this single point of interconnection to the various additional locations AIT designates." (*Id.* at 8-9.) Again putting aside for the moment the fact that the Commission-approved rates that Ameritech Illinois proposes to charge are not, by definition, excessive, GNAPs completely misconceives the treatment that Ameritech Illinois' proposed language contemplates for long haul calls. Ameritech Illinois' language does not permit Ameritech Illinois, in any scenario, to require GNAPs to interconnect at each local calling area tandem. Rather, it permits GNAPs to

choose either to pay half the cost of the facilities on which long haul calls are transported on Ameritech's side of the POI that is outside the local exchange area in which the POI is located or to pay Ameritech Illinois the Commission-approved switched access rate for that transport.

GNAPs is off base not only in these particulars, but also on all of its principal arguments:

A. FCC Rule 703(b) Does Not Support GNAPs' Position.

GNAPs asserts that Ameritech Illinois' proposal is "in direct contradiction of 47 CFR 51.703(b)" (GNAPs Init. Br. at 11), and then goes on to develop the point in a page and a half of argument. Rule 703(b) is irrelevant, however, because it has only to do with reciprocal compensation, not with anything that Ameritech Illinois is proposing here.

Rule 703(b) appears in Subpart H of the FCC's rules, which is entitled, "Reciprocal Compensation for Transport and Termination of Telecommunications Traffic." Subpart H begins with Rule 701(a), which provides, "The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications between LECs and other telecommunications carriers." Thus, when Rule 703(b) provides that a LEC "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," it necessarily means that a LEC may not assess reciprocal compensation charges on any other carrier for such traffic.

What, then, is "reciprocal compensation"? It is, pursuant to Rule 701(a) compensation for "transport and termination of telecommunications traffic." And the "transport" that is comprised by reciprocal compensation is "the transmission and any necessary tandem switching of telecommunications traffic . . . *from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party . . .*" (Emphasis added.) The transport that

is the subject of Issue 2 is not from the parties' interconnection point to the terminating carrier's end office switch; rather, it is transport from the originating carrier's switch to the point of interconnection." Thus, it is not within the scope of reciprocal compensation at all, is not the subject of Subpart H of the FCC's rules, and is unaffected by Rule 703(b) in particular.

This analysis is confirmed by the discussion of Rule 703(b) that appears in the *Local Competition Order*, as part of which the FCC promulgated the rule:

We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier *for terminating LEC-originated traffic*. . . . As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier *for terminating LEC-originated traffic* and must provide that traffic to the CMRS provider or other carrier without charge. (Emphasis added.)³

Ameritech Illinois is not proposing to charge GNAPs for terminating Ameritech-originated traffic. Rather, it is proposing that GNAPs bear the incremental transport costs caused by GNAPs' decision to employ a single POI architecture. Indeed, one of the two cost-bearing methods that Ameritech Illinois proposes GNAPs choose from – namely, that GNAPs pay half the cost of long haul *facilities* – is not even usage-sensitive, and so could not by the remotest stretch be construed as within the ambit of Rule 703(b).

The FCC itself has made clear that what Ameritech Illinois is proposing does not run afoul of Rule 703(b), again, in the *Verizon 271 Order*. There, the FCC concluded that Verizon was not in violation of any FCC rule by virtue of its imposition of charges exactly like those that Ameritech Illinois proposes here. If GNAPs were correct in its assertion that Ameritech's proposal runs afoul of FCC Rule 703(b), the FCC could not possibly have reached that conclusion.

³ *Local Competition Order* ¶ 1042.

Furthermore, numerous FCC decisions on interconnection providers support the ILEC's right to seek compensation for the cost of services or facilities provided to other carriers providers that *are necessitated not by interconnection itself, but by those carriers' decision how to interconnect*. These decisions include *TSR Wireless v. U.S. West* ("wide area calling" and similar services),⁴ *Texcom, Inc. v. Bell Atlantic* (cost of interconnection facilities used to carry third party originated traffic),⁵ *Metrocall v. Concord Telephone* (cost of DID facilities that are used to transport third party-originated traffic),⁶ and most recently *Mountain Communications v. Qwest*.⁷

The FCC's decision in *Mountain Communications* strongly supports Ameritech Illinois' position. There, the FCC's Enforcement Bureau held that the ILEC could recover the cost of dedicated toll facilities that it uses to transport calls made to a carrier's POI from outside of the ILEC's local calling area where the carrier's POI is located. The case warrants detailed discussion.

Qwest, an ILEC, provides interconnection services to Mountain Communications, a CMRS (in this case paging) carrier, and transports calls to Mountain's network. In prior decisions, the FCC had held that under its reciprocal compensation rules, ILECs may not charge CMRS providers for terminating ILEC-originated traffic in their local service areas (which are determined by the FCC) because it "constitutes local traffic within our rules." See *TSR Wireless v. US West Communications*,

⁴ *TSR Wireless v. US West*, Docket Nos. E-98-13, *et al.*, 15 FCC Rcd. 11,166, FCC No. 00-194 (rel. June 21, 2000), para. 40.

⁵ *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Docket No. EB-00-MD-14, 16 FCC Rcd. 21,493, FCC No. 01-347 (rel. Nov. 28, 2001), para. 8.

⁶ *Metrocall, Inc. v. Concord Tel. Co.*, Docket No. EB-01-MD-008, 2002 WL 192416 (F.C.C.), FCC No. DA 02-301 (rel. Feb. 8, 2002), para. 12.

⁷ *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Docket No. EB-00-MD-017, Memorandum Opinion and Order, FCC No. DA 02-250 (rel. Feb. 4, 2002).

15 FCC Rcd. 11, 166, ¶ 31 (2000). Because a paging carrier's local service areas are often larger than the LEC's, however, a LEC customer who calls a paging carrier's customer may incur a toll charge. A LEC may agree with a paging carrier, however, not to assess toll charges on calls from the LEC's end users to the paging carrier's end users, in exchange for the paging carrier paying the LEC a per-minute fee to recover the LEC's toll carriage costs – a “wide area calling” service. The wide area calling arrangement at issue in the *Mountain Communications* case involved Qwest's provision of dedicated facilities to Mountain that connect the Direct Inward Dialing (“DID”) numbers that Mountain has obtained in each of Qwest's local calling areas to Mountain's interconnection point in another Qwest local calling area. Thus a customer in each of Qwest's local calling areas could dial a local number to reach a Mountain subscriber and avoid incurring toll charges. *Id.* ¶¶ 3, 11.

Mountain's complaint alleged that Qwest should cease assessing it any charges *associated* with the delivery of traffic to Mountain's network and issue refunds for such charges. *Id.* ¶¶ 3, 5, 11. The Enforcement Bureau disagreed: “We agree with Qwest that the provision of dedicated toll facilities by Qwest to enable Mountain to offer its customers a local number in several local calling areas is an optional service that is not necessary for interconnection.” *Id.* ¶ 13.

The arrangement that Mountain unsuccessfully tried to avoid paying for is the same from the calling and called parties' perspectives as an FX service between LECs. Although the caller avoids paying for what would otherwise be a toll charge, the LEC serving the caller provides facilities between the switch serving the caller and the distant point of interconnection with the called party's carrier, who provides the called party with a form of free inward calling. The wide area calling arrangement is a convenience to the called party and its serving carrier, not a necessity for interconnection. By a variety

of rate plans, the paging carrier compensates the LEC providing the facilities between the end office switch of the caller and the paging carrier's POI.

The arrangement also looks like FX from a technical perspective. Mountain ordered from Qwest trunk groups from central offices in several local calling areas. The trunk groups have banks of telephone numbers pointed to them – 100, 1000, or 10,000 DID numbers in each local calling area. The trunks connect Qwest's local switch with the paging carrier's. When a Qwest customer dials one of these "local" numbers, Qwest transports the call to Mountain to process the paging connection. A CLEC with an FX arrangement similarly would have trunks extended to its switch from different local calling areas. Each local ILEC switch would have banks of numbers pointed at trunk groups from the switch to the CLEC's POI. The ILEC would install and maintain the facilities underlying the trunks just as Qwest installed and maintained the facilities underlying Mountain's DID trunks.

B. GNAPs' Treatment of the Third Circuit's Decision in the *MCI/Bell Atlantic* Case is Both Absurd on its Face and Inconsistent with the FCC's *Verizon 271 Order*.

Both Ameritech Illinois' and GNAPs' opening briefs discuss *MCI Telecomm. Corp. v. Bell-Atlantic Pennsylvania*, 271 F.3d 491 (3d Cir. 2001). As Ameritech Illinois summarized in its brief (at 12-13), the Third Circuit, having first concluded that CLECs are entitled to a single point of interconnection (as Ameritech Illinois acknowledges), then went on to say, "To the extent, however, that [the CLEC's] decision on interconnection points may prove more expensive to [the ILEC], the PUC should consider shifting costs to [the CLEC]." 271 F.3d at 518. Plainly, the import of this last sentence is that to the extent that the CLEC's choice to establish a single POI proved more expensive, the CLEC should bear the incremental costs – exactly what Ameritech Illinois maintains here.

In a woeful attempt to deny the undeniable, GNAPs concocts a novel interpretation of the quoted language from the Third Circuit's opinion. According to GNAPs, all the court really meant was that the CLEC should bear the additional costs that the ILEC would incur "if the CLEC chooses a technically difficult location for interconnection." (GNAPs Init. Br. at 10 n.14.) Also according to GNAPs, the Third Circuit couldn't have meant that the CLEC should bear the additional costs caused by its choice to use a single POI, because that would be inconsistent with the court's decision that the CLEC is entitled to choose a single point of interconnection. (*Id.*)

GNAPs misreading of the Third Circuit's decision exceeds the bounds of fair advocacy. All one has to do to see what the Third Circuit meant is to read what it said:

The PUC's requirement that Worldcom interconnect at these additional points is not consistent with the Act. We will affirm the District Court's decision, rejecting the PUC's interconnection requirements. To the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom.

271 F.3d at 518. The meaning of the last sentence is absolutely clear from the context: Having said in one sentence that it would reject the PUC's multiple POI requirement, the Third Circuit went on *in the very next sentence* to say that, "*however,*" to the extent that Worldcom's decision may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom. Obviously (especially in light of the "however"), the Worldcom decision that the court is referring to in the last sentence is the decision to interconnect at a single POI as the Court just held it could do, not – as GNAPs pretends – a Worldcom decision to choose a technically difficult point of interconnection. Indeed, there is no antecedent reference to the technical difficulty of one point of interconnection vs. another at any point in the Third Circuit's decision.

What, though, about GNAPs' argument that the Third Circuit cannot have meant that the CLEC should bear the additional costs caused by its choice to use a single POI because that would be inconsistent with the court's decision that the CLEC could use a single POI in the first place? The answer, as we have emphasized from the outset, is that there is no inconsistency. It is one thing to say that a CLEC has the right to choose a single POI architecture and it is quite another thing to say that the additional transport costs caused by that choice will be subsidized by the ILEC. Again, this is the significance of the FCC's decision in its *Verizon 271 Order*: an ILEC that allows CLECs to establish a single point of interconnection per LATA is in full compliance with the FCC's requirement that it permit such an architecture *notwithstanding that the ILEC charges the CLEC for the resulting incremental transport*.

This is the point that GNAPs persists in missing. GNAPs asserts, for example, that there is "no difference between Verizon's demand [in the Third Circuit case] that the CLEC interconnect at additional locations and AIT's demand that Global interconnect at additional locations *or* pay AIT's unreasonable charges for transport to and from those locations." (GNAPs Init. Br. at 9.) The truth is that there is all the difference in the world, as both FCC and the Third Circuit have made clear.

C. Paragraph 1062 of the *Local Competition Order* Does Not Support GNAPs' Position.

GNAPs asserts that Ameritech Illinois' position "is in contradiction to the FCC's discussion of inter-network transport costs in ¶ 1062 of the *Local Competition Order*." (GNAPs Init. Br. at 7.) The manner in which GNAPs presents this assertion, though, is a dead giveaway that the assertion is false: Instead of quoting from paragraph 1062, as GNAPs would do if the paragraph actually supported its position, GNAPs quotes its hired witness saying that the paragraph means that the originating carrier is responsible for the cost of getting its outbound traffic to the interconnection carrier.

Ameritech Illinois urges the Commission to read paragraph 1062 for itself. If it does, the Commission will see that it does not say (or even imply) what GNAPs claims it does. Nor, of course, could it: If the FCC had actually said in the *Local Competition Order* that each carrier must bear the cost of getting to the POI the calls that originate on its side of the POI, then the FCC would not have concluded, as it did in the *Verizon 271 Order*, that Verizon was in compliance with the FCC's rules when it required CLECs to bear their fair share of those very costs.

D. GNAPs' Skimpy Economic Analysis is Wrong.

As Staff has pointed out, no current law, rule or precedent expressly dictates the outcome on Issue 2. The *Verizon 271 Order* makes clear that it would be consistent with the 1996 Act and with the FCC's regulations for the Commission to resolve the issue in favor of Ameritech Illinois, and the Third Circuit's decision in the *MCI/Bell Atlantic* case supports such a resolution, but neither authority *compels* the result in this arbitration. What does compel the result is the requirement in section 251(c)(2) of the 1996 Act that the Commission's decision yield terms and conditions for interconnection that are just and reasonable. As we have demonstrated at length (AIT Init. Br. at 9-14), it is just and reasonable for GNAPs to bear the costs that would be caused by its decision to employ a single point of interconnection, and it would be unjust and unreasonable for the Commission to require Ameritech to bear those costs. And this is primarily because Ameritech's proposal gives GNAPs, as the sole decision-maker on how many points of interconnection there will be, the socially desirable incentive to take into account all pertinent switching costs and all pertinent transport costs when it makes its decision, rather than the socially undesirable incentive to ignore an important aspect of transport costs because Ameritech will be bearing them even though GNAPs caused them.

GNAPs' counter to Ameritech's fully developed economic analysis consists of two sentences: "If Global bears AIT's costs, AIT has no incentive to control its transport costs. In fact, the reverse is true: AIT has an incentive to inflate costs which are imposed on its competitors." (GNAPs Init. Br. at 15.) GNAPs' contention that Ameritech Illinois will have no incentive to control its transport costs if Issue 2 is resolved in Ameritech's favor is demonstrably wrong. Under Ameritech Illinois' proposal, Ameritech will continue to bear the overwhelming bulk of the transport costs on its network. That being so, Ameritech has all the incentive it needs to reduce transport costs. There is no reason to believe – certainly, GNAPs has not offered one – that the narrowly circumscribed piece of incremental transport for which GNAPs would be paying under Ameritech Illinois' proposal would skew any cost/benefit analysis that Ameritech might perform as part of a decision whether to deploy more cost-effective transport facilities. (Apart from that, GNAPs is, of course, mistaken, when it begins by referring to GNAPs bearing Ameritech's costs. The cost-causer pays principal instructs that these are GNAPs' costs that are at issue, not Ameritech's.)

E. The Commission Should Disregard GNAPs' Allegations That the Amounts GNAPs would Pay under Ameritech Illinois' Proposal Are Inflated.

GNAPs discussion of Issue 2 is peppered with the allegation that amounts GNAPs would pay for the additional transport caused by its decision to use a single POI are inflated. Ameritech Illinois denies that allegation. More to the point, it is an allegation that cannot even be considered in this proceeding.

Under Ameritech Illinois' proposed NIM section 2.2.2, GNAPs would choose to pay *either* half the cost of the facilities on which long haul calls are transported on Ameritech's side of the POI that is outside the local exchange area where the POI is located *or* Ameritech Illinois' tariffed switched

access rates for that transport. To the extent GNAPs is actually concerned that Ameritech Illinois' tariffed switched access rates are too high, GNAPs can elect to bear half the cost of the facilities (a cost, incidentally, that Ameritech's proposal does *not* give Ameritech Illinois authority to determine unilaterally, and that GNAPs presumably would not pay unless it was satisfied that it was appropriate, or was told that it was by this Commission after disputing Ameritech Illinois' bill). Even if GNAPs did not have that option, however, the Commission could not properly consider in this proceeding the question whether Ameritech Illinois' Commission-approved tariffed access rates are what they should be. Any such inquiry would appropriately be conducted only in a generic proceeding in which all affected carriers could participate, and in which the basis for Ameritech Illinois' current rates could be presented. *See Order, In the Matter of Verizon Wireless Petition for Arbitration Pursuant to Section 252(b) of the Telecomm. Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois* (I.C.C. May 1, 2001), at 23-24 (rejecting CLEC request to re-evaluate Ameritech Illinois' tariffed transiting rate, which "applies to carriers in Illinois generally," finds it "inappropriate to reach a decision in this [arbitration] docket on the appropriateness of Ameritech's transiting rate," and concludes such a decision is appropriately reached in an ongoing generic proceeding).

F. It Is Immaterial That GNAPs Has Transport Costs In Its Side Of The POI

GNAPs points out that under its proposal, it will bear transport costs on its side of the POI, and characterizes as a "reasonable compromise" its proposal that each carrier bear the transport costs on its side of the POI. (GNAPs Init. Br. at 16-17.) This is sophistry, for several reasons. *First*, on the long haul calls that are originated by Ameritech Illinois' customers, GNAPs recovers the transport costs on its side of the POI through reciprocal compensation. *Second*, it is hardly a compromise for GNAPs to

agree to bear costs that are properly its own on its side of the POI “in exchange for” Ameritech bearing costs that are also properly GNAPs’ on the other side of the POI. *Third*, GNAPs cannot escape with rhetoric the inescapable conclusion of the economic analysis that Ameritech Illinois has presented. If it is correct that the costs that Ameritech Illinois is asking that GNAPs bear (a) are caused by GNAPs’ decision to employ a single POI and (b) should be borne by GNAPs in order to ensure that GNAPs makes economically efficient decisions about network architecture – and both propositions are correct – then the only correct conclusion is that it is just and reasonable for GNAPs to bear those costs.

Issue 3: Should Ameritech-IL’s local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?

Disputed Contract Language: General Terms and Conditions §§ 1.1.50, 1.1.67, 1.1.75, 1.2.8; Appendix Reciprocal Compensation §§ 3.2, 6.2; Appendix Numbering § 2.3

REPLY TO STAFF

Ameritech Illinois agrees with Staff that “[t]he carriers should use the existing local calling areas in Ameritech’s service territory for purposes of intercarrier compensation” (Staff Init. Br. at 11) and that, “It would be chaotic to apply different local calling area standards on inter-network calls” (*id*). Ameritech Illinois notes Staff’s statement, which appears to fall well short of a recommendation, that the Commission “may” wish to evaluate the existing local calling area standard outside of this arbitration. Particularly since Staff has not taken a stand on whether such a proceeding should be conducted, Ameritech Illinois expresses no view on the subject at this time.

REPLY TO GNAPS

GNAPs states that it “is interested in providing Illinois with LATA-wide local calling areas” and that “AIT’s contract proposal prevents this.” (GNAPs Init. Br. at 22.) As Staff correctly understands, that is false. Ameritech Illinois’ contract proposal leaves GNAPs absolutely free to establish LATA-

wide local calling areas if it wishes. (*See* Staff Init. Br. at 11.) The fact that intercarrier compensation will continue to be governed by the existing Commission-approved local calling area does not derogate from that option.

GNAPs fails altogether to come to grips with the fact, testified to by Ameritech Illinois witness Mindell and recognized by Staff, that its proposal would lead to chaos, with a call from GNAPs customer Smith to Ameritech customer Jones subject to access charges and a call from Jones to Smith subject to reciprocal compensation.

Presumably, GNAPs is not suggesting that the Commission use this proceeding to require all carriers in Illinois to use GNAPs' proposed LATA-wide areas for purposes of intercarrier compensation. Any such suggestion would be absurd, because only two carriers are represented here. But if, as GNAPs would presumably contend, each carrier should be able to define its own local calling areas for purposes of intercarrier compensation, the resulting chaos would be orders of magnitude greater than that which Ameritech and Staff have already pointed out: Imagine sorting out intercarrier compensation with five or six sets of local calling areas, with various carriers using each. The prospect is unthinkable, and that is doubtless why Staff's most unequivocal recommendation – one which it does not intimate might even be subject to reevaluation – is “that a uniform local calling area govern intercarrier compensation.” (Staff Init. Br. at 11.) Once one accepts the indisputable proposition that there must be only one set of local calling areas in the state for purposes of intercarrier compensation among all carriers, it necessarily follows, at least for purposes of this proceeding, that it has to be Ameritech Illinois' current, Commission-approved areas.

Issue 4: Can GNAPs assign to its customers NXX codes that are “homed” in a central office switch outside of the local calling area in which the customer resides?

Disputed Contract Language: Appendix FX; Appendix Numbering, § 2.2; Appendix Reciprocal Compensation, § 3.7

REPLY TO STAFF

Ameritech Illinois agrees with Staff that “GNAPs may assign its customers virtual NXX codes associated with a particular rate center and provide FX or FX-like services” (Staff Init. Br. at 13); that the Commission should reject GNAPs’ proposal as it relates to intercarrier compensation, and should require carriers to “continue to associate each NXX with a particular local calling area for purposes of intercarrier compensation,” so that FX and FX-like calls are not subject to reciprocal compensation (*id.* at 14); and that “the Commission should reject GNAPs’ LATA-wide FX proposal (*id.* at 15).⁸

REPLY TO GNAPS

GNAPs contends that the Commission “should reject AIT’s proposal that the traditional method of determining the jurisdiction of calls by comparing the NPA-NXX’s of the calling and called parties be replaced with an unspecified method involving the comparison of the physical locations of the calling and called party.” That contention cannot be taken seriously, because the “unspecified method” that GNAPs refers to is compelled by law and is the one and only method that is used in every (or

⁸ Staff states that the Commission, in its *Level 3 Decision* (Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332, required carriers to exchange such traffic at the POI with neither carrier allowed to collect reciprocal compensation or access charges from the other. (Staff Init. Br. at 14 n. 8.) Staff is correct that the Commission held that reciprocal compensation does not apply to FX calls. See *Level 3 Decision* at 9-10 (“FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation”). As Staff recommends, the Commission should adhere to that decision in this proceeding. Ameritech Illinois does not agree, however, that the *Level 3 Decision* prohibited carriers from imposing access charges on FX calls. Indeed, the Commission would not have had occasion to consider that question in *Level 3*, and has no occasion to consider it here, because interconnection agreements are not the source of any carrier’s duty to pay access charges, and also are not appropriate instruments for stating when access charges do or do not apply; access tariffs do that.

virtually every) interconnection agreement that this Commission has approved since the 1996 Act became law. As the Commission held in the *Level 3 Decision*, “FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.” As Staff recommends, the Commission should not reconsider that decision here, but should do so, if at all, only “in a separate industrywide proceeding where all telecommunications carriers and interested parties can participate.” (Staff Init. Br. at 14 n. 8.)

GNAPs’ assertion that “standard industry practice establishes the fact that FX traffic is local” (GNAPs Init. Br. at 29) is false. Not only is the standard industry practice exactly the contrary in Illinois as established by this Commission, but this Commission’s decision that FX calls are not subject to reciprocal compensation is in line with the well-considered decisions of numerous other State commissions (*see* AIT Ex. 3 at 30, line 1 – 32, line 2). GNAPs, in contrast, is unable to cite a single state that has reached the result it advocates.⁹

⁹ In California, to which GNAPs cites, incumbent LECs are reimbursed, through TELRIC-like charges, for the use of their networks in “FX-like” arrangements.

CONCLUSION

For the reasons set for above, and as further elaborated and supported in this proceeding, Ameritech Illinois respectfully urges the Commission to rule in its favor on the contested issues and to approve Ameritech Illinois' proposed interconnection agreement.¹⁰

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Respectfully submitted,

ILLINOIS BELL
TELEPHONE COMPANY

By: _____

Dennis G. Friedman
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, IL 60603
(312) 782-0600

Nancy J. Hertel
AMERITECH ILLINOIS
225 West Randolph Street
Chicago, IL 60606
(312) 727-4517

¹⁰ The Commission will note that Ameritech Illinois briefed Issue 11 in its initial brief, and that GNAPs did not. Issue 11 has in fact settled, and need not be addressed by the Commission.

CERTIFICATE OF SERVICE

I certify that I caused copies of the foregoing Ameritech Illinois' Post-Hearing Reply Brief to be served on this 11th day of March, 2002, on the following persons by e-mail and overnight delivery at the following addresses:

Michael Wallace
Hearing Examiner
Illinois Commerce Commission
527 East Capitol Ave.
Springfield, Illinois 62701
mwallace@icc.state.il.us

Mary Stephenson
OCG-Illinois Commerce Commission
Suite C-800
160 North LaSalle Street
Chicago, Illinois 60601
mstephen@icc.state.il.us

James R.J. Scheltema
Director – Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road W
Columbia, Maryland 21044
jscheltema@Comcast.net

Scott Helmholz
Sorling Law Offices
607 East Adams
Suite 800
Springfield, IL 62701
schelmholz@sorlinglaw.com

Tom Stanton
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, IL 60601
tstanton@icc.state.il.us

John Dodge
K.C. Halm
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., N.W.
2nd Floor
Washington, DC 20006
jdodge@crblaw.com

Jim Zolnierek
Illinois Commerce Commission
527 East Capital Avenue
P.O. Box 19280
Springfield, IL 62701
jzolnierek@icc.state.il.us

William Rooney
Vice President & General Counsel
Global NAPs, Inc.
89 Access Road, Suite B
Norwood, MA 02062
wrooney@gnaps.com

Dennis G. Friedman