

# LARGE FILING SEPARATOR SHEET

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND	:	
TELEPHONE COMPANY,	:	
Plaintiff,	:	CIVIL ACTION NO.
v.	:	3:04-cv-2075 (JCH)
	:	
GLOBAL NAPS, INC. et al,	:	
Defendants.	:	JULY 1, 2008

**SECOND AMENDED RULING RE: PLAINTIFF'S REDACTED MOTION FOR  
DEFAULT JUDGMENT (Doc. No. 517), PLAINTIFF'S MOTION FOR DEFAULT  
JUDGMENT (Doc. No. 519) AND DEFENDANT'S MOTION TO MODIFY THE  
COURT'S OCTOBER 19, 2007 ORDER (DOC. NO. 618)**

**I. INTRODUCTION**

Plaintiff, Southern New England Telephone Co. ("SNET"), moves the court to sanction defendants, Global NAPS, Inc., Global NAPS New Hampshire, Inc., Global NAPS Networks, Inc., Global NAPS Realty, Inc., and Ferrous Miner Holdings, Ltd.<sup>1</sup> (collectively "defendants"), for failure to comply with discovery orders. The sanction sought is a default judgment against the defendants pursuant to Federal Rule of Civil Procedure 37(b). See Pl.'s Mot. for Default at 1 (Doc. No. 519).

**II. PROCEDURAL BACKGROUND**

SNET brought this action against defendant Global NAPS, Inc. ("Global") on December 7, 2004. SNET's original Complaint alleged that Global had misrouted long-distance traffic of certain circuits not designated for such traffic, thereby depriving SNET of applicable access charges and that Global failed to pay SNET access charges

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<sup>1</sup>This Second Amended Ruling is filed to correct the misidentification of a defendant, Ferrous Miner Holdings, Ltd.

specified in SNET's federal tariff for special access circuits Global ordered from SNET's tariff. This court stayed SNET's misrouting claims under the doctrine of primary jurisdiction on October 26, 2005 (Doc. No. 38). On May 5, 2006, this court granted SNET's Motion for a Prejudgment Remedy in the amount of \$5.25 million. See Transcript of Ruling, May 5, 2006 (Doc. No. 133). This court entered summary judgment in favor of SNET on twenty-one of the twenty-six circuits at issue on March 27, 2007 (Doc. No. 406).

On December 9, 2006, SNET filed an Amended Complaint, which added as defendants Global NAPS New Hampshire, Inc. ("Global NH"), Global NAPS Networks, Inc. ("Global Net"), Global NAPS Realty, Inc. ("Global Realty"), and Ferrous Miner Holdings, Ltd. ("Ferrous Miner"). All of the defendants are Delaware corporations with principal places of business at 10 Merrymount Street in Quincy, Massachusetts. SNET's Amended Complaint alleges that the defendants' corporate structure is a "sham" (Am. Compl. ¶ 15), and seeks to hold the defendants collectively liable for the underlying allegations set forth in SNET's original Complaint against Global.

### **III. FACTS**

The long battle for discovery in this case began in earnest over two years ago, on May 5, 2006, when this court granted SNET's Motion for a Prejudgment Remedy in the amount of \$5.25 million. See Transcript of Ruling, May 5, 2006 (Doc. No. 133). The court ordered Global to disclose assets sufficient to secure the prejudgment remedy within two weeks. See id. By May 24, 2006, Global had not complied with the court's May 5, 2006 Order, forcing SNET to file a Motion to Compel. See Motion to Compel (Doc. No. 142).

On May 26, 2006, this court issued a Ruling on SNET's Motion to Compel, finding that Global had failed to "comply to date in any acceptable manner." See Ruling at 1 (Doc. No. 149). At that time, the court entered a second, detailed Order requiring, in part, that Global produce an employee, pursuant to Federal Rule of Civil Procedure 30(b)(6), to testify on the existence of Global's assets and Global's current financial condition. Id. at 2. At that deposition, Global was ordered to produce "information and documents relating to Global's current financial position" including tax returns and financial statements "from 2002 to the present" and, for every asset it disclosed that could go towards satisfying the prejudgment remedy, to provide "documents that describe or evidence the location, identity, and valuation, through objective criteria, of that asset." Id.

A deposition was held pursuant to the May 26, 2006 Order on May 31, 2006. At that deposition, Global's treasurer, Richard Gangi, testified that he had not brought any financial statements or tax records of any of the Global entities with him. He further testified that he had "never seen" a financial statement prepared for "any of the Global entities" and that the only financial statement Global's accountant would have prepared would be that of Ferrous Minor. Id. at page 95, lines 16-22. These statements were patently untrue.<sup>2</sup>

Still having not received documentation in compliance with the court's May 5 or

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<sup>2</sup>Only six months before, on November 17, 2005, Richard Gangi had identified "statements of income and expense of Global NAPs, Inc. for the years ended December 31, 2004, 2003, 2002, 2001 and 2000" at a deposition in different litigation. See Notice, Doc. No. 226 at 5. These documents had been prepared by defendants' accountants. See Gangi Depo. at 94 line 25 and 95 lines 1-5, Ex. GG to Pl.'s Mot. for Default Judgment.



May 26, 2006 Orders, SNET filed a Motion for Contempt and Sanctions on June 12, 2006. See Motion for Contempt and Sanctions (Doc. No. 171). In opposition, Global argued, in part, that it could not be sanctioned for failing to provide the requested documents because they were not in the "custody or control" of Global. See Def.'s Mem. in Opp. to Pl.'s Mot. for Sanctions at 6 (Doc. No. 184). Global asserted that it was making "diligent attempts" to obtain tax returns, which it claimed were in the custody of its "corporate parent" Ferrous Minor; bookkeeping records, which it claimed were in the custody of its bookkeeper, Select & Pay, Inc.; and tax records, which it claimed were in the possession of its accountants, Nardella & Taylor. Id. at 6-8. At a hearing on this Motion, Richard Gangi testified to the court that he believed that general ledgers existed for Global and that his bookkeeper, Janet Lima of Select & Pay, had the ledgers but had not turned them over to Global, despite Global's requests. See Testimony of Richard Gangi at 104, Ex. II to Pl.'s Mot. for Def. Judg.

On November 27, 2006, the court ruled on SNET's June 12, 2006 Motion for Contempt and Sanctions, finding that the statement made by Richard Gangi that he had "never seen" a financial statement for any of the Global entities was "demonstrably false," and that it was "clear" that Global had violated the May 26, 2006 Order. See Ruling at 4 (Doc. No. 277). While the court found that Global had been "anything but forthcoming in complying with the court's May 5 and 26 Orders," the court was "not prepared to conclude that there is clear and convincing evidence to conclude that Global has acted with the bad faith necessary for the court to exercise its inherent contempt powers." Id. at 2-3. However, the court found Global had offered no "substantial justification" for violating the May Orders and ordered Global to pay SNET

"reasonable expenses caused" by its noncompliance. Id. at 4. Further, the court ordered Global to obtain their records from third-party entities Select & Pay, Inc. and Nardella & Taylor, and to produce them to SNET by December 6, 2006. Id. at 5. The court warned Global that failure to produce these documents would "likely result in the entry of a default judgment." Id. The records were not produced.

By June 21, 2007, it became clear that Global's claim that third-party Select & Pay was withholding their financial records was a lie intended to delay the production of financial records in compliance with SNET's discovery requests and the court's discovery Orders.<sup>3</sup> On that day, Select & Pay's President, Janet Lima, signed an affidavit stating that, "Select & Pay does not keep or maintain or otherwise control Global's records, or any copies of them. To the extent Select & Pay, Inc. prepares Global documents, they are left at the Global premises." Lima Affidavit at ¶ 13, Ex. Z to Pl.'s Mot. for Def. Judg. Further, Lima attested that, "the documents are actually kept in the client's custody and control." Id. at ¶ 9.

In addition, Global violated the court's November 7, 2006 Order by failing to produce the records in question. Even if one were to have accepted Global's position that it did not have custody of the records (which the court once did, but no longer does), Global violated the November 7, 2006 Order in that it failed to obtain its own records from its accountant and bookkeeper. SNET eventually, by subpoena, obtained some records from the accountant, which had not previously been produced by Global.

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<sup>3</sup>The fact that Select & Pay did not maintain control over defendants' records was affirmed in a separate litigation, in which Select & Pay responded to a request for documents by stating that "none were presently in the control, custody or possession" of Select & Pay. See Response from Select & Pay at 1-2, Ex. Y to Pl.'s Mot.

See, e.g., Financial Documents produced by Nardella & Taylor, Ex.'s G-O to Pl.'s Mem. in Supp.

Even after the fiction that Select & Pay had withheld Global's records was exposed, Global has still failed to provide its general ledger in accordance with this court's May 2006 Orders. On May 2, 2008, almost exactly two years after the court originally ordered Global to produce its financial records, when asked by the court why Global had failed to produce its general ledger, Global's counsel was unable to offer any credible explanation.

While Global's noncompliance with the court's May 2006 Orders dragged on, yet another discovery dispute arose. On April 17, 2007, SNET moved the court to compel Global to comply with twenty-nine requests for the production of documents relevant to SNET's veil-piercing allegations. See Pl.'s Mot. to Compel at 1 (Doc. No. 420). On May 31, 2007, this court granted SNET's Motion and ordered each of Global NAPs New Hampshire, Global NAPs Networks, and Global NAPs Realty to produce to SNET within two weeks "the books of the company," including "balance sheets, cash statements, registers, journals, ledgers" in "the form in which the records are kept," and within a slightly longer period to produce other financial documents that may have had to be gathered from third parties. See Motion Hearing, May 31, 2007. The court later extended this Order to include defendant Ferrous Minor Holdings, Ltd. See Motion Hearing, June 18, 2007. Global was subject to the same discovery requests that were the subject of this Order.

On June 15, 2007, defendants Global, Global NAPs Networks, Global NAPs New Hampshire and Global NAPs Realty (collectively the "Global defendants"),

produced documents; however, only about a dozen pages of which contained material not previously produced. In lieu of the bookkeeping records ordered to be produced by the court, the Global defendants wrote a letter to opposing counsel explaining that they were "unable to locate copies of all the ledgers from the relevant time period." See Letter from Miller to Jensen at 1, Ex. B to Pl.'s Mot. for Def. Judg. The letter relied on an Affidavit from James Scheltema, Vice President of Regulatory Affairs for Global NAPs, Inc. Id. Scheltema claimed that, on June 12, 2007, he had undertaken a "thorough, unannounced search of all three Global NAPs locations in Massachusetts" where he located "limited documents relevant to the production requests." Id. He attested that he "searched the hard drive of the computer used by Select & Pay. Although the hard drive had Peachtree [accounting] software, there was no data relating to a Global entity, merely the program." Scheltema Affidavit at ¶ 15, Att. to Ex. A to Pl.'s Mot. for Def. Judg.

On June 21, 2007, Ferrous Minor's counsel reported to SNET via email that Scheltema's search included a search for Ferrous Minor's documents. See Email, Ex. C to Pl.'s Mot. for Def. Judg. Ferrous Minor did not produce any documents despite the fact that its Director, Frank Gangi, testified on June 12, 2007, in different litigation, that "Ferrous Minor generates its own separate financial statements," Frank Gangi Declaration at ¶ 15, Ex. D to Pl.'s Mot. for Def. Judg., and Richard Gangi had testified on May 31, 2006, that Global's accountants "would have the financial statements of Ferrous Minor Holdings." Richard Gangi Depo. at 95, Ex. GG to Pl.'s Mot. for Def. Judg.

Defendants have falsely argued to the court that documentation for periods prior

to June 2006, did not exist because there had been "uncontroverted testimony that the computer Ms. Lima was using 'crashed' and all of her data was lost." Def.s' Mem. in Opp. at 8-9 (citing Sheltema Depo. at 66-69, Ex. 2 to Def.'s Mem. in Opp.). Defendants went on to speculate that the "crash occurred and [the] data [was] lost in the summer of 2006." Id. In fact, the "crash" of this computer should have had absolutely no impact on the production of discovery because Janet Lima testified that she "dropped"<sup>4</sup> the computer she had used for the last five years in late December 2006, *after* the court-ordered deadline for production had come and gone. Lima Depo. at 181-182, Ex. G to Pl.'s Suppl. Mem.

Not only was the computer "dropped" after the deadline for production had passed, but based on Lima's testimony, there is no reason to believe that data on the computer was irretrievably lost. Lima testified that the computer she dropped had been "turning itself off" and "things were popping up," so she picked up the computer to take it to Richard Gangi's office. Id. While carrying the computer, she fell down the stairs, dropping the computer, which broke into many pieces. Id. at 183. Lima picked up the pieces and left them in her office. She saw Richard Gangi take those pieces, along with the rest of the computer, out of her office in a plastic bag. Id. at 186. She never saw that computer again, or was informed of what happened to it. Id. Even assuming

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<sup>4</sup>The court notes that Lima testified that she "dropped" her computer, whereas Scheltema testified that she told him it had a "meltdown" with respect to the "storage mechanism, the drive." See Lima Depo. at 118, Ex. G to Pl.'s Suppl. Mem. and Scheltema Depo. at 66, Ex. L to Pl.'s Suppl. Mem. Defendants' counsel had represented to the court that it "crashed," suggesting to the court a computer malfunction, not physical contact with the ground. See Def.s' Mem. in Opp. at 8-9 (citing Sheltema depo. at 66-69, Ex. 2 to Def.'s Mem. in Opp.)

that Lima's testimony should be credited that she dropped the computer and it broke into pieces, the hard drive of this "dropped" computer has never been produced. The defendants have never explained why documents were unretrievable from the hard drive, why the computer has not been produced, or where it is.

On January 19, 2007, defendants' tax accountants, Nardella & Taylor produced, pursuant to third-party subpoena, hard copy excerpts of many financial documents that defendants had never previously produced, including "excerpts of a general ledger, customer ledgers, fixed asset and depreciation spreadsheets, an aged payables journal, and an aged receivables report." Pl.'s Suppl Mem. at 2; Mem. in Support at 5-6 and Exhibits G-O. On June 25, 2007, Nardella & Taylor produced adjusted trial balance reports for defendants and summary financial statements for Ferrous Minor for the year ending December 31, 2006. See Pl.'s Suppl. Mem. at 2; Pl.'s Mem. in Supp. at 6 and Ex. P. Ed Taylor of Nardella & Taylor has testified that the hard copies of records he produced were largely created by defendants. See Ed Taylor depo. at 34, 49, 51. He also testified that he was sure he had seen a general ledger for defendants over the years. See id. at 70.

In light of defendant's failure to produce a general ledger in compliance with the court's May 31, 2007 Order, the parties jointly hired FTI Consulting to "image" the replacement computer "searched" by Sheltema and used by Janet Lima after her other computer "crashed." See Letter from FTI consulting to SNET's counsel, Ex. E to Pl.'s Mot. for Def. Judg. The expert found the only "active" financial data on the new computer involved a few days worth of check registers for June and July of 2007. Id. However, the expert did find an email attachment containing a sales journal for the year

2000, and using "forensic techniques," located a cash disbursement journal for June 1, 2006 through December 31, 2006 that had been deleted. Id.

Based on the expert's conclusion that at least one seemingly relevant financial document had been erased from Janet Lima's computer, the parties agreed to a more thorough examination of the computer. FTI consulting produced a second report, indicating that the application "Window Washer," a software program with the capability to "overwrite data and disk space" had existed on Janet Lima's computer. Letter from FTI Consulting at 1-2, Ex H to Pl.'s Suppl. Mem. in Supp. of Mot. for Def. Judg. ("Pl.'s Suppl. Mem."). Parts of this program were initially created on the morning of June 12, 2007, the same morning Scheltema arrived to "search" for responsive documents. See id.; Scheltema Affidavit at ¶ 15, Att. to Ex. A to Pl.'s Mot. for Def. Judg. FTI reported that, "[m]ore time would be needed to identify further components and registry entries of Window Washer as well as its forensic artifacts when executed." Id.

In a deposition of Lima taken November 28, 2007, Lima admitted installing and running Window Washer on her computer the morning Scheltema arrived on June 12, 2007. See Lima Depo. at 204-205, Ex. G to Pl.'s Suppl. Mem. She says that she ran the program because she was concerned that her personal information was on the computer, and she did not want anyone involved in this litigation to have access to it. See id. She further testified that she never ran Window Washer again. See id. at 209-210.

However, SNET hired LECG, LLC to conduct further forensic analysis of the computer. See LECG report, Appendix A to Ex. I to Pl.'s Suppl. Mem. LECG's analysis shows that, at the time Lima used Window Washer on the morning of June 12, 2007,

she did not merely use the program in its default mode, but chose the "wash with bleach" option, which overwrites deleted files. Id. at 9. While it is impossible to determine everything that was erased, LECG was able to determine that "file shortcuts" to files titled "2000 Sales Journal," "checkregisterNH7-12-2006," and "NH check Jan thru May 06" were deleted. Id. at 9-10.

LECG's Report further explains that Window Washer has a "data wiping utility" separate from the main program. Id. at 6. This program, called wwShred.exe, allows a user to manually erase files. For every file erased using this utility, the user must chose to "Shred (wash with bleach)" each individual file or directory, and then click again to confirm that they want to erase that file or directory. Id. LECG's analysis shows that Window Washer's data wiping utility was first used on June 16, 2007, on which day it was run three times, and was used again on June 20, 2007. Id. at 10-11.

In order to determine what, or how many files, have been deleted, LECG relies on "metadata." Id. at 2. Metadata is a record created for all files containing their name, the date, and where the data is stored on the disk, among other things. See id. Metadata is stored in a database called a Master File Table ("MFT"). Id. Generally, a deleted file maintains its metadata, so it is possible to determine some things about the deleted file even after it has been erased. See id. at 2-3. However, when a deleted file has no metadata, "it is likely that anti-forensics software has been employed by the user to erase the file and clear the MFT data." Id.

LECG determined that, out of 93,560 items in the MFT, nearly 20,000 had no metadata, meaning they had likely been erased using anti-forensic software such as Window Washer's Shred utility. Id. at 2-3. At least 103 of these files were "user



created files," that is, "substantive files created by a user as opposed to a computer generated record." Def.'s Suppl. Mem. at 10-11 (citing Expert Witness Report of Ashley, Ex. A to Def.'s Suppl. Mem. at 3). Window Washer was uninstalled from Lima's computer the night of June 20, 2007. Id. at 11. The "Disk Defragmenter" utility was used on Lima's computer on June 25, 2007. Id. at 13. While the Disk Defragmenter can be used to improve the computer's performance, it also makes forensic analysis of a computer more difficult when files have been deleted. Id. This was the first and only time the Disk Defragmenter was used on Lima's computer.

Defendants have also attempted to excuse their failure to produce documents by claiming that,

[t]here is the possibility that there were additional financial documents that were in Richard Gangi's possession at the time of his death. Unfortunately, Mr. Gangi died intestate. . . the result of the absence of a will is that, under Massachusetts law, documents in the decedent's possession at the time of his death may not be searched nor removed from his house . . . .

Letter from Global's Counsel to SNET's Counsel at 2, Ex. B to Pl.'s Mem. in Supp. This explanation, like the suggestion that Select & Pay was withholding defendants' records or that defendants' records were necessarily lost when Lima dropped her computer, was a red herring devised to frustrate timely, indeed any, compliance with discovery orders. Sheila Gangi, Richard Gangi's ex-wife, testified at a deposition taken during the probate proceedings that she witnessed Janet Lima removing Richard Gangi's computer from Richard Gangi's home after his death. See Sheila Gangi depo. at 54 lines 17-23, Ex. 3 to Pl.'s Reply. She further testified that Lima told her the computer would be "emptied" and that she would bring it back to the house if Sheila Gangi

wanted it back. Id. Sheila Gangi also testified that, "[a]ll of Richard's mail, all of Richard's filing cabinet papers and the safe" were removed from the house. Id. at 58. While Gangi did not see anyone remove the items from the filing cabinet, she later asked Frank Gangi to return the title to her truck (which had been in the filing cabinet) and subsequently received it from Lima in the mail. Id. at 59. She had conversations with Frank Gangi and Janet Lima about the truck title and the contents of the filing cabinet. Id. at 63. She also testified that, prior to Richard Gangi's death, she was the only person with the security code to Richard Gangi's house. See Affidavit of Sheila Gangi, Ex. 3 to Def.'s Mem. in Opp. She gave that code after Richard Gangi's death to Frank Gangi and to no one else. Id.

On February 25, 2008 and March 7, 2008, defendants produced some additional financial documents not previously produced. These documents included emails and attachments that were clearly subject to the court's November 27, 2006 Order or the court's May 31, 2007 Order. See, e.g., Email from Anne Hartman dated February 23, 2007, Ex. M to Pl.'s Suppl. Mem.; Email from Anne Hartman dated May 29, 2006, Ex. N to Pl.'s Suppl. Mem.; Email from Anne Hartman dated July 7, 2006, Ex. O to Pl.'s Suppl. Mem.; Email from Anne Hartman dated August 18, 2006, Ex. P to Pl.'s Suppl. Mem. Defendants failed to produce them until after SNET had taken depositions for which the documents would have been quite pertinent.

#### **IV. DISCUSSION**

A district court may sanction a party who fails to comply with a discovery order of that court, including rendering a default judgment against the noncompliant party. See Fed.R.Civ.P. 37(b)(2)(A)(v). Such a sanction derives from the district court's "broad

inherent power to protect the administration of justice by levying sanctions in response to abusive litigation practices.” Penthouse Int’l, Ltd. v. Playboy Enter.s, Inc., 663 F.2d 371, 386 (2d Cir. 1981) (citing Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980) and National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976)). Rule 37 sanctions serve two purposes: “to penalize those whose conduct may be deemed to warrant such a sanction” and “to deter those who might be tempted to such conduct in the absence of such a deterrent.” Id. (quoting National Hockey League, 427 U.S. at 643). District courts must have the power to dismiss cases with prejudice “in order to prevent undue delays in the disposition of cases and to avoid congestion in the calendars of the District Courts.” Id. However, dismissal pursuant to Rule 37 is a “drastic remedy” that “should only be imposed in extreme circumstances, usually after consideration of alternative, less drastic sanctions.” West v. Goodyear Tire and Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999) (internal quotation and citations omitted). Notwithstanding that, “discovery orders are meant to be followed,” and a party who “flouts such orders does so at his peril.” Bambu Sales, Inc. v. Ozak Trading Inc., 58 F.3d 849, 853, (2d Cir. 1995) (internal quotation omitted).

Dismissal is appropriate if there is a showing of “willfulness, bad faith, or fault on the part of the sanctioned party.” Id. A party may also be found at “fault” sufficient to justify dismissal of the case if they were “grossly negligent” in following discovery orders. Penthouse, 663 F.2d at 387. While a showing of prejudice to the moving party is not a requirement for a dismissal under Rule 37, a court may consider it in weighing the appropriateness of the sanction. See Metropolitan Opera Ass’n, Inc. v. Local 100, Hotel Employees and Restaurant Employees Int’l Union, 212 F.R.D. 178, 229 (S.D.N.Y.

2003). In addition to willfulness or bad faith on the part of the nonmoving party and prejudice to the moving party, other factors that appear appropriate to this court to consider are the history, if any, of noncompliance, whether lesser sanctions would be effective, whether the noncompliant party has been warned about the possibility of sanctions, and the client's involvement. See American Cash Card Corp. v. AT&T Corp., 184 F.R.D. 521, 524 (S.D.N.Y. 1999).

- A. Defendants have willfully violated this court's discovery Order to produce their general ledger

Defendants have failed to produce their general ledger or ledgers in violation of the court's May 31, 2007 Order. The court's May 31, 2007 Order specifically required defendants to produce "balance sheets, cash statements, registers, journals, ledgers." It is clear from the testimony of Joan Conway, see Joan Conway depo. at 76, 81, Ex. D to Pl.'s Supp. Mem., and Richard Gangi, see Richard Gangi depo. at 87, Ex. E to Pl.'s Suppl. Mem., and from the excerpts of the general ledger produced by defendants' tax accountants Nardella & Taylor, see general ledger excerpts, Ex. A to Pl.'s Suppl. Mem, that defendants possess or have possessed at some point during this litigation a general ledger. Defendants have offered no plausible explanation for why these business records have not been produced and, as such, the court finds that defendants have willfully violated the court's May 31, 2007 Order to produce general ledgers.

Defendants argue that production of the ledger was not necessary because "[t]here is no reason to believe that if it was available, a 'full' general ledger would provide any additional information not already in SNET's possession." Def.'s Suppl.

Mem. in Opp. ("Def.'s Suppl. Mem.") at 2 (Doc. No. 744). This argument misses the point for two reasons. First, as SNET points out, a general ledger, unlike the other bits and pieces of financial documents defendants have produced, "shows how, in the ordinary course of business, the defendants characterized and accounted for . . . inter-company transaction, if they accounted for it at all;" a general ledger shows how defendants "characterized and accounted" for revenue; and, a general ledger shows transfers of non-fund assets, such as network equipment. Pl.'s Suppl. Mem. at 4. This type of information is clearly relevant to SNET's veil-piercing claims and is not similarly disclosed through check registers, cash disbursement journals, and bank account statements, as defendants would suggest. Second, even if the general ledger were largely redundant of other discovery SNET received, which the court finds it is not, the court's May 31, 2007 Order specifically and unequivocally ordered defendants to produce "ledgers." Absent any objection to the Order, defendants claim at this late date that such production is unnecessary is frivolous.

Global further argues that it is not obliged to produce financial documents, including the general ledger, created prior to Spring 2006, because only at that point did those documents become "relevant to the litigation." Def.'s Suppl. Mem. in Opp. at 8. As this court stated at a hearing on October 3, 2007, "[t]his case was commenced at the end of 2004;" therefore "[f]rom and after the time this lawsuit was pending, there should not have been one piece of paper destroyed." Transcript of October 3, 2007 Hearing at 59 (Doc. No. 582). The court found that Global's financial records should exist for "at least" the years 2004-2007. See id. Defendants' counsel agreed, see id., and Global does not point to any objection it raised to any of the court's discovery

orders based on the argument that they were not on notice that such documents were relevant to the litigation. Therefore, lack of notice does not suffice to excuse Global from producing documents predating 2006 in compliance with the court's May 31, 2007 Order.

Even if one accepts the suggestion that it was not until SNET filed its Motion to Amend (Doc. No. 192) on June 30, 2006, that the veil piercing defendants would have been on notice to preserve documents, it is completely implausible that absolutely no documents existed, on that date, that predated June 30, 2006.<sup>5</sup> And yet, defendants have produced merely a few such documents.

The defendants have often defended SNET's Motions to Comply and other discovery matters by responding that SNET could not prove that any of the documents it sought were in existence, and in defendants' custody or control. See, e.g., Global's Opp. to Pl.'s Mot. for Contempt and Sanctions at 2 (Doc. No. 184) ("SNET cannot prove that the purportedly 'missing' documents even exist, let alone that Global has withheld them intentionally and in bad faith"); Def.s' Mem. in Opp. to Pl.'s Mot. for Def. Judg. at 6 (Doc. No. 548) ("SNET has not and cannot prove that financial documents exist that have not been produced by defendants or its agents."). It is indeed often the case that an opponent complains about the lack of production of documents the opponent

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<sup>5</sup>Despite defendants' failure to produce their general ledger or ledgers in violation of the court's discovery orders, there is evidence in the record that defendants were a multimillion dollar enterprise. See e.g., Summary Financials, Ex. P to Pl.'s Mot. (showing \$55 million in sales for Ferrous Minor in 2006); Global NAPs New Hampshire check register, Ex. S to Pl.'s Mot. (showing Global NAPs New Hampshire transferred millions of dollars to other Gangi-run enterprises). The suggestion that they have no complete financial records as a matter of practice, rather than because they willfully destroyed them to avoid discovery, is incredible to this court.

"expects" that the non-producing party should, or likely would, have. Unfortunately for these defendants, the pieces of evidence obtained from Nardella & Taylor's eventual third-party disclosure demonstrates that the general ledgers, and other financial documents like "a sales journal, customer ledgers, a cash receipts journal, aged receivable reports, an aged payables journal, and records regarding the purchase of assets, loan receivables, and notes payable," (Pl.'s Mem. at 6 summarizing contents of Ex.'s G-O to Pl.'s Mem.) were created, and have either been destroyed or hidden to prevent their discovery. Testimony of the defendants' accountant that he was sure he had seen a general ledger for defendants over the years further supports this conclusion, see Taylor Depo. at 70, as does the testimony of Joan Conway, see Joan Conway Depo. at 76, 81, Ex. D to Pl.'s Supp. Mem., and Richard Gangi, see Richard Gangi Depo. at 87, Ex. E to Pl.'s Suppl. Mem. Evidence of detailed financial records was further uncovered in the forensic analysis of Lima's computer. See discussion of Lima's computer, Section IV. B, infra; excerpt of Sales Journal for Year 2000, Ex. E to Pl.'s Suppl. Mem. Furthermore, the court draws an inference from the destruction of evidence on Janet Lima's computer that defendants possessed relevant financial documents which they destroyed to avoid their discovery. In summary, the conclusion that defendants have willfully destroyed or hidden financial documents in violation of this court's orders is unavoidable.

**B. Global has erased computer documents in bad faith**

The court finds that, based on the facts recited above, defendants willfully destroyed evidence contained on the computer used by Janet Lima, in violation of the court's November 27, 2006 and May 31, 2007 Discovery Orders.

Defendants make several unpersuasive arguments in an attempt to discredit SNET's expert report on the use of file shredding software on the disputed computer. First, Global argues that only 103 of the 53,100 deleted files are "user files," that is, "substantive files created by a user as opposed to a computer generate record." Def.'s Suppl. Mem. in Opp. at 10-11. Even crediting defendants' expert that this is the case, not one file should have been deleted, much less 103 files. See discussion of Court's admonition on October 3, 2007, discussed in section A, infra, at 16.

Defendants also argue, "it can be inferred that [plaintiff's expert] is aware" that Window Washer does not erase metadata of MFT entries because, had Window Washer been the anti-forensics software used, SNET's expert "would have said so." Id. at 11. The court disagrees. The fact that a program with the capability to "overwrite data and disk space" was executed on Janet Lima's computer, Letter from FTI Consulting at 1-2, Ex H to Pl.'s Suppl. Mem. in Supp, in conjunction with evidence that files on Lima's computer had been "wiped" rather than merely deleted, convinces the court that at least Window Washer, and potentially other file wiping programs, were run on Lima's computer with the intent and result of irrevocably erasing files from that computer. Further, this activity on the computer did not occur in a vacuum; the defendants' persistent non-compliance with discovery is further support for the court's conclusion of intentional destruction of evidence.

Defendants next argue that, "that there is no proof that any files of consequence were deleted." Def.'s Suppl. Opp. at 13. This argument entirely misses the point. First, plaintiff need not prove that the deleted files were material; "the intentional or grossly negligent *destruction* of evidence in bad faith can support an inference that the



destroyed evidence was harmful to the destroying party.” Residential Funding Corp. v. DeGeorge Financial Corp., 306 F.3d 99, 110 (2d Cir. 2002) (emphasis in original) (internal citation omitted). SNET is not required to show that the destroyed files were material as long as it can prove that the deletion of the files was in bad faith.<sup>6</sup>

The court finds that the deletion of files in this case was done in bad faith. Defendants argue that Lima’s use of Window Washer is “regrettable” but excusable, because she merely wanted to protect her personal information. Def.’s Suppl. Mem. at 13. The court finds this explanation entirely incredible. First, the court credits SNET’s expert report, which found that Lima did not merely use Window Washer in its default mode, which “empties the Recycle Bin, clears the Internet browsing history and cookie files, clears certain temporary folders, and clears the Recent Documents history.” Pl.’s Suppl Mem. at 11. Instead, she deliberately chose to use the “wash with bleach” option to permanently delete and overwrite files that clearly did not contain her personal information, including files named “2000 Sales Journal, “NH check Jan thru May 06,” “checkregisterNH7-12-2006”, and “cashrecINC7-12-2006”. LECG report at 9, App. A to Ex. I to Pl.’s Suppl. Mem. Even if Lima intended only to erase her personal information, which the court does not find to be the case, her actions would be at the least grossly negligent given that the court had ordered discovery of defendant’s bookkeeping records and Lima had been specifically told not to destroy any records starting at the beginning of this litigation. See Lima Depo. at 122-3, Ex. G to Pl.’s Suppl. Mem. “Grossly negligent failure to obey a discovery order may justify severe disciplinary

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<sup>6</sup>Further, in a case that seeks recovery under a pierce-the-corporate-veil theory, the corporate accounting and financial records are necessarily material.

measures," even dismissal under Rule 37. Penthouse, 663 F.2d at 387. Furthermore, the court finds that the "shredding" feature of Window Washer was used on June 16, 2007 and June 20, 2007. Given that the shredding utility requires that a user confirm his or her intent to shred files, as described above, permanently destroying files using this utility can only be described as willful. Because the computer was in the possession and control of the defendants at all times, the conclusion that this program was used intentionally to destroy files that should have been preserved is inescapable. Such a conclusion is bolstered by the fact that the computer's Disk Defragmenter was run, for the first and only time, on June 25, 2007. While defendants urge that this program was used to improve the computer's performance, see Def.'s Suppl. Mem. at 15, the court does not credit this explanation in light of the earlier deletion of files, and given that the program makes forensic discovery of deleted files more difficult. See LECG Report at 13, Appendix A to Ex. I to Pl.'s Suppl. Mem. In light of the fact that a shredding utility had been used to permanently delete files only days before, the timing of the use of the Disk Defragmenter only corroborates the court's conclusion that defendants had willfully destroyed evidence and then attempted to conceal their actions.

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999). "A federal district court may impose sanctions under Fed.R.Civ.P. 37(b) when a party spoliates evidence in violation of a court order." Id. In June 2007, defendants were clearly subject to the court's May 31, 2007 Order to produce financial documents.

Defendants have failed to offer any credible explanation for why documents on their computer, which was used by their bookkeeper, were destroyed within a month of the court's Order. Therefore, the court concludes that the defendants' destruction of documents relevant to this litigation was, at best, gross negligence in the case of Lima's admitted deletions, and at worst, bad faith, intentional destruction in the case of the use of the shredding application later in that month.

C. Richard Gangi lied to the court that defendants' bookkeeping records were in the control of Select & Pay in an attempt to delay discovery.

The court finds that Richard Gangi's testimony that defendants' accounting firm was withholding bookkeeping records, despite requests from defendants for those records, was willfully false. See Testimony of Richard Gangi at 104, Transcript of Hearing October 11, 1006, Ex. II to Pl.'s Mot. for Def. Judg. While the court does not credit all of Lima's testimony, the court does credit her testimony that defendants' bookkeeping records were always within their own control. See Lima Affidavit at ¶ 13, Ex. Z to Pl.'s Mot. for Def. Judg. Despite a specific Order to obtain the records from their accountant and bookkeeper, defendants offer no explanation as to what efforts it took to obtain them and why they did not succeed. There is no record before this court evidencing an accountant willfully refusing to provide defendants their documents, despite repeated requests, or even a lawsuit asserting a replevin claim. Absent any plausible alternate explanation for Gangi's testimony, the court concludes that Gangi intentionally lied to the court with the purpose of delaying the discovery of bookkeeping records in compliance with the court's discovery Orders.

D. Frank Gangi Caused Documents and a Computer to be Removed from Richard Gangi's House

Defendants suggested that additional financial documents may have been in the possession of Richard Gangi, but could not be searched until his estate was settled. See Letter from Global's Counsel to SNET's Counsel at 2, Ex. B to Pl.'s Mem. in Supp. The court finds that, while making this excuse, Frank Gangi directed his agents and employees, including Janet Lima, to remove Richard Gangi's computer from his house and to empty his home filing cabinet of documents. The court understands that Sheila Gangi never saw Frank Gangi remove anything from Richard Gangi's house, nor did she see anyone remove the files. However, the court credits Sheila Gangi's testimony that she spoke with Frank Gangi and Janet Lima about the contents of the file cabinet, and that, after requesting Frank Gangi to return a document that had been in the cabinet, Janet Lima returned them to her. In these circumstances, the inference that Frank Gangi had the contents of Richard Gangi's filing cabinet removed from the house, at the same time defendants were using Richard Gangi's estate as an excuse for failing to produce relevant discovery, is unavoidable. Furthermore, the court credits Sheila Gangi's testimony that she witnessed Janet Lima remove Richard Gangi's computer from his home and offer to bring it back after it had been "emptied."<sup>7</sup> See Sheila Gangi Depo. at 54 lines 17-23, Ex. 3 to Pl.'s Reply. In summary, the court finds

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<sup>7</sup>The court credits Sheila Gangi's testimony concerning events following Richard Gangi's death despite not having the benefit of observing the relevant witnesses on the stand. Sheila Gangi's testimony is corroborated by the defendants' prior and subsequent persistence in refusing to produce documents. While Sheila Gangi may have had reason to mislead the court, although the court does not find that she did, the defendants have demonstrated that they will mislead, and have misled, the court. Further, while defendants have attacked the credibility of Sheila Gangi's testimony, they have offered no credible evidence to contradict her version of events, instead quibbling over words she used ( Frank Gangi removing items, versus Frank Gangi's agents removing items).

that the defendants deliberately removed Richard Gangi's computer<sup>8</sup> and paper files that had been in the possession of Richard Gangi, have not produced those documents or computer despite court Orders, and meanwhile used Gangi's death to further delay and frustrate compliance with the court's discovery orders.

E. Defendants have given misleading and nonresponsive answers to discovery requests

On several occasions, defendants have given SNET misleading or non-responsive answers to discovery requests. For example, Global NAPs Realty told SNET (May 4, 2007 email from Global NAPs Realty counsel to SNET, Ex. W to Pl.'s Mem.), and the court (Hearing on May 31, 2007) that it did not have a bank account. It later recanted this statement, but has still not produced statements for that account. See Pl.'s Mem. at 15. Similarly, in response to SNET's discovery requests, Global NAPs New Hampshire produced only a cash disbursement journal for June 2006 through April 2007 and referred SNET to Global NAPs, Inc. records, which Global NAPS New Hampshire's counsel later admitted were nonresponsive. Hearing of May 31, 2007.

F. Defendants have a history of violating discovery orders

As discussed above, the court has already found that the statements made by Richard Gangi indicating that he had "never seen" a financial statement for any of the Global entities was "demonstrably false," and that it was "clear" that Global had violated the May 26, 2006 Order. See Ruling at 4 (Doc. No. 277). The court sanctioned Global

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<sup>8</sup>There was also a second laptop computer used by Richard Gangi, which he had at the hospital before his death, and which computer Frank Gangi removed from the hospital, that has not been produced. See Sheila Gangi Affidavit at ¶ 11, Ex. DD to Pl.'s Mot.

for this violation by requiring it to pay SNET's expenses in prosecuting that Motion to Compel. See id.

More significantly, on July 9, 2007, the court found Global in civil contempt for violating the prejudgment remedy Orders of May and October 2006. See Ruling re: Plaintiff's Motion for Contempt and Sanctions at 11 (Doc. No. 496). In that Ruling, the court found "there to be clear and convincing proof that Global's conduct was a blatant violation of the court's clear and unambiguous" orders. Id. The court imposed civil contempt sanctions in the form of SNET's costs in prosecuting the Motion for Contempt and Sanctions, including attorneys' fees, expert fees, and other costs. See id. at 13. The court subsequently granted SNET \$645,760.41 in costs and fees. See Ruling re: Motion for Costs and Fees (Doc. No. 757).

The Second Circuit's discussion of the relevance of past actions in Penthouse is exactly on point:

It would be excessively formalistic to view the defiance of [an] order in isolation rather than against the background of Penthouse's prolonged and vexatious obstruction of discovery with respect to closely related and highly relevant records . . . which Penthouse kept from Playboy and from the court during the pretrial and trial of the case through perjurious testimony of its top officials and false representations to the court by its counsel.

Penthouse, 663 F.2d at 388. "Sanctions must be weighed in light of the full record in the case." Id. (Internal citation omitted).

Defendants' past violations weigh heavily in favor of imposing a default judgment against them at this time. The court has imposed lesser sanctions on defendants to no avail. In light of these prior sanctions, the court is confident that sanctions less severe

than default would not be effective in deterring defendants from continuing to violate discovery and other court orders. Certainly orders compelling disclosure and imposing monetary sanctions have not worked. See, e.g., Order and Ruling of May 26, 2006 (Doc. No. 149); Ruling on Motion for Contempt of June 10, 2007 (Doc. No. 496). While adverse inferences can be effective tools for situations involving the destruction of evidence, in this case the extent of defendants' noncompliance and either wilful withholding or destruction is so extensive that any adverse inference sufficient to sanction defendants and address the harm to SNET would effectively amount to a directed verdict or the equivalent of a default judgment.

**G. Plaintiffs have been prejudiced and judicial resources squandered**

While a finding of prejudice to the plaintiffs is not necessary for the imposition of a default judgment, see Met. Opera Ass'n, Inc., 212 F.R.D. at 229, the court finds that defendants' violations have prejudiced SNET. There can be no doubt that a delay of over a year and a half in producing court ordered discovery has prejudiced its ability to prepare its case for trial. Furthermore, SNET was prejudiced by having to conduct the depositions of Ed Taylor, Ann Hartman, Janet Lima, and Joan Conway without the benefit of defendants' most recent productions. Defendants argue that, "SNET was advised that the supplemental production would be forthcoming before the depositions, but made the strategic decision to press ahead without additional documents." Def.'s Suppl. Mem. at 16. Given the repeated delays and intransigence by defendants in following discovery orders, SNET was wise to discount any promise from defendants that discovery would be forthcoming and proceed with the depositions when they could get them. Having followed that wise course, SNET has been prejudiced by their

inability to use the recently produced documents during those depositions.

Another factor the court considers is the tremendous waste of judicial resources defendants have caused by their repeated violations of the court's discovery orders. Defendants' "prolonged and vexation destruction of discovery," 663 F.3d at 338, has caused a morass of discovery disputes. The Second Circuit in Playboy expressed its concern that,

If parties are allowed to flout their obligations, choosing to wait to make a response until a trial court has lost patience with them, the effect will be to embroil trial judges in day-to-day supervision of discovery, a result directly contrary to the overall scheme of the federal discovery rules.

Penthouse, 663 F.2d at 388. The Second Circuit's concern in Playboy has come to fruition in this case, with the court holding many lengthy hearings on discovery motions, and spending innumerable hours dealing with defendants' recalcitrance. In this circumstance, a default judgment is warranted to prevent defendants' wilful noncompliance and destruction from impacting the court's other cases and thus impacting the orderly administration of justice for other litigants.

H. Global was clearly put on notice that failure to produce their general ledger would result in the court entering default against them.

While default judgment is a proper remedy as long as a party had notice of a discovery order, see United States Freight Co. v. Penn Central Transport., 716 F.2d 954, 955 (2d Cir. 1983), the court went even further to explicitly put Global on notice that failure to produce its general ledger would "likely result in the entry of a default judgment." See Ruling at 4 (Doc. No. 277). That Ruling was made on November 27, 2006. A clear and unambiguous warning that default would enter is apparently not enough to cause Global to comply with this court's Orders.



## **V. CONCLUSION**

The court finds that all defendants have willfully violated the court's discovery orders by failing to turn over their general ledgers and other business records, lying to the court about the inability to obtain documents from third parties, and destroying and withholding documents that were within the scope of the discovery requests and Orders. These defendants have committed a fraud upon this court. These willful violations have prejudiced, indeed likely destroyed, SNET's ability to prove its case, and have squandered judicial resources by dragging the court into frequent policing of discovery disputes over an inordinate period of time. In light of the defendants' history of violations, and the explicit warning that failure to comply would result in a default judgment entering, the court finds that lesser sanctions would not deter the defendants from further delaying discovery in this case. Indeed, the court has little confidence that the discovery sought continues to exist.

In conclusion, defendants' behavior exemplifies the type of willful disregard for the process of discovery created by the Federal Rules of Civil Procedure that warrants the ultimate sanction of dismissal. Defendants "rolled the dice on the district court's tolerance for deliberate obstruction," and this court does not believe they should be allowed to "return to the table." Bambu Sales, 58 F.3d at 853.

For the forgoing reasons, plaintiff's Motions for Default Judgment (Doc. Nos. 517 & 519) are GRANTED. Those of SNET's claims which involve IP-related transmissions and were stayed pending determination by the Federal Communications Commission of the issues raised in the plaintiff's Complaint (Counts II through VII and part of Count 1), see Ruling (Doc. No. 38), are administratively DISMISSED without prejudice to reopen

if a Motion to Reopen is filed within thirty days of the final administrative action which restores jurisdiction over those claims to this court. The Clerk is ordered to enter judgment in favor of the plaintiff on all other claims and against the defendants, jointly and severely, in the amount of \$5,247,781.45. (The Judgment should also include the award of fees and costs of \$645,760.41 see Doc. No. 757.)

Global's Motion to Modify the Court's October 19, 2007 Order is DENIED. The court credits Sheila Gangi's testimony that Frank Gangi did remove Richard Gangi's laptop from the hospital. See page 21, n.6 infra. Alternatively, the Motion is moot in light of the default judgment. SNET's Motions to Amend (Doc. No. 770) and to Register (Doc. No. 771) are denied as moot. The Clerk is directed to enter judgment and to close this case.

**SO ORDERED.**

**Dated at Bridgeport, Connecticut this 1st day of July, 2008.**

**/s/ Janet C. Hall**

Janet C. Hall

United States District Judge

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

SOUTHERN NEW ENGLAND  
TELEPHONE CO.

v.

3:04-cv-02075(JCH)

GLOBAL NAPS, INC., GLOBAL NAPS  
NEW HAMPSHIRE, INC., GLOBAL NAPS  
NETWORKS, INC., GLOBAL NAPS  
REALTY INC., AND FERROUS MINER  
HOLDINGS, LTD.

**AMENDED DEFAULT JUDGMENT**

This matter came for consideration before the Honorable Janet C. Hall, United States District Judge, as a result of plaintiff's motions for default judgment and sanctions against the defendants for failure to comply with discovery orders pursuant to Fed.R.Civ.P. 37(b).

The court reviewed all of the papers filed in conjunction with the motions and on July 1, 2008, issued a Second Amended Ruling granting the motions for default judgment against defendants, Global NAPS, Inc., Global NAPS New Hampshire, Inc., Global NAPS Networks, Inc., Global NAPS Realty Inc., and Ferrous Miner Holdings, Ltd., jointly and severally, in the amount of \$5,247,781.45. Plaintiff was also awarded \$645,761.41 in fees and costs. Claims made against defendants in Counts II through VII and part of Count 1 of the complaint are dismissed.

Therefore, it is ORDERED and ADJUDGED that judgment is entered in favor of the plaintiff, in the amount of \$5,893,542.86, against defendants Global NAPS, Inc., Global NAPS New Hampshire, Inc., Global NAPS Networks, Inc., Global NAPS Realty Inc., and Ferrous Miner Holdings, Ltd., jointly and severally, and the case is closed.

Dated at Bridgeport, Connecticut this 9th day of July, 2008.

ROBIN D. TABORA, Clerk

By /s/ Chrystine W. Cody  
Deputy-in-Charge

Entered on Docket \_\_\_\_\_

1  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----  
THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY

VS

Civil Action No. 3:04  
CV2075 (JCH)

GLOBAL NAPS, INC.  
-----

Deposition of: RICHARD GANGI, taken pursuant  
to Federal Rules of Civil Procedure before Judi A.  
Roberts, Licensed Shorthand Reporter, License No. 325  
and Notary Public within and for the State of  
Connecticut, held at the offices of Koskoff, Koskoff &  
Bieder, 350 Fairfield Avenue, Bridgeport, Connecticut,  
on May 31, 2006 commencing at 11:00 A.M.

JUDI A. ROBERTS, LSR  
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2  
A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFF:  
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ALSO PRESENT:

Donald MacGregor, CFO, AT&T

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3  
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4  
RICHARD GANGI, the deponent, having first been  
duly sworn deposes and says as follows:

MR. JENSEN: The witness has brought with  
him today some documents, one copy, we will be making  
several copies for the deposition. According to  
Counsel Glenn Manishin these documents are being  
marked as highly confidential which means they are  
limited to attorneys' eyes only, with the exception of  
banking records which will be marked as confidential.

Attorney Manishin is going through the  
documents right now and crossing out the customer  
names as an extra bit of caution and after he does  
that we will get them copied.

MR. MANISHIN: That is correct.

DIRECT EXAMINATION BY MR. JENSEN

Q. Good morning, Mr. Gangi.

A. Good morning.

Q. Could you please state your name for the  
record?

A. Richard Gangi.

Q. And, Mr. Gangi, where do you live?

A. New Hampshire, Amherst.

Q. What's the address?

A. 13 Cricket Hill Drive.

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1 Q. Mr. Gangi, I'm just going to quickly go  
2 through some ground rules for a deposition. When I  
3 ask you a question I need you to answer audibly.  
4 Please don't shake your head or gesture, the court  
5 reporter needs to hear the answer that you have.  
6 Your counsel may object to my questions. Let him  
7 object and then please answer the question unless he  
8 instructs you otherwise, okay. I'm going to assume  
9 that you understand my questions and therefore that  
10 your answer is responsive to my question. If you  
11 don't understand my question for any reason, please  
12 tell me and I'll try to rephrase it.

13 You may take a break whenever you want, I  
14 just ask that if there's a pending question that you  
15 answer the question before you take the break. Do you  
16 understand all of those?

17 A. Yes.

18 Q. Okay. Are you on any substance today that  
19 would affect your memory?

20 A. No.

21 MR. MANISHIN: Mr. Jensen, excuse me,  
22 before we start I just want to make clear that this  
23 deposition is proceeding pursuant to a notice under  
24 Rule 30(b)(6) of the Rules of Civil Procedure, so Mr.  
25 Gangi is appearing not in his personal capacity but as

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1 a representative of the defendant company.

2 MR. JENSEN: That's correct.

3 Q. (By Mr. Jensen) And, Mr. Gangi, do you  
4 understand that you're under oath?

5 A. Yes.

6 Q. Are you ready to proceed?

7 A. Yes.

8 (Deposition Exhibit 1, offered and  
9 marked.)

10 Q. (By Mr. Jensen) Mr. Gangi, I'm showing you  
11 what's been marked as Plaintiff's Exhibit 1, do you  
12 see that document?

13 A. Yes.

14 Q. Have you seen that document before today?

15 A. I have seen something I believe similar but  
16 I don't know if I've seen this one.

17 Q. Is there a document of a different date that  
18 you may have seen?

19 A. Different format.

20 MR. MANISHIN: You're not allowed to talk  
21 on the record. Are you referring to the Court's  
22 order?

23 THE WITNESS: That's it.

24 Q. (By Mr. Jensen) Okay. So you haven't seen  
25 the actual deposition notice, Plaintiff's Exhibit 1?

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1 A. No.

2 Q. Showing you --

3 MR. JENSEN: This is Exhibit 2.

4 (Deposition Exhibit 2, offered and  
5 marked.)

6 Q. (By Mr. Jensen) Mr. Gangi, showing you  
7 what's been marked as Plaintiff's Exhibit 2, have you  
8 seen that document before today?

9 A. Yes.

10 Q. Actually, let me take a look at that. I may  
11 have two copies of the same thing. Thank you. And  
12 have you had an opportunity to review that document?

13 A. Yes.

14 Q. Okay. And did you review each item that the  
15 Court ordered you to testify to today?

16 A. Yes.

17 Q. And are you qualified to testify to each and  
18 every topic identified by the Court order?

19 MR. MANISHIN: Object as to form. If you  
20 understand the question please answer.

21 THE WITNESS: I believe I am.

22 Q. (By Mr. Jensen) Okay. And what is the  
23 basis of your knowledge of the topics in the Court  
24 order?

25 A. They have to do with Global NAPs and that's  
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1 where I work.

2 Q. You've brought with you today a group of  
3 documents, is that right?

4 A. Yes.

5 Q. Okay. What was the source of those  
6 documents; where did you get those documents from?

7 A. Various people within the organization  
8 provided them. I'm not exactly sure where each one of  
9 them came from.

10 Q. Where did you receive them from?

11 A. From in-house counsel.

12 Q. Where did you physically receive them, was  
13 it in New Hampshire or was it in Massachusetts?

14 A. The documents, in New Hampshire.

15 Q. And do you know who pulled the documents  
16 that you received?

17 A. No, I don't.

18 Q. Do you know who would know that?

19 A. I don't know who would.

20 Q. Okay. Do you know where they were pulled  
21 from?

22 A. No, I don't.

23 Q. And do the documents that you've brought  
24 with you today, do they represent the entirety of  
25 documents that are responsive to the Court's order.

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1 MR. MANISHIN: I think he means is there  
2 anything in the order that you couldn't find or bring?

3 THE WITNESS: Those are all the documents  
4 that we could find. I don't know if they satisfy all  
5 the points in the order or not, I don't know if that's  
6 your question.

7 MR. JENSEN: That is my question.

8 THE WITNESS: Okay.

9 Q. (By Mr. Jensen) So you don't know whether  
10 or not they satisfy the Court order?

11 A. I don't know. That's all the documents we  
12 have. I don't know if they satisfy each point in the  
13 order.

14 Q. Did you know what steps were taken to locate  
15 all the documents?

16 A. Each individual step, no.

17 Q. Okay. Generally do you know what the steps  
18 were?

19 A. I instructed our staff to gather what  
20 documents they had so this is what was turned over.

21 Q. Okay. And who on the staff did you notify?

22 A. Jeff Melick.

23 MR. MANISHIN: Mr. Melick is employed as  
24 Global NAP's counsel, in-house counsel.

25 Q. (By Mr. Jensen) Other than Mr. Melick did  
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1 you consult with anybody else in terms of pulling  
2 documents?

3 A. Personally, no.

4 Q. When you say personally, no, is there  
5 somebody else that you know did do it personally?

6 A. No, I don't.

7 Q. Who would know who pulled all the documents?

8 A. I don't know.

9 Q. Where does Global NAPs store its records?

10 A. Which records?

11 Q. Well, why don't we start with financial  
12 records.

13 A. We have an outside bookkeeping company and  
14 an outside accounting firm.

15 Q. Okay. So is that where the records are  
16 kept?

17 A. To the best of my knowledge, yes.

18 Q. Does Global keep records at any of its  
19 offices?

20 A. Not that I'm aware of.

21 Q. What types of records are kept on behalf of  
22 Global; what type of financial records are kept on  
23 behalf of Global?

24 A. That, I don't know. Again, I'm not the  
25 accountant or the bookkeeper.

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1 MR. MANISHIN: Excuse me for  
2 interjecting. If you have a general understanding you  
3 might want to provide that as opposed to knowledge  
4 specific of each and every document.

5 THE WITNESS: Okay.

6 Q. (By Mr. Jensen) You mentioned outside  
7 bookkeepers?

8 A. Yes.

9 Q. And who are those outside bookkeepers?

10 A. The company is called Select and Pay; it's  
11 based out of New Hampshire.

12 Q. Do you have an address in New Hampshire?

13 A. I don't.

14 Q. Do you have a city in New Hampshire?

15 A. Salem, I believe.

16 Q. And do you have a contact person at Select  
17 and Pay?

18 A. Janet Lima.

19 Q. Is she an employee of Select and Pay?

20 A. I believe so, yes.

21 Q. You also mentioned your accountant?

22 A. Yes.

23 Q. Who is your accountant?

24 A. Nardeller (phonetic) and Taylor.

25 Q. Nardeller and Taylor? --

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1 A. Um-hm, yes.

2 Q. Where is Nardeller and Taylor located?

3 A. Lexington, Mass.

4 MR. MANISHIN: By you you're referring to  
5 the company, are you not?

6 MR. JENSEN: Pardon me?

7 MR. MANISHIN: By you in that question is  
8 Global NAPs, the company. You said where are your  
9 accountants.

10 MR. JENSEN: Correct.

11 MR. MANISHIN: I want to make sure the  
12 record is clear. I apologize for the interruption.

13 Q. (By Mr. Jensen) Who is your contact person  
14 at Nardeller and Taylor?

15 A. Ed Taylor.

16 Q. And you work for Global NAPs, Inc.?

17 A. Yes, I do.

18 Q. And what's Global NAPs' address?

19 A. 10 Merrymount Road, Quincy, Mass.

20 Q. Is that the principal office?

21 A. Yes, it is.

22 Q. Does Global NAPs have any other offices?

23 A. I have an office that I use in Manchester,  
24 New Hampshire.

25 Q. Other than those two offices does Global

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1 NAPs have any other offices?  
 2 A. Not that I'm aware of.  
 3 Q. What is your job title?  
 4 A. Vice president and treasurer.  
 5 Q. How long have you been vice president and  
 6 treasurer of Global NAPs?  
 7 A. Six years, seven years.  
 8 Q. And how long has Global NAPs been in  
 9 business?  
 10 A. Same length of time.  
 11 Q. So you've been vice president and treasurer  
 12 since the inception of Global NAPs?  
 13 A. Yes.  
 14 Q. Can you tell me what your duties are as vice  
 15 president and treasurer of Global NAPs?  
 16 A. Day to day operations of the company.  
 17 Q. Correct.  
 18 A. That's what I do.  
 19 Q. Can you give me an example of what the day  
 20 to day operations would be for you?  
 21 A. Dealing with employees, dealing with  
 22 particular vendors.  
 23 Q. Anything else?  
 24 A. No, that's pretty much it.  
 25 Q. I take it as treasurer you deal with the  
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1 finances of the company as well?  
 2 A. Some.  
 3 Q. What would those some be?  
 4 A. I do payroll for the company.  
 5 Q. Okay. What else?  
 6 A. That's pretty much it.  
 7 Q. Who deals with the rest of the finances?  
 8 A. Our bookkeepers and accountants.  
 9 Q. Can you tell me what type of company Global  
 10 NAPs is?  
 11 MR. MANISHIN: Objection as to form.  
 12 Q. (By Mr. Jensen) Can you tell me what type  
 13 of entity Global NAPs is?  
 14 A. I'm not sure what you're asking.  
 15 Q. Is it a corporation, is it a partnership?  
 16 A. It's a corporation.  
 17 Q. Okay. Is it a regular corporation or a  
 18 limited corporation?  
 19 A. I believe it's a regular corporation.  
 20 Q. Where is it incorporated?  
 21 A. Delaware.  
 22 Q. You said earlier that its principal place of  
 23 business is in Quincy, Mass?  
 24 A. Quincy, Mass, yes.  
 25 Q. Is it a private company?  
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1 A. Yes.  
 2 Q. Does it have stock shares?  
 3 A. I believe it does.  
 4 Q. Okay. Do you know who owns those stock  
 5 shares?  
 6 A. No, I don't.  
 7 Q. Do you own any of those stock shares?  
 8 A. No, I don't.  
 9 MR. MANISHIN: Excuse me for one second.  
 10 (Discussion off the record)  
 11 MR. JENSEN: Back on the record.  
 12 THE WITNESS: Were you asking me which  
 13 company is the owner of Global NAPs when you refer to  
 14 the stock shares because Global NAPs is owned by  
 15 Ferrous Miner Holdings.  
 16 Q. (By Mr. Jensen) Okay. My question was  
 17 whether or not Global NAPs is issued any stock?  
 18 A. Yes, and I believe it's owned by Ferrous  
 19 Miner Holdings.  
 20 Q. Okay. Do you understand what percentage is  
 21 owned by Ferrous Miner Holdings?  
 22 A. I believe it's 100 percent.  
 23 Q. So 100 percent of the shares are held by  
 24 Ferrous Miner Holdings?  
 25 A. Ferrous Miner Holdings, yes.  
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1 Q. Who are the officers for Global NAPs?  
 2 A. My brother, Frank.  
 3 Q. What's his position?  
 4 A. He's president.  
 5 Q. Okay.  
 6 A. Myself.  
 7 Q. And you're the vice president and treasurer?  
 8 A. Vice president and treasurer and Mike  
 9 Couture.  
 10 Q. What is Mr. Couture's position?  
 11 A. Secretary.  
 12 Q. And how long has Frank Gangi been president  
 13 of Global NAPs?  
 14 A. Since its inception.  
 15 Q. And how long has Mike Couture been the  
 16 secretary?  
 17 A. I believe he came in a year after we  
 18 started.  
 19 Q. Okay. Who was the secretary prior to Mike  
 20 Couture?  
 21 A. I don't recall.  
 22 Q. Does Global NAPs have board members?  
 23 A. Yes.  
 24 Q. Who are the board members?  
 25 A. The same.  
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1 Q. Frank Gangi, Richard Gangi and Mike Couture?  
 2 A. Yes.  
 3 Q. Is that it?  
 4 A. That's it.  
 5 Q. How many employees does Global NAPs have?  
 6 A. Very few, a handful.  
 7 Q. Do you have a number?  
 8 A. I haven't gone through all our employee list  
 9 but my best estimate at this time would be three that  
 10 I can think of.  
 11 Q. Three. Who would know how many employees  
 12 Global NAPs has?  
 13 A. I'd have to go through the payroll records  
 14 to figure out which company employees are given to.  
 15 Q. Can you say that again?  
 16 A. I'd have to go through the company payroll  
 17 records to figure out which company the employees are  
 18 assigned to.  
 19 Q. So some employees that work for Global NAPs  
 20 work for other related entities, is that right?  
 21 A. No, if they work for Global NAPs, they work  
 22 for Global NAPs. If there are other entities, then  
 23 they would work for the other entities.  
 24 Q. Okay. When you're talking about payroll,  
 25 you're talking about payroll for not only Global NAPs,

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1 you're talking about payroll that you do for other  
 2 entities?  
 3 A. Yes, sorry, I do payroll for the other  
 4 companies as well. Sorry for that confusion.  
 5 Q. Can you tell me what other companies you do  
 6 payroll for?  
 7 A. Sure, Global NAPs New Hampshire, Global NAPs  
 8 Networks, Global NAPs Realty.  
 9 Q. So Global NAPs New Hampshire, Global NAPs  
 10 Networks and Global NAPs Realty?  
 11 A. Yes.  
 12 Q. Okay. And is Global NAPs New Hampshire  
 13 located in New Hampshire?  
 14 A. Yes, it is.  
 15 Q. Okay. Does it have an address in New  
 16 Hampshire?  
 17 A. Yes, I believe it is the 10 Sun Dial -- 1  
 18 Sun Dial Drive in Manchester.  
 19 Q. And are you the treasurer for Global NAPs  
 20 New Hampshire?  
 21 A. Yes.  
 22 Q. Who is the president for Global NAPs New  
 23 Hampshire?  
 24 A. Frank.  
 25 Q. Is it the same officer structure as it is

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1 for Global NAPs, Inc.?  
 2 A. Yes.  
 3 Q. It's Frank Gangi, Richard Gangi and Mike  
 4 Couture?  
 5 A. Yes.  
 6 Q. Are there any other officers?  
 7 A. No.  
 8 Q. Global NAPs Networks, where is that located?  
 9 MR. MANISHIN: Excuse me, is it Network  
 10 or Networks plural?  
 11 THE WITNESS: Networks plural. 10  
 12 Merrymount.  
 13 Q. (By Mr. Jensen) And that's in Quincy?  
 14 A. Quincy, yes.  
 15 Q. And who are the officers at Global NAPs  
 16 Networks?  
 17 A. Same structure.  
 18 Q. So, again, it's Frank Gangi, Richard Gangi  
 19 and Mike Couture?  
 20 A. Yes.  
 21 Q. Same positions?  
 22 A. Yes.  
 23 Q. And where is Global NAPs Networks  
 24 incorporated?  
 25 A. Delaware.

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1 Q. Is that the same for Global NAPs New  
 2 Hampshire?  
 3 A. Yes.  
 4 Q. They're both corporations?  
 5 A. Yes.  
 6 Q. What about Global NAPs Realty, where is that  
 7 located?  
 8 A. 10 Merrymount.  
 9 Q. Quincy?  
 10 A. Yes.  
 11 Q. Is it the same officer structure?  
 12 A. Yes.  
 13 Q. Okay. And is it also incorporated in  
 14 Delaware?  
 15 A. Yes.  
 16 Q. Okay. And is it also a straight  
 17 corporation?  
 18 A. Yes.  
 19 Q. So in your capacity as treasurer you do  
 20 payroll for Global NAPs, Inc. and these other three  
 21 related Global NAPs entities?  
 22 A. Yes.  
 23 Q. Okay. Other than the officers being the  
 24 same and the addresses being the same are there any  
 25 other relationships between these entities and Global

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- 1 NAPs, Inc.?
- 2 A. How do you mean?
- 3 Q. Do they do business together?
- 4 A. Yes.
- 5 Q. Okay. How do they do business together?
- 6 A. Global, we buy and sell services from each
- 7 other.
- 8 Q. Okay. Why don't we start with Global NAPs
- 9 New Hampshire. What type of services are bought and
- 10 sold between Global NAPs New Hampshire and Global
- 11 NAPs, Inc.?
- 12 A. Global NAPs New Hampshire takes care of the
- 13 financial matters.
- 14 Q. How does it do that?
- 15 A. Takes the money in and distributes it.
- 16 Q. Where does the money come from?
- 17 A. Customers.
- 18 Q. Customers of who?
- 19 A. Any of the companies.
- 20 Q. So any of the four companies that we've
- 21 spoken about, Global NAPs New Hampshire -- strike
- 22 that, Global NAPs New Hampshire does not generate its
- 23 own revenue?
- 24 A. No.
- 25 Q. It's simply a financial arm?

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- 1 A. Yes.
- 2 Q. Okay. And it's a financial arm for Global
- 3 NAPs, Inc., Global NAPs Networks and Global NAPs
- 4 Realty?
- 5 A. Yes.
- 6 Q. Okay. Does it perform that service for any
- 7 other entity?
- 8 A. No.
- 9 Q. Could you describe for me the process by
- 10 which Global NAPs New Hampshire would pay bills for,
- 11 for example, Global NAPs, Inc.?
- 12 A. No, as I said I'm not a bookkeeper and I'm
- 13 not the accountant so I don't know what the structure
- 14 is for breaking that down. I can give you a general
- 15 overview. Money comes into Global NAPs, Inc., gets
- 16 deposited and then whatever is designated for Global
- 17 NAPs, Inc. or Networks would be paid out of it.
- 18 MR. MANISHIN: Could you reread that
- 19 answer to the question.
- 20 (The answer was read as requested)
- 21 THE WITNESS: I was incorrect. The money
- 22 comes into the Global NAPs New Hampshire and then is
- 23 distributed throughout the other companies.
- 24 Q. (By Mr. Jensen) How does the money get into
- 25 Global NAPs New Hampshire?

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- 1 MR. MANISHIN: I assume you don't mean
- 2 physically, by check or electronic transfer?
- 3 MR. JENSEN: Right, at least at this
- 4 point.
- 5 Q. (By Mr. Jensen) How is it that Global NAP
- 6 New Hampshire gets money from anyone?
- 7 A. It's just deposited in the account.
- 8 Q. Okay. So, for example, a Global NAPs, Inc.
- 9 customer would deposit their money in the Global NAPs
- 10 New Hampshire?
- 11 A. No, they'd send it to Select and Pay.
- 12 Q. Pardon me?
- 13 A. They would send it to Select and Pay.
- 14 Q. Select and Pay, okay.
- 15 A. And Select and Pay would deposit it.
- 16 Q. Okay. So a customer of either Global NAPs,
- 17 Inc., Global NAPs Network or Global NAPs Realty would
- 18 pay, however they do it, either by check or wire, to
- 19 Select and Pay, correct?
- 20 A. Checks would be mailed to Select and Pay;
- 21 wires would be wired directly into the account.
- 22 Q. And the account at Select and Pay is for
- 23 Global NAPs New Hampshire, is that right?
- 24 A. I don't believe Select and Pay has an
- 25 account for Global NAPs New Hampshire. There is a

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- 1 Global NAPs New Hampshire bank account.
- 2 Q. Okay. And then Select and Pay actually
- 3 deposits what they get?
- 4 A. Into that account, yes. Select and Pay does
- 5 our billing as well.
- 6 Q. How many employees does Global NAPs New
- 7 Hampshire have?
- 8 A. I don't know if it has any. I don't believe
- 9 it does but --
- 10 Q. Who would know that?
- 11 A. Again, I'd have to go through the payroll
- 12 and find out if anybody is assigned to Global NAPs New
- 13 Hampshire.
- 14 Q. If it doesn't have any employees how does it
- 15 function?
- 16 A. It's just used as a financial tool. Money
- 17 is deposited in and checks are written out but they're
- 18 written out by Select and Pay.
- 19 Q. So Select and Pay is in control of writing
- 20 the checks to the various entities?
- 21 A. Yes.
- 22 Q. So Global NAPs New Hampshire has no
- 23 customers, is that right?
- 24 A. Yes, no customers.
- 25 Q. Okay. Does Global NAPs New Hampshire have

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1 any written agreements with Global NAPs, Inc. to  
 2 perform this function?  
 3 A. Not that I'm aware of.  
 4 Q. Are there any documents reflecting Global  
 5 NAPs New Hampshire's authority to perform this  
 6 function?  
 7 A. Not that I'm aware of.  
 8 Q. Who would know that answer?  
 9 A. I don't know, I'd have to research it.  
 10 Q. Do you have an idea of who would know the  
 11 answer?  
 12 A. No.  
 13 Q. Would it be in any of the filings that  
 14 either Global NAPs, Inc. or Global NAPs New Hampshire  
 15 has made?  
 16 A. Not that I'm aware of.

17 MR. MANISHIN: Just make a comment for  
 18 the record. Tim, as I said in court, Mr. Gangi  
 19 extensively researched these questions. If there are  
 20 issues like the one that you just raised that he's not  
 21 able to answer because he doesn't have the information  
 22 he can make calls during a break or overnight in an  
 23 attempt to ascertain that and if there is additional  
 24 documentation get it faxed down here for you.

25 MR. JENSEN: Okay. I would appreciate  
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1 that, thank you.  
 2 Q. (By Mr. Jensen) Mr. Gangi, if you know  
 3 this, do you know who set up the relationship between  
 4 Global NAPs New Hampshire and Select and Pay?  
 5 A. Set up the relationship between Global NAPs  
 6 New Hampshire and Select and Pay?  
 7 Q. Yes.  
 8 A. I would have to assume it came from our  
 9 accountant.  
 10 Q. Your accounting?  
 11 A. Our accountant.  
 12 Q. Were you involved in any way in that  
 13 relationship of setting it up?  
 14 A. No.  
 15 Q. No. Do you know if there are any documents  
 16 reflecting the agreement between Global NAPs New  
 17 Hampshire and Select and Pay?  
 18 A. I'm not aware of any, no.  
 19 Q. Do you know who would be aware of that?  
 20 A. No, I'm not.  
 21 Q. Are there any other Global NAPs entities  
 22 that handle -- strike that. Are there any other  
 23 Global NAPs entities or do those entities handle all  
 24 of Global NAPs work throughout the country?  
 25 A. They handle all Global NAPs.

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1 Q. So there are no other Global NAPs entities  
 2 that you're aware of?  
 3 A. Those are the Global companies.  
 4 Q. Okay. Who are the customers of Global NAPs  
 5 Networks?  
 6 A. Customer list or --  
 7 Q. Why don't you give me the type of customers  
 8 first and then we can talk about --  
 9 A. ISP provider, internet service.  
 10 Q. Let me back up for a second. What does  
 11 Global NAPs Networks do?  
 12 A. Provides transport and network services.  
 13 Q. And you mentioned that it does that for ISP  
 14 providers?  
 15 A. Yes.  
 16 Q. Where would those ISP providers be located?  
 17 A. Could be anywhere in Mass. or out of Mass.  
 18 Q. Do you know where they are?  
 19 A. Off the top of my head, no, I don't.  
 20 Q. Do you have examples of ISP customers that  
 21 you have providers for?  
 22 A. We have like local companies like Berkshire  
 23 Internet, Shore Net, there are others, I don't have  
 24 the customer list off the top of my head.

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1 Q. Okay. Who would know the customers of  
 2 Networks, Inc.? Pardon me, is it Networks, Inc. or is  
 3 it just Networks, Global NAPs Networks?  
 4 A. Global NAPs Networks, I believe it's Inc.  
 5 MR. MANISHIN: Ms. Reporter, would you  
 6 mark that page of the deposition as highly  
 7 confidential, attorneys' eyes only under the  
 8 protective order.  
 9 Q. (By Mr. Jensen) Who would know the identity  
 10 of the customers that Global NAPs Networks has?  
 11 A. Probably be our Sales Department.  
 12 Q. Okay. Who's in your Sales Department?  
 13 A. Brad Masuret.  
 14 Q. Mr. Masuret is in the Sales Department of  
 15 Global NAPs Networks?  
 16 A. Yes.  
 17 Q. And are there documents --  
 18 A. Sorry, Brad is with Global NAPs, Inc.  
 19 Q. Okay. But he would know the customers for  
 20 Global NAPs Networks?  
 21 A. Yes, the customers of Global NAPs Networks  
 22 were most likely originally customers of Global NAPs,  
 23 Inc. When those contracts expired they go month to  
 24 month and once the contracts go month to month they're  
 25 typically assumed by Global NAPs Networks.

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- 1 Q. And why is that?
- 2 A. It's just the way they do it.
- 3 Q. Is there a particular benefit to Global NAPs
- 4 for doing it that way?
- 5 A. We're trying to break up the companies into
- 6 individual companies that do specific things. And
- 7 such as Realty takes care of realty, Networks takes
- 8 care of networks and Global NAPs itself is dealing
- 9 with the contracts of ILECs.
- 10 Q. And I probably jumped the gun a little bit
- 11 and I didn't talk about what Global NAPs, Inc. does.
- 12 Let me backtrack a little bit and why don't you tell
- 13 me a little bit about what Global NAPs, Inc. does.
- 14 A. As I said, Global NAPs' primary role now is
- 15 contracts with ILECs.
- 16 Q. Okay.
- 17 A. And interconnection agreements.
- 18 Q. With ILECs?
- 19 A. With ILECs.
- 20 Q. Who would those ILECs be?
- 21 A. SBC, Verizon, Bell South.
- 22 Q. Are there any particular states that Global
- 23 NAPs has interconnection agreements with ILECs?
- 24 A. I don't know what states we're in. I know
- 25 it's our goal to get into every state. I'm not sure

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- 1 where we are in that grand scheme of things. I know
- 2 there are a number of states we do have
- 3 interconnection agreements with. What that number is,
- 4 I don't know.
- 5 Q. Okay. Can you tell me what you do know,
- 6 which states you do remember?
- 7 A. Sure. Massachusetts, Connecticut, Florida,
- 8 California, Atlanta, Georgia. Off the top of my head
- 9 that's -- Illinois. Off the top of my head that's a
- 10 quick list.
- 11 MR. MANISHIN: New Jersey.
- 12 THE WITNESS: New Jersey.
- 13 Q. (By Mr. Jensen) And does Global NAPs, to
- 14 the best of your knowledge, have interconnection
- 15 agreements with an ILEC in each of those states?
- 16 A. To the best of my knowledge, yes. New York
- 17 is another one, Vermont, New Hampshire.
- 18 Q. Ohio?
- 19 A. Rhode Island.
- 20 Q. Can you tell me what Global NAPs' business
- 21 model is?
- 22 A. Being?
- 23 Q. How does it make money? How does Global
- 24 NAPs make money?
- 25 A. Global NAPs, Inc.?

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- 1 Q. Correct.
- 2 A. Its primary source of income is intercarrier
- 3 compensation.
- 4 Q. Tell me what that is.
- 5 A. Charges between carriers for reciprocal
- 6 compensation.
- 7 Q. Does it have any other source of income
- 8 other than -- I think what you're saying is it makes
- 9 money from reciprocal compensation, is that it?
- 10 A. Yes.
- 11 Q. Does it have any other source of revenue?
- 12 A. No, now Global NAPs, Inc. has its
- 13 intercarrier compensation as its source of income.
- 14 Q. Was there a point where it was not strictly
- 15 limited?
- 16 A. When we first started it had other things
- 17 but those are long gone. It had handled contracts in
- 18 the past but that's -- we've changed, we're breaking
- 19 things up so --
- 20 Q. Okay. Can you tell me when that change
- 21 happened?
- 22 A. It's been over the last four, five years
- 23 anyway.
- 24 Q. Okay. In the last four or five years what
- 25 did Global NAPs change from?

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- 1 A. Originally Global NAPs, Inc. handled
- 2 everything, and we've broken it off into the various
- 3 companies trying to have specific single task
- 4 companies to handle things.
- 5 Q. And the breakdown was -- is it into Global
- 6 NAPs New Hampshire, Global NAPs Networks and Global
- 7 NAPs Realty, is that the breakdown that you're talking
- 8 about?
- 9 A. Right now, yes.
- 10 Q. Are there other entities that were created
- 11 that we haven't talked about?
- 12 A. I believe not, no.
- 13 Q. Okay. Are there other entities in the works
- 14 that we haven't talked about?
- 15 A. No.
- 16 Q. Prior to -- and strike that. So you think
- 17 that this change happened over the last four or five
- 18 years or it happened four to five years ago?
- 19 A. It's ongoing.
- 20 Q. It's an ongoing process?
- 21 A. Yes.
- 22 Q. Maybe we can nail down some of the time
- 23 frames. When was Global NAPs New Hampshire
- 24 incorporated?
- 25 A. I don't know off the top of my head, but --

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1 would guess five or six years ago it's been around.  
 2 It's not something that was incorporated yesterday.  
 3 Q. Okay. But was it part of this process?  
 4 A. Yes.  
 5 Q. Okay. So would this process have begun six  
 6 years ago or four or five years ago?  
 7 A. Four to five years ago, but we have other  
 8 companies. And Global NAPs, I don't know if it was  
 9 originally Global NAPs New Hampshire, I'm not sure if  
 10 it was originally set up to do what it's doing today.  
 11 It may have been an existing company that was not  
 12 doing much of anything and we just started to use it  
 13 for this particular application.  
 14 Q. So you don't know what Global NAPs was doing  
 15 when it was incorporated, is that a fair statement?  
 16 A. Global NAPs New Hampshire?  
 17 Q. New Hampshire.  
 18 A. Yes, it's a fair statement.  
 19 Q. What about Global NAPs, and maybe we can  
 20 just ease having to say this by referring to Global  
 21 NAPs, Inc. as Global NAPs.  
 22 A. Okay.  
 23 Q. Global NAPs Networks as Networks.  
 24 A. Okay.  
 25 Q. And Global NAPs Realty as Realty.

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1 A. Okay.  
 2 Q. And Global NAPs New Hampshire as New  
 3 Hampshire.  
 4 A. Perfect.  
 5 Q. Because I'm starting to slur my words.  
 6 MR. MANISHIN: Early in the day for that,  
 7 Tim.  
 8 Q. (By Mr. Jensen) Do you recall when or do  
 9 you know when Networks was incorporated?  
 10 A. No. Again, when it was incorporated, I know  
 11 it's been around a while, and, again, its original  
 12 purpose, I'm not sure what it was.  
 13 Q. Okay. What about Realty?  
 14 A. Same thing.  
 15 Q. So these were not incorporated as part of  
 16 the process?  
 17 A. Well, I'm not saying that. They could have  
 18 been. I don't know if they were or weren't but they  
 19 certainly could have been.  
 20 Q. Who would know when these other entities  
 21 were incorporated?  
 22 A. I have to check with our Legal Department to  
 23 find out when they did the filings.  
 24 Q. Going back to Global NAPs and its revenue  
 25 stream. How much has it received in cash -- strike

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1 that. How much has Global NAPs -- what was Global  
 2 NAPs' revenue for the year 2005?  
 3 MR. MANISHIN: For clarity. The Global  
 4 NAPs is Global NAPs, Inc., not Global NAPs New  
 5 Hampshire?  
 6 MR. JENSEN: Correct.  
 7 THE WITNESS: Global NAPs, Inc.'s revenue  
 8 for 2005 -- I don't know.  
 9 Q. (By Mr. Jensen) Do you know who would know?  
 10 A. I'd have to talk to our accountants on that.  
 11 Q. Do you have any financial statements today  
 12 that would help you?  
 13 A. No, I don't.  
 14 Q. Does Global NAPs make any of -- strike that.  
 15 Does Global NAPs create financial statements as a  
 16 regular course of business?  
 17 A. I'm not sure if it does or it doesn't.  
 18 Ferrous Miner Holdings does. All these companies are  
 19 sub Q's of Ferrous Miner Holdings, so everything is  
 20 pushed up to Ferrous Miner and Ferrous Miner does  
 21 generate that.  
 22 Q. And do you keep copies of that?  
 23 A. I don't have them, no.  
 24 Q. Do they send you copies of financial  
 25 statements? --

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1 A. Ferrous Miner, no.  
 2 Q. Does Ferrous Miner send you any financial  
 3 statements?  
 4 A. For Global?  
 5 Q. For any of the Global entities?  
 6 A. I have not seen them, no.  
 7 Q. Okay. Does Ferrous Miner send tax returns,  
 8 copies of tax returns to you as the treasurer for the  
 9 Global NAPs entities?  
 10 A. I have not seen them, no.  
 11 Q. You've never seen them?  
 12 A. No.  
 13 Q. So for the years 2002 to 2005 you've never  
 14 seen a tax return for Global NAPs Inc., Global NAPs  
 15 Networks, Global NAPs New Hampshire or Global NAPs  
 16 Realty?  
 17 A. That's correct.  
 18 Q. Have you seen a consolidated tax return for  
 19 Ferrous Miner?  
 20 A. I have not.  
 21 Q. Who would have seen these tax returns?  
 22 A. I believe our accountants.  
 23 Q. Does Ferrous Miner send -- strike that.  
 24 Are the accountants for Global NAPs, the Global NAPs  
 25 entities the same accountants for Ferrous Miner?

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1 A. I believe they are, yes.  
 2 Q. You don't know how much revenue Global NAPs  
 3 generated in 2005 but can you tell me if all of the  
 4 revenue from 2005 was based on reciprocal compensation  
 5 payments?  
 6 A. No, we have other services that we sell.  
 7 Oh, for Global NAPs --  
 8 Q. Correct.  
 9 A. -- Inc.? My guess would be yes, but I don't  
 10 know if there's others revenue in there as well. I  
 11 can't imagine what else would be in there but I don't  
 12 know for certain.  
 13 MR. MANISHIN: Excuse me for a second.  
 14 The normal rule is not to volunteer but I think that  
 15 perhaps an explanation of the fund flow would assist  
 16 Mr. Jensen in understanding your answer, because  
 17 you're distinguishing reciprocal comp revenues and the  
 18 customers of the entities and that would be your  
 19 answer and the entities to which they flow.  
 20 THE WITNESS: Well, we get money from  
 21 reciprocal compensation that would get thrown into  
 22 Global NAPs New Hampshire as well as our customer  
 23 money for dial up services and VOIP services.  
 24 Q. (By Mr. Jensen) And are these customers of  
 25 Global NAPs?

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1 A. Originally they may have been but the term  
 2 of the contracts have expired so they're month to  
 3 month now. Once the contracts expire they're  
 4 generally just handed to Networks to handle, so they  
 5 may have been Global NAPs, Inc.'s originally, now  
 6 they're in Networks.  
 7 Q. Okay. How would we know when they switched  
 8 over?  
 9 A. The expiration date on the contract.  
 10 Q. And do we have copies of all those  
 11 contracts?  
 12 A. I think we brought a fair amount of them  
 13 today.  
 14 Q. Okay, we'll go through those after we get  
 15 copies.  
 16 You mentioned that once these contracts  
 17 expire they would move from Global NAPs to Networks?  
 18 A. Right.  
 19 Q. Is there any written documentation of that  
 20 transaction?  
 21 A. No, it's just a matter of course, once the  
 22 original term is done they go month to month. We  
 23 don't try to hold anybody hostage, any of our  
 24 customers hostage. So once the original term is done,  
 25 which is usually a short term, a year, then it goes

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1 month to month. If you don't like the service you can  
 2 leave, you know, if you don't want to be around.  
 3 Q. Is there any document reflecting the  
 4 transfer to Networks from Global NAPs, Inc.?  
 5 A. Not that I'm aware of.  
 6 Q. Do you know who would know the answer?  
 7 A. I don't believe it exists.  
 8 Q. So you don't think there's any  
 9 documentation?  
 10 A. No.  
 11 Q. So what would the process be if you can  
 12 describe it for me?  
 13 A. Well, as I said, the contracts -- the  
 14 original contract is good for a certain term. Once  
 15 it's expired it's a month to month term. So once it  
 16 goes month to month Networks just assumes it.  
 17 Q. So somebody from Global NAPs walks it over  
 18 to Networks and they say, okay, now this is our's, how  
 19 does that process work?  
 20 A. I'm not sure. I know it's just a matter of  
 21 course, it's what's done, we know what's going to  
 22 happen. I don't know if there actually is any formal  
 23 procedure for it.  
 24 Q. How do you tell a customer they're switching  
 25 from Global NAPs to Networks?

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1 A. We typically don't. No reason, it's on a  
 2 month to month so --  
 3 Q. So how would they know who to write their  
 4 checks to?  
 5 A. They may still in fact write it to Global  
 6 NAPs, Inc. Like I said, all that money gets put into  
 7 Global NAPs New Hampshire, customer money, reciprocal  
 8 compensation all goes into the New Hampshire bank  
 9 account and then it gets distributed.  
 10 Q. So the customer doesn't know that there was  
 11 a change basically?  
 12 A. I would say probably not.  
 13 Q. How many employees does Networks have?  
 14 A. Again, I wouldn't know unless I went through  
 15 the payroll to see where they were assigned, but if  
 16 you're looking for a guess, thirty, forty.  
 17 MR. MANISHIN: Excuse me. Is that the  
 18 kind of question you can check on during the break,  
 19 the number of employees?  
 20 THE WITNESS: Yes, but I think that's a  
 21 pretty good estimate, thirty to forty. Networks does  
 22 the lion's share of the heavy lifting. It's got all  
 23 the technicians and the people at the various switch  
 24 sites, they're all in Networks.  
 25 Q. (By Mr. Jensen) Okay. And has Networks

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1 always had somewhere around thirty to forty employees?

2 A. Yes.

3 Q. So it's always been relatively large  
4 compared to Global?

5 A. Originally these were all in, as I said  
6 before, Global NAPs Inc. did it all. And once we  
7 started breaking it out Networks is the company that  
8 took the lion's share of Global's work.

9 Q. And, therefore, the lion's share of  
10 employees?

11 A. The employees.

12 Q. The employees that currently work for  
13 Networks worked for Global originally?

14 A. Yes, we have a very low turn over so they've  
15 been around since the beginning.

16 Q. Now, what about Realty, how many employees  
17 does Realty have?

18 A. I'm not sure Realty has any. Realty takes  
19 care of our rack rentals and some of our leases. It  
20 didn't really have a customer base, so I'm not sure if  
21 there are any employees that are assigned Realty.

22 Q. Okay. Can you tell me -- You've given me  
23 kind of what you think the number of employees are for  
24 the various entities, as a whole these four Global  
25 entities, about how many employees?

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1 A. Fifty.

2 Q. Fifty. And these fifty employees all  
3 originally worked for Global?

4 A. Unless they were hired after we started this  
5 transition, yes.

6 Q. And I think you just told me a little bit  
7 about what Realty does, is there anything else that  
8 Realty does?

9 A. Pretty much rack rentals and leases, that  
10 takes care of it.

11 Q. Does Networks retain any of the revenues  
12 that it generates?

13 A. It has to to pay its employees.

14 Q. Okay.

15 A. Is that what you're asking?

16 Q. Well, I'm just asking you is that your  
17 understanding?

18 A. Yes, we have to, it has employees it needs  
19 to pay.

20 Q. But money goes -- To get to Networks it has  
21 to go through this Select and Pay process?

22 A. Yes.

23 Q. Can you tell me -- strike that. Do you know  
24 where Global NAPs pays taxes?

25 A. Where it pays taxes? I'm not certain but I

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1 can find out for you.

2 Q. Okay, that would be great.

3 A. Any of these questions that I don't have the  
4 answers to, I mean, I was given a day to prepare to  
5 come to you guys today, so anything that you guys have  
6 for questions I'm sure that I can get the answer to  
7 the attorneys so they can forward them to you, that's  
8 not an issue. Not that I don't want to answer your  
9 questions, I just legitimately don't have the answers  
10 for you right here but I can get them for you.

11 Q. All right, I would appreciate that. It  
12 would be the same question for Networks, New Hampshire  
13 and Realty.

14 A. Okay.

15 MR. JENSEN: Take a five-minute break.

16 MR. MANISHIN: Absolutely. Take your  
17 time.

(Recess taken at 11:55 A.M.)

(Deposition resumed at 12:09 P.M.)

19 MR. JENSEN: Back on the record.

21 Q. (By Mr. Jensen) Does Global NAPs have any  
22 subsidiaries?

23 A. Global NAPs itself, no.

24 Q. And what do you mean by Global NAPs itself,  
25 is there another --

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1 A. No, Global NAPs does not have any  
2 subsidiaries.

3 You asked me earlier about Global NAPs  
4 companies and I gave you the four: Networks, Realty,  
5 New Hampshire and Inc. There are a slew of other  
6 Global NAPs companies that I call file companies.

7 Q. File companies?

8 A. File companies, yeah, they don't do anything  
9 because Global NAPs -- A couple of them may, Global  
10 NAPs South, Global NAPs Virginia, there are various  
11 companies in various states that are filed just for  
12 regulatory reasons. They don't actually do anything.  
13 They have no assets. They have no employees. It's  
14 just as I said, a file company. So those are in  
15 there. I don't have a complete list of those but they  
16 exist.

17 Q. Okay. Can you get me a list of those  
18 companies?

19 A. I can get you a list, sure. I hope I can  
20 get you a list. I think it will be extensive.

21 MR. MANISHIN: Off the record.

22 (Discussion off the record)

23 MR. JENSEN: Back on the record.

24 Q. (By Mr. Jensen) And as you sit here today  
25 you don't know how many actual file companies there

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1 are?

2 A. No, I don't, and I really don't deal with  
3 them because, like I said, they don't do much of  
4 anything, so my day to day activities, you know, they  
5 don't exist in my head.

6 Q. And are they, would you say they are in  
7 states where Global NAPs does business, is that an  
8 accurate statement?

9 A. Probably where we have interconnection  
10 agreements.

11 Q. And you mentioned you are an officer at  
12 again the Global NAPs four entities that we talked  
13 about?

14 A. Yes, and any of one of these companies as  
15 well it would be the same corporate structure.

16 Q. Okay.

17 A. Right.

18 Q. Are there any other entities that you work  
19 at other than the ones we've already talked about?

20 A. That I work at.

21 Q. That you work at?

22 A. In what capacity?

23 Q. Any capacity.

24 A. I am an officer in other companies that are  
25 unrelated to Global.

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1 manufacturing company?

2 A. They would be the same.

3 Q. Does the manufacturing company do any  
4 business with any of the Global entities?

5 A. Yes, it does.

6 Q. What type of business?

7 A. Sales, sales equipment.

8 Q. What type of equipment?

9 A. Switch gear.

10 Q. Does this manufacturing company have any  
11 contracts with any of the Global entities?

12 A. We acquired this company, it was an existing  
13 company that Global had done work with in the past and  
14 they're existing contracts with this prior owners. I  
15 would have to say this contract is still good so I  
16 guess the answer would be, yes, but I have to make  
17 certain that those contracts were still in effect.

18 Q. And you said this manufacturing company  
19 makes switch gear?

20 A. Yes.

21 Q. What is switch gear? Describe it to me.

22 A. Telephone switches.

23 Q. And what is the process by which a telephone  
24 switch is manufactured?

25 A. I don't understand.

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1 Q. Okay. And what are those companies?

2 MR. MANISHIN: It's beyond the scope of  
3 the deposition so I'll object. If you can establish  
4 relevance I'll permit the witness to answer.

5 MR. JENSEN: I need to know the nature of  
6 these companies, find out whether or not they are  
7 related.

8 MR. MANISHIN: Without identifying the  
9 name then tell him the nature of the company and what  
10 business it does.

11 THE WITNESS: One is a manufacturing  
12 company.

13 MR. BYRNE: These are the Global  
14 companies you're talking about?

15 MR. MANISHIN: These are other companies  
16 that Mr. Gangi personally has a role in.

17 THE WITNESS: I'm an officer in and the  
18 other one is a VOIP company.

19 Q. (By Mr. Jensen) And what do you do at the  
20 manufacturing company?

21 A. Again, I just have a title, same as I would  
22 in the Global companies.

23 Q. So you're vice president and treasurer?

24 A. Treasurer, yes.

25 Q. And who are the other officers in the

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1 Q. Does it require machinery?

2 A. I'm not very involved with the day to day  
3 operation of the company so I really don't know. I  
4 believe they outsource all of that and assemble  
5 in-house but I'm not 100 percent certain.

6 Q. Other than contracts that were acquired when  
7 this manufacturing company was acquired by you and the  
8 rest of the officers, Frank Gangi and Mike Couture, is  
9 there any relationship between the Global NAPs  
10 entities and this manufacturing company?

11 A. No, not that I'm aware of.

12 Q. Do they share employees?

13 A. No.

14 Q. Do they share revenue?

15 A. Again, they have a relationship where the  
16 Global companies will buy from them. Is that what you  
17 mean by share revenue? They're a customer/vendor  
18 relationship.

19 Q. Okay. Are there any intercompany loans  
20 between the manufacturing company and any of the  
21 Global NAPs entities?

22 A. Not that I'm aware of, no.

23 Q. Who would be aware of that if in fact it  
24 happened?

25 A. I could get you that answer.

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1 Q. And who would you be getting that  
2 information from?  
3 A. I'd have to check with our accountants to  
4 see if there are any outstanding loans.  
5 Q. And does this manufacturing company use the  
6 same accountants as Global NAPs?  
7 A. I don't believe so.  
8 Q. Does this manufacture company use the  
9 services of Select and Pay?  
10 A. I don't believe so.  
11 Q. Does this company share receivables with any  
12 of Global NAPs entities?  
13 A. I don't believe so?  
14 Q. Turning to the VOIP company, you're also an  
15 officer?  
16 A. Um-hm.  
17 Q. Is it the same group of officers as the  
18 manufacturing company?  
19 A. Yes.  
20 Q. So it's Frank Gangi, Richard Gangi and  
21 Michael Couture?  
22 A. Yes. There may be additional officers for  
23 each of those companies, I don't have that answer.  
24 There be may be one additional on each.  
25 Q. Going back to the manufacturing company, is  
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1 is it privately owned?  
2 A. Yes.  
3 Q. Okay. And who owns it?  
4 A. I'm not sure what the structure is on that.  
5 Again, I'm not that involved with it or the VOIP  
6 company so I'd have to get you those answers.  
7 Q. All right. Has it issued shares?  
8 A. I don't know.  
9 Q. Does it have a parent company?  
10 A. I don't know.  
11 Q. Turning to the VOIP company. What does the  
12 VOIP company do?  
13 A. Sells VOIP services.  
14 Q. Could you describe for me that process?  
15 A. If you wanted to use a VOIP phone you could  
16 contact them and they would supply you with a phone  
17 and a phone number and you would have a VOIP phone.  
18 Q. Okay. Do they do any business, this VOIP  
19 company, does it do any business with any of the  
20 Global NAPs entities?  
21 A. It may do business with Networks, again, I'm  
22 not sure.  
23 Q. And who would be the person to find that  
24 out?  
25 A. I'd have to ask our accountants.

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1 Q. And do you know if there were any contracts  
2 between the VOIP company and any of the Global NAPs  
3 entities?  
4 A. I don't believe there are.  
5 Q. Who provides the phone numbers for the VOIP  
6 company?  
7 A. I don't know. Again, that's another company  
8 that I am not very involved with.  
9 Q. Do you know if any of the Global NAPs  
10 entities provide the phone number for the VOIP  
11 company?  
12 A. I don't know but I can find out.  
13 Q. Please do. Do you know whether or not the  
14 VOIP company and any of the Global NAPs entities have  
15 any intercompany loans?  
16 A. Not that I'm aware of but I will find out  
17 for you.  
18 Q. Same with any receivables that are shared by  
19 the companies.  
20 A. I know that receivables are not shared.  
21 MR. JENSEN: Just for the record,  
22 depending upon what Mr. Gangi produces in response to  
23 some of these questions I will need to follow up on  
24 these issues at some point, and I may need to get the  
25 names. I understand right now it's --  
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1 MR. MANISHIN: Appreciate the  
2 sensitivity. We can discuss that at the appropriate  
3 time.  
4 Q. (By Mr. Jensen) Other than the  
5 manufacturing company and the VOIP company, and  
6 actually if I could ask where are those located? You  
7 don't have to give me the address.  
8 A. Massachusetts.  
9 Q. Both of them?  
10 A. Yes.  
11 Q. Do you do any work for, and it can be as an  
12 officer, an employee or -- well, limit it to those  
13 two, any other entities?  
14 A. No.  
15 Q. Okay. Do you have any ownership interest in  
16 any of Global NAPs entities?  
17 A. No.  
18 Q. Do you have any interest in the parent  
19 company of the Global NAPs entities?  
20 A. No.  
21 Q. So you don't own any of the stock of Ferrous  
22 Miner?  
23 A. No.  
24 Q. Have you ever been involved in any legal  
25 proceedings in your capacity as an officer of Global

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1 NAPS?

2 A. I believe I have, sure.

3 Q. Okay. Can you tell me what those  
4 proceedings are?

5 A. Various cases, some with ILECs, some  
6 collection cases with customers, not ILECs, with ILECs  
7 as well.

8 Q. Okay. Could you be a little bit more  
9 specific as to the location of these cases, and why  
10 don't we start with that.

11 A. When you're asking me for my involvement  
12 with them what's the question?

13 Q. I'm asking you whether or not you as an  
14 officer of Global NAPS have been involved in any  
15 litigation?

16 A. I mean, I guess I don't know what you're  
17 looking for.

18 Q. I'm trying to find out what the proceedings  
19 are that you were involved in. Let me take this a  
20 step back.

21 Have you provided testimony at any legal  
22 proceedings in your capacity as an officer for any of  
23 the Global NAPS entities?

24 A. Yes.

25 Q. What proceedings were those?

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1 off the top of my head.

2 Q. What entity is this case against?

3 A. I think it's against Global NAPS, Inc.

4 Q. Have you given any other testimony during  
5 that proceeding other than in a deposition?

6 A. Not that I recall.

7 Q. I think you mentioned more than one  
8 proceeding, what would be --

9 A. Well, I don't know, that's what I was trying  
10 to get to when I asked you what you meant by being  
11 involved. I mean, do I see something come across my  
12 desk or hear mention of things?

13 Q. Right, I'm going to limit it for right now  
14 to your -- again, when you provided testimony and it  
15 can be either at a deposition, like this, in court  
16 when you're on the stand as a witness, by affidavit,  
17 signed and sworn, can be part of a memorandum or  
18 anything else.

19 A. Sure.

20 Q. Can be part of an agency proceeding, if  
21 you're going in front of one of the PUC's, the public  
22 utility companies or control authorities in the  
23 various states or an arbitration, that's the world I'm  
24 looking at right now.

25 A. Okay.

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1 A. There was a case with a former employee that  
2 I had to testify in a deposition.

3 Q. Okay. And do you recall where that case is  
4 or was?

5 A. It's in Massachusetts.

6 Q. Is it in the State Court?

7 A. I don't really know.

8 Q. What was the nature or what is the nature of  
9 that claim?

10 A. Just a former employee was let go and I'm  
11 not really sure on the details of it but --

12 Q. Okay. And you had your deposition taken at  
13 that?

14 A. Yes.

15 Q. And do you recall when that deposition was  
16 taken?

17 A. Within the last year I would say.

18 Q. Is that case still pending?

19 A. I believe it is, yes.

20 Q. What's the name of the employee in that  
21 case?

22 A. Sandy Stevens, I believe.

23 Q. And is there a claimed dollar amount of the  
24 claim that she's asserted against?

25 A. I believe there is, I don't know what it is  
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1 Q. Any time you've given testimony at any of  
2 those proceedings.

3 A. Sure, that helps. Affidavits, I've signed  
4 many. I can't give you the specifics of what they  
5 were for, but I know I have signed affidavits on  
6 behalf of Global NAPS, Inc. I'm sure there's got to be  
7 some of them.

8 I gave testimony in court for a suit we had  
9 brought against a landlord in California but I'm not  
10 sure if that was Global NAPS, Inc. or Global NAPS  
11 Realty, so, but that's --

12 Q. That was court testimony?

13 A. Court testimony.

14 Q. You were a witness?

15 A. Yes.

16 Q. Okay. Do you have a more specific  
17 recollection of any of the affidavits that you may  
18 have testified in?

19 A. No.

20 Q. Okay. Any other cases where you would have  
21 been a witness on a stand?

22 A. Not that I recall.

23 Q. And you've never testified during an agency  
24 proceeding?

25 A. No, not that I recall.

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1 Q. And you've never testified during an  
2 arbitration?  
3 A. Not that I recall.  
4 Q. Are you a board member on any companies that  
5 we've already spoken about?  
6 A. No.  
7 Q. I'm going to turn my attention and your  
8 attention to the specific assets that Global has, but  
9 I do want to ask a couple questions based on some of  
10 the issues that have popped up in the last couple of  
11 days.  
12 Is it true that Global does not have any  
13 assets -- strike that. Is it true that Global does  
14 not have assets anywhere? When I say anywhere,  
15 Connecticut, United States or the world, sufficient to  
16 satisfy the \$5.25 million PJR award?  
17 A. I believe that's a true statement.  
18 Q. Okay. And how do you know that's a true  
19 statement?  
20 A. Because Global does not have very many  
21 assets.  
22 Q. Did Global ever have assets?  
23 A. I don't believe so. I think that Networks  
24 is where most of the assets are.  
25 Q. Was there a point in time when Global had

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1 the assets that Networks currently has?  
2 A. Some of them I'm sure. The larger items  
3 probably not. We switched manufacturers and I think  
4 when we had switched manufacturers we also -- it was  
5 probably around the same time we were doing the  
6 transition from Global to Networks.  
7 Q. Which was about when?  
8 A. Five years ago.  
9 Q. So the four to five year time frame that we  
10 talked about before and as you said it was an ongoing  
11 process?  
12 A. Yes.  
13 Q. Okay. So it didn't happen all at once?  
14 A. No, it's still ongoing.  
15 Q. And do you recall the specifics of any of  
16 the assets that were transferred from Global to  
17 Networks?  
18 A. No, I don't.  
19 Q. Are there any documents supporting the  
20 transfer of assets from Global to Networks?  
21 A. Not that I'm aware of, no.  
22 Q. Did Global notify any of the state PUCs  
23 about the changes?  
24 A. Which changes are those?  
25 Q. The transfer of assets or the transfer of

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1 anything from Global to Networks?  
2 A. Not that I'm aware of.  
3 Q. Does Global have the ability to satisfy a  
4 \$5.25 million judgment at this time?  
5 A. Repeat that, please.  
6 Q. Does Global have the ability to satisfy a  
7 \$5.25 million judgment?  
8 MR. MANISHIN: Objection as to form.  
9 MR. JENSEN: You can answer.  
10 THE WITNESS: I believe that Global would  
11 be able to satisfy that with the backing of the other  
12 Global companies.  
13 Q. (By Mr. Jensen) How so?  
14 A. Anytime there's been a judgment against  
15 Global the other companies have opted to assist. And  
16 I'm sure if there is a judgment against Global again  
17 that the other companies would opt to assist to  
18 satisfy it.  
19 Q. You said that they have done that in the  
20 past. Can you give me a circumstance or can you give  
21 me the particular circumstances where that happened in  
22 the past?  
23 A. There was a lawsuit with Verizon I believe  
24 that had a judgment against Global. And I'm not sure  
25 on the amounts, I know it was substantial, and it was

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1 satisfied with the aid of the other Global companies.  
2 Q. Do you recall when that was?  
3 A. Three years ago maybe.  
4 Q. And where was that judgment entered?  
5 A. I believe it was Massachusetts.  
6 Q. And it was a matter brought by Verizon  
7 against Global?  
8 A. Yes, there was counterclaims in it as well,  
9 and at the end of the day it was settled and it was  
10 paid.  
11 Q. Was there a judgment or was it settled?  
12 MR. MANISHIN: If you know the  
13 difference.  
14 THE WITNESS: I don't know the answer. I  
15 can find out for you.  
16 Q. (By Mr. Jensen) Do you know the difference  
17 between a judgment and a settlement?  
18 A. Yes.  
19 Q. And can you tell me how the various Global  
20 entities work together to satisfy whatever this was,  
21 either a judgment or a settlement?  
22 A. The particulars on it, no, I don't know what  
23 they were. But I do know the other companies came to  
24 the aid of Global, Inc.  
25 Q. Who would know how this was done?

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1 A. I'd have to talk with our accountant to see  
2 how they broke it up.

3 Q. Were there any documents generated as a part  
4 of this group -- strike that. Were there any  
5 documents between the various Global entities  
6 memorializing this transaction?

7 A. None that I'm aware of.

8 Q. And when you say none that you're aware of,  
9 might there be?

10 A. There might be, I can ask.

11 Q. So it's your position today that if SNET  
12 were to obtain a \$5.25 million judgment that the  
13 Global entities would get together and satisfy that  
14 judgment?

15 MR. MANISHIN: Objection, lacks  
16 foundation, calls for speculation. Answer if you can.

17 THE WITNESS: Yes.

18 Q. (By Mr. Jensen) And your basis for that  
19 answer is what these Global entities did to satisfy  
20 the Verizon dollar amount, is that correct?

21 A. Yes.

22 Q. Do you know whether Global has the ability  
23 to pay SNET \$200,000 per month going forward?

24 A. I don't.

25 Q. You don't know the answer?

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1 A. No.

2 Q. Who would know the answer?

3 A. I would have to find out what that's based  
4 on and what the charges are. Just a random number  
5 like that, I don't know.

6 Q. Well, okay, let me explain it then. It's  
7 not a question of charges and whether or not they're  
8 disputed, the question is financially. Is Global in a  
9 position to pay \$200,000 a month going forward?

10 MR. MANISHIN: Does your question assume  
11 a different scenario than before or is this Global  
12 alone as opposed to these other entities he's  
13 testified to today?

14 MR. JENSEN: Yes.

15 THE WITNESS: Global, Inc. would not be  
16 able to pay that.

17 Q. (By Mr. Jensen) Would the same answer apply  
18 to a \$150,000 per month going forward?

19 A. I would say, yes.

20 Q. And what is your basis for the answer that  
21 they would not be able to pay out those amounts?

22 A. I don't see the revenue in Inc. that could  
23 satisfy, the other companies would have to assist.

24 Q. Global Networks, can you tell me what assets  
25 Global Networks has?

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1 A. Networks has all our switching gear and  
2 transport gear.

3 Q. Do you have a ballpark value for those  
4 assets?

5 A. No.

6 Q. Do you know who would?

7 A. Our accountants.

8 MR. MANISHIN: Excuse me one second.

9 (Discussion off the record)

10 MR. JENSEN: Back on the record.

11 MR. MANISHIN: Just note for the record,  
12 it may be that Mr. Gangi hasn't learned it but I came  
13 into possession of the information over the weekend  
14 about the acquisition cost of a significant portion of  
15 the Networks assets, they were bought from a company  
16 called Sycamore Network. We can verify that  
17 information on the telephone.

18 But, again, it's acquisition cost as  
19 opposed to present value and given the changing market  
20 dynamics in telecommunication equipment it's difficult  
21 for us to provide a present fair market value versus  
22 acquisition cost.

23 MR. JENSEN: So Sycamore Network is  
24 looking to buy.

25 MR. MANISHIN: No, Sycamore Network sold  
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1 a significant amount of equipment to Global NAPs  
2 Networks.

3 MR. JENSEN: And when did that happen?

4 MR. MANISHIN: I do not know. Mr. Gangi  
5 can check with the appropriate people during the break  
6 and corroborate that, but that's information that  
7 apparently I learned that he didn't learn as part of  
8 his investigation.

9 Q. (By Mr. Jensen) Other than the switching  
10 gear and the stuff from Sycamore Network that was  
11 recently acquired, does Global Networks have any other  
12 assets?

13 A. No, that's what Networks owned is just  
14 transport gear.

15 Q. Did you testify earlier that Networks  
16 contracts a lot of its business out or is that a  
17 different entity?

18 A. Contracts a lot of its business out, no.

19 Q. Okay, that was a manufacturing company.  
20 Mr. Gangi, are you familiar at all with the Sycamore  
21 acquisition?

22 A. Yeah, we've been buying Sycamore equipment  
23 for a long time, six years.

24 Q. Okay. And when Networks purchases network  
25 equipment, for example, from Sycamore, how does it

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- 1 purchase that?
- 2 A. Currently or in the past?
- 3 Q. Both, start with the past.
- 4 A. I'm not quite sure if Sycamore is actually
- 5 still in business.
- 6 Q. Okay.
- 7 A. Any purchases that would be done today would
- 8 be for equipment that's either used or unused sitting
- 9 in someone's warehouse, we've done that. Originally
- 10 we had purchase orders with purchases from Sycamore
- 11 itself, all of that is on that. I'm not -- As I sit
- 12 here today I can't give it to you, but I know we did
- 13 have large orders with them in the beginning.
- 14 Q. Okay. And how did you pay for those?
- 16 A. What were the terms?
- 16 Q. Well, where did the money come from to pay
- 17 for the equipment?
- 18 A. Out of the Networks revenue stream.
- 19 Q. Okay. And did you purchase them outright?
- 20 A. Yes.
- 21 Q. So is that typical, is that what you would
- 22 typically do is purchase them outright?
- 23 A. Versus?
- 24 Q. Versus leasing?
- 25 A. Yes.

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- 1 Q. Okay. Did you ever have to put up any
- 2 collateral or security against the purchase?
- 3 A. I don't believe so, no.
- 4 Q. Okay. As an officer of the various Global
- 5 NAFs entities do you receive a salary?
- 6 A. Yes.
- 7 Q. Okay. And what is that salary?
- 8 MR. MANISHIN: You have to say, it's part
- 9 of the finances of the company.
- 10 THE WITNESS: My salary is \$100,000.
- 11 Q. (By Mr. Jensen) Is that for all of the
- 12 Global entities?
- 13 A. Yes, that's my salary.
- 14 Q. What about bonuses?
- 15 A. I don't receive them, haven't in a few
- 16 years.
- 17 Q. Okay. Do you receive any other benefits
- 18 besides salary from any --
- 19 A. Insurance.
- 20 Q. Insurance?
- 21 A. Yes.
- 22 Q. What about, do you lease a vehicle through
- 23 the companies?
- 24 A. I drive a company vehicle, yes.
- 25 Q. Do you receive any dividends from any of the

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- 1 Global entities?
- 2 A. No.
- 3 Q. Do you receive any other source of income
- 4 from any of the Global entities?
- 5 A. No.
- 6 Q. So \$100,000, that's it?
- 7 A. Yes.
- 8 Q. Can you tell me what efforts, if any, Global
- 9 made toward securing a bond in this matter?
- 10 A. No, I cannot.
- 11 Q. Who would know that?
- 12 A. I don't know.
- 13 Q. Okay. Do you know if anybody made efforts
- 14 toward securing a bond?
- 15 A. I don't know but I can find out for you.
- 16 Q. Who would you talk to?
- 17 A. My legal staff.
- 18 MR. MANISHIN: I object to this line of
- 19 questioning, Counsel, it's not within the scope of the
- 20 Judge's May 31st order.
- 21 MR. JENSEN: I think it is. I think it's
- 22 very, very much relevant because if in fact Global did
- 23 in fact try to get a bond and was rejected it goes
- 24 towards credit.
- 25 MR. MANISHIN: There's nothing in there--

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- 1 on the list of any efforts to acquire a bond. I just
- 2 made my objection for the record, I'm not going to
- 3 instruct him not to answer.
- 4 MR. JENSEN: And, again, I'll say for the
- 5 record that if Global did try to get a bond and it was
- 6 rejected for any reason it goes towards their credit
- 7 and perhaps their assets and their standing.
- 8 Q. (By Mr. Jensen) But you personally did not
- 9 take any steps towards securing a bond?
- 10 A. No.
- 11 (Deposition Exhibit 3, offered and
- 12 marked.)
- 13 MR. JENSEN: Off the record.
- 14 (Luncheon recess taken at 12:40 P.M.)
- 15 (Deposition resumed at 1:45 P.M.)
- 16 MR. JENSEN: Back on the record.
- 17 Q. (By Mr. Jensen) Mr. Gangi, I want to follow
- 18 up on a couple of topics that we talked about earlier.
- 19 You had mentioned a company called Select and Pay as
- 20 your bookkeeping?
- 21 A. Um-hm.
- 22 Q. Do you have an internal person that does
- 23 bookkeeping at Global NAFs?
- 24 A. No, everything is done by Select and Pay.
- 25 Q. Everything. So who would be the person at

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- 1 Global NAPs that would provide information to Select  
2 and Pay?  
3 A. I don't know.  
4 Q. Can you find that out?  
5 A. Sure.  
6 Q. Okay. I'm assuming somebody from Global  
7 NAPs has to tell Select and Pay what to do, you know,  
8 what customer they've gotten, how to bill them, things  
9 of that nature?  
10 A. Okay.  
11 Q. Are you familiar at all with the process  
12 that Select and Pay uses when it receives a check from  
13 a customer?  
14 A. No, I'm not.  
15 Q. Okay. So do you have any idea how Select  
16 and Pay determines where the money goes that comes in?  
17 When I say where, I mean to any of the three or four,  
18 I guess. Tell me if I'm wrong, the money that Select  
19 and Pay accepts or receives is the payments on the  
20 various invoices, is that right?  
21 A. Yes.  
22 Q. Okay. And then it sends it to Global New  
23 Hampshire, is that right?  
24 A. Global New Hampshire's bank account, yes.  
25 Q. Global New Hampshire's bank account, okay.

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- 1 How does it get from Global New Hampshire's bank  
2 account to any of the three other entities?  
3 A. I don't know if it physically is transferred  
4 to the other accounts. I believe that the bills are  
5 paid through Global NAPs New Hampshire on behalf of  
6 the other entities. So Global NAPs New Hampshire  
7 would issue a check. Global NAPs New Hampshire also  
8 does -- the bills are sent out under Global NAPs New  
9 Hampshire through Select and Pay. And the checks  
10 would be written from Global NAPs New Hampshire to  
11 satisfy bills on behalf of Inc., Realty or Networks.  
12 Q. So say \$500 came in from Global NAPs, Inc.,  
13 a customer, from one of their customers, goes to  
14 Select and Pay, they send it to or they deposit it to  
15 Global New Hampshire's bank account, correct?  
16 A. Yes.  
17 Q. And then Global New Hampshire then uses that  
18 money to pay or to pay expenses of Global NAPs, Inc.  
19 or any of the other entities?  
20 A. Yes, all of them are paid through Global  
21 NAPs New Hampshire.  
22 Q. Okay. So is that money that comes in, is it  
23 designated for any particular purpose?  
24 A. I'm sure that it is, it would just be an  
25 accounting entry on a ledger.

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- 1 Q. Okay. But is it just one big pool of money  
2 that comes in, is it one account?  
3 A. Yes, it's one account.  
4 Q. Okay. And is there any process that you're  
5 aware of by which the money from that account goes  
6 the various entities?  
7 A. Other than a transaction on a ledger, no.  
8 Q. Okay.  
9 A. It doesn't physically go from Global NAPs  
10 New Hampshire to Global NAPs Realty, let's say, they  
11 don't get the money into an account that's Global NAPs  
12 Realty. It says in Global NAPs New Hampshire and it's  
13 used for bills of Global NAPs Realty in this example.  
14 Q. Okay. But it's a general account then?  
15 A. Yes.  
16 Q. So all the assets that come in are used to  
17 pay all the various expenses of all the various  
18 companies?  
19 A. Yes.  
20 Q. Okay. Showing you what's been marked as  
21 Plaintiff's Exhibit 3, Mr. Gangi, have you seen that  
22 document before?  
23 A. Yes.  
24 Q. And can you tell me what that document is?  
25 A. It's a list of equipment that Global NAPs,

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- 1 Inc. has in Connecticut.  
2 Q. Okay. Do you know who put this list  
3 together?  
4 A. I do not know who gave the information to  
5 our attorney, no.  
6 Q. Okay. Do you know what the source of the  
7 information for that list was?  
8 A. No, I don't, I wasn't part of putting this  
9 together.  
10 Q. Okay, do you know who was?  
11 A. No, I don't.  
12 Q. Is there a way you can find that out?  
13 A. I can inquire.  
14 Q. Do you know what the total value of the  
15 equipment that's listed on that document adds up to?  
16 A. No, I have no way of determining what its  
17 value is.  
18 Q. Do you know if anybody within Global knows  
19 the value of that equipment?  
20 A. From an accounting perspective or a real  
21 dollar value?  
22 Q. Well, it would be a fair market value.  
23 A. No, I don't.  
24 Q. Okay. Did you bring any documents with y  
25 today to show the fair market value of those items ...

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1 that letter?

2 A. No.

3 Q. Do you know if there are any documents that  
4 Global has that would show the fair market value of  
5 those items?

6 A. Not to my knowledge.

7 MR. MANISHIN: Just make sure I  
8 understand the question. Fair market value, you're  
9 referring to fair market value today as opposed to the  
10 purchase price or the accounting information he just  
11 referenced?

12 MR. JENSEN: Well, why don't we break it  
13 down. Fair market value today would be one question.

14 Q. (By Mr. Jensen) Have you produced today any  
15 documents showing the fair market value today of those  
16 assets?

17 A. No.

18 Q. Have you produced any documents today  
19 showing the value or the price of those equipment when  
20 they were purchased?

21 A. No.

22 Q. Do you have any documents that tell me  
23 anything about those assets that were disclosed in  
24 that May 22nd letter?

25 A. No.

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1 Q. Okay, looking at the first entry, it's  
2 Hartford, you have listed, when I say you, I mean  
3 Global has listed, one Chatsworth rack. Can you tell  
4 me what that is?

5 A. That would be an aluminum rack that the  
6 equipment was mounted in.

7 Q. Okay. And do you have a serial number for  
8 that item?

9 A. A Global NAPs, Inc. serial number applied to  
10 it, I don't know.

11 Q. No, well, it would be a serial number that  
12 would be on it when you purchased it.

13 A. No, racks wouldn't have serial numbers on  
14 it.

15 Q. Would not have a serial number?

16 A. Unless we applied one and I don't know if we  
17 applied one to it.

18 Q. What about a model number?

19 A. It would have one. I don't know what it is.  
20 It's a standard, either a 19 or 23-inch rack.

21 Q. Okay. And do you know where this Chatsworth  
22 rack is located?

23 A. Within Hartford? No, I have not been  
24 physically to any of these sites so I don't know where  
25 they are.

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1 Q. Do such documents exist?

2 A. Not to my knowledge, but, again, I can  
3 inquire. This list has some Sycamore stuff on it,  
4 some Cisco stuff on it. I know that we bought --  
5 Well, I can't speak to when this was purchased, I  
6 guess, no.

7 Q. Do you have kind of a general idea of what  
8 the fair market value would be of the items in that  
9 document?

10 A. Half a million bucks maybe.

11 Q. What I'd like to do is go through each of  
12 these items and find out as much detail as I can about  
13 them from you.

14 Looking at the first page, the list looks  
15 like cities, and underneath you have a series of  
16 equipment which are referred to as assets of Global  
17 NAPs, Inc. in the state of Connecticut. First of all,  
18 do you know whether or not that is a true statement,  
19 that these are assets of defendant Global NAPs, Inc.  
20 in the state of Connecticut?

21 A. To the best of my knowledge, yeah.

22 Q. What's your knowledge based on?

23 A. These are all the cities that we're in and  
24 my understanding is that this is typical of what we  
25 would have in these cities.

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1 Q. So you don't know what the address is?

2 A. No, I don't.

3 Q. Does Global have a map of locations where  
4 its equipment might be located?

5 A. Yes.

6 Q. Okay. Could we get a copy of that?

7 A. Yes.

8 MR. MANISHIN: In technical terms, like a  
9 network diagram?

10 THE WITNESS: I don't know if we have a  
11 map per se or just a list of addresses, but I can  
12 definitely get you the information where each of those  
13 locations is.

14 MR. JENSEN: Well, let me just give you  
15 some background. The Court ordered you guys to bring  
16 today objective credible evidence to allow me to find  
17 out where these assets are located so I can attach  
18 them. For me to do that I need to know the exact  
19 location which is the address. If they're not  
20 specifically at that address how far away from that  
21 address they are. That's information that I need  
22 today and information I need to perform my attachment,  
23 so that's the nature of information I'm looking for.

24 THE WITNESS: Again, I had 24 hours to  
25 prepare for this today so it was a little short but I

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1 can definitely get the answers for that, that's an  
 2 easy one.  
 3 Q. (By Mr. Jensen) Okay. Is there somebody  
 4 else at Global NAPs that knows the answer to that  
 5 question?  
 6 A. I don't know who I'd ask, but I'll dig down  
 7 to find out, it shouldn't be that difficult.  
 8 Q. Do you know when that Chatsworth rack was  
 9 purchased?  
 10 A. No. I know we buy them in bulk 100 or 200  
 11 at time.  
 12 Q. And who do you buy them from?  
 13 A. Chatsworth.  
 14 Q. And where is Chatsworth located?  
 15 A. I believe they're in California, and if I'm  
 16 not mistaken it's Chatsworth, California.  
 17 Q. And do you know what the purchase price for  
 18 a Chatsworth rack was?  
 19 A. It varies, ballpark a couple hundred  
 20 dollars.  
 21 Q. Do you typically buy these as new or used?  
 22 A. New.  
 23 Q. Do you have any receipts for the purchase of  
 24 this Chatsworth rack?  
 25 A. I do not, no.

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1 Q. Any invoices?  
 2 A. No.  
 3 MR. MANISHIN: Excuse me, but are you  
 4 referring to you or to the company?  
 5 THE WITNESS: The company. Today, I  
 6 don't, if they exist I don't know, I can find out.  
 7 Q. (By Mr. Jensen) What about maintenance  
 8 records, does Global have any maintenance records with  
 9 respect to the Chatsworth rack?  
 10 A. There is no maintenance on the rack.  
 11 Q. Is the Chatsworth rack under any type of a  
 12 warranty?  
 13 A. I don't believe so, no. We haven't  
 14 purchased racks in probably two years so any warranty  
 15 that may have been may have been for general.  
 16 Q. Is this Chatsworth rack being used today?  
 17 A. Yes.  
 18 Q. I take it the Chatsworth rack does not use  
 19 software, it's simply a holding mechanism?  
 20 A. It's an aluminum rack, that's it.  
 21 MR. MANISHIN: It's like a narrow set of  
 22 shelves?  
 23 THE WITNESS: It's just a frame.  
 24 Q. (By Mr. Jensen) Is it fair to say that for  
 25 each of the pieces of equipment that are listed on

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1 both of these pages you don't know what the model  
 2 numbers are?  
 3 A. Unless it's listed here I wouldn't know what  
 4 it was, no.  
 5 Q. Do you see any of them that do have the  
 6 model number listed?  
 7 A. I believe this Cisco Cerant 15454, I believe  
 8 that is a model number of the piece of equipment.  
 9 Q. Okay. Any other items that would have model  
 10 numbers on them?  
 11 A. I don't see any listed.  
 12 Q. Looking again at the equipment listed under  
 13 the Hartford address, or I assume it's a Hartford  
 14 address, you have a Cisco Cerant that we just talked  
 15 about, the 15454, and that's the model number?  
 16 A. I believe that would be the model number.  
 17 Q. Would that have a serial number?  
 18 A. It should.  
 19 Q. And you said that that would be applied by  
 20 Global NAPs?  
 21 A. No, on the rack there would be no serial  
 22 number. On the Cerant it should have a serial number  
 23 from the factory.  
 24 Q. Okay. And you don't know what that serial  
 25 number is?

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1 A. I do not know what that serial number is.  
 2 Q. The 4-OC48's, is that a separate piece of  
 3 equipment?  
 4 A. No, I believe that would be 4-OC48 cards  
 5 that are inserted into the Cisco Cerant. A Cerant  
 6 would just be a piece of equipment with card slots in  
 7 the back, you can put in different outputs that you  
 8 want or inputs, and this particular one appears to  
 9 have 4-OC48 cards installed.  
 10 Q. Do you know whether or not there were  
 11 plug-ins included as part of the Cisco Cerant with the  
 12 4-OC48's?  
 13 A. Plug-in such as?  
 14 Q. I don't know, what would be a plug-in that  
 15 might apply to that?  
 16 A. I don't know, that's why I'm asking.  
 17 Q. So based on your knowledge you don't think  
 18 there would be a plug-in?  
 19 A. I don't know what a plug-in is so I would  
 20 say no.  
 21 Q. Do you know when that Cisco Cerant 4-OC48  
 22 was purchased?  
 23 A. No, I don't.  
 24 Q. Okay. And who would you typically purcha  
 25 that Cisco from?

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1 A. Some of this stuff was purchased from Cisco  
2 many years ago. And some of the stuff we buy used and  
3 unused on the open market.

4 Q. But you can't, from looking at this, you  
5 can't tell whether you bought it as a used or a new  
6 item?

7 A. No, I can't.

8 Q. Does Global have any receipts for this  
9 product?

10 A. Not that I'm aware of.

11 Q. Any invoices?

12 A. Not that I'm aware of.

13 Q. Would you keep maintenance records for this  
14 Cisco product?

15 A. They don't require much maintenance other  
16 than changing filters.

17 Q. Okay. So filters would be the only spare  
18 you'd keep around?

19 A. Well, there would be spare cards, but I'm  
20 not sure where the cards are located. From the list  
21 they don't have any spares in the sites so I'm  
22 assuming that any spares for these would be in Quincy.

23 Q. Okay. So they're not listed?

24 A. They're not listed, right.

25 Q. And would that apply to each of the towns

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1 that has equipment listed, that they do not have  
2 spares listed with them?

3 A. I don't see any spares listed so I would  
4 have to say yes.

5 Q. Okay. So any spares would be located you  
6 think in Quincy?

7 A. In Quincy.

8 Q. Do you know whether or not the Cisco Cerent  
9 4-OC48 was under any type of a warranty?

10 MR. MANISHIN: Objection, asked and  
11 answered.

12 THE WITNESS: I don't know.

13 Q. (By Mr. Jensen) Do you know whether the  
14 Cisco Cerent 4-OC48 is in operation today?

15 A. Yes.

16 Q. Do you know if there were any modifications  
17 made to the Cisco Cerent 4-OC48's?

18 A. None that I am aware of.

19 Q. Does this product require software?

20 A. Yes.

21 Q. Do you know what software version is being  
22 used with this?

23 A. No idea.

24 Q. Do you own this or do you lease it?

25 A. This would be owned by Global NAPs.

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1 Q. And do you have an approximate value, fair  
2 market value of this product?

3 A. I do not, no. I can tell you that would be  
4 the most expensive item in these sites.

5 Q. Again, you have no documents with you today  
6 that would show -- Well, strike that. Do you know  
7 who, if anyone, would maintain purchase records for  
8 these products?

9 A. If we did maintain them Select and Pay would  
10 most likely have them or the accountant, I'm not sure  
11 which. Most likely neither because we don't keep  
12 records very long, I know that.

13 Q. But if they had a warranty wouldn't you  
14 probably keep the invoice around?

15 A. Yes.

16 Q. Who owns Select and Pay?

17 A. Who owns it? I don't know who owns it.

18 Q. Do you know where it's incorporated?

19 A. No idea.

20 Q. Does Select and Pay have any employees that  
21 are also employees of any of the Global entities?

22 A. No.

23 Q. Continuing on the list, I'm going to go  
24 through this first one in complete detail. One fiber  
25 panel?

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1 A. Yeah, I believe that would be a fiber patch  
2 panel.

3 Q. Okay. And what is a fiber patch panel?

4 A. If you were bringing fiber to this  
5 particular rack, the patch panel would be at the top.  
6 You would plug in your fiber and then we would take  
7 the fiber out of the panel down to whatever particular  
8 piece of equipment in the rack needed the fiber  
9 connection.

10 Q. Okay. And do you know the fair market value  
11 of that panel?

12 A. No, I don't.

13 Q. Do you know when it was purchased?

14 A. No, I don't.

15 Q. Do you know who it was purchased from?

16 A. No, I don't.

17 Q. Does it have a serial number?

18 A. I would suspect not. It's a small piece of  
19 equipment.

20 Q. Okay. Does it have a model number?

21 A. There would definitely be a model number on  
22 it, sure.

23 Q. Do you know what that model number is?

24 A. No, I don't.

25 Q. Do you have an approximate purchase price

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1 for that product?

2 A. No, I don't.

3 Q. And I assume that -- Well, I wouldn't assume  
4 anything. Is that product subject to maintenance?

5 A. No, it's just a pass-through, fiber in and  
6 fiber out, no moving parts.

7 Q. Generally, and I know you don't have the  
8 specifics of when these were purchased, but do you  
9 have a general idea of how old, and why don't we start  
10 with the equipment in Hartford, how long it's been in  
11 operation?

12 A. No, I don't. I don't know when we brought  
13 up the Hartford route.

14 Q. Okay. Would you know that -- Would you know  
15 the answer to that question for any of the towns in  
16 Connecticut that are listed here?

17 A. No, I don't know when we specifically  
18 brought up any of these routes.

19 MR. MANISHIN: Could you find that out?

20 THE WITNESS: I could find that out. I  
21 know we've been servicing Connecticut for several  
22 years, three that I'm fairly certain of, maybe  
23 possibly as long as four or five, if that gets you in  
24 the ballpark you want to be or I can get you more  
25 specific details on it.

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1 Q. (By Mr. Jensen) And instead of going  
2 through each and every item here I may choose a few  
3 more.

4 But is it safe to say that if there's a  
5 serial number for the item you don't know what it is,  
6 is that right?

7 A. Right.

8 Q. If there's a model number and it's not  
9 listed here, you don't know what that model number is?

10 A. Correct.

11 Q. And you don't know the exact location of  
12 this equipment, is that right?

13 A. Correct, but I can find that out for you.

14 Q. And for all of these again, you don't know  
15 the date that they were purchased, is that right?

16 A. Correct.

17 Q. Some of them you know who it was purchased  
18 from but others you do not, is that right?

19 A. Correct.

20 Q. And you don't know what the purchase price  
21 of these products is or was?

22 A. No.

23 Q. Okay. And you don't know necessarily  
24 whether or not they were purchased used or new?

25 A. No, I don't.

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1 Q. And, again, I'm talking about all the  
2 products that are listed on these two pages. And you  
3 don't have any, and when I say you, you're not aware  
4 that Global NAPs has any receipts for any of these  
5 products, is that right?

6 A. That's correct.

7 Q. And the same question for invoices. You're  
8 not aware that Global NAPs has any copies of invoices  
9 for any of these products, is that right?

10 A. That's correct.

11 Q. And you're not aware of any maintenance  
12 records for any of these products?

13 A. No. The Mystic and New Haven sites appear  
14 to be larger sites.

15 Q. Okay.

16 A. They appear to be in our own hut, a ten by  
17 ten Rhon hut, so these would not be in a building but  
18 placed somewhere.

19 Q. Okay.

20 A. They seem to have more equipment in them as  
21 well.

22 Q. Okay. Can you tell me what a Rhon hut is?

23 A. That would be a cement hut, a building but  
24 it's a stand alone. It comes on a trailer, you drop  
25 it on the ground and put your equipment inside of it.

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1 Q. And when you say equipment, what equipment

2 A. The equipment listed here.

3 Q. Okay. So all of this equipment should be  
4 found in the Rhon hut?

5 A. Inside the hut, right. It tells you there's  
6 three Chatsworth racks, so there's three racks of  
7 equipment in the one in Mystic, for example.

8 Q. Okay.

9 A. The Argus pathfinder 3W power plant, that's  
10 a DC power plant.

11 Q. Should that be pathfinder or --

12 A. Pathfinder, yeah.

13 Q. So there's a missing D?

14 A. Yeah.

15 Q. Okay.

16 MR. JENSEN: Just note for the record  
17 that the document has pathfinder without the D.

18 Q. (By Mr. Jensen) It also lists two 48 volt  
19 battery strings?

20 A. Sure, those would go with the power plant.

21 The power plant makes the DC power and it stores it in  
22 the batteries.

23 Q. And do you know who manufactures those  
24 batteries?

25 A. No, could possibly be Deka but I don't know.

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- 1 Q. And do you know the type of batteries those  
2 are?
- 3 A. I'm not sure if these are jell batteries or  
4 not but they most likely are a jell style battery.
- 5 Q. Do you know the year that these battery  
6 strings were manufactured?
- 7 A. No, I don't know when Mystic was brought up  
8 so I don't know when that date would be.
- 9 Q. Okay. Is that the same for New Haven?
- 10 A. Same for New Haven, yes.
- 11 Q. I think those are the only two sites that  
12 have the batteries, right?
- 13 A. Right. They both have generators for  
14 back-up power.
- 15 Q. You're referring to the Kohler 65 kilowatt  
16 generator?
- 17 A. Yes.
- 18 Q. Okay.
- 19 A. And the transfer switch to transfer to  
20 back-up power.
- 21 Q. Okay. And just moving back to the Kohler  
22 generator. Can you tell me today how many hours of  
23 use that generator has had?
- 24 A. No, I can't.
- 25 Q. And do you know the type of fuel that it

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- 1 uses?
- 2 A. No, I believe one of these sites, Mystic is  
3 propane and I'm not sure what New Haven is.
- 4 Q. What are the other types of fuel that it  
5 might use?
- 6 A. Diesel fuel or natural gas.
- 7 Q. Looking at the Rhon hut for Mystic, does it  
8 have any climate control?
- 9 A. I believe these huts are designed as Telco  
10 huts so they would have air conditioning as part of  
11 the base package.
- 12 Q. Okay. And I assume that this is a base  
13 package Rhon hut?
- 14 A. Yes.
- 15 Q. Okay. Do you know whether or not there are  
16 any other amenities besides air conditioning in this  
17 hut?
- 18 A. Lights, and usually they're fitted with some  
19 type of a finish on the inside, lights and electrical  
20 outlets.
- 21 Q. And you said it was cement?
- 22 A. Cement on the outside.
- 23 Q. What type of a roof does it have?
- 24 A. I believe it would be cement as well, just a  
25 cement cube.

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- 1 Q. And is this the same for the New Haven Rhon  
2 hut?
- 3 A. Yes.
- 4 Q. And have you ever seen either of those two  
5 Rhon huts?
- 6 A. No.
- 7 Q. So what are you basing your knowledge on?
- 8 A. Experience with other sites that I've seen  
9 in other locations, I don't know where they are, but  
10 they have these huts. I've seen the literature come  
11 across my desk for this too.
- 12 Q. For these two specific ones you don't  
13 specifically know that they're the ones that --
- 14 A. Right, specifically for these two, no, it  
15 would be in general that's what we have. I can't  
16 imagine these falling outside.
- 17 Q. For the Kohler generator in New Haven, do  
18 you know the hours of use?
- 19 A. No, I don't.
- 20 Q. Do you know whether or not there are any  
21 liens on any of the equipment that you've listed here?  
22 And when I say you, I mean Global.
- 23 A. None that I'm aware of.
- 24 Q. Who would know that?
- 25 A. There are none.

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- 1 Q. There are no liens?
- 2 A. Right.
- 3 Q. So these are owned outright by Global?
- 4 A. Yes.
- 5 Q. Are there any related bank loans to this  
6 equipment?
- 7 A. No.
- 8 Q. Okay. Any security provided to obtain this  
9 equipment?
- 10 A. No.
- 11 Q. And to the extent that the equipment needs  
12 software, I take it that you can't tell me what  
13 version of software it uses?
- 14 A. No, I can't. I don't know if it's ever been  
15 changed from what came with it out of the factory. If  
16 it works fine we don't touch it.
- 17 Q. Okay. And if there's no Rhon hut -- I take  
18 it everything that's in Mystic and New Haven there's a  
19 Rhon hut so all the equipment is inside the Rhon hut.  
20 Is that right?
- 21 A. Yes.
- 22 Q. Okay. So if there is no Rhon hut where is  
23 the equipment located?
- 24 A. These are probably Telco hotels that we just  
25 have racks at, just a co-location.

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1 Q. Okay.

2 A. I don't know if these would be in an SBC  
3 co-lo somewhere or if it's some other provider, I'm  
4 not sure.

5 Q. So would these be found -- Can you just tell  
6 what that means, if it's a Telco hotel, what does that  
7 mean?

8 A. It's just a privately owned building that  
9 caters to telephone companies so they can bring their  
10 equipment there or anybody else that wants to bring  
11 their equipment there.

12 If it's an SBC co-lo, SBC would have space  
13 that they'd provide for vendors and other carriers to  
14 connect to, so I'm not sure which category these fall  
15 into.

16 Q. Do you know whether or not there's a market  
17 for these types of products?

18 A. There's a market for everything.

19 Q. Do you know what that market is?

20 A. No.

21 Q. Turn your attention back to Plaintiff's  
22 Exhibit 2 which is the Court Order. Looking at page 2  
23 beginning with No. 1 sentence, the existence of  
24 assets, do you see that?

25 A. Yes.

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1 Q. It says, "The existence of assets, whether  
2 real or personal property, chattels, money,  
3 securities, accounts payable or debts in which Global  
4 has an interest in in the state of Connecticut  
5 including but not limited to." Do you see that list  
6 of various categories of property?

7 A. A to G?

8 Q. A to G.

9 A. Yes.

10 Q. What I'm going to do now is, I'd like you to  
11 tell me about them to try to break it down and make it  
12 a little bit easier to digest. But all of Global's  
13 assets anywhere, Connecticut, United States, the  
14 world, okay, and I'll break it down by category so  
15 that it may make a little bit more sense, but I want  
16 to give you the scope.

17 Can you tell me what cash on hand Global  
18 currently has?

19 A. No, I can't.

20 Q. Who could tell me that?

21 A. I'd have to talk to our accountants.

22 Q. Is there a document that would show you what  
23 Global's cash on hand is?

24 A. I don't know.

25 Q. I think you testified earlier today that you

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1 did not produce today any financial statements, is  
2 that right?

3 A. Yes.

4 Q. And you didn't produce any tax records?

5 A. Yes.

6 MR. HANISHIN: You did not ask him, and  
7 you might consider asking, your choice, Tim, whether  
8 they're in the possession, to his knowledge of Global  
9 NAPs. You asked him what cash was on hand, you didn't  
10 ask him that with regard to the financial statements.

11 MR. JENSEN: Why don't I do that.

12 Q. (By Mr. Jensen) Mr. Gangi, do you have or  
13 does Global have in its possession any financial  
14 statements?

15 A. No.

16 Q. Do you know whether or not Global's  
17 accountant has any financial statements for Global?

18 A. Specifically for Global, no.

19 Q. What does, if any, what does Global's  
20 accountants have financial statements of?

21 A. They would have the financial statements of  
22 Ferrous Miner Holdings.

23 Q. Okay. What about any of the other Global  
24 entities?

25 A. I don't believe they do, no. To the extent

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1 that they exist they would have them.

2 Q. You've never seen a copy?

3 A. I've never seen them, no.

4 Q. From 2002 to 2006 you've never seen a  
5 financial statement for any of the Global entities?

6 A. No.

7 Q. And to your knowledge there's no or there  
8 are no copies of financial statements, copies of  
9 financial statements. Do you know whether or not  
10 Global maintains separate books and records for its  
11 Connecticut business?

12 A. To the best of my knowledge they don't.

13 Q. So to your knowledge is the only financial  
14 statement that has been created which includes Global  
15 or any of the Global entities is one that's created on  
16 behalf of Ferrous Miner Holdings?

17 A. Yes.

18 MR. JENSEN: If we could mark this as  
19 Exhibit 4, Plaintiff's Exhibit 4.

20 (Deposition Exhibit 4, offered and  
21 marked.)

22 Q. (By Mr. Jensen) Mr. Gangi, showing you  
23 what's been marked as Plaintiff's Exhibit 4, that's,  
24 and I'll represent on the record, one of the docu  
25 that you brought with you today, do you recognize that

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1 document?

2 A. Yes, I saw it when I brought it down today.

3 Q. Do you know what that document is?

4 A. It looks like a one on Global NAPs' payroll  
5 account.

6 Q. Payroll account, is that what it says on  
7 top?

8 A. Payroll account, yeah.

9 Q. Do you know what bank that's for?

10 A. It doesn't say on here, but I believe the  
11 payroll account is at South Coastal Bank.

12 MR. MANISHIN: We have produced a cover  
13 letter to that effect.

14 MR. JENSEN: Right, okay.

15 Q. (By Mr. Jensen) And where is South Coastal  
16 Bank located?

17 A. Quincy.

18 Q. And what type of a bank account is that?

19 A. I believe it's just a checking account.

20 Q. Is that the only account that Global has?

21 A. Global, Inc.?

22 Q. Correct.

23 A. I believe there may be another account that  
24 pays some incidental expenses, some small phone bills,  
25 that kind of thing. I'm not sure if it's still in

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1 existence but this is the Global NAPs' account, the  
2 largest account.

3 Q. Mr. Gangi, you have a copy of Exhibit 4 in  
4 front of you?

5 A. Yes.

6 Q. From that document could you tell what the  
7 ending balance on that account is?

8 A. I'm not an accountant, no.

9 Q. If I pointed you to the heading that says  
10 ending balance, would that help?

11 A. I can read it off the paper, sure.

12 Q. If you want to look on the first page,  
13 direct your attention to the top middle last line.

14 A. Okay.

15 Q. Do you see that says ending balance equals  
16 373,646.56, do you see that number?

17 A. I see that, yes.

18 Q. And the date on this statement is  
19 January 31st, '06?

20 A. Yes.

21 Q. Right above that?

22 A. I see that, yes.

23 Q. So that your understanding that as of the  
24 end of January 2006 Global NAPs had cash on hand of  
25 \$373,646.56?

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1 A. It's my understanding that in the payroll  
2 account on that particular day there's \$363,000 but I  
3 don't know if that's checks written against it or  
4 people haven't cashed it or what it is, whether it be  
5 cash on hand, I don't know.

6 Q. Okay. And is this, as it says, strictly  
7 limited to payroll?

8 A. This is a Global NAPs payroll account so  
9 this would be payroll.

10 Q. And a fair -- Well, my reading of this it  
11 looks like almost \$400,000 was paid out over the prior  
12 month for payroll. How many employees does Global  
13 have?

14 A. Global NAPs, Inc. does the payroll for all  
15 of the Global NAPs companies.

16 Q. Okay. So the approximately \$400,000 would  
17 be to pay salaries for not only yourself but all the  
18 employees for all the various entities?

19 A. Networks, Realty and Inc.

20 Q. What is the payroll each month?

21 A. Twice a month.

22 Q. Okay. Is there any reason why it looks like  
23 -- why it looks like -- strike that. If you look on  
24 the first page there's a deposit of \$300,000?

25 A. Okay.

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1 Q. You see that?

2 MR. MANISHIN: Referring to the  
3 January 6th entry, Counsel?

4 MR. JENSEN: Correct.

5 THE WITNESS: Yes.

6 Q. (By Mr. Jensen) Do you know what the source  
7 of that money is or was?

8 A. No, I don't.

9 Q. Typically what would be the source of a  
10 large deposit like that into the account?

11 A. It would have had to come out of Global NAPs  
12 New Hampshire.

13 Q. And that would have been as a payment for  
14 expenses from Global NAPs New Hampshire to Global  
15 NAPs, Inc. to pay for payroll?

16 A. Or for any other companies because Global  
17 NAPs, Inc. does the payroll.

18 Q. So Global NAPs New Hampshire would put 300  
19 grand in the bank account of Global NAPs, Inc. to pay  
20 payroll for all the companies?

21 A. Yes.

22 Q. Okay. Does your bank keep copies of the  
23 checks that are cashed?

24 A. I have no idea.

25 Q. Okay. Does Global NAPs keep copies of the

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1 checks that are cashed?

2 A. They would be kept either by Select and Pay  
3 or the accountant if they're kept; I know Global  
4 doesn't keep them.

5 Q. Okay. Are these checks issued from this  
6 account by Select and Pay?

7 A. No, there's another payroll service that's  
8 used and I don't have the name off the top of my head.

9 Q. Is there a way we can get copies of checks  
10 that have been cashed from this account?

11 MR. MANISHIN: Well, if they're in the  
12 possession of Global NAPs then they can be produced.  
13 If they're in the possession of the bank you can get  
14 them or we can request them from the bank. We did  
15 request from the bank the bank statements that were  
16 not in the possession of Global NAPs that we produced  
17 today. If the checks are in the possession of the  
18 bank we can request them as we did the bank statements  
19 that were produced today.

20 MR. JENSEN: We'll take the position that  
21 the Court ordered disclosure of all banking material  
22 to show banking activity, and I would take the  
23 position that that included cancelled checks, cashed  
24 checks.

25 MR. MANISHIN: And you can take whatever  
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1 position you want, Attorney Jensen, but if they're not  
2 available or in possession or custody, control of the  
3 company they can't be produced by the company.

4 MR. JENSEN: Well, you were able to  
5 produce these though.

6 MR. MANISHIN: And we were able to over  
7 the weekend get them from the bank.

8 MR. JENSEN: Is there a more --

9 MR. MANISHIN: Let me correct the record.  
10 They did not come from the bank, they came from  
11 counsel for Global NAPs in a related proceeding.  
12 Unrelated proceeding, excuse me.

13 MR. JENSEN: Take a quick break.

14 MR. MANISHIN: Sure.

15 (Recess taken at 2:35 P.M.)

16 (Deposition resumed at 2:40 P.M.)

17 MR. JENSEN: Back on the record.

18 Q. (By Mr. Jensen) Mr. Gangi, do you know  
19 whether or not this Plaintiff's Exhibit 4 is a  
20 complete record of the banking activity on this  
21 particular account?

22 MR. MANISHIN: Like to qualify that by  
23 time.

24 MR. JENSEN: Well, it's hard to say what  
25 time frame it covers but it looks like it's a

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1 compilation of a number of different months and years.

2 MR. MANISHIN: May be hard for you to say  
3 but it shows a date. I will object on the grounds  
4 that the question is ambiguous.

5 THE WITNESS: Can you ask the question  
6 again?

7 Q. (By Mr. Jensen) Let me ask you this. Do  
8 you know how this particular document, Exhibit 4, is  
9 organized?

10 A. No, I don't. Appears to be by date but I  
11 didn't put it together.

12 Q. Do you know what months this document  
13 covers?

14 A. I can just look at the left column and see  
15 the months listed.

16 Q. Okay, we're looking at the first three  
17 pages, then it looks like this covers the period  
18 January of '06, do you see that?

19 A. Yes.

20 Q. Okay. And do you know whether or not that  
21 is a complete record of the banking activity on that  
22 account for January of '06?

23 A. The left-hand column shows from  
24 December 31st to January 31st and a list of checks in  
25 between, so I'd have to say that this a complete list

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1 of checks written out of that account.

2 Q. Okay. And looking at that month period of  
3 time, are all the checks that are written for payroll?

4 A. Well, this is the payroll account so these  
5 would all be payroll checks.

6 Q. Would there be any occasion when payroll,  
7 the payroll account would be used to pay something  
8 other than payroll checks?

9 A. No, no.

10 Q. Never?

11 A. Never to my knowledge, no.

12 Q. Who has signing authority on that account?

13 A. I do.

14 Q. Does anybody else?

15 A. I believe Frank does and I think Michael  
16 may.

17 Q. Can I grab that back from you?

18 A. Sure. I know Frank does. As I said before,  
19 I do the payroll, the times I'm unavailable he will  
20 sign for it.

21 MR. JENSEN: We would also request in  
22 compliance with the Court Order that we get an up to  
23 date version of the bank statements. This only goes  
24 up, as far as I can tell, as of January of '08, so  
25 either you can do it in compliance with the Court's

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1 order along with getting copies of the checks or we  
2 can subpoena the bank.  
3 MR. MANISHIN: The request is noted. I  
4 refer you to Federal Rule Procedure 34A and the  
5 decisions among others in the United States against  
6 Beckham 210 F788 9/8/91 which made clear that  
7 discovery is limited to documents that are in the  
8 possession, custody and control of a party. Control  
9 means readily ability to obtain possession. If we  
10 have the ability to obtain possession from banks or  
11 other agents we will produce them.

12 MR. JENSEN: I would assume that as the  
13 owner of this account Global NAPs would have the  
14 ability to obtain that information.

15 MR. MANISHIN: Given sufficient time,  
16 yes, sir.

17 THE WITNESS: Just one other thing to  
18 clarify. You had asked me about invoices earlier, if  
19 we had them. And I told you no, or if we produced  
20 them, sorry, I told you no because we don't have them  
21 in our possession. If I had them I surely would  
22 produce them for you, it's just we don't have them.

23 Q. (By Mr. Jensen) Okay. And invoices related  
24 to what?

25 A. Equipment.

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1 Q. For equipment, okay. And do you know who  
2 has the invoices for the equipment?

3 A. I don't believe they exist because we don't  
4 keep them. We would have had them originally but we  
5 don't store stuff for very long.

6 Q. Okay. Direct your attention again to  
7 Plaintiff's Exhibit 4. Looking at the top line the  
8 date January 17th says CBS payroll, server payroll CCD  
9 8021.

10 A. Okay.

11 Q. In the amount \$71,715.77, do you see that?

12 A. Yeah.

13 Q. Do you know what that payment was for?

14 A. CBS could be the company that does the  
15 payroll services for us, I'm not certain, and this may  
16 be a withdrawal from them to pay taxes.

17 Q. To pay taxes?

18 A. Um-hm.

19 Q. Do you also pay taxes through the payroll  
20 account?

21 A. Payroll taxes.

22 Q. Employment taxes?

23 A. Employment taxes, yes.

24 Q. Okay.

25 A. I'm not certain but that would be my

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1 interpretation of what this is.

2 Q. Okay. And looking down a little bit further  
3 it says on January 20th, Verizon network VNFC, is a  
4 deposit for \$1,291?

5 A. I haven't a clue.

6 Q. Okay. Turning your attention to a page that  
7 has 12 on it, I believe it's four pages in.

8 A. Okay.

9 Q. Looking there's a \$300,000 deposit, you see  
10 that on January 4th?

11 A. Yes.

12 Q. Okay. A little bit further down on January  
13 4th is a withdrawal/check, whatever it is for  
14 \$15,041.97, do you see that?

15 A. Yes.

16 Q. Okay. Was that to one particular  
17 individual?

18 A. This is January of '05, I don't know. This  
19 is the payroll account so that has to be somebody's  
20 paycheck but I don't specifically know who that would  
21 go to.

22 Q. Okay. Do you know anybody that's making  
23 120,000 at Global NAPs or any of the Global entities?

24 MR. MANISHIN: Objection, ambiguous and  
25 unclear, salary, bonus, whatever.

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1 THE WITNESS: \$120,000 specifically, no.  
2 I don't know specifically anyone making \$120,000.

3 Q. (By Mr. Jensen) How about \$120,000  
4 including a bonus, salary plus bonus?

5 A. No, I don't.

6 Q. Is that an unusual amount for a payroll  
7 check?

8 MR. MANISHIN: Objection as to form.

9 MR. JENSEN: You can answer.

10 THE WITNESS: Does the \$15,000 amount  
11 here equate to \$120,000 a year?

12 Q. (By Mr. Jensen) No, my question was, is  
13 that an unusually high amount for a payroll check?

14 A. I'm uncertain because I don't know what that  
15 number represents.

16 Q. What could it represent?

17 A. As far as the yearly salary so --

18 MR. MANISHIN: If you don't know.

19 THE WITNESS: I don't know. I don't  
20 know.

21 Q. (By Mr. Jensen) Do you know how much your  
22 check is each month?

23 A. \$2,900 twice a month, I believe.

24 Q. Okay. So this fifteen, would this be --  
25 Well, you've already answered, you don't know the

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1 answer.

2 It's going to be difficult for me to get you  
3 on the right page but it would be summary of activity  
4 of June 30th, '05 which is at the top right corner, it  
5 says June 30th, '05.

6 MR. MANISHIN: There's three pages to  
7 that effect at least for that month, that's a  
8 three-page document.

9 MR. JENSEN: The first page.

10 Q. (By Mr. Jensen) Looking down at June 2nd  
11 there is a withdrawal for a check for \$42,852, do you  
12 see that?

13 A. Yes, I do.

14 Q. Do you know what that's for?

15 A. No, I don't.

16 Q. You don't know who that is paid to?

17 A. No, I don't.

18 Q. Would that be for taxes?

19 A. Could very well be. I don't know, I'd be  
20 guessing. Unfortunately I know it's not my check.

21 Q. So payroll is paid through Global NAPs,  
22 Inc., is that right?

23 A. Yes.

24 Q. Is there another account that pays for  
25 expenses?

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1 about expenses and you were talking about rents. I  
2 assume you rent or lease these properties?

3 A. They would be I believe leased through  
4 Global NAPs Realty and then a portion to whatever  
5 company is in them.

6 Q. Can you tell me a little bit about that,  
7 what do you mean leased to?

8 A. Global NAPs Realty would sign the lease for  
9 10 Merrymount, let's say, and whatever companies  
10 occupy 10 Merrymount would pay their portion of the  
11 rent through the funds from Global NAPs New Hampshire.

12 Q. Okay. But you're not saying that Global  
13 NAPs Realty or any of the Global entities own any of  
14 these office properties?

15 A. Own them, no.

16 Q. They just lease?

17 A. Lease, yeah.

18 Q. Okay.

19 A. Global, Inc. does not own any property, I  
20 can tell you that.

21 Q. Does not own any properties?

22 A. Right.

23 Q. And Global New Hampshire pays the expenses  
24 of Global NAPs, Inc.?

25 A. Yes.

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1 A. I don't know. I believe that would come out  
2 of New Hampshire.

3 Q. Out of the New Hampshire account?

4 A. Yeah.

5 Q. They would pay for all the expenses?

6 A. Yes.

7 Q. And they have their own bank accounts?

8 A. Their own bank account, it's that same  
9 general account.

10 Q. What other expenses does Global NAPs have  
11 other than payroll?

12 A. Rents, utilities, same as any other  
13 business.

14 Q. How many office buildings does it own?

15 A. Global NAPs, Inc.?

16 Q. Global NAPs, Inc.

17 A. Earlier you asked me about offices, I told  
18 you 10 Merrymount and my office in New Hampshire but  
19 we have another building in Quincy, 1120 Hancock  
20 Street, a couple buildings down from Merrymount. And  
21 also Jeff works in an office in Norwood, that's where  
22 our attorneys are at. So I guess those are other  
23 Global NAPs' offices. And what was your question  
24 again?

25 Q. That's a good question. We were talking

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1 Q. Does Global NAPs have any savings accounts

2 A. No.

3 Q. Does Global NAPs have any certificates of  
4 deposit?

5 A. No.

6 Q. Does Global NAPs have any other bank  
7 accounts other than the bank account we've been  
8 looking at which is the payroll account?

9 A. As I mentioned there was a smaller account  
10 that pays incidentals, you know, 50, \$100 bills, but  
11 that's it.

12 Q. Where is that account located?

13 A. I don't know, I'm not sure it's still in  
14 existence.

15 Q. Would it have been in Massachusetts?

16 A. Most likely at South Coastal with this one  
17 in Massachusetts.

18 Q. Do any utilities hold any security deposits  
19 for Global NAPs?

20 A. Nothing that I can think of, no.

21 Q. Do any landlords hold any security deposits  
22 for Global NAPs?

23 A. I believe when we signed, we haven't done  
24 new leases in several years, but I believe when we  
25 signed the leases some of them did require a month

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1 whatever it is, traditional security deposits, so,  
 2 yes, those would be out there.  
 3 Q. Does Global NAPS have any safe deposit  
 4 boxes?  
 5 A. No.  
 6 Q. And at this point you can't tell me what  
 7 cash on hand Global currently has?  
 8 A. That's correct.  
 9 Q. Is the balance approximately the same today  
 10 as it was in January of '08 based on what you know?  
 11 A. Balance on?  
 12 Q. The balance in this checking account?  
 13 A. The payroll account?  
 14 Q. The payroll account, correct.  
 15 A. The balance, I'm pretty certain goes to zero  
 16 every two weeks or so and then gets replenished. We  
 17 get paid every two weeks so out it goes and in it  
 18 comes.  
 19 Q. Does Global have any accounts at Citizen's  
 20 Bank in Massachusetts?  
 21 A. Citizens Bank -- I don't believe so. They  
 22 may have in the past. I'm not sure if it's active  
 23 anymore. Again, to my knowledge there's just two  
 24 accounts, there's the payroll account and that small  
 25 incidental account, and I'm not sure that's active.

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1 but that's the most recent ones that I know of.  
 2 Q. Does Global own any stocks?  
 3 A. No.  
 4 Q. Does Global own any bonds?  
 5 A. No.  
 6 Q. What about securities?  
 7 A. No.  
 8 Q. When I say stocks, I'm including any  
 9 ownership in subsidiaries?  
 10 A. Correct, they don't have anything.  
 11 Q. Okay. Does Global have any other  
 12 investments other than what you already spoke about  
 13 which sounds like none, but does it have any other  
 14 investments?  
 15 A. No.  
 16 Q. This is again Connecticut, United States,  
 17 anywhere in the world?  
 18 A. No.  
 19 Q. Does Global have any customers in  
 20 Connecticut?  
 21 A. Do you mean customers that reside in  
 22 Connecticut or --  
 23 Q. Customers that remit payment to Global from  
 24 Connecticut.  
 25 A. Not that I'm aware of, no. We sell services

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1 that include Connecticut but it's not -- they don't  
 2 just buy something that's Connecticut. It's part of  
 3 our package and Connecticut is included so --  
 4 Q. Can you tell me who the customers of Global  
 5 NAPS are?  
 6 A. No, I don't have a customer list.  
 7 Q. Okay. Can you get one?  
 8 A. Yes.  
 9 MR. JENSEN: Can you get one and we can  
 10 mark it as confidential?  
 11 MR. MANISHIN: I will need to consult my  
 12 client but I believe the answer to that question is  
 13 yes.  
 14 Q. (By Mr. Jensen) As you sit here today do  
 15 you know of any customers, do you know the names of  
 16 any of your customers?  
 17 A. I think I provided you with several before,  
 18 that's all I can remember right now.  
 19 Q. Can you tell me the location of any of your  
 20 customers?  
 21 A. No, I can't. Again, I'm sure I can provide  
 22 a list to you. Off the top of my head right here, no.  
 23 Q. Can you tell me how much revenue comes in  
 24 each month from Global NAPS' customers?  
 25 MR. MANISHIN: Are you referring here to

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1 revenue to Global NAPS or revenue to Global New  
 2 Hampshire or both?  
 3 MR. JENSEN: Well, I guess it can be  
 4 clarified.  
 5 MR. MANISHIN: It will be fine to any  
 6 destination whatsoever.  
 7 MR. JENSEN: Right, what I want to say is  
 8 revenue paid from Global NAPS' customers.  
 9 THE WITNESS: Paid to Global NAPS?  
 10 Q. (By Mr. Jensen) Well, as I understand it  
 11 everything is paid to Global New Hampshire?  
 12 A. Okay. Paid on behalf of Global NAPS?  
 13 Q. That would be another way to say it, yes.  
 14 A. No, I don't know what that number is.  
 15 Q. Is there a way you can find that out?  
 16 A. I can inquire.  
 17 Q. Okay. Is there a document that has that  
 18 information?  
 19 A. I can inquire. I don't know of one, I have  
 20 not seen one but I can inquire if there is one that  
 21 exists.  
 22 Q. Okay. Financial information is provided to  
 23 your parent company, Ferrous Miner. I assume you do  
 24 provide financial information to Ferrous Miner, is  
 25 that right?

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1 A. Yes, Ferrous Miner filed the tax returns for  
2 all the companies so they would get the financial  
3 information, yes.

4 Q. Okay. Where does that financial information  
5 come from within Global NAPs?

6 A. That, I don't know.

7 Q. Who would know that?

8 A. I believe it would probably be our  
9 accountants that would have it. They also prepare the  
10 return for Ferrous Miner so they've got both ends of  
11 the spectrum.

12 Q. How does it get to the accountants?

13 A. What in particular?

14 Q. Financial information from Global NAPs?

15 A. Such as?

16 Q. Revenue that comes in every month, revenue  
17 that comes in for the --

18 A. Oh, that would come from Select and Pay to  
19 them.

20 Q. So you as the treasurer of Global NAPs would  
21 never see that information?

22 A. I have not seen that information, no.

23 Q. You have never seen that information?

24 A. I have never seen that information, no.

25 Q. Do you have an interest in seeing that  
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1 needed to be transmitted to Global New Hampshire to  
2 send out a bill?

3 A. He would send it to Select and Pay because  
4 Select and Pay would actually be sending out the bill.  
5 And say, for instance, a customer buys PRIs from us  
6 if they're buying two PRIs today and they add a PRI  
7 this month, I'm sure he would just pick up the phone  
8 and say, Janet, I've add a PRI to Joe's Internet  
9 Service, put it on the bill. And the next month that  
10 bill went out, the bill would go out the next month  
11 with the additional PRI.

12 MR. MANISHIN: By PRI you're referring to  
13 PRI?

14 THE WITNESS: PRI.

15 MR. MANISHIN: Primary rate interface,  
16 acronym. Just want the record to be clear.

17 Q. (By Mr. Jensen) So who has copies of the  
18 bills that are sent out to the various customers of  
19 Global?

20 A. Select and Pay issues them so they would  
21 have the copies of them.

22 Q. Okay. And you don't maintain any of the  
23 copies yourself?

24 A. No.

25 Q. And when I say yourself, I mean Global NAPs?  
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1 information?

2 A. Not particularly.

3 Q. You don't care how much is coming in each  
4 month?

5 A. As long as the bills are being paid and  
6 we're still functioning, I've got my hands full.

7 Q. What's the typical billing set-up for a  
8 Global NAPs customer?

9 A. The bill is issued from Global NAPs New  
10 Hampshire on behalf of whatever entity is billing the  
11 particular customer and that's it, sent out by Select  
12 and Pay.

13 Q. How would the information from Global NAPs  
14 get to Global New Hampshire for them to send out a  
15 bill?

16 A. Global, there's not a lot of change in  
17 Global NAPs. We don't have daily transfers of  
18 customers. We're pretty consistent month to month,  
19 week to week. So if there are any changes they would  
20 be reported from our sales guy to Select and Pay, that  
21 there's either a new customer or some other added  
22 capacity and an adjustment would be made in the bill.

23 Q. And the sales rep is from which entity?

24 A. Global NAPs.

25 Q. So he would transmit whatever information  
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1 A. No, we don't.

2 Q. Are these payments made on a monthly basis  
3 or are they made on some sort of a different basis?

4 A. No, monthly basis, first of the month  
5 payments are due.

6 Q. Does Global NAPs have contracts with its  
7 customers?

8 A. It had contracts. If their term expired  
9 they're month to month now. I don't believe that  
10 there are any outstanding contracts other than them  
11 going to month to month, to the best of my knowledge  
12 anyway. There may be one that I'm unaware of but I  
13 can't think of anybody right now.

14 Q. All right. And are these the contracts once  
15 they expire that are turned over to Networks?

16 A. Networks, yes.

17 Q. So in other words does Global no longer have  
18 any contracts?

19 A. Yes, that would be my answer, Global no  
20 longer has them, they've been transferred to Networks.  
21 Sorry.

22 Q. But Global does have contracts with ILECs?

23 A. The interconnection agreements?

24 Q. Correct.

25 A. Yes, Global maintains those.

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1 Q. And are those the only remaining contracts  
2 that Global currently has?  
3 A. To the best of my knowledge, yes.  
4 Q. Okay.  
5 A. Other than maybe one other contract. I  
6 can't think of anything but there may be one of their  
7 contracts that hasn't expired yet. I don't know of  
8 any but I'm saying there may be one.  
9 Q. And I think we talked earlier about this, I  
10 just want to confirm. But there's no documentation of  
11 the transfer of the contract of the customer from  
12 Global to Networks, is that right?  
13 A. We're a small company. We don't have big  
14 company rules. I mean, we know internally that once  
15 they expire they're getting transferred from Global  
16 NAPS to Networks and everyone knows that's what the  
17 process is. There's not a whole lot of people  
18 involved in it, we're pretty small.  
19 Q. And when you say we are a small company, you  
20 mean the group, Global NAPS entities?  
21 A. Yes.  
22 Q. And that's Realty, New Hampshire, NAPS and  
23 Networks, is that right?  
24 A. Yes.  
25 MR. MANISHIN: The answer was no.  
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1 Q. (By Mr. Jensen) Again, under the umbrella  
2 of your small companies, was any compensation paid by  
3 Networks for the customers that Global NAPS  
4 essentially turned over to Networks?  
5 A. No.  
6 Q. Do you have a ballpark figure of how much  
7 money comes in each month on behalf of Global NAPS?  
8 MR. MANISHIN: I think you've asked that  
9 but if you recall.  
10 THE WITNESS: No, I don't.  
11 MR. JENSEN: I think I asked him if he  
12 knew. I'm giving him more of a general question.  
13 THE WITNESS: No, I don't. You're  
14 talking about Global NAPS, Inc. itself, right?  
15 MR. JENSEN: Right.  
16 THE WITNESS: Yeah.  
17 Q. (By Mr. Jensen) For Global NAPS Networks,  
18 we're calling it Networks, do you have a general  
19 ballpark figure of how much money comes in each month  
20 for that company?  
21 A. No, I don't.  
22 Q. How about for Realty?  
23 A. Again, I don't know if Realty has any real  
24 revenue stream. Sorry, Realty -- I'm getting confused  
25 myself. Realty sells the racks and co-los, so, yes.  
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1 they would have revenue.  
2 Q. And you don't have a number?  
3 A. I don't know what that number is, no.  
4 Q. And, again, we'd be able to find this  
5 information out from your accountant or bookkeeper?  
6 A. Yes, I can find it for you, sure.  
7 Q. Do you know what bank account of Global New  
8 Hampshire, do you know what bank account that is?  
9 A. Bank of New Hampshire.  
10 Q. And where is that located?  
11 A. In Amherst.  
12 Q. And do you have an account number for that?  
13 A. No, I don't.  
14 MR. JENSEN: That would be another thing  
15 I would ask for, account numbers for the New Hampshire  
16 bank.  
17 MR. MANISHIN: Take that under  
18 advisement.  
19 MR. JENSEN: It's clearly relevant just  
20 for the record because apparently all revenue from  
21 Global NAPS goes into that account.  
22 MR. MANISHIN: Maybe, but it's a  
23 different company, Counsel.  
24 Q. (By Mr. Jensen) I want to talk a little bit  
25 about the type of equipment that Global NAPS owns-or  
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1 doesn't own other than what we've already talked about  
2 in Connecticut.  
3 A. Okay.  
4 Q. Does Global NAPS own any, I'll call it  
5 telecommunication equipment, similar to what we've  
6 seen in the 5/22 letter anywhere other than in  
7 Connecticut?  
8 A. I don't believe so. The last place we had  
9 Global NAPS, Inc. equipment in was in Florida but  
10 we've taken that route down and that equipment has  
11 been transferred to Networks.  
12 MR. MANISHIN: When we have a convenient  
13 time for a bio break would be okay.  
14 MR. JENSEN: We can do that right now.  
15 (Recess taken at 3:15 P.M.)  
16 (Deposition resumed at 3:25 P.M.)  
17 MR. JENSEN: Back on the record.  
18 (The question and answer was read as requested)  
19 Q. (By Mr. Jensen) And, Mr. Gangi, when that  
20 equipment was transferred to Networks was any  
21 consideration paid for it?  
22 A. I don't believe so.  
23 Q. Do you know if there was any documentation  
24 of that transfer?  
25 A. No. As I explained earlier, the progression  
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1 of stuff as we're taking single purpose corporations  
2 and Global's getting out of that and things are being  
3 transferred into Networks, so when the route came down  
4 Networks took the equipment.

5 Q. And do you have an idea of when that  
6 happened?

7 A. Two years ago, three years ago.

8 Q. And was that the only Global NAPs equipment  
9 that was transferred to Networks? Strike that. Was  
10 that the only Global NAPs facility type telecom  
11 equipment that was transferred to Networks?

12 A. No, all of the equipment that Global -- If  
13 Global had owned any equipment in the past it has  
14 since been transferred to Networks.

15 Q. Is that true for all the equipment?

16 A. Yes.

17 Q. Okay. Does that include the equipment  
18 that's in Connecticut?

19 A. That hasn't been done yet. Florida was the  
20 last one before Connecticut. As I said, we're a small  
21 company, we kind of have a path, might take us a  
22 little while to get there.

23 MR. JENSEN: I'm just looking through the  
24 documents that you produced. I do recall seeing a  
25 list. I'm showing you seven pages of a document that

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1 A. Yes, I'm not sure when it was, three years  
2 ago, two years ago, in that range.

3 Q. Okay. And I think again you mentioned there  
4 was no documentation of that transfer?

5 A. That's correct.

6 Q. And I note that next to each of the items  
7 there's on the right also an FMV, do you know what  
8 that stands for?

9 A. No.

10 Q. Could it be a fair guess to say that stands  
11 for fair market value?

12 A. It could, I didn't prepare the document so I  
13 don't what it says.

14 Q. Okay. Do you know who prepared this  
15 document?

16 A. No, I don't.

17 Q. Do you know who would know who prepared this  
18 document?

19 A. I don't know, I'd have to ask the lawyers  
20 where they got it from.

21 Q. And when you say the lawyers, do you mean  
22 in-house counsel?

23 A. In-house counsel, yes.

24 Q. So as of today's date it's your  
25 understanding that none of this is owned by Global-

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1 you've produced today with the documents that you  
2 produced. We will mark that as Plaintiff's Exhibit 5.  
3 (Deposition Exhibit 5, offered and  
4 marked.)

5 Q. (By Mr. Jensen) Mr. Gangi, referring your  
6 attention to Plaintiff's Exhibit 5, the first page  
7 says West Coast sites, equipment; it's a seven-page  
8 document, and it looks to be listing various  
9 facilities, telecom equipment in the state of Florida.  
10 Do you see that document?

11 A. Yes.

12 Q. All right. Is what I said an accurate  
13 recitation or an accurate description of what that  
14 document stands for?

15 A. Yes.

16 Q. And can you tell me a little bit about the  
17 equipment that's listed here?

18 A. It's similar to the other list in  
19 Connecticut. This is racks, a lot of it appears to be  
20 empty racks. Where you just see the Chatsworth  
21 aluminum rack and then the Nortel 48-volt fuse panel,  
22 that's just a rack and a fuse panel that's empty.

23 Q. Now, is this equipment the equipment that  
24 you were testifying to earlier that was transferred  
25 recently from Global NAPs to Global Networks?

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1 NAPs, Inc.?

2 A. Yes.

3 Q. I may have already asked you this and I  
4 think I have, but there's no consideration for the  
5 transfer of these assets from Global NAPs to Global  
6 Networks, is that right?

7 A. Not that I'm aware of, no.

8 MR. JENSEN: Mark this as 6, please.

9 (Deposition Exhibit 6, offered and  
10 marked.)

11 Q. (By Mr. Jensen) Mr. Gangi, turning your  
12 attention to Plaintiff's Exhibit 6, do you see that  
13 document?

14 A. Yes.

15 Q. Do you recognize that document?

16 A. Appears to be a print-out of Global NAPs web  
17 page.

18 Q. Okay. And that's www.gnaps.com?

19 A. That's correct.

20 Q. And turning your attention to page 2 of that  
21 document.

22 MR. MANISHIN: I think for the record on  
23 the first page of Exhibit 6 there's a flash  
24 illustration of something that does not appear in  
25 print-out. I don't think that's anything that --

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1 MR. JENSEN: That's right, and I'll just  
2 represent for the record that I printed this out  
3 yesterday from the web site and it may be that flash  
4 doesn't print out for some reason, and also it's odd  
5 that it prints out three pages instead of one.

6 Q. (By Mr. Jensen) But directing your  
7 attention to the second page which has three  
8 paragraphs, do you see that?

9 A. Yes.

10 Q. Could you take a look at that and just read  
11 it for me, read it to yourself and I will ask you a  
12 couple of questions about it.

13 A. (Witness complying) Okay.

14 Q. You've had a chance to look at this, can you  
15 tell me what an SS7 is?

16 A. That's one of the systems to direct the  
17 phone calls where it goes.

18 Q. And what does an SS7 look like?

19 A. It's a piece of equipment. An SS7 is a --  
20 it's a system more than a piece of -- within just a  
21 sole piece of equipment. There are multiple SS7's, I  
22 don't know what the bays, I guess of equipment,  
23 they're assembled at different sites connected  
24 together through fiber. It's basically the traffic  
25 cup for the phone system.

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1 system?

2 A. Well, again, this is similar to the  
3 equipment from Sycamore where some of the stuff was  
4 bought from the manufacturer many years ago. Over  
5 time the stuff ends up on the secondary market, the  
6 open market and we either buy it used or unused, so  
7 the value is all over the place, I can't give you a  
8 specific.

9 Q. No, I understand. I'm not asking the  
10 specific value. I'm asking whether it's closer to a  
11 million than \$100?

12 A. It's closer to a million than \$100.

13 Q. Is that per site or for the whole system?

14 A. The whole system.

15 Q. Okay. And is that system owned by Global  
16 NAPs?

17 A. Yes, it is, Global NAPs Networks.

18 Q. Global NAPs Networks?

19 A. Yes.

20 MR. MANISHIN: Still using the  
21 terminology but Global NAPs means Global NAPs,  
22 Networks means Networks.

23 THE WITNESS: Networks owns the SS7  
24 network.

25 Q. (By Mr. Jensen) Okay. So is this web site  
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1 Q. And looking at this web page, the second  
2 sentence says "Global NAPs also maintains its own SS7  
3 network." Do you see that?

4 A. Yes.

5 Q. What does that mean?

6 A. We have our own SS7 network.

7 Q. You physically own an SS7 network?

8 A. Yes.

9 Q. Where is it located?

10 A. It's in various sites. The equipment is  
11 spread out throughout local families. I believe  
12 there's some SS7 gear in Quincy, Reston, Virginia, New  
13 York and Atlanta, maybe in Chicago and Los Angeles as  
14 well but I'm not sure of those two.

15 Q. Okay. And do you have an idea of the value  
16 of the SS7 network?

17 A. No, I don't but I can find out for you.

18 Q. Okay. Is a ballpark figure on the value, is  
19 it a hundred dollars, is it a million dollars?

20 A. It's a substantial investment on our part.  
21 I'm not sure if the million dollar number is accurate  
22 but I would guess that that's close but I can  
23 certainly find out more for you.

24 Q. But just again, general understanding is the  
25 million dollars for the entire network for each SS7

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1 outdated?

2 A. Yes, this web site honestly probably hasn't  
3 been updated in -- There was a woman who worked for us  
4 named Carolyn who probably left three years ago, I  
5 think she's the last one that touched our web site.

6 MR. MANISHIN: Note for the record that  
7 the web site doesn't distinguish between Global NAPs,  
8 Inc., Global NAPs Networks and the other Global NAPs  
9 entities.

10 THE WITNESS: It's just the Global NAPs  
11 families.

12 Q. (By Mr. Jensen) So when we look at this web  
13 site --

14 A. It's very outdated.

15 Q. It's all the Global NAPs entities?

16 A. Yes.

17 Q. At some point did Global NAPs as opposed to  
18 Networks own this SS7 network?

19 A. No, I don't believe it ever did. When we  
20 brought the SS7 network it was always under Networks.

21 Q. It was always under Networks?

22 A. Right.

23 Q. Do you recall when that was about?

24 MR. MANISHIN: You mean when it was first  
25 turned up, made operational?

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1 Q. (By Mr. Jensen) When was it first  
2 purchased?  
3 A. Specifically, I don't know. I can venture a  
4 guess and I can certainly find out the correct answer.  
5 I know Quincy was our first equipment. I'd say five  
6 years ago, four or five years ago.

7 Q. Do you know whether or not Networks has any  
8 records of that purchase?

9 A. I don't know.

10 Q. If there was a record of that purchase do  
11 you know where it would be?

12 A. If there was any record it would be -- it  
13 would have been in Quincy and it is not there because  
14 we would have produced it for you, so it doesn't  
15 exist. Whether or not the accountant has it, it's  
16 doubtful, but in Global's possession it doesn't exist.  
17 Again, we don't store a lot of records, we're limited  
18 on space.

19 MR. MANISHIN: There's no question  
20 pending.

21 MR. JENSEN: Mark this please for the  
22 right number, 7.

23 (Deposition Exhibit 7, offered and  
24 marked.)

25 Q. (By Mr. Jensen) Mr. Gangi, turning your  
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1 attention to Exhibit 7, do you see that document?

2 A. Yes.

3 Q. And I will represent this is another page  
4 from the Global NAPs web site. And at the bottom it's  
5 www.gnaps.com, is that accurate?

6 A. That's accurate.

7 Q. In looking at the text it begins with Global  
8 NAPs real estate, and it talks about availability of  
9 co-location space, do you see that?

10 A. Yes.

11 Q. Okay. Could you tell me what that means?

12 A. Co-location?

13 Q. Well, yes, co-location first and then you  
14 can explain perhaps what Global NAPs real estate is  
15 saying in this sentence.

16 A. Sure. We offer co-location to any of our  
17 customers. If you want to put your equipment in our  
18 facilities, we're happy to do it. We will rent you a  
19 rack and away we go.

20 Q. Are these facilities owned by real estate?

21 A. If they're leased they would be leased by  
22 Global NAPs Realty. This is Global NAPs Real Estate,  
23 it should be Global NAPs Realty.

24 Q. Pardon me, pardon me, right, right, that  
25 should be Realty. Who owns co-location space?

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1 A. Whatever building we're in, the landlord.

2 Q. So does Global NAPs Realty, does it own any  
3 space that has a co-location in it?

4 A. Doesn't own any property, just the leases in  
5 other people's property.

6 Q. Okay. So how is it that you're able to  
7 charge for co-location space in somebody else's  
8 property, is it like a sublease?

9 A. We lease a large, like 5,000 square foot  
10 area and in that area we'll install our switching  
11 equipment. And there's also an area set up for  
12 co-location which would be those Chatsworth racks.  
13 And a customer could come in and purchase those on a  
14 monthly basis and install their equipment and connect  
15 to our network.

16 Q. Were any of these co-location leased spaces  
17 ever leased directly by Global NAPs, Inc.?

18 A. Not to my knowledge.

19 Q. So these are all part of the Realty group?

20 A. Yes.

21 Q. Okay.

22 A. Florida may have been in Global NAPs, Inc.,  
23 the facility in Miami, but that's since been shut  
24 down.

25 Q. And what do you mean by shut down?  
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1 A. We no longer use it.

2 Q. What did you do with the facilities that  
3 were in Florida?

4 A. They've been transferred to other places,  
5 Reston, Atlanta, we've got some other facilities in  
6 Florida from other vendors that we moved some  
7 equipment into.

8 Q. Can you just explain that to me. So the  
9 facilities that were in Florida, and I think we looked  
10 at a list of facilities that were in Florida?

11 A. Right, this is separate from that list.

12 This is a switch site that was in Florida in Miami  
13 that's no longer operating, so there's no equipment  
14 there anymore, it's an empty room right now.

15 The equipment that was in there is  
16 transferred to Networks in the other facilities we  
17 have that -- I think you're confused when I'm saying  
18 they were in Florida, am I correct?

19 Q. Correct.

20 A. Okay. We shut down one route in Florida,  
21 the route that was on that paper. There was another  
22 route we had in Florida that is a Networks route that  
23 we used, an alternate to the one that we had taken  
24 down, that's why we took the other one down.

25 Q. So the facilities we looked at in the othe.  
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1 exhibit, Exhibit 5, are those all still in Florida?  
 2 A. Probably not.  
 3 Q. So they were taken out and brought to  
 4 another facility?  
 5 A. I couldn't tell you. Probably to another  
 6 network. To what particular facility, I couldn't tell  
 7 you.  
 8 Q. Does Global NAPs own any computer equipment?  
 9 A. Laptops, desktops, myself, maybe half a  
 10 dozen of them.  
 11 Q. Is there a document somewhere where that  
 12 would reference the various computer equipment you  
 13 have?  
 14 A. The accountant may have a depreciation  
 15 schedule for it but I'm sure mine has been written off  
 16 a long time ago. I don't know, I could ask.  
 17 Q. And the computer equipment that you do have,  
 18 do you own it or lease it?  
 19 A. No, it's owned.  
 20 Q. It's owned in full?  
 21 A. Yeah.  
 22 Q. And for the most part they're laptops or are  
 23 they desktops?  
 24 A. I have a desktop and a laptop.  
 25 Q. Okay. Is there anything other than desktops

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1 or laptop type of computer equipment?  
 2 A. Not that I'm aware of.  
 3 Q. No main servers?  
 4 A. For Global NAPs, Inc., no.  
 5 Q. How about for any other Global entities?  
 6 A. That would be Networks.  
 7 Q. What does Networks have in terms of computer  
 8 type equipment?  
 9 A. I know they have servers, multiple servers  
 10 throughout the various sites, how many and where, I  
 11 can't tell you.  
 12 Q. And the computer equipment that you have,  
 13 the laptop and the desktop, is that purchased through  
 14 Global NAPs, Inc. or one of the other entities, who  
 15 was it purchased through?  
 16 A. Through Inc.  
 17 Q. Does Global NAPs own any electronics other  
 18 than computer equipment?  
 19 A. Not that I'm aware of, no.  
 20 Q. What about equipment like office copiers,  
 21 does it own any office copiers?  
 22 A. I don't know. We have copiers but I don't  
 23 know if they're owned by one of the other companies or  
 24 actually owned by Global NAPs, Inc.  
 25 Q. But you believe they're owned by somebody

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1 and they're not leased?  
 2 A. Yes, they are definitely owned.  
 3 Q. They're owned?  
 4 A. Yes.  
 5 Q. And would that information be somewhere  
 6 perhaps on --  
 7 A. I can find that out for you, sure.  
 8 Q. Okay. Do you know how many copiers there  
 9 might be at Global NAPs?  
 10 A. Four or five.  
 11 Q. Do you know the types of copiers?  
 12 A. No idea.  
 13 Q. Is there any machinery that Global NAPs  
 14 owns?  
 15 A. No.  
 16 Q. Any fixtures in any of the other buildings  
 17 that Global NAPs owns?  
 18 A. Such as?  
 19 Q. Anything.  
 20 A. Can I have an example of a fixture?  
 21 MR. MANISHIN: I'll object on the grounds  
 22 of ambiguity, but say to the witness that a fixture is  
 23 a permanent improvement that can't be taken away.  
 24 MR. BYRNE: On real estate.  
 25 MR. MANISHIN: On real estate, yes.

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1 MR. BYRNE: They don't own any real  
 2 estate.  
 3 MR. MANISHIN: Well, they could  
 4 theoretically have installed fixtures in the real  
 5 estate they lease so --  
 6 THE WITNESS: We do typically do a  
 7 build-out when we rent a piece of property or lease a  
 8 piece of property, or improvements to it, so I guess  
 9 the answer would be yes.  
 10 Q. (By Mr. Jensen) Do you know whether or not  
 11 those fixtures are documented somewhere?  
 12 MR. MANISHIN: Object to lack of  
 13 foundation. I don't know if you've established that  
 14 he knows whether they're by Global NAPs or the  
 15 landlord.  
 16 THE WITNESS: Not that I'm aware of.  
 17 Honestly, I don't know which sites would fall under  
 18 Global NAPs because they would have been built out  
 19 when Global NAPs actually owned them.  
 20 Now, Miami, I can tell you did because  
 21 that was a Global NAPs facility, but everything's been  
 22 removed from there and that site is closed down, so  
 23 other than that one I really don't know of any other.  
 24 Q. (By Mr. Jensen) Does Global NAPs have any  
 25 inventory?

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1 A. Not that I'm aware of, no.  
 2 Q. Does Networks have any inventory?  
 3 A. Networks would have inventory, yes.  
 4 Q. And is an inventory of the inventory  
 5 regularly taken by Networks?  
 6 A. I wouldn't say regularly.  
 7 Q. Is there -- How often is the inventory  
 8 taken?  
 9 A. They probably do it once a year for  
 10 accounting purposes.  
 11 MR. MANISHIN: Let me clarify, Counsel.  
 12 You're referring to inventory not in a technical  
 13 accounting sense but as an inventory of equipment?  
 14 MR. JENSEN: Correct.  
 15 MR. MANISHIN: Okay.  
 16 MR. JENSEN: Yeah, my understanding is  
 17 nothing that is manufactured by any of these entities.  
 18 MR. MANISHIN: Yes, and so in that terms  
 19 it's not inventory but I think we both understand you  
 20 meant equipment on hand that Networks owns or  
 21 controls?  
 22 MR. JENSEN: Right, and Global owns no  
 23 equipment as we've talked about before?  
 24 THE WITNESS: Right.  
 25 Q. (By Mr. Jensen) Does Global own any  
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1 automobiles?  
 2 A. No.  
 3 Q. Does Global own any trucks?  
 4 A. No.  
 5 Q. Does Global own any trailers?  
 6 A. No.  
 7 Q. Does Global lease any automobiles?  
 8 A. Not that I'm aware of, no.  
 9 Q. Does Global lease any trucks?  
 10 A. Not that I'm aware of, no.  
 11 Q. Does Global lease any trailers?  
 12 A. Not that I'm aware of, no.  
 13 Q. Do you know whether or not Global has any  
 14 ownership interest in any automobiles, trucks,  
 15 trailers?  
 16 A. No.  
 17 Q. Does Global own, and I mean perhaps to  
 18 quicken this a little bit, does Global own or lease  
 19 any boats?  
 20 A. No.  
 21 Q. Does Global own or lease any aircraft?  
 22 A. No.  
 23 Q. Does Global have any interest in any  
 24 aircraft?  
 25 A. Not that I'm aware of.  
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1 Q. Does Global have any interest in any boats?  
 2 A. Not that I'm aware of.  
 3 Q. Do any of the other Global entities have any  
 4 ownership interest in any boats?  
 5 A. Not that I'm aware of.  
 6 Q. Do any of the other Global entities have any  
 7 ownership interest in any aircraft?  
 8 A. Not that I'm aware of.  
 9 Q. I think you testified earlier you do lease a  
 10 company car?  
 11 A. I have the use of a company car.  
 12 Q. You have the use of a company car?  
 13 A. Yes.  
 14 Q. Which company is that through?  
 15 A. Geez, I don't know who my car is registered  
 16 to. I don't believe it's Global MAPs, Inc. I know  
 17 it's not Global MAPs, Inc. because Global has no cars.  
 18 I don't know who it's registered to.  
 19 Q. Let me back up a little bit. Do any of the  
 20 other entities own or lease any automobiles?  
 21 A. Yes, but I can't tell you which one it is.  
 22 Q. Do you have a ballpark figure as to how many  
 23 automobiles are -- Well, strike that. Do they own or  
 24 do they lease -- strike that. Does the entity that  
 25 you don't know which one it is own or lease that --  
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1 automobile?  
 2 A. They would own it outright.  
 3 Q. Okay. Do you have a ballpark figure about  
 4 the number of automobiles that are owned by the  
 5 collective Global entities?  
 6 A. Fifteen, twenty.  
 7 Q. Fifteen or twenty?  
 8 A. Right.  
 9 Q. And what are the types of automobiles?  
 10 A. Typically a Mercedes or BMW.  
 11 Q. Do you have a general idea as to what years  
 12 these cars are?  
 13 A. Anything in the last four years.  
 14 Q. So every four years would they be turned in  
 15 for a new version or --  
 16 A. Possibly.  
 17 Q. And what year is the car that you have?  
 18 A. Mine is a 2004 or 2005.  
 19 Q. And what model is it?  
 20 A. Mercedes.  
 21 Q. What model Mercedes?  
 22 A. G.  
 23 Q. G?  
 24 A. G wagon.  
 25 Q. Do you know through which entity these are  
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1 insured?

2 A. No, but I can find out for you. I don't  
3 have it off the top of my head.

4 Q. When you said that it's a G wagon, is that a  
5 G wagon?

6 A. G wagon.

7 Q. So it's a wagon as opposed to a --

8 A. It's an SUV.

9 Q. My next question is whether or not any of  
10 the collective entities own or lease any trucks. I'm  
11 assuming that's not a truck?

12 A. We do have a truck, it's a Peterbilt, just a  
13 box truck. Again, I can find out for you. I don't  
14 have it off the top of my head which company it's in,  
15 I don't know. It's not Global NAPs, Inc. and we have  
16 a couple little vans, regular E350 vans, and, again, I  
17 don't know which particular company has those but I  
18 know they're there.

19 Q. Okay. And they're all owned by that,  
20 whatever entity it is?

21 A. They would be owned.

22 Q. And about how big is the Peterbilt truck?

23 A. I think it's like a 24-foot box.

24 Q. What about ownership by the collective  
25 entities of any trailers?

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1 A. Senior employees, the lead switch techs  
2 would have them.

3 Q. Do you have the names of those people?

4 A. Not top off the top of my head. I can get  
5 it for you.

6 Q. I would appreciate that. And that would be  
7 people that are in the various Global entities at the  
8 various switch locations?

9 A. Yes.

10 Q. Do you know whether or not there are any  
11 liens on any of the vehicles that we've just talked  
12 about?

13 A. Not that I'm aware of.

14 Q. Do you know whether there have been any  
15 attachment proceedings attempted on any of these  
16 vehicles?

17 A. Not that I'm aware of.

18 Q. Does Global or any of the Global entities  
19 own any art?

20 A. No.

21 Q. Do they own any valuable rugs?

22 A. No.

23 Q. Do they own any type of collectibles that  
24 has a value of say over a thousand dollars?

25 A. No.

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1 A. Not that I'm aware of.

2 Q. Okay. Does the Peterbilt trucks or vans  
3 have anything written on the side?

4 A. Peterbilt I believe says not for hire  
5 because we use it just for our internal usage. The  
6 driver gets a ticket for not having some kind of a  
7 sign on it.

8 Q. Doesn't say any Global NAPs?

9 A. No, no company name.

10 Q. Is that the same for the vans?

11 A. Yeah, nothing on them.

12 Q. Where are these vehicles? When I say  
13 vehicles, I mean the fifteen or so automobiles and  
14 trucks and the vans, where are they physically  
15 located?

16 A. The switch sites will have their own  
17 vehicles, so Atlanta, Reston, New York, Quincy.  
18 Quincy has a fair share of them for some of the  
19 employees for the various companies, the trucks are  
20 based out of Quincy, that's pretty much it.

21 Q. And the title for these vehicles are in the  
22 name of whatever entity it is that owns them?

23 A. Right.

24 Q. Okay. Which Global employees have these  
25 cars?

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1 Q. Does Global or any of the entities own any  
2 patents?

3 A. I don't know the answer to that. I'll have  
4 to find out.

5 Q. Okay. Does Global or any of the Global  
6 entities own or have an interest in any copyrights?

7 A. Again, I have to find out.

8 Q. The same question, does Global or any of the  
9 Global entities have any ownership interest in any  
10 intellectual property?

11 A. I have to find out.

12 Q. Do you know of any liquidated debts that are  
13 owed to Global or any of the entities?

14 MR. MANISHIN: Objection as to form. If  
15 you understand please answer.

16 THE WITNESS: What do you consider a  
17 liquidated debt?

18 MR. JENSEN: An example would be a tax  
19 return. Are any Global entities owed a tax return?

20 A. Not that I'm aware of.

21 MR. BYRNE: Tax refund.

22 Q. (By Mr. Jensen) Pardon me, tax refund?

23 A. Not that I'm aware of.

24 MR. JENSEN: Can we take a quick break?

25 (A recess was taken at 4:07 P.M.)

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1 (Deposition resumed at 4:20 P.M.)  
 2 MR. JENSEN: Back on the record. We're  
 3 going to adjourn today at around five and go forward  
 4 again next Wednesday which I believe is June 7th at  
 5 the offices of Tyler Cooper in New Haven. Counsel has  
 6 indicated that he will produce documents as he gathers  
 7 them, but, in any event, as many as he can before the  
 8 deposition on Wednesday. We will start at 10 o'clock.  
 9 is that --

10 MR. MANISHIN: Very, very civilized.  
 11 thank you.

12 MR. JENSEN: Also, I will put on the  
 13 record, by continuing the deposition until next  
 14 Wednesday plaintiff is not waiving any of its rights  
 15 to file a motion for contempt based on the disclosure  
 16 of information as of today.

17 Q. (By Mr. Jensen) Mr. Gangi, we're going to  
 18 move away from expensive rugs and expensive cars and  
 19 we're going to try to move back to Global and its  
 20 entities and its parent company.

21 I would ask if you could for me draw a  
 22 diagram of the various companies and how they relate  
 23 to Ferrous Miner which I believe is the parent  
 24 company, is that right?

25 A. Yes.

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1 Q. Okay.

2 A. This is pretty simple but --

3 Q. Understood.

4 MR. JENSEN: Why don't we mark this as  
 5 Plaintiff's Exhibit 8.

6 MR. MANISHIN: The witness is talking to  
 7 himself.

8 THE WITNESS: I'm bad. I'm not really  
 9 sure what you're looking for, a diagram, it all adds  
 10 up to Ferrous Miner, it's pretty simple.

11 MR. JENSEN: Mark this.

12 (Deposition Exhibit 8, offered and  
 13 marked.)

14 Q. (By Mr. Jensen) And, Mr. Gangi, just again,  
 15 showing you your drawing, could you describe for the  
 16 record what this drawing depicts?

17 A. It's the parent company Ferrous Miner, and  
 18 all the sub companies, Global NAPs, Global NAPs  
 19 Networks, Global NAPs Realty, Global NAPs New  
 20 Hampshire and the other Global NAPs companies.

21 Q. Those are the file companies, there are many  
 22 of them, quite a few of them?

23 A. Yes.

24 Q. Now, does -- Well, let me back up a little  
 25 bit. Where is Ferrous Miner located?

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1 A. I don't know.

2 Q. Do you know where Ferrous Miner is  
 3 incorporated?

4 A. Delaware.

5 Q. And do you know what type of business  
 6 Ferrous Miner is, is it a corporation, a limited  
 7 liability?

8 A. I believe it's a corporation.

9 Q. And I may have covered this earlier, forgive  
 10 me if I have. Who are the officers in Ferrous Miner?

11 A. I don't know but I'll find out for you. It  
 12 could be the same structure as the other companies,  
 13 I'm just uncertain.

14 Q. Okay. Are you one of the officers of the  
 15 company?

16 A. I'm not certain but I could be, but I'll  
 17 find out for you and let you know.

18 MR. MANISHIN: Ferrous Miner is  
 19 represented by separate counsel. I don't think you  
 20 can make that representation without speaking to that  
 21 lawyer which is not me.

22 THE WITNESS: Okay, I will do my best to  
 23 find out and let you know.

24 Q. (By Mr. Jensen) Okay. What do you know  
 25 about Ferrous Miner?

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1 A. Other than it is the holding company for L  
 2 the Global NAPs entities, not much.

3 Q. Okay. What do you mean by the holding  
 4 company for the Global NAPs entities?

5 A. Is the parent company.

6 Q. And does it generate its own revenue?

7 A. I believe all its revenue comes from the sub  
 8 Q's.

9 Q. Pardon me?

10 A. The sub companies.

11 MR. MANISHIN: Did you say sub Q's?

12 THE WITNESS: Sub Q.

13 Q. (By Mr. Jensen) What do you mean by sub Q?

14 A. Qualifying sub.

15 Q. Okay. So as you understand it Ferrous Miner  
 16 does not generate any of its own revenue?

17 A. Not that I'm aware of.

18 Q. Does Ferrous Miner produce any products?

19 A. Not that I'm aware of.

20 Q. Does Ferrous Miner perform any services?

21 A. Other than act as parent for Global  
 22 companies?

23 Q. Correct.

24 A. Not that I'm aware of.

25 Q. Do you know how revenue goes from the

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1 various Global entities to Ferrous Miner?  
 2 A. Say that again please.  
 3 Q. Do you know how revenue -- You testified  
 4 earlier that the only source of revenue of Ferrous  
 5 Miner is the revenue from the various Global entities,  
 6 is that right?  
 7 A. Yes.  
 8 Q. How does that revenue get to Ferrous Miner?  
 9 A. That, I don't know.  
 10 Q. Does it go through the bookkeeping company?  
 11 A. That would be through the accountants.  
 12 Q. That would be through the accountants?  
 13 A. Right.  
 14 Q. Okay. Do you have any information about  
 15 that process?  
 16 A. No.  
 17 Q. Okay. Do you have any idea -- strike that.  
 18 Do you know if Ferrous Miner, what Ferrous Miner does  
 19 with the revenue once it gets it, that is the revenue  
 20 from the Global entities?  
 21 A. When you say revenue, are you talking about  
 22 profits?  
 23 Q. Why don't you tell me. What is it that  
 24 flows from the Global entities to Ferrous Miner?  
 25 A. I'm not sure how the accounting process  
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1 works between the companies. As I said, I'm not an  
 2 accountant, so I don't understand how the process  
 3 works.  
 4 Q. Okay. But do you know whether it's profits  
 5 that flow up?  
 6 A. Profits or losses would flow up.  
 7 Q. So you believe both profits and losses flow  
 8 up through Ferrous Miner?  
 9 A. Yes.  
 10 Q. Mr. Gangi, do you have any formal education  
 11 in financial --  
 12 A. I have some accounting background.  
 13 Q. And is that a college?  
 14 A. At a college, yes.  
 15 Q. And what college?  
 16 A. Bentley.  
 17 Q. Is that in Massachusetts?  
 18 A. Yes.  
 19 MR. MANISHIN: Outside of Boston.  
 20 Q. (By Mr. Jensen) What was your degree in at  
 21 Bentley?  
 22 A. I did not get a degree.  
 23 Q. Was your intended degree in accounting?  
 24 A. Yes.  
 25 Q. Did you go to any accounting -- Did you take  
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1 any financial classes after college?  
 2 A. No.  
 3 Q. So the extent of your accounting experience  
 4 is based on your --  
 5 A. General knowledge.  
 6 Q. -- general knowledge?  
 7 A. As I said, I'm not an accountant.  
 8 Q. And before working for the Global entities  
 9 what did you do for a living?  
 10 A. I was in the power industry.  
 11 Q. Where was that?  
 12 A. The company I worked for was based out of  
 13 Milwaukee.  
 14 Q. What was the name of that company?  
 15 A. Sieman's Power.  
 16 Q. And what did you do at Siemen's?  
 17 A. I was a project manager.  
 18 Q. And your next job after that was working for  
 19 the Global entities?  
 20 A. Global, yes.  
 21 Q. Does Ferrous Miner have any employees?  
 22 A. Not that I'm aware of.  
 23 Q. Do you know whether or not Ferrous Miner has  
 24 any contracts with any of the Global entities?  
 25 A. Not that I'm aware of.  
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1 Q. Okay. Do you know whether or not any of the  
 2 Global entities have any loans with Ferrous Miner or  
 3 from Ferrous Miner?  
 4 A. That, I don't know but I could research it  
 5 and find out for you.  
 6 Q. Who would know that answer?  
 7 A. Our accountant. I don't believe there are  
 8 but I'm not certain.  
 9 Q. You mentioned you work for a VOIP company,  
 10 you currently work for a VOIP company?  
 11 A. I'm an officer.  
 12 Q. You're an officer of a VOIP company. Do you  
 13 know whether or not that VOIP company uses G NAPs, any  
 14 of the Global entities' network at any point?  
 15 A. I'm sure that it rides some portion of the  
 16 Global Networks, where and how much, I don't know.  
 17 Q. Do you know whether or not Ferrous Miner  
 18 owns any airplanes?  
 19 A. I don't know.  
 20 Q. Do you know if Ferrous Miner owns any  
 21 trucks?  
 22 A. I don't know.  
 23 Q. Do you know any assets that Ferrous Miner  
 24 has?  
 25 A. Any?  
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1 Q. Do you know of any assets that Ferrous Miner  
2 has?

3 A. No, I don't.

4 Q. Looking at your chart, Plaintiff's  
5 Exhibit 8, are there any other entities that are  
6 related to Ferrous Miner?

7 A. Not that I'm aware of but I can ask and let  
8 you know.

9 Q. Okay. And you're not aware of, or this may  
10 be similar to the last question I asked you, but are  
11 you aware of any other entities that Ferrous Miner  
12 owns?

13 A. No, I'm not.

14 Q. Do you have the use of an aircraft?

15 A. Do I personally?

16 Q. Yes.

17 A. Yes.

18 Q. And is that aircraft either owned or does  
19 any of either Global NAPs or Ferrous Miner entities  
20 have an ownership interest in that aircraft?

21 A. I don't know. I can ask and let you know  
22 but I don't know that.

23 Q. Do you have an understanding about who owns  
24 the aircraft?

25 A. No, I don't.

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1 Q. Okay. Are you aware of any provision that  
2 allows Global NAPs to bill SNET for reciprocal  
3 compensation?

4 A. I can't point to it specifically right now.  
5 I don't know if it's in the interconnection agree~~me~~  
6 of the SCC agreement, or I'm not sure what it's unde~~.~~  
7 but I know there is some document that allows us to do  
8 that.

9 Q. Do you know whether there is a specific  
10 provision in the interconnection agreement which says  
11 you cannot bill for the reciprocal compensation?

12 A. Again, I don't know what takes precedence,  
13 whether it's the --

14 MR. MANISHIN: Answer the question.

15 THE WITNESS: Can I have the question  
16 again?

17 MR. JENSEN: Can you read that back?

18 (The question was read as requested)

19 THE WITNESS: No, I don't.

20 Q. (By Mr. Jensen) And do you have an idea of  
21 how much you believe it owes Global for reciprocal  
22 compensation?

23 A. For intercarrier compensation depends upon  
24 the rate that it's calculated at. It comes out to be  
25 roughly \$1.6 million or \$6.3 million.

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1 Q. Do you have an understanding of whether that  
2 aircraft is owned or leased?

3 A. No, I don't.

4 Q. Are you aware of any money that is owed any  
5 of the Global entities that we have not already  
6 covered?

7 A. Yes.

8 Q. Okay. And what would those be?

9 A. We have monies that are billed to Verizon,  
10 billing dollars.

11 Q. And what's the nature of the bills to  
12 Verizon?

13 A. Intercarrier compensation.

14 Q. Is that the reciprocal compensation?

15 A. That's part of it, sure.

16 Q. When you say that's part of it, what's the  
17 other part of it?

18 A. Termination of minutes.

19 Q. Any other?

20 A. We have an outstanding bill with SNET.

21 Q. And what is the basis for that bill?

22 A. Same thing, intercarrier compensation.

23 Q. Have you read the interconnection agreement  
24 between SNET and Global NAPs?

25 A. Sections of it.

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1 MR. JENSEN: Okay. And I will I guess  
2 mark these as Exhibits 10 and 11. Sorry, sorry,  
3 Exhibit 9?

4 (Deposition Exhibit No. 9, offered and  
5 marked.)

6 Q. (By Mr. Jensen) Mr. Gangi, showing you  
7 what's been marked as Plaintiff's Exhibit 9, you see  
8 that document?

9 A. Yes.

10 Q. That's a document that you produced today,  
11 could you describe that document for me?

12 A. Yes, this is the sheet that shows all the  
13 invoices that have been billed to SBC since June of  
14 2003 up until April of 2006 on a monthly basis.

15 Q. Okay. What's the date on that document?

16 A. The document date is 5/30/2006.

17 Q. Okay. Is that an actual invoice?

18 A. That is an invoice, yes.

19 Q. Okay. And this was created yesterday?

20 A. This was created 5/30, is that yesterday?

21 Q. Today is 5/31, I believe so, yes.

22 A. Then this was created yesterday.

23 Q. Do you know who created that document?

24 A. This would have come from Select and Pay  
25 they do our billing.

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1 Q. And do you know whether or not that was sent  
2 to SNET?

3 A. I know that each of these individual  
4 invoices from June '03 to April of '08 has been sent.

5 Q. Okay.

6 A. Whether this condensed version has been  
7 sent, I'm not aware.

8 Q. How do you know the individual bills or the  
9 individual invoices listed on those two sheets were  
10 sent to SNET?

11 A. I was told by Select and Pay that they were  
12 and I was shown various Fed Ex slips to prove that  
13 they were sent.

14 Q. Okay. Do you recall who from Select and Pay  
15 sent those?

16 A. Janet Lima.

17 Q. And Janet Lima works at Select and Pay?

18 A. Yes.

19 Q. Does she also work at Global NAPs?

20 A. No longer.

21 Q. At what point did she stop working at Global  
22 NAPs?

23 A. I don't recall what date she left, a year  
24 ago maybe.

25 Q. Okay. Up until a year ago what did Janet  
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1 specifically who made the decision to bill SNET for  
2 reciprocal compensation?

3 A. I don't know.

4 Q. Do you know who would know?

5 A. I guess I'm missing your question.

6 Q. There was at one point and let me just look  
7 at the document. This has invoices that, look likes  
8 listing invoices going back to June of '03. At some  
9 point before June of '03, at some point before June  
10 '03 somebody made the decision that they could bill  
11 SNET for reciprocal compensation, is that right?

12 A. Okay, it would be intercarrier compensation,  
13 reciprocal compensation would fall under that, sure,  
14 okay.

15 Q. So assuming that the decision was made to  
16 bill SNET?

17 A. Okay.

18 Q. Who made that decision?

19 A. Probably would have been the three officers  
20 of the company.

21 Q. Okay.

22 A. Based on recommendations from our attorneys  
23 who would decipher the interconnection agreement that  
24 let us know we could.

25 MR. MANISHIN: Note that for completeness  
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1 Lima do at Global NAPs?

2 A. Similar to what she's doing at Select and  
3 Pay.

4 Q. Are there any other employees at Select and  
5 Pay that used to work at Global NAPs?

6 A. I don't believe so. I don't know how many  
7 employees Select and Pay has, I'm not involved with  
8 them.

9 Q. And Select and Pay is not related in any way  
10 to any of the Global entities?

11 A. No.

12 Q. Who from Global NAPs would tell somebody at  
13 Select and Pay to bill SNET that amount or any given  
14 amount for any invoice?

15 A. I'm not sure.

16 Q. Okay.

17 A. But I can find out.

18 Q. Do you know who at Global NAPs would make  
19 the determination that that was a proper charge to  
20 send SNET?

21 A. This would be based on minutes of use or  
22 minutes terminated, and I don't know off the top of my  
23 head who would verify that number, but, again, I can  
24 find out for you.

25 Q. Okay. But in general, not in general, but  
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1 of the record, Mr. Jensen, we did produce today copies  
2 of the invoices starting with the July 1, 2003  
3 individual invoice all the way through and including  
4 an invoice dated May 1, 2006 monthly throughout that  
5 entire period.

6 MR. JENSEN: Okay, and I'm not going to  
7 go into each of these.

8 MR. MANISHIN: I wanted to make clear  
9 that was a summary.

10 Q. (By Mr. Jensen) Is it your testimony today  
11 that each of the invoices that is listed on here was  
12 sent to SNET?

13 A. Absolutely, yes.

14 Q. And were these invoices sent on or about the  
15 date on the invoice?

16 A. Yes.

17 Q. For example --

18 A. The first of the month they would have gone  
19 out via Fed Ex to the recip comp manager at SNET.

20 Q. So, for example, looking at Plaintiff's  
21 Exhibit 9, and I know you have the back-up in front of  
22 you, but I'm just looking at, without going through  
23 each document --

24 A. Sure.

25 Q. For example, the June --

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1 MR. MANISHIN: I have a copy of 9, you  
2 can look at that.  
3 Q. (By Mr. Jensen) For the June '03 invoice  
4 for \$11,000 is it your testimony that that invoice was  
5 sent out on or about June of 2003?

6 A. Well, this would be -- It's my understanding  
7 what this is is this would be for minutes of use in  
8 June.

9 Q. Okay.

10 A. Okay, so the bill would be sent out on July  
11 1st.

12 Q. Okay.

13 A. For the prior month.

14 Q. That would be the same for each one of  
15 these, this would be the following month?

16 A. Yes.

17 Q. It's your testimony each of these were sent  
18 out on a monthly basis?

19 A. Yes, starting July 1st, the first one should  
20 have been sent out for June and then each month  
21 afterwards, the first of the month.

22 Q. Should have been or was?

23 A. Was sent out.

24 MR. MANISHIN: Hold on one moment.

25 THE WITNESS: The first sheet that we  
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1 for the reciprocal compensation?

2 A. Total that Verizon is holding, I believe  
3 it's an undisputed amount of \$22 million roughly.

4 Q. And you say it's undisputed?

5 A. Right, they acknowledge it's due.

6 Q. Do you know whether or not there are any  
7 attachments or liens on that amount?

8 A. Yes, they have a -- I'm not sure what it is,  
9 order from the Court that they can hold 16 or \$16  
10 million of that money. I'm not sure what the correct  
11 term is for that, but -- so that leaves 6 million of  
12 that that should be free.

13 Q. Okay.

14 A. And unattached.

15 Q. And that twenty-two sixteen six is still  
16 with Verizon, is that right?

17 A. Yes, I'm not sure if it's being -- Yes.

18 Q. In other words, it was not put into an  
19 escrow account with the Court?

20 A. I believe it's still being held by Verizon  
21 but I can verify that for you.

22 Q. Other than the Verizon and the SNET that we  
23 just talked about are there any other sources of money  
24 this is owed to any of the Global entities?

25 A. Not that I can recall.

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1 were just looking at has the .0027 rate. The invoices  
2 that were sent out were sent out as the second sheet  
3 shows at the .0007 rate. So that \$11,000 that you  
4 were talking about actually is \$2,900, it's a lesser  
5 amount. So the second sheet will match up.

6 Q. To the actual invoices?

7 A. To the actual invoices, yes.

8 Q. And, again, to my same question before, the  
9 actual invoice then, on the second page which is the  
10 actual invoice, that was sent out at or around that  
11 time?

12 A. Yes.

13 MR. MANISHIN: But I think the witness is  
14 explaining that the invoices that were sent were the  
15 figures on page 2, not page 1.

16 MR. JENSEN: I understand.

17 Q. (By Mr. Jensen) Okay. You've told me about  
18 the recip comp from Verizon?

19 A. Yes.

20 Q. And the recip comp from SNET, correct?

21 A. Yes.

22 Q. Those are two things that we had not covered  
23 previously, is that right?

24 A. Um-hm.

25 Q. How much are you claiming Verizon owes you

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1 Q. Is there any document that would let you  
2 know of any other source of money that was owed?

3 A. I'd have to talk to the accountant to see if  
4 they're carrying any amounts due us on this but I  
5 don't believe that there are.

6 MR. MANISHIN: Excuse me for one second.

7 THE WITNESS: But I could be mistaken.

8 (Discussion off the record)

9 MR. MANISHIN: Back on the record.

10 THE WITNESS: These invoice were to SBC  
11 in Connecticut, and I don't know if any other SBC  
12 company was billed for recip comp in other states. I  
13 don't have that answer, so that may be something else  
14 that's due us and I can research that for you as well.  
15 Q. (By Mr. Jensen) Okay. What about  
16 reciprocal compensation for Bell Atlantic, do you know  
17 anything about that?

18 A. That should be Verizon, right?

19 Q. So that would be covered in the 22 million?

20 A. 22 million, yes.

21 MR. MANISHIN: Verizon, GTE, there's  
22 another company all of which merged to become Verizon,  
23 Bell Atlantic, GTE all merged to become Verizon.

24 MR. JENSEN: I think this is probably  
25 good ending point for the day.

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1 MR. MANISHIN: Yes, since I can't even  
2 remember the genesis of the most important local  
3 exchange company in my area, it's a good time to  
4 break.

5 MR. JENSEN: It's been a long day.

6 MR. MANISHIN: We thank you for your  
7 courtesies as we do. We will produce documents as  
8 soon as they become available and take up whatever  
9 issues logistically or otherwise sometime between now  
10 and next Wednesday.

11 MR. JENSEN: Thank you.

12 (Time noted: 4:55 P.M.)

13 MR. JENSEN: Any way we can get it by  
14 Thursday, Friday, rough by Friday?

15 THE REPORTER: Sure. I can get you the  
16 rough by Friday morning the latest.

17 MR. JENSEN: That would be great.

18 Thanks.

19

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1 STATE OF CONNECTICUT

2

3 I hereby certify that I am a Notary  
4 Public, in and for the State of Connecticut, duly  
5 commissioned and qualified to administer oaths.

6 I further certify that the deponent named  
7 in the foregoing deposition was by me duly sworn, and  
8 thereupon testified as appeared in the foregoing  
9 deposition; that said deposition was taken by me  
10 stenographically in the presence of counsel and  
11 reduced to typewriting under my direction, and the  
12 foregoing is a true and accurate transcript of the  
13 testimony.

14 I further certify that I am neither of  
15 counsel nor attorney to either of the parties to said  
16 suit, nor am I an employee of either party to said  
17 suit, nor of either counsel in said suit, nor am I  
18 interested in the outcome of said cause.

19 IN WITNESS THEREOF, I have hereunto set  
20 my hand and affixed my seal this 1st day of June,  
21 2006.

22

23 Judi A. Roberts, Notary Public  
24 Licensed Professional Reporter  
25 No. SHR.325

26

My commission expires:

26 July 31, 2007

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

\*\*\*\*\*

THE SOUTHERN NEW ENGLAND \*

TELEPHONE COMPANY, \*

PLAINTIFF, \*

VS. \*

GLOBAL NAPS, INC., \*

DEFENDANT. \*

CIVIL ACTION NUMBER

\*\*\*\*\*

3:04 CV 2075 (JCH)

CONTINUED DEPOSITION OF RICHARD GANGL,  
AS A DESIGNATED REPRESENTATIVE OF GLOBAL NAPS, INC.

Taken before Frances R. Teti, Licensed Shorthand  
Reporter and Notary Public within and for the State of  
Connecticut, pursuant to the Federal Rules of Civil  
Procedure, at the law offices of Tyler, Cooper & Alcorn,  
LLP, 205 Church Street, Ninth Floor, New Haven,  
Connecticut, on June 23, 2006, commencing at 10:36 a.m.

DEL VECCHIO REPORTING SERVICES, LLC  
PROFESSIONAL SHORTHAND REPORTERS  
127 RANDOLPH DRIVE  
MADISON, CONNECTICUT 06443  
203-265-0583  
HARTFORD STAMFORD NEW HAVEN

1 ALSO PRESENT:

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3 Leslie Wright-Oswald, AT&T  
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3

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2

1 STIPULATIONS

2

3 IT IS STIPULATED by counsel for the parties  
4 that each party reserves the right to make specific  
5 objections in open Court to each and every question  
6 asked and the answers given thereto by the witness,  
7 reserving the right to move to strike out where  
8 applicable, except as to such objections as are directed  
9 to the form of the question.

10 IT IS STIPULATED by counsel for the parties  
11 that the proof of the authority of the Notary Public  
12 before whom this deposition is taken is waived.

13 IT IS STIPULATED AND AGREED by counsel for the  
14 parties that any defects in the Notice are waived.

15 IT IS FURTHER STIPULATED by counsel for the  
16 parties that the reading and signing of the deposition  
17 are not waived.

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1 RICHARD GANGI,  
2 having first been duly sworn, was examined  
3 and testified as follows:

4  
5 CONTINUED DIRECT EXAMINATION BY MR. JENSEN

6  
7 Q. Good morning, Mr. Gangi.  
8 A. Good morning.  
9 Q. This is a continuation obviously of the deposition  
10 from several weeks ago. You understand that you  
11 are under oath?  
12 A. Yes.  
13 Q. Okay. And you understand that you're still to  
14 abide by the rules that we talked about last time?  
15 Do you recall those rules --  
16 A. Yes.  
17 Q. -- in terms of: Speak out loud instead of  
18 gesturing; if you don't understand one of my  
19 questions, please let me know; otherwise, I will  
20 assume that you understood the question; things of  
21 that nature? Do you recall those rules that we  
22 talked about?  
23 A. Yes.  
24 Q. Are you on any substances today that would affect  
25 your memory?

5

1 A. No.  
2 Q. Okay. And is there anything from the testimony  
3 that you gave last time that you want to correct?  
4 A. I don't believe so.  
5 Q. Okay. So -- you've had several weeks to think  
6 about it?  
7 A. Yes.  
8 Q. Okay. And so can we assume that all of your  
9 answers during the last deposition were accurate?  
10 A. Yes.  
11 Q. Okay. You produced a number of documents or some  
12 documents at the last deposition, and your counsel  
13 produced some documents, I believe, on June 7th and  
14 then again on June 22nd, and it looks like you've  
15 produced some documents today; is that right?  
16 A. Yes.  
17 Q. Okay. Could you tell me -- we talked a little bit  
18 about this last time, but could you clarify who  
19 pulled the documents and where the documents were  
20 pulled from?  
21 A. I made requests of our in-house counsel, I made  
22 requests of our accountant, and I made requests to  
23 our bookkeepers, several requests to each. I have  
24 had letters back and forth and phone conversations  
25 with all of them doing the best we could to try to

6

1 satisfy the Court's order.  
2 Q. Okay. You referred to in-house counsel. Who was  
3 the in-house counsel that was consulted?  
4 A. Jeff Melick.  
5 Q. Do you know the sources -- other than the  
6 bookkeeper and the accountant, do you know the  
7 sources or where the information was pulled?  
8 A. I believe the majority of the information came from  
9 Select & Pay. The contracts would have come from  
10 our legal department. I our also asked our sales  
11 department to provide them. I'm not sure if they  
12 provided them to the legal department or if the  
13 legal department had them in hand.  
14 Q. Who is your -- who would the contact be in the  
15 sales department?  
16 A. Brad Masuret, M-A-S-U-R-E-T.  
17 Q. What is his position?  
18 A. He's a salesman, VP of sales.  
19 Q. For Global NAPS, Inc.?  
20 A. Yes.  
21 Q. Is he a salesman for any other Global entity?  
22 A. I don't believe so.  
23 Q. Does he work for any other Global entity?  
24 A. Actually, he probably does sales for Networks as  
25 well, but he's employed by Global NAPS, Inc.

7

1 Q. Do you know whether or not he receives a salary or  
2 commission from Global NAPS Networks?  
3 A. He's salaried and commissioned only from Global  
4 NAPS, Inc. There's another gentleman in the sales  
5 department, Dave Shaw, who I asked as well to  
6 produce documents that he may have had for today.  
7 Q. What is Mr. Shaw's position?  
8 A. He works underneath Brad Masuret. He's a  
9 salesman.  
10 Q. Does Mr. Shaw work for any of the other Global  
11 entities?  
12 A. No. He works -- is employed by Global NAPS, Inc.  
13 Q. He's employed by Global NAPS, Inc.?  
14 A. He's employed by Global NAPS, Inc., but he does --  
15 he may sell Networks services as well.  
16 Q. And you indicated that Mr. Melick --  
17 Is it Melick?  
18 A. Yes.  
19 Q. -- is in-house counsel for Global. It's Global  
20 NAPS, Inc.; is that right?  
21 A. Yes.  
22 Q. Do you know whether or not Mr. Melick is in-house  
23 counsel for any of the other Global entities?  
24 A. He does do work for other entities, yes.  
25 Q. Which entities are those?

8

1 A. Any one of them.  
 2 Q. So it would be Global NAPS New Hampshire, Inc.?  
 3 A. Yes.  
 4 Q. Global NAPS Networks, Inc.?  
 5 A. Yes.  
 6 Q. Global NAPS Realty, Inc.?  
 7 A. Yes.  
 8 Q. Does he do counsel work for any of the -- I think  
 9 we referred to them or you referred to them last  
 10 time as the GNAPS file entities.  
 11 A. Those are set up by our in-house legal department,  
 12 so I would assume that he does or has had some --  
 13 whether or not it was him directly, I'm not sure.  
 14 Q. Did you review any information in preparation for  
 15 today's deposition?  
 16 A. I looked over some of the documents that were  
 17 provided to you. Not all of them.  
 18 Q. Do I have all the documents that you've reviewed --  
 19 A. Yes.  
 20 Q. -- prior to the deposition?  
 21 A. Yes.  
 22 Q. Did you speak with anyone prior to the deposition  
 23 in preparation for the deposition?  
 24 A. The --  
 25 MR. MANISHIN: Do not include discussions

9

1 with counsel or where counsel was present.  
 2 A. In preparation? With regard to acquiring  
 3 documents, I spoke with Select & Pay generally. I  
 4 spoke with Jeff Melick, various employees of Global  
 5 NAPS and Global NAPS Networks.  
 6 BY MR. JENSEN:  
 7 Q. Do you recall who the employees were from Global  
 8 NAPS?  
 9 A. Global NAPS, Inc.?  
 10 Q. Global NAPS, Inc., yes.  
 11 A. Robert Gaetani.  
 12 Q. Who is Robert Gaetani?  
 13 A. He does administrative stuff for Global NAPS, Inc.  
 14 Q. Does he have a position?  
 15 A. I'm not sure what his title is.  
 16 Q. Does Mr. Gaetani work for any of the other Global  
 17 entities?  
 18 A. He is employed by Global NAPS, Inc., and I do not  
 19 think he provides services for the other entities.  
 20 He may, but that's not my recollection.  
 21 Q. Okay. Who else at Global NAPS, Inc. did you speak  
 22 with?  
 23 A. Brad Masuret, Dave Shaw.  
 24 Q. Okay. What about -- who did you speak with at  
 25 Global NAPS Networks, Inc.?

10

1 A. That would be Matt Pallett.  
 2 Q. How do you spell the last name?  
 3 A. P-A-L-L-E-T-T.  
 4 Q. Is Mr. Pallett an employee of Global NAPS Networks?  
 5 A. Networks, yes.  
 6 Q. Does he do any work or provide any services for  
 7 Global NAPS, Inc.?  
 8 A. No. He works strictly for Networks. Matt  
 9 maintains the network. He's one of our engineers.  
 10 So as far as getting information for serial numbers  
 11 off of equipment, once I designate to him what  
 12 equipment it is, he can go gather the serial  
 13 numbers and locations.  
 14 Q. Did he provide you with any other information other  
 15 than the serial numbers for the equipment?  
 16 A. No, just serial numbers, addresses, that type of  
 17 stuff, trying to identify where it is and what it  
 18 is.  
 19 MR. MANISHIN: Would model numbers --  
 20 THE WITNESS: Model numbers as well,  
 21 yes.  
 22 BY MR. JENSEN:  
 23 Q. Did you speak with anybody else at Global NAPS  
 24 Network?  
 25 A. I don't believe that I did.

11

1 Q. I'd like to follow up on some of the topics that we  
 2 left over from last week. I don't know if the  
 3 documents you brought today include this  
 4 information. When we have a break, I'll take a  
 5 look through it, but the first question I have is:  
 6 I'd like to know what Global NAPS, Inc. -- again,  
 7 we can refer to Global NAPS, Inc. as Global. Is  
 8 that all right?  
 9 A. Okay.  
 10 Q. And then we'll do the other thing, which is  
 11 referring to Global NAPS Realty as Realty, Global  
 12 NAPS Network as Network and Global NAPS New  
 13 Hampshire as New Hampshire.  
 14 A. Okay.  
 15 Q. And then I'm going to refer to Global NAPS South as  
 16 South and the rest of the Global NAPS entities as  
 17 the file entities. Is that fine?  
 18 A. Sure.  
 19 Q. I'm just trying to make it so that we don't have to  
 20 repeat the name every time.  
 21 A. If I could add one thing, with regard to speaking  
 22 to other people within Global NAPS Networks, I did  
 23 make it very clear to the people that I did talk to  
 24 that they should let others know that I'm looking  
 25 for information. So I may not have talked to

12

1 people directly, but it was well known throughout  
2 the company that I needed to gather the  
3 information.

4 Q. That was for Global NAPS Networks?

5 A. Right; and for Global NAPS, Inc.

6 Q. And for Global NAPS, Inc.?

7 A. Right.

8 Q. What about the other related Global entities,  
9 Realty and New Hampshire?

10 A. They would have heard as well, but I did not speak  
11 to anybody directly in those companies.

12 Q. Can you tell me what Global's revenue was on an  
13 annual basis from the year 2002 to the present?

14 A. I believe we requested that from our bookkeepers,  
15 but they have not produced that for us yet. As  
16 soon as we get it, we'll pass it along. I know  
17 it's been requested.

18 Q. Okay. And have the bookkeepers told you why it's  
19 taken so long to get that information?

20 A. I believe they provided a response to the letter I  
21 had sent to them.

22 MR. MANISHIN: There was also a prior  
23 response, I believe. (Handing.) Excuse me.  
24 Let me clarify the record. I believe you have  
25 a direct response from Select & Pay to the

13

1 first request for information. It was  
2 produced as part of the — either the initial  
3 production or the June 7th production that's  
4 been Bates stamped. This is a letter from  
5 Select & Pay's counsel citing certain contract  
6 provisions and certain difficulties they've  
7 had assembling certain documents, which  
8 Mr. Gangi is looking at right now.

9 MR. JENSEN: Could you clarify what the  
10 original response from Select & Pay was?

11 MR. MANISHIN: I believe it was a letter  
12 from Janet Lima back to Mr. Gangi identifying  
13 records that she was able to locate and  
14 produce and those that she had not.

15 MR. JENSEN: Okay. I don't think we do  
16 have that.

17 MR. MANISHIN: Okay. Maybe I'm —  
18 Correct me if I'm wrong. Was there a  
19 written response from Select & Pay to your  
20 first request? Am I correct?

21 THE WITNESS: There may have been.  
22 I've looked at so much —

23 MR. MANISHIN: I thought that there was.  
24 I could be confusing the answer with the  
25 request letter, but I know that that

14

1 correspondence, to the extent it existed at  
2 the time of the first request in — whatever  
3 it was — late May, early June, had been  
4 produced.

5 MR. JENSEN: Okay. I don't think we have  
6 a letter from Janet Lima.

7 MR. MANISHIN: I thought there was one.  
8 If there is one, I will make sure it is  
9 produced. I will call our office and confirm  
10 or corroborate whether one exists.

11 MR. JENSEN: Thank you.

12 MR. MANISHIN: I'm sure he's not going to  
13 want you to testify as to what's in the  
14 letter, so either let him ask a question or  
15 give him the letter now.

16  
17 (Plaintiff's Exhibit No. 10,  
18 four-page letter from Robert E.  
19 McLaughlin, Jr. to Jeffrey C.  
20 Melick dated June 22, 2006,  
21 marked for identification.)  
22

23 BY MR. JENSEN:

24 Q. Mr. Gangi, I'm taking a look at Plaintiff's  
25 Exhibit 10, which looks to be a June 22, 2006

15

1 letter from the law firm of Gilman, McLaughlin &  
2 Hanrahan to Attorney Melick. I'll just show it to  
3 you, and tell me if you recognize that document.  
4 (Handing.)

5  
6 (Witness reviews document.)  
7

8 A. Yes.

9 Q. You produced that document today?

10 A. Yes.

11 Q. Have you read that document?

12 A. I've gone through it, yes.

13 Q. Okay. I take it that document was sent yesterday;  
14 is that right?

15 A. Yes.

16 Q. Could I have that back?

17 A. Sure. (Handing.)

18 Q. According to this letter, Richard Gangi, which is  
19 you, sent a letter to Select & Pay requesting  
20 certain information; is that right?

21 A. Yes.

22 Q. Do I have a copy of that letter?

23 A. I believe you do. If not, I have it here.

24 MR. MANISHIN: That was the letter I was  
25 referring to, and there's another copy — this

16

1 document was e-mail correspondence related to  
2 the follow-up. (Hanging.) I just want to  
3 make clear for the record that these documents  
4 are being produced today because they've just  
5 been obtained. All of the prior documents  
6 that were produced in similar fashion were  
7 also then Bates labeled and marked and  
8 produced formally for the record here. Our  
9 office is in the process in Connecticut of  
10 Bates stamping these documents, and Bates  
11 copies will be delivered in hard copy or by  
12 electronic mail to Mr. Jensen at some point  
13 today.

14  
15 (Plaintiff's Exhibit No. 11,  
16 one-page letter from Richard C.  
17 Gangi to Janet Lima, undated,  
18 marked for identification.)  
19

20 BY MR. JENSEN:

21 Q. (Hanging.) Looking at Plaintiff's Exhibit 11, do  
22 you see that document?  
23

24 (Witness reviews document.)  
25

17

1 been marked as Plaintiff's Exhibit 12; is that  
2 right?  
3 A. Yes.  
4 Q. Okay. And then you said the -- you sent it again  
5 on June 22nd?  
6 A. Yes.  
7 Q. That's marked as Plaintiff's Exhibit 13?  
8 A. Yes.  
9 Q. Those are both printouts of your e-mail?  
10 A. Yes.  
11 Q. Okay. And those e-mails included that --  
12 A. This is the attachment that it references, yes.  
13 Q. So Plaintiff's Exhibit 11 was attached to each of  
14 these e-mails?  
15 A. Yes, it was.  
16 Q. What response, if any, did you get from Select &  
17 Pay after you initially sent that letter on  
18 June 2nd?  
19 A. I got a -- I talked with Janet on the phone to go  
20 over what it was that I was looking for and just to  
21 let her know to call if she had any questions or,  
22 if she was able to find anything, just to get it to  
23 me as soon as she could.  
24 Q. Okay. Did she ever get back to you?  
25 A. After that, yes, we talked several times just on

19

1 A. Yes.  
2 Q. Could you tell me what that document is?  
3 A. This is a copy of the e-mail I sent to Select & Pay  
4 requesting the items that I thought were -- they  
5 would have -- potentially have that were in  
6 response to the Judge's order.  
7 Q. Okay. And, Mr. Gangi, is there a date on that  
8 document?  
9 A. No, there's not, but there's the body of the e-mail  
10 that references it, and the date on that is 6-22.  
11 That was the second time it was sent. 6-2 was the  
12 first time it was sent.

13 MR. JENSEN: Why don't we mark these.

14  
15 (Plaintiff's Exhibit No. 12,  
16 e-mail dated 6-2-06,  
17 marked for identification.)  
18

19 (Plaintiff's Exhibit No. 13,  
20 e-mail dated 6-22-06,  
21 marked for identification.)  
22

23 BY MR. JENSEN:

24 Q. Mr. Gangi, you were referring to the first time  
25 this e-mail was sent on June 2, 2006, and that's

18

1 items that she was trying to find for us.  
2 Q. Did she give you an idea of a time frame for  
3 getting you the information that you requested?  
4 A. I just told her to get it to me as soon as she  
5 could. I know she was working on this as well as  
6 doing her daily duties, so I'm sure 100 percent of  
7 her day was not devoted to trying to acquire these  
8 documents. She does have to run her business. I  
9 know she was giving it her best effort, and that's  
10 all I could ask her to do.  
11 Q. Do you recall when you first got information from  
12 Ms. Lima?  
13 A. No, I don't. It would have to have been before we  
14 produced the first batch to you. I'm not sure of  
15 the dates though.  
16 Q. Looking at Plaintiff's Exhibit 13, you say,  
17 "Janet" -- I'm going to quote this -- "Janet, I  
18 know you responded to this previously, but I wanted  
19 to make sure you have given me everything you have  
20 with regard to Global NAPS, Inc." When you are  
21 saying "responded to this previously," I assume  
22 you're referring to Plaintiff's Exhibit 11 which  
23 was the attached document request?  
24 A. No. Her response was providing the documents for  
25 us. That's what I meant by response. She had been

20

1 giving us documents this whole time. I just  
2 wanted to make sure that she had no more in her  
3 hands before I came down here. So she had been  
4 responding regularly giving us documents as she  
5 found them.  
6 Q. What I'm trying to figure out is this: When you  
7 say "responded to this previously," are you talking  
8 about the letter that is attached?  
9 A. Yes. Sorry. Yes.  
10 Q. Okay. Did she indicate, prior to this letter,  
11 that she had given you everything that you had  
12 asked for?  
13 A. That she had at the time but she was going to  
14 continue to try to find anything else that she  
15 might have.  
16 Q. And the information that she did provide you, do  
17 you know where that information came from?  
18 A. It would have been out of her records. I don't --  
19 I don't know.  
20 Q. So it would have been at her office somewhere?  
21 A. I would assume so or in -- I don't know where she  
22 stores her records. I don't know if it's in her  
23 office or if she has outside storage. I don't know  
24 that.  
25 Q. Okay. Do you know whether or not she obtained any

21

1 of the information from other sources, from sources  
2 outside of Select & Pay?  
3 A. I don't know. I don't believe so, but I don't  
4 know. I believe this was all done from her --  
5 documents that she has.  
6 Q. So everything that she's produced to you so far,  
7 it's your understanding, came from her records?  
8 A. That's my understanding, yes.  
9 Q. Okay.  
10 MR. MANISHIN: Just for clarity, by  
11 "her," it would also be the records of her  
12 company, Select & Pay. You don't know mean  
13 Janet Lima personally.  
14 MR. JENSEN: Understood. Understood.  
15 When I say "her," at least at this point I  
16 mean Select & Pay.  
17 MR. MANISHIN: Thank you.  
18 BY MR. JENSEN:  
19 Q. One of the topics that Janet Lima, on behalf of  
20 Select & Pay -- well, actually, in this letter,  
21 Plaintiff's Exhibit 10 dated June 22, 2006, on the  
22 second page, Rint 3 says, "Global NAPS, Inc.'s  
23 average revenue per month." Do you see that,  
24 Mr. Gangi?  
25 A. Yes.

22

1 Q. And counsel in that letter -- well, let me back up  
2 for a second. Why is counsel for Select & Pay  
3 responding to your e-mail and not Janet Lima?  
4 A. I believe there is an agreement between the parent  
5 company, Ferrous Miner, and Select & Pay that  
6 outlines how they need to produce documents if  
7 requested.  
8 Q. Is Select & Pay affiliated with Ferrous Miner?  
9 A. Select & Pay is --  
10 MR. MANISHIN: I think he means  
11 affiliated in terms of ownership.  
12 A. No, not for ownership. Select & Pay works for  
13 Ferrous, the parent company.  
14 BY MR. JENSEN:  
15 Q. Doing the same thing that it does for Global NAPS,  
16 Inc.?  
17 A. Yes.  
18 Q. So there's an agreement somewhere that says, if  
19 documents are produced, they have to be produced  
20 through counsel? Is that the agreement?  
21 A. I'm not sure if it says that exactly, but there is  
22 some provision and agreement between Ferrous and  
23 Select & Pay for document production that  
24 references them getting their own counsel to make  
25 sure they're not giving out documents that would be

23

1 inappropriate, I guess.  
2 Q. Okay. Is this the first time that this law firm  
3 has corresponded with anybody from GNAPS with  
4 regard to the document request that you gave on  
5 June 2nd?  
6 A. To the best of my knowledge, yes.  
7 Q. So prior to that letter, was Janet Lima giving you  
8 information outside of that law firm?  
9 MR. MANISHIN: Calls for speculation.  
10 But if you know, please answer.  
11 A. I don't know the answer to that. I don't know if  
12 she ran it through them first or not.  
13 BY MR. JENSEN:  
14 Q. Did she mention them at all during that period of  
15 time between when you requested the information and  
16 when that letter came to Mr. --  
17 A. Not to me, no.  
18 Q. So going back to Point Number 3 on the second page  
19 of that letter talking about the revenue per month,  
20 counsel writes, "Please see bank statements  
21 provided by Select & Pay." Do you see that?  
22 A. Okay.  
23 Q. What does that mean?  
24 A. I believe we requested bank statements prior to  
25 this that we obtained through Select & Pay, so I

24

1 can only assume that that's what she's talking  
2 about, the records she had given to us, bank  
3 statements that she had given to us before to  
4 provide to you.  
5 Q. Okay. And those are the bank statements that you  
6 provided to us?  
7 A. Yes.  
8 Q. Okay. So are they saying that we are supposed to  
9 figure out what your monthly revenue -- what  
10 Global's monthly revenue is based on the bank  
11 statements?  
12 A. It appears that's what it says, yes.  
13 Q. Okay. Looking at Paragraph Number 5, which  
14 appears to be -- I'll quote it. "Accounting ledger  
15 sheets and other documents concerning the transfer  
16 of assets and equipment from Global NAPS, Inc. to  
17 Global NAPS Networks, Inc. and any other  
18 companies." The response to that is: "Please see  
19 the documents produced." Do you have those  
20 documents?

21 MR. MANISHIN: Let me make a statement  
22 for the record. I discussed this with my  
23 client. I don't want to go over the substance  
24 of the discussion for privilege reasons, but  
25 it became apparent at the end of that

25

1 discussion that neither Mr. Gangi nor my law  
2 firm have received any of the accounting  
3 ledgers from Select & Pay or from the  
4 accounting firm, which you'll talk about  
5 later. So I do not know what that reference  
6 is, but all the documents that we received  
7 from Select & Pay through Mr. Gangi have been  
8 produced to you in addition to the ones that  
9 have been brought today. So I don't think  
10 there's any ledger entries in there. I asked  
11 Ms. Miller of my office to corroborate that.  
12 I've not had a chance to talk to her this  
13 morning, but I suspect that there are none,  
14 but I've still been pressing the company to  
15 try to get them from the accountants and the  
16 bookkeeper.

17 BY MR. JENSEN:

18 Q. Mr. Gangi, do you have any idea why they would have  
19 responded that they produced this information when,  
20 in fact, they didn't?

21 A. No, and I haven't had a chance to talk to Ms. Lima  
22 after we received this letter either, so I don't  
23 know what that response is.

24 Q. Okay. Is it your understanding that there are  
25 such documents that do exist?

26

1 A. Well, it appears from the letter that she's saying  
2 there is. I have not seen them, so I can't tell  
3 you whether they do or don't exist.

4 Q. Have you ever seen these documents before, and I'm  
5 not saying -- strike that.

6 Have you ever seen account ledgers for Global  
7 before?

8 A. No.

9 Q. Have you ever seen any documents concerning the  
10 transfer of assets or equipment from Global NAPS,  
11 Inc. to Global NAPS Networks at any time?

12 A. No. I would have no reason to see that.

13 Q. Okay. Do you know whether or not those documents  
14 exist?

15 A. Which documents in particular?

16 Q. It would be the documents concerning the transfer  
17 of assets and equipment from Global NAPS, Inc. to  
18 Global NAPS Networks, Inc.

19 A. If there was a transfer of equipment between the  
20 two companies, there would definitely be an entry  
21 in a ledger at the time. Whether we still have  
22 those ledgers or not, I can't tell you. It  
23 depends on when the equipment was transferred. If  
24 it was many years ago, chances are they don't exist  
25 anymore; but at the time the transfer was done,

27

1 they certainly did exist.

2 Q. And you're positive about that?

3 A. Yes.

4 Q. So you're positive that any transfer of assets or  
5 equipment from Global NAPS, Inc. to Global NAPS  
6 Networks generated a document or an entry in a  
7 document?

8 A. An entry, a ledger or journal entry, yes.

9 Q. Then, looking at Paragraph Number 6 on the same  
10 page, it asks about accounting ledger sheets and  
11 other documents concerning the transfer of assets  
12 and equipment from Global NAPS Networks, Inc. and  
13 any other companies to Global NAPS, Inc., and the  
14 response is: "Please see the documents produced."  
15 Is it your same position that those documents were  
16 not found in the documents that were produced by  
17 Select & Pay?

18 MR. MANISHIN: Yes. We have the same  
19 problem with that response because they've not  
20 been produced either to the company or to  
21 counsel, and I will tell you, Mr. Jensen,  
22 given the sensitivity of this, I've been  
23 pressing the company very hard to get those  
24 ledger entries.

25 BY MR. JENSEN:

28



1 Q. Mr. Gangi, do you know whether any such documents  
2 do exist?

3 A. Again, it's the same as the last question. If  
4 there was a transfer between the companies, then it  
5 would have been a ledger or journal entry. So at  
6 the time, the document would have existed; and,  
7 again, depending on when it was done, if it was  
8 many years ago, I'm sure we still don't have them.  
9 If it was something recently, yes, we should have  
10 them.

11 Q. And when you say "recently," what do you mean by  
12 recently?

13 A. Last year.

14 Q. So within the last year. So you would have a  
15 record of that?

16 A. Right; and I'm not aware of any transfer between  
17 the companies, Global, Inc. and any of the other  
18 companies, within the last year. So there may not  
19 be anything to provide to you because there may not  
20 have been a transfer in the last year.

21 Q. And, again, you're positive that there would be  
22 documents in some form of the transfer of assets  
23 and equipment from Global NAPS Networks, Inc. and  
24 any other companies to Global NAPS, Inc.; is that  
25 right?

29

1 A. That is what has been represented to me, yes.  
2 There would be a journal entry.

3 Q. And who represented that to you?

4 A. I talked with our CFO, Ann Hartman.

5 Q. What did you talk to Ann Hartman about?

6 A. Specifically that, journal entries, how it works.

7 Q. And what did Ann Hartman tell you?

8 A. Exactly what I've told you. When it happens,  
9 there would have been a journal entry.

10 Q. How long has Ann Hartman been — strike that.  
11 How long has Ann Hartman been the CFO for  
12 Global?

13 A. Since its inception.

14 Q. Does Ann Hartman work for or provide services for  
15 any of the other Global entities?

16 A. I don't believe so.

17 Q. Is Ann Hartman paid by Global?

18 A. Yes.

19 Q. Did Ann Hartman tell you anything else?

20 A. We just had a general conversation on — I'm not an  
21 accountant as I told you before — on how it works  
22 within Global.

23 Q. And when you say "how it works within Global,"  
24 meaning the --

25 A. Things such as this, ledger entries, how things

30

1 would be accounted for in a very broad sense.

2 Q. That's between the various Global entities?

3 A. Within Global and between the entities, yes.

4 Q. So if a transfer of assets did happen at some  
5 point, would Ann Hartman have been the one that  
6 documented that?

7 A. No. That would have been documented by the  
8 bookkeepers.

9 Q. Select & Pay?

10 A. Yes.

11 Q. And has that been the case since the inception of  
12 Global?

13 A. It would be the — Janet, as I told you before,  
14 used to work for Global. This was her job since  
15 the inception of Global, yes; and now she's out on  
16 her own, and she's still doing that service for us.

17 Q. So Janet Lima, while she was an employee for  
18 Global, would document the asset transfers?

19 A. Yes.

20 Q. And while Janet Lima was at Global, was she also  
21 working for any of the other Global entities?

22 MR. MELICK: Is this beyond the scope?

23 MR. MANUSHIN: Not just yet.

24 A. I'm not sure on that.

25 BY MR. JENSEN:

31

1 Q. What was Janet Lima's position while she was  
2 working for Global?

3 A. Bookkeeper, same as it is today.

4 Q. Do the other entities have a different bookkeeper?

5 A. Not that I'm aware of, so my assumption would be  
6 that she did do the bookkeeping for all the Global  
7 entities.

8 Q. Prior to Select & Pay, your bookkeeper was  
9 in-house, and that was Janet Lima?

10 A. Yes.

11 Q. You never outsourced that service prior to Select &  
12 Pay?

13 A. No.

14

15 (Plaintiff's Exhibit No. 14,  
16 two-page printout from  
17 New Hampshire Corporation  
18 Division web site,  
19 marked for identification.)

20

21 BY MR. JENSEN:

22 Q. Mr. Gangi, I'm going to show you what's been marked  
23 as Plaintiff's Exhibit 14. Do you see that  
24 document? (Handing.)

25

32

(Witness reviews document.)

1  
2  
3 A. Okay.  
4 Q. For the record, this document is from the New  
5 Hampshire Corporation Division.  
6 A. Okay.  
7 Q. And do you see the name on that?  
8 A. Select & Pay.  
9 Q. Is there a date that Select & Pay was, I guess,  
10 incorporated? An entity creation date?  
11 A. 6-16-2005.  
12 Q. So about a year ago? June of 2005?  
13 A. That's what this says, yeah.  
14 Q. Okay. And is that about the time that Global  
15 started using Select & Pay as its bookkeeper?  
16 A. Yeah. It's been about a year since she's been on  
17 her own, yes.  
18 Q. Is that the date, on or about that date -- maybe  
19 not that exact date, but is that the date or around  
20 the date that Janet Lima stopped working for  
21 Global?  
22 A. Yeah. Like I said, it's been about a year. So  
23 this is right in that time frame, so that's  
24 probably pretty close.  
25 Q. So after the middle of June, 2005, Janet Lima was

33

1 no longer an employee of Global; is that right?  
2 A. Right.  
3 Q. Looking down a little bit further at the registered  
4 agent, can you tell me the name of the registered  
5 agent?  
6 A. It says Samantha Holbrook.  
7 Q. Okay. And what is the office address?  
8 A. 1 Sundial Avenue, Manchester, New Hampshire.  
9 Q. Do you know who Samantha Holbrook is?  
10 A. She is one of the administrative girls for one of  
11 the Global companies, but I'm not sure which one.  
12 Q. Okay. Do you know what department she is the  
13 administrative person for?  
14 A. No, I don't. I could find out, but I don't know  
15 off the top of my head.  
16 Q. Would it be the legal department?  
17 A. Again, I don't know. I'd be guessing. I can  
18 find out for you for sure.  
19 Q. Do you know whether Samantha Holbrook has an office  
20 at 1 Sundial Avenue, Manchester, New Hampshire?  
21 A. I don't believe so.  
22 Q. Who has an office at 1 Sundial Avenue in  
23 Manchester, New Hampshire?  
24 A. Me.  
25 Q. Is that your home office?

34

1 A. No, that's our office up in Manchester.  
2 Q. You say "our office." Which --  
3 A. Global.  
4 Q. Global NAPS, Inc.?  
5 A. I'm not sure if Global NAPS, Inc. -- I know  
6 Networks has their equipment in there. I'm not  
7 sure if my office there is with Networks or with  
8 Inc., but it's one or the other.  
9 Q. Would it be Global NAPS New Hampshire?  
10 A. It could be as well.  
11 Q. Okay. Regardless, it's one of the Global  
12 entities?  
13 A. One of the Global entities, yes. I'm just not sure  
14 which one.  
15 Q. Okay. Do you know whether or not Samantha  
16 Holbrook is an agent or registered agent for any of  
17 the other -- any of the Global entities?  
18 A. I know Samantha was doing a lot of filings for the  
19 different companies. I'm not sure if she was a  
20 registered agent on any others or not. I'm not  
21 sure what a registered agent does, but . . .  
22 Q. All right. But Samantha Holbrook is an employee of  
23 Global; is that right?  
24 A. Yes, one of the Global companies. Yes.  
25 Q. One of the Global companies?

35

1 A. Yes. I don't know which one. I can find out for  
2 you. I can make a phone call during one of the  
3 breaks and find out. I just don't know which one  
4 it is.  
5 Q. Do you know whether it's all of them?  
6 A. I don't know.  
7 Q. Okay. Can you tell me why, if you know, Samantha  
8 Holbrook is the registered agent for Select & Pay?  
9 A. I have no idea.  
10 Q. Were you involved in the process of designating  
11 Samantha Holbrook as the agent for Select & Pay?  
12 A. No.  
13 Q. Do you know who was?  
14 A. No, I don't.  
15 Q. What is Janet Lima's position at Select & Pay, if  
16 you know?  
17 A. I think she's the president of the company.  
18 Q. Okay. Is she the one that started the company?  
19 A. Yes.  
20 Q. Did Global or any of the Global entities have any  
21 role in the startup of Select & Pay?  
22 A. No.  
23 Q. No financial role?  
24 A. No.  
25 Q. Did you personally have any role in the startup of

36

1 Select & Pay?  
 2 A. No.  
 3 Q. Do you know why Janet Lima started Select & Pay?  
 4 A. Wanted to get out on her own.  
 5 Q. How do you know that?  
 6 A. We talked about it before she went out on her own.  
 7 Q. What did she tell you?  
 8 A. That she wanted to try to expand what she was doing  
 9 and get a bigger customer base.  
 10 Q. Does she have other customers other than the Global  
 11 entities?  
 12 A. My dealings with Janet are strictly for Global  
 13 companies. What she does outside of that I'm  
 14 unaware of.  
 15 Q. How was the decision made to use Select & Pay as  
 16 the billing company for Global?  
 17 A. As I said, she's been doing it since our inception.  
 18 So it's just natural that we would have her keep  
 19 doing it when she was out on her own. She did a  
 20 fine job then, and she does a fine job now. No  
 21 sense changing.  
 22 Q. Do you know of any other Select & Pay employees  
 23 other than Janet Lima?  
 24 A. I don't know if there are any. She may be the  
 25 only one, but I don't know. I'd be guessing.

37

1 She's the only one I've ever dealt with.  
 2 Q. Have you ever been to her office before?  
 3 A. In Salem? No, I have not been there.  
 4 Q. Does she have an office somewhere else?  
 5 A. Not that I'm aware of, no.  
 6 Q. Does she use Global's offices in Massachusetts?  
 7 A. She'll come down to collect paperwork or whatever  
 8 down to Quincy. Our banking is still done -- some  
 9 of it is done at Quincy, payroll.  
 10 Q. Do you know when Janet Lima -- strike that.  
 11 Was Janet Lima on Global's payroll before she  
 12 started Select & Pay?  
 13 A. Yes.  
 14 MR. MANISHIN: By Global, he's referring  
 15 to Global MAPS, Inc.  
 16 A. I don't know the answer to that. I can find out,  
 17 but I'm not sure whose payroll she was on.  
 18 BY MR. JENSEN:  
 19 Q. But you told me she was the bookkeeper for Global;  
 20 is that right?  
 21 A. Yes. Yes, as well as the other companies. I'm  
 22 pretty certain, as we're talking about this, she's  
 23 been doing -- she was doing the other companies  
 24 before, and now she's continuing to do them as  
 25 well, so . . .

38

1 Q. Okay. So she was on the payroll of one of the  
 2 Global entities?  
 3 A. I believe one of the Global entities, yes.  
 4 Q. Do you know when she stopped being on the payroll  
 5 of whichever Global entity it was that was she on  
 6 the payroll of?  
 7 A. I would have to assume it was the same time that  
 8 she went out on her own, so roughly a year ago.  
 9 Q. In terms of what Select & Pay does for Global --  
 10 and I guess -- well, let me ask this: Does Select  
 11 & Pay also do the bookkeeping for the other Global  
 12 entities?  
 13 A. To the best of my knowledge, yes.  
 14 Q. Okay. So she essentially just switched her role  
 15 from employee of the Global entities to a separate  
 16 corporate entity? Is that a safe statement?  
 17 MR. MANISHIN: Objection as to form.  
 18 BY MR. JENSEN:  
 19 Q. I'll rephrase it. In other words, Ms. Lima used  
 20 to be an employee with the Global entities; is that  
 21 right?  
 22 A. Yes.  
 23 Q. She opened up her own company; is that right?  
 24 A. Yes.  
 25 Q. Okay. And continued in that new company doing

39

1 what she did as an employee of the Global entities;  
 2 is that right?  
 3 A. Yes.  
 4 Q. All right. With respect to what Select & Pay does  
 5 for Global and the various Global entities, to whom  
 6 does Select & Pay issue bills?  
 7 A. That I don't know, but, again, I can find out for  
 8 you.  
 9 Q. Would it be the --  
 10 A. I don't know if it's Ferrous or if it's one of the  
 11 other Global entities or not. I know her  
 12 relationship is with Ferrous. I'm not sure --  
 13 MR. MANISHIN: I think you guys are  
 14 confusing each other.  
 15 BY MR. JENSEN:  
 16 Q. Well, tell me about that while you brought it up,  
 17 the relationship with Ferrous and Select & Pay.  
 18 A. That's who she works for, the parent company.  
 19 Q. Okay.  
 20 MR. MANISHIN: I believe Mr. Jensen was  
 21 referring to the bills issued by Select & Pay  
 22 not for payment of their services but for  
 23 payment of --  
 24 A. Oh, I thought you were talking about payment to  
 25 Select & Pay.

40

1 BY MR. JOHNSON:

2 Q. I'll get to that, too.

3 A. Okay.

4 Q. While you're on that, why don't we just go down  
5 that road. How does Select & Pay bill Global for  
6 its services?

7 A. I'm not sure on that. Like I said, the  
8 relationship with Select & Pay is between Ferrous  
9 and Select & Pay, and how they handle payments from  
10 the other companies I don't know.

11 Q. Okay. So you don't know how -- you think Ferrous  
12 Miner may pay Select & Pay for the services it  
13 provides to Global?

14 A. They may. I know that's what the relationship is,  
15 but I'm not certain on that.

16 Q. Okay. Do you know whether or not Global pays  
17 Select & Pay any money directly?

18 A. I don't know.

19 Q. Who would know that?

20 A. I'd have to ask Janet who's paying her, where the  
21 funds come from.

22 Q. Moving back to the question I originally asked,  
23 which is: Who does Select & Pay issue bills to --  
24 and, by that, I mean customers, vendors -- pardon  
25 me -- not vendors but customers --

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1 A. So the Global -- when you say bills, you're not  
2 talking about Select & Pay's bills. You're talking  
3 about bills on behalf of Global companies?

4 Q. Correct. As I understand it, Select & Pay is the  
5 entity that receives customer checks after Select &  
6 Pay issues bills or invoices to the customers; is  
7 that --

8 A. Yeah. Select & Pay issues an invoice on behalf of  
9 either Global NAPS, Inc. for intercarrier  
10 compensation or Global NAPS New Hampshire for  
11 services to our customers. Is that what you're  
12 asking?

13 Q. Right. So for every customer that Global has,  
14 Select & Pay will issue that bill to that customer?

15 A. On behalf of either Global NAPS New Hampshire or  
16 Global NAPS, Inc. or whichever of the operating  
17 companies it is.

18 Q. Right; including Networks?

19 A. Networks and Realty; right.

20 Q. So to the extent I have a list of customers that  
21 you've provided me with, which you have -- I don't  
22 know if it's complete or not, but you've provided  
23 me with a list of customers and some contracts.  
24 Each one of those would get a bill from Select &  
25 Pay; is that right?

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1 A. Well, the bill would be from Global. It would be  
2 sent out by Select & Pay.

3 Q. Sent out by Select & Pay?

4 A. Right.

5 Q. And then the check would be sent from the customer  
6 back to Select & Pay?

7 A. I believe all of the mail comes in to Quincy.

8 Q. Okay.

9 A. I don't think the check is sent directly to Select  
10 & Pay.

11 Q. How do the checks go from Quincy to Select & Pay?

12 A. I don't know if they send them or if she comes down  
13 to pick them up. I'm not sure of the logistics of  
14 how the physical checks get from the mailbox to the  
15 bank.

16 Q. Okay. So when she sends out the bills, she says  
17 send the payment to --

18 A. Right; there's an address on the bill, and I  
19 believe it's a P.O. box in Quincy that everything  
20 gets sent to.

21 Q. And these customers would be Global's customers;  
22 correct?

23 A. Any one of the Global companies, yes.

24 Q. It could be any one of the Global companies. Okay.  
25 Does Select & Pay issue bills to anyone other than

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1 customers of the Global entities? Let me rephrase  
2 that and qualify it. Does it issue bills to  
3 anyone else other than the customers but not for  
4 services rendered on behalf of Global or Ferrous  
5 Miner or any of the related entities?

6 A. I don't -- I am not sure what you are really asking  
7 me.

8 Q. I'm just asking if there are any bills that go out  
9 from Select & Pay to anybody else other than  
10 customers.

11 A. On behalf of Global?

12 Q. On behalf of Global or the Global entities.

13 A. Not that I'm aware of, no.

14 Q. Do you --

15 A. I mean the recip. comp. bills and services is  
16 pretty much what we provide, so those would be the  
17 two things that --

18 Q. So those would be the customers?

19 A. Right.

20 Q. For Networks, it would be -- would it be something  
21 different?

22 A. That's services.

23 Q. Services?

24 A. Right.

25 Q. And Realty would be --

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1 A. Well, services, rack rental, that kind of stuff.  
 2 Q. -- lease -- would they send out the lease requests?  
 3 A. Lease to -- for rack rental you mean?  
 4 Q. Well, I guess it could be rack rental or property  
 5 rental.  
 6 A. Yeah.  
 7 Q. Okay. Do you know whether or not Select & Pay  
 8 issues any bills to any entity in Connecticut?  
 9 A. I don't believe they do, no, other than SBC for  
 10 intercarrier compensation.  
 11 Q. Okay. But that may not be Connecticut; right?  
 12 Maybe that goes to a different address?  
 13 A. Yeah, that could go to a different address.  
 14 Q. Other than, for example, SBC, AT&T, you're not  
 15 aware of any customers that are located in  
 16 Connecticut?  
 17 A. No, I'm not.  
 18 Q. And that would be customers for any of the Global  
 19 entities?  
 20 A. Yes.  
 21 Q. Does Select & Pay also pay expenses for the various  
 22 entities?  
 23 A. To -- internal expenses? External expenses?  
 24 Expenses in general? Yes, they would.  
 25 Q. Let's start with external expenses. Vendors, for

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1 example?  
 2 A. Yes.  
 3 Q. Okay. So --  
 4 A. Through Global's -- whichever one of the Global  
 5 entities it would be -- checking account.  
 6 Q. Whichever Global entity's -- could you say that  
 7 again?  
 8 A. Are responsible for the bill, they would pay it --  
 9 Select & Pay would issue a check from that entity's  
 10 checking account to the vendor.  
 11 Q. Okay. And isn't that checking account Global NAPS  
 12 New Hampshire, an account in its name?  
 13 A. I believe there are also checking accounts set up  
 14 for the individual entities, such as Realty,  
 15 Networks and Inc.  
 16 Q. Okay. I thought you testified last time that the  
 17 Global NAPS New Hampshire, Inc. account in its name  
 18 was the --  
 19 A. Issued the checks.  
 20 Q. Issued the checks, but it was also the repository  
 21 for all the revenue or payments from customers for  
 22 all of the entities; is that true?  
 23 A. Yes, it is, but there's one more step to it than I  
 24 was aware of. I found this out after trying to get  
 25 all this together: That there are the individual

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1 accounts now for the separate Global entities. So  
 2 everything I told you was correct, except there's  
 3 one more step. Instead of a check being issued --  
 4 say if Realty had a bill. Instead of Global NAPS  
 5 -- the money would come into Global NAPS New  
 6 Hampshire. It would be allocated and journalized.  
 7 If Global NAPS Realty had a bill to pay, the money  
 8 would go from New Hampshire into Realty's checking  
 9 account, and then the check would be issued from  
 10 Global NAPS Realty's checking to whoever the bill  
 11 was due to.  
 12 Q. Okay. And when you say, when the money comes in,  
 13 it was allocated and journalized, what does that  
 14 mean?  
 15 A. The accounting was done on it, the breakdown of the  
 16 funds.

MR. MANISHIN: Mr. Jensen, let me  
 interrupt you at this moment. Pursuant to  
 the Judge's instructions at the last  
 conference, I've permitted you to ask general  
 questions about the process; but you  
 understand that, if you want information from  
 Mr. Gangi or the company about the actual  
 revenues of the other entities or the amount  
 of these costs being paid, that you cannot

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1 inquire at this deposition.  
 2 MR. JENSEN: I am not -- I do not plan on  
 3 asking about the actual amounts of revenue  
 4 from the other companies. That's correct.  
 5 What I'm trying to do is figure out how  
 6 everything works together, and part of that is  
 7 that there's this one Global account that I  
 8 need to figure out how it works and how it's  
 9 allocated.  
 10 BY MR. JENSEN:  
 11 Q. That was helpful. Thank you. It goes into the  
 12 New Hampshire account, and then -- we'll use Global  
 13 as an example -- there's another account that  
 14 Global has set up, and we'll probably talk about  
 15 that in a few minutes with the bank account  
 16 statements that you've provided us. It goes into  
 17 another account within the specific entities, and  
 18 then that account is used to pay for the various  
 19 expenses of that particular entity?  
 20 A. Right. I believe those are all zero-balance  
 21 accounts. Money goes in and money goes out.  
 22 There's no actual cash held in those.  
 23 Q. Okay. Who makes the payments from those accounts?  
 24 A. The transfer of funds between the accounts?  
 25 Q. Well, it would be the initial transfer from Global

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1 New Hampshire and then -- that would be the first  
2 one. Who makes that -- who makes the transfer from  
3 Global New Hampshire to the specific accounts  
4 within the Global entities?

5 A. That would be Select & Pay.

6 Q. And then Select & Pay also issues the check for  
7 whatever expense that needs to be paid from the  
8 account that's within the entity?

9 A. Yes.

10 Q. So Select & Pay has signing authority on the checks  
11 for Global New Hampshire as well as the -- why  
12 don't we just do Global New Hampshire first.

13 A. I believe so. I believe so.

14 Q. And Select & Pay has the signing authority for the  
15 bank that is used to pay expenses within each  
16 entity?

17 A. I believe they do, yes.

18 Q. So Select & Pay would have a list of all the  
19 various expenses that are from each entity or are  
20 owed by each entity?

21 A. Yes.

22 Q. Okay. Is that something that you keep internally  
23 at Global?

24 A. No.

25 Q. Okay. So as you sit here today, do you know what

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1 Global's expenses are?

2 A. No, I don't.

3 Q. Okay.

4 A. I requested that from Select & Pay. I'm sure  
5 they'll get it to us. It just hasn't come yet.

6 Q. Do you know whether or not Select & Pay sends any  
7 checks or makes any payments to any person or  
8 entity in Connecticut?

9 A. I don't believe any person. I'm not sure on  
10 entity. I don't know if we have any co-location  
11 or anything that needs to be paid for. I'm sure  
12 there is if we have equipment here, but I'm not  
13 sure who that would be with.

14 Q. So co-location would be an example of --

15 A. That equipment list that we provided before, all  
16 that equipment has to live somewhere. If it's not  
17 in one of our huts like we talked about before, it  
18 has to be in someone else's building, but I'm not  
19 sure who that someone else's building is.

20 Q. Okay. Other than co-location, are there any  
21 vendors that are located in Connecticut that Global  
22 uses?

23 A. Other than SBC, no, not that I'm aware of. There  
24 may be, but I'm not aware of them.

25 Q. Does Select & Pay ever use the Global NAPS New

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1 Hampshire bank account to make expense payments for  
2 the various entities?

3 A. I believe they may have in the past, but they've  
4 transitioned to the separate accounts. That's why  
5 I explained it last time that all the payments went  
6 out of Global NAPS New Hampshire. I think that's  
7 how it was done in the past, but they've  
8 transferred to the -- transitioned to the  
9 zero-balance accounts for each of the individual  
10 companies, so that's how they're doing it now.

11 Q. About when did that change happen?

12 A. I don't really know. I'd say probably within the  
13 last year or so.

14 Q. And we would be able to probably check that by  
15 looking at the dates on some of the bank accounts  
16 that were opened up?

17 A. Sure.

18 Q. Okay. I don't know if you told me this or not,  
19 but why was that done that way? Why was that set  
20 up so there's another step for each entity?

21 A. Just an additional separation.

22 Q. What is the benefit to Global or the other Global  
23 entities for that?

24 A. Something like today. If I could hand you a bunch  
25 a checks from Global NAPS, Inc., it would make life

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1 a lot easier for everybody. Do we need it  
2 internally? Probably not.

3 Q. Okay. But up until perhaps a year ago, everything  
4 came out of the Global NAPS New Hampshire account?

5 A. Yes.

6 Q. Other than Select & Pay -- let me back up. Is it  
7 Select & Pay that has signing authority on the  
8 Global NAPS New Hampshire account, or is it Janet  
9 Lima personally?

10 A. I do not have the answer for that, but I can find  
11 out for you.

12 Q. Okay. Other than either Select & Pay or Janet  
13 Lima, who else has signing authority on the Global  
14 NAPS New Hampshire account?

15 A. I'm fairly certain that -- I know I do. I'm  
16 fairly certain that my brother does, and I'm not  
17 sure if Mike Couture does or not, but I believe he  
18 does. It would be the three officers.

19 Q. Your brother is Frank Gangi?

20 A. Frank, yes.

21 Q. Who is the contact -- strike that.

22 Who at Global is the contact with Select &  
23 Pay? Who deals with Janet Lima?

24 A. It would be me. If there was any change in the  
25 billing for a particular customer, that would come

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1 from our sales department. Robert, our  
2 administrative guy, would get the mail together  
3 that would go up to them. There's not a  
4 tremendous amount of interaction because we're  
5 pretty consistent. Things don't change too much.  
6 Our customer base is what it is, and there might be  
7 small changes but nothing on a daily basis anyway.  
8 Q. In terms of where -- how does Janet Lima -- how  
9 does Select & Pay get the information to know who  
10 to bill, when to bill and how much to bill?  
11 A. As I said, we don't change much, so the billing has  
12 been going on, you know, for a long while. So it's  
13 just the same consistent bills going out every  
14 month to the same fairly consistent customer base.  
15 If a customer changes the bill, adds some service  
16 or subtracts some service, then Brad would, you  
17 know, just pick up the phone and call Janet and  
18 say, hey, add a PRI to whoever's account or take a  
19 PRI away or add some racks or take some racks away,  
20 whatever the situation was, but there's not a lot  
21 of change.  
22 Q. Okay. So if a new customer comes in, are you  
23 saying that Brad --  
24 That's Brad Masuret?  
25 A. Right.

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1 Q. -- would call up --  
2 A. He'd call Janet.  
3 Q. -- Janet and say, "I've got a new customer here.  
4 Here is the information?"  
5 A. Right.  
6 Q. Okay. What about when -- this is something we  
7 talked about before -- there was some transfer or  
8 there is, it sounds like, an ongoing transfer of  
9 customers from Global NAPS, Inc. to Global NAPS  
10 Networks. Does that affect what Janet Lima does at  
11 Select & Pay in terms of billing customers?  
12 A. I think that would just affect -- you know, see, we  
13 don't have any -- I'm not aware of any contracts  
14 that are still in their original term. As I said,  
15 once they go past the original term, they're  
16 assigned to Networks. So I think, for quite a  
17 while now, everything has pretty much been in  
18 Networks' hands, so there's not a lot of change in  
19 that. I mean, there may be onesies, twosies that  
20 I'm just not aware of that are still out there, but  
21 I can't think of any. This stuff has been in  
22 Networks' hands for a while and continues to stay  
23 there, so there's not a lot of change.  
24 Q. So you think there are only a few customers left at  
25 Global NAPS, Inc.?

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1 A. I don't really think there are any, but there may  
2 be one or two that I'm just not aware of.  
3 Q. In terms of the payments for expenses that Select &  
4 Pay makes, how does that work? How does Janet  
5 Lima at Select & Pay know when to pay and who to  
6 pay and how much to pay?  
7 A. For?  
8 Q. For any expense that is within, for example,  
9 Global.  
10 A. If it was a vendor's bill, like something say --  
11 for Global, Inc. are we talking about?  
12 Q. Right.  
13 A. I'm trying to think of an expense that Global, Inc.  
14 would have on a -- if it's a reoccurring expense,  
15 it's easy. You pay it every month and you  
16 continue to pay it every month. Any new expenses,  
17 I can't really think of any new expenses that she  
18 would have for Inc.  
19 Q. Say a big expense comes in. How would you get  
20 that information to Janet Lima?  
21 A. I'd call her.  
22 Q. Okay. And she would just cut a check?  
23 A. If that's what we determined needed to be done,  
24 sure.  
25 Q. And who would determine that?

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1 A. Myself, my brother and my brother-in-law.  
2 Q. Okay.  
3 A. The three officers.  
4 Q. Is that the same process for the other Global  
5 entities?  
6 A. Yes.  
7 Q. I'm going to move back to Plaintiff's Exhibit 10  
8 that we started on before we started talking more  
9 about Select & Pay.  
10 MR. JENSEN: Can we take a quick break?  
11 MR. MANISHIN: Sure. I will also check  
12 with my office to see whether, in fact, there  
13 were any ledger documents received from Select  
14 & Pay. I don't believe there were, as I said  
15 before.  
16  
17 (Recess taken from 11:45 a.m. to  
18 12:01 p.m.)  
19  
20 MR. MANISHIN: During the break, I was  
21 able to confer with my colleague, Barbara  
22 Miller, who has confirmed, as I believed, that  
23 all documents that have been produced to  
24 Global NAPS by Select & Pay have, in turn,  
25 been produced to counsel for SNET. That

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1 includes a small amount of documents that have  
2 been produced today that have been produced in  
3 nonBates stamp form. To date, we have not  
4 received from Select & Pay the ledger entries  
5 and other accounting documents referenced in  
6 the attorney's letter, which I believe was  
7 marked as Plaintiff's Exhibit 13 -- no -- 10.  
8 So that statement is erroneous.

9 MR. JENSEN: The statement you're  
10 referring to is the statement in the actual  
11 letter in Plaintiff's Exhibit 10 saying that  
12 these documents have been produced?

13 MR. MANISHIN: Well, the inference, when  
14 it says, "Please see previously produced  
15 documents," is that they believe that they've  
16 produced them. They are not in the documents  
17 that have been produced, so there's either a  
18 misunderstanding or a problem which we will  
19 continue to pursue.

20 A. I called my brother as well during the break to ask  
21 him about that to see if he could get some clarity  
22 on it. He's been helping me get these documents  
23 together as well. So I just asked him to see if he  
24 could find out what they were talking about there  
25 so we can figure it out. So hopefully he can get

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1 I don't know if they're full-time or not. She's  
2 doing this as well as doing her daily duties and  
3 she's got to get the lawyer involved, so it's a bit  
4 of a process for her. It might be somewhat  
5 overwhelming.

6 Q. Looking on the third page of this same document,  
7 Paragraph 8 is regarding invoices sent by Global  
8 NAPS, Inc. to customers from 2002 to the present;  
9 and counsel for Select & Pay writes, "Select & Pay  
10 has provided to Global NAPS, Inc. invoices that it  
11 has been able to compile thus far" and that they're  
12 continuing to search for the material. So do I  
13 have all the invoices that Select & Pay has  
14 produced to you guys so far?

15 MR. MANISHIN: I did not specifically  
16 corroborate that, but I did corroborate that  
17 all the documents that have been produced from  
18 Select & Pay either to Global NAPS or directly  
19 to our office have, in turn, been produced to  
20 SNET.

21 MR. JENSEN: For the record, I have not  
22 had an opportunity to look through the  
23 documents that were produced today. I will  
24 try to do that at the lunch break, but it does  
25 appear that at least one of the documents says

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1 an answer for us.

2 BY MR. JENSEN:

3 Q. So your brother Frank is looking into it?

4 A. Yes. He's been helping me through this whole  
5 process.

6 Q. So he's somebody else you consulted in terms of --

7 A. Yes.

8 Q. -- preparing for the deposition and pulling the  
9 documents?

10 A. Yes. I thought I said his name, but if I didn't,  
11 he was.

12 Q. Again, going back to Plaintiff's Exhibit 10,  
13 looking at Paragraph 7 on the second page  
14 responding to the request for financial statements,  
15 Select & Pay writes, "Select & Pay is in the  
16 process of compiling documents responsive to this  
17 request and will provide the responsive documents  
18 when complete." Is it your understanding that  
19 they're in the process of pulling the financial  
20 documents right now?

21 A. Yes.

22 Q. Okay. And have they indicated to you why it has  
23 taken so long to get those documents pulled?

24 A. As I said, you know, I believe Janet is a sole  
25 employee. She may have someone that helps her.

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1 "Invoice" on it to Verizon.

2 MR. MANISHIN: What you have here, just  
3 for the record, is a series of invoices that  
4 actually support the spreadsheets with regard  
5 to Verizon intercarrier compensation that we  
6 previously produced and then some invoices on  
7 a related -- different matter to Qwest.

8 Those are the two categories of invoices, and  
9 they're explained in a declaration of Janet  
10 Lima that she prepared at our request for the  
11 Verizon attachment proceeding where they were  
12 unsuccessful in securing a prejudgment  
13 attachment in the Eastern District of New  
14 York. So I brought all of those materials.

15 BY MR. JENSEN:

16 Q. Is it your understanding, Mr. Gangi, that the  
17 invoices that have been produced thus far are  
18 invoices for reciprocal compensation?

19 A. Yes, intercarrier compensation.

20 Q. And those would be to Verizon, for example?

21 A. For example, yes.

22 Q. Okay. Are you aware of any other invoices that  
23 Select & Pay has provided you -- let me strike  
24 that. Let me make it more clear.

25 Are you aware of any other -- any invoices

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1 other than invoices for intercarrier compensation?

2 MR. MANISHIN: I need to ask you to  
3 clarify that because it's unclear to me  
4 whether you're asking that have been produced  
5 for purposes of this proceeding or are  
6 generated by Select & Pay during the ordinary  
7 course of business.

8 BY MR. JENSEN:

9 Q. We'll do the first one first then in terms of what  
10 Select & Pay has produced to you as part of their  
11 response to your request for information.

12 A. Do you have them --

13 Q. Do we have invoices other than the invoices for  
14 intercarrier compensation?

15 A. Not that I'm aware of, no.

16 Q. Okay. Does Select & Pay generate invoices for  
17 customers other than customers for intercarrier  
18 compensation?

19 A. I don't believe they do. Global's function is to  
20 bill carriers for intercarrier compensation.

21 Q. Okay. Maybe you might not have understood my  
22 question. Select & Pay generates the invoices for  
23 the Global entities; is that right?

24 A. Yes.

25 Q. And Select & Pay sends those invoices out to the

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1 various customers; is that right?

2 A. Yes.

3 Q. Some of those customers are for intercarrier  
4 compensation; is that right?

5 A. Yes.

6 Q. For example, Verizon would be an example of a  
7 customer that would get an intercarrier  
8 compensation bill?

9 A. Yes.

10 Q. Okay. But then there are other types of  
11 customers, for example --

12 MR. MOREIRA: ISPs.

13 BY MR. JENSEN:

14 Q. -- an ISP like Earth Link. Does Select & Pay  
15 generate the invoice that would go out to Earth  
16 Link?

17 MR. MOREIRA: You're just using Earth  
18 Link as an example.

19 MR. JENSEN: Earth link is an example.

20 A. Yes, but that would not -- if there was an invoice  
21 going out to Earth link, it would not be on behalf  
22 of Global NAPS, Inc. It would be on behalf of one  
23 of the other Global entities. So the invoices  
24 that are generated on Global NAPS, Inc.'s behalf  
25 are invoices for intercarrier compensation.

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1 BY MR. JENSEN:

2 Q. So those would be the only invoices generated on  
3 behalf of Global NAPS, Inc.?

4 A. To the best of my knowledge, yes.

5 Q. Okay. When did Global NAPS, Inc. stop providing  
6 telecommunications services?

7 MR. MANISHIN: Excuse me?

8 BY MR. JENSEN:

9 Q. You've said that Global NAPS no longer provides --  
10 all the contracts with customers for ISP, for  
11 example, have been assigned to Networks; is that  
12 right?

13 A. To the best of my knowledge, yes.

14 Q. So the only business Global does is with, for  
15 example, Verizon for recip. comp.; is that right?

16 A. As far as outside billing, yes.

17 Q. Okay.

18 A. Global NAPS still holds the certificates, the  
19 intercarrier agreements.

20 Q. The ICAs?

21 A. Yes.

22 Q. Okay. But it's no longer providing that service?

23 MR. MANISHIN: Objection as to form. I  
24 don't know what "that service" means.

25 BY MR. JENSEN:

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1 Q. It sounds like all the services that Global NAPS  
2 would have provided in the past have now been  
3 assigned to Global NAPS Networks; is that right?

4 A. Other than holding the certificate, yes.

5 Q. Okay. So the only thing that Global does now for  
6 ISP providers is hold a certificate?

7 A. It holds a certificate that allows Networks to  
8 provide telecom services.

9 Q. But Global no longer provides that telecom service;  
10 correct?

11 A. Correct; yes.

12 Q. Just going back to -- well, going back to Select &  
13 Pay, prior to Select & Pay's incorporation in June  
14 of '05 -- about a year ago I think we  
15 established -- where were all the bookkeeping  
16 records kept prior to that time? I'll be  
17 specific. For Global, for example, where were all  
18 the bookkeeping records for Global kept prior to  
19 June, '05?

20 A. I didn't deal with the records then and I don't  
21 deal with them now, so I don't know where they kept  
22 them. I don't know if it was outside storage or  
23 if it was actually kept in one of our facilities.  
24 I just don't know. I don't deal with that.

25 Q. In terms of where they are now, where are the

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1 records for preJune, '05 kept?  
 2 A. If they exist — after a year, I believe it is, for  
 3 most of the stuff, they're destroyed.  
 4 Q. Okay. So you think the bookkeeping records are  
 5 destroyed after a year?  
 6 A. Yeah, I think it's roughly a year. Some of the  
 7 stuff they're obligated to keep longer, but  
 8 anything they're not obligated to keep they get rid  
 9 of.  
 10 Q. Is that a written policy that the Global entities  
 11 have?  
 12 A. I'm not sure if it's written, but it is a policy.  
 13 We just don't have the room for it. That's the  
 14 problem. Paperwork will just consume you.  
 15 Q. But Janet Lima would know where the records were  
 16 kept prior to Select & Pay?  
 17 A. Yes. Yes.  
 18 Q. Okay.  
 19 MR. MANISHIN: Would you mind if I  
 20 interject with one question for the witness on  
 21 the record?  
 22 MR. JENSEN: Perhaps. It depends on the  
 23 question.  
 24 MR. MANISHIN: You can object.  
 25 Did you ask anyone within Global to look

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1 in the various Global offices to see if you  
 2 could locate accounting records that may not  
 3 have been transferred to Select & Pay or  
 4 billing records?  
 5 THE WITNESS: I asked Janet to do that.  
 6 She would have known where they would have  
 7 been in the past, so she was asked to make  
 8 sure there was nothing left behind.  
 9 BY MR. JENSEN:  
 10 Q. So Janet Lima came back to your offices to look  
 11 around for the records?  
 12 A. If she felt the need to, she would have. I know  
 13 she was asked to do it.  
 14 Q. When Janet Lima started Select & Pay, did she take  
 15 all the past bookkeeping records with her to Select  
 16 & Pay?  
 17 A. I believe she did, yes.  
 18 Q. Okay. Do you know whether or not any of the  
 19 bookkeeping records are kept electronically?  
 20 A. Again, I don't do the bookkeeping, so I'd be  
 21 guessing. I don't know the answer to that.  
 22 Q. And Janet Lima would know that?  
 23 A. Yes, she would.  
 24 Q. Okay. When was the last time that you saw Janet  
 25 Lima?

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1 A. Physically saw her? I saw her — what day is  
 2 today? Friday?  
 3 MR. MANISHIN: Yes, today is Friday.  
 4 A. Wednesday.  
 5 BY MR. JENSEN:  
 6 Q. You typically see her how often per month?  
 7 A. A couple times a month.  
 8 Q. Is that because she comes to your office, or you go  
 9 to her office?  
 10 A. Yeah, she comes down to Quincy to gather what she  
 11 needs.  
 12 Q. But her office is up in New Hampshire?  
 13 A. Her office is in Salem, New Hampshire; right.  
 14 MR. MANISHIN: Off the record.  
 15  
 16 (Off-the-record discussion.)  
 17  
 18 BY MR. JENSEN:  
 19 Q. Going back to Plaintiff's Exhibit 10, I'm looking  
 20 at Point Number 9, and the topic is payments made  
 21 for Global NAPS, Inc.'s expenses by any bank or  
 22 other entity. The response is: "Select & Pay  
 23 does not have any information or documents  
 24 responsive to this request." What does it mean by  
 25 "payments made for Global NAPS, Inc.'s expenses by

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1 any bank or other entity?"  
 2 A. Which one are you talking about?  
 3 Q. Number 9.  
 4 MR. MANISHIN: Well, you're asking him to  
 5 interpret the letter from counsel.  
 6 MR. JENSEN: Which, I believe, is quoting  
 7 his letter.  
 8 MR. MANISHIN: Yes. I was just going to  
 9 say, if it's reciting the language from your  
 10 request, then obviously Mr. Gangi can testify  
 11 to what he meant.  
 12 MR. JENSEN: That's what I'm asking.  
 13 BY MR. JENSEN:  
 14 Q. I believe it's just a recitation of what you asked  
 15 for.  
 16 A. I'm not sure why it says "by any bank or other  
 17 entity." All I'm asking for is the expenses of  
 18 Global NAPS, Inc., so I'm not sure why that's in  
 19 there.  
 20 Q. Okay. Do you think maybe she or her counsel  
 21 misunderstood the question that you were asking?  
 22 A. They could have, but we did talk about this. I  
 23 don't remember her specifically asking me about  
 24 that, but I think, if she had a question, she would  
 25 have. She could have misunderstood it, sure. I

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1 misunderstand it and it's my letter.  
 2 Q. The reason I'm asking is because you told me  
 3 before, I think, that Select & Pay pays the  
 4 expenses for the various Global entities including  
 5 Global.  
 6 A. Yes.  
 7 Q. So they would have a record of what expenses were  
 8 paid monthly, yearly, however it's set up?  
 9 A. Yes.  
 10 Q. Okay. So based on her response, it appears that  
 11 she misunderstood the question because she's saying  
 12 they don't have any records like that?  
 13 A. You're right; it does.  
 14 Q. Unless you're asking a different question, and  
 15 that's why —  
 16 A. No. That was my question. It's worded poorly,  
 17 but that's my question.  
 18 Q. When Select & Pay was originally incorporated, do  
 19 you know if their office was always in New  
 20 Hampshire?  
 21 A. I don't know.  
 22 Q. Is Janet Lima from New Hampshire?  
 23 A. I believe she resides in Massachusetts. I don't  
 24 think she's a resident of New Hampshire. I think  
 25 she's a Mass. resident.

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1 Q. Do you know where in Mass.?  
 2 A. I'm not sure.  
 3 Q. Okay. We've been talking about Select & Pay who is  
 4 your current bookkeeper. In terms of obtaining  
 5 financial information, have you also consulted with  
 6 your accountant?  
 7 A. Yes.  
 8 Q. Okay. And have you gotten any response from your  
 9 accountant?  
 10 A. He did send me a — I talked to him last week, and  
 11 he gave me a verbal response that he didn't have  
 12 anything pertaining to this. He also sent me an  
 13 e-mail this morning, which I was not able to print  
 14 out before we got here, basically saying the same  
 15 thing.  
 16 Q. Had you sent him a letter similar to the letter  
 17 that you sent to Janet Lima?  
 18 A. Yeah, almost identical. I think we have it here  
 19 somewhere. Here it is. (Handing).  
 20 MR. MANISHIN: For the record, it's dated  
 21 June 7th.  
 22 MR. JENSEN: Let's have that marked as  
 23 Exhibit No. 15.  
 24  
 25

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1 (Plaintiff's Exhibit No. 15,  
 2 one-page letter dated 6-7-06  
 3 from Richard Gangi to Nardella  
 4 & Taylor with attached one-page  
 5 fax cover sheet,  
 6 marked for identification.)  
 7  
 8 BY MR. JENSEN:  
 9 Q. Mr. Gangi, showing you what's been marked as  
 10 Plaintiff's Exhibit 15, do you see that document?  
 11 (Handing.)  
 12  
 13 (Witness reviews document.)  
 14  
 15 A. Yes.  
 16 Q. Would you tell me what that document is?  
 17 A. This is a fax that I sent to Ed Taylor, our  
 18 accountant, requesting documents that I thought he  
 19 might have that might be responsive to the Court's  
 20 order.  
 21 Q. What's the date on that document?  
 22 A. This is June 7th. I did send one to him prior to,  
 23 same document. It was just sent the same day that  
 24 I sent the one to Select & Pay. I think that was  
 25 the 2nd of June, but for some reason, he didn't get

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1 it. It was faxed to him. When I called him to  
 2 ask him how he's making out with it, he thought I  
 3 had three heads — "What are you talking about?" —  
 4 and we discovered he didn't get it, so I sent it to  
 5 him again.  
 6 Q. And that's the letter —  
 7 A. This is; right.  
 8 Q. — Plaintiff's Exhibit 15?  
 9 A. Right.  
 10 Q. How soon after that letter that you sent to him did  
 11 you speak with him?  
 12 A. Within a few days, he called me to tell me that he  
 13 didn't have anything on this; and, as I said, this  
 14 morning, actually early, he sent me an e-mail reply  
 15 which basically says the same thing. I'll get that  
 16 to you guys. I'll print it out and forward it to  
 17 you.  
 18 MR. MANISHIN: You might want to ask if  
 19 there was an explanation for why he doesn't  
 20 maintain those things in the response.  
 21 It's his deposition. If he doesn't want  
 22 to ask you, he doesn't have to ask you.  
 23 Off the record.  
 24  
 25 (Off-the-record discussion.)

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1  
2 BY MR. JENSEN:  
3 Q. When you spoke to Mr. Taylor, did you go through  
4 the various items that are on your June 7th letter  
5 with him?  
6 A. We did. He went through it item by item.  
7 Unfortunately, I was driving and on my cell phone  
8 with him, so I didn't write anything down from our  
9 conversation.  
10 Q. Okay. And he told you for -- well, let me go  
11 through each one of these. He said he has no  
12 information on Global NAPS, Inc.'s equipment and  
13 its fair market value?  
14 A. Yes.  
15 Q. Did he say why?  
16 A. Yes. It's the same reason for pretty much all of  
17 them. He gets his information from Select & Pay,  
18 and it's not broken out specifically by company.  
19 It's consolidated, the information, before it's  
20 given to him. So he doesn't have specifically  
21 items for strictly Global NAPS, Inc. He deals with  
22 the stuff for tax purposes, and, as you know, it's  
23 all pushed up to Ferrous Miner, the parent, and  
24 done on a consolidated return, and that's how he  
25 receives his information.

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1 A. I know he told me that she sends him the  
2 consolidated entries. I don't know if she -- he  
3 didn't mention her sending him the individual bank  
4 accounts. I can only assume, if he's telling me  
5 he gets the consolidated information, that he  
6 doesn't see the individual accounts.  
7 Q. Okay. How is it that Janet Lima knows to send a  
8 consolidated entry to the accountant?  
9 A. I guess that's what she's always been doing. I  
10 don't know why.  
11 Q. Okay. Who would have originally made that  
12 decision? Would it have been you? Would it have  
13 been your brother? Would it have been  
14 Mr. Couture?  
15 A. It would have been the three of us.  
16 Q. So it would have been by all three of you?  
17 A. Right; but this has been going on since the  
18 beginning of time, so it's not anything that's  
19 happened recently.  
20 MR. MANISHIN: You don't literally mean  
21 the beginning of time. You mean the beginning  
22 of the company?  
23 THE WITNESS: Beginning of the company;  
24 right.  
25 BY MR. JENSEN:

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1 Q. For example, I understand that there's a Global  
2 bank account, and that's the Global New Hampshire  
3 account; is that right?  
4 A. Yes.  
5 Q. Okay. But there are subaccounts for each entity;  
6 is that right?  
7 A. Yes.  
8 MR. MANISHIN: Subaccounts or --  
9 MR. JENSEN: Pardon me.  
10 BY MR. JENSEN:  
11 Q. Bank accounts for each entity.  
12 A. The checking accounts for the individual entities?  
13 Q. Correct.  
14 A. Yes.  
15 Q. And those are used, at least recently, to pay  
16 expenses --  
17 A. Yes.  
18 Q. -- for each entity?  
19 A. Yes.  
20 Q. Does the accountant see the actual bank statements  
21 or -- well, let me -- does the accountant see the  
22 actual bank statements?  
23 A. I don't know. I don't deal with our tax  
24 preparation, so I'm not sure what he actually sees.  
25 Q. Okay. Do you know what Janet Lima sends to him?

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1 Q. But there are some recent changes that happened:  
2 One being that Select & Pay is now the bookkeeper;  
3 correct?  
4 A. Correct.  
5 Q. And the fact that each entity has its own separate  
6 bank account?  
7 A. Correct. That's new.  
8 Q. Were there any discussions about how to address  
9 those issues with a consolidated return?  
10 A. Not that I've been involved in, no.  
11 Q. Do you know who would have been involved in those  
12 discussions?  
13 A. I probably would have been involved in those. So  
14 if I haven't been, I can assume that there haven't  
15 been any. My brother may have -- may have stepped  
16 in and had some discussion. I'm just not aware of  
17 it.  
18 Q. And it's your understanding that your accountant's  
19 explanation applies to each one of these topics  
20 that you've requested information on from him?  
21 A. Yes.  
22 Q. So he doesn't know anything about the specific  
23 assets that Global has?  
24 A. Specifically Global NAPS, Inc., no, because he  
25 deals with the parent. It's all one big mess when

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1 it gets up there.  
2 Q. He doesn't have accounting ledger sheets showing  
3 asset transfers between the various entities?  
4 Isn't that something that would be included in a  
5 consolidated financial statement?

6 MR. MANISHIN: Objection. Lack of  
7 foundation.

8 If you know.

9 A. I don't know. Like I said, I'm not an accountant.  
10 I'm not a bookkeeper. I don't know what should or  
11 shouldn't be transferred from one to the other.

12 MR. MANISHIN: I will say this to your  
13 inquiry: I know that Mr. Taylor's firm is  
14 engaged by Ferrous Miner to prepare tax  
15 accounting records, not business accounting  
16 records; and there's a difference frequently  
17 between accounting for tax purposes and  
18 accounting for GAAP purposes. As a private  
19 company, GAAP does not necessarily apply to  
20 either Ferrous or any of the subs. So if you  
21 understand the difference between the two, it  
22 sort of makes sense why he doesn't have the  
23 underlying records for the subsidiaries.  
24 That's my understanding, and I believe that's  
25 referenced in the response that Rich has

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1 talked about. I have not had a chance to  
2 read it, but when he read it to me over the  
3 telephone, that's what it said.

4 MR. JENSEN: You're referring to the  
5 e-mail that he received from the accountant?

6 MR. MANISHIN: Yeah. I believe it would  
7 be in the documents Barbara is having Bates  
8 stamped.

9 BY MR. JENSEN:

10 Q. Does Global have a separate accountant that it  
11 uses?

12 A. For what?

13 Q. For anything.

14 A. Separate?

15 Q. Accountant.

16 A. Not that I'm aware of, no.

17 Q. So Ferrous Miner has hired Nardella & Taylor to  
18 perform the accounting functions for Global; is  
19 that right?

20 A. Yes, and, again, Ferrous Miner also has hired  
21 Select & Pay. The relationship is Ferrous to  
22 Select & Pay and Ferrous to Nardella & Taylor.

23 Q. So whatever agreement on how things are supposed to  
24 be done are directed by Ferrous Miner?

25 A. Ferrous; right. Ferrous instructs the subs on how

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1 to handle the other entities.

2 Q. When you say "subs," you mean --

3 A. The professionals, the accountants and bookkeepers.

4 Q. -- Select & Pay and --

5 A. And Nardella & Taylor, yes.

6 Q. So as treasurer of Global, you have no say of how  
7 your tax returns are put together; is that right?

8 A. That's right.

9 MR. MANISHIN: I need to interpose an  
10 objection. The testimony last time was clear  
11 that Global NAPS, Inc. does not file its own  
12 separate tax returns; that the tax returns are  
13 filed on a consolidated basis. So I will  
14 object to that question for lack of foundation  
15 and mischaracterizing the prior testimony.

16 MR. JENSEN: I don't think it does  
17 because I think the point is that Global does  
18 not file a tax return because it's told not to  
19 file a tax return by Ferrous Miner.

20 MR. MANISHIN: Whatever.

21 BY MR. JENSEN:

22 Q. We may have touched on this before, but as you sit  
23 here today, can you tell me the expenses that  
24 Global has on a monthly basis?

25 A. No. Again, I've requested that from the

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1 bookkeepers, and they haven't turned it over to us  
2 yet. As soon as we get it, we'll share it with  
3 you.

4 Q. Since the last deposition, were you able to confirm  
5 the number of Global employees?

6 A. Yes. Can I have a piece of paper so I can write  
7 this down?

8 MR. MANISHIN: (Handing.) He can have  
9 that marked as an exhibit, so don't write  
10 anything that's privileged.

11 BY MR. JENSEN:

12 Q. Don't draw any pictures.

13 A. You want me to recite them to you and you can write  
14 them down?

15 MR. JENSEN: If the notes will help you  
16 recollect and get your testimony accurate, you  
17 should take the notes.

18 THE WITNESS: Okay. (Handing.)

19 MR. JENSEN: Why don't we mark this as  
20 Exhibit 16.

21 (Plaintiff's Exhibit No. 16,  
22 handwritten list of eight  
23 names on yellow lined paper,  
24 marked for identification.)  
25

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1  
2 BY MR. JENSEN:  
3 Q. Okay. Just reading from Plaintiff's Exhibit 16,  
4 Mr. Gangi, the following eight people are employees  
5 of Global, and that would be: Jeff Noack, Bob Fox,  
6 Ann Hartman, Jeff Melick, Sam Zarzour,  
7 Z-A-R-Z-O-U-R, Robert Gastani, G-A-E-T-A-N-I, Brad  
8 Masuret and Dave Shaw; is that right?  
9 A. Yes, and myself of course.  
10 Q. So it's a total of nine employees?  
11 A. Right.  
12 Q. What about Mike Couture?  
13 A. Mike does not work for Global, Inc.  
14 Q. Isn't he an officer of Global, Inc.?  
15 A. Yes.  
16 Q. What about your brother Frank?  
17 A. He's an officer, but he's not an employee.  
18 Q. What's the distinction between the two as you  
19 understand it?  
20 A. An officer is an officer of the corporation, and an  
21 employee is someone who is paid by the company.  
22 Q. So your brother does not get paid by Global?  
23 A. No, he doesn't.  
24 Q. Mike Couture does not get paid by Global?  
25 A. No, he doesn't.

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1 Q. Do either of the two -- well, does your brother do  
2 any work on behalf of Global?  
3 A. I'm sure he does something, sure.  
4 Q. All right. What about Mike Couture?  
5 A. Mike for Global, Inc.? Yes.  
6 Q. What does Jeff Noack do?  
7 A. Jeff works with the carriers.  
8 Q. Does he have a position?  
9 A. Yes, but I'm unsure of his title.  
10 Q. Does Jeff work for any of the other Global  
11 entities?  
12 A. No. He works for Global, Inc.  
13 Q. Global, Inc. only? He provides no services for  
14 the other --  
15 A. He may from time to time, but the majority of his  
16 work is for Global, Inc.  
17 Q. What does -- Bob Fox, what's his position?  
18 A. He does -- works with the carriers as well, the  
19 ILECs.  
20 Q. You don't know what his position is?  
21 A. I don't have his title off the top of my head. I  
22 can find it for you. That's not an issue.  
23 Q. Does Bob Fox also work for other Global entities?  
24 A. From time to time, he may do something, but  
25 primarily those guys work for Global.

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1 Q. When they do work for other Global entities, what  
2 would they be doing?  
3 A. I can't really think of anything they might do for  
4 somebody else, but there's certainly a possibility  
5 that somebody may need their services for some  
6 issue. I don't know what that might be.  
7 Q. Do you know if --  
8 A. I can't sit here and tell you that 100 percent of  
9 their time is spent on Global NAPS, Inc.  
10 Q. Ann Hartman I think we spoke about before. She's  
11 the CFO?  
12 A. CFO, yes.  
13 Q. Okay. And instead of hutchering what you said  
14 before, does Ann Hartman work for any of the other  
15 Global entities?  
16 A. I don't believe she does. I think she's strictly  
17 Global NAPS, Inc.  
18 Q. What does Ann Hartman do?  
19 A. CFO.  
20 Q. What are her daily activities?  
21 A. I'm not sure. I know she's not, in a traditional  
22 sense, what you would -- what a typical CFO would  
23 do, but she's our CFO. I'm not sure on her daily  
24 duties.  
25 Q. What do you mean by she's not a CFO in the

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1 traditional sense?  
2 A. I think a -- well, in my view, I think a CFO is  
3 more involved in the maybe day-to-day finances of  
4 the company, and Ann is not.  
5 Q. Why is that?  
6 A. Just the way we do things.  
7 Q. Is there somebody that is in charge of the  
8 day-to-day finances of the business?  
9 A. As I explained to you, there's not a whole lot of  
10 change in our company, so things just kind of trot  
11 along.  
12 Q. Okay. Money comes in and money goes out. Is that  
13 what you're saying?  
14 A. Yes.  
15 Q. What happens if not enough money comes in?  
16 A. I'm not sure; never run across that circumstances  
17 yet.  
18 Q. That's never happened since the inception of  
19 Global?  
20 A. Not that I'm aware of.  
21 Q. What location or -- strike that.  
22 Where is Ann Hartman's office?  
23 A. I believe she works from home.  
24 Q. Is she a full-time CFO?  
25 A. Yes. She's salary.

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1 Q. Where is her home?  
 2 A. I believe she lives in Boston. I don't exactly  
 3 know where.  
 4 Q. By full-time, you mean she has no other positions  
 5 with any other company?  
 6 A. Not that I'm aware of.  
 7 Q. Who is Sam Zarzour?  
 8 A. In-house counsel.  
 9 Q. Where is his office?  
 10 A. Norwood.  
 11 Q. Norwood?  
 12 A. Norwood, yes.  
 13 Q. Does Mr. Zarzour do anything special as in-house  
 14 counsel? Does he have an area that he specializes  
 15 in?  
 16 A. No.  
 17 Q. Does Mr. Zarzour work for any of the other Global  
 18 entities?  
 19 A. Yes, I'm sure for -- well, he's employed by Global  
 20 NAPS, Inc., but I'm sure he offers services to the  
 21 other Global entities as needed.  
 22 Q. Is there one in-house counsel department for all  
 23 the Global entities?  
 24 A. Yes.  
 25 Q. Okay. So Mr. Zarzour and Mr. Melick work in one

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1 central Global in-house department?  
 2 A. Yes.  
 3 Q. And provide services for all the various Global  
 4 entities?  
 5 A. As needed, yes.  
 6 Q. But, for example, Mr. Zarzour is paid by Global?  
 7 A. Yes.  
 8 Q. And is Mr. Melick paid by Global?  
 9 A. Yes.  
 10 Q. Is all the staff for in-house counsel paid for by  
 11 Global?  
 12 A. I don't believe so, no. I don't know the breakup  
 13 on the other employees, which entity is paying for  
 14 them, but Sam and Jeff are the responsibility of  
 15 Global, Inc.  
 16 Q. Do you know how many in-house counsel attorneys you  
 17 have? When I say "you," I mean Global and the  
 18 Global entities.  
 19 MR. MANISHIN: Not enough.  
 20 MR. JENSEN: That's why they hired you.  
 21 A. Actually, I believe Sam and Jeff are the only  
 22 attorneys in-house. There are other staff that  
 23 are in the legal department. I don't believe  
 24 they're attorneys.  
 25 BY MR. JENSEN:

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1 Q. Okay. Robert Gaetani we spoke about a little bit  
 2 earlier. Where is his office?  
 3 A. Quincy.  
 4 Q. I think you said before that he works for Global  
 5 but he also works for some of the other Global  
 6 entities?  
 7 A. Yeah. He may do projects for other companies from  
 8 time to time, sure.  
 9 Q. Okay.  
 10 A. But he's, again, paid by Global, Inc.  
 11 Q. Does in-house counsel for Global and the various  
 12 entities, do they also provide services for Ferrous  
 13 Miner?  
 14 A. I'm not aware if they do or they don't.  
 15 Q. Brad Masuret, where is he located?  
 16 A. Quincy.  
 17 Q. David Shaw?  
 18 A. Quincy.  
 19 Q. Mr. Gangi, do you know who Jim Shelton is?  
 20 A. Oh, yeah, another attorney. I knew I'd forget  
 21 somebody.  
 22 Q. Is he a Global employee?  
 23 A. I don't believe he works -- oh, maybe he is. Yes,  
 24 Jim is a Global employee. My mistake.  
 25 Q. Okay.

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1 A. There may be a name or two that are going to crop  
 2 up other than what's on that list, so . . .  
 3 Q. What office is Mr. Shelton out of?  
 4 A. I believe he works out of his home in Florida.  
 5 Q. Okay. Do any of the Global entities have an  
 6 office down where he works?  
 7 A. Just his home office.  
 8 Q. That's his own office?  
 9 A. Yeah.  
 10 Q. Is that considered a Global office?  
 11 A. I don't know the answer to that. I don't think it  
 12 is. I think it's just his own -- his own thing.  
 13 Q. Okay. What does Mr. Shelton do for Global?  
 14 A. He does a lot of our regulatory stuff.  
 15 Q. What would be an example of something that he would  
 16 do in the regulatory arena?  
 17 A. Negotiating an interconnection agreement, anything  
 18 really dealing with the ILECs. Boy, is he going  
 19 to be mad that I forgot him.  
 20 Q. I'll have to fly down to Florida and tell him.  
 21 Does Mr. Shelton also do work for other Global  
 22 entities?  
 23 A. He may, but I don't think he does. I think he's  
 24 pretty concentrated with dealing with the  
 25 regulatory stuff.

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1 Q. And you're suggesting that only Global has  
2 regulatory issues? Is that what you're saying?  
3 A. Yes. Global is the certificate holder.  
4 MR. JENSEN: This might be a good time  
5 for a break because I'm about to get into  
6 something that may -- well, talk about the  
7 assets, the asset list and the equipment. We  
8 can either start that now and go to lunch when  
9 I'm done with it or --  
10 MR. MANISHIN: Do you want to eat?  
11 THE WITNESS: I'm here. I'm good to go.  
12 MR. MANISHIN: This man apparently never  
13 needs sustenance. I've never known him to  
14 eat. I'd be happy to grab a bite because I  
15 was up early.  
16 MR. MOREIRA: I'd like to grab a bite if  
17 that's okay.  
18 MR. JENSEN: Okay. Why don't we take a  
19 break.  
20 MR. MANISHIN: Not as early as last time  
21 though.  
22 MR. MOREIRA: Back by 1:30? Is that  
23 okay?  
24 MR. MANISHIN: That's fine.  
25

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1 (Recess taken from 12:46 p.m. to  
2 1:42 p.m.)  
3  
4 BY MR. JENSEN:  
5 Q. I want to take a look at what we marked as  
6 Exhibit 3 in the last deposition as updated by  
7 somebody at Global, and I'm handing a copy that's  
8 not stamped to Attorney Manishin. (Handing.)  
9 A. Could we jump back to something for one second?  
10 Q. Sure.  
11 A. You asked me if they had offices other places?  
12 Q. Yes.  
13 A. Janet does have -- I don't know if you want to call  
14 it an office, but it's based in Quincy where she  
15 does some of her work on our behalf.  
16 Q. Is that at your office building in Quincy?  
17 A. Not at my building. A different building in  
18 Quincy.  
19 Q. How close to --  
20 A. A few blocks away.  
21 Q. Would you call that like a satellite office maybe?  
22 A. Call it what you want. It's a room. She does  
23 her stuff in there, you know.  
24 Q. Going back to --  
25 MR. JENSEN: I just want to clarify for

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1 Attorney Manishin that it's the same document.  
2 It's just not Bates stamped and marked  
3 confidential. I just didn't have an extra  
4 copy.  
5 MR. MANISHIN: Well, I'm going to need a  
6 confidential copy.  
7 MR. JENSEN: I'm going to mark the  
8 confidential copy as Plaintiff's Exhibit 17.  
9  
10 (Plaintiff's Exhibit No. 17,  
11 three-page document Bates Stamp  
12 GLOBAL MAPS CT 1820 through  
13 GLOBAL MAPS CT 1822,  
14 marked for identification.)  
15  
16 BY MR. JENSEN:  
17 Q. Mr. Gangi, going back to Janet Lima, do you have  
18 the address of that space that she has?  
19 A. 10 Merrymount Road.  
20 Q. Isn't that the same office building that --  
21 A. I'm in 1120 Hancock. 10 Merrymount is a building  
22 that's a Global building. She's got a room in that  
23 building.  
24 Q. Okay.  
25 A. It's not owned by Global, but one of the Global

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1 companies rents it, the building.  
2 Q. 10 Merrymount, isn't that the headquarters of  
3 Global, Inc.?  
4 A. Yeah, but it's really just got switching equipment  
5 in there. There's very few employees in that  
6 room; I mean a handful, if that many. It's mostly  
7 equipment, and it's got our co-lo and our main  
8 switch gear for Mass. 1120 Hancock Street is  
9 where all the offices are, but 10 Merrymount is  
10 used. That's the mailing address and stuff,  
11 so . . .  
12 Q. Does Select & Pay pay rent for the use of that  
13 office?  
14 A. I believe they do, but I think it's probably like a  
15 buck a year or something like that.  
16 Q. So it's a nominal rent?  
17 A. Right.  
18 Q. How is it determined that Select & Pay would be  
19 using office space in a Global office for nominal  
20 rent?  
21 A. Well, she just does so much stuff for us. When  
22 she comes down, like I said, to pick up the mail,  
23 get the checks, the banking in Quincy, she just  
24 needs the space to work at. It's a matter of  
25 convenience. It just works out for everybody.

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1 Q. Do you know who made that decision?  
 2 A. I'm sure it would have been the three of us  
 3 officers when it was made.  
 4 Q. Has she been using that office space since the  
 5 incorporation of Select & Pay?  
 6 A. Yeah, I'm pretty sure. It's been available to her  
 7 since she's left. I don't know if she's been  
 8 using it or not, but it's there.  
 9 Q. Going back and taking a look at the two exhibits,  
 10 Plaintiff's Exhibit 3 and Plaintiff's Exhibit 17 --  
 11 MR. MANISHIN: One second.  
 12 MR. JENSEN: Did I take it? Sorry.  
 13 BY MR. JENSEN:  
 14 Q. Let me give it back to you so your counsel can have  
 15 it. (Handing.) I think there was an open  
 16 question during the last deposition as to who put  
 17 together what was marked as Plaintiff's Exhibit 3  
 18 during that deposition. Do you have more  
 19 information on that today?  
 20 A. This is . . .  
 21 MR. MANISHIN: The letter.  
 22 THE WITNESS: Right.  
 23 A. This was put together by -- I believe Glenn  
 24 actually put this together. He got his  
 25 information from our in-house counsel, who I'm sure

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1 queried the employees in Global NARS for it.  
 2 BY MR. JENSEN:  
 3 Q. So by "Glenn," you're referring to Attorney  
 4 Manishin?  
 5 A. Yes.  
 6 Q. It's your belief that he got this information from  
 7 in-house counsel?  
 8 A. Right; who would have gotten it from a Global  
 9 employee.  
 10 Q. Okay. And do you know who that Global employee  
 11 was?  
 12 A. I'm not certain, but looking at the list, I know  
 13 who I went to to update the list. That was Matt  
 14 Ballett.  
 15 MR. MANISHIN: I'll say for the record  
 16 that he is correct. I got it from in-house  
 17 counsel; Mr. Shelton in particular.  
 18 BY MR. JENSEN:  
 19 Q. Looking at Plaintiff's Exhibit 17, you just  
 20 testified that Mr. Ballett assembled the  
 21 information in Plaintiff's Exhibit 17?  
 22 A. Right, the serial numbers and location and that  
 23 stuff, yeah.  
 24 Q. Okay. Do you know where he got the information to  
 25 put in this document?

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1 A. No, I didn't ask him. I know he's got a database  
 2 with all of the equipment for Networks on it. I'm  
 3 unsure if it's the database or if he can go to the  
 4 specific piece of equipment to draw up the  
 5 information from it, but he has access to it.  
 6 Q. So he has a --  
 7 A. I believe he has a database of equipment in the  
 8 network. This equipment, I believe, was -- this  
 9 was the stuff from -- in Connecticut?  
 10 MR. MANISHIN: Yes.  
 11 A. Right. So I don't know if this is in his database  
 12 or if he just went and accessed -- because you can  
 13 access some of this equipment, the Sycamore stuff,  
 14 remotely from the terminal and pick up the  
 15 information off of it. I'm not certain how he did  
 16 it.  
 17 BY MR. JENSEN:  
 18 Q. Okay. But you mentioned he has a -- is the  
 19 database an electronic database that he has of the  
 20 network equipment?  
 21 A. Again, I was just -- sorry. That was speculation  
 22 on my part, and I probably shouldn't have done  
 23 that. After looking at this, I realize the  
 24 Sycamore you can just log into and just get the  
 25 information from them. So that's more than likely

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1 what he did.  
 2 Q. Okay. And why do you say that versus having a  
 3 database with the same information?  
 4 A. Because I'm not sure he does have a database, but I  
 5 know he can log into them.  
 6 Q. Okay. And can you tell me how you do log into --  
 7 for example, to find a Sycamore -- information  
 8 about a Sycamore chassis?  
 9 A. Again, I don't do that; but, specifically, if you  
 10 know where an item is located, it has -- it's  
 11 connected to IP and has an address. You can log  
 12 into the piece of equipment for a network that has  
 13 a monitor and a NOC and make sure the thing's  
 14 running.  
 15 MR. MANISHIN: NOC is N-O-C for the  
 16 Reporter.  
 17 A. So they can pull up the information off of it once  
 18 they lock into it.  
 19 BY MR. JENSEN:  
 20 Q. What does NOC stand for?  
 21 A. Network operation center.  
 22 Q. Okay. How did Matt Ballett go about putting this  
 23 together? Did you say, hey, Matt, we need more  
 24 details on the equipment in Connecticut? How did  
 25 this happen?

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1 A. Yeah. I had the list from the letter, and you guys  
2 needed one of the addresses and the serial numbers.  
3 So I just went to Matt and asked him if he could  
4 get that, and he said yes.  
5 Q. And he didn't explain to you how he --  
6 A. No. I didn't ask him.  
7 Q. Is there any way to get information that is more  
8 specific than the information that we currently  
9 have on Plaintiff's Exhibit 17?  
10 A. What are you looking for?  
11 Q. Well, for example --  
12 A. I think you asked me for model and serial number  
13 last time, right?  
14 MR. MANISHIN: And location.  
15 A. And location.  
16 BY MR. JENSEN:  
17 Q. Right. I think those were some of the things we  
18 asked for. For example, on the second page, you  
19 have Devon and -- well, just looking at the first  
20 entry for Devon, it says "Devon" and then "NEON  
21 Site," and "689 Naugatuck Road or "Naugatuck R"  
22 and then the description of the piece of equipment.  
23 Where at 689 Naugatuck is this piece of equipment,  
24 and how would we find it?  
25 A. Well, reading this, I suspect there is a NEON

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1 site -- NEON is a provider, New England Optical  
2 Network, a fiber provider. So we're probably in  
3 their co-location site at that address, and I would  
4 have to assume -- this is a Cerent, so it's a rack  
5 item -- there must be a rack in there that's got  
6 our name on it. I don't think we share a rack  
7 with anybody, but we may.  
8 Q. As you sit here today, you don't know the answer to  
9 that?  
10 A. I don't know the answer to that. I didn't ask Matt  
11 for all that detail. I asked him for a serial  
12 number and model and an address.  
13 Q. Okay. I guess the question would be: If I were  
14 to walk up to the NEON site at 689 Naugatuck and  
15 wanted to find that piece of equipment, how would I  
16 do it?  
17 A. Ask for the Global NAPS rack.  
18 Q. Who would I ask?  
19 A. Whoever is running the facility. There would be  
20 someone there.  
21 Q. Okay. So there's somebody from NEON running that  
22 facility?  
23 A. Well, some of these sites are unmanned. I don't  
24 know if these NEON sites are, but some sites are  
25 unmanned. So if we wanted to go there, we would

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1 either have a key or we would have to call and have  
2 somebody meet us there. I know that's typically  
3 what they do.  
4 Q. Okay. If we were --  
5 A. If this is an unmanned site, you'd have to make a  
6 call to have somebody meet you there. If it was a  
7 manned site, you could ask them and they could  
8 point you in the right direction.  
9 Q. And they'd be able to point you to each and every  
10 piece of equipment?  
11 A. They could point you to the rack, and in the rack  
12 would be the equipment. If there's multiple  
13 racks, they'll show you multiple racks. I don't  
14 think any of these would be multiple racks. They  
15 should all fit in one rack.  
16 Q. Is there any information on here about age of the  
17 various equipment?  
18 A. No.  
19 Q. Is there any information here about the value of  
20 the equipment?  
21 A. No. We just don't have that. Most of the stuff  
22 is, you know, four, five years old, maybe older.  
23 It's been depreciated off of our books. We don't  
24 keep fair market values for stuff because we just  
25 don't have a need for it. Even determining what

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1 fair market value is -- you know, it's all a crap  
2 shoot, what somebody will pay for what you got.  
3 Some of this stuff is provisioned for our own use.  
4 For somebody else to use it, can they use it  
5 directly or do they have to modify it or whatever?  
6 So a value on something is very difficult to  
7 establish.  
8 Q. Is it all still in use as you understand it?  
9 A. In Connecticut, this should all still be in use,  
10 yes. This run is up.  
11 Q. So it does have value to it?  
12 A. Well, it keeps the run up. So, yeah, it has value.  
13 As far as from an accounting perspective, I don't  
14 know if it has any value.  
15 Q. In terms of the equipment that is in Hartford,  
16 Stamford and Devon -- and those are the locations  
17 that don't have a hut -- you indicated that you  
18 thought the stuff would be -- the equipment would  
19 be in a single rack? That's your understanding?  
20 A. Yeah. Like in Hartford, for instance, this looks  
21 like it is -- this is actually -- like the Cerent  
22 is a -- call it like a desktop computer kind of.  
23 It's a chassis that you put cards into. This is a  
24 breakdown of the cards that are in that Cerent. So  
25 this looks like to be -- even though there's a

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1 bunch of line items here, I think it's that one  
2 chassis with the individual components broken out  
3 of it.

4 Q. Okay. Then you look at the — Plaintiff's  
5 Exhibit 3 describes the equipment that is supposed  
6 to be at the Hartford location?

7 A. Right; and that makes sense because this is a rack  
8 that the equipment is housed in. Then there is  
9 one Cisco Cerent, and this second sheet, 17, gives  
10 you the breakdown of what's in that Cerent. The  
11 fiber panel is just a single panel at the top of  
12 the rack where the fiber comes into, and we take it  
13 out of it, and the Telec fuse panel is a fuse panel  
14 at the top of the rack where we derive our power  
15 from — there's a large feed coming in, smaller  
16 feeds coming out to the equipment — and then the  
17 filter shelves are just fiber shelves.

18 Q. So you think that all of that would be on one rack?

19 A. Yeah. That's one piece of equipment.

20  
21 (Whereby the witness indicates.)

22  
23 Q. Okay. Do you know whether or not any of the  
24 equipment that — strike that.

25 Do you know whether or not there might be

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1 other people's or another company's equipment on  
2 that rack?

3 A. I don't know if there is, but there shouldn't be.  
4 It should all be Global's.

5 Q. So typically there would just be Global's equipment  
6 on one rack?

7 A. Right. We don't typically share, unless there's a  
8 co-lo that's full and can't get a rack. Then you  
9 may try to find somebody in the co-lo that has  
10 empty space in their rack, but that is uncommon.

11 Q. And why don't we look at Devon and Stamford, the  
12 detail that's in Plaintiff's Exhibit 3. So that  
13 would be the same?

14 A. Same thing. One Cerent. The Cerent is the major  
15 piece of equipment. The second sheet, 17, gives  
16 you the breakdown of what's in that Cerent.

17 Q. So Devon and Stamford appear to be on one rack?

18 A. One rack; right.

19 Q. And I guess one of the questions is: You haven't  
20 actually gone to these sites to confirm that it's  
21 on one rack and the equipment that is listed here  
22 is on that rack; is that right?

23 A. I haven't physically gone there, no.

24 Q. And you haven't been to those sites to verify that  
25 there isn't somebody else's equipment on those

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1 racks?

2 A. No, I haven't.

3 MR. MANISHIN: "You" as Rich Gangi and  
4 not the company?

5 BY MR. JENSEN:

6 Q. You as a representative of Global.

7 MR. MELICK: I'm not sure he understood  
8 that to be the case in your question.

9 A. Did I physically go to one of these things? Is  
10 that what you're asking me?

11 BY MR. JENSEN:

12 Q. As a representative of Global; correct.

13 A. No, I have not gone to these sites. Someone within  
14 Global may have gone to these sites, maybe not this  
15 week, but I know we do inventories, so . . .

16 Q. Who would have done that?

17 A. I don't know who would actually go out and do the  
18 inventories.

19 Q. How regularly do people do inventories? When I say  
20 "people," somebody from Global.

21 A. We haven't done one in — maybe annually.

22 Q. So in terms of putting together the information  
23 that's in this letter and in the follow-up sheet,  
24 you don't know whether or not somebody actually  
25 went — when I say "somebody," it can be anybody

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1 from Global — went to the site to verify that this  
2 equipment is still there?

3 A. Right; my guess is not. They can verify remotely  
4 that it's there because the network is still up;  
5 and if the equipment wasn't there, it wouldn't be,  
6 so . . .

7 Q. Turning your attention to the two DDM filter  
8 shelves, do we have a part number for those and a  
9 manufacturer?

10 A. I'm not sure if one of these would be the — no, it  
11 doesn't look like there is. He just did a  
12 breakdown on what was in the Cerent. Those other  
13 pieces are just small pieces of equipment that —  
14 like the fuse panel is a simple fuse panel.

15 Q. Okay. So there's no other information for the  
16 filter shelves?

17 A. No.

18 Q. And that would be for Hartford, Devon and Stamford?

19 A. Right.

20 Q. And the racks that are at these three sites, do  
21 they have Global NAPS on them somewhere?

22 A. I don't know. Typically we have inventory tags.  
23 I can't tell you if these do or not.

24 Q. Assuming that there's nobody working at the site  
25 and that you need to get a key to get in, how do

104

1 you figure out which rack is Global NAPS's?

2 A. I don't know. I guess the guys would either — I

3 don't know if there is a map when you go in. I

4 really haven't been to many of the smaller co-los,

5 so I don't know if there's a guide when you go in

6 or how they do it or if they just walk around and

7 look for a rack labeled "Global NAPS." I don't

8 know.

9 Q. Okay. The reason I'm asking is because, in order

10 for us to —

11 A. I could inquire for you certainly.

12 Q. I would appreciate that. The detail I need is

13 that of a person walking in off the street to walk

14 into one of these buildings and know exactly what

15 equipment is owned by Global NAPS —

16 A. Sure.

17 Q. — Inc.

18 A. Okay.

19 MR. MANISHIN: You're asking where the

20 equipment in the building is located, not

21 which equipment is owned by Global NAPS?

22 MR. JENSEN: Well, it's both.

23 MR. MANISHIN: Well, he's told you which

24 equipment is owned by Global. Now your

25 question was: How would you find out where it

105

1 is in the building?

2 MR. JENSEN: Well, I think once you get

3 there, you've got to figure out which

4 equipment on that rack is Global NAPS's. It

5 may have somebody else's equipment on it. It

6 may be located in different spots in that

7 area. It may not all be on one rack.

8 MR. MANISHIN: Maybe. According to the

9 witness, that's not the way it is. You can

10 also — you're entitled to serve a Rule 34

11 request to inspect, and you're able to go out

12 there yourself.

13 MR. JENSEN: Right.

14 BY MR. JENSEN:

15 Q. In terms of the equipment that's located in Mystic

16 and New Haven, that equipment I understand is —

17 well, those two locations have huts; is that right?

18 A. New Haven, Global NAPS hut, yeah.

19 Q. Okay.

20 A. And Mystic, GNAPS hut, yeah.

21 Q. So both those locations have huts?

22 A. Yes.

23 Q. I think we talked a little bit about the huts last

24 time. Do you know whether or not the equipment

25 that's located in the New Haven hut is all owned by

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1 Global NAPS?

2 A. Well, I would say yes because this is a list of all

3 the equipment that we have in Connecticut; and the

4 Connecticut run is owned by Global NAPS, so I would

5 say yes.

6 Q. Okay. So are you saying —

7 A. Everything in that hut should belong to Global

8 NAPS.

9 Q. Are you saying, therefore, that nothing — no space

10 is being leased to any other entity?

11 A. I don't believe we provide co-lo — these huts are

12 on the Antrak right-of-way. Antrak is the fiber

13 provider for us. Antrak may actually have

14 something in there to allow us — their own

15 equipment to allow us to connect to their fiber.

16 So I can't say for certain that there's not a rack

17 of Antrak's equipment in these huts. I'm not sure

18 if we provided the equipment for that or if they're

19 just giving me fiber. I don't know.

20 Q. Okay. And are you saying you don't know whether or

21 not Global offers any rack rental or co-location

22 services within Connecticut?

23 A. I'm sure we offer it. I just don't know if

24 anybody has taken advantage of the offer.

25 Q. Who would know the answer to that?

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1 A. I could ask my sales department if they have any

2 rack rentals in Connecticut.

3 Q. But it is your belief that you do offer to lease

4 that space?

5 A. Yes. The huts? Yeah.

6 Q. The equipment that is at the hut in Mystic, we'll

7 start with, is that equipment all located inside

8 the hut?

9 A. Yes.

10 Q. All of it?

11 A. Except for — did they list a generator on any one

12 of these huts? I think they both have generators;

13 right? Yeah, the generator would be external.

14 Everything else is inside the hut.

15 Q. What about the fuel system for the generator?

16 Where would that be?

17 A. I think these may be propane, so it's either

18 sitting on a belly tank underneath the generator —

19 if it's diesel fuel, that would be in a tank

20 underneath it. If it's propane, it would be some

21 tank in close proximity to the generator but

22 outside of the hut.

23 Q. Other than the generator, it's your understanding

24 that all the equipment would be inside the hut?

25 A. Yes.

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1 Q. And is that same -- is that also true for the New  
2 Haven hut?  
3 A. Yes.  
4 Q. Do you know what a storage cell is?  
5 A. Storage cell? That could be a fuel tank.  
6 Q. Okay. Do you know what the model number for the  
7 fuel tanks are at each site?  
8 A. I don't know what specifically the fuel is, if it's  
9 propane or diesel. So I don't know if it's -- if  
10 it's -- I don't know.  
11 Q. Okay. And another thing that we haven't been  
12 provided is a serial number for the generators at  
13 the Mystic and New Haven site.  
14 A. Okay.  
15 Q. Is there in a reason why we don't have that  
16 information?  
17 A. I may not have requested that from Matt. It could  
18 be my issue. I could get it for you for certain.  
19 Q. There's also listed at each of these sites, the  
20 Mystic and New Haven sites, an ethernet switch.  
21 Do you know what the model number of each of these  
22 ethernet switches is?  
23 A. No, but they're of minimal value. Even new, it's  
24 probably a hundred-dollar item. It's not a  
25 large-scale item.

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1 Q. On the last page of Exhibit 17, the very last entry  
2 for the New Haven GNAPS hut is "Edglink M13 Mux."  
3 Do you see that?  
4 A. Yeah.  
5 Q. What is that?  
6 A. A mux is a piece of fiber equipment.  
7 Q. Is there a part number for this?  
8 MR. MANISHIN: Not listed.  
9 A. Not listed, and if it's not there, it means he  
10 could not get it.  
11 BY MR. JENSEN:  
12 Q. Is this an Edglink hub?  
13 A. I really don't know. It's an M13 mux. I don't  
14 believe that's considered a hub.  
15 Q. Do you know if it's equipped with any cards?  
16 A. I don't know. He didn't do a breakdown on that.  
17 I can inquire.  
18 Q. Do you know whether or not Global keeps any test  
19 equipment at any of the locations?  
20 A. Typically, no.  
21 Q. I think we talked about spares last time, and I  
22 think your testimony was that spares, if you had  
23 them, would be located in Massachusetts somewhere?  
24 A. Right.  
25 Q. But not at the sites in Connecticut?

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1 A. No.  
2 Q. Okay.  
3 A. Not that I'm aware of anyway.  
4 Q. In terms of the power that the equipment in  
5 Hartford, Stamford and Devon use -- strike that.  
6 How does Global attain power in Hartford,  
7 Stamford and Devon?  
8 A. Those are the huts that we're talking about?  
9 Q. No, those are the racks.  
10 A. That would be part of the -- provided by the  
11 co-location facility.  
12 Q. Do you know whether they're AC- or DC-based?  
13 A. All of our equipment or the majority of our  
14 equipment is DC-based, so this would most likely be  
15 DC.  
16 Q. One of the questions I had last time was whether or  
17 not Global had any interest or rights in any  
18 patents. Were you able to check on that?  
19 A. Yeah. No, we don't.  
20 Q. Does Global have any interest or rights in any  
21 copyrights?  
22 A. No.  
23 Q. Does Global have any interest or rights in any  
24 intellectual property?  
25 A. No.

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1 Q. We also talked about Global's efforts to secure a  
2 bond in this action last time?  
3 A. Right.  
4 Q. You, I think, testified that you didn't know what  
5 efforts were taken, if any?  
6 A. Right.  
7 Q. Were you able to follow up on that?  
8 A. Yes. None were taken.  
9 Q. No steps were taken at all?  
10 A. No steps were taken.  
11 Q. Is there any reason why?  
12 A. Didn't feel that we could get a bond, so they  
13 didn't bother to attempt to get one.  
14 Q. Did you discuss that with anyone?  
15 A. My in-house counsel and also with my brother.  
16 Q. At what point did you guys make that decision?  
17 A. Of not attempting to get the bond?  
18 Q. Correct.  
19 A. I'm not sure.  
20 Q. Was it prior to the BUR hearing, or was it after  
21 the BUR hearing?  
22 A. I can't --  
23 MR. MANISHIN: Object to the form.  
24 A. I can't nail that down. I'm not sure when it was.  
25 BY MR. JENSEN:

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1 Q. Was it sometime in May?  
 2 A. I'd be guessing.  
 3 Q. Is there any documentation of the decision not to  
 4 try to get a bond?  
 5 A. No. I can inquire. Maybe somebody else has a  
 6 better recollection of when we talked about it.  
 7 Q. Other than your counsel, who I won't ask you  
 8 about --  
 9 MR. MANISHIN: Thank you.  
 10 BY MR. JENSEN:  
 11 Q. -- I assume before you were referring to in-house  
 12 counsel --  
 13 A. In-house counsel, yes.  
 14 Q. -- and perhaps outside counsel as well. You spoke  
 15 to your brother about this?  
 16 A. Yes.  
 17 Q. What did you two say? What did you talk about?  
 18 A. Whether we thought it would be worthwhile to try to  
 19 get a bond.  
 20 Q. And why did you decide that it wasn't worthwhile?  
 21 A. I didn't think we'd have any success in getting a  
 22 bond.  
 23 Q. What did you base that conclusion on?  
 24 A. It was a while ago. I don't recall our point and  
 25 counterpoint on it.

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1 Q. Okay. Was there a -- did you look at the finances  
 2 of the company and say, hey, we can't afford to  
 3 post a bond or, hey, we don't have enough assets?  
 4 A. I'm really not sure. I'd be guessing.  
 5 Q. Was there -- at any point, did you anticipate  
 6 trying to post a bond?  
 7 A. We discussed attempting to do it but didn't feel  
 8 we'd have any success, so we didn't pursue it any  
 9 further.  
 10 Q. Have you tried to secure a bond in the past and not  
 11 been able to do it?  
 12 A. Not that I can recall.  
 13 Q. When I say "you," I mean Global. The last time we  
 14 also talked about office equipment that was owned  
 15 by Global. I think you had mentioned a couple  
 16 things, copiers and computers, and you weren't  
 17 quite sure how old they were or where they were  
 18 located, things of that nature. Do you have any  
 19 more detail on any of the office equipment?  
 20 A. It's the same list except expanded to include the  
 21 additional employees' -- their laptops. Everybody  
 22 has a laptop.  
 23 Q. So no details on the brand? The make? Serial  
 24 number? Value?  
 25 A. I can tell you they're Compaqs, but I can't tell

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1 you each individual model.  
 2 Q. And you can't tell me the value of each one?  
 3 A. I have no idea. They've been around for a while.  
 4 I can tell you mine is probably four years old.  
 5 Q. What about the copiers?  
 6 A. I was unable to have anybody tell me definitively  
 7 that any of the copiers belong to Global NAPS, Inc.  
 8 So I can't tell you whether there is a copier or  
 9 not.  
 10 Q. Were there any -- who specifically did you speak to  
 11 to find out information about --  
 12 A. I actually went around and looked for inventory  
 13 tags on them to see if anything was marked Global  
 14 NAPS, Inc. because I didn't even know who to ask to  
 15 say does this belong to Global NAPS, Inc.  
 16 Q. If it doesn't belong to Global NAPS, Inc., who  
 17 would it belong to?  
 18 A. It could be Networks, Realty. It could be leased.  
 19 I don't believe we lease any of them though, but,  
 20 again, they've been around, you know, four, five,  
 21 six years.  
 22 Q. Other than copiers and computers, is there any  
 23 other office equipment that --  
 24 A. Everybody has a desk and chair for the employees.  
 25 Q. But other than that, really nothing?

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1 A. Nothing.  
 2 Q. Has Global NAPS, Inc. sold any office equipment in  
 3 the last six months?  
 4 A. No.  
 5 Q. How do you know that?  
 6 A. Because I would have known if something was sold,  
 7 and nobody sold any equipment.  
 8 Q. Why would you have known if something was sold?  
 9 A. Somebody would ask if they could sell it.  
 10 Q. Okay.  
 11 A. There's no reason to sell it.  
 12 Q. So if somebody had a transaction, if somebody  
 13 wanted to sell something or buy something, would  
 14 they go to you?  
 15 A. Not necessarily, but I would hear about it.  
 16 Q. Do you know whether or not any office equipment has  
 17 been transferred to another entity in the last  
 18 year?  
 19 A. No, nothing has been transferred.  
 20 Q. Do you know that for the same reason that you know  
 21 that nothing was sold in the last six months?  
 22 A. Yes.  
 23 Q. Does Global have an interest -- when I say "an  
 24 interest," it could be an easement, it could be fee  
 25 or it could be leasehold interest -- in any real

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1 property? Actually, let me strike that.  
 2 Does Global have an easement interest in any  
 3 real property in Connecticut?  
 4 MR. MANISHIN: Object. Calls for a legal  
 5 conclusion.  
 6 If you understand the question, please  
 7 answer.  
 8 A. Not that I know of, no.  
 9 MR. JENSEN: Calls for a legal  
 10 conclusion?  
 11 MR. MANISHIN: Yeah. It requires  
 12 knowledge of what an easement is. I don't  
 13 know if he knows what an easement is.  
 14 BY MR. JENSEN:  
 15 Q. Does Global have any type of interest in any real  
 16 property in Connecticut?  
 17 A. No.  
 18 Q. Does Global have any type of an interest in any  
 19 real property anywhere?  
 20 A. No.  
 21 Q. You don't own any -- they don't own any buildings?  
 22 A. Global, Inc.? No.  
 23 Q. How do you know that?  
 24 A. I just know. I would know if Global owned  
 25 something.

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1 Q. Does Global have any plans to purchase any real  
 2 property?  
 3 A. No.  
 4 Q. Can you tell me where Global's offices currently  
 5 are?  
 6 A. I think we went over this at my other depo. We've  
 7 got my office at 1120 Hancock Street. There's the  
 8 legal offices in Norwood. There's my office in  
 9 New Hampshire, 1 Sundial. I believe that's it.  
 10 There may be a portion of 10 Merrymount that Global  
 11 has. I'm not sure on that though.  
 12 Q. 10 Merrymount, the same --  
 13 A. That's the other Global building in Quincy.  
 14 Q. You call it a Global building. Is it --  
 15 A. It's rented by one of the Global companies. Global  
 16 doesn't own it.  
 17 Q. Which Global entity rents it?  
 18 A. I believe that's rented by Global NAPS Realty.  
 19 Q. All right. For 1120 Hancock Street, does Global  
 20 have a lease?  
 21 A. I'm not sure who the lease is with at 1120. I  
 22 don't believe it's rented to -- directly with  
 23 Global, Inc., no.  
 24 Q. Who is it directly with?  
 25 A. I don't know.

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1 Q. Global Realty?  
 2 A. Again, I don't know, but I can inquire and let you  
 3 know for sure.  
 4 MR. MANISHIN: Hold on one second.  
 5  
 6 (Off-the-record discussion.)  
 7  
 8 MR. MANISHIN: He left out a fact I had  
 9 to remind him of. Let me state it for the  
 10 record. You're obviously aware of the Verizon  
 11 action because you've referenced them in your  
 12 papers. Mr. Gangi submitted a declaration in  
 13 those actions talking about certain realty  
 14 transfers from Global NAPS Realty to a  
 15 specific corporation set up for each property,  
 16 in which he verified and attested that 1120  
 17 Hancock Street is now owned by a company that  
 18 is known essentially as 1120 Hancock Street  
 19 Limited. That's technically the lessor at  
 20 this date. You can look at that and see what  
 21 the testimony is, and I'm happy to provide you  
 22 with a copy.  
 23 BY MR. JENSEN:  
 24 Q. Mr. Gangi, is that an accurate representation?  
 25 A. That's an accurate representation. I thought you

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1 were asking me for who was leasing the building.  
 2 They're the owner of the building. I don't know  
 3 which of the Global companies was actually --  
 4 Q. Actually, I was asking you who was leasing the  
 5 building.  
 6 A. Right; and I don't know which one of the Global  
 7 companies --  
 8 MR. MANISHIN: I misunderstood then.  
 9 A. -- is leasing the building, but I can find out.  
 10 BY MR. JENSEN:  
 11 Q. Okay. So Global, Inc. -- Global NAPS, Inc. has its  
 12 office at 1120 Hancock Street, and you don't know  
 13 who is leasing that office space?  
 14 A. Right. I have my office there, Robert's there, and  
 15 the salespeople are there. I don't know which one  
 16 of the -- when there's multiple companies in a  
 17 building like 1120, one company would sign the  
 18 lease and then, through our accounting, everybody  
 19 would pay their fair share of the rent to whoever  
 20 the company is that has the lease.  
 21 Q. Okay. What are the multiple companies that are at  
 22 1120?  
 23 A. Networks -- all of them are represented there --  
 24 Realty and Inc.  
 25 Q. Okay. So there's a Global lease for all four or

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1 all three I mean?

2 A. There's a lease from -- I believe there's a lease  
3 from the owner to one of the Global entities, and  
4 then, internally, the accountant would separate --  
5 for instance, Inc., how much of that building they  
6 use -- a portion of the cost of that to Global  
7 NAPS, Inc. as well as Global NAPS Realty as well as  
8 Global NAPS Network. There's only one lease, I  
9 believe, between the owner and one of the Global  
10 NAPS companies. I don't know which one it is for  
11 1120. I can ask and find out. I just don't know  
12 off the top of my head.

13 Q. But the owner of 1120 Hancock Street is  
14 1120 Hancock Street, Inc.; is that right?

15 A. Yeah. It's a -- it's a --

16 Q. That's what you just --

17 MR. MANISHIN: It's essentially that.  
18 It's listed -- the correct name is listed in  
19 the declaration, which I said you can get or  
20 I'll provide you with a copy of it.

21 BY MR. JENSEN:

22 Q. So that's the landlord?

23 A. That's the landlord, owner of the building; right.

24 Q. Where is the landlord located?

25 A. I don't know where their offices are.

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1 Q. Would they be located in the same building?

2 A. They could be but not necessarily.

3 Q. Do you know how payments are made on behalf of  
4 Global for payments for lease space at 1120 Hancock  
5 Street?

6 A. No. That would be done by the bookkeepers.

7 Q. Do you know what -- do you know the amount per  
8 month that Global pays for 1120?

9 A. No.

10 Q. Who would know that?

11 A. Bookkeepers.

12 Q. And that bookkeeper would be Select & Ray?

13 A. Select & Ray, yes.

14 Q. Before that, it would just be Janet Lima?

15 A. Janet, yes. Again, all the companies pay their  
16 fair share of the entire rent. So whatever the  
17 breakdown is for their percentage of the building,  
18 that's what they pay.

19 Q. Has it always been that way?

20 A. Yes.

21 Q. Even before there was the separate bank accounts  
22 set up for each individual entity?

23 A. Oh, yes. Yes. It was all done -- from what my  
24 CFO told me, it really doesn't matter, from an  
25 accounting perspective, if they just do the journal

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1 entries or if there's actually a separate checking  
2 account to go with it as well. It's kind of a  
3 safety to add, you know, some simplicity to it.

4 As I said before, in this particular instance, if I  
5 could just hand you a stack of Global NAPS's  
6 checks, it would be a lot easier.

7 Q. Tell me about the office space in Norwood. It's  
8 Norwood, Mass.?

9 A. Norwood, Mass., yes.

10 Q. What's the address?

11 A. 89 Access Road.

12 Q. Does Global lease space at that office?

13 A. Sam and Jeff are located out of that office, and  
14 that's -- so their portion of that office space  
15 would be paid for by Global.

16 Q. Who has the other portion of that office space?

17 A. There are other staff members from the legal  
18 department. I don't know who they're employed by,  
19 which one of the entities, but whichever entity  
20 they're employed by would pay that share.

21 Q. So is -- 89 Access Road in Norwood, is that only  
22 the in-house legal department?

23 A. Yes.

24 Q. That in-house legal department provides services  
25 for the various Global entities?

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1 A. Yes.

2 Q. Do you know who the landlord is at 89 Access Road?

3 A. The owner of the building? I don't know off the  
4 top of my head.

5 Q. Do you know how payments are made for the -- for  
6 Global's share of the lease at 89 Access Road?

7 A. Depending on who the lease is with, the owner and  
8 whichever one of the Global entities, there would  
9 be an accounting entry to show their fair share of  
10 the payment.

11 Q. So this address would have the same issue that  
12 1120 Hancock Street has, which is one entity is  
13 leasing with the owner and then the other entities  
14 are paying their share?

15 A. Yes.

16 Q. Okay. The New Hampshire address, I believe that's  
17 the address where you work from?

18 A. One Sundial.

19 Q. Do you lease that space?

20 A. Yes, that's leased.

21 Q. Okay. Is that leased by Global?

22 A. Again, I'm not sure who leases that. I believe  
23 that one is leased by Global NAPS, Inc. I'm not  
24 certain. I can check again. That is the Hesser  
25 Center. It's a large college business center.

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1 Q. Do you know who your landlord is at that --  
 2 A. STTC.  
 3 Q. ST --  
 4 A. STTC I believe is the company name. I don't know  
 5 what it stands for.  
 6 Q. Do you know where it's located?  
 7 A. It's in the building.  
 8 Q. Okay. Do you know how much Global pays for its  
 9 share monthly for that lease?  
 10 A. I don't. I don't know how they break it out.  
 11 Q. Do any other Global entities share space in that  
 12 office?  
 13 A. Yeah. Networks has some equipment in there, and I  
 14 don't know if there's -- I think there's  
 15 co-location in there as well, so Realty would have  
 16 some stuff in there, too.  
 17 Q. 10 Merrymount, that's the address in Quincy?  
 18 A. Right.  
 19 Q. Tell me about the leasing structure for that.  
 20 A. That one is leased by Global NAPS Realty, and the  
 21 other companies that occupy the building -- same  
 22 structure: Realty holds the lease, and they pay  
 23 their fair share.  
 24 Q. And --  
 25 A. I believe the owner of that building is Pascucci

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1 [phonetic] Realty Trust or something like that.  
 2 Q. You don't know what Global's share of the lease is?  
 3 A. I don't know what the breakdown is. I know  
 4 Networks has equipment in there. Realty has a  
 5 co-location in there. That building is mostly  
 6 equipment. I'm not sure what portion of that is  
 7 Global's, if any. If it was, it would be a couple  
 8 of offices on the top floor.  
 9 Q. Okay. This is also the address that the Global  
 10 entities list as their headquarters; is that right?  
 11 A. Right. That was our original facility.  
 12 Q. Did you ever own -- did Global ever own that  
 13 facility?  
 14 A. No, not yet.  
 15 Q. Did any of the other Global entities own that  
 16 facility?  
 17 A. No.  
 18 Q. Has Global owned any real property in the last four  
 19 years?  
 20 A. Not that I'm aware of.  
 21 Q. Who would know?  
 22 A. I'd have to ask either the bookkeeper or the  
 23 accountants. Actually, my brother might even  
 24 know. I could ask him.  
 25 Q. So assuming you don't know whether or not Global

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1 owned any property in the last four years, you  
 2 don't know whether or not Global sold or  
 3 transferred any real property in the last four  
 4 years?  
 5 A. Right.  
 6 Q. You say Frank would be the person that would know?  
 7 A. Or Select & Pay. They would know if there was  
 8 something carried to the books.  
 9 Q. What about Mr. Couture? Would he know?  
 10 A. Doubtful.  
 11 Q. Why is that?  
 12 A. It's just not something he deals with.  
 13 Q. Are there any unsatisfied judgments in Global's  
 14 favor that you're aware of?  
 15 A. Not that I'm aware of.  
 16 Q. That would be state court, federal court,  
 17 arbitration or an agency proceeding.  
 18 A. Right. Money that's owed to Global you're asking  
 19 right?  
 20 Q. Money that's owed to Global as a result of a  
 21 proceeding.  
 22 A. No, not that I'm aware of.  
 23 Q. Okay. Are there any unsatisfied judgments against  
 24 Global?  
 25 A. Unsatisfied? Not that I'm aware of.

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1 Q. Is there somebody that would be able to answer that  
 2 positively, meaning somebody that would know --  
 3 would be able to answer that yes or no?  
 4 A. The answer is: No, there's no unsatisfied  
 5 judgments against Global.  
 6 Q. How do you know that?  
 7 A. It's one of the things we had reviewed prior to me  
 8 coming down here.  
 9 Q. Who did you review that with?  
 10 A. In-house counsel.  
 11 Q. Okay. What did you review? I'm not asking what  
 12 he told you. I'm asking what you reviewed.  
 13 MR. MANISHIN: As in were there documents  
 14 reviewed?  
 15 MR. JENSEN: Correct. He said he  
 16 reviewed documents.  
 17 A. I didn't say I reviewed documents. I said I  
 18 reviewed whether we had any judgments against us.  
 19 BY MR. JENSEN:  
 20 Q. Okay. Does Global have any insurance policy that  
 21 might be able to -- that might be liable to satisfy  
 22 judgment in this action?  
 23 A. No.  
 24 Q. Have you made any submissions to an insurance  
 25 company for the claims that are made in this

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1 action?  
 2 A. No.  
 3 Q. Has Global ever entered into a contract with a  
 4 Connecticut entity or person?  
 5 A. I believe SBC. I think we have a contract or  
 6 agreement with them. Other than that, I'm not  
 7 aware of anybody.  
 8 Q. You don't think so?  
 9 A. I don't think so.  
 10 Q. Other than AT&T?  
 11 A. Or whoever it be, AT&T, whichever you want to call  
 12 it, SNET, AT&T, SBC. I don't know. Pick one.  
 13 Q. Are there any payments due to Global from a person  
 14 or entity located in Connecticut?  
 15 A. SBC.  
 16 Q. Other than your claims against SBC, are there any  
 17 other?  
 18 A. No.  
 19 Q. How do you know that?  
 20 A. Just in reviewing for this. Nothing was brought to  
 21 my attention that was owed to us from anybody in  
 22 Connecticut other than the SBC bills. If there  
 23 was, I'm sure it would have been brought to my  
 24 attention so I could show it to you.  
 25 Q. We would hope so.

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1 A. I would certainly hope so.  
 2 Q. Has Global made any loans to any Connecticut person  
 3 or entity?  
 4 A. No.  
 5 Q. Does Global have any future plans to do business in  
 6 Connecticut?  
 7 A. It's going to continue to do business in  
 8 Connecticut. That's the plan.  
 9 Q. Other than the business it currently has, does it  
 10 have plans to do other types of business in  
 11 Connecticut?  
 12 A. No.  
 13 Q. Does Global have pending deals in Connecticut?  
 14 A. No.  
 15 Q. You just testified earlier that Global is  
 16 continuing on planning — continuing to plan to do  
 17 business in Connecticut or continuing to do  
 18 business in Connecticut; is that right?  
 19 A. Yes.  
 20 Q. What is the business that Global plans to continue  
 21 doing in Connecticut?  
 22 A. Whatever it is that we do today.  
 23 Q. When I say "Global," I mean Global NAPS, Inc.  
 24 A. Global NAPS, Inc. is the certificate holder in  
 25 Connecticut, so we'll probably continue to offer

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1 its services or reselling it, or however you want  
 2 to call it, to Global NAPS Network to allow it to  
 3 sell its services.

4 MR. MANISHIN: Would you read back that  
 5 last answer, please.  
 6

7 (Record was read back by Court  
 8 Reporter.)  
 9

10 MR. MANISHIN: Did you mean "to" or  
 11 "from" Global NAPS Network?

12 THE WITNESS: What did I say?

13 MR. MANISHIN: You said "to."

14 THE WITNESS: Oh, from.

15 MR. MOREIRA: Just read that back again.  
 16

17 (Record was read back by Court  
 18 Reporter.)  
 19

20 MR. MANISHIN: The clarification was  
 21 changing "to" to "from."

22 MR. MOREIRA: You're changing it?

23 MR. MANISHIN: No. I just asked her to  
 24 re-read it to see if it was accurate, and he  
 25 modified it.

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1 BY MR. JENSEN:  
 2 Q. Who is Global Networks going to sell its services  
 3 to?  
 4 MR. MANISHIN: Objection as to form.  
 5 Lack of foundation.  
 6 MR. JENSEN: I think it's perfectly based  
 7 on foundation because he just testified that  
 8 they're going to sell their services.  
 9 MR. MANISHIN: No, he did not.  
 10 MR. MOREIRA: He can answer anyway, so  
 11 don't bother with the colloquy. It's not  
 12 worth it.  
 13 A. To whichever one of the customers is interested in  
 14 buying that service. I don't know specifically  
 15 which customer utilizes Connecticut.  
 16 MR. JENSEN: Can we just take a minute  
 17 break?  
 18  
 19 (Recess taken from 2:38 p.m. to  
 20 2:50 p.m.)  
 21  
 22 BY MR. JENSEN:  
 23 Q. Mr. Gangi, you testified a few minutes ago about  
 24 services. I'm not talking about future services.  
 25 I'm talking about current services that Global

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1 sells to Networks. Do you remember when you just  
2 testified to that?

3 A. Yeah. I think I corrected that though.

4 Q. I don't know if you did. I think your counsel  
5 did.

6 A. No, I believe I did.

7 Q. How did you correct that answer?

8 A. I believe she asked me if -- you asked me if --  
9 sorry. I said that Global sold services to  
10 Networks. Global buys services from Networks.

11 Q. What are the services that Global buys from  
12 Networks?

13 A. Transport.

14 Q. I thought Global does not have any customers. How  
15 can it purchase transport services if it does not  
16 have any customers?

17 MR. MANISHIN: Objection. Question is  
18 inherently ambiguous.

19 BY MR. JENSEN:

20 Q. Does Global have any customers?

21 A. Global, Inc. have customers? In Connecticut?

22 Q. Well . . .

23 A. I don't know which customers --

24 Q. We'll distinguish between the recip. comp.  
25 customers like the Verizons --

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1 MR. MANISHIN: Counsel, you have a  
2 customer list and you have customer contracts,  
3 so there are customers out there.

4 MR. JENSEN: He keeps testifying that  
5 there may be a couple customers left, if any;  
6 that they've all been transferred or assigned  
7 to Networks.

8 MR. MANISHIN: Contracts. Anyway, go  
9 ahead.

10 MR. JENSEN: I don't know if you're  
11 making a distinction between customers and  
12 contracts, but . . .

13 BY MR. JENSEN:

14 Q. So are you saying right now -- after you said  
15 before that Global sells services to Networks, are  
16 you saying they do not sell services to Networks?

17 A. Well, it's --

18 MR. MANISHIN: Asked and answered. It's  
19 cumulative.

20 If you have anything else to say, please  
21 add it.

22 A. I don't have anything to add.

23 MR. JENSEN: I don't know that he has  
24 answered that.

25 BY MR. JENSEN:

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1 Q. Does Global sell services to Networks?

2 MR. MANISHIN: That's a yes or no  
3 question.

4 MR. MOREIRA: Glenn, stop coaching the  
5 witness.

6 MR. MANISHIN: It is a yes or no  
7 question.

8 MR. MOREIRA: Glenn, stop coaching the  
9 witness.

10 MR. MANISHIN: I'm not coaching the  
11 witness.

12 MR. MOREIRA: Glenn, I'm telling  
13 you . . .

14 MR. MANISHIN: I'm entitled to tell my  
15 client it's a yes or no question. If he wants  
16 to --

17 MR. MOREIRA: I don't think you're  
18 entitled to that to be honest with you.

19 A. What was the question again?

20 MR. JENSEN: Read it back, please.

21

22 (Record was read back by Court  
23 Reporter.)

24

25 A. I'm sure there are some services that Global would

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1 or could sell to Networks. I don't know  
2 specifically what they might be.

3 BY MR. JENSEN:

4 Q. Why did you answer earlier that Global does sell  
5 services to Networks?

6 THE WITNESS: Can you read back what my  
7 answer was?

8

9 (Record was read back by Court  
10 Reporter.)

11

12 BY MR. JENSEN:

13 Q. Is that a true statement?

14 A. That's a true statement, yes.

15 Q. Are there any documents between Global and Networks  
16 with respect to the services that Global sells to  
17 Networks?

18 A. Not that I'm aware of, no.

19 Q. Are there any payments that are made by Networks to  
20 Global for those services?

21 A. Yes. Those payments would be journalized.

22 Q. Those payments would be journalized?

23 A. Yes.

24 Q. Where would they be journalized?

25 A. In our accounting records.

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1 Q. Whose accounting records?  
 2 A. Select & Pay's.  
 3 Q. Pardon me?  
 4 A. They would be done by Select & Pay.  
 5 Q. How would that entry go?  
 6 A. The money would come into Global NAPS New  
 7 Hampshire.  
 8 Q. From who?  
 9 A. From whoever — what are we talking about?  
 10 Q. We were talking about payments that were made from  
 11 Networks to Global for services that Global sold to  
 12 Networks.  
 13 A. So any money that was in — that was allocated to  
 14 Networks, if Global NAPS had done some work for  
 15 Networks, Global NAPS would be paid out of the  
 16 money allocated for Networks.  
 17 Q. What type of work would that be?  
 18 A. I guess we could use a — you know, like a taxi  
 19 cab. The medallion owner, that would be Global  
 20 NAPS.  
 21 Q. So the service is the fact that Global has the  
 22 certificate in the state of Connecticut. Is that  
 23 what you're saying?  
 24 A. Yes.  
 25 Q. Does Global charge Networks for the use of the

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1 medallion as you called it?  
 2 A. I believe there is some compensation paid to Global  
 3 for it, yes.  
 4 Q. Okay. Could you describe to me that compensation?  
 5 A. I don't know the particulars of it, no.  
 6 Q. Who would know that?  
 7 A. That would come from our bookkeepers.  
 8 Q. Who would determine how much compensation is paid?  
 9 A. That would have been the officers.  
 10 Q. You're one of the officers?  
 11 A. Yes, but that decision would have been made a long  
 12 while ago, and I don't recall what it was.  
 13 Q. How long ago do you think that decision was made?  
 14 A. Probably at the inception of the company. If the  
 15 circumstances ever came about, we may have  
 16 addressed it. I don't know.  
 17 Q. But I think you told me that contracts had not been  
 18 assigned from Global to Networks since the  
 19 inception of the company. That only happened in  
 20 the last few years?  
 21 A. That happened after the original term of the  
 22 contracts expired. The contracts are typically  
 23 only for a year. After that year, they go to  
 24 month-to-month, which is assigned to Global NAPS  
 25 Networks.

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1 Q. When was Global NAPS incorporated?  
 2 A. '97, '98.  
 3 Q. I think you testified earlier or at least last time  
 4 that there was a change in the corporate structure  
 5 between the four entities going back maybe four  
 6 years ago, maybe five years ago?  
 7 A. Yeah, around the year 2000.  
 8 Q. Is that when the assignments started happening?  
 9 A. I'm not sure if they were done prior to that. I  
 10 know, from that day forward, they were. Prior to  
 11 that, I'm not certain how it was — it was just so  
 12 long ago.  
 13 Q. So the directors or the officers of Global would  
 14 know — would have been part of the decision in  
 15 terms of how much compensation was getting paid for  
 16 that assignment?  
 17 A. Yes.  
 18 Q. Is there any documentation of that anywhere?  
 19 A. Not that I'm aware of, no.  
 20 Q. Would that be something that is typically written  
 21 down and documented?  
 22 A. Not necessarily.  
 23 Q. Is that something that, if it were documented, was  
 24 destroyed?

MR. MANISHIN: I'll object. Lack of

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1 foundation.  
 2 BY MR. JENSEN:  
 3 Q. You can answer.  
 4 A. It shouldn't have been. I can't say that it  
 5 wasn't, but it shouldn't have been. That's not  
 6 something that would be slated for destruction.  
 7 Q. If you don't know the answer to the compensation  
 8 question, might Frank know the answer to this  
 9 question?  
 10 A. What question is that?  
 11 Q. How the determination was made about how much  
 12 compensation would be paid for the assignment of  
 13 customers — for the use of the medallion.  
 14 A. I thought I answered that. That was a decision we  
 15 made at the inception of the company.  
 16 Q. I know. I'm asking you — you don't have the  
 17 details of that decision, the amount of the  
 18 compensation. I'm asking you whether or not Frank  
 19 might have that information.  
 20 A. Well, I know that the — if his memory is better  
 21 than mine, maybe, but I doubt it. I know that  
 22 Select & Pay would have it because they do the  
 23 actual entries.  
 24 Q. So there should be an actual entry on some ledger  
 25 showing the compensation for the use of this,

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1 again, as you call it, medallion?

2 A. Absolutely. For any transaction between the

3 companies, there is a journal entry that exists or

4 did exist.

5 Q. That always happens?

6 A. Absolutely, without doubt, there is a journal entry

7 to keep the separation of the companies.

8 Q. Other than the Verizon action in Massachusetts, is

9 there any pending litigation in which Global has

10 asserted a claim for damages? Again, I'll qualify

11 it by saying state, federal, arbitration or agency

12 action.

13 A. Global, Inc. has, I believe, two cases that are

14 pending other than the Verizon case. There is a

15 defamation case -- this is another Verizon case --

16 and then there was a case with Broadvox, I believe

17 it was, that's out there.

18 Q. Okay. Going to the defamation case, that's against

19 Verizon?

20 A. Yes.

21 Q. What state is that in?

22 A. Massachusetts.

23 Q. Do you know if it's in the state court?

24 A. I believe it is, but I'm not certain of that.

25 Q. It's Global NAPS, Inc. v. Verizon? That's the

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1 is that the plaintiff?

2 A. I'm a little uncertain on the Broadvox case. I

3 probably have to get you more detail on that.

4 Q. Okay. But did Global NAPS bring the action?

5 A. I'm not sure if Global NAPS is the defendant or the

6 plaintiff in that one. I'm not sure.

7 MR. MELICK: We provided you with the

8 pleadings.

9 MR. JENSEN: Pardon me?

10 MR. MELICK: We provided you with the

11 complaint in that case the last time we were

12 here, that and the Verizon case and the other

13 case.

14 MR. JENSEN: I still have the right to

15 ask about it.

16 MR. MELICK: I just wanted you to know.

17 That's all.

18 BY MR. JENSEN:

19 Q. Does Global NAPS have a claim for damages in that

20 case?

21 A. I think there's claims and counterclaims.

22 Q. So however it is, either a counterclaim or an

23 original claim for damages, Global is asserting

24 claims against Broadvox?

25 A. Right.

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1 caption?

2 A. Well -- well, those --

3 Q. Global NAPS is the plaintiff?

4 A. Yes.

5 Q. And Verizon is the defendant?

6 A. Yes.

7 Q. Do you know when that was filed?

8 A. Two or three years ago.

9 Q. Do you know what the status of that case is?

10 A. It's still in -- ongoing. They're doing

11 depositions and whatnot.

12 Q. Have you valued the claim that you have in that

13 case?

14 A. It's strictly a damage of reputation claim. So,

15 no, we don't have a value on it.

16 Q. Have you made a demand in that case?

17 A. Not that I'm aware of, no.

18 Q. Have you been deposed in that case?

19 A. No.

20 Q. Has your deposition been noticed in that case?

21 A. No.

22 Q. The Broadvox claim, where is that pending?

23 A. I believe that's in Massachusetts. I think that

24 one is fairly close to being settled.

25 Q. Okay. The parties in that -- Global NAPS, Inc.,

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1 Q. Okay. Did you say that was in state court or

2 federal court?

3 A. I believe that one is in state court as well.

4 Q. Did you ever make a demand in that case?

5 A. Again, I'm uncertain on that case.

6 Q. You said it's --

7 A. I can certainly find out for you, but I don't know

8 right now.

9 Q. I want to find out what you do know, and we'll go

10 from there. You said it's close to settling?

11 A. Yeah. I think that one is pretty close to being

12 settled.

13 Q. Would you be receiving funds as a result of that

14 settlement?

15 A. I believe the settlement is covered by a

16 confidentiality agreement, so I'm not sure that I

17 should be discussing that.

18 Q. You haven't signed a confidentiality agreement yet,

19 have you?

20 A. I personally have not. I don't know if one of the

21 other officers has.

22 Q. The case is not settled?

23 A. No, it's not settled.

24 Q. Has there been an exchange of checks that you're

25 aware of?

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1 A. No.

2 Q. Do you have an idea of whether or not you will be  
3 paying money or receiving money?

4 THE WITNESS: Am I able to discuss this?

5 MR. MELICK: Any information he has about  
6 that would have come from me, so that would be  
7 protected by the attorney-client privilege.

8 MR. JENSEN: You're directing him not to  
9 answer?

10 MR. MELICK: Right.

11 MR. MOREIRA: We'll take this -- go  
12 ahead.

13 MR. MANISHIN: Well --

14 MR. MOREIRA: Your attorney-client --  
15 there's no point in colloquy.

16 MR. MANISHIN: Let's just say that  
17 there's a litigation. There hasn't been a  
18 settlement. The witness testified there  
19 hasn't been a check. When there's a  
20 settlement and a right to receive money,  
21 you're entitled to know that.

22 MR. MOREIRA: I know, but he just said he  
23 was directing him not to answer the question.  
24 I just want to know is that something we need  
25 to claim so --

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1 MR. MANISHIN: He directed him.

2 MR. MOREIRA: That's something we'll be  
3 claiming with the Judge.

4 (Off-the-record discussion.)

5 (Recess taken from 3:07 p.m. to  
6 3:11 p.m.)

7 MR. MELICK: In the interest of moving  
8 things along, I'll withdraw the instruction  
9 and allow the witness to answer the question.

10 A. The question is?

11 MR. MANISHIN: Do you expect you'll be a  
12 payor or receiver of funds in the settlement  
13 that you've been discussing with Broadvox?

14 THE WITNESS: I like it better when she  
15 reads it back.

16 (Record was read back by Court  
17 Reporter.)

18 A. It's my understanding that -- as I said, I don't  
19 have a complete grasp on the Broadvox case -- there  
20 will be no exchange of money in either direction.

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1 MR. MANISHIN: Do you also know now  
2 whether or not there has, in fact, been a  
3 settlement to date?

4 THE WITNESS: I don't know if it has been  
5 signed. I know the attorneys have sent stuff  
6 back and forth saying, yes, we agree to do  
7 this. I don't know if there's actually been  
8 a piece of paper that has a signature on it.  
9 They've represented -- both sides have  
10 represented to each other that they agree.  
11 Does that constitute a settlement? I don't  
12 know.

13 MR. MANISHIN: Okay. Well said.

14 BY MR. JENSEN:

15 Q. Going back to the Verizon defamation case, is that  
16 anywhere near settling?

17 A. That was still in discovery.

18 Q. Other than the Verizon and the Broadvox cases that  
19 we just talked about, is there any other pending  
20 litigation in which Global has asserted a claim for  
21 damages?

22 A. Not that I'm aware of, no.

23 MR. MELICK: Well --

24 MR. JENSEN: I'm including the  
25 Massachusetts Verizon action.

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1 MR. MELICK: You understand that there is  
2 an action --

3 MR. JENSEN: I understand that there's --  
4 the big Massachusetts action?

5 MR. MELICK: Yes.

6 MR. JENSEN: Yes.

7 MR. MELICK: I don't know if you're  
8 including that in the question.

9 MR. JENSEN: No. I was just --

10 MR. MELICK: We provided you with the  
11 papers in that. I don't think there's an  
12 addendum asking for money in that case, which  
13 is a technicality, but obviously we're looking  
14 for money from Verizon.

15 THE WITNESS: Which case are we talking  
16 about?

17 MR. MELICK: The Judge Wolfe case.

18 THE WITNESS: He knows about that one.

19 MR. MELICK: I know.

20 THE WITNESS: Aside from that is what  
21 he's talking about.

22 A. Right?

23 BY MR. JENSEN:

24 Q. Does Global anticipate suing anyone in the near  
25 future?

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1 THE WITNESS: Do I answer that,  
2 gentlemen?  
3 MR. MANISHIN: If you know. If there is  
4 an anticipation, answer the question.  
5 MR. MELICK: Let's take a break. That's  
6 a complicated question, and I just want to  
7 clarify something.

8  
9 (Recess taken from 3:14 p.m. to  
10 3:18 p.m.)  
11

12 A. We have not made any determination of suing anybody  
13 at this time.

14 BY MR. JENSEN:

15 Q. Have you sent out any demand letters in the last  
16 year?

17 A. Demand?

18 Q. For payment.

19 A. Yes.

20 Q. Okay. Who would those demand letters be going to?

21 A. I'm sorry. Hang on one second. I'm not sure if  
22 it was actually a demand letter.

23 MR. MANISHIN: He's referring to  
24 correspondence that I've related to you before  
25 between Global NAPS, Inc. and Qwest related to

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1 some Global NAPS New Hampshire invoices for  
2 ERIs, and we have produced them today, both  
3 the correspondence and the invoices.  
4

5 (Plaintiff's Exhibit No. 18,  
6 Global NAPS, Inc. Legal  
7 Department correspondence to  
8 Qwest Communications, Inc.  
9 with attached invoices,  
10 marked for identification.)  
11

12 BY MR. JENSEN:

13 Q. Mr. Gangi, showing you what's been marked as  
14 Plaintiff's Exhibit 18, do you see that document?  
15 (Handing.)  
16

17 (Witness reviews document.)  
18

19 A. Yes.

20 Q. That was a document you produced today; is that  
21 right?

22 A. Yes.

23 Q. What is that document?

24 A. This is a -- hang on one second while I breeze  
25 through it quickly.

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1  
2 (Witness reviews document.)  
3

4 A. This is a letter to Qwest Communications describing  
5 the current rates they're being charged and  
6 referencing invoices.

7 Q. And what is the service that is being provided by  
8 Global, Inc.?

9 A. This service is provided by -- it's PRI service  
10 provided by Global NAPS Networks.

11 Q. What does PRI stand for?

12 A. Primary rate interface.

13 Q. And are you classifying this as a demand letter to  
14 Qwest?

15 MR. MANISHIN: Objection to the form. I  
16 think it does call for a legal conclusion.

17 MR. JENSEN: Well, the background would  
18 be I asked whether or not he had sent any  
19 demand letters in the last year, and you  
20 referred him to this.

21 MR. MANISHIN: He said he didn't know if  
22 it was a demand letter, just correspondence.

23 A. Right. That's why I looked at it. I'm not certain  
24 if you would classify this as a demand letter.

25 BY MR. JENSEN:

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1 Q. What would you call it?

2 A. This is just a letter informing them of their new  
3 pricing structure.

4 Q. New pricing structure or amount that they  
5 purportedly owe?

6 A. It's both because it went back to address invoices  
7 that were issued at a different rate. This is at  
8 the new corrected rate.

9 Q. Is it that Qwest has not paid any of its bills?

10 A. No. They were invoiced at a different rate than  
11 this rate, and they paid that bill.

12 Q. They paid it at the old rate?

13 A. At the old rate.

14 Q. What you're saying is you need to pay us at the new  
15 rate?

16 A. Right.

17 Q. What is the amount that they have not paid?

18 A. I think the total is \$70,794,000. I'm sorry.  
19 Less what they've paid, it comes out to  
20 \$59,173,000.

21 Q. Has Qwest disputed this new rate -- strike that.  
22 Has Qwest disputed this new rate?

23 A. No, they have not.

24 Q. Have they disputed that they owe another \$59  
25 million?

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1 A. No, they have not.  
 2 Q. Have they responded to this letter?  
 3 A. This is part of the negotiation with Qwest. They  
 4 have not given me or I have not seen a written  
 5 response from them specifically addressing this  
 6 letter. It has been mentioned in the  
 7 negotiations.  
 8 Q. Who have you been negotiating with?  
 9 A. Anne Oullather.  
 10 Q. How do you spell that last name?  
 11 MR. MANISHIN: C-U-L-L-A-T-H-E-R. She  
 12 was a former client for years at MCI before  
 13 she went to Qwest. I have not spoken to her  
 14 on this matter.  
 15 BY MR. JENSEN:  
 16 Q. Are you personally negotiating with Anne Oullather?  
 17 A. Yes, I am.  
 18 Q. Is anybody else at Global negotiating?  
 19 A. No.  
 20 MR. MANISHIN: Would you say hello to  
 21 Anne the next time you talk to her for me.  
 22 THE WITNESS: She's a lovely lady.  
 23 MR. MANISHIN: I've known her since 1984.  
 24 THE WITNESS: I will.  
 25 MR. MANISHIN: Thank you.

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1 BY MR. JENSEN:  
 2 Q. Has Anne Oullather of Qwest indicated to you that  
 3 they would be paying the \$59 million?  
 4 A. As I said, this is part of a broader negotiation.  
 5 Q. What are other parts of the negotiation?  
 6 A. Continued service with us. We also have some  
 7 services that we purchase from them that they have  
 8 claims against us, so we'll end up -- as I said,  
 9 it's an ongoing negotiation. This is just one  
 10 portion of it.  
 11 Q. And what is their claim against -- let me back up  
 12 for a second. Is the money that you claim is  
 13 owed, the \$59 million, is that owed to Global?  
 14 A. Global, Inc.?  
 15 Q. Correct.  
 16 A. A portion of it would go to Global.  
 17 Q. What portion would that be?  
 18 A. Typically, it's -- on PRI service, anywhere from --  
 19 I don't know -- 5 to maybe 20 percent.  
 20 Q. What determines whether it will be 5 or 20 percent  
 21 or somewhere in between?  
 22 A. How much of the -- how much -- where the PRIs are  
 23 located and how much of it is transport. Networks  
 24 would chew up the remainder of that.  
 25 Q. Is Qwest a customer of Global, Inc.?

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1 A. It originally had a contract with Global, Inc.  
 2 That contract has been assumed by Networks.  
 3 Q. Do you know when that was assumed by Networks?  
 4 A. It expired -- the last contract expired -- the  
 5 original contract expired. There's an addendum  
 6 signed, and I believe the last addendum expired  
 7 over a year ago, so they've just been month to  
 8 month.  
 9 Q. The \$59 million that you claim is owed by Qwest,  
 10 how far back does that go?  
 11 A. That covers the period from when the contract  
 12 expired to date.  
 13 Q. So a little over a year?  
 14 A. A little over a year; right.  
 15 Q. Do you know what Qwest's claim against -- strike  
 16 that.  
 17 Does Qwest have -- is Qwest's claim against  
 18 Global or Global Networks?  
 19 A. I'm not sure. Actually, some of it is on -- they  
 20 have -- like I said, it's negotiations. There are  
 21 multiple parts to this. One of their claims would  
 22 be against Networks because it has to do with us  
 23 buying transport services from them, fiber. So  
 24 that be against Networks' portion of this.  
 25 Q. Okay. All told, what would be the claim that Qwest

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1 has against Global and Global Networks, Inc.? Do  
 2 you have a rough idea of the amount?  
 3 A. I think the contract value for the fiber side is in  
 4 the range of \$11 million. They've -- they haven't  
 5 brought forward any other claims officially to me  
 6 yet, so I don't know what else they're going to put  
 7 on the table; but that is the largest one that's  
 8 out there.  
 9 Q. Have they suggested other claims?  
 10 A. Yes, for damages for -- one of their claims --  
 11 having to move on to a new vendor. There was some  
 12 cost that was associated with that that they had  
 13 mentioned. Nothing else that I can think of.  
 14 There may have been some other items, but they were  
 15 just small items.  
 16 Q. Do you have a rough idea of the value of the  
 17 damages in the vendor claims that they might raise?  
 18 A. That's up to interpretation. I don't know. It  
 19 would be -- I believe there's some limitation on  
 20 our liability in our contracts and under our  
 21 tariffs, and I'm not sure what that is, but I know  
 22 there is a limit on it.  
 23 Q. Is there a number that you figured out at Global or  
 24 Global Networks that you think would be the net  
 25 result of the negotiation?

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1 A. No. This is still in the very early, early stages  
2 of negotiation.  
3 Q. Is it your expectation that, at some point, Global  
4 or Global Networks will receive a positive sum as a  
5 result of this negotiation?  
6 A. One of the -- one of the solutions that we had  
7 tossed around for a while was just having them  
8 continue service for some length of time as they do  
9 today. So if -- is that a positive?  
10 Q. So it would be more of an in-kind resolution as  
11 opposed to a money payment?  
12 A. Well, there's money paid every month, their bill,  
13 continued service with us.  
14 Q. Correct.  
15 A. You're talking about a lump sum of money?  
16 Q. Well, as you've told me so far, you've got a claim  
17 of \$59 million? When I say "you," it's Global and  
18 Global Networks.  
19 A. Right.  
20 Q. And, at this point, Qwest has an 11-million-dollar  
21 claim with maybe some other ones that are -- sounds  
22 like they're smaller than that. That, to me, seems  
23 like a pretty big net number on your side. Is  
24 there a reason to think that there will not be a  
25 large net number on your side?

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1 A. We're still in negotiations. I can't tell you how  
2 it's going to end up. I can tell you that one of  
3 the things we were talking about was just  
4 continuing service for a fixed period of time.  
5 Q. Qwest is not disputing this rate change?  
6 A. They have not sent me a formal dispute yet, no.  
7 Q. Other than Qwest and Exhibit 18 that we've looked  
8 at -- which we don't know if it's a demand letter.  
9 It's just a letter to Qwest saying you owe us  
10 X-amount of money -- has Global sent out any other  
11 demand letters in the last year?  
12 MR. HANISHIN: Objection to the form.  
13 You can answer.  
14 A. Not that I'm aware of. I don't believe -- I mean,  
15 if there was a small customer that maybe hadn't  
16 paid, I'm not sure if a letter would be appropriate  
17 or if they would just get a phone call. I don't  
18 know of any other letters or even if this is a  
19 demand letter, but I don't know of any that have  
20 gone out.  
21 BY MR. JENSEN:  
22 Q. Do you typically call somebody if they owe you  
23 money?  
24 A. Our sales department would. They maintain a  
25 relationship with the customer.

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1 Q. That's Mr. Masuret?  
2 A. Masuret, yes.  
3 Q. I think you testified earlier that Mr. Masuret  
4 works for Global, Inc.; right?  
5 A. Yes.  
6 Q. He's in the sales department at Global, Inc.?  
7 A. Yes.  
8 Q. What does Mr. Masuret actually sell?  
9 A. He would sell anything we have to offer: Inbound  
10 service, outbound service, co-location.  
11 Q. Okay. But in terms of Global, the services or the  
12 offerings that Global has, what does he sell?  
13 A. Well, he sells products for all the Global  
14 entities. Whatever portion of that would be  
15 Global, Inc.'s portion, that's what he would sell.  
16 Q. That would be an example of --  
17 A. If he sold a PRI.  
18 Q. Pardon me?  
19 A. If he sold a PRI, one, a portion of that would go  
20 to Global NAES, Inc., a portion would go to  
21 Networks and, if there was a co-location involved,  
22 a portion would go to Realty. So on the sale of  
23 one PRI, he would encompass three companies.  
24 Q. What part of PRI is the service that Global offers?  
25 A. Global is the certificate holder, and Global was

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1 the originator of the contracts.  
2 Q. Does Global have an interest in any entities?  
3 When I ask this question, I'm asking from 2002 to  
4 the present. Has it had -- well, let me rephrase  
5 it. That was bad.  
6 Does Global currently have an interest in any  
7 business entities?  
8 A. Other than itself?  
9 Q. Other than itself, yes.  
10 A. No.  
11 Q. Okay. So I'm including corporations,  
12 partnerships, joint ventures. It has no interests  
13 in any of those?  
14 A. No.  
15 Q. Sports teams?  
16 A. No.  
17 Q. Restaurants?  
18 A. No.  
19 Q. You looked up in the sky for a second.  
20 A. No. I'd love to have a sports team.  
21 Q. Going back to the year 2002 to the present, has  
22 Global had any interest in any business entities?  
23 A. To the best of my knowledge, no.  
24 Q. Okay. No interest in any partnerships?  
25 A. No.

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1 Q. Any joint ventures?

2 A. 2002? No. No.

3 Q. Any corporations?

4 A. No.

5 Q. Sports teams?

6 A. No.

7 Q. Any restaurants?

8 A. No.

9 MR. MANISHIN: Bars?

10 MR. JENSEN: I'm hoping that comes in  
11 under restaurant,

12 MR. MANISHIN: At some point, you get  
13 fairly far afield; but, you know, they could  
14 own a bank. That might be where all the  
15 money is. You should ask him banks. We'll  
16 be here for months.

17 BY MR. JENSEN:

18 Q. Do you own South Coastal Bank?

19 A. No, we don't.

20 Q. Has Global — I think you testified before that  
21 Global does not currently own any vehicles; is that  
22 right?

23 A. That's correct.

24 Q. Global does not currently own any aircraft; is that  
25 right?

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1 A. '99, 2000.

2 Q. Did you say the size of that truck?

3 A. Twenty-four-foot. Just a box truck.

4 Q. Okay. What happened to that truck?

5 A. It got sold.

6 Q. Who was it sold to?

7 A. I don't know.

8 Q. Was it sold to another Global entity?

9 A. I'm not sure if it was or not.

10 Q. Who would know?

11 A. I could ask — Jeez, I don't know. I could ask  
12 Rob to find out where it is, what happened to it.

13 Q. Do you know how much it was sold for?

14 A. No. It's a 15,000-dollar truck. I don't. I  
15 don't.

16 Q. Do you remember when it was sold?

17 A. Like I said, in the last year or two I would guess.

18 Q. Why was it sold?

19 A. No idea.

20 Q. Who made the decision to sell it?

21 A. I'm not sure on that one.

22 Q. Other than the Peterbilt truck, what other vehicles  
23 did Global own since 2002?

24 A. They had a Chrysler PT Cruiser.

25 Q. Do you know what year that was?

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1 A. That's right.

2 Q. And no boats?

3 A. That's correct.

4 Q. Has Global ever owned — when I say "ever," I'm  
5 going to go back to 2002. From 2002 forwards, has  
6 Global owned vehicles?

7 A. Yes.

8 Q. When did Global own vehicles?

9 A. Over the last three to five years maybe. Yeah,  
10 three to five years.

11 Q. When did they stop owning vehicles?

12 A. A year or two ago maybe. I don't really recall.

13 Q. So relatively recently?

14 A. Yeah.

15 Q. Last year or two?

16 A. Yeah.

17 Q. And what type of vehicles did Global own?

18 A. They had a truck.

19 Q. What kind of truck?

20 A. A Peterbilt.

21 Q. What was it used for?

22 A. Deliveries, moving equipment around.

23 Q. Global owned it?

24 A. That was owned by Global, I believe, yeah.

25 Q. Okay. Do you recall what year that truck was?

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1 A. 2000, 2001.

2 Q. What was that PT Cruiser used for?

3 A. I don't know. Just to run errands, I guess.

4 Q. When was it sold?

5 A. I'd say in the last year or two.

6 Q. Was there a reason why these — the vehicles that  
7 we've talked about, at least these two, were sold  
8 in the last year or two?

9 A. I don't know what the reason was. These are small  
10 — I mean, the PT Cruiser is a 5,000-dollar car.

11 Q. Was there a reason that the officers or the  
12 directors of Global decided that they did not want  
13 to own vehicles anymore under the Global name?

14 A. I'm not sure if they were just sold away or if they  
15 were sold to another Global company. I don't  
16 know.

17 Q. I'll ask you the same question, which is: Who  
18 would know?

19 A. I'm not sure who would know, but I can inquire.

20 Q. Okay.

21 A. It's small items.

22 Q. They add up, though, over time. Any other  
23 vehicles that were owned from 2002 to the present?

24 A. I don't believe so. There was a van, but I don't  
25 think it was ever owned by Global.

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1 Q. What about aircraft?  
 2 A. No.  
 3 Q. Global never owned any aircraft from 2002 to the  
 4 present?  
 5 A. No.  
 6 Q. Any boats from 2002 to the present?  
 7 A. No.  
 8 Q. We talked last time about the -- very generally  
 9 about the relationship between Global, Global New  
 10 Hampshire, Global Realty, Global Networks and the  
 11 -- well, Global South and the Global file entities.  
 12 Do you recall that?  
 13 A. Yes.  
 14 Q. I think we established or we will establish now  
 15 that -- well, you know, let me just confirm first  
 16 who the file entities are because I think we didn't  
 17 nail that down last time. So I'm going to read a  
 18 list of Global entities, and let me know whether or  
 19 not these constitute the Global file entities.  
 20 Okay?  
 21 A. Okay.  
 22 Q. Global NAPS South, Inc.; Global NAPS California,  
 23 Inc.; Global NAPS Florida, Inc.; Global NAPS  
 24 Georgia, Inc.; Global NAPS Hawaii, Inc.; Global  
 25 NAPS Kansas, Inc.; Global NAPS Kentucky, Inc.;

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1 Global NAPS Louisiana, Inc.; Global NAPS Maine,  
 2 Inc.; Global NAPS Maryland, Inc. So far am I  
 3 right?  
 4 A. Sounds to be right.  
 5 Q. Okay.  
 6 MR. MANISHIN: You asked us for a list,  
 7 but you had one the whole time.  
 8 MR. JENSEN: Not the whole time.  
 9 BY MR. JENSEN:  
 10 Q. Global NAPS Massachusetts, Inc.; Global NAPS  
 11 Michigan, Inc.; Global NAPS Minnesota, Inc.;  
 12 Global NAPS Nevada, Inc.; Global NAPS New  
 13 Hampshire, Inc. -- is that the same as Global NAPS  
 14 New Hampshire that we've been talking about?  
 15 A. Yes.  
 16 Q. It's not a separate New Hampshire --  
 17 A. I'm unaware if there's a separate company.  
 18 Q. So that's not necessarily a file entity?  
 19 A. That one wouldn't be a file company; right.  
 20 Q. Global NAPS New York, Inc.; Global NAPS North  
 21 Carolina, Inc.; Global NAPS Oregon, Inc.; Global  
 22 NAPS Pennsylvania, Inc.; Global NAPS South  
 23 Carolina, Inc.; Global NAPS Tennessee, Inc.; Global  
 24 NAPS Washington, Inc. Does that sound like the  
 25 list of file entities?

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1 A. Sounds good to me.  
 2 Q. Okay. Do you have any reason to think that that is  
 3 not the correct list of file entities?  
 4 A. No.  
 5 MR. MANISHIN: Do you know of any that he  
 6 left off the list?  
 7 THE WITNESS: No.  
 8 BY MR. JENSEN:  
 9 Q. Or do you know of any that I've added to the list  
 10 that shouldn't be there?  
 11 A. No.  
 12 Q. The officers for Global are: Frank Gangi,  
 13 President; Richard Gangi, Treasurer; and Mike  
 14 Chuture, Secretary; is that right?  
 15 MR. MANISHIN: Asked and answered about  
 16 six times.  
 17 A. Yes.  
 18 BY MR. JENSEN:  
 19 Q. These are the same people that are the board  
 20 members of Global; is that right?  
 21 A. Yes.  
 22 Q. Are these also the officers for Global New  
 23 Hampshire?  
 24 A. I believe so, yes.  
 25 Q. Are these also the officers for Global Realty?

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1 A. I believe so, yes.  
 2 Q. Are these also the officers for Global Networks?  
 3 A. I believe so, yes.  
 4 Q. Are these also the officers for Global South?  
 5 A. I believe that they are the same structure for all  
 6 those file companies, but I can't tell you for  
 7 certain.  
 8 Q. As you sit here today, it's your best understanding  
 9 that those are the -- the officers are also the  
 10 officers for Global South as well as the rest of  
 11 the file entities?  
 12 A. Yes.  
 13 Q. Okay. The board members, which is the same as the  
 14 officers, is it also true that these are the same  
 15 board members for Global New Hampshire?  
 16 A. Yes.  
 17 Q. For Global Networks?  
 18 A. Yes.  
 19 Q. Global Realty?  
 20 A. Yes.  
 21 Q. And Global South and the Global file entities?  
 22 A. To the best of my knowledge, yes.  
 23 Q. Okay. And do all these entities -- when say "all  
 24 these entities," I mean all the Global entities,  
 25 the four that are separate and then the file

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1 entities -- are they all headquartered in Quincy,  
2 Mass.?  
3 A. I believe they are. I don't know if they have  
4 Delaware addresses or if they use the legal offices  
5 for their headquarters. I don't know, but I  
6 believe they're all 10 Merrymount.  
7 Q. 10 Merrymount, Quincy, Mass.?  
8 A. Right.  
9 Q. All these entities have the same parent company; is  
10 that right?  
11 A. Yes.  
12 Q. That's Ferrous Miner?  
13 A. Yes.  
14 Q. And Ferrous Miner files a consolidated income tax  
15 for all of these entities; is that right?  
16 MR. MANISHIN: I think we went over this  
17 several times.  
18 MR. JENSEN: I don't think we have, not  
19 quite as --  
20 A. To the best of my knowledge, yes.  
21 BY MR. JENSEN:  
22 Q. For Global, can you tell me how often the company's  
23 Board of Directors meets?  
24 A. Whenever it's necessary. It varies.  
25 Q. Is there a typical number of times per year that

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1 you would meet?  
2 A. No. When we need to.  
3 Q. When is it that you would normally need to?  
4 A. If something requires our attention or if there's  
5 something we need to meet for for regulatory or any  
6 other obligation we have, legal obligation.  
7 Q. So you have no regular meetings?  
8 A. No scheduled regular meeting, no.  
9 Q. Would you say you meet regularly?  
10 A. We meet when we need to. As I said, we're a small  
11 company.  
12 Q. And when you meet as Global, do you also meet at  
13 the same time as the other Global entities?  
14 A. If there's a need for it.  
15 Q. Well, give me an example of the need to have  
16 everybody at the same meeting.  
17 A. I can't think of one, why I would need to meet for  
18 all the companies at the same time.  
19 Q. Has that happened in the past?  
20 A. Not that I can recall.  
21 Q. Are minutes kept of the company's meetings?  
22 A. Yes.  
23 Q. Who keeps the minutes?  
24 A. Secretary.  
25 Q. Who is that?

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1 A. Mike Couture.  
2 Q. Does Mr. Couture also maintain the minutes?  
3 A. I'm not sure if he does or if that's done by our  
4 in-house legal -- I'd have to check and let you  
5 know.  
6 Q. Who is typically present at a board meeting for  
7 Global?  
8 A. Board members.  
9 Q. Just the board members?  
10 A. (Nods.)  
11 Q. Is there also legal staff that's there?  
12 A. On occasion.  
13 Q. Is there usually a specific occasion that legal  
14 staff is needed?  
15 A. No, not that I can recall.  
16 Q. In the absence of legal staff, who would maintain  
17 the minutes?  
18 A. Mike.  
19 Q. Do you know where the minutes are kept?  
20 A. No, I don't.  
21 Q. Mike would be the one to ask?  
22 A. Yeah.  
23 Q. Where does Global keep its business records?  
24 A. What type of business records?  
25 Q. Any type of business records. It could be board

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1 meetings. It could be activity.  
2 A. They could be anywhere, I guess. If it's a  
3 contract, that would be with our sales guys or our  
4 in-house legal department; or if it's, you know,  
5 invoices and that type of stuff, it would be with  
6 the bookkeeper.  
7 Q. What about board-related records?  
8 A. I don't know where those would be kept.  
9 Q. Do you know who maintains the company's business  
10 records?  
11 A. I don't know what you're asking for about business  
12 records, so I can't answer your question.  
13 Q. Well, I guess you've broken it down to some extent  
14 for me. Some contracts, are they maintained with  
15 the sales departments?  
16 A. They could be, or they could be with the legal  
17 department.  
18 Q. Or both?  
19 A. Or both, yeah.  
20 Q. Does the company maintain any accounting records?  
21 A. No. Those are maintained by outside . . .  
22 Q. "Outside" being who?  
23 A. Our accountants and bookkeeper, Select & Pay,  
24 and -- I'm not even sure if Nardella & Taylor has  
25 any records.

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1 Q. So Select & Pay would be the one who maintains your  
2 accounting records?

3 A. Right.

4 Q. And Select & Pay maintains the accounting records  
5 for all the Global entities; is that right?

6 A. Yes.

7 Q. Including Ferrous Miner?

8 MR. MANISHIN: Ferrous Miner is  
9 technically not a Global entity.

10 But I think you understand the question.  
11 Please answer it.

12 A. Yes, I believe so.

13 BY MR. JENSEN:

14 Q. Who runs Global NAPS?

15 A. What do you mean by "Global NAPS"?

16 Q. Who runs the day-to-day business of Global?

17 A. That's me.

18 Q. That's you?

19 A. Yeah.

20 Q. And you make all the decisions?

21 A. Day-to-day decisions, yes. I get the input from  
22 Mike and Frank when need be.

23 Q. What would be an occasion that you would need to  
24 consult with Mike or Frank?

25 MR. MANISHIN: Counsel, I would just

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1 caution you that we're getting very far afield  
2 from what the Judge outlined in our May 31st  
3 order.

4 MR. JENSEN: How so?

5 MR. MANISHIN: There's nothing in here  
6 about how Global conducts its current business  
7 operations at all.

8 MR. JENSEN: I believe there is a  
9 provision for —

10 MR. MANISHIN: Show me. Corporate  
11 structure, yes.

12 MR. JENSEN: Exactly. That's what this  
13 is. Who runs the company, that's not part of  
14 the corporate structure?

15 MR. MANISHIN: Talking about the specific  
16 duties of specific individuals I don't regard  
17 as —

18 MR. JENSEN: Well, that's what I'm trying  
19 to find out. Mr. Gangi has testified that  
20 he's the person who runs the company.

21 MR. MANISHIN: I would just caution you  
22 that, at some point, I'm going to object. Go  
23 ahead. He testified to that in the first  
24 session as well.

25 MR. JENSEN: I don't think he did.

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1 MR. MANISHIN: You asked him that  
2 question — what did he do — and he said he  
3 runs the company on a day-to-day basis. I'm  
4 just saying because I read it this morning.  
5 Anyway, please proceed.

6 BY MR. JENSEN:

7 Q. Does Global publish notices and agendas for the  
8 board meetings?

9 A. I don't know. I wouldn't do that, so if it was  
10 required, I'm sure we would. I don't know what  
11 the regulations require.

12 Q. Have you ever seen a notice for a board meeting?

13 A. No.

14 Q. Have you ever seen an agenda for a board meeting?

15 A. Not that I can recall, no.

16 Q. Who would be in charge of putting together notices  
17 or agendas for board meetings?

18 A. If they're required and they're done, then they  
19 probably would be done by our secretary or somebody  
20 from our legal department. That's not something I  
21 would do.

22 Q. Would that be something that Michael Couture would  
23 do?

24 A. If it was required and if it was done, maybe or our  
25 legal department.

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1 Q. What does Michael Couture do as secretary other  
2 than take minutes at board meetings?

3 A. I'm not sure what other duties, other  
4 responsibilities of a secretary.

5 Q. I'm not asking you what they generally are, but  
6 what does he do as a secretary?

7 A. I don't know.

8 MR. MANISHIN: What does he do in  
9 addition to taking minutes is the question.

10 THE WITNESS: Secretary I thought he  
11 said.

12 MR. MANISHIN: Well, you already  
13 testified he takes minutes. I just want to  
14 make sure it's clear. The question he asked  
15 was what does he do, and you said, "I don't  
16 know," but that's not accurate.

17 BY MR. JENSEN:

18 Q. He takes minutes, but other than taking minutes,  
19 you don't know what he does?

20 A. In his official capacity as secretary — is that  
21 what you're asking — or just, in general, what  
22 does Michael Couture do?

23 Q. If you want to answer that question, I'd be more  
24 than happy to hear it.

25 A. I'd prefer not to. I would prefer to answer no

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1 more questions, but you're asking them, not me.  
 2 Q. If you want to tell me what Michael Couture does --  
 3 I'm asking you as a secretary, as a secretary of  
 4 Global, because that's what I know him as.  
 5 A. I don't know any other duties that he has as  
 6 secretary. If there is some obligation that he has  
 7 as secretary, I'm sure he performs that duty. I  
 8 just don't know what it is.  
 9 Q. Could you tell me what your brother's duties are at  
 10 Global?  
 11 A. He's the president of the company.  
 12 Q. What does he do as president?  
 13 A. He's the president of the company. He doesn't  
 14 have much involvement with the day-to-day operation  
 15 of Global.  
 16 Q. That would be your job; is that right?  
 17 A. That would be my job, yes.  
 18 Q. To the extent your brother Frank does anything,  
 19 what does he do?  
 20 A. Within Global?  
 21 Q. Within Global.  
 22 A. If there was -- I don't know -- a major issue --  
 23 I'm not sure what that would be, but I would ask  
 24 for Mike and Frank to give me some input. It  
 25 doesn't happen often.

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1 Q. But you've consulted with him in this case --  
 2 A. Yes, I have.  
 3 Q. -- in preparation for this deposition?  
 4 A. This is a major issue, sure.  
 5 Q. Presumably that means Frank knows something about  
 6 Global and what's going on with Global; is that  
 7 right?  
 8 A. Oh, sure. Yeah.  
 9 Q. Would you say he's involved in Global?  
 10 A. No.  
 11 Q. Not at all?  
 12 A. No.  
 13 Q. Why is that?  
 14 A. He is not there. He doesn't run the company.  
 15 That's what I do. He's got other things and other  
 16 interests that he's involved with.  
 17 Q. Has he ever been involved in the business of  
 18 Global?  
 19 A. Oh, sure.  
 20 Q. When was that?  
 21 A. He probably became very uninvolved with Global  
 22 three years ago, three and a half years ago, four  
 23 years ago, somewhere around there.  
 24 Q. Why did he become less involved three or four years  
 25 ago?

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1 A. Wanted to pursue other avenues.  
 2 Q. At that point, you took charge?  
 3 A. Yes. I've always been there and working in  
 4 conjunction with Frank to run the company. He  
 5 wanted to do other things. It was a simple  
 6 transition.

7 MR. JENSEN: Let's take a two-minute  
 8 break.

9  
 10 (Recess taken from 3:58 p.m. to  
 11 4:13 p.m.)  
 12

13 BY MR. JENSEN:

14 Q. Mr. Gangi, could you tell me which Global entity or  
 15 entities deliver traffic to SNET in Connecticut?  
 16 A. I'm not sure who delivers traffic to you. I  
 17 believe it's -- I'm not sure. I'd have to check.  
 18 Q. Who would know the answer to that?  
 19 A. That I don't know either.  
 20 Q. Would that be Mr. Nback?  
 21 A. Jeff might be able to tell me. I'd have to  
 22 inquire.  
 23 Q. Was there a point in time when you did know the  
 24 answer to that question? You just can't recall it  
 25 now?

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1 A. I don't remember that being brought to my  
 2 attention, which company was providing it for you  
 3 -- to you.  
 4 Q. A similar question: Which Global entity or  
 5 entities receive traffic from SNET and transport it  
 6 elsewhere?  
 7 A. Again, I'd have to get the answer to that. I don't  
 8 know it off the top of my head.

9  
 10 (Plaintiff's Exhibit No. 19,  
 11 customer lists, Bates Stamps  
 12 GLOBAL NAPS CT 1839 and GLOBAL  
 13 NAPS CT 1938 through GLOBAL  
 14 NAPS CT 1946,  
 15 marked for identification.)  
 16

17 BY MR. JENSEN:

18 Q. Mr. Gangi, I'm show you what's been marked as  
 19 Plaintiff's Exhibit 19. (Handing.) These are  
 20 documents that were produced by Global NAPS to us.  
 21 Do you recognize these documents?  
 22

23 (Witness reviews document.)  
 24

25 A. I have not seen these before, no.

180

1 Q. Could you just flip through them and take a look?

2

3 (Whereby the witness complies.)

4

5 A. Okay.

6 Q. Why don't we take a look at the first page, which  
7 is Bates Number Global NAPS CT 1839. Do you see  
8 that page?

9 A. Yes.

10 Q. Okay. Could you tell me what this page is? What  
11 does it represent?

12 A. It looks to be a list of customers.

13 Q. Customers for who?

14 A. I'm assuming Global NAPS.

15 Q. Global NAPS, Inc.?

16 A. I didn't prepare this, so I don't know what it is.

17 Q. Do you know who prepared it?

18 A. There's no indication on here. This most likely  
19 would have to come from our sales department.

20 Q. Would that be Mr. Masuret?

21 A. Yes, Mr. Masuret and Mr. Shaw.

22 Q. Okay. Do you know how this document got to be put  
23 together?

24 A. No. I had no involvement with this document.

25 Q. You had no involvement in asking that a customer

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1 list be put together?

2 A. No.

3 Q. And do you have an idea of who would have asked  
4 that a customer list be put together?

5 A. I would assume it came from in-house counsel to  
6 satisfy the Court's order.

7 Q. Okay. Taking a closer look at the first page,  
8 looking at the -- if you notice, on the left side  
9 at the top left, it says, "Customer"?

10 A. Yeah.

11 Q. And then it lists a number of customers going down.  
12 Do you have a -- as the person that runs the  
13 day-to-day business of Global, do you have an idea  
14 of whether or not these are customers of Global?

15 A. My guess would be that these are, as I've said,  
16 originally contracted with Global, Inc.; but if  
17 their term is expired on the original contract,  
18 then they've been assigned to Networks. Just by  
19 looking at this document, I can't tell you which  
20 one of these people may have current contracts.  
21 My suspicion is none of them.

22 Q. Okay. Looking in the Ds, it says a customer by  
23 the name of Dial Assurance. Do you see that  
24 customer?

25 A. Yes.

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1 Q. Have you ever heard of that customer before?

2 A. I've heard mention of it, sure.

3 Q. Okay. And what's the address for that customer?

4 A. 65 High Ridge Road, Stamford, Connecticut.

5 Q. Do you know whether that customer is still in  
6 Connecticut today?

7 A. I don't know if they're still a customer, first  
8 off; and I don't know if they are still in  
9 Connecticut if they are still a customer.

10 Q. Is there somebody that could find that information  
11 out?

12 A. Sure. I'm sure Mr. Masuret could find that out for  
13 me.

14 Q. Turning to the second page -- I apologize for  
15 lumping it all together. I'm doing that to  
16 hopefully make it --

17 A. No problem.

18 Q. The second page is entitled, "Confidential,  
19 Attorneys' Eyes Only"; and then underneath it says,  
20 "Global NAPS, Inc. Customer List 2002." Do you see  
21 that?

22 A. Yes.

23 Q. Does that tell you anything about the customers  
24 listed under the heading Customer?

25 A. Well, it would appear to be a list of customers for

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1 Global NAPS, Inc. back in 2002.

2 Q. Okay. Is there any reason to believe that these  
3 were not Global NAPS's customers back in 2002?

4 A. I'm -- not by this -- not by this document.

5 Q. Okay. And, again, you don't know who put this  
6 particular document together?

7 A. Yeah, I was not involved with this.

8 Q. I'm talking specifically about the customer list  
9 for 2002.

10 A. Yeah, I was not involved with that.

11 Q. Do you have any idea what the highlighting means on  
12 certain of the customers?

13 A. No idea.

14 Q. If you turn two pages, it's the Global NAPS  
15 customer list for 2003, and that is Bates  
16 Number 1940. Do you see that page?

17 A. Yes.

18 Q. Okay. It looks like a two-page document listing  
19 the customers, at least by the heading, for Global  
20 NAPS, Inc. for 2003.

21 A. Okay.

22 Q. You don't know anything about this list?

23 A. Again, I didn't prepare the list or ask for the  
24 list to be prepared. So, no, I don't know anything  
25 about it.

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1 Q. I'm asking you that for each one because --  
 2 A. Sure.  
 3 Q. -- they're clumped together but they're separate  
 4 lists it looks like.  
 5 A. I understand.  
 6 Q. The next one we have, which is Bates Number 1942,  
 7 is the list for 2004. Do you see that?  
 8 A. Yes.  
 9 Q. Okay. That's for Global NAPS -- the heading is  
 10 "Global NAPS, Inc. Customer List 2004"?  
 11 A. Right.  
 12 Q. But you don't know whether or not -- strike that.  
 13 What does this document tell you, if anything?  
 14 A. It appears to be a list of customers for Global  
 15 NAPS for 2004.  
 16 Q. Okay.  
 17 MR. MANISHIN: I would state for the  
 18 record, Mr. Jensen, it was one of your  
 19 requests at the last deposition for a customer  
 20 list, and so endeavors were made to put a  
 21 customer list together whether or not it was  
 22 technically responsive to the Court's order.  
 23 I don't know who in the company did it, but  
 24 obviously it was not Mr. Gangl.  
 25 MR. JENSEN: Thank you for that.

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1 MR. MANISHIN: You're welcome.  
 2 BY MR. JENSEN:  
 3 Q. As you sit here today, do you have any reason to  
 4 believe that this list of customers in 2004 were  
 5 not customers of Global NAPS, Inc. in 2004?  
 6 A. Again, if they're listed as customers in 2002 and  
 7 then again in 2004, the same customer, their  
 8 initial contract is obviously expired, so they  
 9 would have been assigned to Global NAPS Networks  
 10 rather than Global NAPS, Inc. I wasn't involved  
 11 with this. I don't know what they were told to  
 12 do.  
 13 Q. Okay.  
 14 A. What I'm saying is purely speculation.  
 15 Q. Looking at the next list, which is 2005 which  
 16 starts on Bates Number 1944, it's titled, "Global  
 17 NAPS, Inc. Customer List 2005." Do you see that?  
 18 A. Yes.  
 19 Q. Okay. What's your understanding as you sit here  
 20 today of what this document is?  
 21 A. It just says it's a Global NAPS, Inc. customer list  
 22 for 2005.  
 23 Q. Looking at the last page, which is Bates  
 24 Number 1946, which I think -- and you can tell me  
 25 if I'm wrong or if you don't even know, but it

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1 looks like the last page is another version of the  
 2 first page of this document?  
 3 A. Another version of the -- okay. They all look  
 4 pretty similar, but okay.  
 5 Q. And the date on this last one is 2006. Do you see  
 6 that?  
 7 A. That's what it says.  
 8 Q. It says, "Global NAPS, Inc. Customer List 2006"?  
 9 A. Right.  
 10 Q. Do you have an understanding of what this document  
 11 represents?  
 12 A. Only by what it says on the paper, and it says it's  
 13 a Global NAPS, Inc. customer list.

14  
 15 (Recess taken from 4:24 p.m. to  
 16 4:35 p.m.)  
 17

18 (Plaintiff's Exhibit No. 20,  
 19 Global NAPS, Inc. Telephone  
 20 Switch Service Agreement with  
 21 Actifunds, marked for  
 22 identification.)  
 23  
 24  
 25

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1 (Plaintiff's Exhibit No. 21,  
 2 Global NAPS, Inc. Telephone  
 3 Switch Service Agreement with  
 4 AV8 Internet, marked for  
 5 identification.)  
 6  
 7 (Plaintiff's Exhibit No. 22,  
 8 Global NAPS, Inc. Telephone  
 9 Switch Service Agreement with  
 10 Berkshire Net, Inc.,  
 11 marked for identification.)  
 12  
 13 (Plaintiff's Exhibit No. 23,  
 14 BestWeb Corporation correspondence,  
 15 four letters,  
 16 marked for identification.)  
 17  
 18 (Plaintiff's Exhibit No. 24,  
 19 Global NAPS, Inc. Telephone  
 20 Switch Service Agreement with  
 21 BBIS Communications,  
 22 marked for identification.)  
 23  
 24  
 25

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1 (Plaintiff's Exhibit No. 25,  
2 through Plaintiff's Exhibit  
3 No. 70, inclusive, to be  
4 described by deponent,  
5 marked for identification.)  
6

7 BY MR. JENSEN:

8 Q. (Handing.) Mr. Gangi, I'm showing you what's been  
9 marked as Plaintiff's Exhibit 20. Do you see that  
10 document?  
11

12 (Witness reviews document.)  
13

14 A. Yes.

15 Q. Okay. Can you tell me what that document is?

16 A. It looks like a contract between Global and . . .

17 Q. If you look at the front page, on the first line  
18 below the title, right after Global --

19 A. Actifunds, A-C-T-I-F-U-N-D-S.

20 Q. Do you know what the current status of this  
21 contract is?

22 A. Give me a minute to look through it. I'll see if I  
23 can figure it out.  
24

25 (Witness reviews document.)

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1 A. If they're still a customer of one of the members  
2 of the Global family, it would be Networks and not  
3 Inc. That I can say.

4 Q. Correct. So my question was: Is Actifunds a  
5 customer of Global currently?

6 A. No.

7 Q. Okay. Would there be any documentation of this  
8 Actifunds contract that expired and was assigned to  
9 Networks?

10 A. Probably not. It's just something that was done  
11 in the course of business for us. It's our  
12 routine. It's what we do.

13 Q. Do you know whether or not this contract deals with  
14 delivery of traffic to SNET?

15 A. What are they buying?

17 (Witness reviews document.)  
18

19 A. It mentions that they are buying ERI service.  
20 That should include SNET anywhere on our footprint  
21 which SNET is part of.

22 Q. So assuming they were still a customer of a Global  
23 entity -- and that Global entity would probably be  
24 Networks. Again, assuming they were still a  
25 customer, they might be providing delivery of

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1  
2 A. I would have to say that this contract is expired.  
3 Q. When you say "expired," what do you mean by that?  
4 A. It was signed in 2001, and it's got an initial  
5 one-year term. Then it goes to -- it doesn't go  
6 anywhere. That's it. One-year term.

7 Q. Is this a contract that was assigned to Networks?

8 A. This would be a contract that was assigned to  
9 Networks. If this is still a customer. At the  
10 time it expired, it would have been assigned to  
11 Networks. That would have been 2002.

12 Q. So around 2002 sometime, it would have been  
13 assigned to Networks?

14 A. Right.

15 Q. How can you tell whether or not it's currently a  
16 customer of Networks?

17 A. If it is a -- I'd have to talk to our -- either our  
18 sales department or Select & Pay to see if they're  
19 issuing them a bill.

20 Q. Okay. But can you say as a matter of fact that  
21 Actifunds is no longer a client of Global NAPS,  
22 Inc.?

23 A. I can't say as a matter of fact either way, whether  
24 they are or aren't a customer.

25 Q. Of Global. Not Global Networks. Of Global.

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1 traffic to SNET?

2 A. If they had a need for it, yes.

3 Q. Okay. Is there any way that you can tell from this  
4 contract whether or not they had a need for it?

5 A. No.

6 Q. Who would know that?

7 A. Probably no one in our organization. That's not  
8 something that we would -- when you buy a ERI from  
9 us, it covers our entire footprint. We deliver it  
10 to you in one spot, and it covers everything that  
11 we cover.

12 MR. MANISHIN: I'll just caution you.

13 This sounds a lot like merits discovery to me  
14 and not assets discovery.

15 MR. JENSEN: Why is that?

16 MR. MANISHIN: Because delivery of  
17 traffic to SNET has nothing to do with whether  
18 there are debts due and owing from these  
19 customers to Global NAPS, Inc. that you could  
20 attach.

21 MR. JENSEN: I think that's a question.

22 BY MR. JENSEN:

23 Q. Looking at Plaintiff's Exhibit 20, which is the  
24 Actifunds contract, and referring you back to  
25 Plaintiff's Exhibit 19 -- 19 is the customer

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1 list -- do you see Actifunds on that list?  
 2 A. No, I do not.  
 3 Q. Does the fact that Actifunds is not listed on that  
 4 list mean anything to you?  
 5 A. It would indicate to me that they're not a  
 6 customer.  
 7 Q. But you don't have any independent knowledge of  
 8 that?  
 9 A. No.  
 10 Q. Where are the -- I think you mentioned earlier that  
 11 you think that contracts might be kept with sales  
 12 and legal; is that right?  
 13 A. Yes.  
 14 Q. Copies of contracts with customers?  
 15 A. Yes.  
 16 Q. Do you know where, for example, Plaintiff's  
 17 Exhibit 20 was pulled from?  
 18 A. No, I don't.  
 19 Q. Do you know who would know that?  
 20 A. Either our in-house counsel or the sales  
 21 department. I don't know who provided which of  
 22 these contracts to you.  
 23 Q. How would Actifunds pay under this contract?  
 24 A. Again, I'm not -- I've never seen this contract  
 25 prior to this, so I would have to read through here

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1 and figure it out and interpret what it says.  
 2  
 3 (Witness reviews document.)  
 4  
 5 A. What's your question again?  
 6 Q. My question was: How would Actifunds pay for the  
 7 services that are provided by Global NAPS, Inc.?  
 8 A. I assume they would write a check.  
 9 Q. That check would go to Select & Pay?  
 10 A. This is back in 2001. It probably would have  
 11 been -- the initial term -- it may have been  
 12 deposited right with Global, Inc.  
 13 Q. Okay.  
 14 A. We're talking five years ago, and that's, you know,  
 15 ancient history in my world.  
 16 Q. Showing you what's been marked as Plaintiff's  
 17 Exhibit 21, do you see that document? (Hanging.)  
 18  
 19 (Witness reviews document.)  
 20  
 21 A. Yes, I do.  
 22 Q. Can you tell me what that document is?  
 23 A. This looks like an agreement between Global NAPS  
 24 and AVB.  
 25 Q. Do you know what the current status is of that

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1 agreement?  
 2 A. This agreement was signed in 2001. The initial  
 3 term was for one year, so it's expired. After  
 4 that, it continued on from month to month. If  
 5 they're still a customer, this contract would be  
 6 assumed by Global NAPS Networks.  
 7 Q. And using -- you can use Exhibit 19 if that helps  
 8 you, but do you know whether or not AVB Internet is  
 9 currently a customer of Global Networks?  
 10 A. They're listed on the customer list all the way up  
 11 to 2006, so my assumption would be that they still  
 12 are --  
 13 Q. Okay.  
 14 A. -- a customer of one of the Global companies.  
 15 Q. Of one of the Global companies?  
 16 A. In this case, without seeing any other paperwork,  
 17 it would be Global NAPS Networks.  
 18 Q. Okay. But I think -- didn't we nail down that  
 19 Global NAPS, Inc. would not have any of these  
 20 customers anymore?  
 21 A. Right. Networks would.  
 22 Q. Would there be any other Global entity that would  
 23 be a company that was assigned this contract other  
 24 than Networks?  
 25 A. Not that I'm aware of, but, as I said, barring any

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1 paperwork telling me something different, then  
 2 these all should go to Networks.  
 3 Q. Okay. Now, what would be the paperwork that would  
 4 tell you something different?  
 5 A. I have no idea. I'm just throwing that out there.  
 6 Q. Okay. Would there be like a co-location agreement  
 7 that goes with it? Would that be something that's  
 8 different?  
 9 A. No.  
 10 Q. Okay. Are there any circumstances under which AVB  
 11 Internet would be doing -- strike that.  
 12 Would there be any circumstances under which  
 13 this AVB Internet contract would be assigned to  
 14 Global Realty?  
 15 A. None that I can think of, no.  
 16 Q. Any circumstances where this contract would be  
 17 assigned to Global New Hampshire?  
 18 A. None that I'm aware of.  
 19 Q. Okay. The world that we're working in is: It's  
 20 originally a Global NAPS, Inc. contract, and it was  
 21 assigned, once it expired, to Global Networks; is  
 22 that right?  
 23 A. Yes.  
 24 Q. Okay. If you can't tell me today whether or not  
 25 AVB Internet is currently a customer of Networks,

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1 who can?

2 A. If I reference the customer list that was produced,  
3 it shows them as a current 2006 customer. So my  
4 answer would be that they are still a customer.

5 Q. Okay. But referring you to that list, it also  
6 says that this list is Global NAPS, Inc.'s customer  
7 list for 2006?

8 A. Okay. And as I said, I didn't get involved with  
9 the production of the list. I don't know what they  
10 were asked to produce, but if someone is  
11 representing that these are still a customer of one  
12 of the Global entities, that entity would be Global  
13 NAPS Networks.

14 Q. I'm asking you who would know that.

15 A. I would know that. If they're a customer today  
16 still, then they belong to Global NAPS Networks.  
17 Just because somebody put down Global NAPS, Inc. --  
18 for whatever reason they did that, I don't know;  
19 but if they're still involved with Global NAPS  
20 today, they would be a customer of Global NAPS  
21 Networks, not Global NAPS, Inc.

22 Q. Okay. Then my question would be: Who knows their  
23 current status? What I'm trying to find out is who  
24 -- you don't know who put this list together; is  
25 that right?

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1 A. Right.

2 Q. Who would have the information to put this list  
3 together?

4 A. Either our sales department or -- well, this would  
5 come from our sales department.

6 Q. So Mr. Masuret would know whether or not a customer  
7 is a current customer as opposed to an expired  
8 customer?

9 A. Right; and he's got the list broken down by year  
10 all the way to 2006. So if he's listing someone on  
11 his 2006 customer list, even those he's saying it's  
12 Global NAPS, Inc., the fact of the matter is it's  
13 not a Global NAPS, Inc. customer. It's a Networks  
14 customer, but I have to rely on that these are  
15 actually customers still of one of the Global  
16 companies. If this is truly a list that he put  
17 together, then it should be fairly accurate. Maybe  
18 not as to who owns the contract, but they are a  
19 customer of one of the world of companies.

20 Q. All right. I don't want to belabor this, but you  
21 don't know that he put this together, so we don't  
22 know the source of this list? Is that the -- I  
23 thought that was the point you were making earlier.

24 A. I don't know the -- I didn't ask to have this  
25 produced, so I don't know the source of it.

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1 Q. I understand. I understand. You probably know  
2 what I'm trying to do, which is find out who does  
3 know the actual status of the customers listed  
4 here. I understand you're looking at this and it  
5 appears that these are the current customers  
6 because that's what it says, but who can verify  
7 that for me?

8 A. That would be Brad.

9 Q. Okay. Do you know whether or not this AVB  
10 contract involves delivery of traffic to SNET?

11 A. Again, if they buy a PRI from us, then they have  
12 the ability to deliver traffic to SNET. Whether  
13 or not they do I don't know.

14 Q. Can you tell me what the amount per month on this  
15 contract is?

16 A. The initial term was -- AVB? Let's see.

17

18 (Witness reviews document.)

19

20 A. They bought one PRI. Their rate is a thousand  
21 dollar set-up fee and then \$500 per month going  
22 forward as long as it's paid on or before the 1st  
23 of the month.

24 Q. And as you sit here today, do you know whether or  
25 not that is the same rate that it pays per month

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1 currently?

2 A. Barring any documents that tell us there's been any  
3 modifications to this, that would be the same rate  
4 they're paying a month.

5 Q. Currently they would be getting a bill from Select  
6 & Pay as we talked about earlier? That would be  
7 the process; that these guys would be billed and  
8 they would pay?

9 A. They would get a bill from Global NAPS New  
10 Hampshire issued by Select & Pay.

11 Q. A bill from Global NAPS New Hampshire?

12 A. Right.

13 Q. Not Global NAPS Networks?

14 A. No. Global NAPS New Hampshire does the billing for  
15 the companies.

16 Q. Okay. Maybe I misunderstood. I thought Global  
17 NAPS New Hampshire held the bank account in its  
18 bank but Select & Pay did the billing?

19 A. The invoices don't go out and say Select & Pay.  
20 Select & Pay is just our agent, if that's the right  
21 word. They work for us. We tell them send a bill  
22 to Joe's Pizza. They send a bill out from Global  
23 NAPS New Hampshire to Joe's Pizza saying you owe  
24 me X.

25 Q. Even though the contract is with Global NAPS, Inc.

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1 or Global NAPS Networks?

2 A. Yes, and then they'll do a reconciliation on their

3 books with due tos and due froms as to how the

4 money's broken up. Some portion of it will go to

5 Networks. Some portion of it will go to Realty.

6 Some portion of it will go to Inc.

7 Q. You mentioned that all of this is registered on the

8 books. Where are these books?

9 A. They would be kept by Select & Pay.

10 Q. Prior to June, '05 when Select & Pay was

11 incorporated, where were these books kept?

12 A. Again, prior to June, '05, I don't know where they

13 were kept. I think you asked me this before.

14 They may have kept them in Quincy, or they may have

15 rented storage. I don't know. I wasn't involved

16 with where to keep records.

17 Q. You're talking about entries on account ledgers; is

18 that right?

19 A. Yes.

20 Q. And you're calling those books?

21 A. Yes.

22 Q. Okay. Is there a distinction between books and

23 business records that you've been talking about?

24 MR. MANISHIN: Objection. I think he

25 said before he wasn't sure what you meant by

201

1 business records.

2 A. Again, I'm not sure what you mean by business

3 records.

4 BY MR. JENSEN:

5 Q. Business records could include corporate records --

6 A. When I say "books," I'm talking about accounting

7 entries.

8 Q. Accounting entries?

9 A. Right.

10 Q. Okay. Other than the monthly fee that is paid by

11 AVB Internet, are there any other recurring fees

12 that would be paid?

13 A. Not that I can gather from this contract, no.

14 Q. Who at Global has the authority to enter into

15 contracts like this?

16 A. I do.

17 Q. Anybody else?

18 A. Frank I'm sure, and I'm sure Michael would. He's

19 an officer. He has signing authority.

20 Q. (Handing.) Showing you what's been marked as

21 Plaintiff's Exhibit 22, do you see that document?

22

23 (Witness reviews document.)

24

25 A. Yes.

202

1 Q. What is it?

2 A. It says it's a Telephone Switch Service Agreement.

3 Q. Okay. Who is it with or who is the client?

4 A. It's handwritten and it's poorly handwritten, but I

5 believe it says Berkshire Net, Inc.

6 Q. Okay. Do you know whether or not that's a current

7 client of Global NAPS?

8 A. I'll refer back to the customer list for 2006.

9

10 (Witness reviews document.)

11

12 A. I see Berkshire Net still listed, so I would say

13 that they're still a customer.

14 Q. Okay. Looking at the contract, that's between --

15 originally between Global NAPS, Inc. and Berkshire

16 Net; is that right?

17 A. Right; it appears to be.

18 Q. Okay. Looking at the first page of the contract,

19 down at the bottom, it says, "Global NAPS Realty,

20 Inc."; and then underneath that is "By Frank Gangl,

21 President" with a signature above that. Do you see

22 that?

23 A. Okay.

24 Q. Can you tell me why Global NAPS Realty is signing

25 this document?

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1 A. Again, this is eight years ago. I don't know what

2 they're selling. Let me read through this, and

3 I'll try and get you an answer.

4

5 (Witness reviews document.)

6

7 A. There's no list of description of service. I

8 don't know what is being sold. If Realty is

9 involved, my assumption would be that this is for a

10 rack rental.

11 Q. Okay. Just looking at the first page, it's titled

12 "Global NAPS, Inc. Telephone Switch Service

13 Agreement"?

14 A. Right.

15 Q. Is that the same as an agreement to lease rack

16 rental?

17 A. It could be.

18 Q. Okay. Is there a separate service that is being

19 or was being provided by Global NAPS, Inc.?

20 A. Sure. PRI service.

21 Q. Okay. Is that the service that you think was

22 provided under this contract?

23 A. Well, the description of service -- this is all

24 speculation. The description of service is blank,

25 but it's signed by Realty, so my assumption would

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1 be that this is for a rack rental. I can't think  
2 of another reason that Realty would sign a contract  
3 other than for rack rental, so . . .  
4 Q. Okay. Just going back to Plaintiff's Exhibit 19,  
5 the list of customers, Mr. Gangi, looking at the  
6 first page, to the extent these are still customers  
7 of a Global entity, these customers listed here  
8 would be customers of Global Networks; is that  
9 right?  
10 A. Yes.  
11 Q. Okay. Is it also true that these customers were  
12 originally customers of Global NAPS, Inc.?  
13 A. The original contract would have been signed with  
14 Global NAPS, Inc., yes.  
15 Q. For each one of these customers?  
16 A. Yes. To the best of my knowledge, yes.  
17 Q. Okay. As you said before, you're a small company.  
18 So the fact that these were assigned to Global  
19 Networks was not documented; is that right?  
20 A. It's just something that we decided to do among the  
21 officers, and it's done as a matter of course for  
22 all of our contracts.  
23 Q. There's no payment made from Global Networks to  
24 Global, Inc. for this assignment?  
25 A. None that I'm aware of, no.

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1 MR. JENSEN: I think I'll stop there for  
2 right now. We will have to continue. I'm  
3 expecting some more financial documents  
4 hopefully shortly. I do have quite a bit  
5 more to cover, so we'll recommence at a later  
6 date.

7 MR. MANISHIN: I would like to receive a  
8 transcript. I would like to get a rough  
9 draft, if you can; not rushed but whenever you  
10 have the dirty ASCII, the text document ready.  
11 I would prefer both a hard copy and an  
12 electronic one. With whatever rapidity  
13 plaintiff's counsel orders it, I will watch  
14 it.

15 MR. JENSEN: We'd like to get it by  
16 Tuesday, if that's possible. An electronic,  
17 as soon as you can get it obviously, and a  
18 mini as well.

19  
20 (Deposition was suspended at 5:04 p.m.)  
21  
22  
23  
24  
25

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# **CERTIFICATE OF REPORTER**

1 I, Frances R. Teti, a Licensed Shorthand  
2 Reporter and Notary Public duly commissioned and  
3 qualified in and for the State of Connecticut, do hereby  
4 certify that there came before me the following named  
5 person, to wit: RICHARD GANGI, as a designated  
6 representative of Global NAPS, Inc., who was by me duly  
7 sworn to testify to the truth and nothing but the truth;  
8 that he was thereupon carefully examined upon his oath  
9 and his examination reduced to writing under my  
10 supervision; that this deposition is a true record of  
11 the testimony given by the witness.

12 I further certify that I am neither attorney  
13 nor counsel for, nor related to, nor employed by any of  
14 the parties to the action in which this deposition is  
15 taken, and further that I am not a relative or employee  
16 of any attorney or counsel employed by the parties  
17 hereto, nor financially interested in the action.

18 IN WITNESS THEREOF, I have hereunto set my  
19 hand and affixed my seal this 25th day of June, 2006.

20 *Frances R. Teti*

21 Frances R. Teti, LSR, Notary Public

22 My commission expires: 3-31-09

23 License No: 00076

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## **EXHIBIT INDEX**

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## **EXHIBIT INDEX**

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10.....	15
Four-page letter from Robert E. McLaughlin, Jr. to Jeffrey C. Malick dated June 22, 2006	
11.....	17
One-page letter from Richard G. Gangi to Janet Lima, undated	
12.....	18
E-mail dated 6-2-06	
13.....	18
E-mail dated 6-22-06	
14.....	32
Two-page printouts from New Hampshire Corporation Division web site	
15.....	71
One-page letter dated 6-7-06 from Richard Gangi to Nardella & Taylor with attached one-page fax cover sheet	
16.....	80
Handwritten list of eight names on yellow lined paper	
17.....	91
Three-page document Bates Stamp GLOBAL NAPS CT 1820 through GLOBAL NAPS CT 1822	
18.....	150
Global NAPS, Inc. Legal Department correspondence to Qwest Communications, Inc. with attached invoices	

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18

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PHR 25

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 08-4518-cv Caption [use short title]  
Southern New England Telephone Co.  
Motion for: Stay Under Rule 8, F.R.A.P. and Local Rule 27 V.  
Global NAPs, Inc.  
Set forth below precise, complete statement of relief sought:  
Appellants hereby move for a stay of execution of the judgment of the court below pending  
disposition of this appeal; and further, that Appellants not be required to post bond.

MOVING PARTY: Global NAPs, Inc., et al. OPPOSING PARTY: The Southern New England Telephone Co.  
☐ Plaintiff ☒ Defendant  
☒ Appellant/Petitioner ☐ Appellee/Respondent  
MOVING ATTORNEY: William J. Rooney, Jr. OPPOSING ATTORNEY (Name): Christian P. Boring  
[name of attorney, with firm, address, phone number and e-mail]  
Global NAPs, Inc. [name of attorney, with firm, address, phone number and e-mail]  
88 Access Road, Suite 8 Meyer Brown LLP  
Norwood, MA 02062 71 S. Wacker Dr.  
(781) 551-8855 Chicago, IL 60606  
wrooney@gnaps.com (312) 791-7711  
cboring@mbnyrbrown.com

Court/Judge/Agency appealed from: United States District Court for the District of Connecticut - Hon. Janet C. Hall  
Please check appropriate boxes:  
Has consent of opposing counsel:  
A. been sought? ☒ Yes ☐ No  
B. been obtained? ☐ Yes ☒ No  
Is oral argument requested? ☐ Yes ☒ No  
(requests for oral argument will not necessarily be granted)  
Has argument date of appeal been set? ☒ Yes ☐ No  
If yes, enter date February 9, 2009  
FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL:  
Has request for relief been made below? ☐ Yes ☐ No  
Has this relief been previously sought  
in this Court? ☐ Yes ☐ No  
Requested return date and explanation of emergency:

Signature of Moving Attorney: William J. Rooney, Jr. Date: 10/28/2008 Has service been effected? ☒ Yes ☐ No  
(Attach proof of service)

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.  
FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, Clerk of Court  
Date: \_\_\_\_\_ By: \_\_\_\_\_

**No. 08-4518-cv**

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**U.S. Court of Appeals for the Second Circuit**

**GLOBAL NAPS, INC., GLOBAL NAPS NEW HAMPSHIRE, INC.,  
GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC.,  
AND FERROUS MINER HOLDINGS, LTD.,**

**Appellants**

**v.**

**THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,**

**Appellee**

**United States District Court for the District of Connecticut  
Civil Action No. 3:04-cv-2075 (JCH)**

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**MOTION FOR STAY UNDER RULE 8, F.R.A.P.**

William J. Rooney, Jr.  
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Suite 570  
Washington, DC 20036  
Telephone: (202) 263-0806

*Counsel to Appellants*

## **RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Appellants GLOBAL NAPS, INC., GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC. and GLOBAL NAPS NEW HAMPSHIRE, INC. certify that each is wholly owned by FERROUS MINER HOLDINGS, LTD, a Delaware corporation, and all Appellants certify that no publicly held entity owns, directly or indirectly, a 10 percent or more interest in any Appellant or parent of any Appellant.

Pursuant to Rule 27 of the Rules of this Court and Rule 8, F.R.A.P., Appellants, Defendants in the court below, hereby move for a stay of execution of the judgment of the court below in the total amount of \$5,893,541.86, pending disposition of this appeal; and further, that Appellants not be required to post bond, for the reasons set forth below.

**A. Proceedings in District Court**

At issue in the court below were claims for damages for failure to pay interconnection charges relating to an interconnection agreement ("ICA") approved by the Connecticut Commission under procedures created by §§251 and 252 of the Telecommunications Act of 1996 ("TCA"). Appellee The Southern New England Telephone Company ("SNET"), an incumbent local exchange carrier ("ILEC"), sued Appellant Global NAPs, Inc. ("Global"), a competitive local exchange carrier ("CLEC"). SNET ultimately was allowed to add Global's affiliates,<sup>1</sup> some of which are not involved in the telecommunications business, as defendants on veil-piercing grounds.

Since the interpretation disputes were not brought by SNET to the relevant state commissions before they were brought to federal court, Global moved for dismissal under 12(b)(1) Fed. R. Civ. P., relying on eight cases

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<sup>1</sup> Global NAPs New Hampshire, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc. and Ferrous Miner Holdings, Ltd.



from six different circuits. The court below denied the motion, concluding that all previous courts granting 12(b)(1) dismissal were wrong, and that the TCA creates only a waivable exhaustion requirement, which Global waived by being untimely with its motion. Doc. No. 601, reported at 520 F.Supp.2d 351(2007).

After SNET prevailed on summary judgment for \$5,247,781.45, and added more defendants because Global purportedly did not have enough assets, two disputes arose: First, SNET proved that Global had removed, after replacing, about \$3,000.00 worth of used telecommunications equipment from the state, and was awarded \$645,760.41 in attorneys' fees for proving that. Second, after a series of disputes concerning whether Global affiliates were providing full financial records, the court below, as a sanction under 37(b) Fed. R. Civ. P., entered a default judgment on the merits (Doc. No. 796) as amended (Doc. No. 803), in the amount of \$5,247,781.45, jointly and severally against all defendants.

Following the district court's denial, on September 3, 2008, of motions to reconsider and to alter or amend judgments (Doc. No. 840) Appellants filed a timely notice of appeal to this Court September 12, 2008 (Doc. No. 842). Their brief on the merits is due on November 12, 2008.

Before filing the instant motion, Appellants moved in the district court for a stay pending appeal. Global asked to be excused from posting securi

or bond of \$6 million, presenting affidavits attesting to its lack of significant assets or cash. (Doc. No. 845). The court denied the motion by order of October, 14, 2008 (Doc. No. 853) (Attached as Exhibit A).

**B. The Standards For Temporary Relief Are Fully Met Here.**

In the absence of a bond posted under Rule 62(d), Fed. R. Civ. P., appellate courts evaluate motions for stays of enforcement of a judgment pending appeal based on the test applicable to preliminary injunctive relief. The moving party must demonstrate that: (a) it will likely succeed on the merits of its underlying appeal; (b) absent a stay, it will suffer irreparable harm; (c) a stay will impose no substantial injury on the non-moving party; and (d) the public interest will be served. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770, 777 (1987); *Mohammed v. Reno*, 309 F.3d 95, 100 -101 (2d Cir. 2002). Each of these standards is met here.

A purpose of the bonding provisions of Rule 62, Fed. R. Civ. P., is to secure a prevailing plaintiff against erosion of the collectability of its judgment during appeal. But attachment of the working assets of a thinly capitalized going business will not help the Plaintiff recover; it serves only predatory purposes. Rule 8 can and has been used to protect an asset-poor litigant from total loss of its business before its appeal is heard. *See Scanner Technologies Corp. v. ICOS Vision Systems Corp., N.V.*, No. 2008-1081 (Fed. Cir. 2008)(Attached as Exhibit B). There, the district court had found

for plaintiff and refused to stay a judgment which defendant represented it could neither pay nor secure by bond. The Federal Circuit granted defendant's emergency stay motion without substantive discussion.

**1. Appellants Are Likely to Prevail on the Merits.**

This Court could conclude even without detailed analysis that Appellants will likely prevail on the merits of the present appeal. First, although Appellants' grounds for dismissal under 12(b)(1) have been accepted in multiple circuit and district courts, the court below rejected the weight of authority and embraced an aberrant and flawed approach. Second, default on the merits as a discovery sanction is highly suspect when no discovery issues concerned the merits, no direct evidence of willful document destruction or alteration was produced, and various lesser and more appropriate sanctions were available. Third, awarding a plaintiff more than \$645,000 in attorney's fees for uncovering removal from the jurisdiction of assets with a combined value of \$3,000.00 is very likely to be found grossly disproportionate and an abuse of discretion.

**(a) Appellants Will Likely Prevail on Their Contention that the Court Below Lacked Subject Matter Jurisdiction.**

It is well settled that any final judgment entered by a court, on default grounds or otherwise, is invalid if the court is found to have lacked subject matter jurisdiction over the plaintiff's claim. *Hernandez v. Conriv Realty*

*Associates*, 182 F.3d 121, 123 (2d. Cir. 1999); *In re: Orthopedic "Bone Screw" Products Liability Litigation (MDL NO. 14)*, 132 F.3d 152, 157 (3d Cir. 1997) (setting aside "imposition of a sanction which will terminate the case on the merits").

The great weight of judicial authority is to the effect that the jurisdiction of federal district courts in disputes relating to ICAs is strictly limited by the TCA to hearing appeals brought by parties "aggrieved by" decisions of the state commissions regarding ICAs, and that they lack jurisdiction to interpret ICAs in the first instance. *Core Communication, Inc. v. Verizon Pa., Inc.*, 493 F.3d 333, 344 (3d Cir. 2007), is the leading case on point.

There, the Third Circuit held:

Pursuant to the FCC's guidance, we hold that the interpretation and enforcement actions that arise after a state commission has approved an interconnection agreement must be litigated in the first instance before the relevant state commissions. *A party may then proceed to federal court to seek review of the commission's decision or move on to the appropriate trial court to seek damages for a breach, if the commission finds one.*

*Id.*, 493 F.3d at 344 (3d Cir. 2007) (emphasis added).

Further, as explained by the Eleventh Circuit:

[T]he language of §252 persuades us that in granting to the public service commissions the power to approve or reject interconnection agreements, Congress intended to include *the power to interpret and enforce in the first instance* and to subject their determination to challenges in the federal courts.

\* \* \* \*

A court might ascribe to the agreement a meaning that differs from what the state commission believed it was approving – indeed, the agreement as interpreted by the court may be one the state commission would never have approved in the first place. To deprive the state commission of the authority to interpret the agreement that it has approved would thus subvert the role that Congress has prescribed for state commissions.

*BellSouth Telecomm., Inc. v. MCI Metro Access Transmission Servs., Inc.*

317 F.3d 1270, 1278 n. 9 (11th Cir. 2003)(*en banc*); *see also Southwestern*

*Bell Tel. Co. v. PUC*, 208 F.3d 475, 479-80 (5th Cir. 2000).

Since 1998, parties to ICAs have on many occasions attempted to litigate *de novo* in federal district court interconnection-related claims based on theories not yet presented to and accepted by the relevant state commission. In such cases, the courts have almost always granted motions under Rule 12(b)(1) to dismiss for lack of subject-matter jurisdiction. District court dismissal rulings include the following:

“[P]laintiff’s request would require [the] court to review issues that were not the subject of the ICC’s determination. Accordingly, this court finds that subject matter jurisdiction is lacking.” *AT&T Communications. v. Illinois Bell Telephone Co.*, No. 97 C 0886, WL 525437, \*5 (N.D.Ill., 1998); “[T]his Court is given jurisdiction only in ‘any case in which the state commission makes a determination.’ 47 U.S.C. §252(e)(6).... The statutory

scheme does not permit this Court to review disputes arising out of interconnection agreements not previously subject to action by a state commission.” *AT&T Communications of Ohio, Inc. v. Ohio Bell Telephone Co.*, 29 F.Supp.2d 855, 856 (S.D. Ohio 1998);

“The commission has not had the opportunity to address the issues raised in AT&T’s counterclaims and circumventing the commission would jeopardize the entire system of review established by the Act.” *Indiana Bell Tel. Co. v. McCarty*, 30 F.Supp.2d 1100, 1104 (S.D. Ind. 1998); *Pacific Bell Telephone Co. v. Global NAPs California, Inc.*, 05-CV-7734, 7 (C.D.Ca. 2007) (attached as Exhibit C).<sup>2</sup>

Choosing to reject this wealth of precedent, the court below reinterpreted section 252 of the TCA as creating only an “exhaustion of remedies” requirement, rather than a jurisdictional bar. In thus redefining the results of these cases, the ruling of the court below was aberrant. Moreover, not all exhaustion requirements are waivable. This and other circuits distinguish judicially-created exhaustion requirements from those, like this one, arising under statutes in which Congress has created a system

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<sup>2</sup> Accord: Parties “must first bring their claims of violations of § 251 to the state [commission] before a federal court has jurisdiction over the matter.” *Intermedia Communications Inc. v. Bellsouth Telecomm., Inc.*, 173 F.Supp.2d 1282, 1287 (M.D. Fla. 2000); “[W]here Congress has provided statutory review procedures designed to permit agency expertise to be brought to bear on particular problems, those procedures are to be exclusive.” “It is clear to this Court that absent a prior determination of the issue by the state [commission], no federal jurisdiction exists.” *Contact Communications v. Qwest Corp.*, 246 F.Supp.2d 1184, 1189 (D. Wyo. 2003); “[I]f plaintiff chooses to replead, it must show that a determination has been made by the state regulatory agency.” *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 549 (E.D. Tex. 2004).

requiring technical expertise and policy input. *See, e.g., Beharry v. Ashcroft*, 329 F.3d 51 (2d Cir. 2003). In such situations, federal trial courts have no discretion to try such cases in the first instance or resist motions to dismiss. The court below ignored all of this case law. Instead, it cited and relied upon three cases (not cited by the parties): *Paese v. Hartford Life and Accident Ins. Co.*, 449 F.3d 435 (2d Cir. 2006); *Lin Zhong v. United States DOJ*, 480 F.3d 104 (2d Cir. 2006); and *Richardson v. Goord*, 347 F.3d 431 (2d Cir. 2003), none of which concerned the TCA or involved evasion of a congressional grant of power to a regulatory commission with quasi-judicial powers.

Confronted with the decision in *Pacific Bell, supra*, which ruled for Global on nearly identical facts (a two-year delay before moving for dismissal under Rule 12(b)(1)), Judge Hall chose simply to reject it. Nor does her opinion analyze whether the exhaustion requirement in ICA disputes derives from the logic of the statutory scheme, or is merely for judicial convenience. Actually, as the opinion in *BellSouth Telecomm., supra*, stresses, the statutory grant of plenary authority to state commissions to fashion, with FCC guidance, a national law of pro-competitive cost-based interconnection for new entrants logically requires that federal courts be limited to a review function, as spelled out in 47 U.S.C. §252, and refrain

from what happened here – interpretation and enforcement of ICAs in the first instance by a federal district court.

The fact that SNET's successful damage claim was framed in terms of tariff rates and tariff issues does not alter the jurisdictional defect. It is now well-settled that all charges arising out of an interconnection agreement created under 47 U.S.C. §251 have to be charges that meet the standards of that section and that gain their legitimacy from and through the ICA.

The idea that there can be tariff charges for interconnection that are outside the ICA has been decisively rejected. In *U.S. West Communications v. Hix*, 183 F.Supp.2d 1249, 1266 (D.Colo. 2000), the court held that

[A]llowing a CLEC that has executed an interconnection agreement to use a tariff to supplement or supplant any term, condition, or price that is covered by the agreement VIOLATES the [TCA]. That is because such a provision would eviscerate the provisions of 251 and 252 of the [TCA] which require that the parties negotiate the terms of an interconnection agreement and arbitrate those terms that they are not able to agree to.

*Accord: MCI Telecommunications Corp. v. GTE Northwest, Inc.*, 41 F.Supp.2d 1157, 1178 (D.Or. 1999). The above reasoning applies *a fortiori* to ILECs, since a principal purpose of the TCA was to open up their dominant market position to competition from CLECs. Since pure tariff claims for interconnection activities are not allowed between parties to an ICA, such claims are viable only under the ICA, and thus subject to dismissal under *Core, supra*.



The summary judgment opinion of the district court, Doc. No. 406, reported at 482 F.Supp.2d 216 (2007), makes clear that the decisive issues here all involve first instance interpretations of the ICA, even though the court said at the outset that its ruling turned on its interpretation of Section 5.4.6 of the Interconnection Trunking Requirements (“ITR”) that are in the Appendix of the ICA. *Id.* at 219. SNET contended that “*given the terms of the ICA,*” Global had to pay tariff rates. *Id.* at 221. The opinion accepts SNET’s interpretation that “[SNET] had no obligation under the ICA” to provide facilities for this traffic because the ICA only governs “local telecommunications” traffic and “exchange access traffic. ESP traffic is neither.” *Id.* at 222.

Moreover, when Global moved for 12(b)(1) dismissal, the court did not adopt SNET’s suggested tariff exemption, and did not deny that it had engaged in first instance interpretation of the ICA. Instead, the court ruled that Global had waived its right to dismissal due to its delay in advancing the motion.

The recognition by many circuits that the interpretive powers of state commissions are “plenary” must mean that those powers include defining the scope of the ICA. *See Core, supra*. Thus, the district court’s conclusion that some tariff charges are outside the ICA is an interpretation of its scope,

and thus should have been made in the first instance by the Connecticut state commission.

The presence in the ICA of “Entire Agreement” clauses makes clear that non-ICA tariff claims were barred by agreement. *See* Exhibit D. Because the assertion of tariff claims falls outside the agreement, the district court wrongfully interpreted the scope of the ICA in the first instance.

Lastly, we note that acceptance of the above points would justify dismissal on these pleadings for lack of subject matter jurisdiction without requiring amplification of these points in a next round of briefing.

**(b) Entry Of A Merits Default Judgment As A Sanction For Non-Merits Related Discovery Failings Will Likely Be Set Aside As An Abuse Of Discretion.**

The veil-piercing and financial discovery issues in this case stem from the particular nature of the modern telephone system in the United States and the difficulties of new entrant internet companies in dealing with it. A new VoIP provider armed with customers, three or four high-powered switches and converters, and a working staff of less than ten people can serve the entire nation – as long as it secures a license and registers to do business in each state where it delivers traffic. Thus, a new entrant, even one doing \$40 million or so in business, must create forty or more separate corporate entities. That done, it is obvious that any one operating company will likely not have assets of more than \$1 million, that the corporate

structure will not maintain forty bookkeepers, and that it will, in general, be stretched thin.

Against that background, the court below abused its discretion in entering a default judgment against *all* Appellants on *all* SNET's claims. Default under Rule 37(b), Fed. R. Civ. P., is and should be reserved only for flagrant cases where "clearly warranted." *Cine Forty-Second St. Theatre Corp. v. Allied Artists Picture Corp.*, 602 F.2d 1602, 1608 (2d Cir. 1979). In considering whether default is appropriate, courts are to weigh five factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the opposing party; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1115 (9th Cir. 2004). The imposition of sanctions under Rule 37(b) are reviewed for abuse of discretion. *United States Freight Company v. Penn Central Transportation Co.*, 716 F.2d 954 (2d. Cir. 1983); *Chimie v. PPG Industries, Inc.*, 402 F.3d 1371, 1381 (Fed.Cir.2005)(listing factors); *International Broth. of Elec. Workers, Local Union No. 545 v. Hope Elec. Corp.*, 380 F.3d 1084, 1105 (8th Cir.2004)(due to its severity, sanction of default judgment scrutinized for abuse of discretion with great care).

For at least three reasons, the extreme measure imposed by the court below constituted such an abuse.

First, all SNET's complaints concerning Global's compliance with its discovery requests, and all the district court's findings underlying its default related not to the underlying merits of SNET's lawsuit against Global but rather to the assets available to SNET to satisfy a final judgment in its favor.

Even if the court below had been on solid ground in imposing sanctions under Rule 37, entry of a default judgment on the merits was disproportionate. Instead of entering a default on the merits as to all SNET's claims against all defendants, the court could have treated SNET's veil-piercing claims as established, giving Global the option of appealing from the district court's grant of summary judgment. Instead, the district court's entry of the default judgment, without discussion of the obvious alternative, had the immediate effect of sheltering its prior summary judgment ruling from appellate review. *See Shcherbakovskiy v. Da Capo al Fine, Ltd.*, 490 F. 3d 130, 139 (2d Cir. 2007)(abuse of discretion to dismiss the complaint *and also* enter default on counterclaim).

Second, the default judgments were based on a series of unnecessary adverse inferences derived from affidavits attached to motions. For instance, the court below considered testimony later recanted when it inferred that Frank Gangi, the shareholder of Appellant of Ferrous Miner

Holdings, Ltd. caused the removal of items from the file cabinet of his deceased brother, based on the supposed fact that Frank Gangi had later caused the return of one such item to the witness. Second Amended Ruling, July 1, 2008 (Doc. No. 793) at 23. That witness later altered her previous testimony in crucial respects. See Affidavit of Sheila Gangi (attached as Exhibit E).

As another example, the court below relied on a pastiche of isolated facts to *infer* that “general ledgers” must have existed; and, therefore, that Appellants must have willfully violated the court’s order of May 31, 2007, Second Amended Ruling (Doc. No. 793) at 15. In so ruling, the court ignored evidence that the software used by Appellants does not create or print a general ledger without specific command. See Affidavit of John Ashley (att. to 810-2)(attached as Exhibit F). It was error to impose sanctions based partly on failure to create and produce previously non-existent documents.

Third, defaults were entered against all defendants added on veil-piercing grounds on the basis of actions not necessarily attributable to them and occurring before their involvement in this case. It is one thing to default a defendant against whom a complaint has been filed for failing to respond to orders of the court, but quite another to default a related or alleged alter ego defendant without trial on the merits of the allegations leading to the

conclusion that veils should be pierced. *See Bambu Sales, Inc. v Ozak Trading, Inc.*, 58 F.3d 849, 853(2d Cir. 1995)(sanctions must be on account of “willfulness, bad faith or fault *on the part of the sanctioned party*”)(emphasis added); *Swackhammer v. Sprint Corp.*, 225 F.R.D. 658, 667 n. 36 (D. Kan 2004)(“To the extent possible, sanctions should be imposed only on the party responsible for the conduct”).

**(c) Global is Likely to Prevail on Its Challenge to the Award of Attorneys’ Fees Arising from the Contempt Ruling.**

A smaller, but nonetheless substantial portion of the judgment below arose from the district court’s award to SNET of the “reasonable costs” of prosecuting its motion for contempt and sanctions, including attorneys’ and experts’ fees. *See* Ruling of July 9, 2007, Re: Plaintiff’s Motion for Contempt and Sanction (Doc. No. 496) at 13.

At the end of the day, SNET was unable to locate “three Sycamore cards, two Cisco/Cerent cards, and the faceplates for all of the Sycamore cards.” *Id.* at 12. Under such circumstances, where complete and literal compliance with producing each of the items on the June 2006 inventory was not within Appellants’ powers, contempt was inappropriate. *See Badgely v. Santacroce*, 800 F.2d 33, 36 (2d Cir. 1986); *Rich v. United States*, 736 F.2d 864, 866 (“Civil contempt is a coercive sanction, and thus a

person held in civil contempt must be able to comply with the court order at issue”).

More significantly, the award of attorneys’ fees was wildly disproportionate and excessive. *See, e.g., Microsoft Corp. v. United Computer Resources of New Jersey*, 216 F.Supp.2d 383 (D.N.J. 2002). As argued to the court below, and reflected in the exhibits to Global’s Motion to Reconsider the court’s Order imposing contempt sanctions, Doc. No. 497 and its Exhibits 1 and 2, what was ultimately in issue and on which SNET prevailed was missing telecommunications equipment estimated to be worth \$3,000.00. Tr. of Motion Hearing, Oct. 3, 2007 (Doc. No. 582) at 40–42 (pages attached as Exhibit G). Legal bills in excess of \$645,000.00 incurred in connection with relatively minor discrepancies in accounting for individually small pieces of equipment on a state-wide basis, all as detailed in the July 9, 2007 order of the court below (Doc. No. 496), are unreasonable on their face, and suggest an effort, through so-called “block billing” and otherwise, to exhaust the resources of a small competitor, rather than to take reasonable and cost-effective steps to secure a judgment. *See* Ruling of Apr. 25, 2008 Re: Plaintiff’s Motion for Fees (Doc. No. 757) at 5–8.

## **2. Appellants Will Be Irreparably Injured.**

Defendants now face judgment in a total amount of almost \$6 million. As was attested in attachments to Appellants Motions to Stay Enforcement in the district court (Doc. No. 814), execution of the judgment would likely have a fatal effect on Global's ability to operate. Global has revenues, but its telecommunications business operates on a "cash in, cash out" basis. See Declarations of Frank Gangi and Janet Lima, Doc. No. 814-2, and attached hereto respectively as Exhibits H and I. Its customers pay for services in advance, and its bank accounts are periodically drawn down to pay operating expenses and payrolls. Should SNET succeed in attaching those funds, Appellants would unlikely become unable to pay their operating expenses, and would thus suffer fatal damage to their business while this appeal is pending and even if they ultimately prevail.

**3. Entry of a Stay Will Not Prejudice SNET.**

If ultimately successful, SNET will still be able to levy on the assets or funds on which it might levy today. Appellants' cash flow from their telecommunications businesses is not seasonal. Moreover, Appellants offered in the court below to escrow any profits it made, but its offer was rejected. Furthermore, the electronic circuitry and associated hardware Appellants use to transfer telecommunications traffic is unlikely to suffer wear and tear during the time frame in which this appeal is pending, and is "used" in any case. Accordingly, SNET will not be prejudiced perceptibly,



if at all, by diminution of the value of these assets should this Court enter a stay pending disposition of the appeal.

**4. The Public Interest Will Be Advanced by a Stay.**

Appellants are engaged in the business of providing telecommunications services. The purpose underlying the TCA was to encourage competition from new suppliers of telecommunications services. If, as has been shown, Appellants' businesses would no longer be viable if the judgment below were sustained, and if Appellants' working assets were attached, competition would be diminished. Thus, the public interest militates in favor of a stay to prevent Appellants' imminent destruction, which would decrease competition *whether or not Appellants ultimately prevail*. Destruction of a business serving a public function, such as a common carrier, is a factor reasonably considered in determining whether to permit it to remain in operation pending an appeal of its status. *Washington Met. Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977)(denying motion to vacate order staying injunction pending appeal).

**D. Appellants Should Not Be Required to Post a Bond.**

As suggested by the foregoing discussion, Appellants are not in a position to post bond in the full amount of the judgment against them. Rule 62, Fed. R. Civ. P. does not inflexibly require the posing of a bond as a precondition to a stay pending appeal. *See Frankel v. ICD Holdings S.A.*,

168 F.R.D. 19 (S.D.N.Y. 1996); *see also Scanner Technologies Corp. v. ICOS Vision Systems Corp.*, *supra* and Exhibit B.

The declarations of Frank Gangi and Janet Lima cited above (Exhibits H and I) make clear the minimal nature of the assets currently available to satisfy the default judgments, and therefore available to satisfy any bonding requirements imposed by the courts. Further, the attached declaration of Samuel Zarzour (Exhibit J), in-house attorney to Global, indicates Global is unable to satisfy the normal requirements imposed by bonding companies, and should have satisfied the court below as to the impracticability of imposing the requirement of a \$6 million bond. At best, the court below should have considered the suggestion of Global's counsel, Doc. No. 845-2, that *all* Appellants agree to retain any revenues in excess of specified costs as security for SNET's judgment pending appeal.

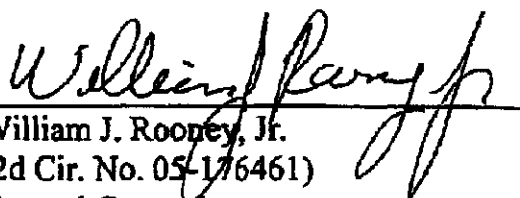
### **CONCLUSION**

There is a substantial likelihood that this Court will eventually follow the holdings and reasoning of the many federal courts cited in Part 1(a) above, and conclude that the court below lacked subject matter jurisdiction over SNET's contract claims. Until such time, however, Appellant's continued existence as a telecommunications provider should not be impeded by attachment of its operating assets.

We therefore respectfully request that this Court order a stay of execution of the judgment of the court below, pending disposition of this appeal. Alternatively, this Court should direct the district court to accept the suggestion advanced by Global's counsel in the court below, Doc. No. 845-2, and order Appellants to retain revenues in excess of operating and legal expenses and taxes.

Respectfully submitted,

By:

  
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*Counsel to Appellants*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Stay Under Rule 8, F.R.A.P., was served this 28<sup>th</sup> of October, 2008, by overnight delivery on counsel for Appellees, addressed as follows:

Christian F. Binnig  
MAYER BROWN LLP  
71 South Wacker Drive  
Chicago, Illinois 60606

  
Robert J. McManus

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY,

Plaintiff

v.

GLOBAL NAPS, INC., ET AL.,  
Defendants.

CIVIL ACTION NO.  
3:04-cv-2075 (JCH)

OCTOBER 14, 2008

**RULING ON DEFENDANT'S MOTION TO STAY EXECUTION  
OF JUDGMENT PENDING APPEAL**

**I. INTRODUCTION**

Defendants, Global NAPs, Inc., Global NAPs New Hampshire, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc., and Ferrous Miner Holdings, Ltd. (collectively, "defendants"); bring the present Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845], in which they move the court to stay enforcement of the July 7, 2008 Default Judgment and the July 9, 2008 Amended Default Judgment pending appeal. Defendants ask the court to grant this Motion without requiring a bond or any other security. Plaintiff, The Southern New England Telephone Company ("SNET"), objects, arguing that the defendants have not made the requisite showing for granting a stay without security.

For the reasons indicated below, the defendants' Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845] is **DENIED**.

**II. BACKGROUND**

The court assumes familiarity with the basic underlying facts of the case and will recite only the relevant recent procedural history. On July 7, 2008, the court entered a Default Judgment against defendants in the amount of \$5,247,781.45 and awarded

fees and costs of \$645,760.41 [Doc. No. 796]. On July 9, 2008, the court entered an Amended Default Judgment [Doc. No. 806] in order to correct the corporate name of one defendant. Defendants subsequently filed Motions for Reconsideration [Doc. Nos. 807, 808] of the rulings on which the Default Judgments were based, as well as Motions to Alter or Amend the Default Judgments [Doc. Nos. 809, 810]. The court denied these Motions on September 3, 2008 [Doc. No. 840]. Defendants timely filed a Notice of Appeal on September 12, 2008.

### **III. STANDARD OF REVIEW**

Fed. R. Civ. P. 62(d) states that, "if an appeal is taken [from a judgment], the appellant may obtain a stay by supersedeas bond . . . . The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond."

As a general rule, posting of a sufficient bond is required in order to obtain a stay of a money judgment pending appeal. This "reflects the federal policy of providing a judgment creditor with security during the pendency of an appeal." FDIC v. Ann-High Assocs., 129 F.3d 113 (2d Cir. 1997). In certain circumstances, however, a district court may, in its discretion, grant a stay without requiring a bond. As the Second Circuit has noted, a stay without a bond is appropriate "if the appellant provides an acceptable alternative means of securing the judgment." Id. This view is in keeping with the Supreme Court's instruction that, "[i]n the event a stay is entered pending appeal, the [Federal Rules of Civil Procedure] require the district court to ensure that the judgment creditor's position is secured, ordinarily by a supersedeas bond." Peacock v. Thomas, 516 U.S. 349, 359 (U.S. 1996).

In assessing a motion for a stay without a bond, the court considers: 1) whether the petitioner is likely to prevail on the merits of his appeal; 2) whether, without a stay, the petitioner will be irreparably injured; 3) whether issuance of a stay will substantially harm other parties interested in the proceedings; and 4) wherein lies the public interest. De la Fuente v. DCI Telecomms., Inc., 269 F. Supp. 2d 237, 240 (S.D.N.Y. 2003) (citing Hilton v. Braunskill, 481 U.S. 770, 777 (1987)). Further, the defendants, as the parties seeking a stay without a bond, have the burden of providing specific reasons why the court should depart from the bond requirement. See De la Fuente, 269 F. Supp. 2d at 240.

#### IV. DISCUSSION

In their Memorandum in Support, defendants devote nearly six pages to the argument that the court should grant a stay because they are likely to succeed on the merits of their appeal. Memorandum in Support of Motion to Stay Execution of Judgment Pending Appeal ("Memo. in Support") at 4-9. Specifically, they contend that they will prevail on the issue of subject matter jurisdiction because this court lacks the power to "adjudicate Interconnection Agreement disputes that have not been presented to the appropriate state regulatory commission". Id. at 5.

For the purposes of the instant Motion, the question of whether defendants are likely to prevail on appeal is merely one prong of the analysis. Because the defendants have failed to carry their burden on the other prongs, as will be discussed below, the court will not belabor the jurisdictional issues. It will suffice to say that the court stands



by its earlier rulings.<sup>1</sup>

As for the second prong of the analysis, the defendants have failed to show that they will be irreparably injured absent a stay. The defendants aver that their business is now a "cash in, cash out" business, and that if SNET is permitted to levy on the business's accounts, the business will be unable to continue. In support of these arguments, defendants point to the Declarations offered by Frank Gangi and Janet Lima (Doc. No. 814, Exh. A & B).

The court gives little weight to the conclusory Declarations of Gangi and Lima. Defendants have offered no objective information to support these declarations, such as thorough financial records, detailed asset statements, or complete tax returns. Given the history of the case and SNET's allegations of defendants' impropriety, without objective evidence the court cannot find that defendants have met the burden of demonstrating irreparable injury absent a stay.

*Regarding the third and fourth prongs, the court rejects defendant's arguments that issuance of a stay will not harm SNET and that the public interest clearly favors a stay. To begin, SNET has, in its opposition to the present motion, raised genuine issues concerning the defendants' characterization of their financial situation. See, e.g., Plaintiff's Opposition to Defendants' Motion to Stay Execution of Judgment Pending Appeal ("Plaintiff's Opp.") at 5-9. Moreover, the very behavior on the part of the defendants that led to the entry of default judgment casts doubt on the defendants'*

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<sup>1</sup>The court has previously addressed, at length, the subject matter jurisdiction issues in this case, and it is not necessary to repeat those findings and rulings here. See, e.g., Ruling Denying Motion to Dismiss [Doc. No. 38].

willingness to abide by the orders of this court and respect the tenets of our legal process. Consequently, in the absence of a sufficient showing by the defendants, the court will not accept their bald reassurances that the issuance of a stay will not harm SNET, especially in the light of SNET's vehement assertions to the contrary.

Similarly, defendants' assertion that the public interest favors a stay is premised upon defendants' unsupported characterization of their business as near insolvent. That is, defendants argue that the public interest favors a stay because posting a bond will "destroy Defendants' business," leaving customers with one less choice in telecommunications providers and leading to a loss of jobs, increase of benefit claims, and loss of tax revenue. Memo. in Support at 14. As previously noted, however, defendants have offered no objective evidence upon which to find that requiring a bond will necessarily lead to business failure, and without such evidence their public interest argument is unconvincing.

Finally, it bears noting that, beyond the four prong analysis, defendants have not satisfied their burden of demonstrating their proposed alternative to a bond is appropriate and sufficient to protect SNET's interests. Specifically, in place of a bond, the defendants propose to "retain any revenues in excess of amounts needed to pay operating expenses . . . , legal expenses, taxes, and other routine expenses." Memo. in Support at 1-2. This proposal is curious, however, given the defendants' earlier assertions that their business now operates on a "cash in, cash out" basis and sometimes "only break[s] even." *Id.* at 13. If the court were to take such assertions at face value – which, as described above, it will not do – it appears that the defendants are pledging to retain nothing to secure SNET. Such a proposal guarantees SNET

nothing, and cannot be entertained as a serious alternative to a surety bond for the full judgment amount, as envisioned by the Federal Rules of Civil Procedure.

**V. CONCLUSION**

For the foregoing reasons, the defendants' Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845] is **DENIED**.

**SO ORDERED.**

Dated at Bridgeport, Connecticut this 14th day of October, 2008.

/s/ Janet C. Hall  
Janet C. Hall  
United States District Judge

## **EXHIBIT B**

NOTE: This order is nonprecedential.

**United States Court of Appeals for the Federal Circuit**

2008-1081

**SCANNER TECHNOLOGIES CORPORATION,**

Plaintiff-Appellant,

v.

**ICOS VISION SYSTEMS CORPORATION, N.V.,**

Defendant-Appellee.

ON MOTION

Before MICHEL, Chief Judge, LOURIE and LINN, Circuit Judges.

LOURIE, Circuit Judge.

**ORDER**

Scanner Technologies Corporation moves for a stay, pending appeal, of execution of the supplemental judgment entered by the United States District Court for the Southern District of New York, on November 6, 2007. ICOS Vision Systems Corporation, N.V. opposes. Scanner Tech replies.

Scanner Tech filed suit against ICOS, asserting that ICOS's ball grid array inspection system infringed Scanner Tech's patents. The district court determined that all claims of Scanner Tech's patents were unenforceable due to inequitable conduct and invalid, and that ICOS did not infringe. Scanner Tech appealed the district court's judgment and that appeal is pending in this court, 2007-1399. Meanwhile, in the district court, ICOS filed a motion seeking attorney fees pursuant to 35 U.S.C. § 285 based on the district court's unenforceability determination. The district court granted the motion and entered a supplemental judgment awarding \$3,355,033 in fees and costs to ICOS.

(2)

The district court denied Scanner Tech's motion to stay execution of the supplemental judgment. Scanner Tech appeals the supplemental judgment and seeks a stay, pending appeal, of execution of the supplemental judgment.

To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. Hilton v. Braunskill, 481 U.S. 770, 778 (1987). In deciding whether to grant a stay, pending appeal, this court "assesses the movant's chances for success on appeal and weighs the equities as they affect the parties and the public." E. I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 835 F.2d 277, 278 (Fed. Cir. 1987). See also Standard Havens Prods. v. Gencor Indus., 897 F.2d 511 (Fed. Cir. 1990).

Based upon our review of the parties' submissions, and without prejudicing the ultimate determination of this case by a merits panel, we determine that Scanner Tech has shown that a stay, pending appeal, is warranted.

Accordingly,

IT IS ORDERED THAT:

Scanner Tech's motion for a stay, pending appeal, of execution of the supplemental judgment is granted.

FOR THE COURT

1/2/2008  
Date

Alan D. Lourie  
Alan D. Lourie  
Circuit Judge

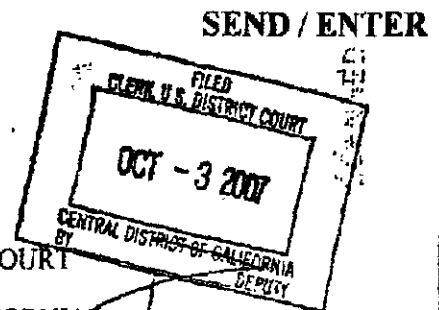
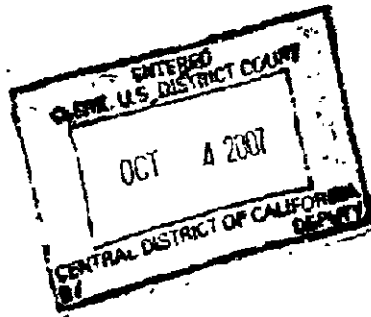
cc: Ernest W. Grumbles, III, Esq.  
Robert M. Kunstadt, Esq.  
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FILED  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

JAN - 2 2008

JAN HORBALY  
CLERK

## EXHIBIT C



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

PACIFIC BELL TELEPHONE COMPANY,  
d/b/a AT&T CALIFORNIA,

Plaintiff,

vs.

GLOBAL NAPS CALIFORNIA, INC., et al.,

Defendants.

CV 05 - 7734 ODW (PJWx)

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION

This matter comes before the Court on Defendants Global NAPs California, Inc., Global NAPs, Inc., Global NAPs Networks, Inc., and Global NAPs Realty, Inc.'s (collectively, "Defendants") Motion to Dismiss for Lack of Subject Matter Jurisdiction.<sup>1</sup> Having been fully briefed, and after hearing oral argument, the Court rules as follows.

I. BACKGROUND

The Federal Telecommunications Act of 1996 (the "Act") requires competing carriers to interconnect their networks to enable customers of one network to call customers of another. 47 U.S.C. § 251. Pursuant to the Act, competing local telephone companies must make arrangements to pay each other reciprocal compensation for telecommunications. Reciprocal compensation is the arrangement between two carriers in which each receives compensation from the other carrier

<sup>1</sup> Joining in this Motion are Specially Appearing Defendants Ferrous Miner Holdings, Ltd. and Global NAPs New Hampshire, Inc.



1 for the transport and termination on each carrier's network of local telecommunications traffic that  
2 originates on the network of the other carrier. Reciprocal compensation arrangements are given  
3 effect through interconnection agreements. These interconnection agreements can be arrived at  
4 through negotiation or arbitration. However, any agreement adopted by such means must then be  
5 submitted for approval to the relevant state commission. *Id.* at § 252(e).

6 Plaintiff AT&T California ("Plaintiff") and Defendant Global California are  
7 telecommunications carriers that entered into an "Interconnection Agreement" (the "Agreement"),  
8 as required by the Act. (SAC ¶ 1.) The Agreement specifies the rates, terms, and conditions upon  
9 which AT&T California and Global California interconnect their networks and exchange certain  
10 communication traffic. (*Id.*) Issues not initially agreed upon by the parties were submitted to the  
11 California Public Utilities Commission ("CPUC") for arbitration, pursuant to § 252(b) of the Act.  
12 (SAC ¶ 18.) After arbitrating the open issues, CPUC approved the parties' Agreement. (*Id.*)  
13 Neither party sought review of the CPUC's determination and, as a result, the Agreement became  
14 effective on August 11, 2003. (*Id.*)

15 In accordance with the Agreement, from March 2004 to the present, AT&T California has  
16 provided a number of services to Global California, including: (1) using AT&T California's local  
17 network to complete local and long distance calls that Global California delivers to AT&T  
18 California, and (2) acting as a middleman to transport and route traffic destined to a third party  
19 carrier where Global California delivers the traffic to AT&T California rather than a third party  
20 carrier. (SAC ¶ 2.) Global California allegedly failed to pay for these services. (*Id.*)

21 On September 23, 2006, Plaintiff filed suit against Defendants in state court seeking  
22 payment of amounts due them under the Agreement. On October 28, 2006, Defendants removed  
23 the case to federal court. Plaintiff then amended its complaint to add a quasi-contract/unjust  
24 enrichment claim. On February 20, 2007, Plaintiff filed a Second Amended Complaint which  
25 added five additional defendants: Global NAPS, Inc. ("Global Inc."), Global NAPS Networks,  
26 Inc. ("Global Networks"), Global NAPS Realty, Inc. ("Global Realty"), Global NH, and Ferrous  
27 Miner.

1 Presently pending before the Court is Defendants' Motion to Dismiss for Lack of Subject  
2 Matter Jurisdiction. Defendants assert that this Court lacks jurisdiction over Plaintiff's first cause  
3 of action for breach of contract (reciprocal compensation and intralata toll charges), second cause  
4 of action for breach of contract (transiting charges), and fourth cause of action for unjust  
5 enrichment.

## 6 7 II. LEGAL STANDARD

8 It is well established that Federal courts are courts of limited jurisdiction without general  
9 subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).  
10 They can adjudicate only those cases which the Constitution and Congress authorize them to  
11 adjudicate. *See id.* As such, Federal courts are presumptively without jurisdiction over civil  
12 actions and the burden of establishing the contrary rests upon the party asserting jurisdiction.  
13 *KVOS v. Associated Press*, 299 U.S. 269, 278 (1936). Because of this, "[w]henver it appears by  
14 suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the  
15 court shall dismiss the action." Fed. R. Civ. P. 12(h)(3). And in order to sustain federal  
16 jurisdiction, the complaint must allege a claim under the Constitution or relevant federal statute  
17 and must not be made solely for the purpose of obtaining federal jurisdiction. *Bell v. Hood*, 327  
18 U.S. 678, 682-83 (1946).

19 A party challenging the court's jurisdiction under Rule 12(h)(1) may do so by raising either  
20 a facial attack or a factual attack. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). A facial  
21 attack is one where "the challenger asserts that the allegations contained in a complaint are  
22 insufficient on their face to invoke jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035,  
23 1039 (9th Cir. 2004). In evaluating a facial attack to jurisdiction, the Court must accept the factual  
24 allegations in plaintiff's complaint as true. *See Miranda v. Reno*, 238 F.3d 1156, 1157 n. 1 (9th  
25 Cir. 2001). For a factual attack, in contrast, the Court may consider extrinsic evidence. *See*  
26 *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Further, the court does not have to  
27 assume the truthfulness of the allegations, and may resolve any factual disputes. *See White*, 227  
28

1 F.3d at 1242. Thus, "[o]nce the moving party has converted the motion to dismiss into a factual  
2 motion by presenting affidavits or evidence properly before the court, the party opposing the  
3 motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing  
4 subject matter jurisdiction." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th  
5 Cir. 2003).

6  
7 **III. DISCUSSION**

8 In support of their Motion, Defendants' primary contention is that this Court has no subject  
9 matter jurisdiction over Plaintiff's first, second and fourth causes of action because "federal courts  
10 do not have jurisdiction to hear disputes arising out of the interpretation and enforcement of  
11 interconnection agreements unless they have been addressed in the first instance by the State  
12 commission that approved the [Agreement]." (Mot. at 5.) Rather than address this argument head  
13 on, Plaintiff's opposition is rife with creativity. Specifically, Plaintiff's arguments, among others,  
14 are: (1) that this Court has supplemental jurisdiction over the claims Defendants seek to dismiss;  
15 (2) that Defendants have waived any lack of subject matter jurisdiction argument; and (3) that  
16 Defendants have contracted for § 1331 jurisdiction.

17 **A. The Court Lacks Subject Matter Jurisdiction Over Plaintiffs Breach Of Contract**  
18 **Claims.**

19 As a threshold matter, Plaintiff's assertion that Defendants have waived their "theory" for  
20 lack of subject matter jurisdiction "by waiting so inordinately long to raise it," is without merit.  
21 (Opp'n at 12). The Federal Rules clearly permit any party to address a court's subject matter  
22 jurisdiction "[w]hensoever it appears . . . that the court lacks jurisdiction of the subject matter." Fed.  
23 R. Civ. P. 12(h)(3). Accordingly, "challenges to subject matter jurisdiction cannot be waived and  
24 may be raised at any point in the proceeding." *Miguel v. Country Funding Corp.*, 309 F.3d 1161,  
25 1163-64 (9th Cir. 2002).

26 Proceeding now to the merits of the underlying Motion, Defendants argue that § 252(e)(6)  
27 deprives this Court of jurisdiction over Plaintiff's breach of contract claims.<sup>2</sup> That section reads:

28  

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<sup>2</sup> In arguing to the contrary Plaintiff states the following: "Defendants have relied on cases that discuss  
jurisdiction under § 252(e)(6) of the Act, but those cases have no bearing here. Plaintiff didn't file any § 252(e)(6)

1 In a case in which a State fails to act as described in paragraph (5), the proceeding  
2 by the Commission under such paragraph and any judicial review of the  
3 Commission's actions shall be the exclusive remedies for a State commission's  
4 failure to act. In any case in which a State commission makes a determination under  
5 this section, any party aggrieved by such determination may bring an action in an  
6 appropriate Federal district court to determine whether the agreement or statement  
7 meets the requirements of section 251 of this title and this section.

8 47 U.S.C. § 252(e)(6).

9 In finding that this section illustrates Congressional intent to deprive this Court of  
10 jurisdiction over disputes arising from the Agreement, at least in the first instance, the Court  
11 follows the reasoning behind the Third Circuit's recent decision, *Core Communications, Inc. v.*  
12 *Verizon Pa., Inc.*, 493 F.3d 333 (3d Cir. 2007).

13 There, proceeding under the deferential standard espoused in *Chevron v. Natural Res. Def.*  
14 *Council*, 467 U.S. 837 (1984)<sup>3</sup>, the Third Circuit found that Congress has not yet spoken on the  
15 proper interpretation and enforcement procedure of disputes arising from already approved  
16 interconnection agreements. *Core*, 493 F.3d at 340-41. Because the Act did not set out an  
17 enforcement scheme for a pure claim for breach of an interconnection agreement, the court turned  
18 to the Acts implementing agency, the Federal Communications Commission's ("FCC"), and its  
19 opinion and order in *In the Matter of Starpower Communications, LLC*, 15 F.C.C.R. 11277  
20 (F.C.C. 2000) to fill the "gap" left by the Act's silence. *Core*, 493 F.3d at 341. In *Starpower*, the  
21 FCC stated, "[i]n applying Section 252(e)(5), we must first determine whether a dispute arising  
22 from interconnection agreements and seeking interpretation and enforcement of those agreements  
23 is within the states' 'responsibility' under section 252. We conclude that it is." 15 F.C.C.R. at  
24 11279. This "responsibility" of a state commission, *Core* noted, was subject to two different  
25 interpretations. *Core*, 493 F.3d at 341-43. On the one hand, a narrow interpretation of

26 appeal in this case. We've never asserted that § 252(e)(6) is the bases for this Court's jurisdiction." (Tr. Sep. 24,  
27 2007.) For lack of a better word, the Court's response is: Exactly! Our opinion follows that reached in *Core*, *infra*.  
28 Accordingly, our position is that federal courts may only review matters which have first been presented to the  
appropriate state commission. Because it is undisputed that Plaintiff does not bring an "appeal" from a  
determination made by the CPUC, we do not have jurisdiction over their breach of contract claims.

<sup>3</sup> Under *Chevron*, federal courts must defer to an implementing agency's (here, the FCC) interpretation  
of a statute within its jurisdiction if (1) "the statute is silent or ambiguous with respect to the specific issue" at  
hand, and (2) "the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at  
843.

1 “responsibility” would suggest that state commissions have, at a minimum, the non-exclusive  
2 authority to hear post-formation disputes involving approved interconnection agreements. *Id.* at  
3 342. On the other, however, a state’s “responsibility” under § 252 suggests that there is not a  
4 shared role for the federal courts. *Id.* Looking at the structure of the statutory scheme as a whole,  
5 and finding no indication in other FCC decisions that the state commissions’ jurisdiction over  
6 post-formation disputes is shared with the federal courts, *Core* followed the latter, more broad  
7 interpretation. *Id.* Specifically, *Core* stated, “a ‘symmetrical and coherent regulatory scheme’  
8 is one where the bodies that considered formation problems also resolve interpretation difficulties.  
9 As with formation problems, federal court jurisdiction over state commission interpretation and  
10 enforcement decisions should be limited to appellate review.” *Id.* at 342-43.

11 Though this precise question has not been heavily litigated, the Court finds no reason to  
12 stray from *Core*’s conclusions. In so holding, we recognize that at the heart of the Act is a scheme  
13 of “cooperative federalism” whereby states were given primary responsibility over interconnection  
14 agreements. As noted, “[r]ather than placing the entire scope of regulatory authority in the federal  
15 government, ‘Congress enlisted the aid of state public utility commissions to ensure that local  
16 competition was implemented fairly and with due regard to the local conditions and the particular  
17 historical circumstances of local regulation under the prior regime.’” *Global Naps, Inc. v. Mass.*  
18 *Dep’t of Telecomm. and Energy*, 427 F.3d 34, 46 (1st Cir. 2005) (citation omitted). Permitting  
19 parties to proceed straight to federal court would therefore circumvent the role of the relevant state  
20 commission and would jeopardize the entire system of review established by the Act. *Ind. Bell*  
21 *Tel. Co., Inc. v. McCarty*, 30 F.Supp.2d 1100, 1104 (S.D. Ind. 1998); accord *BellSouth*  
22 *Telecomms., Inc. v. MCI Metro Access Transmission Servs., Inc.* 317 F.3d 1270, 1278 n. 9 (11th  
23 Cir. 2003) (noting, “[a] court could ascribe to the agreement a meaning that differs from what the  
24 state commission believed it was approving . . . . To deprive the state commission of authority to  
25 interpret the agreement that it has approved would thus subvert the role that Congress prescribed  
26 for state commissions.”); accord *Sw. Bell Tel. Co. v. PUC*, 208 F.3d 475, 479-80 (5th Cir. 2000)

27  
28  

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4 Indeed, it is this view Plaintiff relies upon in its Opposition. (Opp’n at 11) (“*Starpower* . . . merely  
“graft[ed] onto the [1996] Act an exhaustion requirement.”).

1 ("the Act's grant to the state commissions of plenary authority to approve or disapprove these  
2 interconnection agreements necessarily carries with it the authority to interpret and enforce the  
3 provisions of agreements that state commissions have approved.").

4 Here, Plaintiff's first and second causes of action allege pure claims for breach of their  
5 Agreement. In particular, Plaintiff seeks recovery of certain (large) sums of money for  
6 Defendants' failure to pay reciprocal compensation and transiting charges. Though cognizant of  
7 Plaintiff's plight, the Court, at this time, cannot provide any redress. Without delving into the  
8 merits of Plaintiff's claims, the Court notes that enforcement of the parties' Agreement necessarily  
9 entails interpretation of the terms and conditions contained therein - determinations which, the  
10 Court is persuaded, ought to be addressed, in the first instance, by the CPUC. To the extent a  
11 select minority of cases hold otherwise, the Court declines to follow them. Interconnection  
12 agreements are the tools through which the Act is enforced and we find it entirely consistent with  
13 the Act to have the CPUC interpret the parties' Agreement in the first instance, and then subject  
14 their interpretations to federal review.<sup>5</sup> See *BellSouth Telecomms.*, 317 F.3d. at 1278.

15 B. The Parties Cannot Invoke This Court's Jurisdiction By Agreement

16 In further support of their position that this Court has subject matter jurisdiction over their  
17 breach of contract claims, Plaintiff's point to language in the parties' Agreement which provides  
18 that any party may pursue "any remedy available to it pursuant to law, equity or agency  
19 mechanism." (Opp'n at 10.) Plaintiff's argument fails for two reasons. First, because the Court  
20 is of the opinion that Plaintiff's breach of contract claims must first be presented to the CPUC,  
21

---

22 <sup>5</sup> At this point the Court finds it appropriate to address the Supreme Court's decision in *Verizon Md. Inc.*  
23 *v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635 (2002). Plaintiff argues, both in their papers and at the September 24,  
24 2007 hearing, that the Court's position is inconsistent with *Verizon Md.* The Court, however, finds that no  
25 inconsistency exists. The Supreme Court held only that § 252(e)(6) does not divest the district courts of their  
26 authority under 28 U.S.C. § 1331 to review a state commission's order for compliance with federal law. *Verizon*  
27 *Md.*, 535 U.S. at 642. In other words, the Supreme Court merely settled the question of whether federal courts  
28 could review a state commission's "interpretation or enforcement of an [existing] interconnection agreement"  
because only arbitration and approval are expressly mentioned in § 252. *Id.* The court concluded that nothing in  
either § 252(e)(6) or in the rest of the Act limited federal jurisdiction that would otherwise exist under § 1331 over  
rulings that were allegedly violative of federal law. *Id.* It did not, however, hold that federal district courts have  
jurisdiction to decide such questions in the first instance, prior to consideration and decision by a state commission.  
Indeed, the Supreme Court's holding actually *presupposes* a determination made by the appropriate state  
commission in the first instance; a determination which we do not have here.

1 bringing those claims to this Court is not an "available" remedy. Second, and more pointedly, in  
2 foreclosing this exact argument the Eastern District of Virginia, when faced with much more  
3 unambiguous contractual language, stated, "parties cannot contract for judicial review in direct  
4 contravention to the Telecommunications Act." *Bell Atl. Va., Inc. v. Worldcom Techs. of Va.*, 70  
5 F.Supp.2d 620, 626 (E.D. Va. 1999); accord *AT&T Commc'ns of Ohio v. Ohio Bell Tel. Co.*, 29  
6 F.Supp.2d 855, 856-57 (S.D. Ohio 1998).<sup>6</sup> Accordingly, Plaintiff cannot seek refuge in the  
7 parties' dispute resolution clause.

8 C. The Court Will Not Exercise Supplemental Jurisdiction

9 Finally, as alluded to above, the thrust of Plaintiff's argument is that this Court's  
10 jurisdiction over Plaintiff's third cause of action for failure to pay federal tariff rates permits the  
11 exercise of supplemental jurisdiction over its breach of contract claims. Plaintiff is incorrect. As  
12 already discussed, bringing to the federal courts, in the first instance, claims for breach of an  
13 interconnection agreement would undermine the role Congress has prescribed for state  
14 commissions. For those same reasons, Plaintiff's attempt to "back-door" its claims as  
15 supplemental must fail as well.<sup>7</sup>

16 To be clear, the Court recognizes that judicial efficiency could best be served by hearing  
17 all of Plaintiff's claims at the same time. Therefore, it is at this point where we pick up where  
18 *Core* left off and find that a stay of Plaintiff's federal tariff claim would be appropriate pending  
19 refile, if any, of Plaintiff's first and second causes of action once CPUC has made its  
20 determination. And because we find, and both parties agree, that Plaintiff's fourth cause of action

21  
22 <sup>6</sup> The relevant contractual language in *Bell Atl. Va., Inc.* stated, "[a]ny dispute between the Parties  
23 regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith  
24 negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a  
reasonable time, either Party may initiate an appropriate action in any regulatory or judicial forum of competent  
jurisdiction." *Bell Atl. Va., Inc.*, 70 F.Supp.2d at 626 (emphasis in original).

25 <sup>7</sup> In arguing to the contrary, Plaintiff relies on *Mich. Bell Tel. Co. v. MCI Metro Access Transmission*  
26 *Servs., Inc.*, 323 F.3d 348, 355-56 (6th Cir. 2003), *Connect Comms. Corp. v. Sw. Bell Tel.*, 467 F.3d 703, 707-09  
27 (8th Cir. 2006), and *Sw. Bell Tel. Co. v. Brooks Fiber Comms. of Okla., Inc.*, 235 F.3d 493, 498 (10th Cir. 2000).  
28 Plaintiff drastically misstates the conclusions reached in these cases regarding supplemental jurisdiction. These  
cases do not, as Plaintiff contends, stand for the proposition that federal courts may bear, pursuant to § 1367, claims  
for breaches of interconnection agreements that were not first presented to the appropriate state commission.  
Rather, these cases merely asserted that federal courts may invoke supplemental jurisdiction over a state  
commission's state law determinations.

1 for damages in quasi-contract cannot be presented before the CPUC, and to the extent that it is  
2 directly intertwined with Plaintiff's other breach of contract claims, that claim is dismissed without  
3 prejudice.

4  
5 IV. CONCLUSION

6 For the forgoing reasons the Court finds that the Act makes only a limited grant of  
7 jurisdiction to the federal district courts to review only those disputes that have been first presented  
8 to the appropriate state utilities commission. We find especially persuasive the reasoning adopted  
9 by the Third and Eleventh Circuits and conclude that the statutory scheme set forth in the Act  
10 makes the state regulatory commissions the initial decision-makers in disputes involving  
11 interconnection agreements. Accordingly, Plaintiff's first and second causes of action are hereby  
12 DISMISSED without prejudice, pending any refiling once CPUC has made its determinations.  
13 Plaintiff's third cause of action is hereby STAYED and Plaintiff's fourth cause of action is  
14 DISMISSED without prejudice.<sup>8</sup>

15  
16 IT IS SO ORDERED.

17  
18 DATE: October 1, 2007

19  
20   
21 OTIS D. WRIGHT II  
22 UNITED STATES DISTRICT JUDGE  
23  
24  
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27

28 <sup>8</sup> Though the Court appreciates Plaintiff's concerns, dismissal at this stage in the proceedings will not be  
exceptionally prejudicial. Undoubtedly, all discovery already completed will be invaluable in proceedings before  
the CPUC and to any future litigation in this Court.



## EXHIBIT D

48. COUNTERPARTS

48.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

49. ENTIRE AGREEMENT

49.1 SBC-12STATE

49.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

49.2 SNET

49.2.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda, Commission approved tariffs and other documents or instruments referred to herein and incorporated into this Agreement by reference constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

*An \* indicates terms changed pursuant to the Arbitrator's Order ("DPUC Ordered Terms") that shall be considered to have been arbitrated and will not be considered portable to another state pursuant to the SBC/Ameritech Merger Conditions.*

## EXHIBIT E

## COMMONWEALTH OF MASSACHUSETTS

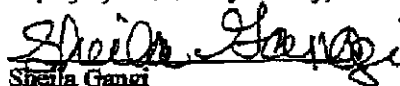
NORFOLK, ss

SUPERIOR COURT  
CIVIL ACTION NO. 07-1723FRANK GANGI,  
Plaintiff,

v.

SHEILA GANGI,  
Defendant.AFFIDAVIT OF SHEILA GANGI

1. My name is Sheila Gangi and I reside at 3 Patricia Lane, Amherst, NH.
2. At the time of his death, Richard Gangi had two computers, one was a laptop and the other was a desk top.
3. I never saw Frank Gangi take either of those computers after Richard died. I did see two lap top computers on Frank Gangi's dining room table one night when I was there, and I assumed one of them was Richard's due to the fact that he sent me my last email back that I sent to Richard. I do not know whether they were Richard's.
4. I have no personal knowledge that Frank ever had physical possession of either of Richard's computers after Richard died.
5. I once owned a 2002 Cadillac Escalade, which I refer to as a truck. I received the title to that vehicle from GMAC in September of 2007 after the last loan payment to GMAC had been made in August of 2007. The title was mailed to me by GMAC to my 3 Patricia Lane, Amherst, NH address.

Signed under the pains and penalties of perjury this 8<sup>th</sup> day of July, 2008.  
Sheila Gangi

**CERTIFICATE OF SERVICE**

I certify that on July 8, 2008 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/Eric C. Osterberg  
Eric C. Osterberg

## **EXHIBIT F**