Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

Global NAPs, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-01-MD-010
	)	
Verizon Communications,	)	
Verizon New England, Inc., and	)	
Verizon Virginia, Inc.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 21, 2002 **Released:** February 28, 2002

By the Commission:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part a formal complaint that Global NAPs, Inc. ("Global NAPs"), filed against Verizon Communications, Verizon New England, Inc., and Verizon Virginia, Inc. (collectively, "Verizon"),[1] pursuant to section 208 of the Communications Act of 1934, as amended ("Act" or "Communications Act").[2] We grant Global NAPs' claim that Verizon violated section 201(b) of the Act[3] by refusing to permit Global NAPs to opt into certain provisions of an interconnection agreement that are eligible for adoption across state lines in accordance with a condition of the Commission's approval of the merger application of Bell Atlantic Corp. and GTE Corp.[4] We deny Global NAPs' claim for damages, however, because such claim is premature.

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[1] *See* Formal Complaint, File No. EB-01-MD-010 (filed Apr. 27, 2001) ("*Global NAPs Complaint*"). Although Global NAPs originally named Verizon Communications as a defendant, the parties jointly requested that we dismiss Verizon Communications as a defendant. Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, File No. EB-01-MD-010, at 2, ¶ 7 (filed June 11, 2001) ("*Joint Statement*"). We hereby grant this request.

[2] 47 U.S.C. § 208.

[3] *Id.* § 201(b).

[4] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14171–75, ¶¶ 300–05, 14310–11, App. D at ¶ 32 (2000) ("*Merger Order*").

II. BACKGROUND

2. Global NAPs is a telecommunications carrier that offers interstate and intrastate telecommunications services.[5] Pursuant to sections 251 and 252 of the Act,[6] Global NAPs and its affiliates have interconnection agreements with Verizon concerning the provision of local telecommunications services in a number of states.[7] Verizon is an incumbent local exchange carrier ("LEC") that provides, among other services, local exchange and exchange access services in the states that are relevant to this complaint.[8]

3. In 1998, pursuant to section 252(a) of the Act,[9] Global NAPs and Bell Atlantic – Rhode Island signed a negotiated interconnection agreement governing the exchange of telecommunications traffic in the state of Rhode Island ("Rhode Island Agreement").[10] That agreement contains section 5.7.2.3, which provides, *inter alia*, that Verizon will pay Global NAPs reciprocal compensation (as defined in the agreement) for the delivery of traffic from Verizon's network to Global NAPs' internet service provider ("ISP") customers ("ISP-bound traffic") until such time as this Commission or a court determines that ISP-bound traffic is not "local traffic" or is otherwise not compensable.[11]

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5 *Global NAPs Complaint* at 2, ¶ 2; Verizon Answer, File No. EB-01-MD-010, at 13, ¶ 28 (filed May 18, 2001) ("*Verizon Answer*").

6 47 U.S.C. §§ 251, 252.

7 *Global NAPs Complaint* at 2, ¶ 3; *Verizon Answer* at 13, ¶ 29.

8 *Global NAPs Complaint* at 2, ¶ 3; *Verizon Answer* at 13, ¶ 29.

9 *See* 47 U.S.C. § 252(a)

10 *Joint Statement* at 1–2, ¶ 2. Bell Atlantic – Rhode Island is the predecessor company of Verizon – Rhode Island, Inc., which is now a subsidiary of Defendant Verizon New England, Inc.

11 *Id.* at 1–2, ¶ 2. The interconnection agreement reads as follows: "5.7.2.3 The Parties stipulate that they disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider ("ISP") connected to the other Party's network ("ISP Traffic") constitutes Local Traffic as defined herein, and the charges to be assessed in connection with such traffic. The issue of whether such traffic constitutes Local Traffic on which reciprocal compensation must be paid pursuant to the 1996 Act is presently before the FCC in CCB/CPD 97-30 and may be before a court of competent jurisdiction. The Parties agree that the decision of the FCC in that proceeding, or as such court, shall determine whether such traffic is Local Traffic (as defined herein) and the charges to be assessed in connection with ISP Traffic. If the FCC or such court determines that ISP Traffic is Local Traffic, as defined herein, or otherwise determines that ISP Traffic is subject to reciprocal compensation, it shall be compensated as Local Traffic under this Agreement unless another compensation scheme is required under such FCC or court determination. Until resolution of this issue, BA agrees to pay GNAPS Reciprocal Compensation for ISP Traffic (without conceding that ISP Traffic constitutes Local Traffic or precluding BA's ability to seek appropriate court review of this issue) pursuant to the [Rhode Island] commission's Order in Case 97-C-1275, dated March 19, 1998, as such Order may be modified, changed or reversed." *Global NAPs Complaint* at Exhibit 2, at 22 (quoting Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 Between Bell Atlantic-Rhode Island and Global NAPs, Inc. (Oct. 1, 1998).).

4. On February 26, 1999, the Commission ruled that ISP-bound traffic is largely interstate traffic that is not subject to the reciprocal compensation scheme of section 251(b)(5) of the Act.[12] Nevertheless, the Commission stated that state commission findings as to whether reciprocal compensation provisions of interconnection agreements applied to ISP-bound traffic would remain in place pending adoption of a Commission rule establishing an appropriate interstate compensation mechanism.[13] On November 16, 1999, the Rhode Island Public Utilities Commission ("PUC") issued an order finding that the requirements of section 5.7.2.3 remain in effect, notwithstanding the Commission's *Declaratory Ruling*.[14] The Rhode Island PUC held that the Commission's *Declaratory Ruling* did not fulfill the Rhode Island Agreement's requirement of fully resolving the issue of whether ISP-bound traffic would remain in the reciprocal compensation scheme as local traffic. Thus, the Rhode Island PUC continued to require Bell Atlantic-Rhode Island to pay reciprocal compensation to Global NAPs for this traffic.[15]

5. On March 24, 2000, the Court of Appeals for the District of Columbia Circuit vacated the *Declaratory Ruling*.[16] The court stated, *inter alia*, that the Commission had not adequately explained why ISP-bound traffic falls outside the rubric of section 251(b)(5) of the Act.[17] Thus, the court remanded the matter to the Commission for further explanation.

6. On June 16, 2000, while the D.C. Circuit's remand of the *Declaratory Ruling* remained pending at the Commission, the Commission released the *Merger Order* approving the transfer of licenses from GTE to Bell Atlantic.[18] The Commission concluded, *inter alia*, that, because of the conditions to which the parties had voluntarily committed, the proposed transfer of licenses would serve the public interest.[19] One such condition set forth in the *Merger Order* is the subject of the instant complaint. In brief, that condition requires Verizon, under certain specified circumstances, to permit requesting carriers to adopt in one state an interconnection agreement that was voluntarily negotiated in another state. The condition states, in pertinent part:

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12 *See Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*"); *see also* 47 U.S.C. § 251(b)(5).

13 *Declaratory Ruling* at 3703, ¶ 21.

14 *See* Complaint of Global NAPs, Inc., Against Bell Atlantic-Rhode Island Regarding Reciprocal Compensation, Docket No. 2967, *Report and Order*, R.I. P.U.C. (Nov. 16, 1999) ("*RIPUC Order*"); *Joint Statement* at 2, ¶ 3.

15 *See RIPUC Order* at 4–5.

16 *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

17 *Bell Atlantic*, 206 F.3d at 8.

18 *See supra* note 4.

19 *See Merger Order*, 15 FCC Rcd at 14036, ¶ 3–5.

> 32. In-Region Pre-Merger Agreements. Subject to the Conditions specified in this Paragraph, Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date and (2) in the GTE Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provision of an interconnection subject to 47 U.S.C. § 251(c) that was voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date, provided that no interconnection arrangement or UNE from an agreement negotiated prior to the Merger Closing Date in the Bell Atlantic Area can be extended into the GTE Service Area and vice versa.[20]

7. On April 27, 2001, in response to the D.C. Circuit's remand, the Commission released an order determining, *inter alia*, that ISP-bound traffic constitutes "information access" under section 251(g) of the Act and is, therefore, excluded from the reciprocal compensation provision of section 251(b)(5).[21] At the same time, the Commission established an interim compensation arrangement for the delivery of ISP-bound traffic, in which incumbent LECs generally pay competitive LECs a progressively decreasing per-minute rate.[22] The Commission emphasized, however, that the new compensation regime applies only prospectively "as carriers renegotiate expired or expiring interconnection agreements," and "does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions."[23]

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[20] *Merger Order*, 15 FCC Rcd at 14310, App. D at ¶ 32 ("paragraph 32").

[21] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9154–56, ¶¶ 4–6 (2001) ("*Order on Remand*"). Section 251(g) of the Act provides, in pertinent part, that "each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on [February 7, 1996]." 47 U.S.C. § 251(g).

[22] *Order on Remand,* 16 FCC Rcd at 9155-57, ¶¶ 7–8.

[23] *Id.* at 9189, ¶ 82; *see id.* at 9186–91, ¶¶ 77–85. We note that, prior to the release of the *Order on Remand*, on December 27, 2000, the Commission's Common Carrier Bureau ("CCB") issued a letter stating that the paragraph 32 condition applies to reciprocal compensation provisions of interconnection agreements. *See* Letter from Carol Mattey, Common Carrier Bureau, to Michael Shor, Swidler Berlin Sheriff Friedman, LLP, 16 FCC Rcd 22 (2000). In response to this letter, Verizon asked CCB to clarify its position regarding the applicability of the condition to intercarrier compensation for ISP-bound traffic. *See* Letter from Gordon Evans, Verizon Communications, to Dorothy Attwood, Common Carrier Bureau, Feb. 20, 2001. CCB issued a *Public Notic*e on March 30, 2001, asking "whether there are grounds to waive or modify the relevant MFN [most favored nation] conditions." Common Carrier Bureau Seeks Comment on Letters Filed by Verizon and Birch Regarding Most-Favored Nation Condition of SBC/Ameritech and Bell Atlantic/GTE Orders, *Public Notice*, 16 FCC Rcd 6873, 6874 (2001). As of the release date of this Order, the Commission has taken no action regarding the *Public Notice*.

8. On July 24, 2000, Global NAPs notified Verizon that, pursuant to paragraph 32 of the merger conditions, it wished to adopt the Rhode Island Agreement in Virginia and Massachusetts.[24] On November 15, 2000, Global NAPs and Verizon agreed that, effective July 24, 2000, Global NAPs could adopt, in Massachusetts and Virginia, all provisions of the Rhode Island Agreement that it could adopt consistent with paragraph 32 of the merger conditions.[25] The parties disagreed, however, about whether paragraph 32 of the merger conditions entitles Global NAPs to adopt in Massachusetts and Virginia section 5.7.2.3 of the Rhode Island Agreement. The parties attempted to settle their disagreement for about nine months.[26] Throughout the course of their dispute, Verizon continued to send Global NAPs ISP-bound traffic in Massachusetts and Virginia, but Verizon did not pay Global NAPs intercarrier compensation for that traffic.[27]

9. On April 27, 2001, Global NAPs filed its complaint alleging that paragraph 32 of the merger conditions required Verizon to allow Global NAPs to opt into section 5.7.2.3 of the Rhode Island Agreement in Massachusetts and Virginia.[28] Global NAPs asserts that "Verizon's conditioning and limitation of adoption of the *Rhode Island Agreement* in Virginia and Massachusetts constitutes a violation of 47 U.S.C. § 201(b) entitling Global NAPs to a payment of money" damages.[29] The complaint alleges, therefore, that Verizon owes Global NAPs "reciprocal compensation payments from July 24, 2000 to the present for ISP-bound traffic in those states at the appropriate rate(s) based on the *Rhode Island Agreement*,"[30] which allegedly amounts to $26,871,153.92.[31] According to Global NAPs, this is the amount of reciprocal compensation that Verizon owes Global NAPs for Global NAPs' transport and termination of Verizon-originated ISP-bound calls in Massachusetts and Virginia from July 24, 2000 through March 31, 2001.[32]

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24 *Global NAPs Complaint* at Ex. 5.

25 *Joint Statement* at 2, ¶ 5; *see Global NAPs Complaint* at Exs. 3–4 (two letter agreements that both parties signed on November 15, 2000).

26 *See Global NAPs Complaint* at Exs. 6–12 (referring to letters and e-mails that the parties exchanged).

27 *Joint Statement* at 2, ¶¶ 5–6.

28 In its complaint, Global NAPs labels its various assertions as "counts" that do not make specific allegations of statutory or regulatory violations, but instead describe legal arguments. Thus, we construe "Count I," "Count II," and "Count III" as merely parts of the main body of the complaint. *See Global NAPs Complaint* at 18–20, ¶¶ 42–48 (Count I), 20–40, ¶¶ 49–90 (Count II), 40–48, ¶¶ 91–109 (Count III). We view Count IV as Global NAPs' true claim. *See id.* at 49, ¶¶ 110–11. Accordingly, Count IV is the only count that we address in this Order.

29 *Id.* at 50, ¶ 114.

30 *Id.* at 49–50, ¶ 113.

31 *Id.* at 50, ¶ 114.

32 *Id.*

III. DISCUSSION

10. Although we find that paragraph 32 is ambiguous as applied to the circumstances at issue here, we conclude that it is best read as requiring Verizon to make available for adoption in other states the entire Rhode Island Agreement, including section 5.7.2.3, or any discrete provision thereof.[33]

11. Global NAPs focuses on the fact that paragraph 32 requires Verizon to make available for adoption across state lines any "provisions of an interconnection agreement **(including an entire agreement)** subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC…."[34] In Global NAPs' view, therefore, the key question is whether the entire Rhode Island Agreement, including section 5.7.2.3, is "subject to 47 U.S.C. § 251(c)" within the meaning of paragraph 32.

12. Assuming for the moment that Global NAPs asks the right question, by focusing on the entire agreement rather than on individual provisions thereof, we agree with Global NAPs' answer that the Rhode Island Agreement, including section 5.7.2.3, is "subject to 47 U.S.C. § 251(c)" within the meaning of paragraph 32 (and thus Global NAPs is entitled to opt into it.) First, this interconnection agreement is subject to section 251(c) because this is the agreement that Verizon negotiated to comply with its obligations under that section. In other words, this agreement incorporates the terms governing the exchange of telecommunications traffic in the state of Rhode Island pursuant to section 251(c). This agreement embodies not only many of those terms listed in section 251(c), but other provisions that the parties found appropriate for inclusion as well. Moreover, section 251(c)(1) states that an incumbent LEC must "negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection."[35] No one disputes that the Rhode Island Agreement was negotiated pursuant to section 251(c) or subject to the good faith provisions of section 251(c). The fact that the agreement included other provisions does not take it out of the ambit of section 251(c).[36]

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[33] We note that paragraph 32 (in a portion not quoted above) does create exclusions from the adoptability requirement for certain items (*e.g.*, paragraph 32 excludes price- and state-specific performance measures for interconnection arrangements and UNEs). Any statements in this Order about paragraph 32 requiring the "entire" interconnection agreement to be made available for adoption should not be interpreted as overriding these exclusions.

[34] *Merger Order*, 15 FCC Rcd at 14310, App. D at ¶ 32 (emphasis added). Paragraph 39 of the *Merger Order*, which requires Verizon to offer unbundled network elements ("UNEs") in accordance with the *UNE Remand Order* and the *Line Sharing Order* until a final, non-appealable judicial decision to the contrary, has no bearing on the issue disputed in this matter. *See id.* at 14316, App. D at ¶ 39 ("paragraph 39"); *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"). Paragraph 39 merely leaves in place the requirements contained in certain Commission orders implementing section 251(c) of the Act subject to appellate review.

[35] 47 U.S.C. § 251(c)(1).

[36] In contrast, certain pre-1996 Act interconnection agreements are outside the scope of section 251(c). *See Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 762–65 (8th Cir. 2000).

Accordingly, we find that the entire Rhode Island Agreement is "subject to 47 U.S.C. § 251(c)" as that phrase is used in paragraph 32 of the merger conditions. Because this is a section 251(c) agreement and paragraph 32 permits opting into an "entire" such agreement, then under Global NAPs' approach, the entire Rhode Island Agreement is eligible for adoption in Virginia and Massachusetts, and Verizon must offer it to requesting carriers to meet its obligations under the *Merger Order*.[37]

13. Verizon, however, poses a different initial question than Global NAPs does. Verizon asserts that the phrase "subject to 47 U.S.C. § 251(c)" limits the terms it must offer to those that are specifically enumerated in section 251(c)(2)–(6) (*e.g.*, unbundled access, collocation); thus, according to Verizon, because section 251(c) does not specifically address reciprocal compensation for ISP-bound traffic, paragraph 32 does not require Verizon to offer a provision, such as section 5.7.2.3, that concerns such compensation.[38] We disagree for two reasons.

14. First, Verizon's interpretation of paragraph 32 would require us to read the phrase "subject to 47 U.S.C. § 251(c)" as modifying the term "provisions" rather than modifying the directly antecedent language "interconnection agreement (including an entire agreement)." We reject Verizon's interpretation. We believe that the more natural reading of this phrase matches the term "interconnection agreement (including an entire agreement)" with its verb "that was voluntarily negotiated," so that the subject and verb agree. Because the phrase "subject to 47 U.S.C. § 251(c)" modifies "agreement," paragraph 32 allows requesting carriers to opt into an *agreement*, or to any discrete provisions thereof, as long as that *agreement* was subject to section 251(c). As discussed above in paragraph 11, the Rhode Island Agreement satisfies this requirement.

15. Second, Verizon's interpretation would mean that competitors could rarely, if ever, invoke paragraph 32 to opt into an "entire agreement." Verizon itself indicated in a joint stipulation that its interconnection agreements in the former Bell Atlantic territory "typically contain terms in addition to those listed in 47 U.S.C. § 251(c)(1)-(6)."[39] Under Verizon's interpretation, requesting carriers would not be entitled to opt into "entire agreements" if the agreements contain any terms not expressly listed in section 251(c). Thus, reading paragraph 32 as Verizon contends would render virtually meaningless the phrase "including an entire agreement." We decline to construe paragraph 32 in such a cramped manner.

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[37] As our determination rests on the text of paragraph 32 itself, Verizon's comparisons between the language in the *SBC/Ameritech Merger Order* and the language at issue here are inapposite. *See Verizon Answer* at 6, ¶ 13; Brief of Defendants Verizon New England, Inc., and Verizon Virginia, Inc., File No. EB-01-MD-010, at 4–5 (filed July 16, 2001) ("*Verizon Brief*") (citing *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) ("*SBC/Ameritech Merger Order*")).

[38] *See Verizon Answer* at 4-8, ¶¶ 7–17; *Verizon Brief* at 1–6; Reply Brief of Defendants Verizon New England, Inc., and Verizon Virginia, Inc., File No. EB-01-MD-010, at 1–6 (filed Aug. 6, 2001) ("*Verizon Reply*").

[39] Joint Stipulation, File No. EB-01-MD-010, at 1 (filed June 19, 2001).

16. Verizon also argues that "even if the merger condition were somehow construed (incorrectly) to apply to matters covered by section 251(b)(5)," the Commission's *Order on Remand* establishes that Internet-bound traffic is not covered by section 251(b)(5).[40] Verizon states that because the Commission has determined in the *Order on Remand* that ISP-bound traffic falls within section 251(g), such traffic must be excluded from section 251(b)(5).[41] We find Verizon's arguments to be irrelevant to the determination in the instant Order. As discussed above, our conclusion that the Rhode Island Agreement, as a whole, is subject to section 251(c) does not turn on which statutory provision governs reciprocal compensation for ISP-bound traffic.

17. Verizon also asserts that construing paragraph 32 in the manner sought by Global NAPs would conflict with the *Order on Remand*, because the Commission's determination that ISP-bound traffic is covered by section 251(g) of the Act rather than section 251(b) demonstrates that "[p]ayment of inter-carrier compensation for Internet-bound traffic is . . . contrary to stated Commission policy."[42] We disagree. The *Order on Remand* governs the exchange of ISP-bound traffic on a prospective basis, after its effective date of June 14, 2001.[43] Global NAPs' complaint, however, asks the Commission to examine Verizon's actions from July 24, 2000 to March 31, 2001.[44] The *Order on Remand* expressly "does not alter existing contractual obligations, except to the extent the parties are entitled to invoke contractual change-of-law provisions."[45] Our decision here fully comports with this determination that pre-existing contractual obligations between Verizon and Global NAPs remain in effect. As noted above, on November 15, 2000, Verizon and Global NAPs entered into an agreement that Global NAPs, as of July 24, 2000, could opt into any provision of the Rhode Island Agreement to which paragraph 32 applied. Because we find that Global NAPs was entitled to opt into the entire agreement, we conclude that the parties' November 15, 2000, agreement qualifies as an "existing contractual obligation" that remains unchanged by the *Order on Remand*.[46]

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40 *Verizon Answer* at 5, ¶ 9; *Verizon Brief* at 2–3; *see also* Letter from Carol Mattey, Common Carrier Bureau, to Michael Shor, Swidler Berlin Sheriff Friedman, LLP, 16 FCC Rcd 22 (2000) (stating that section 251(b) is incorporated explicitly into section 251(c)).

41 *Verizon Answer* at 4, ¶ 8; *Verizon Brief* at 2–3.

42 *Verizon Brief* at 8; *see also Verizon Answer* at 2–5, ¶¶ 3–8; *Verizon Brief* at 1–2; *Verizon Reply* at 2–3.

43 *See* 68 Fed. Reg. 26800 (2001).

44 *See Global NAPs Complaint* at 50, ¶ 114.

45 *See Order on Remand*, 16 FCC Rcd at 9189, ¶ 82. Verizon argues that the *Order on Remand* "makes clear that any provision dealing with reciprocal compensation for ISP traffic is not and has never been subject to section 252(i)." *Verizon Reply* at 11. We disagree. The *Order on Remand* specifically states that "as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to rates paid for the exchange of ISP-bound traffic." *Order on Remand*, 16 FCC Rcd at 9189, ¶ 82. The statement that carriers may "no longer" invoke section 252(i) "as of this date" indicates that, prior to this date, such provisions were eligible for opt-in pursuant to section 252(i).

46 We do expect, however, that once these agreements expire, the *Order on Remand* will govern the exchange of ISP-bound traffic between Global NAPs and Verizon. *See Merger Order*, 15 FCC Rcd at 14172, ¶ 301.

18. We recognize that the interpretation proposed by Global NAPs does to some extent render the language "subject to 47 U.S.C. § 251(c)" arguably superfluous, because paragraph 32 also refers to section 252(a)(1) to identify the kind of interconnection agreements within its scope. Nevertheless, for the reasons explained above, this interpretation makes far more sense than the interpretation proffered by Verizon. Thus, we adopt Global NAPs' approach here.

19. Finally, we note that paragraph 32 specifically states that interconnection terms adopted across state lines must be "consistent with the laws and regulatory requirements of the state for which the request is made."[47] Thus, we conclude that, although the Commission may determine whether an agreement is eligible for adoption pursuant to paragraph 32, only the relevant state commission may ultimately decide whether particular terms of the agreement should be adopted in that state, and if so, what those terms mean.

20. Because paragraph 32 concerns voluntarily negotiated agreements, we expect Verizon and Global NAPs to submit the Rhode Island Agreement to the Virginia and Massachusetts commissions for approval pursuant to section 252(e)(1) of the Act.[48] The parties should follow the procedures that the Massachusetts and Virginia commissions have established for submitting such voluntarily negotiated agreements.[49] We also expect that these agreements will contain section 5.7.2.3 of the Rhode Island Agreement, if Global NAPs chooses to include it. As specified by the Act, each state commission will then determine the acceptability of specific provisions under section 252(e)(2).[50]

21. In sum, because paragraph 32 allows for requesting carriers to opt into entire agreements across state lines, Verizon should have offered the entire Rhode Island Agreement, including section 5.7.2.3, to Global NAPs in Virginia and Massachusetts to satisfy Verizon's commitments under the *Merger Order*. Verizon's failure to do so violates section 201(b) of the Act. Accordingly, we grant Count IV of Global NAPs' complaint.

IV. DAMAGES

22. Global NAPs asserts that, if we rule that Verizon violated section 201(b) of the Act by refusing to allow Global NAPs to adopt in Virginia and Massachusetts section 5.7.2.3 of the

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47 *Id.* at 14310, App. D at ¶ 32.

48 *See* 47 U.S.C. § 252(e)(1) (requiring interconnection agreements to be submitted to state commissions for approval).

49 Verizon indicated orally to Commission staff and Global NAPs that staff at the Virginia commission has stated informally that Verizon should not submit agreements opted into from other states with the Virginia commission. In the absence of an official state ruling that indicates otherwise, however, we cannot assume that the Virginia or Massachusetts commissions will decline to carry out their responsibilities set forth in section 252 of the Act.

50 *See* 47 U.S.C. § 252(e)(2)(A) (listing the grounds upon which state commissions reject negotiated interconnection agreements).

Rhode Island Agreement, we should award Global NAPs $26,871,153.92 in damages.[51] This is the amount that Global NAPs alleges Verizon would have paid in reciprocal compensation for ISP-bound traffic in Virginia and Massachusetts from July 24, 2000, through March 31, 2001, based on the minutes of traffic delivered to Global NAPs and the compensation rate under the Rhode Island Agreement during that time period.

23. Global NAPs' request for damages is premature. As described above, in accordance with this Order, Global NAPs and Verizon must submit interconnection agreements containing section 5.7.2.3 of the Rhode Island Agreement to the Massachusetts and Virginia commissions for approval under section 252(e)(1) of the Act. Only if and when the state commissions approve the interconnection agreements, pursuant to section 252(e)(2) of the Act, will the issue of Global NAPs' entitlement to damages under those agreements be ripe for the appropriate regulatory agency to adjudicate. Accordingly, we deny Global NAPs' claim for damages without prejudice.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 208, that Global NAPs' complaint IS GRANTED IN PART to the extent described herein, and in all other respects IS DENIED.

25. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, that the parties' joint request to dismiss Verizon Communications, Inc., as a defendant IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[51] *See Global NAPs Complaint* at 49–50, ¶¶ 113–14.