

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

In the Matter of )  
 )  
Global NAPs, Inc. )  
 )  
Petition for Arbitration Pursuant to ) Docket No.: 02-0253  
Section 252(b) of The )  
Telecommunications Act of 1996 )  
to Establish an Interconnection )  
Agreement with Verizon North Inc. f/k/a )  
GTE North Incorporated and Verizon )  
South, Inc. f/k/a GTE South Incorporated. )

Direct Testimony of  
**JONATHAN B. SMITH**

On Behalf of  
Verizon North Inc. and  
Verizon South Inc.

May 16, 2002

1 **I. WITNESS BACKGROUND AND OVERVIEW**

2 **Q. Please state your name and business address.**

3 A. My name is Jonathan B. Smith. My business address is 1095 Avenue of the Americas,  
4 New York, New York 10036.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Verizon Services Corp. as Executive Director - Local Interconnection  
7 Billing and Wholesale Billing Support. In that position, I am responsible for the review  
8 and payment of invoices received from CLECs for local interconnection traffic and  
9 facilities, as well as for support of the Wholesale Billing and Collections Organization.

10 **Q. Please summarize your educational background and experience in the**  
11 **telecommunications industry.**

12 A. I have more than twenty years of experience in the telecommunications industry as an  
13 employee of Verizon and its predecessor companies. Prior to assuming my present  
14 position in August 2001, I have held positions of increasing responsibility in billing and  
15 collection services, resale services marketing, customer services, and outside plant  
16 engineering. I received a Bachelor of Science degree in Engineering from Northeastern  
17 University in 1979 and a Masters of Business Administration from Babson College in  
18 1992.

19 **Q. Please describe the purpose of your testimony.**

20 A. The purpose of my testimony is to address Issue 11, including the disputed contract  
21 language associated with this issue, as identified below:

Issue No.	Statement of Issue	Disputed Contract Sections Related Issue
Issue 11	“To what extent should the parties be permitted to conduct audits to ensure (i) the accuracy of each other’s bills, and (ii) appropriate use and disclosure of Verizon OSS Information?”	Verizon’s GT&C § 7; Additional Services § 8.5.4; Interconnection Attachment §§ 6.3, 10.13.

22 **Q. Please summarize your testimony.**

23 A. There are four sections in Verizon’s proposed interconnection agreement that address  
24 audit rights.

- 25 • Verizon’s General Terms and Conditions § 7 provides audits for the purpose to  
26 evaluate the accuracy of the audited party’s bills.
- 27 • Verizon’s Additional Services § 8.5.4 provides for audits to ensure that GNAPs  
28 complies with legal requirements for access to and use of Verizon Operations  
29 Support Systems (“OSS”).
- 30 • Verizon’s Interconnection Attachment § 6.3 provides for audits of traffic data for  
31 interconnection trunks.
- 32 • Verizon’s Interconnection Attachment § 10.13 provides for audits of access  
33 recording in the context of meet-point billing arrangements.

34 It is standard practice to include audit requirements in interconnection agreements.

35 Moreover, Verizon’s proposed audit provisions are reasonably tailored to their respective  
36 purposes, with provisions that protect confidential business information and prevent  
37 needless intrusion on each party’s business.

38 **II. ISSUE 11: AUDIT RIGHTS**

39 **Q. Please explain Verizon’s proposed audit provisions that allow each party to verify**  
40 **the accuracy of billing information.**

41 A. Verizon’s proposed General Terms and Conditions § 7 provides a mechanism for Verizon  
42 and GNAPs to ensure the accuracy of each other’s bills. The highlights of Verizon’s  
43 audit provisions include:

- 44 • The right to audit books, records, facilities and systems *for the purpose of*  
45 *evaluating the accuracy of the audited party’s bills.*
- 46 • No more than annual audits generally, with an exception if previous audit found  
47 uncorrected net billing inaccuracies of at least \$1,000,000 in favor of the audited  
48 party.
- 49 • Audit performed by independent certified public accountants selected and paid  
50 by the auditing party, but acceptable to the audited party.
- 51 • Confidentiality agreement to protect the confidentiality of the information  
52 disclosed by the audited party to the accountants.
- 53 • Audits at the auditing party’s expense.

54 **Q. Why are these billing audit provisions necessary?**

55 A. Verizon does not seek the billing audit rights as a competitor of GNAPs, but as a  
56 customer. Without audit rights, Verizon is asked to accept GNAPs’ charges without the  
57 ability to verify their accuracy or appropriateness. This is unacceptable from a business  
58 perspective. The supplier (billing party) reasonably should be expected to carry the  
59 burden to justify its charges to the customer (the billed party).

60 There is particularly good reason for contractual audit provisions in the Verizon/GNAPs  
61 agreement. In New York, Verizon uncovered what it believed to be an apparent illegal  
62 billing scheme GNAPs implemented to overcharge Verizon millions of dollars under the  
63 guise of reciprocal compensation. *See Verizon’s Complaint filed in New York Telephone*  
64 *Company, et al. v. Global NAPs, Inc., et al.*, No. 00 Civ. 2650 (FB) (RL) (E.D. N.Y.).  
65 Moreover, a California federal court found that a GNAPs’ principal “acted in bad faith,  
66 vexatiously, wantonly and for oppressive reasons” and “perpetrated a fraud on the

67 [California Federal] Court” in the context of a civil breach of contract lawsuit. August  
68 31, 1995 Order of the United States District Court for the Central District of California in  
69 *CINEF/X, INC. v. Digital Equipment Corporation*, No. CV 94-4443 (SVW (JRx)) at 31.  
70 It is not reasonable to expect Verizon to simply trust that GNAPs will not act  
71 unreasonably under the parties’ agreement.

72 **Q. GNAPs’ claims that Verizon’s audit provisions compromise GNAPs’ confidential**  
73 **business information. Do you agree?**

74 A. No. Verizon’s proposal applies equally to both parties, not just GNAPs. Thus, if  
75 GNAPs’ purported concern was legitimate, Verizon would have the same concern.  
76 Neither party, however, is obligated to provide records directly to the other. Rather,  
77 pursuant to § 7.2, the “audit shall be performed by independent certified public  
78 accountants” selected and paid by the Auditing Party who are also acceptable to the  
79 Audited Party. The auditor is required to execute a confidentiality agreement to protect  
80 the audited party’s confidential information.

81 **Q. Does Verizon propose unlimited access to records?**

82 A. No. Verizon’s audit provisions are not the “unreasonably broad” mechanism that would  
83 disclose GNAPs’ proprietary business records to Verizon, as GNAPs complains on page  
84 30 of GNAPs’ Petition. Rather, Verizon’s proposed § 7.1 defines the purpose of the audit  
85 as evaluating the “accuracy of the Audited Party’s bills,” and this purpose circumscribes  
86 the parties’ rights and obligations in this section of the contract. Section 7.3 provides that  
87 the auditing *accountant*—not Verizon’s personnel—would not have access to *all* records  
88 but only to records, documents, employees, books, facilities and systems “necessary to  
89 assess the accuracy of the Audited Party’s bills.”

90 **Q. Are there other safeguards against abuse of Verizon’s proposed audit provisions?**

91 A. Yes. Verizon’s proposed § 7.4 requires the auditing party to bear the expense of the  
92 audit, thus ensuring that audits will not be requested without reasonable cause. In  
93 addition, § 7.1 limits the frequency of audits to one per calendar year.

94 **Q. Are Verizon’s audit provisions typical in the industry?**

95 A. Yes. In 100% or all 92 interconnection agreements on file in Illinois, Verizon has audit  
96 provisions that allow the parties to audit each other’s books and records pertaining to the  
97 services provided under the interconnection agreement. These kinds of provisions are  
98 common business practice to safeguard the right to an accurate bill.

99 **Q. Verizon also proposes that the parties be able to audit one another’s traffic data.**

100 **Why are these provisions reasonable?**

101 A. The ability to audit one another’s traffic data is a crucial component in assessing the  
102 accuracy of the other party’s bill. For example, assume that GNAPs sends Verizon a bill  
103 for reciprocal compensation based upon the amount of traffic that GNAPs terminates  
104 from Verizon. In order to accurately assess these bills, it is necessary for Verizon to audit  
105 the traffic data GNAPs uses to create these bills. Not only would *Verizon* have the right  
106 to audit GNAPs’ traffic data at least twice a year, but Verizon’s proposed §§ 6.3 and  
107 10.13 of the Interconnection Attachment provide *GNAPs* with the same ability to audit  
108 Verizon’s traffic data.

109 **Q. GNAPs proposes to delete entirely Verizon’s proposed § 8.5.4 of the additional  
110 services attachment, which permits Verizon to audit GNAPs’ use of Verizon’s OSS.**

111 **Why is this provision necessary?**

112 A. Hundreds of CLECs, CMRS providers, and IXC's rely on access to Verizon's OSS to  
113 serve their customers. Section 8.5.4 provides Verizon with the right to monitor *its* OSS  
114 so that all carriers, not just GNAPs, receive access to this system. This is essential to  
115 Verizon because a CLEC could establish a program to repetitively access Verizon's OSS  
116 to mine proprietary information. By engaging in such conduct, a CLEC would impair  
117 Verizon's OSS. Verizon's proposed § 8.5.4 thus not only protects Verizon's interest in  
118 ensuring GNAPs uses OSS in the intended manner, but ensures reliable OSS access for  
119 all CLECs.

120 In addition, Verizon's OSS contains customer proprietary network information ("CPNI").  
121 Verizon is obligated to protect CPNI and to release it only to authorized parties. *See* 47  
122 U.S.C. §§ 222, 251. To fulfill that obligation, Verizon must be able to audit GNAPs' use  
123 of Verizon's database.

124 **Q Does this conclude your testimony?**

125 A. Yes, it does.