

State of Illinois
Illinois Commerce Commission

In the Matter of the Petition Of

Global NAPs, Inc.

Petition for Arbitration Pursuant to 47 USC
Section 252(b) of the Telecommunications
Act of 1996 of Interconnection Rates,
Terms and Conditions with Illinois Bell
Telephone Company d/b/a Ameritech
Illinois

No. 01-0786

REPLY BRIEF OF THE PETITIONER, GLOBAL NAPs, INC.

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On Behalf of Global NAPs, Inc.

March 11, 2002

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I. Introduction:

INTRODUCTION:

Petitioner, Global NAPs, Inc. ("Global") hereby files its Reply Brief in this matter, before the Illinois Commerce Commission ("Commission"). This Reply Brief is submitted in response to the Initial Brief of the Incumbent Local Exchange Carrier, Illinois Bell Telephone Company d/b/a Ameritech Illinois ("AIT") or ("Ameritech") and Commission Staff, which are referred to hereafter as *AIT's Brief* and *Staff's Brief*, respectively.

II. Argument

Law and equity favor Global's positions. Ameritech makes a number of arguments resisting the letter and spirit of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the "Act"). These center on a basic theme: fairness.¹ Global agrees; fairness should be a consideration. There is no way to make up for a century of government-sanctioned monopoly. During this period, AIT has enjoyed a reliable revenue stream which financed construction of a ubiquitous network that was closed to competition.²

Times have changed, and so has the industry. Among other things, regulatory bodies now embrace competition instead of sheltering monopolies. Monopolies

¹ "Legal precedents aside, fundamental principles of fairness and economic efficiency dictate that GNAPs bear the incremental costs caused by its decision to interconnect at a single POI." AIT Brief at 2 (emphasis added).

² AIT also asserts that, when arguing Global should bear transport costs on AIT's side of the POI, that "[i]t is efficient, and therefore in the public interest, for a firm to bear the costs it causes, in order to encourage decisions that reduce costs and, ultimately, the prices paid by the consuming public." AIT Brief at 10. More compelling is that it is in the public interest to promote competition and only through competition will there be pressures to reduce costs to an efficient level.

themselves have abandoned the old rate-of-return paradigm, opting for the alternate regulation of price controls which leave them free to earn more than allowed under the more traditional regulation. Under Congress' instructions, the FCC has grappled with the issue of equity and has, in certain circumstances, chosen asymmetrical treatment of the carriers in an attempt to compensate for the incumbents' head-start and promote competition in telephony.³ Global will demonstrate how the resolutions it proposes to the arbitration issues are both just and equitable.

A. Global Should Not Be Required To Install More Than One Point Of Interconnection Per LATA.

AIT claims there is no fundamental disagreement between AIT and Global on Issue 1—that GNAPs may receive interconnection through a single POI in each LATA.⁴ AIT acknowledges that this issue has been determined both by federal law⁵ and Illinois state law and is no longer in controversy.⁶ Notwithstanding this acknowledgement, AIT continues to refuse to permit Global to interconnect at the technically feasible point of Global's choosing.

³ “This asymmetry is designed to offset, in part, the inherent advantages of the ILEC’s ubiquitous network and widely dispersed customer base.” Direct Testimony of Scott Lundquist at 6 (Dec. 28, 2001).

⁴ See Staff Brief at 2. AIT Brief at 1 (March 1, 2002): “GNAPs may, at its election, establish a single point of interconnection (“POI”) per LATA or may establish multiple POIs per LATA.” See also Rebuttal Testimony of Craig S. Mindell at 2 (Feb. 1, 2002).

⁵ See § 251(c)(2); see also FCC, Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65 at ¶78. (“Texas 271”).

⁶ Section 13-801(b) states that the ILECs must allow for interconnection “... at any technically feasible point within the incumbent local exchange carrier’s network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA.” 220 ILCS 5/13-801(b)(1) cited by Verified Statement of Qin Liu at 3 (Jan. 25, 2002).

Specifically, Global entered into an interim interconnection agreement with AIT covering California, Ohio, Illinois, and Nevada. Paragraph 5 of the Interim Interconnection Agreement says "SBC shall use its *best efforts* to implement this Interim Interconnection Agreement including the actual interconnection of facilities, expeditiously." (Emphasis added). 47 CFR § 51.715 (a) says, "upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of local telecommunications traffic *immediately* under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 51 and 252 of the Act." (Emphasis added). By agreement to use "*best efforts*", and by law, to act "*immediately*", AIT had an obligation to interconnect with Global as soon as possible.

Global designated its facility in Illinois as the interconnection point as SBC has both fiber and multiplexing equipment at Global's facility in Illinois. In light of the fact that SBC has fiber and multiplexing equipment in Global's facility, it is not only technically feasible to interconnect at that facility, but such interconnection does not require AIT to provide additional fiber. SBC adamantly refused to interconnect unless Global would pay AIT a monthly charge in excess of \$20,000.00.

Under the terms of the multi-state interim interconnection agreement, SBC and Global were to interconnect "in the closest manhole nearest the mutually agreed upon SBC location." AIT objected to Global's designation of its facility to interconnect as its facility was not the "closest manhole." This, of course, makes no sense in Illinois as AIT

has fiber in Global's facility. Notwithstanding this, Global proposed that AIT and Global interconnect at the manhole closest to Global's facility. AIT again refused.

In light of AIT's refusal to interconnect at the technically feasible point of Global's choosing, Global urges the Commission to specifically rule that AIT must interconnect at the technically feasible point of Global's choosing.⁷ Absent an extremely clear mandate, AIT may refuse to interconnect at the location on AIT's network of Global's choosing (Global's facility) or may seek to impose an interconnection charge (\$20,000/month).

B. Each Carrier Should Be Responsible For The Costs Associated With Transporting Telecommunications Traffic To The POI.

AIT boldly states that "none of the arguments offered in support of Global's position withstands scrutiny."⁸ In support of this statement, it refers to the Pennsylvania 271 decision. Both Staff and Global agree that the FCC declined to address this issue in its decision and instead deferred the issue for further consideration.

AIT's second argument purports to rest on FCC authority. AIT states:

The FCC has also made clear that a CLEC that wishes an expensive interconnection must bear the cost of that interconnection, and a single point of interconnection is an 'expensive interconnection.'⁹

Again, the Commission should pay close attention to AIT's interpretation and review the actual language of paragraph 199 of the Local Competition Order which states that "a requesting carrier that wishes a technically feasible but expensive interconnection

⁷ The Interim Interconnection Agreement between the parties defers resolution of issues raised in arbitration to the Commission. *See* Interim Interconnection Agreement at ¶X (Jan. 28, 2002).

⁸ AIT Brief at 2.

⁹ *Id.* at 5.

would, pursuant to section 251(d)(1), be required to bear the cost of that interconnection including a reasonable profit." A clear reading of this passage shows that this section is referring to additional costs that would be incurred by an ILEC if the CLECs chose a technically difficult *means of interconnection*—not the cost of exchanging traffic. However, AIT's position has added transport costs to interconnection without rhyme or reason.

Global already pays for the costs of interconnection (*e.g.*, cabling, entrance facilities, etc.), but these costs are distinct from "transport" costs. Indeed, Global employs the least costly means of interconnection via a fiber midpoint meet arrangement. Thus, AIT's assertion that Global should pay for its expensive interconnection is simply wrong.

AIT inexplicably ignores Global's many arguments—which are based on federal law.¹⁰ The Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the "Act") provides that a CLEC must be permitted to interconnect "at any technically feasible point within the carrier's network."¹¹ On the surface, this appears to be inequitable treatment. But, the FCC implemented this asymmetrical treatment on purpose.¹² If AIT were permitted to charge transport, it would subvert the intent of this treatment. After all, what is the point of the statute if the ILEC is permitted to impose upon the CLEC the economic costs of interconnection in every local calling area through transport charges?¹³ Federal

¹⁰ AIT asserts that "all pertinent legal precedents support the proposition that GNAPS should bear the incremental costs caused by its decision to interconnect at a single point per LATA." AIT Brief at 5.

¹¹ 47 U.S.C. §. 251 (c)(2)(B).

¹² *See* Direct Testimony of Scott Lundquist at 6 (Dec. 28, 2001).

¹³ AIT admits that "[t]he reason GNAPS is allowed to opt for a single POI architecture is that that may be the most efficient choice." AIT Brief at 17. Burdening Global with AIT's transport costs

law prohibits a LEC from assessing charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.¹⁴ How can AIT's demand that Global pay its transport costs for the delivery of AIT's traffic comport with this regulation? Moreover, 47 USC §§ 251 (c) (2) (C) and (D) require that interconnection be at least equal in quality to that provided by the local exchange carrier to itself and on rates, terms and conditions that are just, reasonable *and non-discriminatory*.¹⁵

The testimony from Global's expert witness clearly demonstrates that AIT's incremental increase in transport costs in delivering its traffic to the SPOI is *de minimis*.¹⁶ Allowing AIT to impose substantial charges upon Global for transport where it incurs only *de minimis*¹⁷ costs is discriminatory.¹⁸ Moreover, existing FCC rules prohibit Ameritech from charging CLECs for local traffic that originates on Ameritech's

on AIT's side of the POI would remove such efficiency. The question for this Commission is thus not whether Global should be allowed to shift costs to Ameritech, but rather, should Ameritech be allowed to shift transport costs on AIT's side of the POI to Global.

¹⁴ 47 CFR 51.703 (b).

¹⁵ Regulators should be alert to and resist ILEC efforts to impose costs on their competitors by using regulatory policies designed for other purposes to force CLECs to build facilities, or assume costs, that are not germane to the CLECs' own competitive strategies. Direct Testimony of Scott Lundquist at 5 (Dec. 28, 2001).

¹⁶ AIT supports its assertion that it bears costs by citing to Staff witness Liu. Ironically, Dr. Liu made the statement AIT refers to when asserting that each carrier should bear their own transport costs to the POI by showing that both carriers have associated costs. "When moving from a multiple interconnection arrangement to a single POI interconnection arrangement, transport costs will increase on both the origination side and termination side of the POI." Staff Ex. 1.0 at 5, 8 *cited by* AIT Brief at 3.

¹⁷ Staff concurred with Global's view that "the incremental costs that Ameritech Illinois would incur to transport calls to a single POI within a LATA would be *de minimis*. Staff Brief at 9 *citing* Lundquist Direct Testimony at 27-29 (Dec. 28, 2001).

¹⁸ Global does not contend that Sprint need interconnect with it outside of the LATA and thus believes Staff's concern regarding transport to locations as far away as Los Angeles are misplaced. *See* Staff Opening Brief at 4.

network.¹⁹ As Staff maintains, each carrier has transport costs. AIT seeks to free itself of transport costs and shift these to Global when Global delivers traffic to any point in the LATA other than the boundary of AIT's-defined local calling area.²⁰ Global is seeking the fair, reasonable and simple solution of having each party bear transport costs on its side of the POI. Staff concurs. It "recommends that each party in the interconnection agreement bear the financial responsibilities on its side of the single POI"²¹ and we trust the Commission will make a determination consistent with its Staff's recommendation and federal law.²²

C. AIT should not be permitted to interfere with Global's ability to provide a LATA-wide calling to Illinois consumers.

As stated in its Initial Brief, unless precluded directly by either the direct terms of its interconnection agreement, or indirectly by the economic burdens of transport costs, Global intends to offer LATA-wide local calling by defining its local calling area as the entire LATA.²³ AIT would deny Global's ability to do so. Specifically, it argues that "... Ameritech Illinois' local calling areas must control [the mutual compensation

¹⁹ See Discussion of the FCC's Kansas/Oklahoma 271 Order in Staff's Brief. Staff's Brief at 6, citing *In re Joint Application by SBC Communications, Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 at ¶ 233 (rel. Jan. 22, 2001).

²⁰ "Under NIM section 2.2.2, GNAPs can *either* pick up half the cost of the facilities on which long haul calls are transported on Ameritech Illinois' side of the POI that is outside the local exchange area in which the POI is located *or* pay Ameritech Illinois the appropriate switched access rate for that transport." Testimony of Craig Mindell on Behalf of Ameritech Illinois at 13 (Jan. 25, 2002); see also AIT Brief at 1.

²¹ Verified Statement of Qin Liu at 14 (Jan. 25, 2002); see also Staff Brief at 5.

²² AIT urges the Commission to leave issues unresolved. "Negotiations between the companies will establish the architecture, based on the tenet that traffic is of value to each company, and transport costs should be equitably divided. AIT Brief at 17. The Commission should rule on the issue of whether AIT can impose its transport costs to bring traffic from its network to the POI on Global. The parties have already established that negotiations on this point are fruitless.

²³ Global's Initial Brief at 21 (March 1, 2002).

between carriers].”²⁴ This is not the case. In fact, if the current LCAs continue to apply for purposes of mutual compensation, Global will be unable to offer many of the benefits it proposes to offer to consumers. Instead of accepting the status quo, this Commission should rule that all intraLATA traffic exchanged between Global and AIT be treated as cost-based “local” compensation under § 251(b)(5), and should not be subject to intrastate access charges.²⁵ Such a ruling will allow Global to offer wider local service areas than currently in effect. Moreover, it would compel AIT to do the same to stay competitive.²⁶

Global’s designation of a LATA-wide local calling area is clearly permitted by law. The FCC has permitted the states to determine what geographic areas should be considered “local areas” for purposes of applying reciprocal compensation obligations under § 251(b)(5) “consistent with the state commissions’ historical practice of defining local service areas for wireline LECs.”²⁷ Moreover, there is no technical prohibition in provisioning FX service as Global proposed.

AIT hit the nail on the head when it stated that “[t]he crux of GNAP’s position on Issue 3 is its assertion that the distinction between local calls and toll calls, especially on an intraLATA basis, has become artificial.”²⁸ Global’s evidence showed that there is no economic or technical reason for local calling areas to be any smaller than a LATA, and

²⁴ AIT Brief at 21.

²⁵ Section 251(b)(5) of the Telecommunications Act states: “Each local exchange carrier has the following duties...(5) The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”

²⁶ See Arbitration Petition at 27. IN AIT’s Brief at 22, there is a lengthy discussion of how larger calling areas can affect AIT. The simple answer is AIT should be competitive and offer similar wider calling areas to its consumers.

²⁷ *Local Competition Order* ¶¶ 1034 and 1036.

that there are reasons for LCAs to be at least as large as a LATA, just as Florida has recognized.²⁹

AIT argues that the Commission has rendered a determination on this issue. However, this ruling was made not only before Global NAPs came into existence, but was also made prior to passage of the *Act*³⁰ itself when there was no competition for local services. Staff's recommendation is merely an acceptance of the current regime and it is less than a ringing endorsement. Staff's recommendation "... is based on the fact that it's the existing Commission-approved LCA."³¹ Staff then hedges its bet by recommending a re-evaluation of AIT's legacy LCA.

Since the Commission last reviewed and approved the LCA standard, however, technological changes have altered the telecommunications landscape. In addition, network interconnection has created a host of complex issues. These changes and circumstances implicate broad policy issues with important consequences for all telecommunications carriers and consumers. *As a result, the Commission may wish to reevaluate the existing LCA standard and consider issues surrounding network interconnection.*³²

²⁸ AIT Brief at 23; *see also* Global's Brief at 23 and Direct Testimony of Scott Lundquist at 6 (Dec. 28, 2001).

²⁹ Florida has adopted LATA-wide calling areas. *See* Florida Public Service Commission Special Commission Conference Agenda Issue 13 (Dec. 5, 2001):

How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation? **RECOMMENDATION:** Staff recommends that parties be permitted to negotiate the definition of local calling area for the purposes of reciprocal compensation to be contained in their interconnection agreements. However, if negotiations fail, staff recommends that "local calling area" for the purposes of reciprocal compensation be defined as "all calls that originate and terminate in the same LATA."

³⁰ *See* ICC Staff Exhibit 2.01 at 38-43 as referenced in Order at 101, "Customers First", Docket Nos. 94-0096 *et al.*, (April 7, 1995). As AIT's witness Mindell points out, "To the best of [his] knowledge, the Commission has not revisited the matter since the Customers First proceeding." Testimony of Craig Mindell on Behalf of Ameritech Illinois at 27 (Jan. 25, 2002).

³¹ Verified Statement of Qin Liu at 16 (Jan. 25, 2002).

³² *Id.* at 16 (*emphasis added*).

Global believes this arbitration is the opportunity for the Commission to widen calling areas to at least LATA-size (as Florida did). However, should the Commission not feel sufficiently at ease in taking this action to benefit consumers, Global invites the Commission to commence a more generic docket, consistent with Staff's comments.

D. Global Should Be Permitted To Assign Its Customers NXX Codes That Are "Homed" In A Central Office Switch Outside Of The Local Calling Area In Which The Customer Resides.

AIT argues that because it permits Global's use of virtual NXXs, this issue is misstated.³³ Global disagrees. Implicit in this issue is the argument that a call's status as "local" will be determined by referring to the NPA-NXXs of the calling and called numbers—just as AIT does for its own FX service. As a result, a party terminating such FX traffic should receive reciprocal compensation from the originating carrier for local calls as indicated by the NPA/NXX Codes.³⁴ The Commission should reject AIT's proposal that the traditional method of determining the jurisdiction of calls by comparing the NPA-NXXs 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. What AIT fails to say is that it wants this Commission to conveniently overlook the physical location of the called and calling parties analysis and not apply this rule to its own FX service. As explained below, treatment of FX traffic as "local" is consistent with industry

³³ AIT Brief at 24.

³⁴ The parties' obligation to pay reciprocal compensation on these calls may be limited to non-ISP customers as defined by the FCC in the *ISP Remand Order*. See *ISP Remand Order* at ¶¶ 3-8. The FCC has established an interim compensation mechanism for such ISP calls. See *id.* The issue of a permanent compensation mechanism for such ISP-bound traffic will be considered as part of the rulemaking the FCC initiated on April 27, 2001 regarding development of a unified intercarrier compensation regime. See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("Intercarrier Compensation NPRM"). Thus, the amount of traffic affected by this issue may have been narrowed by the FCC's recent ruling regarding ISP-bound traffic.

precedent and practice—including AIT’s own, and the failure to treat CLEC-provided FX as local, paired with the local treatment of AIT’s FX service, will eliminate competition for FX service. (If the commission rules to the contrary, AIT will no longer be able to offer FX service as the calling party will be faced with toll charges.)

Global’s request that it should receive reciprocal compensation for termination of “non-local” traffic is reasonable, despite AIT’s argument to the contrary.³⁵ AIT’s objection is based on its misplaced assumption that its own LCAs should be determinative of what is or is not local. But, as previously discussed, these LCA definitions are entirely within AIT’s and the Commission’s power to change. Unfortunately, rather than compete with Global on an equal footing and spread the benefits to consumers of an expanded local calling area, AIT elects instead to perpetuate an access regime in order to maintain its monopoly profit revenue streams. Global, in contrast, is proposing to define its local calling areas to be LATA-wide and by doing so, provide real benefits to consumers.

III. CONCLUSION:

The Commission should rule that Global may interconnect with AIT at Global’s facility which is a point on AIT’s network and is technically feasible (without imposition of an AIT interconnection charge); that each party should be responsible for the costs associated with transporting traffic to the single point; and that Global should be permitted to define its own local calling areas. Global should also be permitted to assign its customers NXX codes that are homed in a central office switch outside the local

³⁵ See AIT Brief at 24.

calling area in which the customers reside. AIT should not be permitted to “allow” Global to use a single point of interconnection, yet penalize Global with transport charges between local calling areas in a LATA. Nor should AIT be permitted to “allow” Global to implement its proposed deployment of virtual NXXs, and yet again penalize Global for doing so by imposing access charges based on its self-defined local calling areas. This Commission should take the necessary steps needed to truly allow Global to provide the benefits to consumers that its innovative offerings and LATA-wide calling areas offer.

In order to ensure Illinois consumers enjoy such benefits, this Commission should rule that (1) Global is not required to install more than one POI per LATA and may designate its location on AIT’s network, (2) each party should be responsible for the costs associated with transporting telecommunication traffic to the single POI, (3) AIT's local calling area boundaries should not be imposed upon Global and Global should be permitted to define its own local calling areas, (4) Global should be permitted to assign its customers NXX code's that are "homed" in a central office switch outside of the local calling area in which the customer resides, and (5) expressly recognize that Global and AIT shall share the cost of fiber meet point interconnection arrangements on a 50-50 split basis, but that other costs, notably transport costs shall be determined as borne by each carrier on their respective side of the POI and that any interim agreement reached between the parties concerning the allocation of interconnection and transport costs should reflect the determination of the Commission retroactively consistent with this ruling.

Respectfully submitted,

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