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In the Matter of the Petition Of

Global NAPs, Illinois 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

EXCEPTIONS OF PETITIONER GLOBAL NAPs ILLINOIS, INC.

Respectfully submitted by:

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I. Introduction

On August 24, 2000, Global NAPs, Illinois Inc. ("Petitioner" or "Global") opened negotiations with Southern New England Telephone Company regarding the terms of an interconnection agreement. On August 21, 2001, the negotiations were expanded to include SBC affiliates, notably Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech"). Those negotiations were ultimately unsuccessful.

On November 30, 2001, Global filed its petition for arbitration citing unresolved issues. The case was docketed and heard as Case No. 01-0786.

The issues to be determined were:

1. Should either party be required to install more than one point of interconnection per LATA?
2. Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?
3. Should Ameritech's local calling area boundaries be imposed on Global or may Global broadly define its own local calling areas?
4. Can Global 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?

Pursuant to the schedule set forth by the Administrative Law Judge, as noted in the Proposed Arbitration Order,¹ Global files its exception to the Proposed Decision on issue 3, *i.e.*, expanding the definition of local calling areas to benefit Illinois consumers. In support of its exceptions, Global

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Proposed Arbitration Decision, *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*, Case No. 01-0786 at 17 (April 4, 2002). ("Proposed Decision").

reiterates the arguments made in its initial brief and reply brief and further responds to the Proposed Decision as follows:

II. Exceptions

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

a. Competition Is Encouraged By Permitting CLECs To Define Their Own Local Calling Areas.

At issue is whether Global can define its own local calling areas for intercarrier compensation purposes. Global wishes to define a LATA wide local calling area. Ameritech wishes to impose access charges whenever a call originates in one Ameritech local calling area and terminates outside of that area. The Proposed Order “rejects Global’s request that it be allowed to define its own local calling area.”² The order perpetuates the status quo at the expense of competition and Illinois consumers.

Without enabling competitors to define their local calling areas, the benefits of “technological changes” will not be realized.³ Specifically, competitors will not be able to provide LATA-wide local calling if they must pay access charges and/or transport charges that are well in excess of cost. The fact is the status quo continues to allow Ameritech to impose its local calling areas upon Global through the application of access charges—making it impossible for Global to offer LATA-wide

² Proposed Decision at 12.

³ *See id.*

local service. The result is even more egregious considering that Ameritech's wireless affiliate offers long distance calling plans which don't suffer from the same economic burdens that it imposes on its wireline customers. And why are subscribers flocking to cell phones for a less expensive means to place intraLATA long distance calls? Simple: competition for wireless service has forced the pricing plans to be competitive. Without introducing the opportunity for competition to rise in similar wireline services, consumers are destined to continue to pay monopoly-based retail prices instead of competitive, cost-based prices.

To the extent that it is necessary, Global urges the Commission to reconsider its decision, or at a minimum, establish a generic docket aimed at enlarging local calling areas in light of the declining costs of transport. There is no longer cost support to justify calling areas smaller than a LATA. If avoidance of "confusion" is the true motivator behind the reliance on status quo local calling areas, such "confusion" can be dealt with and resolved in a generic docket.⁴

The advent of competition was supposed to change industry custom and practice and, as a result, provide for choice by the customer between expanded offerings of multiple providers at lower prices. Retention of ILEC's industry custom and practice has denied consumers of the competitive benefits, including lower pricing which has been experienced in the long distance markets, and the innovative services that otherwise might be available if competition were allowed to flourish rather than founder. Six years after the Act, which sought to spread competition, all that remains is numerous companies littering the competitive landscape with a few niche players. Promoting competition, not preserving the status quo, was the goal of the Act. Thus, retention of the status quo

⁴ *See id.*

is at odds with the Act, does not encourage competition, or spread benefits to Illinois consumers. Instead, it serves to direct CLECs to invest in other markets.

To promote competition, Global urges the Commission to revisit the issue of local calling areas. Specifically, the Commission should permit Global to impose LATA-wide calling areas without being subject to access fees by virtue of superimposing existing local calling areas and their related compensation regime on Global's defined LCAs.

b. Ameritech's Application Of Access Charges Violates The Telecommunications Act.

The Administrative Law Judge's Proposed Decision would permit Ameritech to impose access charges whenever a call originates and terminates in different Ameritech-defined local calling areas. Access charges may be imposed, however, only where a carrier offers exchange access. Exchange access is defined by the Telecommunications Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."⁵ The term "telephone toll service" means "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."⁶ Consequently, access charges can only apply where the end-user must pay toll charges.

In the instant case, Global has no intention of charging anyone toll charges for calls within the LATA (or for virtual NXX calls). Thus, under the definitions of the Telecommunications Act,

⁵ 47 USC § 153 (40).

⁶ See 47 USC §§ 153 (47), (48).

access charges should not apply. Imposition of access charges in the absence of "telephone toll service" has no basis in the Telecommunications Act and is inconsistent with the best interests of Illinois consumers. Ameritech should not be permitted to impose access charges on Global for anything other than telephone toll service.

c. The Commission's rulings with regard to the Interconnection Agreement do not pertain to ISP bound traffic.

Global has always been an adamant proponent of the two call theory of intercarrier compensation for ISP bound traffic. As a substantial amount of Global's traffic has always been incoming ISP bound traffic, the two call theory significantly benefits Global as Global is paid reciprocal compensation for terminating calls to ISPs. Unfortunately, the two call theory is not the law.

The FCC's *ISP Order* rejected the two call theory and explained, "[t]he proper focus for identifying a communication needs to be on the user interacting with a desired web page, friend, game or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible."⁷ The *ISP Order* went on to state, "because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, ... state commissions will no longer have authority to address this issue."⁸

Under the *ISP Order*, the physical location of the ISP is irrelevant to the question of intercarrier compensation. Moreover, intercarrier compensation for ISP bound traffic is controlled

⁷ *Implementation of Local Competition Provisions In the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd. 9151 at ¶ 59 (rel. April 27, 2001) ("*ISP Order*").

⁸ *Id.* ¶ 82.

wholly by the *ISP Order* so the Commission has no jurisdiction over it and it cannot be the subject of interconnection agreements. The Commission should be clear that its rulings with regard to the Interconnection Agreement do not pertain to ISP bound traffic.

III. **Conclusion**

For the reasons set forth above, and for the reasons set out in Global's initial brief and reply brief, previously filed, the Commission should rule in favor of Global's exception and issue a final order consistent with said exception.

Respectfully submitted,

GLOBAL NAPS, INC.

By: _____


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On Behalf of Global NAPs, Inc.

Proof of Service

The undersigned hereby certifies that a copy of the foregoing Exceptions of Petitioner Global Naps Illinois, Inc. was served by placing same in a sealed envelope addressed:

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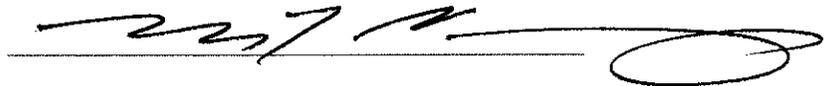
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and by depositing same in the United States mail in Springfield, Illinois, on the 12th day of April, 2002, with postage fully prepaid.

A handwritten signature in black ink, appearing to be "John Dodge", written over a horizontal line.