

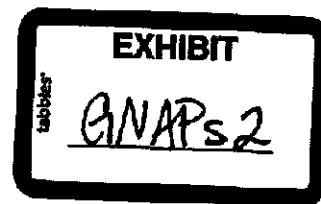
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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

The Ohio Bell Telephone Company, Inc.)
d/b/a AT&T Ohio)
Complainant,)
v.)
Global NAPs Ohio, Inc.)
Respondent.)

Case No. 08-690-TP-CSS



SUPPLEMENTAL TESTIMONY OF JEFFREY NOACK

On Behalf of Global NAPs Ohio, Inc.

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1 **INTRODUCTION**

2 **Q. What is your name title and address?**

3 A. My name is Jeffrey Noack. I am the Director of Network Operations of Global NAPs,
4 Inc. ("Global"). I have held this position since 1999. My address is 25094 Jaymarr Ct.
5 Porter, Texas. 77365.

6 **Q. What is your experience in telephony?**

7 A. I worked for twenty six years for Verizon, Inc. ("VZ"), or its predecessors and affiliates
8 in various engineering jobs concerning Access Carriers and Competitive Local Exchange
9 Carriers ("CLECs"). I was the account manager for all CLECs at Bell Atlantic. At Global
10 NAPs, I have been responsible for building, augmenting and maintaining networks with all
11 incumbent carriers and reviewing all billing from incumbents.

12 **Q. Have you testified before state utility regulatory agencies, and, if so, before what**
13 **agencies and with regard to what subject matter?**

14 A. Yes. I have testified in front of multiple state regulatory commissions concerning
15 network engineering and design. I am familiar with Global NAPs' network configurations in
16 Ohio. I am familiar with the type of clients we serve.

17 **OVERVIEW AND CONCLUSIONS**

18 **Q. What is the purpose of your testimony in this proceeding?**

19 A. The traffic Global NAPs sends to AT&T for termination is Voice over Internet Protocol
20 ("VoIP") traffic, a form of enhanced service or information service and not a telecommunications
21 service. Enhanced service voice traffic -- VoIP -- is neither local traffic nor interexchange traffic
22 within the meaning of the Parties' ICA. It is, therefore, not subject either to the ICA provisions
23 addressing local traffic or to the provisions setting rates for transit traffic. AT&T submitted the
24 testimony of James W. Hamiter. Mr. Hamiter states that the purpose of his testimony is, in part,

25 to demonstrate that the traffic “exchanged between AT&T Ohio and Global Ohio” is “not
26 Enhanced Service Provider (“ESP”) traffic.”¹ He states further that his objective is to prove that
27 “much of this traffic is traditional telephony, including interstate interLATA traffic (i.e.,
28 traditional long distance traffic) (Hamiter Testimony p. 4).

29 In support of this testimony, Mr. Hamiter sponsors and explains Attachments that purport
30 to show that certain traffic that terminated to AT&T over interconnection facilities with Global
31 NAPs originated on the AT&T public switched network. These Attachments, and certain
32 associated discovery responses, have come to be called the Three Minute Reports (“TMRs.”)

33 My testimony will examine both the details of Mr. Hamiter’s TMRs and the validity of
34 his, and AT&T’s conclusions drawn from the data in those reports.

35 **Q. Will you please summarize the findings and conclusions of your testimony?**

36 A. One of the major conclusions of Global’s testimony is largely presented in the
37 Supplemental Testimony of Mr. Brad Masuret (“Masuret Testimony”) also filed today. Mr.
38 Masuret demonstrates that the TMRs do not prove that “much” of Global’s traffic to AT&T is
39 traditional local or long distance traffic. Indeed, supplemented with the data provided by Global
40 itself, the TMRs prove that nearly none of the traffic Global sends to AT&T is “traditional” local
41 or long distance traffic. Indeed, it shows that the traffic captured in the TMRs is less than 1% of
42 the traffic Global sends to AT&T to terminate. Even accepting for argument’s sake AT&T
43 unsupported assertion that other PSTN network carriers must be sending similar traffic to Global

¹ Mr. Hamiter sometimes uses enhanced service {voice} traffic and VoIP interchangeably and so will I. My understanding is that VoIP traffic comes in at least two types. A call is VoIP either if it is originated in internet protocol (“IP”) format or if it is originated in TDM format, is converted to IP format somewhere in the transmission path, and is enhanced. I will sometimes distinguish between these two variations, but I consider both to be “enhanced service” voice traffic and to be VoIP.

44 for termination in Ohio to AT&T, Mr. Masuret shows that it is highly likely that at least 97% of
45 the traffic that Global sends to AT&T is not PSTN originated and, therefore, is VoIP.

46 My analysis, however, will largely focus on the calls that AT&T has identified that
47 apparently did originate on the PSTN. These calls are captured in the TMRs and are analyzed by
48 Mr. Hamiter.

49 **Q. What conclusions have you drawn about the TMR study?**

50 A. Mr. Hamiter's report is incomplete and, as a consequence, does not support his
51 conclusions. Before the legal issues raised in the TMRs can be addressed, the traffic, real or
52 potential, exchanged between AT&T and Global NAPs must be carefully defined on the basis of
53 the network architecture involved. The AT&T TMRs fail to distinguish between significantly
54 different network architecture arrangements. They fail to capture any data at all about local calls,
55 although this case is largely about local calls. Even as to interexchange calls, they fail to capture
56 much of the information regarding how calls that originated on the AT&T public switched
57 network ("PSTN") are transported to AT&T over interconnection facilities shared with Global.
58 As a consequence, AT&T TMRs fail to capture important data that can prove or disprove the
59 conclusions set forth in Mr. Hamiter's testimony.

60 **Q. What conclusions do you draw regarding the types of traffic exchanged or**
61 **potentially exchanged between AT&T and Global NAPs?**

62 A. There are theoretically, seven different types of traffic arrangements involved in this
63 dispute; four involving local and three involving interexchange traffic. However, while all seven
64 architectures are theoretically possible, not all of them exist.

65 Below, I will carefully define each of these categories of traffic in terms of network
66 architecture. I will then examine the TMR data to show what conclusions can and cannot be

drawn from that data with respect to each type of service. Finally, I will provide supplemental data developed by Global that fills in some of the critical evidentiary gaps left blank by AT&T and show what conclusions follow.

In summary, this report will prove the following:

1. None of the traffic delivered by Global to AT&T is traditional local traffic.
2. All or substantially all of the traffic delivered by Global to AT&T that AT&T characterizes as "local" originates on broad band facilities and is what is commonly called VoIP traffic.
3. None of the traffic delivered by Global to AT&T is traditional long distance traffic.
4. All or substantially all of the traffic delivered by Global to AT&T of the type measured in AT&T's TMRs is delivered through the switching functions of an Enhanced Service Provider ("ESP") and substantially all or all of it is enhanced.

LOCAL TRAFFIC

Q. Please describe each of the traffic categories involved in this dispute and explain the network architecture that applies to each.

A. I would begin by noting that the fact that a category of traffic is discussed here does not mean that any traffic exchanged between Global and AT&T actually falls into that category. Some categories are discussed, directly or implicitly by AT&T, for which there is no traffic. With that caveat, the following traffic categories are at issue.

Q. What is "Local Exchange Traffic?"

A. Local exchange traffic is also commonly called intraexchange traffic. However, with the expansion of local calling plans to wider and wider geographic areas, a "local" call is often not

90 defined by the traditional meaning of a call that originates and terminates in the same local
91 exchange. Indeed, as I expect the Commission's Staff knows, a call may be billed as a local call
92 by one customer, and a customer making a virtually identical call on a different calling plan will
93 be billed for a toll, or "interexchange" call. It also used to be the case that local calls could be
94 distinguished from long distance calls by the dialing pattern of the call. Local calls were seven-
95 digits and long distance calls were eleven digits (1 plus the three digit area code plus the seven
96 digit local number). Today, however, many local calls are dialed in the same manner as
97 interexchange calls. Switching tables allows the originating carriers to recognize which calls
98 shall be carried locally and billed as local and which shall be routed to interexchange carriers
99 ("IXCs") and billed as long distance. In general, local traffic is usually distinguished from
100 interexchange traffic, which is typically routed to Interexchange Carriers ("IXCs") over Feature
101 Group D ("FGD") trunks. This analysis, however, focuses on network architectural
102 arrangements, not commercial calling plans. For simplicity's sake, therefore, I describe only
103 truly intraexchange calling patterns here. Four potential network arrangements cover the
104 possibilities for local calling here:

105 1. Traditional local traffic originates and terminates on the PSTN, generally owned
106 and operated by the Incumbent Local Exchange Carrier ("ILEC"). This might be a call from an
107 AT&T customer to another AT&T customer to a reseller of AT&T network facilities. Chart 1 in
108 Attachment 1 shows a simple schematic diagram of such an exchange. Traditional local calls,
109 like all traditional calls, begin by routing a call from an originating customer's telephone over a
110 local loop to a PSTN local switch. As Mr. Hamiter correctly states, all AT&T local switches are
111 Time Division Multiplex ("TDM") switches (Hamiter Testimony p. 16). AT&T's TDM

switches cannot receive call traffic in IP format. As a result, all traditional local traffic both originates and terminates on TDM switches. The PSTN is a TDM based network.

2. Inter-LEC local traffic, a variation of traditional local traffic, is a local call that originates on the local network of a Competitive Local Exchange Carrier ("CLEC") and traverses an interconnection facility to the ILEC's network or vice versa. Inter-LEC local calls are generally exchanged by ILECs and CLECs over interconnection facilities established pursuant to the terms of Interconnection Agreements ("ICAs") entered into under the provisions of the Telecommunications Act ("TCA"). Like traditional local traffic, Inter-LEC local calls are carried in TDM format over the established interconnection facilities. Chart 2 in Attachment 1 shows the typical network architecture for the exchange of Inter-LEC local traffic. As AT&T recognizes, Global is a CLEC, and Global NAPs Ohio and AT&T Ohio have entered into an ICA in Ohio.

3. Local TDM to IP to TDM traffic. A third potential form of local traffic is traffic that both originates and terminates on the PSTN but is routed through an intervening ESP. AT&T apparently lumps TDM to IP to TDM traffic into the class of traditional local traffic. This is important because AT&T's principal argument in this case is that all or substantially all of the traffic that Global has sent to AT&T and that AT&T has billed as local traffic subject to reciprocal compensation payments is TDM to IP to TDM traffic. As AT&T knows, Global has no local end user customers and doesn't originate traffic in TDM format. Hence, it sends no "traditional" local traffic to AT&T.

TDM to IP to TDM local traffic is one of the classes of calls that could theoretically exist but, to the best of my knowledge, doesn't, because it makes no sense from either a cost or a network design perspective. By definition, this class of local call is initiated by a phone

company offering retail local service over a TDM-based switch. Also by definition, because this case is only about calls that terminate to AT&T local PSTN customers in Ohio, the call terminates to an AT&T local TDM switch. On the originating end, the local TDM switch might be owned by AT&T, either because the retail customer was purchasing AT&T local service or because the customer was purchasing retail service from a CLEC leasing switch capacity from AT&T. In either case, however, every call in such an arrangement will be transported directly from the originating AT&T switch to the terminating AT&T switch, perhaps passing through an AT&T tandem. As AT&T acknowledged in response to Global Request 15, AT&T local switches are not programmed to transmit locally dialed calls outside the PSTN. As a direct consequence, there is no way that a local call may be dialed into an AT&T-owned local switch and then be routed by that switch to Global.

The circumstances are essentially the same if the originating TDM switch is owned by a CLEC offering retail local service. The key fact here is that no locally dialed call initiated on a CLEC network can terminate to an AT&T local switch except by passing over an interconnection arrangement established by AT&T and another LEC and in TDM format. Hence, the originating CLEC has only two theoretical choices. It can enter into an interconnection arrangement directly with AT&T, and route all locally dialed calls from its TDM switch directly to the AT&T TDM network. This arrangement is described by Mr. Hamiter in Figure 4 of his testimony.

Alternatively, the CLEC could route the call from its TDM switch over transport facilities (either built by it or leased) to an ESP switch, where the signal can be converted to IP format. Then the call will need to be transported to an intermediate CLEC that has an interconnection arrangement with AT&T and that can convert the call back into TDM format. The call will then

158 travel over the intermediate LEC's interconnection arrangement with AT&T for termination.

159 This arrangement is presented in Chart 3 in Attachment 1.

160 Comparing Charts 2 and 3 shows that TDM to IP to TDM local traffic imposes
161 substantial needless costs on the originating LEC. In both the direct interconnection arrangement
162 and the interconnection through an ESP arrangement, some LEC must have an interconnection
163 agreement with AT&T and must construct facilities to transport calls between the AT&T and
164 CLEC networks in TDM format. With direct interconnection, however, there are no other
165 network costs. In contrast, if the CLEC elects to route TDM to TDM local calls through an IP
166 carrier, it must incur at least three other classes of costs; the cost of transporting the call to the
167 ESP, the cost of having the ESP convert the signal to IP and route it to an intermediate CLEC,
168 and the cost of have the signal reconverted to TDM. Yet it avoids none of the costs of direct
169 interconnection.

170 Moreover, the CLEC must also solve the problem of how to receive local calls
171 originating on the AT&T network and dialed to the CLEC's end user customers. As I have
172 discussed above, AT&T's local switches are programmed to route local calls directly, either to
173 other AT&T local switches or over a Point of Interconnection ("POI") with a CLEC to the
174 CLEC's local switch. In this arrangement, however, the CLEC would need to persuade AT&T
175 to route calls that AT&T switches recognize as "local" to a third party carrier which presumably
176 would have to pay to receive the traffic from AT&T to route the traffic to the CLEC TDM
177 switch. As a consequence, there is no reason a CLEC that chooses to build a TDM based
178 network to provide local exchange service would route locally dialed calls through an IP
179 switching system. I know of no carrier that does this.

181 **Q. Does AT&T agree with this analysis?**

182 A. It appears so. In response to a Global's discovery request, AT&T confirmed that the only
183 way a local call could originate on the PSTN, terminate on the PSTN to an AT&T local customer
184 and still be routed through an IP switch would be if the originating customer dialed the call using
185 a 1010NXX prefix; in short, converted the call from a local to an interexchange call by directing
186 that it be routed to an IXC. I can think of no reason why a customer would choose to do this
187 since it is both inconvenient and expensive. In any event, I do not believe that AT&T is
188 asserting that this traffic pattern is prevalent or even existent in the traffic actually exchanged
189 between AT&T and Global. For the same reason, I cannot think of a reason why a CLEC would
190 construct a TDM-based switching network and not interconnect with the ILEC and program its
191 switches to directly interconnect with the AT&T network to complete local calls. There simply
192 is not, to the best of my knowledge and belief, any TDM to IP to TDM local calls.

193 4. IP to PSTN calls. The fourth and last category of local calls is local traffic that
194 originates off the PSTN in Internet Protocol ("IP") format, which is then routed through an ESP
195 and, commonly, an intermediate CLEC to be converted to TDM format and terminated over an
196 interconnection facility to the ILEC's network. It is important to reiterate that calls that are
197 either originated or converted to IP format, *must* be reconverted into TDM format before the
198 ILEC switch will accept them for termination over the PSTN. Hence, while a TDM to TDM
199 local call doesn't need to be routed through an IP switch, an IP to TDM call must be routed to an
200 IP switch.

201 **Q. Does the Category of IP to PSTN local calls exist?**

202 A. Yes, such calls are usually called VoIP calls and originate from retail VoIP service
203 providers like Vonage, Packet 8 and many cable modem service providers like Comcast and

Time Warner. However, the designation of such calls as "local" is misleading. As one AT&T witness states, whether a traditional call is a local or an interexchange call can generally be determined by comparing the NPA-NXXs of the originating and terminating numbers. However, that methodology does not work reliably for IP initiated calls. IP calls can be, and often are routed from locations that are physically remote from the geographic location traditionally associated with the dialing number. Such traffic is called "nomadic." Nomadic IP-based calls are generally treated as a separate category of traffic, neither local nor interexchange, but simply called "VoIP." Carriers that negotiate ICA agreements regarding the proper treatment of VoIP calls routinely set rates for terminating VoIP traffic, both nomadic and fixed, without regard to definitions of local, intrastate or interstate.

Nevertheless, some VoIP calls do originate in locations that are in the same physical exchange as the customer receiving the calls and a VoIP retail service provider must construct a method for completing these calls. Unlike a TDM based local CLEC, however, the IP based VoIP provider cannot simply interconnect directly with AT&T to terminate calls because the AT&T TDM switches do not accept traffic in IP format.

A VoIP-initiated call does not begin in TDM format and is not sent over a local loop to a local TDM switch. Instead, it begins in IP format, is carried over a broadband facility such as DSL or cable modem service and may be routed to an IP switch several states away from either its origination or termination point. Because IP technology permits calls to travel over the internet to locations far more remote than local switches providing TDM service, call routing of IP calls pay no attention to local network architecture.

Furthermore, many retail providers of VoIP service have few network facilities of their own. It is therefore common for VoIP carriers to lease network and switching facilities from two

or three categories of carrier in order to complete any one call. First, some VoIP carriers purchase transport facilities to get traffic to the ESP providing IP switching facilities.

Alternatively, the VoIP company can simply route traffic directly to the ESP over the internet.

Second, the VoIP provider will lease switching capability from an ESP. Among the ESPs that provide IP switching are Transcom, CommPartners and Point One. The ESP may enhance the signal or provide other services to its retail VoIP customer.

In all cases, however, the ESP, either on its own initiative or pursuant to routing instructions from its customer, will determine a route for terminating the call, usually sending it to an intermediate carrier that has an interconnection arrangement with the ILEC serving the end user receiving the call. The intermediate carrier receives the traffic from the switching carrier either in TDM or IP format. It converts the signal to TDM if necessary, and routes it over its own interconnection facilities to the local carrier serving the customer receiving the call. Chart 4 in Attachment 1 shows a typical arrangement for completing a local call that originates on a VoIP network.

Q. Can you summarize your analysis of the types of local traffic raised by Mr. Hamiter's testimony?

A. Yes. Mr. Hamiter's testimony implies, but does not actually state, that there are four types of local calling: 1) Traditional TDM-based calls on the AT&T network; 2) TDM-based calls exchanged between CLEC and ILECs in TDM format over interconnection facilities; 3) TDM to IP to TDM calls, which Mr. Hamiter apparently lumps into the traditional TDM call baskets; and 4) IP to TDM calls. In fact, there are only three categories. There is no such thing as a TDM to IP to TDM call.

The sole role that Global plays in the termination of voice traffic is that of an intermediate CLEC carrying traffic sent to it by ESPs. It, therefore, not only does not, but cannot carry “traditional” local traffic. Put simply, the category of PSTN originating local traffic that is terminated through Global NAPs is a null set. There is no such traffic. VoIP is the only local traffic that needs either an ESP to perform switch conversions or for an intermediate LEC to terminate the calls. It is the type of “local” traffic that Global sends to AT&T.

LONG DISTANCE TRAFFIC

Q. What is “traditional long distance traffic?”

Mr. Hamiter uses the term “traditional long distance traffic,” but he does not clearly define what he means by this (Hamiter Testimony p. 4). Just as is the case with local traffic there are several possible network arrangements for the transport and termination of interexchange, or “long distance,” traffic.

1. Traditional Long Distance

Traditionally, long distance traffic was initiated on the PSTN of an incumbent local carrier. After passage of the Telecommunications Act, it might also be initiated by a customer of a facilities-based CLEC. In either case, a call is then handed off to an IXC. Most commonly, the IXC is pre-selected by the customer originating the call as its “Primary Interexchange Carrier” or “PIC.” In some cases, however, the IXC carrying the call is dialed using a specialty code such as 1010NXX. In either case, the local carrier routes the originated call to the IXC selected by the calling party over FGD trunks to the IXC’s local Point of Presence (“POP”). The IXC then carries the traffic from its local POP to a POP in the LATA of the customer to whom the call is directed. The IXC then sends the call over a FGD trunk to the local carrier network, for delivery to the called party. The traffic then remains in TDM format throughout. In general, the IXC

pays originating and terminating switched access charges (interstate or intrastate depending on the characteristics of the call) and recovers its costs in retail toll charges that it receives from the originating end user that selected it to carry the long distance toll call. Chart 5 in Attachment 1 describes such an arrangement.

2. ESP-routed PSTN to PSTN interexchange traffic

A different type of long distance traffic is traffic that originates and terminates on the PSTN, but is routed through the switching facilities of an Enhanced Service Provider ("ESP") in between. There are at least two architectural differences between ESP-routed PSTN to PSTN calls and traditional long distance calls. The first is that an ESP routed call goes through a switching function that a TDM routed call does not. The call, if originated on the PSTN, will be converted to IP format. At that time, the call may be modified or enhanced by the ESP performing the conversion. While the types of enhancements that might occur depend on the services offered by the ESP and those selected by the IXC sending the call to it. Further, regardless of whether or how enhanced, the call must then be converted from IP format back to TDM format for termination. This conversion commonly adds another player into the transmission path; an intermediate LEC. Intermediate LECs may perform the IP to TDM conversions or they may be performed for them in advance by the ESP sending them traffic. In either case, the intermediate LEC has an interconnection arrangement with the terminating LEC and has interconnection facilities for transferring the terminating traffic to the terminating LEC. The FCC has recognized that intermediate carriers play a critical role in the handling of VoIP traffic. Among the carriers providing intermediate carrier services in Ohio are Global NAPs, Level 3, Transcom, Qwest and AT&T itself.

294 Thus, while a typical "traditional" long distance call has only three participants, ESP-
295 routed PSTN to PSTN calls usually have at least five companies involved in the transport of a
296 call: originating and terminating LECs, an IXC, an ESP and an intermediate LEC. Chart 6 in
297 Attachment 1 shows a typical ESP-routed PSTN to PSTN calling arrangement. There are
298 occasionally fewer participants in these calls, as, for example, when the ESP is also an
299 intermediate CLEC, but there are also cases where there are more than five participants.

300 3. IP to PSTN Long Distance Calls

301 Finally, there is traffic that originates off the PSTN in IP format and is converted to TDM
302 format to be terminated on the PSTN (e.g., Vonage-type traffic, or traffic from cable providers
303 like Time Warner and Comcast). An IP to PSTN long distance call as represented in Chart 7 of
304 Attachment 1, looks exactly like an IP to PSTN local call as represented in Chart 4. Internet
305 Telephony network architecture pays little attention to the points of origination and termination
306 because it is far less distance sensitive than is TDM-based telephony.

307 Unlike ESP-routed PSTN to PSTN calls, IP-initiated calls are not originated in TDM
308 format, are not carried over local PSTN network facilities and are not sent to IXCs. Like IP-
309 routed PSTN to PSTN calls, however, IP-initiated calls are sent to an ESP that may perform
310 enhancements on the call, and that will route the call to an intermediate LEC for termination over
311 interconnection facilities to the terminating LEC's end user customer.

312 **TYPES OF CALLS IN THE TMRs**

313 **Q. Do the TMRs Capture "Traditional Long Distance Calls"?**

314 A. Despite Mr. Hamiter's statement to the contrary, the answer is "no." While Mr. Hamiter
315 refers to the calls studied in its TMRs as "traditional long distance," that is apparently a legal
316 conclusion, not a description of the actual routing patterns for this traffic. As I have shown

317 above, there are significant differences between the switching and routing of traditional long
318 distance calls and the switching and routing of ESP-routed PSTN to PSTN long distance calls.
319 The attorneys can argue about whether the two traffic categories are subject to the same legal
320 treatment, but they are not the same traffic routing arrangements. The calls captured in the
321 TMRs are all ESP routed calls, and this is not the traditional network architecture of long
322 distance traffic.

323 **Q. What did AT&T miss?**

324 A. The TMRs discussed in Mr. Hamiter's testimony only identify a group of calls that were
325 terminated by Global to AT&T local customers and that were originated on the AT&T network.
326 For each call, AT&T identifies the Carrier Identification Code ("CIC") for the IXC to whom the
327 call was routed. However, AT&T stops its analysis there. It apparently made no effort to
328 determine who the IXC was, how it routed the call once it received it, what was done to the call
329 en route or how the call got to Global. This should have been important to AT&T because the
330 one thing it knew for certain was that these were *not* "traditional long distance calls." Traditional
331 long distance calls would have been routed to an IXC POP and then delivered from that POP
332 directly back to AT&T over FGD trunks. They would never have been routed to an ESP and
333 would never have been routed to an intermediate LEC like Global. These calls, as AT&T knew
334 because it is the basis of its complaint, were somehow delivered to Global, who routed them to
335 AT&T over its interconnection facilities with AT&T. Moreover, AT&T's experience in other
336 cases, including cases involving Global and cases involving Global's ESP customers, would
337 have led AT&T to understand that these calls had passed through the switching networks of
338 ESPs, which are the only customers that Global serves. AT&T knew, for example, that Global is
339 not an IXC and has no end user customers. AT&T knew that none the calls that originated on its

network were sent directly to Global and AT&T's own study reflects that fact. Yet AT&T declined to determine who was sending these PSTN originated calls to Global and how they were being routed.

As is discussed more fully in the accompanying testimony of Mr. Masuret, Global has attempted in this proceeding to fill in some of the blanks of AT&T's incomplete analysis in the TMRs. His analysis demonstrates important facts about both the local market and about the long distance market. In summary, Mr. Masuret demonstrates that all or substantially all traffic that Global delivers to AT&T and that AT&T characterizes as "local" is, in fact, VoIP traffic. Global has no TDM based local traffic because it has no end user customers. Global does not handle TDM to IP to TDM traffic because TDM to IP to TDM traffic does not exist. That leaves only VoIP, which is what Global carries to terminate with AT&T.

With respect to long distance, Mr. Masuret provides information regarding how traffic identified by AT&T in its TMRs gets from the IXC's to whom AT&T sends the traffic to Global. His findings show that this traffic is sent to ESP's who enhance it, and then send it on to intermediate LEC's like Global for termination. Mr. Masuret demonstrates that AT&T itself both functions as an intermediate LEC in direct competition with Global and that, when it does compete for the right to terminate this type of traffic, it treats the traffic exactly as Global treats it; as enhanced information traffic, not telecommunications.

Q. Can you apply this analysis to the Hamiter Testimony and TMRs?

A. The first and most obvious flaw in the AT&T analysis is AT&T failed to measure its count of PSTN-originated calls against the universe of all calls that Global sent it for termination. It thereby failed to report that less than 1% of the calls it was receiving from Global began on the AT&T PSTN.

AT&T's second obvious flaw is that, even as to PSTN-originated traffic, it studied traffic in the wrong market. AT&T's principal damage claim in this proceeding seeks the payment of reciprocal compensation for the termination of "local" traffic (AT&T Complaint at para. 30). AT&T has not brought a claim for access charges for interexchange traffic. However, the study conducted under Mr. Hamiter's supervision studied *only* interexchange traffic and, apparently deliberately, excluded all local traffic. The AT&T Summary Reports and Raw Data confirm that *all* of the traffic captured in the AT&T TMRs was interexchange traffic and none of it was local. Indeed, the study was *designed* to exclude local traffic. The only document that AT&T disclosed discussing the origin and methodology underlying the creation of these Reports states that it was "designed to determine if any traffic coming over UTEX's interconnection trunks was in fact FGD originated. . ." Of course, "FGD originated" calls are not local calls. Hence, the AT&T Reports provide no evidence at all about whether traffic that AT&T identifies as local (by looking at the originating NPA-NXX) was or was not initiated on a TDM switch instead of a VoIP broad band facility.

Because Mr. Hamiter never discusses the distinction between local and FGD traffic, he never offers any analysis regarding why the study of interexchange traffic should be read as evidence that the AT&T-designated "local" calls were not VoIP calls. As I have shown above, however, the distinctions between local and interexchange traffic are numerous and critical. Most obviously, an interexchange call involves a third party between the originating and terminating CLECs. The IXC both has the ability to designate how a call sent to it is routed for termination and an economic interest in deciding which of several possible routes and routing technologies meet its business needs. This is what Sage does, and it is the only way that a call originated on the PSTN can reach Global for termination to a party on the PSTN.

386 There is no comparable independent third party intervening in a local PSTN to PSTN
387 call. No TDM switch would route a locally dialed call to an IXC and no TDM switch would
388 route a locally dialed call to an intermediate IP switching company. As a consequence, there are
389 no TDM originated local calls in the universe of calls that Global has delivered to AT&T. There
390 are only IP originated local calls, otherwise known as VoIP.

391 To further confirm this point, Global asked AT&T to “describe all known routing
392 arrangements by which a call could originate on the AT&T Ohio public switched telephone
393 network, terminate on the public switched network to an AT&T local customer in the same local
394 calling area, and be routed to Global NAPs Ohio in between.” (AT&T Discovery Request 1-15).
395 In response, AT&T replied that the only method it could think of to route a call in this manner
396 would be “if a customer dials 1010XXX to place a local call. . .” The answer is technically
397 correct but obviously commercially irrelevant. Consumers don’t dial extra digits in order turn
398 low cost local calls into high cost, long distance calls. As noted, Mr. Hamiter confirms that no
399 such calls were found in AT&T’s TMRs.

400 Finally, Mr. Masuret did what AT&T declined to do. He looked at a sample of data on
401 calls that AT&T would define as “local.” He found, as I would expect, that calls originated
402 almost exclusively from known VoIP providers or providers of phone numbers and DID trunks
403 to VoIP providers. Among the carriers found in Mr. Masuret’s study was Broadwing, Level 3,
404 Global NAPs and AT&T itself. Indeed, AT&T sent Global nearly 8% of the “local” calls that
405 Global terminated back to AT&T. For the reasons I have explained above, none of these AT&T
406 calls were, or could have been “traditional” AT&T local traffic. They were AT&T VoIP or VoIP
407 traffic of carriers purchasing numbers from AT&T.

409 **CONCLUSION**

410 **Q. Does this conclude your testimony?**

411 **A. Yes it does.**

412

413 ND: 4835-4343-2708, v. 2

J. Noack Attachment 1

Chart 1 – ILEC Local Call

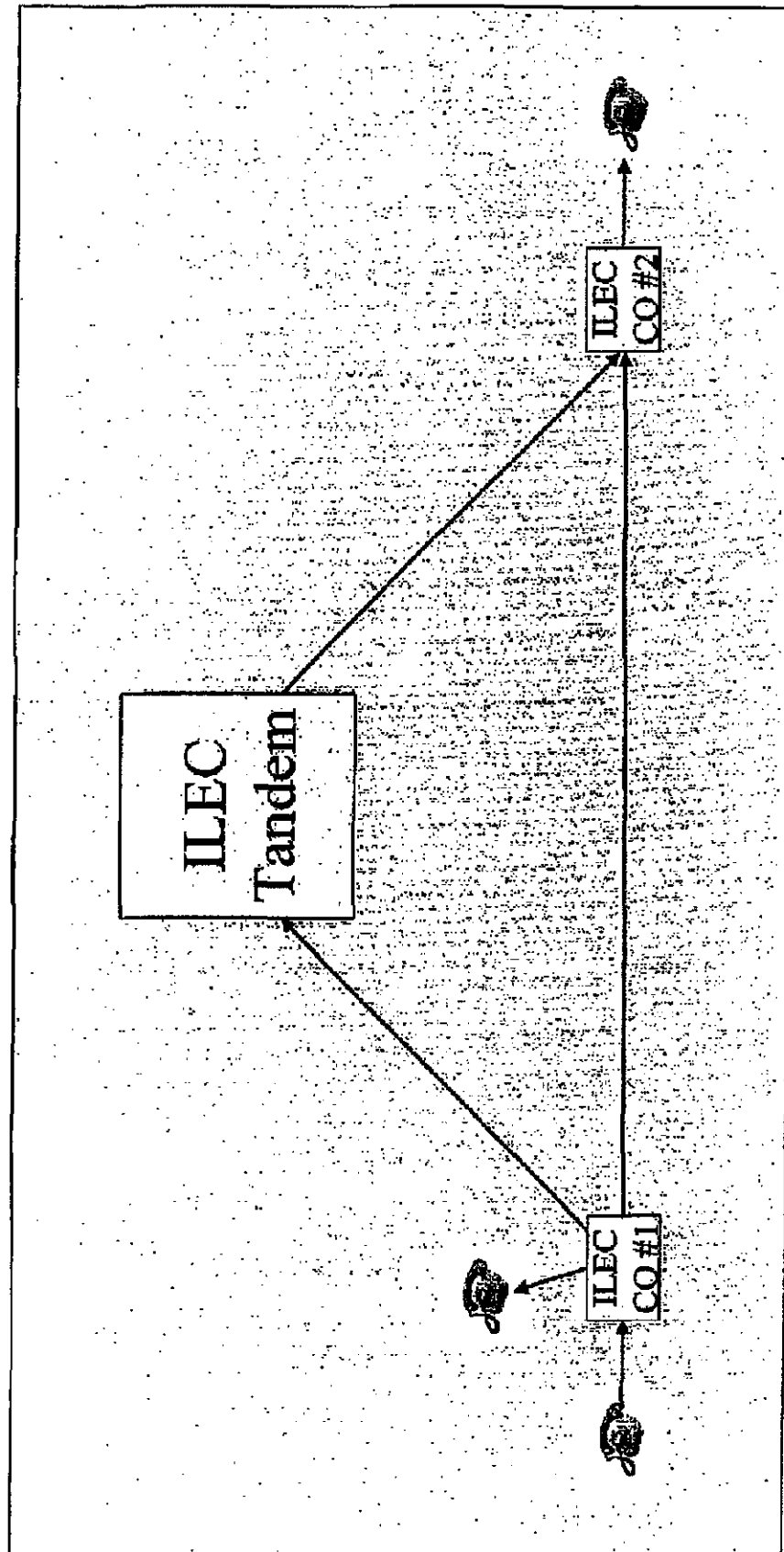


Chart 2 – CLEC to ILEC Local Call

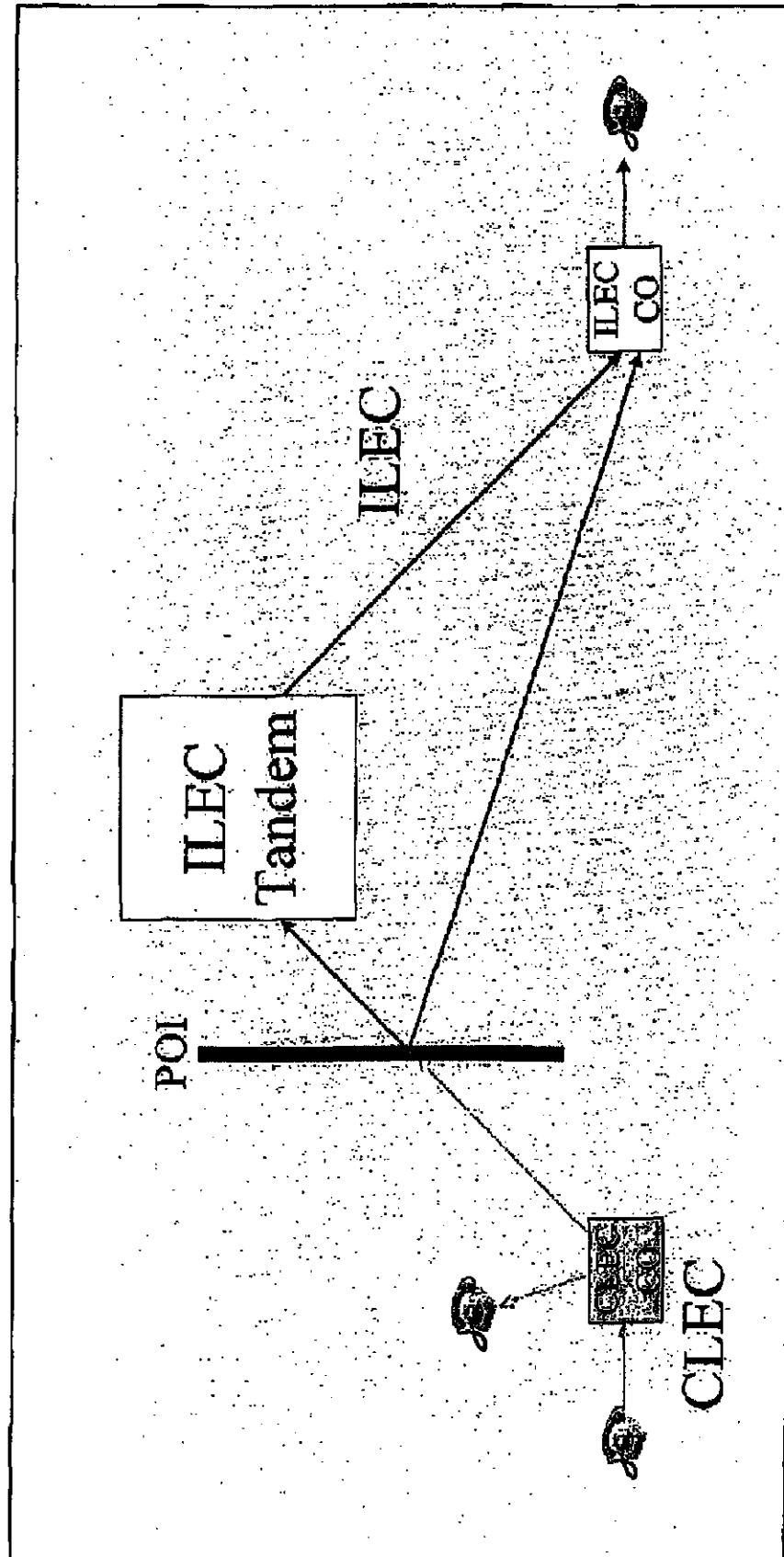


Chart 3 – ESP Routed PSTN to PSTN Local Call

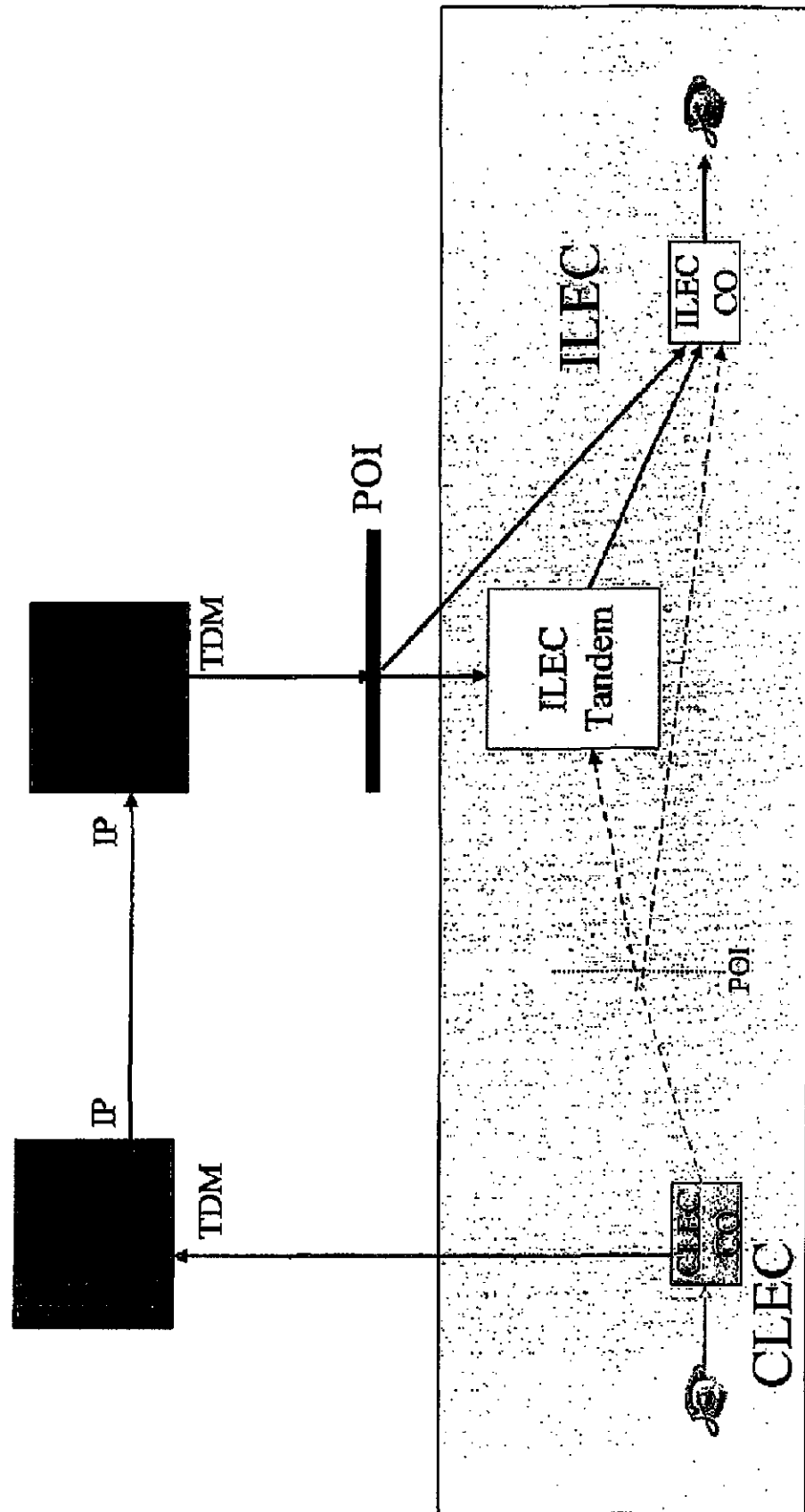


Chart 4 – IP to PSTN Local Call

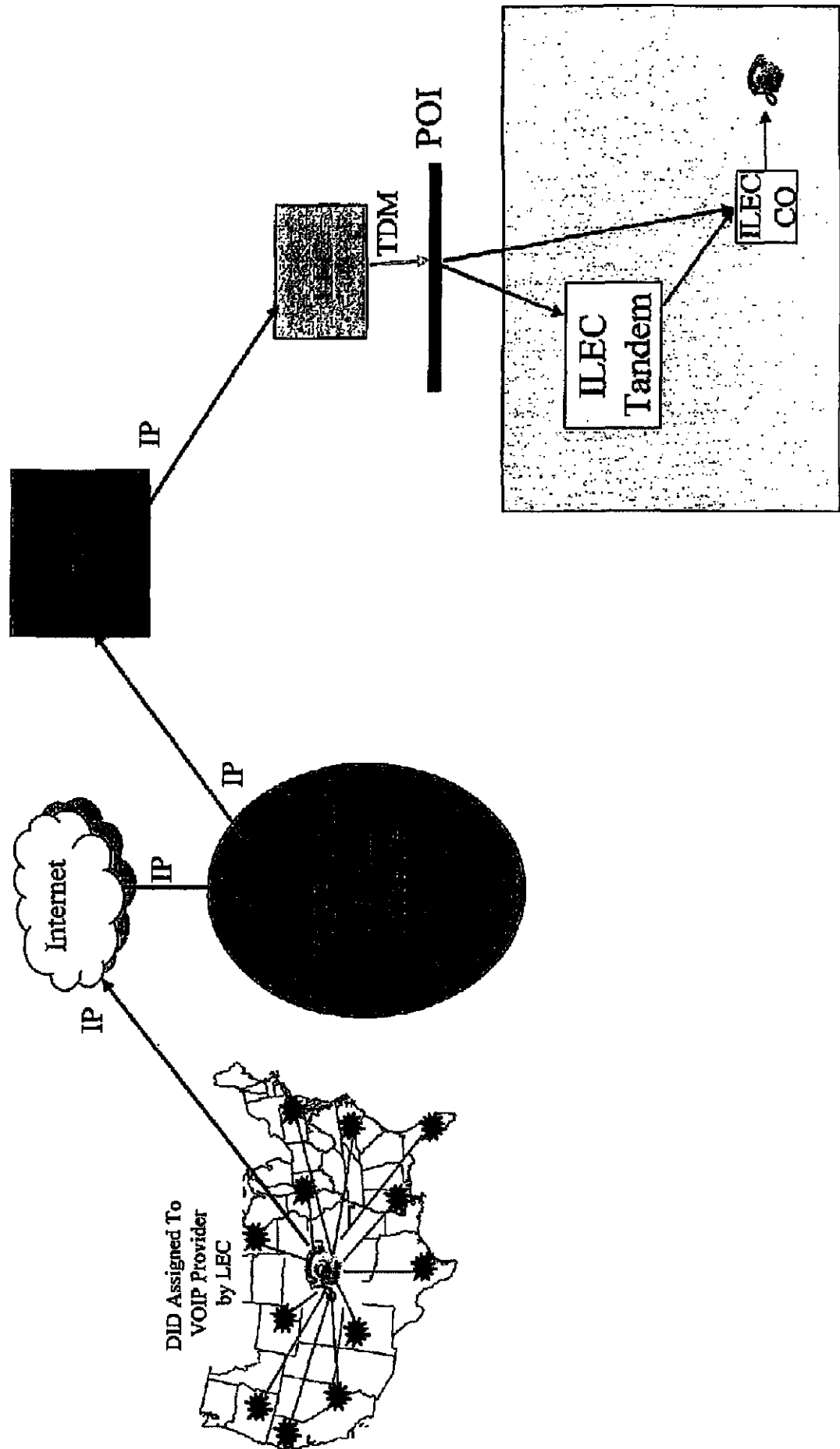


Chart 5 – Traditional Long Distance Call

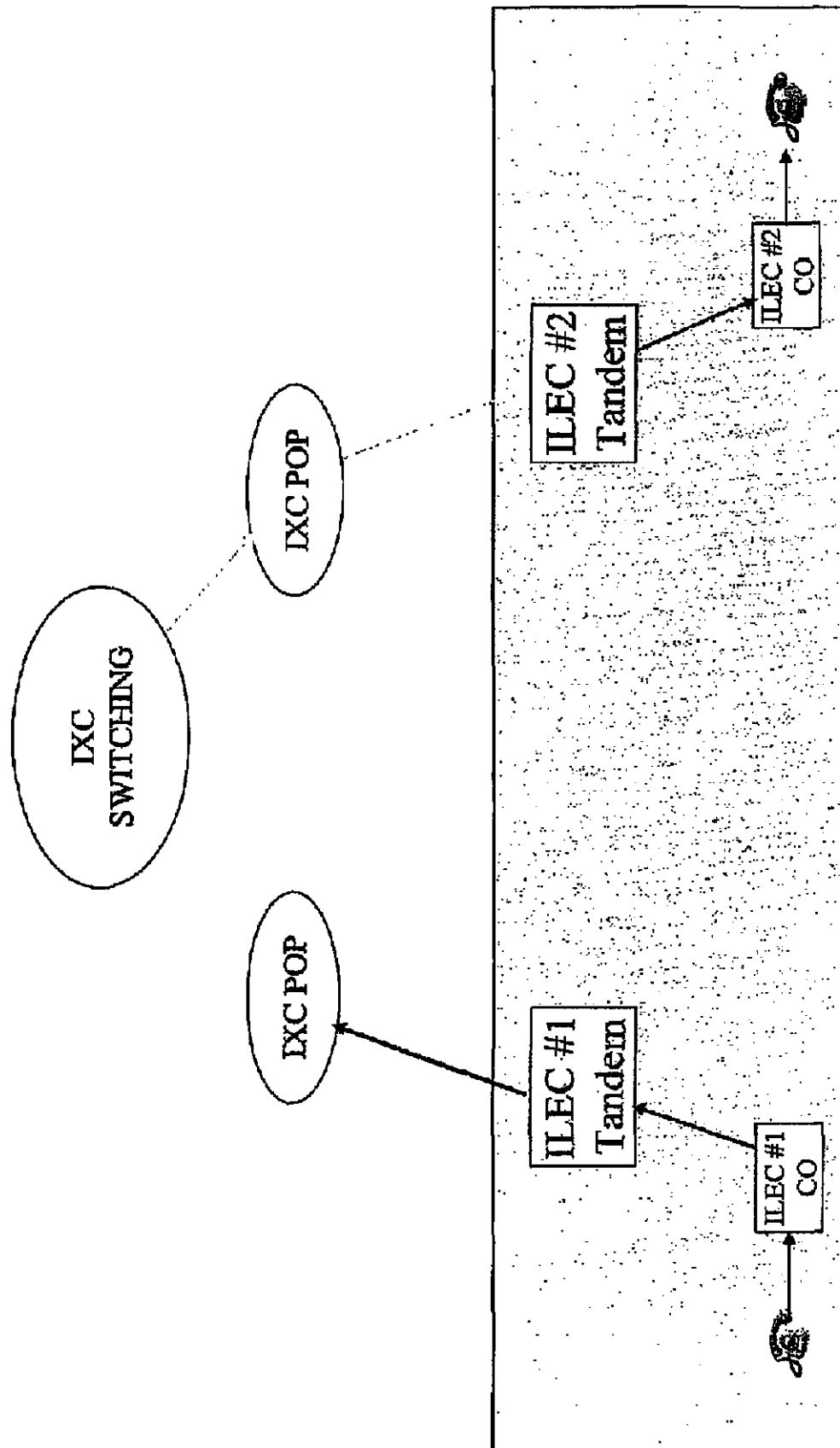


Chart 6 – ESP Routed PSTN to PSTN Long Distance Call

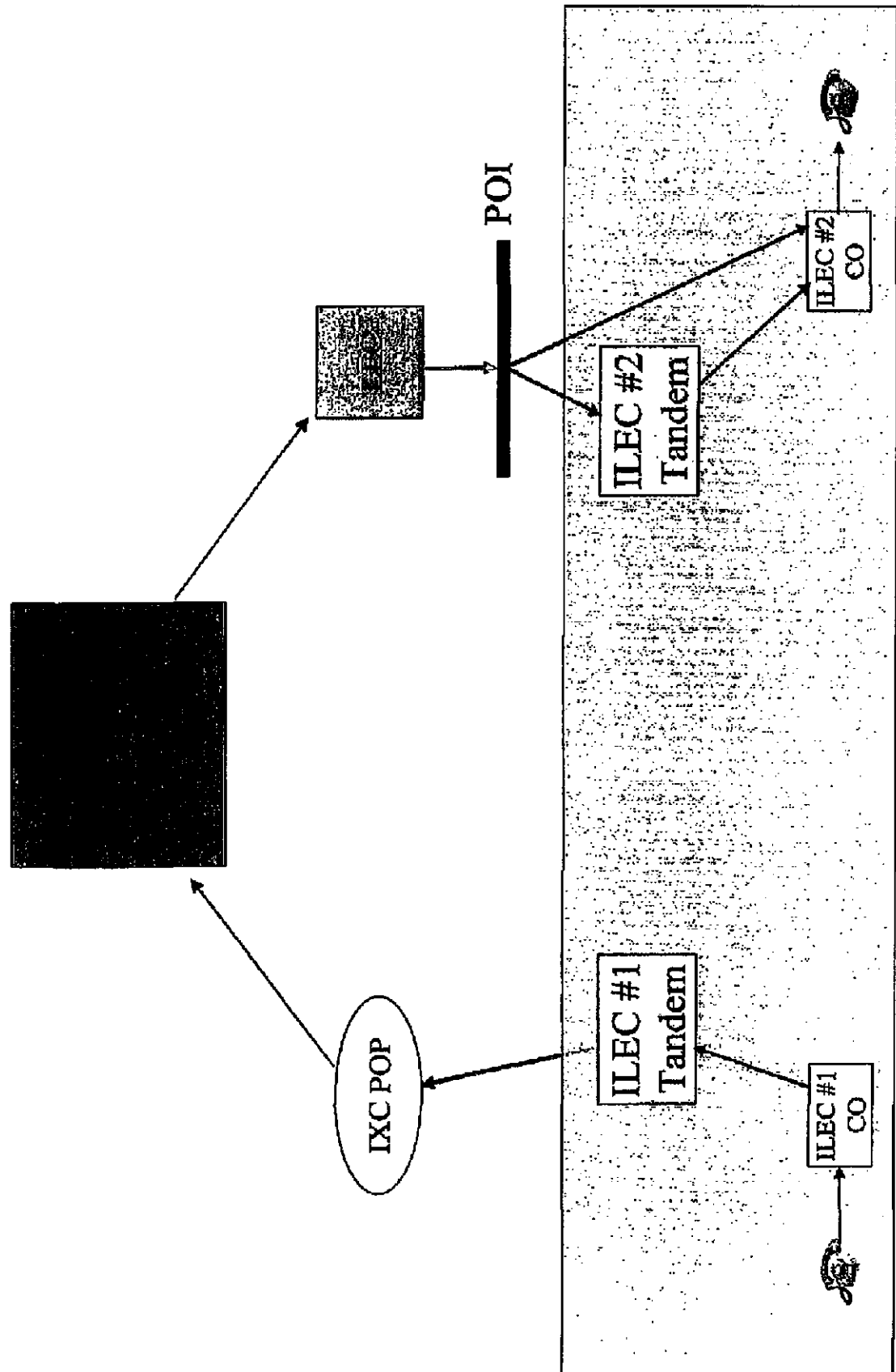
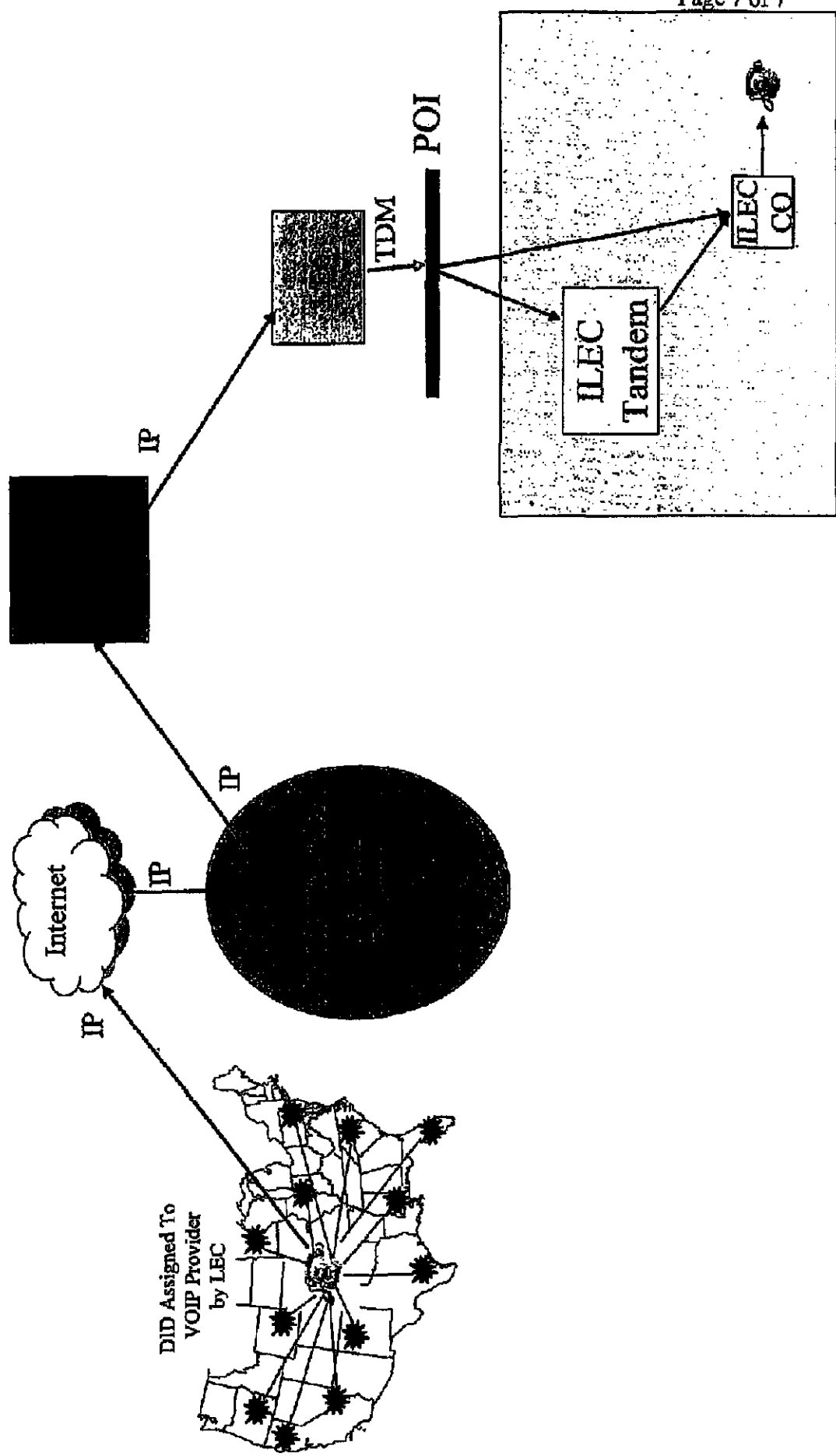


Chart 7 – IP to PSTN Long Distance Call



080545 ORIGINAL

FLORIDA PUBLIC SERVICE COMMISSION

DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT

APPLICATION FORM

for

DEPOSIT DATE
863 - AUG 14 2008

AUTHORITY TO PROVIDE COMPETITIVE LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANY SERVICE
WITHIN THE STATE OF FLORIDA

CK# 1159
\$ 400.00
8-13-08
RT

Instructions

- A. This form is used as an application for an original certificate and for approval of sale, assignment or transfer of an existing certificate. In the case of a sale, assignment or transfer, the information provided shall be for the purchaser, assignee or transferee (See Page 8).
- B. Print or type all responses to each item requested in the application. If an item is not applicable, please explain.
- C. Use a separate sheet for each answer which will not fit the allotted space.
- D. Once completed, submit the original and two (2) copies of this form along with a non-refundable application fee of \$400.00 to:

Florida Public Service Commission
Division of the Commission Clerk and Administrative Services
2640 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6770

- E. A filing fee of \$400.00 is required for the sale, assignment or transfer of an existing certificate to another company (Chapter 25-24.815, F.A.C.).

- F. If you have questions about completing the form, contact:

Florida Public Service Commission
Division of Competitive Markets and Enforcement
2640 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6600

COM
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RCP
SSC
SGA
ADM
CLK

FORM PSC/CMP-3 (01/96)
Required by Commission Rule Nos. 25-24.810,
and 25-24.815

Note: To complete this interactive form
using your computer, use the tab key
to navigate between data entry fields.

DOCUMENT NUMBER - DATE
07219 AUG 13 08
FPSC-COMMISSION CLERK

1. This is an application for (check one):

☒ Original certificate (new company).

☐ Approval of transfer of existing certificate: Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority rather than apply for a new certificate.

☐ Approval of assignment of existing Certificate: Example, a certificated company purchases an existing company and desires to retain the existing certificate of authority and tariff.

2. Name of company: Clective Telecom Florida, LLC

3. Name under which applicant will do business (fictitious name, etc.):

SAME AS ABOVE

4. Official mailing address:

Street/Post Office Box: 2090 Dunwoody Club Drive Suite 108-257
City: Atlanta
State: GA
Zip: 30350

5. Florida address:

Street/Post Office Box: 300 Fifth Ave South Suite 101-330
City: Naples
State: FL
Zip: 34102

6. Structure of organization:

☐ Individual
☐ Foreign Corporation
☐ General Partnership
☐ Other,

☒ Corporation
☐ Foreign Partnership
☐ Limited Partnership

7. **If individual**, provide:

Name:
Title:
Street/Post Office Box:
City:
State:
Zip:
Telephone No.:
Fax No.:
E-Mail Address:
Website Address:

8. **If incorporated in Florida**, provide proof of authority to operate in Florida. The Florida Secretary of State corporate registration number is: L08000049129
9. **If foreign corporation**, provide proof of authority to operate in Florida. The Florida Secretary of State corporate registration number is:
10. **If using fictitious name (d/b/a)**, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida. The Florida Secretary of State fictitious name registration number is:
11. **If a limited liability partnership**, please proof of registration to operate in Florida. The Florida Secretary of State registration number is:
12. **If a partnership**, provide name, title and address of all partners and a copy of the partnership agreement.

Name:
Title:
Street/Post Office Box:
City:
State:
Zip:
Telephone No.:
Fax No.:
E-Mail Address:
Website Address:

13. **If a foreign limited partnership**, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable. The Florida registration number is:

14. Provide F.E.I. Number(if applicable): 26-3114389

15. Who will serve as liaison to the Commission in regard to the following?

(a) The application:

Name: Evan Katz
Title:
Street name & number: 2090 Dunwoody Club Drive Su 106-257
Post office box:
City: Atlanta
State: GA
Zip: 30350
Telephone No.: 404-537-0101
Fax No.: 877-865-4882
E-Mail Address: ekatz@clective.com
Website Address: www.clective.com

(b) Official point of contact for the ongoing operations of the company:

Name: Evan Katz
Title: Director
Street name & number: 2090 Dunwoody Club Drive Suite 106-257
Post office box:
City: Atlanta
State: GA
Zip: 30350
Telephone No.: 404-272-0445
Fax No.: 877-865-4882
E-Mail Address: ekatz@clective.com
Website Address: www.clective.com

(c) Complaints/Inquiries from customers:

Name: Evan Katz
Title: Director
Street/Post Office Box: 2090 Dunwoody Club Drive Suite 106-257
City: Atlanta
State: GA
Zip: 30350
Telephone No.: 404-272-0445
Fax No.: 877-865-4882
E-Mail Address: ekatz@clective.com
Website Address: www.clective.com

16. List the states in which the applicant:

(a) has operated as a Competitive Local Exchange Telecommunications Company.

Georgia

(b) has applications pending to be certificated as a Competitive Local Exchange Telecommunications Company.

N/A

(c) is certificated to operate as a Competitive Local Exchange Telecommunications Company.

Georgia

(d) has been denied authority to operate as a Competitive Local Exchange Telecommunications Company and the circumstances involved.

NO

(e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

NO

(f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

NO

17. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent (and not had his or her competency restored), or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, provide explanation.

NO

(b) granted or denied a competitive local exchange certificate in the State of Florida (this includes active and canceled competitive local exchange certificates). If yes, provide explanation and list the certificate holder and certificate number.

NO

(c) an officer, director, partner or stockholder in any other Florida certificated or registered telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

NO

18. Submit the following:

(a) Managerial capability: resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.

(b) Technical capability: resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

(c) Financial Capability: applicant's audited financial statements for the most recent three (3) years. If the applicant does not have audited financial statements, it shall so be stated. Unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet,
2. income statement, and
3. statement of retained earnings.

Note: This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.

THIS PAGE MUST BE COMPLETED AND SIGNED

REGULATORY ASSESSMENT FEE: I understand that all telephone companies must pay a regulatory assessment fee. Regardless of the gross operating revenue of a company, a minimum annual assessment fee, as defined by the Commission, is required.

RECEIPT AND UNDERSTANDING OF RULES: I acknowledge receipt and understanding of the Florida Public Service Commission's rules and orders relating to the provisioning of competitive local exchange telecommunications company (CLEC) service in Florida.

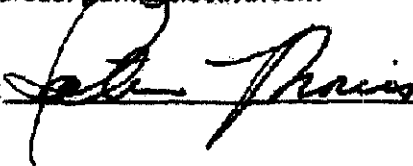
APPLICANT ACKNOWLEDGEMENT: By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide competitive local exchange telecommunications company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

Company Owner or Officer

Print Name: Patricia Morris
Title: President
Telephone No.: 404-788-8048
E-Mail Address: pam@clective.com

Signature: _____



Date: _____

8/12/08

Clective Telecom Florida, LLC Management/Technical Capabilities

Management Capabilities

Patricia Morris – Serves as the President of Clective GA, Inc., a facilities based Georgia CLEC. In addition she also serves as Director of Customer Relations.
Years of Experience: 20

Brad Mondschein – Formerly served as inhouse counsel for an RBOC with responsibilities of negotiating the first interconnection agreement with CLECs. Currently Brad serves as Director of Regulatory Affairs and General Counsel for Clective GA, Inc. (Total Years of Experience: 15)
Years of Experience: 15

Technical Capabilities

Evan Katz – Worked several years for multiple CLECs maintaining the telephone network infrastructure from operating the telephonic switch to managing the transport network. Evan has built out several facilities based data and telecom networks for various ISP's. Currently Evan serves as the Director of Network and Switch Engineering for Clective GA, Inc.
Years of Experience: 20

Joseph Nichols – Worked for RBOC for 26 years as a network engineer and served in a regulatory capacity responsible for CLEC's. Currently Joseph serves as Director of Carrier Interconnection for Clective GA, Inc.
Years of Experience: 35

Hal Finkel – Worked for several ISPs and CLECs. Hal's expertise spans from Software Engineering to SS7 network implementation and design. Currently Hal servers as Director of Software Engineering and SS7 network integration for Clective GA, Inc.
Years of Experience: 12

Alex Balashov – Worked for several different CLECs and Telecommunications Companies. Alex is A specialist in VoIP platform and application engineering, telecommunications systems integration, and carrier CDR/billing mediation. Currently Alex serves as Director of Systems Engineering for Clective GA, Inc.
Years of Experience: 5

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

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BRAD N. MONDSCHN, ESQ.
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February 19, 2009

Michael M. Turbes, Esq, (via email michael.turbes@att.com)
General Attorney
AT&T Services, Inc.
Legal Department
675 West Peachtree St., NE
Suite 4213
Atlanta, GA 30375-0001

Re: CLECTIVE, GA, Inc. and CLECTIVE Telecom Florida, LLC

Dear Mr. Turbes:

I am in receipt of your letter dated February 17, 2009 directed to CLECTIVE GA, Inc. and CLECTIVE Telecom Florida, LLC. CLECTIVE has asked me to respond to your letter. While CLECTIVE believes that it is entirely inappropriate for AT&T to require CLECTIVE to respond to the questions, CLECTIVE is doing so with the expectation that its interconnection agreement will be expedited once the responses are received. In response to your questions, CLECTIVE states the following:

1. CLECTIVE is not associated or affiliated with any of the entities listed in Question #1. CLECTIVE is 100% owned and operated by Ms. Morris.
2. See Answer to #1.
3. Mr. Noack has been retained by CLECTIVE as a consultant relating to network architecture and interconnection issues. Mr. Noack has been associated with CLECTIVE for approximately three years and is an independent contractor. While CLECTIVE utilizes Mr. Noack's expertise in a variety of ways, CLECTIVE relies upon its legal counsel for compliance with state and federal regulations.
4. Mr. Noack and Mr. Nichols are indeed the same person. Mr. Noack utilizes the alias Joseph Nichols because of the extreme prejudice that Mr. Noack believes would be associated with his employment at GlobalNaps.

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

Page 2

5. CLECTIVE GA and CLECTIVE Telecom Florida are 100% owned by Ms. Morris. Ms. Morris and myself (Brad Mondschein) are officers of CLECTIVE GA. Ms. Morris is the sole member of CLECTIVE Telecom Florida. After searching the Georgia PSC website, it does not appear that Exhibits A and B were filed with the CLEC certificate application. However, Ms. Morris is the sole stockholder of CLECTIVE and the sole Board member.

6. CLECTIVE GA will rely on its revenues from Georgia for payment of its debts while CLECTIVE Telecom Florida will rely on its revenues from Florida for payment of its debts. In addition, to the extent that Ms. Morris invests capital into either of these companies, such capital may be used to pay debts as well as purchase equipment.

This letter should satisfy your inquiry. We expect that the fully executed Interconnection Agreement will be forwarded to Ms. Morris and filed with the Florida and Georgia PSCs immediately.

Sincerely,



Brad N. Mondschein, Esq.

cc: Patricia Morris

Hartford/72618.1/BMONDSCHN/353390v1

FILE

AT&T Cross Ex. No. 3

17

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of AT&T OHIO :

Complainant,

Case No. 08-690-TP-CSS

v.

GLOBAL NAPS OHIO, Inc.,

Respondent.

PUCO

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GLOBAL NAPS OHIO, INC.'S RESPONSE TO AT&T'S
REPLY TO MOTION TO COMPEL

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Attorney for Global NAPS Ohio, Inc

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of AT&T OHIO :

Complainant,

v.

Case No. 08-690-TP-CSS

GLOBAL NAPS OHIO, Inc.,

Respondent.

**GLOBAL NAPS OHIO, INC.'S RESPONSE TO AT&T'S
REPLY TO MOTION TO COMPEL**

Introduction

The dictionary defines "coherence" as "the property of unity in a written text or a segment of spoken discourse that stems from the links among its underlying ideas and from the logical organization and development of its thematic content." The concept is of obvious utility in this litigation in at least two ways. First, an argument that is not coherent is unlikely to be valid, while its conclusions are unlikely to be proven or even to be true. Second, and perhaps more subtly, an argument that is incoherent and that stays incoherent even after challenge and an opportunity to clarify or cure the incoherency is probably incoherent for a reason. The reason for the incoherence is often that a coherent argument is unsustainable, and incoherence is the best defense available to the party.

Is the traffic Global sends to AT&T "local" or VoIP? AT&T began this case by asserting that the local traffic that Global sends to it is not VoIP. In support of this assertion, AT&T conducted a study – apparently undertaken just for use in this litigation

– of the toll market. AT&T asserts that this study of the toll market, supports its claim for reciprocal compensation for the transport and termination of local traffic.

Since then, and despite repeated opportunities to correct or improve the record by offering or disclosing data on local traffic, AT&T has assiduously avoided doing so. Indeed, as became clear in the telephone conference of last week, AT&T appears to have played more than a little fast and loose with the facts in order to avoid perfectly ordinary and proper discovery that, one way or another, would make this case clearer and more coherent.

Request 1-1

Request 1-1 asked AT&T to produce, among other things, memoranda and email referring or relating to the three minute reports. AT&T asserts in its Opposition that this issue is now moot because “after a reasonable search and inquiry, AT&T Ohio has produced *all* documents responsive to Request 1-1.” This statement is false. Instead, as it has explained more accurately in its Amended Response to this Request, AT&T claims to have “produced all *nonprivileged* documentation” responsive to Request 1-1. At this date, however, we have no idea what documents are claimed to be privileged, how many documents exist or whether any claims of privilege are sustainable. Indeed, we don’t know if there is one document or one hundred. Since AT&T’s initial discovery responses denied the existence of any such documents at all, the issue is of more than passing interest. Global reserves the right to pursue this issue further when AT&T finally produces a privilege log – as it was obligated to do in the first place.

Request 1-2

This request seeks information on three minute reports prepared with respect to CLECs other than Global NAPs. AT&T has refused to produce such data – except in one anomalous case. AT&T asserts that the request is irrelevant to this proceeding. Plainly it is not. The Ohio Rules of Evidence Define "Relevant Evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Also, discovery is permissible if it leads or might reasonably be expected to lead to relevant evidence. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.¹ In this case, AT&T has created an ad hoc study, explicitly claimed not to be generated out of its ordinary billing records or otherwise in the ordinary course of business, to attempt to prove facts that AT&T believes are relevant to this case. AT&T has represented that the studies done with respect to others use the same methodology as the study it has done with respect to Global Ohio. Global is plainly allowed to explore the quality of that methodology. AT&T admits that it did not use its reports with respect to other CLECs in litigations against them. Why? It is "reasonably likely" that there was a reason for this, and that reason might be probative of the relevance or accuracy of AT&T's study in this case. The relevant questions are obvious. Did AT&T disclose the reports to the CLECs and have those carriers produce evidence that the reports were flawed? Did AT&T itself conclude that there was a flaw in the methodology that precluded their use as against others but not against Global? Did the CLECs produce information showing that, although calls originated and terminated on the PSTN, they were, in fact, enhanced in

¹ Ohio Admin. Code. 4901-1-16(B).

between and, hence, were VoIP within the meaning either of their existing contracts or federal rules? Did AT&T accept that evidence? All of these are possible outcomes and all would be probative evidence in this case if they were discovered. Hence, the material is plainly relevant.

AT&T asserts that it receives traffic from hundreds of different CLECs and Global NAPs "cannot explain what relevance revealing the names of the four unidentified CLEC would have." Global is not seeking randomly among the CLEC population. Instead, Global is seeking the identity of all those and only those CLECs that AT&T elected to single out for the same study treatment that it imposed on Global. Other CLECs may be irrelevant as to this issue, but these four are not.

AT&T continues to assert that these data are confidential and that it "does not routinely share one CLEC's calling data with a second CLEC." This is not precisely accurate. AT&T has shared one such report with Global in response to Request 1-1, where AT&T disclosed is a summary report of an apparently three minute study conducted with respect to a CLEC named UTEX, with the actual UTEX data redacted.² This redaction is entirely acceptable to Global as to other CLECs. Global simply seek discovery as to the other four CLECs, the same type of data (and other data and information that doesn't reveal the CLEC usage data) that AT&T so freely provided as to UTEX. Finally, to the extent that AT&T claims these data are confidential to it, the appropriate solution is disclosure under a confidentiality agreement – one that includes the right to challenge the claim of confidentiality.

Request 1-12 and 1-18

² A copy of this discovery response is attached for the Examiner's convenience. AT&T has not explained why it cannot produce for other CLECs what it has produced from UTEX – including, as it did in that case, the name of the CLEC involved.

AT&T's principal claim is that Global NAPs Ohio failed to pay AT&T Ohio reciprocal compensation charges as specified in Section 5 of the Reciprocal Compensation Appendix of the ICA for "local traffic."³ Global NAPs has asserted that its traffic to AT&T is not local. It is Voice over Internet Protocol ("VoIP") traffic, which is a separately defined service category that is not subject to Section 5 of the Appendix. AT&T is apparently prepared to argue that, even if Global's traffic is VoIP, the Appendix rules applying to local traffic will still apply. However, this will be a "tough road to hoe," as Section 16.9 of the ICA specifies that "this Appendix shall not be construed against either Party as a "meeting of the minds" that VOIP or Internet Telephony traffic is . . . local traffic subject to reciprocal compensation." AT&T has already acknowledged in earlier briefs that it is unlikely to prevail on its argument if the traffic at issue is, in fact, VoIP.⁴

Hence, AT&T "anticipating" that Global would assert that the traffic it delivers to AT&T is not "local" within the meaning of the ICA Appendix because it is VoIP, AT&T has presented in its case-in-chief a study, generally referred to as the three minute reports, purporting to show that some or all of Global NAPs' traffic is not VoIP. Oddly, however, AT&T elected to submit a study of Global NAPs toll traffic only – and excluded from its filed data all information that would inform directly on the question of whether the traffic that it claims is local traffic is, or is not, VoIP.⁵ Notwithstanding the disconnect between the market studied and the claims raised, AT&T apparently intends to argue that its study of toll traffic is, nevertheless, probative as to the nature of the traffic it calls "local".

³ Complaint, ¶ 30.

⁴ AT&T Opposition to Request for Arbitration, p. 2, n. 2.

⁵ See, Opposition to Motion to Compel, p. 10 (the Hamiter study "did not look at local calls. . .")

It was conceivable that this was simply an oversight on AT&T's part, but AT&T is behaving more as if this were an intentional stratagem instead. When Global NAPs asked in discovery requests that AT&T supplement its evidence by including three minute reports for local traffic, AT&T, instead of jumping at the chance to put in the data it claims is local, ferociously resisted responding to the request. Further, when Global NAPs offered a series of compromises that would allow AT&T to produce some evidence as to the local traffic that is, in fact, at issue in this case, AT&T absolutely refused to produce it. Indeed, AT&T has apparently made false or misleading statements about the difficulty of producing such data in its efforts to insure that actual information about the local traffic that is at the heart of its complaint never makes it into the record of this case.

There is no doubt that in order, to resolve this dispute, the Examiner and the Commission will need to rule on whether some or all of the traffic that AT&T claims is "local" is or is not, VoIP. The question is what record evidence the Commission will have on which to base its decision?

There is, already, some hard evidence on point. In Request 1-15, Global NAPs asked AT&T to describe "all known routing arrangements" by which a call originating on the public switched network and terminating locally on the public switched network could pass through Global NAPs. AT&T could think of only one: "if a customer dials 1010NXX to place a local call..." We agree. This is the only technologically possible way that a local PSTN to PSTN call could pass through Global NAPs. However unless the State of Ohio is populated by citizens mad to dial seven extra digits in order to create toll charges on what would otherwise be a routine, flat-rated, local call, this type of call

simply didn't happen. In short, both AT&T's reading and Global's reading of the technology is that there should be no local PSTN to PSTN calls passing through Global NAPs. All IP to PSTN traffic – the only technological alternative that would route traffic through a carrier like Global since wireless traffic is excluded – would be VoIP. Global's discovery requests seek to confirm this. And AT&T has refused to produce the data.

It is clear, at this stage, that AT&T has no interest in actually having record evidence on local traffic in the record. That is why it submitted a study of the toll market and why it still explicitly asserts this study is probative of VoIP in the local market. That is also why it has declined repeated invitations to replace or supplement its toll study with a comparable study of local traffic. And that is why it has so vociferously opposed producing any evidence that would allow Global to analyze and produce evidence on local traffic and VoIP.

Instead, AT&T's position appears to be that, instead of actual evidence, the issue should be turned into a battle over who has failed to carry its "burden of proof." This is not a speculation. AT&T has already asserted that "Global NAPs Ohio, not AT&T Ohio, has the "burden of proof" as to whether local traffic is VoIP.⁶

Global disagrees with this unsupported assertion, which misreads the plain wording of the contract. The ICA is explicit that VoIP is a separately identified category of traffic and that the provisions of the contract that reference "local" shall not be read as applying to VoIP. Given that contractual injunction, it was AT&T's obligation to exclude from its billing of local traffic as local, all traffic that was VoIP. AT&T had the ability to do this, because its access to originating telephone numbers allowed it to identify the originating carrier. If it elected to file a damages case that improperly

⁶ AT&T Opposition, p. 2

included non-local VoIP traffic, it has failed to carry its burden of properly identifying genuine local traffic as to which it would be entitled to reciprocal compensation. If, as we believe the facts so far show, there is actually no non-VoIP local traffic since no one actually dials 1010NXX before dialing a local call, then a review of a sample of the actual data will confirm that fact. However, the burden of proving that the traffic for which it claims payment is, in fact, local traffic and not VoIP traffic, is AT&T's not Global's.

Ultimately, however, burden of proof arguments are an irresponsible way to address the issue. The best way to determine the truth is with facts, which can be obtained by examining the carriers initiating the calls that AT&T claims are "local." However, to perform this examination requires a record of the originating phone numbers. Two facts are not in dispute in this regard: AT&T has those phone numbers in its records; Global does not.

In order to avoid this inconvenient truth, AT&T plays fast and loose with the facts. AT&T leads with indignation. Global has asserted in its Motion to Compel that AT&T has apparently refused to produce three minute report data on local calls in its possession. AT&T responds that this "is nothing more than a gross misrepresentation made without any good faith basis in an attempt to deceive the Commission. . ."

Opposition at 9. Actually, Global simply took AT&T at its word. In response to Request 1-12, AT&T stated: "AT&T Ohio does not have 3 minute raw data reports for *all* local calls." (Italics supplied). The use of the adjective "all" implies that it does have reports for "some" local calls, and Global, correspondingly, moved to compel their production. This is not chicanery on Global's part; it is standard English. If AT&T had

no raw data reports for local traffic, the proper adjective would have been "any" local calls, not "all local calls."

AT&T continues its opposition with another misleading answer. It states that:

Mr. Hamiter's "three minute reports" were generated from data collected in the ordinary course of business regarding calls, more than 3 minutes in length, that originated on an AT&T ILEC network, were handed off to an IXC, and were terminated on an AT&T ILEC network. *No similar data is collected in the ordinary course for local calls.*" Opposition, p. 10 (Italics added.)

The chicanery is in the word "similar." Of course there is no data on local calls handed off to an IXC since (unless they were dialed as 1010NXX) local calls are not handed off to IXCs. However, the objective of the three minute reports was to identify calls originating on the PSTN by finding calls originated by AT&T local. Data "similar" enough to determine the originating carrier of local calls is "collected in the ordinary course of business" by AT&T. AT&T's witness, Mr. Cole says so in his testimony. In fact, it is far easier for AT&T to determine the originating carrier for local calls than for toll since (A) by definition, they all originate in Ohio, and (B) they don't ordinarily pass through the hands of a second or third independent carrier such as an IXC or enhanced service provider and, (C) the data passed through Global to AT&T apparently includes the originating number but not necessarily the IXC or enhanced service provider who are intermediate between the originating carrier and AT&T. It would thus be easy for AT&T to take the originating numbers from its billing data, run them against the LERG and determine what carriers are originating the local calls that Global is sending to AT&T Ohio to terminate.

Notwithstanding this analysis, Global has attempted to make the task easier for AT&T. We have proposed, in lieu of an answer to Request 1-12, that AT&T simply

provide data from its billing records of the originating numbers of some set of the calls that AT&T billed as local. There can be no question that AT&T has this information in its billing records and AT&T doesn't actually deny this fact.

Instead, AT&T argues that this question goes beyond the scope of discovery regarding the Hamiter study because "that study did not look at local calls. . ." That, however, is precisely the point. Until the Hamiter study was produced in AT&T's case in chief, Global did not know and could not have known that AT&T would attempt to prove that local traffic was not VoIP through a study that "did not look at local calls." Global's questions are, therefore, both prompt and critical. Is AT&T's study that "did not look at local calls" probative of VoIP in the local calling market? Asking AT&T for originating telephone numbers will allow us to test the proposition that the local market is entirely different from the toll market and that, in the local market, there are no PSTN to PSTN calls routed through Global NAPs. Hence, this is discovery directed to the validity and relevance of the Hamiter study and the use to which AT&T plainly intends to put it.

AT&T's next defense is burden. AT&T states:

To produce the requested information, AT&T Ohio would have to arrange for its offsite contractor to retrieve archived AMA records for Ohio and for the 46 particular days requested by Global NAPs Ohio. . . . AT&T Ohio estimates that the process would take several months and cost several thousand dollars just for outside vendor costs.

As became clear in last week's telephone conference, this answer is at least materially misleading if not entirely false. Relying on this representation, Global NAPs argued that any information exchanged between AT&T Ohio and its offsite contractor to perform its three minute study would not have been privileged and should be disclosed. AT&T's counsel replied that, to the contrary, the three minute reports put into its

testimony were done entirely in-house and did not require the use of an off site contractor to retrieve archived records.

However, Global's request to AT&T for local data covered exactly the same dates as the dates of AT&T's toll study. Hence, there are only two possibilities.

(1) AT&T archives local calls at a different and faster rate than it archives toll calls. But AT&T hasn't made this argument and it is, at the very least, highly implausible; or .

(2): That what AT&T states in its Opposition to Global's Motion to Compel regarding the need to retain and pay a third party vendor to retrieve billing data on local calls is simply false.

While it is possible (bordering on likely) that AT&T has made false representations about its own ability to produce originating telephone numbers of local calls from Global NAPs Ohio, it is certain that AT&T has misrepresented Global NAPs' ability to generate the same data. AT&T states: "Global NAPs Ohio apparently chose to destroy its own calling records." The statement is a flat falsehood and, moreover, AT&T is fully aware that it is a false statement. Global NAPs did not destroy any data. It never collected it. Global's business is to sell to enhanced service providers two things, transport and termination services for VoIP traffic. It does not charge any customer on a per minute of use ("MOU") basis. Since it doesn't bill on an MOU basis, neither the point of origination nor the point of termination of any particular call affects Global's charges to its customers. Hence, like any sensible firm, it keeps no records, computer or otherwise, of individual call data for which it has no commercial use. AT&T's only honest statement in this area is that "Global NAPs Ohio passed [originating number]

information to AT&T Ohio." But the key word is "passed." The data are part of the signaling that Global receives from its customers and forwards without modification from the customers who send it. Global neither generates these data nor does it ever record it.

Ultimately, once the various misstatements are put aside, AT&T admits two very important facts emerge. First AT&T admits that it does keep in its billing systems the originating phone numbers of local calls that it bills as local; and second, AT&T admits that Global NAPs does not keep such records.

In short, the only records that exist that can be used to determine – or perhaps more correctly to confirm – that the local traffic that Global sends to AT&T originates from VoIP carriers are AT&T records. We simply ask that they be produced.

Finally on this topic, we would note that Global is entirely prepared to be flexible about the specific means used to produce these data. Global needs only a sample and will accept any type of sample data that can reasonably be relied upon to stand in for the whole or, perhaps more pertinently, that AT&T will not contest as unrepresentative. We note here that, not only does AT&T have these data in its billing systems, but that AT&T continues to generate such relevant data every month. AT&T's witness has testified that each month, when it prepares its bills "AT&T Ohio takes the NPA-NXX of the originating number . . ." to help determine when a call is local. Cole, p 8. Global assumes there is no problem, therefore, for AT&T to produce the originating local phone numbers from which AT&T utilized to put together Global's most recent bill. Surely these are not yet archived! AT&T might claim feel that one month's data would seem a bit inadequate, but data on the past several months should also be readily available. If AT&T believes three month's data are an adequate sample and will not contest the

sample's adequacy, then Global will accept the records from the past three months. Even more simply, we will accept a sample from randomly selected days from the past three months. In short, this is not a difficult problem to solve unless, if the objective is to have the actual evidence placed on the record. We invite the Examiner to propose a solution that is simultaneously reasonable for AT&T to execute, and will be adequate to be dispositive as to the various facts and claims.

Requests 1-19 through 1-21

In Requests 19 through 21, Global sought information from AT&T on carriers with whom AT&T has entered into contracts – either as an ILEC or as a CLEC -- that explicitly reference VoIP, Voice over Internet Protocol or IP-to-PSTN traffic.

AT&T refuses to answer these questions on grounds of burden and relevance. AT&T asserts that Global NAPs “is just as capable as AT&T Ohio of searching these contracts.” This statement is false. First, AT&T has a filing system of extant contracts in a single location or, at most, a very few locations. Global would need to search the state commission offices of most, if not all, of the 50 states to find all AT&T agreements. Second, AT&T has its contracts on computers, in readable form, not simply paper. It can perform the easiest of search inquiries to find the relevant words. Global would need to physically review contracts to find the relevant ones. Third, AT&T has legal departments skilled in mastering important contested topics – like how to treat VoIP as either an ILEC or CLEC. Its counsel knows which contracts are relevant. Global starts blind.

AT&T argues that the request is irrelevant because “This proceeding is about Global NAPs’ contract with AT&T Ohio.” This is true but uninformative. The Global NAPs contract is a form agreement created by AT&T itself, particularly as to the critical

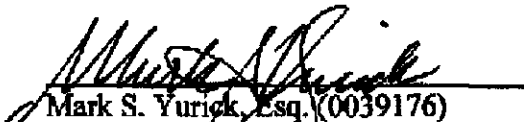
Reciprocal Compensation Appendix. If AT&T has interpreted provisions of its contracts with others in a manner that is different from how it interprets those provisions here, that fact is probative of its claims as to the meaning of these provisions. When this Commission approved this agreement, and each other agreement in the state, it held that the agreement did not discriminate against a telecommunications carrier not a party to the agreement. Section 252(e)(2). If AT&T entered into agreements with multiple carriers that are not discriminatory as to their text, but that AT&T implements in discriminatory ways, that would be a violation of Section 252 and of the Commission's approval orders. It would also be a breach of contract that would raise a defense against claims based on a discriminatory interpretation. Hence, the identity of other CLECs with similar provisions is clearly relevant.

Also relevant are contracts that address VoIP with specificity, as contrasted with the Global NAPs agreement which does not. AT&T's assertion that a contract that contains no agreed upon or arbitrated rates, terms or conditions for the handling of VoIP traffic, still set rates for VoIP traffic that AT&T can impose, can be contrasted with a contract that actually does set rates for VoIP. The interpretations of these contracts goes to the issue of the parties' intent.

Finally, AT&T asserts that Global's requests are outside the limits of permissible discovery. Here, AT&T makes the novel argument that Global's discovery right should be limited in this litigation because it, allegedly, had discovery rights in the federal litigation that AT&T so improvidently initiated. We frankly have no idea what AT&T is talking about, but we don't know of any provision of Ohio law or PUCO practice that would deny discovery rights on this basis. In this case, Global did not know and could

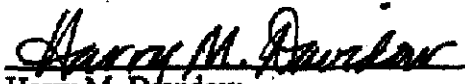
not have known that AT&T intended to argue that, notwithstanding Section 16.9, the ICA makes VoIP traffic subject to Reciprocal Compensation until if first made the argument in its case in chief. Indeed, had Global sought discovery on this issue at the time the Complaint was filed, it could reasonably have expected AT&T to refuse discovery over issues not raised in the complaint. Discovery is not supposed to be this kind of game of "hide the pea". When AT&T for the first time raised the argument that VoIP traffic is subsumed under the Local traffic provisions of the ICA, Global moved promptly to seek discovery as to the factual and legal basis of those claims. The questions are relevant, reasonable, clearly discoverable and should be answered.

Respectfully Submitted,



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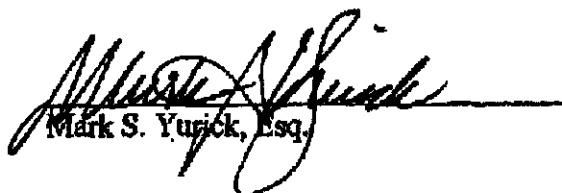


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on March 5, 2009.



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