

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Docket No. 08-690-TP-CSS

**Direct Testimony of Patricia H. Pellerin
On Behalf of AT&T Ohio**

AT&T Ohio Exhibit 1

January 21, 2009

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T (“AT&T”),**
3 **AND YOUR BUSINESS ADDRESS.**

4 A. My name is Patricia H. Pellerin. I am an employee of The Southern New England
5 Telephone Company (“AT&T Connecticut”), which provides services on behalf of
6 AT&T Operations, Inc. – an authorized agent for the AT&T incumbent local exchange
7 company subsidiaries (including Ohio Bell Telephone Company d/b/a AT&T Ohio
8 (“AT&T Ohio”)), as an Associate Director–Wholesale Regulatory Support. My business
9 address is 1441 North Colony Road, Meriden, Connecticut 06450.

10 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

11 A. I attended Middlebury College in Middlebury, Vermont and received a Bachelor of
12 Science Degree in Business Administration, magna cum laude, from the University of
13 New Haven in West Haven, Connecticut. I have held several assignments in Network
14 Engineering, Network Planning, and Network Marketing and Sales since joining AT&T
15 Connecticut in 1973. From 1994 to 1999 I was a leading member of the wholesale
16 marketing team responsible for AT&T Connecticut’s efforts supporting the opening of
17 the local market to competition in Connecticut. I assumed my current position in April
18 2000.

19 As Associate Director – Wholesale Regulatory Support, I am responsible for
20 providing regulatory and witness support relative to various wholesale products and
21 pricing, supporting negotiations of local interconnection agreements (“ICAs”) with
22 competitive local exchange carriers (“CLECs”), participating in regulatory and judicial

proceedings, and guiding compliance with the Federal Telecommunications Act of 1996 (“Act”) and its implementing rules.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE REGULATORY COMMISSIONS?

A. Yes. I have previously testified before the Ohio Public Utilities Commission, the Alabama Public Service Commission, the California Public Utilities Commission, the Connecticut Department of Public Utility Control, the Florida Public Service Commission, the Illinois Commerce Commission, the Kansas Corporation Commission, the Kentucky Public Service Commission, the Michigan Public Service Commission, the North Carolina Utilities Commission, the Oklahoma Corporation Commission, the Public Utility Commission of Texas, and the Public Service Commission of Wisconsin.

II. OVERVIEW OF AT&T OHIO’S TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my direct testimony is to explain and support Ohio Bell Telephone Company’s (“AT&T Ohio”) claims against Global NAPs Ohio, Inc.¹ (“Global Ohio”) for failure to pay for services provided pursuant to the parties’ ICA. My testimony will also demonstrate that Global Ohio has failed to satisfy the statutory requirements to maintain its certification to provide telecommunications services in Ohio.

¹ There are numerous Global NAPs entities. This includes Global NAPs, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc., Global NAPs New Hampshire, Inc., and numerous other Global NAPs [State], Inc. entities – all of which operate under the single umbrella company, Ferrous Miner Holdings, Ltd. (sometimes referred to as Ferrous Miner Holdings, Inc.) (“Ferrous Miner”), which is wholly owned and controlled by a single person, Frank T. Gangi.

1 I will first give a brief overview of the direct testimony presented in support of
2 AT&T Ohio's claims in this proceeding. I will then specifically address (i) Global
3 Ohio's breach of the ICA regarding reciprocal compensation; and (ii) Global Ohio's
4 breach of the ICA regarding transiting service. Based on these violations, I recommend
5 that the Commission issue an order finding that Global Ohio has violated its obligations
6 under the parties' ICA and owes AT&T Ohio the amounts billed for these services.

7 Next, I explain the many ways in which Global Ohio has failed to satisfy the
8 requirements to maintain its certification to provide telecommunications services in Ohio.
9 Based on these failures, AT&T Ohio seeks a Commission ruling that Global Ohio no
10 longer possesses the requisite technical, financial and managerial resources and abilities
11 to hold a Certificate of Public Convenience and Necessity ("CPCN") to provide local
12 exchange services and competitive telecommunications services, and I recommend that
13 the Commission take appropriate steps to revoke Global Ohio's CPCN.

14 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF AT&T OHIO'S DIRECT**
15 **TESTIMONY BEING PRESENTED IN THIS PROCEEDING.**

16 A. AT&T Ohio offers direct testimony from four additional witnesses: James Hamiter,
17 Rebecca Harlen, William Cole, and Yolanda Williams.

18 James Hamiter, AT&T Network Regulatory, addresses the physical and technical
19 aspects of Global Ohio's delivery of communications traffic to AT&T Ohio. He provides
20 data to demonstrate that much (if not all) of Global Ohio's traffic is not Voice over
21 Internet Protocol ("VoIP") or IP-originated, and that at least some of the traffic is
22 interstate / interLATA. This data also supports AT&T Ohio's claim that Global Ohio

1 delivered interstate / interLATA traffic to AT&T Ohio over interconnection trunks that
2 are reserved for local and intraLATA toll traffic.

3 Rebecca Harlen, AT&T Wholesale Customer Service Local, discusses the
4 ordering process for local/intraLATA toll trunks. She demonstrates that Global Ohio
5 submitted to AT&T Ohio Access Service Requests (“ASRs”) for local/intraLATA toll
6 trunks to be used for the delivery of local and intraLATA toll telecommunications traffic
7 from Global Ohio to AT&T Ohio.

8 William Cole, AT&T Wholesale Finance, identifies the methods by which AT&T
9 Ohio captures and measures the traffic Global Ohio delivers to AT&T Ohio for
10 completion, including local and transit traffic. As background, Mr. Cole provides an
11 overview of how traffic usage is recorded on local/intraLATA toll trunks and explains
12 how AT&T Ohio validates the recordings. He also explains how AT&T Ohio determines
13 the jurisdiction of a call (*i.e.*, local or toll) to determine the proper billing and rate
14 elements to apply to the usage. Finally, Mr. Cole attests to the accuracy of the usage data
15 utilized to generate AT&T Ohio’s bills for reciprocal compensation and transiting.

16 Yolanda Williams, AT&T Wholesale Billing, provides testimony with respect to
17 AT&T Ohio’s bills for reciprocal compensation and transiting traffic. She explains the
18 bill format and describes how AT&T Ohio generates its bills for each of these services.
19 She then testifies regarding the accuracy of AT&T Ohio’s bills to Global Ohio and walks
20 through an excerpt from a recent Global Ohio bill to facilitate understanding. She also
21 testifies that while Global Ohio has disputed AT&T Ohio’s usage bills in total, claiming
22 that it owes AT&T Ohio nothing, it has not challenged the accuracy of the calculations
23 themselves for the specific amounts billed. Finally, Ms. Williams testifies to the amount

1 of Global Ohio's outstanding unpaid balances (excluding late payment charges) as of
2 December 2008 as follows:

- 3 • reciprocal compensation \$40,339.37
- 4 • transiting charges \$32,728.66

5 **Q. PLEASE SUMMARIZE AT&T OHIO'S INTERCONNECTION**
6 **ARRANGEMENT WITH GLOBAL OHIO AND THE RELATED CHARGES.**

7 A. In order to make use of the transiting and transport and termination of traffic services that
8 AT&T Ohio provides to Global Ohio under the parties' ICA, Global Ohio requested that
9 AT&T Ohio establish trunks to AT&T Ohio's tandem and end office switches. Ms.
10 Harlen describes the ASRs submitted by Global Ohio through which Global Ohio ordered
11 these trunks. Trunks are designated to carry certain types of traffic. Most relevant to this
12 case are the type of trunks ordered by Global Ohio for the delivery of traffic to AT&T
13 Ohio – trunks reserved for local and intraLATA toll traffic.

14 AT&T Ohio does not charge for the local/intraLATA toll trunks, but there are
15 usage charges for the traffic that Global Ohio sends to AT&T Ohio over those trunks.
16 AT&T Ohio charges reciprocal compensation rates for local traffic and intrastate
17 switched access rates for intraLATA toll traffic.² AT&T Ohio charges a separate rate for
18 the transit traffic that Global Ohio also sends over the local/intraLATA toll trunks. Mr.
19 Cole explains how Global Ohio's usage is measured and delivered to downstream
20 systems for billing. And Ms. Williams explains AT&T Ohio's usage bills to Global

² For traffic that Global Ohio hands off to AT&T Ohio for completion to AT&T Ohio's end users, although local and intraLATA toll traffic is carried over the same local/intraLATA toll trunks, only the charges for AT&T Ohio's transport and termination of traffic that Global Ohio has represented is local traffic under the parties' ICA (*i.e.*, reciprocal compensation) are at issue in this proceeding. AT&T Ohio's charges for transited traffic at issue in this proceeding relate to both local and intraLATA toll traffic as represented by Global Ohio under the parties' ICA.

Ohio. Global Ohio has not paid any of the charges for the traffic it delivered to AT&T Ohio for completion to AT&T Ohio's end users or for transiting to other carriers serving Ohio end users.

III. INTERCONNECTION AGREEMENT BACKGROUND

Q. BRIEFLY EXPLAIN THE HISTORY OF THE PARTIES' INTERCONNECTION AGREEMENT.

A. The parties commenced negotiations for a Section 251/252 ICA on March 2, 2001. When negotiations failed to result in an executed ICA,³ Global Ohio filed for arbitration on November 30, 2001.⁴ The Commission issued its Arbitration Decision on May 9, 2002.⁵ The ICA was approved by the Commission November 7, 2002 and was effective on November 17, 2002. Selected provisions of the ICA are attached to AT&T Ohio's Complaint as Exhibit 2, (*i.e.*, Appendix Interconnection Trunking Requirements ("ITR") and Appendix Reciprocal Compensation ("RC")).

³ Negotiating, arbitrating and executing a new ICA is a time consuming process that may be prolonged. Therefore, in an effort to get Global Ohio interconnected sooner rather than later, the parties negotiated an interim interconnection arrangement pending final Commission approval of a Section 251/252 ICA. The interim interconnection arrangement was documented in an "Interim Agreement" and signed on January 28, 2002. The Interim Agreement, which provided terms and conditions for interconnection between Global NAPs and AT&T in California, Illinois and Ohio, is not relevant to AT&T Ohio's complaints presented to the Commission for resolution in this case.

⁴ Case No. 01-3096-TP-ARB, Global NAPs, Inc. *Petition for Arbitration Pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms and Conditions with Ohio Bell Company d/b/a Ameritech Ohio* ("Arbitration").

⁵ Arbitration Decision in Case No. 01-3096, dated May 9, 2002 ("Arbitration Decision")

VI. RECIPROCAL COMPENSATION – BREACH OF ICA

Q. WHAT ICA PROVISIONS PERTAIN SPECIFICALLY TO RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC, AS THAT TERM IS DEFINED IN THE ICA?

A. In addition to Appendix RC Section 1, which generally provides the scope of Appendix RC, Section 3 (Classification of Traffic), Section 4 (Responsibilities of the Parties), Section 5 (Local Call Termination), and Section 15 (Billing for Mutual Compensation) provide relevant terms and conditions for reciprocal compensation for local traffic.

Q. HOW DOES THE ICA CLASSIFY TRAFFIC FOR PURPOSES OF INTERCARRIER COMPENSATION?

A. Appendix RC Section 3.1 classifies the telecommunications traffic exchanged between the parties as:

Local Calls, Transit Traffic, Optional Calling Area Traffic,
IntraLATA Toll Traffic, or InterLATA Toll Traffic.

These terms are defined in the ICA’s General Terms and Conditions (“GTCs”) or in Appendix RC.⁶

Q. WHAT TERMS SET FORTH IN RC SECTION 3 ARE THE MOST RELEVANT TO THE RECIPROCAL COMPENSATION ISSUES IN THIS PROCEEDING?

A. I described the relevance of Appendix RC Section 3.1 above. These provisions are also relevant to local traffic. In addition, Section 3.2 provides that “local calls” and “local ISP calls” are to be compensated at the same rates and rate structures, provided that the

⁶ The terms “Local Calls,” “IntraLATA Toll Traffic” and “InterLATA” are defined in GTC Sections 1.1.75, 1.1.67, and 1.1.64, respectively. “Transit Traffic” is described in RC Section 9. As indicated in RC Section 7, the term “Optional Calling Area Traffic” is limited to Global doing business in AT&T’s southwest region (“SWBT”) and is not relevant to Global Ohio.

1 originating and terminating telephone numbers are in the same local (or extended local)
2 calling areas.⁷ Section 3.4 states that for local calls, “the originating Party shall
3 compensate the terminating Party for the transport and termination of Local Calls at the
4 rate(s) provided in this Appendix and Appendix Pricing.” Sections 3.6 and 3.7 identify
5 traffic excluded from reciprocal compensation. And Section 3.9 states that “Reciprocal
6 Compensation applies to local traffic that is terminated at either parties’ [sic] terminating
7 switch.”

8 **Q. WHAT ARE THE CALLING PARTY NUMBER (“CPN”) OBLIGATIONS SET**
9 **FORTH IN APPENDIX RC SECTION 4?**

10 A. Appendix RC Section 4 provides responsibilities of the parties with respect to reciprocal
11 compensation, primarily related to CPN. CPN stands for “calling party number” and
12 refers to the telephone number of the calling party that is normally transmitted by the
13 originating carrier (along with other information) when a call is made by an end user.
14 Section 4.2 states that, where available, each party will provide the other with “original
15 and true” CPN. CPN is important because it is used in conjunction with the terminating
16 end user’s telephone number to determine the jurisdiction of a call (*i.e.*, local or toll). If
17 there is a technical problem that results in one party providing CPN but the other party
18 not receiving it, Section 4.3 provides that the parties will work together to remedy the
19 problem. Compensation for calls delivered without CPN is addressed in my discussion
20 below regarding the Percent Local Usage factor.

⁷ RC Section 3.2 is specific to the situation where AT&T Ohio has not invoked the FCC’s ISP Compensation Plan (FCC 01-0131). And while AT&T Ohio did invoke the FCC’s ISP Plan, Global Ohio elected not to amend its ICA to avail itself of the FCC’s compensation rate of \$0.0007. Accordingly, the parties’ ICA includes AT&T Ohio’s traditional reciprocal compensation rates rather than the FCC’s rate.

Q. HOW IS APPENDIX RC SECTION 5 PERTINENT TO AT&T OHIO'S CLAIM AGAINST GLOBAL OHIO REGARDING RECIPROCAL COMPENSATION?

A. Appendix RC Section 5 provides terms and conditions specific to how the parties will assess charges for reciprocal compensation of local traffic. Section 5.1 states that the terms of Section 5 apply unless and until the FCC's ISP Compensation Plan is invoked.⁸ Section 5.2 describes the rate structure (bifurcated to reflect different rates for call set-up and call duration), and Sections 5.3 and 5.4 provide the tandem and end office serving rate elements. Where Global Ohio is directly connected through trunk groups to AT&T Ohio's end office switches, the end office rate elements apply to Global Ohio's local traffic. Where Global Ohio connects through trunk groups to AT&T Ohio's tandem switches, the tandem switching and tandem transport rate elements apply in addition to the end office rate elements, because AT&T Ohio is providing tandem switching, end office switching, and transport between these switches.

Q. WHAT ARE THE RECIPROCAL COMPENSATION RATES SET FORTH IN GLOBAL OHIO'S ICA?

A. The specific rates are set forth in the Pricing Schedule and are as follows:⁹

End Office Local Termination:

Set up charge, per call	\$0.009381
Duration charge, per minute of use ("MOU")	\$0.001086

Tandem Switching:

Set up charge, per call	\$0.001391
Duration charge, per MOU	\$0.000255

⁸ RC Sections 5.5 and 5.6 also provide that treatment of local ISP-bound traffic is the same as that applicable to local traffic.

⁹ While the Pricing Schedule reflects separate rate elements for end office and tandem switching "Set up" charges, AT&T Ohio is not billing those rate elements due to billing system limitations, resulting in an under-billing of approximately 1 cent per minute. All other rate elements are billed as indicated in the Pricing Schedule.

Tandem Transport Termination, per MOU \$0.000155

Tandem Transport Facility, per MOU, per mile \$0.000006

Q. WHAT IS THE RELEVANCE OF APPENDIX RC SECTION 15?

A. RC Section 15 deals with billing of mutual compensation (also known as reciprocal compensation). Section 15.1 provides measurement specifications for the usage on trunks that are the basis for intercarrier compensation billing. Section 15.2 provides for quarterly usage reporting based on traffic terminated over the local/intraLATA toll trunks.

ITR Section 5.3 provides that local and intraLATA toll traffic will be delivered over the same trunk group(s). Since local and intraLATA toll traffic will be carried on the same trunk groups, RC Section 15.2 requires the parties to develop a percent local usage (“PLU”) factor. RC Section 15.2.1.1 provides that PLU is calculated by dividing the local minutes of use (“MOU”) by the total MOU terminated over the local/intraLATA toll trunk groups. And RC Section 15.2.2 sets forth terms and conditions for either party to audit the other party’s reported PLU and for billing adjustments to be made based on the results of any such audit.

Q. DID THE PARTIES DEVELOP A “PLU” PURSUANT TO SECTION 15.2?

A. No. However, Global Ohio did provide a PLU factor on its ASRs for the local/intraLATA toll trunk groups it ordered from AT&T Ohio.

Q. HOW IS THE PLU FACTOR USED IN BILLING?

A. The parties are obligated to pass CPN on all calls, and as I stated above, it is CPN (in conjunction with the terminating end user’s telephone number) that determines the jurisdiction of a call. (See my discussion regarding Appendix RC Section 4 and CPN

1 above.) The PLU factor is only applied to traffic that is delivered without CPN. For
2 example, suppose Global Ohio delivered 100 calls to AT&T Ohio and that CPN was
3 contained on 92% of those 100 calls, leaving eight calls that were delivered without CPN
4 (*i.e.*, “no-CPN calls”). Further suppose that Global Ohio’s PLU factor is 75% (*i.e.*, 75%
5 local and 25% intraLATA toll). In this example, the ICA would authorize AT&T Ohio to
6 bill Global Ohio the local compensation rate on six of the eight Global Ohio no-CPN
7 calls, and the remaining two no-CPN calls would be billed at tariffed switched access
8 rates.

9 **Q. HOW DOES THE ICA TREAT COMPENSATION FOR INTERNET SERVICE**
10 **PROVIDER (“ISP”) BOUND TRAFFIC?**

11 A. RC Section 3.1 states that:

12 Telecommunications traffic exchanged between CLEC and
13 ILEC will be classified as either Local Calls, Transit Traffic,
14 Optional Calling Area Traffic, IntraLATA Toll Traffic, or
15 InterLATA Toll Traffic. For purposes of this Appendix, calls
16 to ISPs will be rated and routed according to these same
17 classifications, depending on the physical location of the
18 originating and terminating end users.

19 Further, Appendix RC Section 6.2 provides that to the extent non-local ISP-bound calls
20 are placed:

21 [T]he Parties agree that section 5. [Local Call Termination]
22 above does not apply, and that the Agreement’s rates, terms
23 and conditions for IntraLATA and/or InterLATA calling shall
24 apply, including but not limited to rating and routing according
25 to the terminating parties’ Exchange Access intrastate and/or
26 interstate tariffs.

27 Thus, an ISP-bound call that originates and terminates in different local calling areas
28 would be compensated in the same manner as other non-local (*i.e.*, IntraLATA Toll or
29 InterLATA Toll) calls – at access rates pursuant to tariff.

1 **Q. IS THE TRAFFIC THAT IS THE SUBJECT OF AT&T OHIO'S COMPLAINT**
2 **ISP-BOUND?**

3 A. No. AT&T Ohio's complaint is for non-payment of reciprocal compensation for calls
4 completing to AT&T Ohio's end users and for non-payment of transiting charges for
5 calls AT&T Ohio transited to other carriers for completion to those carriers' end users.
6 Thus, none of the traffic at issue is ISP-bound.

7 **Q. DOES GLOBAL OHIO DENY THAT IT HAS DELIVERED (AND CONTINUES**
8 **TO DELIVER) TRAFFIC TO AT&T OHIO IN THE QUANTITIES AT&T OHIO**
9 **HAS ASSERTED?**

10 A. No. Global Ohio has not disputed and cannot present any evidence that Global Ohio did
11 not deliver traffic to AT&T Ohio in the quantities AT&T Ohio has claimed. Instead,
12 Global Ohio denies that it has any obligation to compensate AT&T Ohio for the traffic
13 Global Ohio hands off to AT&T Ohio under the parties' ICA.¹⁰

14 **Q. WHAT IS THE BASIS FOR GLOBAL OHIO'S CONCLUSION THAT IT IS NOT**
15 **OBLIGATED TO COMPENSATE AT&T OHIO FOR ITS TRAFFIC**
16 **DELIVERED TO AT&T OHIO FOR COMPLETION TO AT&T OHIO'S END**
17 **USERS?**

18 A. Although Global Ohio has never made the assertion in its billing dispute forms submitted
19 to AT&T Ohio, if Global Ohio follows the tactics of its affiliates in California and
20 Illinois, Global Ohio will claim that its traffic to AT&T Ohio is Enhanced Service
21 Provider ("ESP") traffic and that, therefore, 100% of Global Ohio's traffic is exempt
22 from reciprocal compensation and transit traffic charges.

¹⁰ Global Ohio Response to AT&T Ohio's Complaint, July 14, 2008, at ¶¶ 7, 8.

1 **Q. WHAT DOES THE TERM “ESP EXEMPTION” MEAN?**

2 A. The ESP exemption refers to the FCC’s long-standing exemption of Enhanced Service
3 Providers from interstate access charges for obtaining access to the ESP’s own
4 customers.¹¹ The ESP exemption applies to a narrow subset of telecommunications
5 activity and traffic – the connectivity between the ESP itself and that ESP’s end user
6 customers in instances where the ILEC provides the link between the ESP end user and
7 the ESP.

8 **Q. WOULD A LIST OF GLOBAL OHIO’S CUSTOMERS CONSTITUTE**
9 **EVIDENCE THAT GLOBAL OHIO’S TRAFFIC QUALIFIES FOR THE ESP**
10 **EXEMPTION?**

11 A. No. Simply providing the name of Global Ohio’s supposed customers does not provide
12 any evidence regarding the nature of the traffic delivered by Global Ohio to AT&T Ohio
13 – it would simply be a list of companies Global Ohio claims are Internet Service
14 Providers (“ISPs”) and/or ESPs and would say nothing about the actual traffic delivered
15 to AT&T Ohio. Furthermore, a company’s classification as an ESP in some
16 circumstances (which AT&T Ohio does not concede here regarding any of Global Ohio’s
17 customers) does not mean that the traffic Global Ohio carries for them is ISP/ESP traffic,
18 nor does it support any assertion that Global Ohio itself is eligible for the ESP exemption.

19 **Q. WOULD LETTERS FROM GLOBAL OHIO CUSTOMERS CONSTITUTE**
20 **EVIDENCE THAT ALL OF GLOBAL OHIO’S TRAFFIC TO AT&T OHIO IS**
21 **ELIGIBLE FOR THE EXP EXEMPTION?**

¹¹ Interstate access charges are not at issue in this proceeding.

1 A. No. First and foremost, it is my understanding that any customer letters Global Ohio
2 might provide with its testimony would constitute hearsay and therefore should be
3 disregarded. In the event the Commission elects to take any such letters into account
4 when rendering its decision in this case, there are additional factors the Commission
5 should consider, for example, the relevance and veracity of the information provided.

6 **Q. IN PRIOR FILINGS, GLOBAL IDENTIFIED TRANSCOM**
7 **COMMUNICATIONS, INC. (“TRANSCOM”) AND COMMPARTNERS, LLC**
8 **(“COMMPARTNERS”) AS SUPPOSED “ESP” CUSTOMERS OF GLOBAL.**
9 **WOULD COMMPARTNERS’ OR TRANSCOM’S TRAFFIC DELIVERED TO**
10 **AT&T OHIO VIA GLOBAL OHIO QUALIFY FOR THE ESP EXEMPTION?**

11 A. No. First with respect to CommPartners, like Global Ohio, CommPartners is a CLEC,
12 not an ESP and therefore not eligible for the ESP exemption. As for Transcom, while
13 there exists a single court decision purportedly finding Transcom to be an ESP, that
14 decision was vacated. *See* Attachment PHP-1. In addition, at least some of Transcom’s
15 traffic is not broadband-originated, *e.g.*, at least some – and perhaps, possibly all –
16 originates on the public switched telephone network (“PSTN”). Importantly, as I discuss
17 below, even if Transcom was an ESP, that does not mean that the transport and
18 termination services and transiting services that AT&T Ohio has provided under the
19 parties’ ICA to Global Ohio, which is not an ESP, is subject to the ESP exemption.

20 **Q. HOW DOES TRANSCOM DESCRIBE ITS SERVICES?**

21 A. On its website, Transcom describes its customers as follows:

22 Typical customers include consumer and enterprise VoIP (Voice
23 over Internet Protocol) providers, cable/MSOs, ILECs (Incumbent
24 Local Exchange Carriers), IXC (Inter-Exchange Carriers), foreign

1 PTTs, calling card operators, wireless carriers, ISPs (Internet
2 Service Providers) and content providers.

3 (<http://www.transcomus.com/background.html>)

4 Transcom also describes its “Voice Termination Service”:

5 This is our core service offering. Transcom provides termination
6 services throughout the world with a focus on North America.
7 Transcom has an onnet footprint that covers about 70% of the US
8 Population. Customers looking for a TDM interconnect can
9 connect to Transcom’s Veraz based network at the following
10 switch locations ...

11 (<http://www.transcomus.com/product.html>)

12 As Transcom itself acknowledges, it provides TDM (Time Division Multiplex)
13 originated, non-IP services to ILECs, interexchange carriers, and/or wireless carriers.

14 **Q. HAS GLOBAL OHIO ADMITTED THAT IT ORDERED TRUNKS FOR THE**
15 **DELIVERY OF TELECOMMUNICATIONS TRAFFIC TO AT&T OHIO**
16 **PURSUANT TO THE PARTIES’ ICA?**

17 A. Yes. In response to an AT&T Ohio request for admission in the parties’ federal district
18 court proceeding,¹² Global Ohio admitted that “the trunks over which Global Ohio has
19 delivered telecommunications traffic to AT&T Ohio were established pursuant to the
20 Interconnection Agreement between Global NAPs Ohio, Inc. and AT&T Ohio.”¹³

21 **Q. CAN GLOBAL OHIO CREDIBLY ASSERT THAT WHEN GLOBAL OHIO**
22 **ORDERED TRUNKS, IT INFORMED AT&T OHIO OF THE PURPORTED**
23 **“ESP-ORIGINATING” NATURE OF GLOBAL OHIO’S TRAFFIC?**

¹² Case No. 2:06 CV 549, *In the United States District Court for the Southern District of Ohio, The Ohio Bell Telephone Company, Inc. v. Global NAPs Ohio, Inc.* (“District Court Proceeding”). An excerpt from Global Ohio’s December 15, 2006 response to AT&T Ohio’s First Requests to Admit (“First Admissions”) is provided as Attachment PHP-2.

¹³ First Admissions, number 9 (Att. PHP-2).

1 A. No. To the extent Global Ohio now seeks to characterize the traffic that Global Ohio has
2 delivered to AT&T Ohio, and for which AT&T Ohio seeks to recover reciprocal
3 compensation and transiting charges, as allegedly VoIP or IP-originated traffic, that
4 characterization is refuted by the facts. Neither Global Ohio nor Global NAPs, Inc. nor
5 Global NAPs Networks, Inc. (“Global Networks”) was even providing transport or other
6 services for such traffic at the time Global Ohio ordered trunks. In its testimony in the
7 parties’ Arbitration, Global Ohio testified about its intention to offer “FX-like local
8 service” to customers like ISPs – *i.e.*, to transport dial-up Internet access service calls
9 from AT&T Ohio’s end users to Global Ohio’s ISP customers.¹⁴ It appears that some
10 “Global” entity only later began offering to “terminate” traffic for alleged ESPs (more
11 precisely, to deliver traffic to local carriers, such as AT&T Ohio, that must actually
12 terminate or transit the traffic).

13 **Q. BESIDES THE ARBITRATION, WHAT OTHER BASIS DO YOU HAVE FOR**
14 **YOUR CONCLUSION REGARDING THE NATURE OF GLOBAL OHIO’S**
15 **TRAFFIC WHEN IT ORDERED TRUNKS FROM AT&T OHIO IN 2004?**

16 A. The Global entities have consistently described their services for the 2002 timeframe
17 until 2005 in a manner that would exclude the type of traffic Global Ohio now claims is
18 subject to the ESP exemption. For example, in litigations between various Global entities
19 and AT&T California, AT&T Illinois, and BellSouth Telecommunications, Inc.
20 (“BellSouth”), and in Global Ohio’s disputes with AT&T Ohio, Global has asserted or
21 suggested that in this timeframe it did not provide VOIP or IP-originated transport
22 services.

¹⁴ See Arbitration, Direct Testimony of Robert Fox, p. 12.

1 **Q. HOW DID GLOBAL NAPS CALIFORNIA, INC. (“GLOBAL CALIFORNIA”)**
2 **CHARACTERIZE ITS SERVICES IN THE AT&T CALIFORNIA LITIGATION?**

3 A. In the Global California / AT&T California litigation,¹⁵ in its July 3, 2008 Appeal From
4 Presiding Officer’s Decision Finding Global NAPs California In Breach Of
5 Interconnection Agreement, Global California stated (at p. 1) that it signed an
6 interconnection agreement with AT&T California “[i]n early 2003,” and that “Global did
7 not transmit Voice over Internet Protocol (‘VoIP’) traffic at that time.”

8 **Q. HOW DID GLOBAL NAPS ILLINOIS, INC. (“GLOBAL ILLINOIS”)**
9 **CHARACTERIZE ITS SERVICES IN THE AT&T ILLINOIS LITIGATION?**

10 A. In the Global Illinois / AT&T Illinois litigation,¹⁶ from 2003 to late 2005 Global Illinois
11 disputed AT&T Illinois’ charges on the ground that the traffic purportedly was ISP-
12 bound traffic. Global Illinois made no mention of any “outbound,” “ESP,” or “VoIP”
13 traffic. Not until late 2005 did Global Illinois suggest that “IP” traffic was also at issue.

14 **Q. HOW DID GLOBAL CHARACTERIZE ITS SERVICES IN THE BELL SOUTH**
15 **LITIGATION?**

16 A. In the Global / BellSouth litigation, Global witness James Scheltema stated that Global’s
17 ICAs with BellSouth “were negotiated and executed at a time when Global was providing
18 in-bound dial-up services to competitive Internet Service Providers,” that “[f]rom 2000 to
19 early 2005, Global’s traffic was primarily inbound-ISP traffic,” and then [f]rom early

¹⁵ California Public Utility Commission (“CPUC”) Case No. 07-11-018, *Pacific Bell Telephone Company, a California Corporation d/b/a AT&T California v. Global NAPs California, Inc.* (“AT&T California Complaint”).

¹⁶ Illinois Commerce Commission (“ICC”) Docket No. 08-0105, *Illinois Bell Telephone, Inc. v. Global NAPs Illinois, Inc.* (“AT&T Illinois Complaint”).

1 2005 to date, Global's traffic has been primarily outbound ESP traffic" that "comes from
2 Enhanced Service Providers (ESPs)."¹⁷

3 Similarly, in his deposition in that case, Mr. Scheltema testified that at the time it
4 entered into ICAs with BellSouth (which was between 2001 and 2003), Global NAPs
5 "was not carrying any VoIP traffic from ESPs,"¹⁸ that "we weren't doing outbound" and
6 that "[a]ll of our traffic was inbound."¹⁹

7 **Q. ARE GLOBAL'S DECLARATIONS IN THE BELL SOUTH LITIGATION**
8 **CONSISTENT WITH GLOBAL OHIO'S BILLING DISPUTES THAT ARE THE**
9 **SUBJECT OF THIS PROCEEDING?**

10 A. For the most part, yes. Consistent with its declarations in the BellSouth litigation and as
11 Ms. Williams explains, from 2004 to 2008 Global Ohio's billing dispute statements have
12 claimed that its traffic to AT&T Ohio is ISP-bound traffic and therefore exempt from
13 intercarrier compensation. Global Ohio has consistently asserted in disputing AT&T
14 Ohio's bills that its traffic is allegedly exempt from compensation obligations to AT&T
15 Ohio because the traffic is ISP-bound – not because it is VoIP or IP-originated.²⁰

¹⁷ Affidavit of James Scheltema, ¶¶ 7-8, Doc. No. 109, Case No. 04-0096 (E.D. N.C. filed 12/19/06).

¹⁸ Doc. No. 83-8, Case No. 04-0096 (E.D. N.C. filed 5/18/06) (Def.'s Ex. B, excerpt of Scheltema deposition, p. 21).

¹⁹ Doc. No. 61, Case No. 04-0096 (E.D. N.C. filed 3/22/06) (Def.'s Ex. F, excerpt of Scheltema deposition, pp. 68-69).

²⁰ On December 12, 2005, AT&T Ohio sent a letter to Global Ohio demanding payment and requesting that the parties close informal dispute resolution. Global Ohio responded on December 15, 2005. These letters are provided as Exhibits PHP-3 and PHP-4, respectively. In responding, Mr. Scheltema stated that Global Ohio characterized its traffic as internet traffic originated with enhanced service providers. This is shortly after Global Illinois changed its assertions regarding the nature of its traffic to AT&T Illinois. However, Global Ohio's billing dispute forms have consistently indicated that its traffic to AT&T Ohio is ISP-bound.

1 **Q. DOES THE ESP EXEMPTION ALLOW ALLEGED DOWNSTREAM**
2 **CARRIERS SUCH AS GLOBAL OHIO TO BE EXEMPT FROM PAYING**
3 **RECIPROCAL COMPENSATION AND TRANSITING CHARGES?**

4 A. Absolutely not, and especially not with respect to the traffic at issue here. As I stated, the
5 ESP exemption is extremely narrow. As a result of the exemption, “enhanced service
6 providers are treated as end users for purposes of applying access charges” and need not
7 purchase switched access products for connecting to their own subscribers; instead ESPs
8 may purchase traditional business lines for such purposes and thus “generally pay local
9 business rates and interstate subscriber line charges for their switched access connections
10 to local exchange company central offices,” rather than access charges.²¹ As the FCC
11 subsequently described its ESP exemption, that exemption carves ESPs out from the
12 access charge obligation when they “use incumbent LEC networks *to receive calls from*
13 *their customers.*”²²

14 To begin with, AT&T Ohio’s claims in this proceeding concern unpaid bills for
15 reciprocal compensation charges and transiting charges, not access charges. Moreover,
16 even if access charges were the subject of AT&T Ohio’s claims in this proceeding, the
17 ESP exemption would not apply to Global Ohio’s alleged IP transport services, for
18 multiple reasons. First, Global Ohio is not using a retail business product as the ESP
19 exemption allows, but instead uses a local/intraLATA toll trunk, which end users do not
20 purchase. Second, as the FCC itself has stated, the ESP exemption excuses *ESPs* from
21 paying access charges only when they “use incumbent LEC networks to receive calls

²¹ *In re Amendments of Part 69 of the Commission’s Rules relating to Enhanced Service Providers*, 3 FCC Rcd 2631, n. 8 (FCC April 27, 1988).

²² *Access Charge Order*, (emphasis added).

1 from their end users.”²³ Global Ohio uses the PSTN not to receive calls from its own end
2 users, but to send calls over the PSTN to AT&T Ohio’s and third party carriers’ end users
3 who are *not* customers of Global Ohio. As the FCC has explained, “enhanced service
4 providers (ESPs) should not be subjected to originating access charges for ESP-bound
5 traffic.”²⁴ But Global Ohio’s alleged IP traffic is not ESP-bound; it is PSTN-bound for
6 termination on the PSTN, just like an ordinary long-distance call. Third, as the name
7 suggests, the ESP exemption applies only when the ESP is providing enhanced or
8 information services to its subscribers. Global Ohio is not an ESP, and in addition it uses
9 AT&T Ohio’s switching to deliver plain old circuit-switched telephone calls to non-VoIP
10 end users. Therefore, the terminating end user receives nothing more than a traditional
11 telephone service and not an information service. Finally, as I just noted, the ESP
12 exemption applies not to CLECs or IXC’s, but to ESPs. The entire point of the exemption
13 is to allow ESPs to provide enhanced services to *their own end users* via a retail product
14 without incurring access charges.

15 **Q. JUST TO BE CLEAR, ARE YOU SAYING THAT THE TRAFFIC GLOBAL**
16 **OHIO DELIVERS TO AT&T OHIO WOULD NOT QUALIFY FOR THE ESP**
17 **EXEMPTION?**

18 A. That’s correct. The ESP exemption does not apply broadly to any traffic Global Ohio
19 sends to AT&T Ohio. Global Ohio is a CLEC, not an ESP. The ESP exemption is very
20 limited and only applies to the ESPs themselves, not to downstream carriers delivering
21 traffic from ESPs to third party end users. Global Ohio is not, and does not claim to be,
22 an ESP. Rather, it claims the customers of its un-certificated affiliate, Global Networks,

²³ *Id.*

1 are ESPs.²⁵ But AT&T Ohio is seeking to recover charges from Global Ohio, not the
2 supposed ESP customers of Global Ohio's affiliate, for services AT&T Ohio provides to
3 Global Ohio. In any event, as explained in Mr. Hamiter's testimony, AT&T Ohio's data
4 demonstrates that much (if not all) of Global Ohio's traffic is not VoIP or IP-originated.
5 Accordingly, the ESP exemption would not apply to Global Ohio or to the traffic it
6 delivers to AT&T Ohio. Furthermore, as I noted above, the ESP exemption is an
7 exemption from interstate access charges, not from reciprocal compensation or transiting
8 charges such as those at issue in this case.

9 **Q. IS THIS THE FIRST TIME A GLOBAL CLEC HAS ADVANCED THE THEORY**
10 **THAT ITS TRAFFIC IS EXEMPT FROM ANY AND ALL CHARGES BY**
11 **VIRTUE OF ITS CUSTOMERS' SUPPOSED ESP STATUS?**

12 A. No. Global Ohio's affiliates advanced the same theory twice before in California and
13 once in Illinois. In all cases, their theory was rejected.

14 **Q. BRIEFLY DESCRIBE THE COMPLAINTS AND RELEVANT ORDERS**
15 **AGAINST GLOBAL CALIFORNIA.**

16 A. AT&T California brought actions against Global California similar to the complaints
17 AT&T Ohio filed with the Ohio federal district court and the Commission. As in Ohio,
18 the California district court dismissed the ICA-related counts, without prejudice, on
19 jurisdictional grounds. On November 17, 2007, AT&T California filed a breach of ICA
20 complaint, and the California Public Utilities Commission ("CPUC") opened Case
21 07-11-018. On September 18, 2008, the CPUC found that Global California's traffic
22 delivered to AT&T California is not eligible for the ESP exemption and ordered Global

²⁴ *In the matter of IP-enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36, ¶ 25.

1 California to pay AT&T California in excess of \$18 million for intercarrier compensation
2 and transiting charges (“CPUC Decision 07-11-018”). I have attached the CPUC
3 Decision as Attachment PHP-5.

4 Cox California brought a similar complaint against Global California for failure to
5 pay for termination of intraLATA toll calls, which was filed April 28, 2006.²⁶ On
6 January 11, 2007, the California Public Utilities Commission (“CPUC”) granted Cox
7 California’s motion for summary judgment and ordered Global California to pay Cox
8 California nearly a million dollars, plus interest for terminating intraLATA toll calls
9 (“CPUC Decision 07-01-004”). CPUC Decision 07-01-004 is attached as Attachment
10 PHP-6. The following passage from CPUC Decision 07-01-004 (p. 15) is particularly
11 relevant to AT&T Ohio’s claims with respect to intercarrier compensation:

12 In its response to Cox’s motion for summary judgment, Global
13 NAPs argues that because the traffic it sent to Cox originated with
14 Internet Service Providers (ISPs), it was exempt from access
15 charges. But this response misreads applicable law. The only
16 relevant exemption from the access charge regime under Federal
17 law is for **ISP-bound traffic** rather than **ISP-originated** traffic, a
18 conclusion we reached in our recent *AT&T-MCI metro* decision
19 [D.06-08-029] involving facts very similar to those in this case.
20 (Emphases in original, footnote incorporated)

21 On July 25, 2007, Global California filed a petition with the California federal district
22 court under Section 252(e)(6) of the Act seeking review of the CPUC’s order.²⁷ On July
23 14, 2008, the CPUC filed a motion for judgment on the pleadings, which the district court
24 construed as a motion for summary judgment. On December 23, 2008, the district court

²⁵ As I explained above, there is no support for any Global Ohio assertion that its customers are actually ESPs.

²⁶ California Case No. 06-04-026, *In the Matter of Cox California Telecom LLC (U-5864-C), Complainant, versus Global NAPs California, Inc. (U-6449-C), Defendant*. (“Cox California Complaint”)

²⁷ Case No. CV 07-04801 MMM (SSx), *In the United States District Court, Central District of California, Global NAPs California Inc. v. Public Utilities Commission of the State of California*.

1 granted the CPUC's motion for summary judgment ("California Summary Judgment").
2 The district court found that the CPUC properly exercised jurisdiction in interpreting and
3 enforcing the parties' ICA, including with respect to intercarrier compensation for VoIP
4 traffic, and that the CPUC's decision was neither arbitrary nor capricious.²⁸ I have
5 provided the California Summary Judgment order as Attachment PHP-7.

6 **Q. YOU MENTIONED THAT GLOBAL ILLINOIS ADVANCED THE THEORY**
7 **THAT ITS TRAFFIC TO AT&T ILLINOIS QUALIFIES FOR THE ESP**
8 **EXEMPTION. HAS THE ILLINOIS COMMISSION REACHED A FINAL**
9 **DECISION REGARDING APPLICATION OF THE ESP EXEMPTION TO**
10 **GLOBAL ILLINOIS' TRAFFIC?**

11 A. Not yet. The Illinois commission is expected to issue its final order in the AT&T
12 Illinois/Global Illinois complaint no later than February 13, 2009. However, the
13 administrative law judge's ("ALJ") proposed order soundly rejected Global Illinois'
14 theory that reciprocal compensation did not apply to its local traffic because of the ESP
15 exemption.²⁹ I have provided the Illinois Proposed Order as Attachment PHP-8.

16 **Q. WOULD IT SURPRISE YOU IF GLOBAL OHIO INDICATES THAT IT WILL**
17 **APPEAL A COMMISSION DECISION FINDING THAT THE ESP EXEMPTION**
18 **DOES NOT APPLY TO GLOBAL OHIO'S TRAFFIC, AS IT DID IN**
19 **CALIFORNIA?**

²⁸ See California Summary Judgment order at 16-18, 27 (Att. PHP-7).

²⁹ Docket No. 08-0105, Illinois Bell Telephone Company, Inc. v. Global NAPs Illinois, Inc., *Complaint Pursuant to Section 252(e) of the Federal Telecommunications Act of 1996, 47 U.S.C. §252(e) and Sections 4-101, 10-101, and 10-108 of the Illinois Public Utilities Act, 220 ILCS 5/4-101, 220 ILCS 5/10-101, and 220 ILCS 5/10-108.* ("Illinois Complaint"). See proposed order dated November 24, 2008 ("Illinois Proposed Order") at pp. 53-56 (Att. PHP-8).

1 A. Not at all. I am not aware of a single decision or order from any state commission or
2 court that ruled against any Global entity that the Global companies did not appeal in
3 some fashion. The Global companies have a well-established pattern of protracted
4 litigation to avoid paying a penny for the services they order and receive from ILECs, to
5 avoid having those services disconnected, and to avoid having their certifications
6 suspended or revoked. The Commission should not be intimidated by any thinly veiled
7 threats of appeal. To be sure, if Global Ohio follows the path of its affiliates, it will
8 appeal any decision that does not absolve it of all financial liability to AT&T Ohio *and*
9 allows it to maintain its state certifications.

10 **Q. WOULD THE NEW YORK ORDER REGARDING A DISPUTE BETWEEN**
11 **GLOBAL NAPS, INC. AND TVC ALBANY, WHICH GLOBAL ILLINOIS**
12 **PROVIDED AS SUPPORT FOR ITS CASE IN ILLINOIS, HAVE ANY**
13 **RELEVANCE TO THIS PROCEEDING?**

14 A. No. The New York Public Service Commission (“NY PSC”) order regarding a dispute
15 between Global NAPs, Inc. and TVC Albany³⁰ would have no relevance to this case, for
16 at least four reasons.

- 17 1. The traffic at issue in New York was between Global and a carrier with which
18 it had no direct interconnection and, most importantly, no interconnection or
19 traffic exchange agreement. The NY PSC did not find that the traffic
20 exchanged was eligible for the ESP exemption. Rather, the NY PSC ordered
21 the parties to negotiate a compensation agreement. In this case, AT&T Ohio
22 and Global Ohio have an ICA that governs the traffic exchanged, and it is that

ICA that directs the appropriate compensation. The negotiation (and arbitration) has already taken place.

2. The NY PSC was addressing only intrastate access charges for the termination of toll calls from Global, and not charges for local reciprocal compensation charges or transiting charges.

3. The NY PSC's findings with respect to access charges were limited to nomadic VoIP traffic. It did not find that Global's traffic qualifies for the ESP exemption. In this case, there is no evidence that any of the traffic Global Ohio delivers to AT&T Ohio is actually nomadic VoIP traffic, much less that it all is.

4. The Commission is not bound by the NY PSC's findings in any event, but especially not in this case where the facts and circumstances are quite different.

This is consistent with the recent California Summary Judgment order, in which the federal district court in California rejected Global California's reliance on the NY PSC's order as support for exempting Global California's traffic to Cox California from intercarrier compensation and transiting charges.³¹

Importantly, the alleged nature of Global Ohio's purported VoIP traffic has no bearing on the limited scope of the FCC's ESP exemption. As I explained above, in defining the narrow contours of that exemption, the FCC made no distinction regarding

³⁰ NY PSC Case 07-C-0059, *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications against Global NAPs, Inc. for Fairlure to Pay Intrastate Access Rates*, order dated March 19, 2008.

³¹ See California Summary Judgment at pp. 20-21 (Att. PHP-7).

the type of enhanced service that the ESP was providing, and it did not extend the exemption to downstream carriers for any kind of enhanced services traffic.

Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED INTERCARRIER COMPENSATION FOR IP-ORIGINATED TRAFFIC?

A. Yes. The issue of intercarrier compensation for IP-originated traffic was addressed in AT&T Ohio's arbitration with TelCove Operations, Inc. ("TelCove").³² I have provided an excerpt from the TelCove Arbitration Award as Attachment PHP-9. The Commission based its decision in that case on the sound principle that "compensation between carriers/service providers [should be] treated in a technology neutral manner."³³ The Commission also cited to paragraph 61 of the FCC's *IP-Enabled Services NPRM*:

any service provider sending traffic to the PSTN [public switched telephone network] should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network, and that the cost of the PSTN should be borne equitably among those that use it in similar ways.³⁴

The Commission concluded that the physical location of the originating and terminating parties is the deciding factor for intercarrier compensation, and when physical location is not available, the CPN should be used.³⁵ The Commission also found that:

[F]or IP-PSTN calls, if the jurisdiction of the call can be determined using CPN or other call records, the applicable compensation regime should be applied (i.e., interstate or intrastate access rates for non-Section 251(b)(5) traffic, and reciprocal compensation for Section 251(b)(5) traffic). If the jurisdiction of

³² Case No. 04-1822-TP-ARB, *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio*, Arbitration Award issued January 25, 2006 ("TelCove Arbitration Award").

³³ TelCove Arbitration Award at p. 16 (Att. PHP-9).

³⁴ *Id.*

³⁵ *Id.*

1 the call cannot be determined, then, in response to the FCC's
2 finding that IP-based services are interstate services, the call shall
3 be considered an interstate call and the interstate access rates shall
4 apply for the purpose of intercarrier compensation.³⁶

5 **Q. HAS THE FCC TAKEN ANY ACTION SINCE JANUARY 2006 THAT WOULD**
6 **DISTURB THE COMMISSION'S PRIOR FINDINGS IN THE TELCOVE**
7 **ARBITRATION?**

8 A. No.

9 **Q. WHAT DOES THIS MEAN FOR GLOBAL OHIO'S ARGUMENT THAT ALL**
10 **ITS TRAFFIC IS EXEMPT FROM INTERCARRIER COMPENSATION**
11 **BECAUSE IT ORIGINATES WITH ESPS?**

12 A. This means that Global Ohio's argument, even if it were supportable (which it is not),
13 would do Global Ohio no good. Even if 100% of Global Ohio's traffic originated in IP-
14 format (which AT&T Ohio does not concede), the Commission clearly found that traffic
15 originated in IP format, precisely what Global Ohio now claims about its traffic to AT&T
16 Ohio, is not exempt from intercarrier compensation. Consistent with its ruling in the
17 TelCove arbitration, the Commission should find that AT&T Ohio is entitled to collect
18 reciprocal compensation for traffic that Global Ohio has represented is local traffic,
19 regardless of the protocol in which the calls originate.

20
21 **VII. TRANSITING – BREACH OF ICA**

22 **Q. PLEASE DESCRIBE THE TRANSITING SERVICE AT&T OHIO PROVIDES**
23 **TO GLOBAL OHIO.**

³⁶ *Id.* at p. 10.

1 A. AT&T Ohio's transiting service allows Global Ohio to utilize AT&T Ohio's network to
2 exchange traffic with third party carriers with which Global has no direct interconnection.
3 This service provides Global Ohio the option to complete the originating traffic of its
4 affiliates' customers to end users of other Local Exchange Carriers ("LECs"), CLECs and
5 wireless carriers (*i.e.*, non-AT&T Ohio end users) via AT&T Ohio's network, without the
6 necessity of separate interconnection arrangements with each of these third party carriers.
7 AT&T Ohio's end users are not part of these transited calls. Indeed, the calls neither
8 originate from nor terminate to AT&T Ohio's network or end users. Irrespective of
9 AT&T Ohio's transiting service offering, however, Global Ohio retains its right to
10 interconnect directly to third-party carriers. In other words, Global Ohio can interconnect
11 directly with third-party carriers or use the facilities of other carriers to indirectly
12 interconnect with third-party carriers.

13 **Q. DOES GLOBAL OHIO NEED TO ISSUE AN "ORDER" FOR AT&T OHIO'S**
14 **TRANSIT SERVICE?**

15 A. No. Global Ohio's ICA contains terms and conditions that apply to transit service, and
16 those terms do not require Global Ohio to explicitly "order" transit service. Pursuant to
17 the ICA, Global Ohio can (and does) simply deliver transit calls over the
18 local/intraLATA toll trunks to AT&T Ohio, and AT&T Ohio will complete those calls to
19 the appropriate third party carrier.

20 **Q. DOES AT&T OHIO CHARGE INTERCONNECTING CARRIERS LIKE**
21 **GLOBAL OHIO FOR TRAFFIC THAT IT TRANSITS ON THEIR BEHALF?**

22 A. Yes. Transiting charges are typically established in AT&T Ohio's ICAs, including its
23 ICA with Global Ohio.

Q. PLEASE IDENTIFY AND DESCRIBE THE RELEVANT ICA PROVISIONS REGARDING COMPENSATION TO AT&T OHIO FOR TRANSITING SERVICE PROVIDED BY AT&T OHIO TO GLOBAL OHIO.

A. Appendix RC Section 9.1 addresses compensation for AT&T Ohio's transiting service provided to Global Ohio³⁷ and states:

Transiting Service allows one Party to send Local, Optional, intraLATA Toll Traffic, and 800 intraLATA Toll Traffic to a third party network through the other Party's tandem. A Transiting rate element applies to all MOUs between a Party and third party networks that transits an **SBC-13STATE** network. The originating Party is responsible for payment of the appropriate rates unless otherwise specified. The Transiting rate element is only applicable when calls do not originate with (or terminate to) the transit Party's End User. Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, the Transit Traffic rate element shall not apply to MCA Traffic (i.e., no transiting charges shall be assessed for MCA Traffic) for **SWBT-MO**. The rates that **SBC-13STATE** shall charge for transiting CLEC traffic are outlined in Appendix Pricing.

The Pricing Schedule in the Global Ohio ICA sets forth AT&T Ohio's transit rate elements and rates as follows:

Tandem Switching, per minute of use	\$0.004587
Tandem Termination, per minute of use	\$0.000226
Tandem Facility, per minute of use	\$0.000188

Q. JUST TO BE CLEAR, DO AT&T OHIO'S TRANSITING CHARGES DIFFER BASED ON THE TYPE OF TRAFFIC GLOBAL OHIO DELIVERS TO AT&T OHIO?

³⁷ Certain provisions in Appendix RC and Appendix ITR relate to transiting service trunking requirements and do not directly address compensation. For example, RC Section 9.5 and ITR Section 4.2.1 provide that Global Ohio is required to establish direct interconnection with a third party when its transit traffic to that third party requires 24 or more trunks.

1 A. No. AT&T Ohio's charges to Global Ohio for transiting services are solely based on the
2 transiting function AT&T Ohio provides in handling that traffic. They are totally
3 unrelated to the regulatory classification of traffic. So, AT&T Ohio charges the same rate
4 for transiting, regardless of whether the traffic is local or toll.

5 **Q. DOES AT&T OHIO ASSESS INTERCARRIER COMPENSATION ON BEHALF**
6 **OF THE TERMINATING CARRIER FOR TRANSITING TRAFFIC?**

7 A. No. AT&T Ohio did not and does not assess intercarrier compensation charges (*i.e.*,
8 reciprocal compensation for local traffic and switched access for toll traffic) on behalf of
9 terminating carriers for Global Ohio's transiting traffic, because those calls do not
10 terminate to AT&T Ohio's end users. It is the responsibility of the originating and
11 terminating carriers to establish the appropriate intercarrier compensation arrangements
12 for calls exchanged between their respective customers.

13 **Q. WHAT DID THE ALJ RECOMMEND IN THE AT&T ILLINOIS / GLOBAL**
14 **ILLINOIS DISPUTE REGARDING AT&T ILLINOIS' TRANSITING SERVICE**
15 **PROVIDED TO GLOBAL ILLINOIS?**

16 A. In her proposed order, the Illinois ALJ found that the parties' dispute regarding transit
17 service is "governed by the parties' ICA, not the FCC rules" (although there are no FCC
18 rules governing transit services in any event) and that "Global agreed in the ICA to pay
19 for transiting service." The ALJ concluded that Global Illinois violated the ICA and was
20 liable for AT&T Illinois' transiting charges.³⁸

21 **Q. ARE THE TRANSIT TERMS AND CONDITIONS IN GLOBAL OHIO'S ICA**
22 **THE SAME AS THOSE FOR GLOBAL ILLINOIS?**

³⁸ See Illinois Proposed Order at pp. 29-30.

1 A. Yes.

2 **Q. HAS GLOBAL OHIO USED THE TRANSIT SERVICES PROVIDED BY AT&T**
3 **OHIO?**

4 A. Yes. Global Ohio uses AT&T Ohio's network to send traffic to third party carriers. This
5 began in June 2004 and continues to the present.

6 **Q. HAS GLOBAL OHIO PAID FOR ANY OF THE TRANSIT SERVICES**
7 **PROVIDED BY AT&T OHIO?**

8 A. No. Global Ohio has an unpaid balance for transit services going back to 2004.
9

10 **VIII. GLOBAL OHIO'S CERTIFICATION**

11 **Q. ARE YOU FAMILIAR WITH THE CORPORATE STRUCTURE OF THE**
12 **VARIOUS GLOBAL NAPS ("GLOBAL") ENTITIES?**

13 A. Yes. Based on my review of and involvement in regulatory and judicial proceedings in
14 other states, I am aware of the corporate structure of the various Global entities.

15 **Q. PLEASE EXPLAIN THAT CORPORATE STRUCTURE.**

16 A. It is difficult to explain because Global has taken great pains to conceal much of its
17 activities. Based on my experience, I have learned that Global Ohio is structured the
18 same as other Global entities that are certificated to provide service in various states, such
19 as Global California and Global Illinois, and that all these entities operate under the
20 umbrella of their corporate parent, Ferrous Miner. I have further learned that Ferrous
21 Miner owns other Global entities, including Global NAPs, Inc., Global Networks, Global
22 NAPs New Hampshire, Inc. ("Global New Hampshire") and Global NAPs Realty, Inc.
23 ("Global Realty"), and that Ferrous Miner is wholly owned by Frank Gangi.

1 **Q. DOES GLOBAL OHIO CURRENTLY HOLD A CPCN IN OHIO?**

2 A. Yes. Global Ohio submitted its application for certification to provide local exchange
3 service on May 9, 2001.³⁹ I have attached Global Ohio's application ("Certification
4 Application") as Attachment PHP-10. Exhibit H to Global Ohio's Certification
5 Application was released from confidential status on November 14, 2008 and is provided
6 as Attachment PHP-11. The Commission's order approving Global Ohio's application,
7 which was granted on July 10, 2001 and effective July 12, 2001,⁴⁰ is attached as
8 Attachment PHP-12.

9 **Q. WHAT REPRESENTATIONS DID GLOBAL OHIO MAKE TO THE**
10 **COMMISSION TO OBTAIN CERTIFICATION?**

11 A. In seeking certification under Chapter 4901:1-6-10 of the Ohio Administrative Code
12 ("OAC"), Global Ohio represented that it had the requisite technical, financial and
13 managerial qualifications to provide the services set forth in its application.

14 **Q. WHO MADE THESE REPRESENTATIONS ON GLOBAL OHIO'S BEHALF?**

15 A. William Rooney, Vice President and General Counsel for Global Ohio.

16 **Q. IN WHAT FORM WERE THESE REPRESENTATIONS MADE?**

17 A. Mr. Rooney submitted an affidavit asserting the truth of Global Ohio's signed
18 certification application. This affidavit was included as Exhibit K to Global Ohio's
19 Certification Application. (See Attachment PHP-10).

³⁹ Case No. 01-1122-TP-ACE, *In the Matter of the Application of Global NAPS Ohio, Inc. for Authority to Resell Local Exchange Services*.

⁴⁰ Certificate Number 90-9199, Issued Pursuant to Case No. 01-1122-TP-ACE, dated July 10, 2001 ("Certification Order").

1 **Q. WHAT FINDING DID THE COMMISSION MAKE BASED ON THESE**
2 **REPRESENTATIONS?**

3 A. The Commission appears to have relied on these representations to find that Global Ohio
4 possessed the requisite technical, financial and managerial resources and abilities to
5 provide local exchange services and competitive telecommunications services.

6 **Q. WHAT REQUIREMENTS OR CONDITIONS ARE INCLUDED IN THE OAC**
7 **RELATED TO GLOBAL OHIO'S CPCN?**

8 A. OAC Chapter 4901:1-6-10 includes, among many other provisions, the following
9 requirements for telephone company certification as set forth in subsection (D):

10 (3) Verification of compliance with any applicable affiliate
11 transaction requirements;

12 (4) Verification that the applicant will maintain accounting
13 records pursuant to generally accepted accounting
14 practices;

15 (5) Documentation attesting to the applicant's satisfactory
16 technical expertise relative to the proposed service
17 offering(s);

18 (6) Documentation indicating the applicant's satisfactory
19 corporate structure, managerial expertise, and ownership;

20 (7) Information pertaining to any similar operations provided
21 by the applicant in other states; and

22 (10) Documentation attesting to the applicant's financial
23 viability including, at a minimum, an actual and pro
24 forma income statement and balance sheet.

25 In addition, subsection (I) provides as follows:

26 Conditions of approval. It is the applicant's responsibility to
27 satisfy the commission that the requirements of section
28 4905.24 of the Revised Code have been met. Section 4905.24
29 of the Revised Code conditions the approval of multiple
30 entities providing service upon a finding by the commission
31 that such operations are proper and necessary for the public

1 convenience. For a provider of basic local exchange service,
2 such determination shall include a review of the applicant's
3 financial, managerial and technical ability to provide the
4 proposed service.

5
6 Finally, subsection (K) addresses revocation of a certificate:

7 Nothing contained within these rules precludes the commission from revoking
8 the certification of a CLEC or CTS provider upon a demonstration that the
9 company has engaged in a pattern of conduct in violation of Ohio law. This
10 includes the failure to comply with the rules and regulations of the
11 commission, including the failure to file the requisite annual reports and the
12 failure to pay all corresponding assessments.
13

14
15 The Commission granted Global Ohio's CPCN certification pursuant to Chapter 4901:1-
16 6-10 of the OAC, indicating that the certificate "is revocable if all the conditions set forth
17 in the aforementioned case(s) [*i.e.*, Case No. 01-1122-TP-ACE] are not met."

18 **Q. ARE THE REPRESENTATIONS GLOBAL OHIO MADE TO THE**
19 **COMMISSION IN ITS CERTIFICATION APPLICATION TRUE TODAY?**

20 A. No. Some of Global Ohio's representations that may have been true in 2001 would be
21 false if those same representations were made today. For example, Global Ohio's
22 application indicated that it was providing "[d]ocumentation indicating the applicant's
23 corporate structure and ownership."⁴¹ What Global Ohio's application failed to state was
24 that Global Ohio (like other state certificated Global entities, *e.g.*, Global Illinois) is an
25 assetless shell, and that all the Global entities operate under the umbrella of Ferrous
26 Miner, which is wholly owned and controlled by Frank Gangi.

⁴¹ Certification Application, 845 Registration Form, Section II.

1 Similarly, Global Ohio's application stated it provided "information regarding any
2 similar operations in other states."⁴² While I did not find specific information in Global
3 Ohio's application with respect to sister companies, there is substantial information
4 available today that does not paint the Global family of companies in a favorable light, as
5 I discuss in more detail below. Likewise, Global Ohio's application stated that it "has no
6 affiliated interests or transactions to report."⁴³ But Global Ohio has no assets, customers,
7 employees, or revenues of its own and simply serves as a "front" for its affiliates. Yet
8 Global Ohio has not documented any of its affiliate transactions.⁴⁴

9 Global Ohio made certain financial representations in May 2001⁴⁵ that bear no
10 resemblance to Global Ohio's current financial situation. Importantly, Global Ohio did
11 not provide *any* financial information in its application that was specific to *Global Ohio*.
12 Instead, Global Ohio made a broad statement that it "has sufficient financial capability to
13 maintain these services, and the financial capability to meet its lease and ownership
14 obligations," with nothing to back up that statement.⁴⁶ Instead, Global Ohio provided
15 statements of "the financial performance and condition of *Global NAPs, Inc.* as of
16 September 30, 2000" (emphasis added). Global Ohio stated that Global NAPs, Inc. had a
17 net profit in excess of \$27 million and net worth of approximately \$53 million. Yet
18 *Global Ohio* has no assets, no customers, no employees, and no revenue. Nor has
19 anyone, including Ferrous Miner, Global NAPs, Inc. or any Global entity, "guaranteed

⁴² *Id.*

⁴³ Certification Application, Exhibit G.

⁴⁴ District Court Proceeding, Global Ohio's March 23, 2007 responses to AT&T Ohio's Second Set of Interrogatories ("Second Discovery Responses"), provided as Attachment PHP-13, Global Ohio Response No. 1-17.

⁴⁵ See Attachment PHP-11, Certification Application, Exhibit H.

⁴⁶ Certification Application, Section IV. Financial, Technical and Managerial Qualifications.

1 the debts or other monetary obligations of Global Ohio at any time between July 2002
2 and the present.”⁴⁷ Further, Global NAPs, Inc. also has turned out to be devoid of assets,
3 as I describe below.

4 As evidence of its managerial and technical resources, Global Ohio identified
5 Frank Gangi as the President and General Manager of Global NAPs, Inc., stating that he
6 “has led a number of successful entrepreneurial ventures ...”⁴⁸ Yet, as I discuss below,
7 Frank Gangi has a documented history of using sham corporations to engage in corporate
8 dishonesty.

9 Global Ohio’s representations have not been fulfilled in other areas as well. For
10 example, Global Ohio represented to the Commission that it would “provide facilities-
11 based local exchange services through the purchase of unbundled network element
12 [“UNE”] from the incumbent local exchange carriers,”⁴⁹ yet Global Ohio has never
13 purchased UNEs from AT&T Ohio. And Global Ohio stated its intention to “offer local
14 service, beginning with ISDN services,”⁵⁰ however Global Ohio has no customers, local
15 or otherwise. I discuss these matters with more specificity below.

16 **Q. HAS GLOBAL OHIO LIVED UP TO THE REQUIREMENTS OF ITS CPCN?**

17 A. No. Global Ohio does not possess sufficient financial resources to provide the services
18 for which it is certified, including facilities-based local exchange service. Global Ohio
19 has no employees, no assets, no customers, and no revenues. Yet it still obtains
20 telecommunications services from AT&T Ohio, incurring liabilities for which it refuses

⁴⁷ Global Ohio Response to AT&T Ohio Discovery Request No. 1-17, August 28, 2008.

⁴⁸ Certification Application Exhibits C and I.

⁴⁹ Certification Application, Section V. Description of Services Offered and Service Territory.

⁵⁰ Certification Application, Section I. Introduction.

1 to pay. It provides services to and receives services from its affiliate(s) without
2 documentation of the affiliated transactions.

3 While Global Ohio sought (and was apparently granted) a waiver from the
4 requirement to maintain its accounting records in accordance with the Uniform System of
5 Accounts (“USOA”), Global Ohio is nonetheless required to maintain its financial
6 transactions in accordance with Generally Accepted Accounting Practices (“GAAP”) and
7 in sufficient detail to comply with public utility tax laws. In its Certification Application,
8 Global Ohio claimed that:

9 [T]he Commission will have a reliable means by which to
10 evaluate the Applicant’s operations and assess its financial
11 fitness.⁵¹

12 Yet Global Ohio does not conduct its affiliate transactions at arms length (as evidenced
13 by the lack of documentation for the transfer of customers, assets, and revenues between
14 affiliates), blurring beyond recognition the line between Global Ohio and its affiliates –
15 making it impossible for the Commission to evaluate Global Ohio’s financial fitness
16 independent of its affiliates. While Global Ohio incurs the liabilities, another entity (or
17 entities) enjoys the revenues.

18 **Q. WHAT REVENUES ARE YOU REFERRING TO?**

19 A. The Global entities are clearly handling traffic that is originating on other networks – that
20 is the very traffic that AT&T Ohio is terminating to its end users and transiting to other
21 carriers. The Global entities are not handling this traffic for free. They are either
22 handling that traffic for the entities that originate it (in which case they are being paid by
23 those entities) or it is traffic originated by the customers of other Global entities (in which

⁵¹ Certification Application, Section VI.A, Waivers and Regulatory Compliance/Financial Record Keeping System.

1 case the Global entities are obtaining revenue from those customers). In either case, the
2 Global entities are generating revenue – but none of that revenue is held by Global Ohio.

3 **Q. DOES GLOBAL OHIO HAVE ANY EMPLOYEES?**

4 A. No. In its August 28, 2008 response to AT&T Ohio's first set of interrogatories in this
5 case ("AT&T Ohio Discovery"), Global Ohio stated that it has no employees today and
6 has never had any employees.

7 AT&T Ohio Request to Global Ohio No. 1-5

8 Please identify every fact and produce all documents on which
9 Global Ohio relies for its denial that it has no employees. Please
10 identify the number of current employees of Global Ohio and
11 identify each such employee.

12 SUBJECT TO ITS GENERAL OBJECTIONS GLOBAL NAPS ILLINOIS, INC.
13 REPLIES AS FOLLOWS:

14 Although there are no documents or facts which can establish
15 the negative of the subject of this request, Global has no
16 information or documents reflecting the existence of, payment
17 to or compensation of a Global employee. Global contacted
18 Select and Pay (via e-mail on 7-28-08) to verify that there are
19 no, nor were there any, Global Ohio employees by
20 crosschecking payroll records.

21
22 AT&T Ohio Request to Global Ohio No. 1-6:

23 Please identify the number of employees Global Ohio had in (a)
24 2007, (b) 2006, (c) 2005, (d) 2004, (e) 2003, and (f) 2002. Identify
25 each such employee.

26 SUBJECT TO ITS GENERAL OBJECTIONS GLOBAL REPLIES AS
27 FOLLOWS:

- 28 a. 2007: 0
29 b. 2006: 0
30 c. 2005: 0
31 d. 2004: 0
32 e. 2003: 0
33 f. 2002: 0
34

1 **Q. DOES GLOBAL OHIO HAVE ANY ASSETS?**

2 A. No. In response to AT&T Ohio Discovery, Global Ohio stated that it does not own any
3 plant or equipment.

4 AT&T Ohio Request to Global Ohio No. 1-10

5 Please identify any and all plant or equipment owned by Global
6 Ohio.

7 SUBJECT TO ITS GENERAL OBJECTIONS GLOBAL REPLIES AS
8 FOLLOWS:

9 Specific Objections:

10 In addition to its General Objections, Global specifically
11 objects to this request upon the grounds that it seeks
12 information that is not relevant and is beyond the scope of any
13 issue properly raised in this proceeding. Subject to this
14 specific objection Global NAPs Ohio, Inc. does not own any
15 plant or equipment.

16
17 In the District Court Proceeding, Global Ohio admitted that it had no assets in response to
18 AT&T Ohio's First Admissions (Att. PHP-2):

19 19. Global NAPs Ohio, Inc. has no assets other than its
20 certificate of public convenience and necessity.

21 RESPONSE: Admitted.

22 Similarly, as stated on March 23, 2007 by Global Ohio in response to AT&T Ohio's
23 Second Discovery No. 29b in the District Court Proceeding:

24 29. Explain the business relationship and identify all business
25 transactions and contracts (and produce copies of the contracts)
26 between Global Ohio and the entities identified in Global's
27 response to Interrogatory number 10.

28 ANSWER:

29 b. Global NAP [sic] Networks, Inc. provides the network
30 facilities necessary for Global NAPs Ohio, Inc. to exchange
31 traffic. ...

32 See Attachment PHP-13.

1 **Q. DOES GLOBAL OHIO HAVE ANY CUSTOMERS?**

2 A. No, as Global Ohio has revealed in various ways. For instance, in response to AT&T
3 Ohio Discovery in this proceeding, Global Ohio acknowledged that it has no customers
4 of its own.

5 AT&T Ohio Request to Global Ohio No. 1-7:

6 Please identify every fact and produce all documents on which
7 Global Ohio relies for its denial that it has no customers. Please
8 identify every customer that Global Ohio currently has, and
9 produce all contracts between Global Ohio and each of its current
10 customers.

11 SUBJECT TO ITS GENERAL OBJECTIONS GLOBAL REPLIES AS
12 FOLLOWS:

13 Although there are no facts which can establish this negative,
14 all customers served by the Global NAPs affiliated
15 corporations are currently customers of Global NAPs
16 Networks, Inc. Global works in conjunction with affiliated
17 Global NAPs entities to provide necessary services.

18 In the District Court Proceeding, Global Ohio made similar admissions that it has no
19 customers.⁵²

20 27. Any contracts that Global may have had with customers
21 have expired or have been assumed by or transferred to Global
22 NAPs Networks, Inc. or some other Global subsidiary, affiliate,
23 or parent entity.

24 RESPONSE: Admitted.

25 Likewise, Global Ohio's responses to AT&T Ohio's Second Discovery question numbers
26 26 and 29 in the District Court Proceeding (see Att. PHP-13) provide further support for
27 my assertion that Global Ohio has no customers.

28 26. Identify by name and address all customers of Global Ohio
29 that have delivered to Global Ohio traffic that Global Ohio then
30 delivered to AT&T Ohio, and for each such customer identify
31 (a) the date when the customer first began delivering to Global

⁵² First Admissions, number 27 (Att. PHP-2).

1 Ohio traffic that Global Ohio then delivered to AT&T Ohio,
2 (b) whether the customer currently delivers to Global Ohio
3 traffic that Global Ohio then delivers to AT&T Ohio, and (c), if
4 the customer is not currently delivering to Global Ohio traffic
5 that Global Ohio then delivers to AT&T Ohio, the date when
6 the customer ceased delivering such traffic.

7 ANSWER: Global NAPs Ohio, Inc. does not currently have
8 any customers. It has a working relationship with Global
9 NAPs Networks to exchange traffic between these two entities.

10
11 29. Explain the business relationship and identify all business
12 transactions and contracts (and produce copies of the contracts)
13 between Global Ohio and the entities identified in Global's
14 response to Interrogatory number 10.

15 ANSWER:

16 a. Global NAPs, Inc. provides a variety of services including
17 administration, management & legal. Further, Global
18 NAPs, Inc. is the contracting/sales party to all customers
19 exchanging traffic in Ohio.

20 b. ... Global NAPs Networks, Inc. is also the assignee of
21 customer contracts from Global NAPs Inc. whose
22 customers exchange traffic in Ohio.

23 **Q. DOES GLOBAL OHIO HAVE ANY REVENUE?**

24 A. No. Since Global Ohio has no assets (other than its state certification) and it admittedly
25 has no customers, it has no mechanism to generate revenues.

26 **Q. DOES GLOBAL OHIO HAVE ANY ABILITY TO PROVIDE LOCAL**
27 **EXCHANGE SERVICES?**

28 A. Given that Global Ohio has no assets and no employees, I do not see how it would be
29 able to provide any local exchange services.

30 **Q. HOW DO YOU EXPLAIN THE FACT THAT GLOBAL OHIO IS OPERATING A**
31 **TELECOMMUNICATIONS BUSINESS IN OHIO?**

1 A. It appears that Global Ohio operates its business (to the extent Global Ohio can be said to
2 have any business at all) via its un-certificated affiliate, Global Networks. However, this
3 is not an arms length arrangement, as Global Ohio admits. For example, Global Ohio
4 responded to AT&T Ohio's Second Discovery question number 29 in the District Court
5 Proceeding (see Att. PHP-13) that there are no contracts between Global NAPs, Inc. and
6 its affiliates.

7 29. Explain the business relationship and identify all business
8 transactions and contracts (and produce copies of the contracts)
9 between Global Ohio and the entities identified in Global's
10 response to Interrogatory number 10.

11 ANSWER: Each of the listed entities are affiliates of Global
12 NAPs Ohio, Inc. To my knowledge and understanding, there
13 are no formal written contracts between these affiliates.

14 ...

15 b. Global NAP [sic] Networks, Inc. provides the network
16 facilities necessary for Global NAPs Ohio, Inc. to exchange
17 traffic. Global NAPs Networks, Inc. is also the assignee of
18 customer contracts from Global NAPs Inc. whose customers
19 exchange traffic in Ohio.

20 Similarly, in responding to AT&T Ohio's additional discovery ("Additional Discovery")
21 in the District Court Proceeding, Global Ohio acknowledged that it does not have
22 documentation of the services it provides to Global Networks:⁵³

23 Document Requests 48 and 55. In response to Request 48,
24 Global states that it "does not have customers specific to Ohio,
25 but serves Global NAPs Networks, Inc. in its provision of
26 services to regionally/nationally diverse customers including
27 customers located in Ohio." In response to Request 55, Global
28 refers to its response to request 48. Please produce all
29 documents that reflect, refer to, or relate to Global's provision
30 of services to Global NAPs Networks, Inc., or confirm that no
31 such documents exist.

⁵³ Additional Discovery at ¶ 9, response numbers 48 and 55, May 14, 2007 (Att. PHP-14).

1 RESPONSE: Global OH states that it offers
2 telecommunications services in Ohio. Upon information and
3 belief, Global OH states that there are no relevant documents
4 responsive to these requests.

5 Global Ohio's responses to AT&T Ohio's Additional Discovery are attached as
6 Attachment PHP-14.

7 **Q. IF GLOBAL OHIO HAD AN AGREEMENT TO OBTAIN FACILITIES FROM**
8 **GLOBAL NETWORKS, WOULD THAT CHANGE YOUR**
9 **RECOMMENDATION TO REVOKE GLOBAL OHIO'S CPCN?**

10 A. No. Even if there were an agreement whereby Global Ohio obtained facilities from
11 Global Networks or another affiliate, it does not detract from the fact that Global Ohio
12 has no assets, employees, customers, revenues, or other financial resources of its own.
13 Apparently, one (or more) of Global Ohio's affiliates has all the employees, assets and
14 capabilities that are used to provide service in Ohio. Those are the Global entities that
15 should hold state certification and be answerable to the Commission – not the asset-less
16 shell corporation called Global Ohio. It is more accurate to state that an un-certificated
17 Global Ohio affiliate is using Global Ohio's CPCN and ICA to provide service in Ohio.

18 **Q. ARE ANY OF GLOBAL OHIO'S AFFILIATES AUTHORIZED BY THE**
19 **COMMISSION TO PROVIDE TELECOMMUNICATIONS SERVICES IN**
20 **OHIO?**

21 A. No.

22 **Q. WHAT DO GLOBAL OHIO'S ANNUAL REPORTS TO THE COMMISSION**
23 **INDICATE ABOUT GLOBAL OHIO'S BUSINESS?**

1 A. Global Ohio's annual reports consistently indicate that Global Ohio is not providing
2 service in Ohio and report no intrastate revenues.⁵⁴ Yet Global Ohio has been delivering
3 local and transit traffic to AT&T Ohio pursuant to the parties' ICA since 2004.
4 Furthermore, Global Ohio has consistently filed its annual reports after the due date
5 established by the Commission, further demonstrating Global Ohio's lack of managerial
6 competence.

7 **Q. IS GLOBAL'S CORPORATE STRUCTURE SIMILAR TO THAT OF VERIZON?**

8 A. No. A comparison of Global's corporate structure to Verizon's structure fails to yield
9 any substantive similarities. Based on my understanding of publicly available
10 information about the Verizon entities, Verizon's certificated entities have their own
11 employees and assets and revenues and they actually provide service to end users.

12 On Verizon's website, for example, Verizon publishes financial information for
13 its principal subsidiary providing telecommunications services in Ohio: Verizon North,
14 Inc. ("Verizon North").⁵⁵ That information establishes that Verizon North has substantial
15 assets, customers, revenues and employees, unlike Global Ohio, which has none.⁵⁶ I have
16 attached as Attachment PHP-18 a copy of the most recent year-end information for
17 Verizon North from Verizon's website. Verizon also files with the FCC publicly
18 available information through the FCC's Automated Reporting Information Management
19 System ("ARMIS") that disaggregates the Ohio-specific employees, revenues, and
20 expenses (and the Ohio assets to which these expenses relate) for Verizon North.

⁵⁴ Global Ohio's annual reports for the years 2004, 2005 and 2006 are attached as Exhibits PHP-15, 16, and 17, respectively. Global Ohio's annual report for 2007 was not posted on the PUCO website. It is my understanding that it was filed, but that such filing (as with its 2004-2006 reports) was not timely.

⁵⁵ http://investor.verizon.com/income/otc_financials.aspx

⁵⁶ According to the 43-02 ARMIS Reports, as of year end 2007 Verizon North had 8,228 employees.

1 Similarly, the annual reports that Verizon North files with the Commission show that
2 Verizon North has customers, revenues, expenses, assets and employees in Ohio. I have
3 attached the 2007 annual report to the Commission for Verizon North as Attachment
4 PHP-19.

5 Global Ohio cannot demonstrate similarity to Verizon, because unlike Verizon
6 North, Global Ohio has no assets, no employees, no customers, and no revenues and,
7 therefore, no ability to provide service. Any representation that Global's corporate
8 structure is similar to Verizon's would be a false and misleading comparison.

9 **Q. ARE YOU FAMILIAR WITH THE ENTITY KNOWN AS GLOBAL NAPS, INC.?**

10 A. Yes.

11 **Q. WHAT IS THE RELATIONSHIP BETWEEN GLOBAL OHIO AND GLOBAL**
12 **NAPS, INC.?**

13 A. Global Ohio and Global NAPS, Inc. are sister companies, under the direction and control
14 of Ferrous Miner, which is wholly owned and controlled by Frank Gangi. According to
15 publicly available corporation records, Global Ohio and Global NAPS, Inc. share the
16 same officers and directors, including Frank Gangi and his brother-in-law Michael
17 Couture. Both Global Ohio and Global NAPS, Inc. are certificated to provide service
18 (though in different states), and, as I explain, both appear to be "paper companies" that
19 incur liabilities by purchasing services from incumbent carriers like AT&T Ohio, while
20 the revenues earned in connection with the purchase of those services are "assigned" to
21 related companies.

1 **Q. DO YOU HAVE ANY INFORMATION ABOUT THE OPERATIONS OF**
2 **GLOBAL NAPS, INC. THAT PERTAINS TO THE ISSUES BEFORE THE**
3 **COMMISSION?**

4 A. Yes. Global NAPs, Inc.'s business practices were virtually identical to those of Global
5 Ohio in terms of using the services of incumbent local exchange carriers to transport,
6 terminate, and transit traffic while refusing to pay for those services. Global NAPs, Inc.
7 ordered and used (for several years) services provided by AT&T Connecticut, all the
8 while consistently refusing to pay a single penny for those services. AT&T Connecticut
9 brought a federal court lawsuit against Global NAPs, Inc. similar to the complaints that
10 AT&T Ohio filed with the Ohio federal district court and the Commission.⁵⁷ While the
11 specifics of AT&T Connecticut's complaint vary somewhat in content from AT&T
12 Ohio's complaints due to the parties' particular interconnection arrangements and ICA in
13 Connecticut (and the narrow subset of AT&T Ohio's claims that are the subject of this
14 proceeding), Global NAPs, Inc.'s pattern of behavior is consistent with that exhibited by
15 Global Ohio. No matter the service provided by the terminating carrier, both Global
16 entities refused to pay for those services.

17 **Q. PLEASE PROVIDE A BRIEF SYNOPSIS OF THE MOST RELEVANT ASPECTS**
18 **OF AT&T CONNECTICUT'S FEDERAL COURT LAWSUIT.**

19 A. On May 5, 2006, the Connecticut federal district court granted AT&T Connecticut a
20 prejudgment remedy ("PJR") in the amount of \$5.25 million ("CT PJR Order"), in which
21 Global NAPs, Inc. (upon its representation to the Court that it would have no financial

⁵⁷ Civil Action No. 03:04CV02075(JCH), *The Southern New England Telephone Company, Plaintiff, versus Global NAPs, Inc., et al, Defendants*, U.S. District Court, District of Connecticut ("CT Court Proceeding").

1 problems posting a bond for that amount) was allowed to post a bond within 21 days.⁵⁸
2 Global NAPs, Inc. was also given 14 days (*i.e.*, until May 19, 2006) to disclose assets
3 sufficient to secure the remedy. When Global NAPs, Inc. did not post the bond, AT&T
4 Connecticut sought to attach Global NAPs, Inc.'s assets pursuant to the Court's May 31,
5 2006 written PJR order. AT&T Connecticut's efforts at attachment were fraught with
6 obstacles and delay of Global NAPs, Inc.'s making. Among other things, AT&T
7 Connecticut learned that Global NAPs, Inc. had no customers – it purportedly had
8 transferred any customers it once had to Global Networks, without any documentation or
9 compensation – and that it had very little network assets, with many of the network assets
10 in Connecticut purportedly being owned by a “one man” Canadian company (whose sole
11 owner, officer, and employee is a food caterer at the Omni Montreal hotel and a long-
12 time personal friend of Frank Gangi) and all of the network assets outside of Connecticut
13 purportedly being owned by Global Networks (after being transferred from Global NAPs,
14 Inc. to Global Networks without documentation or compensation). On December 22,
15 2006, AT&T Connecticut filed a motion for contempt and sanctions against Global
16 NAPs, Inc. for its failure to comply with the Connecticut federal district court's orders.
17 The court granted AT&T Connecticut's motion for civil contempt on July 9, 2007 (“CT
18 Contempt Order”) and awarded AT&T Connecticut the reasonable costs of bringing the
19 contempt action, including attorneys' fees. The CT Contempt Order is attached as
20 Attachment PHP-20.
21 Regarding the merits of AT&T Connecticut's special access service (DS3 and DS1)
22 claims against Global NAPs, Inc., on March 27, 2007 the Connecticut federal district

⁵⁸ CT PJR Order at 16-22.

1 court granted AT&T Connecticut's motion for partial summary judgment with respect to
2 21 of the 26 special access services at issue. On April 21, 2008, the court calculated the
3 damages owed by Global NAPS, Inc. to AT&T Connecticut at just under \$5.25 million.

4 On July 1, 2008, the Connecticut district court found that Global NAPs, Inc. and
5 the other defendants had willfully violated the court's discovery orders, and entered a
6 default judgment against all the defendants as a sanction, including a default judgment on
7 SNET's claim that Global NAPs Realty, Global NAPs Networks, Global NAPs New
8 Hampshire, and Ferrous Miner are alter egos liable for the debts of Global NAPs, Inc.
9 *See* Attachment PHP-21. The court found "that all defendants have willfully violated the
10 court's discovery orders by failing to turn over their general ledgers and other business
11 records, lying to the court about the inability to obtain documents from third parties, and
12 destroying and withholding documents," and "[t]hese defendants have committed a fraud
13 upon this court." The court concluded, among other things, that defendants had lied to
14 delay the production of financial records, had no credible explanation for their failure to
15 produce some records, "falsely argued to the court" that certain documents did not exist,
16 had "willfully destroyed or hidden financial documents," "willfully destroyed evidence
17 contained on the computer" used by their bookkeeper by running "file wiping programs,"
18 and attempted to conceal their actions.

19 On July 9, 2008, the Connecticut district court entered judgment against Global
20 NAPs, Global NAPs New Hampshire, Global NAPs Realty, Global NAPs Networks, and
21 Ferrous Miner in the amount of \$5,893,542.86, jointly and severally. *See* Attachment
22 PHP-22. AT&T Connecticut is currently attempting to enforce the judgment in several
23 states by locating and executing upon the assets of the defendants. However, all of the

1 defendants, including Ferrous Miner, claim they lack the resources necessary to satisfy
2 the judgment, and AT&T Connecticut's attempts to date to collect on the judgment have
3 succeeded in obtaining only marginal recovery of the nearly \$6 million.

4 **Q. IS AT&T CONNECTICUT STILL PROVIDING SERVICES TO GLOBAL NAPS,**
5 **INC.?**

6 A. No. AT&T Connecticut discontinued its provision of services to Global NAPs, Inc. in
7 November 2006.

8 **Q. IN ITS CERTIFICATION APPLICATION, GLOBAL OHIO PROVIDED**
9 **FINANCIAL INFORMATION FOR GLOBAL NAPS, INC. AS OF SEPTEMBER**
10 **30, 2000.⁵⁹ IS THAT INFORMATION REPRESENTATIVE OF GLOBAL NAPS,**
11 **INC.'S CURRENT FINANCIAL CONDITION?**

12 A. No. Even assuming that Global NAPs, Inc. was willing to assume responsibility for
13 Global Ohio's debts, which is questionable, it would be unable to satisfy them. Global
14 NAPs, Inc. does not have any assets upon which the Commission can rely in evaluating
15 Global Ohio's fiscal viability.

16 **Q. PLEASE EXPLAIN.**

17 A. In his May 31, 2006 deposition in the CT Court Proceeding, Richard Gangi, the Treasurer
18 of Global NAPs, Inc. and Global Ohio, stated that "Global [NAPs, Inc.] does not have
19 very many assets," that he did not believe it ever did, and that "Networks is where most
20 of the assets are." Attachment PHP-23, p. 57. Mr. Gangi also stated that "all of the
21 equipment that Global – If Global had owned any equipment in the past it has since been
22 transferred to Networks" (*id.*, p. 125), that "Networks has all our switching gear and

⁵⁹ See Attachment PHP-13, Certification Application, Exhibit H.

1 transport gear” (*id.*, p. 63), and that he was not aware of any consideration for the transfer
2 of these assets from Global NAPs, Inc. to Global Networks (*id.*, p. 128).

3 In his May 31, 2006 deposition, Mr. Gangi also stated that after the initial term of
4 Global NAPs, Inc.’s contracts with customers, the contracts were assigned to Global
5 Networks (*id.*, pp. 38-39). And in his June 23, 2006 deposition, Mr. Gangi again stated
6 that Global NAPs, Inc.’s customer contracts are assigned to Global Networks after the
7 first year, and that he did not think Global NAPs, Inc. had any customers left.
8 Attachment PHP-24, pp. 53-54).

9 In his May 31, 2006 deposition, Mr. Gangi also stated that Global NAPs, Inc. did
10 not have assets anywhere in the world to satisfy the \$5.25 million prejudgment remedy
11 granted by the Connecticut federal court. Attachment PHP-23, p. 57. Thus, the
12 managers of Global NAPs, Inc. and Global Ohio have managed to dissipate or siphon off
13 to other entities and individuals \$67 million in annual revenues and more than \$100
14 million in assets – if the 2000 “financial statement” Global Ohio previously provided to
15 the Commission is to be believed. And, as I explained above, the Connecticut federal
16 court has now ordered an entry of judgment against Global NAPs, Inc. in the amount of
17 nearly \$6 million, so whatever few assets Global NAPs, Inc. may have had left, if any,
18 are plainly insufficient to provide any meaningful financial backing to Global Illinois.
19 Indeed, Global NAPs, Inc. and the other defendants told that Connecticut federal court
20 and the Second Circuit that they operate on a “cash in, cash out” basis, and were unable
21 to post any security for the judgment.⁶⁰

⁶⁰ Global NAPs, Inc.’s appeal to the Second Circuit is provided as Attachment PHP-25. *See, e.g.*, Exhibits I and J attached to Global NAPs, Inc.’s appeal.

1 **Q. DO YOU HAVE ANY INFORMATION ABOUT THE OPERATIONS OF**
2 **GLOBAL CALIFORNIA THAT PERTAIN TO THE ISSUES BEFORE THE**
3 **COMMISSION?**

4 A. Yes. Global California's business practices were virtually identical to those of Global
5 Ohio and Global NAPs, Inc. Global California used services provided by AT&T
6 California, including switched access (transport and termination of intraLATA toll
7 traffic), transport and termination of local traffic, and transiting service – but consistently
8 refused to pay a single penny for those services. As I explained above regarding
9 reciprocal compensation, AT&T California brought actions against Global California
10 similar to the complaints AT&T Ohio filed with the Ohio federal district court and the
11 Commission. Cox California Telecom LLC ("Cox California") was subjected to a
12 similar "refusal to pay" experience with Global California and took the matter to the
13 CPUC for resolution.

14 **Q. VERY BRIEFLY, PLEASE DESCRIBE THE RESULT OF COX CALIFORNIA'S**
15 **COMPLAINT AGAINST GLOBAL CALIFORNIA.**

16 A. On January 11, 2007, the CPUC granted Cox California's motion for summary judgment
17 and ordered Global California to pay Cox California nearly a million dollars, plus
18 interest.⁶¹ Despite the CPUC's order, Global California still did not pay Cox. On April
19 12, 2007, the CPUC ordered Global California to supplement the record ("Supplemental
20 Record Order") with information regarding where its creditors could go for satisfaction.
21 The Supplemental Record Order is provided as Attachment PHP-26. Set forth on pages

⁶¹ Cox California Complaint, CPUC Decision 07-01-004.

1-2 of the Supplemental Record Order is the following significant background information:

On April 9, 2007, GNCI appeared through counsel at the show cause hearing and introduced an affidavit from Richard Gangi, identified as the Treasurer of GNCI, which states that GNCI has no liquid assets, no offices, no real or personal property and no bank accounts in California. Gangi's affidavit also states, in numbered paragraph 4:

4. On January 12, 2007, Global NAPS California, Inc. did not have sufficient cash or other capital on hand to pay the amount required by [Decision D.07-01-004]. At no time between January 12, 2007 and the date of this declaration has Global NAPS California, Inc. had sufficient cash or other capital on hand to pay the amount required by the Decision. (Brackets in original.)

As I described above regarding reciprocal compensation, the federal district court upheld the CPUC's decision.⁶²

Q. HOW IS THIS RELEVANT TO AT&T OHIO'S COMPLAINT AGAINST GLOBAL OHIO?

A. The acknowledgement of Global California's treasurer (who also was Global Ohio's treasurer until his death on May 26, 2007) that Global California was unable to pay Cox California as ordered by the CPUC is particularly relevant because Global Ohio is exactly the same type of entity as Global California. Neither company has any assets or cash upon which a creditor can rely to satisfy a financial judgment. Global Ohio and Global California are identically situated – they are sister companies (under control and direction of the same parent, Ferrous Miner) with no assets other than their state certifications. The certificated company incurs the liabilities, while another corporate entity enjoys the revenues.

1 **Q. WHAT IS THE STATUS OF GLOBAL CALIFORNIA'S CERTIFICATION?**

2 A. Global California's certification is suspended indefinitely. The CPUC's February 14,
3 2008 letter, attached as Attachment PHP-27, provides the CPUC's synopsis regarding the
4 status of Global California's certification and the CPUC's directives to other carriers to
5 cease exchanging traffic with Global California. AT&T California discontinued
6 exchanging traffic with Global California on March 16, 2008 and has since terminated
7 Global California's ICA.

8 **Q. DO YOU HAVE ANY INFORMATION ABOUT THE OPERATIONS OF**
9 **GLOBAL ENTITIES IN OTHER STATES THAT PERTAINS TO THE ISSUES**
10 **BEFORE THE COMMISSION?**

11 A. Yes. Global's state certificated entities all exhibit the identical behavior – they receive
12 services from AT&T's incumbent LECs and other facilities-based local exchange
13 companies and refuse to pay for them. In Florida, Georgia, and North Carolina, the
14 AT&T ILECs of BellSouth provided services to certificated Global entities in those states
15 for which the Global entities refused to pay. BellSouth indicated that it would terminate
16 services if Global did not pay the charges due under contract. In response, Global filed a
17 complaint in court, and BellSouth counter-claimed for breach of contract.⁶³ On
18 September 20, 2007, the court granted BellSouth's motion for summary judgment
19 regarding the validity of the agreements and the types of charges for which the Global
20 entities were liable. The BellSouth incumbent LECs discontinued service to Global in all
21 three states by November 2007 pursuant to the ICAs' terms.

⁶² See Attachment PHP-7, Summary Judgment Decision.

1 On June 23, 2006, AT&T Illinois filed a civil complaint (later amended) against
2 Global Illinois for non-payment.⁶⁴ And while the Illinois court dismissed the breach of
3 ICA claims on the ground that AT&T Illinois first needed to exhaust its administrative
4 remedies with the Illinois Commerce Commission (“ICC”), the remaining claims are still
5 pending before the court.

6 On February 13, 2008, AT&T Illinois filed a complaint against Global Illinois for
7 breach of the parties’ ICA and for violation of AT&T Illinois’ state access tariff.⁶⁵
8 AT&T Illinois’ claims against Global Illinois for breach of the parties’ ICA are virtually
9 identical (other than the dollar amounts at stake) to AT&T Ohio’s claims against Global
10 Ohio in this case. Similar to AT&T Ohio’s complaint being considered in this case,
11 AT&T Illinois also requested the ICC revoke Global Illinois’ state certifications. The
12 ALJ’s proposed order was issued November 24, 2008, and a final decision is expected in
13 mid-February.

14 **Q. DID THE ILLINOIS ALJ FIND THAT GLOBAL ILLINOIS LACKS THE**
15 **REQUISITE FINANCIAL, TECHNICAL AND MANAGERIAL RESOURCES TO**
16 **MAINTAIN ITS STATE CERTIFICATIONS IN ILLINOIS?**

17 A. Yes. See Attachment PHP-8, pages 73-76.

18 **Q. ARE YOU AWARE OF OTHER INCUMBENT LOCAL EXCHANGE CARRIERS**
19 **(“ILECS”) WITH SIMILAR EXPERIENCES WITH GLOBAL ENTITIES?**

⁶³ Case No. 5:04-CV-96-BO(1), U.S. District Court for the Eastern District of North Carolina, In the Matter of *Global NAPs North Carolina, Inc., Global NAPs Georgia, Inc., and Global NAPs South, Inc., Plaintiffs, versus BellSouth Telecommunications, Inc., Defendant.*

⁶⁴ Case No. 06 C 3431, *In the United States District Court for the Northern District of Illinois Eastern Division, Illinois Bell Telephone, Inc. v. Global NAPs Illinois, Inc.*

⁶⁵ Docket No. 08-0105, *Illinois Bell Telephone Company, Inc. v. Global NAPs Illinois, Inc., Complaint Pursuant to Section 252(e) of the Federal Telecommunications Act of 1996, 47 U.S.C. §252(e) and Sections 4-101, 10-101, and 10-108 of the Illinois Public Utilities Act, 220 ILCS 5/4-101, 220 ILCS 5/10-101, and 220 ILCS 5/10-108.*

1 A. Yes. For example, on November 15, 2005, independent ILECs in Georgia brought a
2 claim against Global NAPs, Inc. to the state commission for non-payment of intrastate
3 switched access charges.⁶⁶ On April 8, 2008, the Georgia commission rendered its initial
4 decision in favor of the independent ILECs, which is attached as Attachment PHP-28.
5 On May 7, 2008, Global NAPs, Inc. applied for review of that initial decision, which
6 review was denied by the Georgia commission.

7 Similarly, Verizon brought claims against various Global entities in federal court
8 in Massachusetts and New York seeking to collect assorted charges the Global entities
9 have refused to pay. The Massachusetts federal court, in Case No. 02-12489, granted
10 Verizon a prejudgment remedy of approximately \$70 million, which remains unsatisfied.
11 Verizon also has brought claims seeking to reach the assets of affiliated Global entities in
12 order to recover the amounts due Verizon. The Massachusetts court later granted
13 summary judgment to Verizon on the underlying merits of Verizon's claims for unpaid
14 charges. In addition, on December 3, 2008, the Massachusetts court sanctioned Frank
15 Gangi, Ferrous Miner, Global NAPs, Inc., and other Ferrous Miner subsidiaries for
16 destroying financial information.⁶⁷ As a result, the court precluded Global NAPs, Inc.
17 and these other defendants from contesting Verizon's veil piercing claims against them.

18 (*Id.*)

19 **Q. WHY IS IT APPROPRIATE FOR THE COMMISSION TO CONSIDER THE**
20 **ACTIONS OF GLOBAL OHIO'S AFFILIATES IN OTHER STATES?**

⁶⁶ Docket No. 21905-U, In the Matter of *Request for Expedited Declaratory Ruling as to the Applicability of Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to them by Global NAPs, Inc.*

⁶⁷ *Global NAPs, Inc. v. Verizon New England, Inc.*, No. 02-12489-RWZ (D. Mass.) ("Massachusetts District Court"), December 3, 2008 Transcript (Second Session), provided as Attachment PHP-29.

1 A. As I stated, the same people – most importantly, Frank Gangi – that are behind these
2 other companies are behind Global Ohio. Their business practices in other states directly
3 pertain to whether Global Ohio has the requisite managerial resources and abilities to
4 remain certificated. There is every reason to believe that the modus operandi of the
5 Ferrous Miner family of Global companies is the same in every state. This is shown by
6 the consistent pattern and practice in each state of refusing to pay the bills of other
7 carriers providing service, and using every means imaginable to avoid paying these bills.

8 **Q. YOU MENTIONED ABOVE THAT FRANK GANGI HAS A DOCUMENTED**
9 **HISTORY OF USING SHAM CORPORATIONS TO ENGAGE IN CORPORATE**
10 **DISHONESTY. PLEASE EXPLAIN.**

11 A. In a prior action in the United States District Court for the Central District of California,
12 the Court found that another Frank Gangi corporation, called CINEF/X, was a sham:
13 “Gangi and CINEF/X perpetuated a fraud on the Court by misleading the Court about the
14 bona fides of CINEF/X. Gangi and CINEF/X obstructed justice by manufacturing
15 witnesses and evidence Finally, Mr. Gangi has perjured himself to conceal his
16 scheme.” August 31, 1995 Order in *CINEF/X, Inc. v. Digital Equipment Corp.*, No. CV
17 94-4433 SVW (JRx) at 31-32. The Ninth Circuit upheld the district court’s imposition of
18 sanctions for this fraud. This is of significance to the Commission’s consideration of
19 Global Ohio’s managerial fitness because, as I stated above, Frank Gangi is the President
20 and ultimate sole owner of all the Global entities, including Global Ohio.

21 **Q. IF GLOBAL OHIO IS CORRECT (WHICH IT IS NOT) THAT THERE IS ONLY**
22 **A BILLING DISPUTE BETWEEN THE PARTIES AND NO EVIDENCE OF**

**UNPAID LIABILITY, WOULD THAT BE RELEVANT TO THE
COMMISSION'S REVIEW OF GLOBAL OHIO'S CPCN?**

A. No Global Ohio is obligated to meet the Commission's certification requirement that it possess adequate financial, managerial and technical competencies – and AT&T Ohio's evidence proves that Global Ohio has failed in this regard. And while a Commission finding that Global Ohio is required to compensate AT&T Ohio based on the record evidence for the services Global Ohio obtained from AT&T Ohio (*i.e.*, transport and termination and transiting), it is not necessary for the Commission to reach such a finding in order to conclude that Global Ohio's CPCN should be revoked.

**Q. IS IT GERMANE THAT THERE ARE NO JUDGMENTS AGAINST GLOBAL
OHIO?**

A. No. Global Ohio cannot point to the assets of affiliates to deflect the fact that Global Ohio has no assets of its own and at the same time point solely to Global Ohio when confronted with the fact that the affiliates' assets are impaired by multi-million dollar judgments.

**Q. IS IT GERMANE THAT THERE ARE NO SERVICE COMPLAINTS AGAINST
GLOBAL OHIO?**

A. No, because Global Ohio has no customers to issue complaints. Moreover, AT&T Ohio is not recommending that Global Ohio's CPCN be revoked due to service complaints. Rather, Global Ohio has failed to maintain adequate financial, managerial and technical competence to justify retention of its CPCN.

**Q. IS GLOBAL OHIO'S REFUSAL TO PAY ITS BILLS IN THE PUBLIC
INTEREST?**

1 A. No. Global Ohio's use of AT&T Ohio's services while consistently refusing to pay for
2 them causes harm in numerous ways. Global Ohio has been enjoying a free ride on
3 AT&T Ohio's network for several years, at the expense of AT&T Ohio, which must
4 attempt to spread that cost over AT&T Ohio's own customers or bear the cost itself. And
5 while AT&T Ohio has been forced to subsidize Global Ohio's business operation, other
6 carriers pay for the services they receive from AT&T Ohio, giving Global Ohio an unfair
7 and undeserved competitive advantage over other carriers, which distorts the market and
8 harms competition. By harming AT&T Ohio through its cost shifting schemes, by
9 harming competition in Ohio generally, and by operating its business in a way that
10 generates no revenues and therefore evades payment of state telecommunications taxes,
11 Global Ohio has harmed and continues to harm the public.

12 **Q. IS IT IN THE PUBLIC INTEREST FOR GLOBAL OHIO TO RETAIN ITS**
13 **CPCN?**

14 A. No. The Ohio legislature has established clear standards about who is and who is not
15 entitled to hold a certificate to provide telecommunications services. The Commission is
16 charged with enforcing those standards. Global Ohio does not meet those standards, and
17 that should be the end of the matter. No one is obligated to make an additional showing
18 that Illinois citizens are threatened. That consideration is implicit in the standards
19 established by the legislature.

20 In any event, it is not in the public interest for Global Ohio to retain its CPCN
21 when it is not meeting the requisite obligations, which were established to protect the
22 telecommunications consumers in Ohio. It is not in the public interest for Global Ohio to
23 be permitted to continue to shift its costs to AT&T Ohio by refusing to pay for services it

1 received and Global Ohio has used to generate income for its affiliate(s), who are
2 obviously not paying taxes on such income to the state of Ohio. It is not in the public
3 interest for AT&T Ohio's customers (or shareholders) to bear Global Ohio's costs. And
4 it is not in the public interest for corporate citizens to avoid sharing in the tax burden
5 placed on all Ohio citizens, yet reap the benefits of its corporate citizenship.

6 **Q. WILL THE PUBLIC BE HARMED BY THE REVOCATION OF GLOBAL**
7 **OHIO'S CPCN?**

8 A. No. Global affiliates' services obtained from AT&T have been disconnected in
9 California, Connecticut, Florida, Georgia, and North Carolina. AT&T received no end
10 user complaints as a result of these service disconnections. Based on AT&T's experience
11 with respect to these service disconnections in five other states, there is no reason to
12 believe Ohio consumers would be harmed in any way by the revocation of Global Ohio's
13 CPCN. To the contrary, Ohio's consumers are harmed if Global Ohio is permitted to
14 continue its free ride on AT&T Ohio's network.

15 **Q. WHAT IS YOUR RECOMMENDATION FOR THE COMMISSION**
16 **REGARDING GLOBAL OHIO'S CERTIFICATION?**

17 A. Global Ohio no longer possesses the requisite technical, financial and managerial
18 resources and abilities to provide facilities-based local exchange services (if it ever did in
19 the first place). Accordingly, I recommend that the Commission revoke the
20 telecommunications service authority it provided to Global Ohio in its Certification Order
21 of July 10, 2001.

22

23

1 **IX. CONCLUSION**

2 **Q. BASED ON YOUR TESTIMONY AND THE TESTIMONY OF THE OTHER**
3 **AT&T OHIO WITNESSES, WHAT ACTION DO YOU RECOMMEND THE**
4 **COMMISSION TAKE ON AT&T OHIO'S COMPLAINT AGAINST GLOBAL**
5 **OHIO FOR ICA VIOLATIONS AND FOR FAILURE TO SATISFY THE**
6 **REQUIREMENTS OF ITS CERTIFICATION?**

7 **A. I recommend that the Commission issue an order finding that Global Ohio has:**

- 8 i) breached the ICA by refusing to pay for reciprocal compensation for local
9 traffic delivered to AT&T Ohio for completion;
10 ii) and breached the ICA by refusing to pay for transiting service provided by
11 AT&T Ohio.

12 I also recommend the Commission find that Global Ohio owes AT&T Ohio the amounts
13 billed for these services, plus late payment charges.

14 Additionally, I recommend the Commission rule that Global Ohio no longer
15 possesses the requisite technical, financial and managerial resources and abilities to hold
16 its CPCN under Chapter 4901:1-6-10 of the Ohio Administrative Code and that the
17 Commission take appropriate steps to revoke Global Ohio's certification.

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 **A. Yes.**

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Summary: Testimony of Patricia H. Pellerin electronically filed by Mrs. Verneda J. Engram on behalf of AT&T Ohio