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September 10, 2009

Via Electronic Filing

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Palmerton Telephone Company
v. Global NAPs South, Inc., Global NAPs
Pennsylvania, Inc., Global NAPs, Inc. and other affiliates
Docket No. C-2009-2093336

Dear Secretary McNulty:

Enclosed please find the Reply Exceptions of Verizon Pennsylvania Inc., being filed in the above referenced matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb
Enc.

cc: **Via E-Mail and First Class U.S. Mail**
The Honorable Wayne L. Weismandel
Cheryl Walker Davis, Esquire, OSA
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Reply Exceptions of Verizon Pennsylvania Inc., upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 10th day of September, 2009.

VIA E-MAIL and FIRST CLASS U.S. MAIL

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------------------------|---|----------------|
| Palmerton Telephone Company | : | |
| | : | |
| v. | : | C-2009-2093336 |
| | : | |
| Global NAPs South, Inc., Global NAPs | : | |
| Pennsylvania, Inc., Global NAPs, Inc. | : | |
| and other affiliates | : | |

REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC.

Verizon Pennsylvania Inc. (“Verizon”) has no direct interest in the private billing dispute between Palmerton Telephone Company (“Palmerton”) and Global NAPs South, Inc. and affiliates (“Global NAPs”) that is the subject of this formal complaint and therefore did not present direct testimony in this case and did not file an initial brief or exceptions.

In lieu of reply exceptions, Verizon respectfully refers the Commission to its reply brief, which is attached hereto as Exhibit A. This reply brief explains why the Commission should address the present dispute in a manner that, to the greatest degree possible, allows it to confine its decision to the specific facts and parties before it – a limitation that ALJ Weismandel “strongly endorse[d]” and that Palmerton does not challenge. *See* Initial Decision at 41; Palmerton Exceptions at 13 (“Palmerton is not seeking . . . a ‘sweeping’ ruling.”)

Additionally, in response to Palmerton’s erroneous assertion at page 20 of its exceptions that “State law requires the application of access charges from all interexchange (long distance) calls and specifically including those originating in Internet protocol,” Verizon refers the Commission to footnote 6 at page 3 of its reply brief, in

which it explains that Palmerton is mischaracterizing the Pennsylvania VoIP Freedom Act.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

Dated: September 10, 2009

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Palmerton Telephone Company

v.

Global NAPs South, Inc., Global NAPs
Pennsylvania, Inc., Global NAPs, Inc.
and other affiliates

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C-2009-2093336

REPLY BRIEF OF VERIZON PENNSYLVANIA INC.

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Counsel for Verizon Pennsylvania Inc.

Dated: July 27, 2009

Because Verizon Pennsylvania Inc. (“Verizon”) has no direct interest in the private billing dispute between Palmerton Telephone Company (“Palmerton”) and Global NAPs South, Inc. and affiliates (“Global NAPs”) that is the subject of this formal complaint, Verizon did not present direct testimony in this case, nor did it file an initial brief. Verizon nevertheless submits this reply brief to respond to certain characterizations made by Global NAPs in its main brief regarding Verizon’s “views.”¹ Specifically, while Global NAPs acknowledges that “Verizon has been silent on the issues in this case” regarding Palmerton’s right to compensation from Global NAPs for the specific traffic in dispute, it nevertheless attempts to characterize for itself what Verizon’s “views of the key issues are” regarding compensation for VoIP traffic generally. (Global NAPs Main Brief at 24). In doing so, Global NAPs attaches to its brief a September 2008 Verizon ex parte filing before the Federal Communications Commission (“FCC”) (the “September 2008 Ex Parte”). (*Id.*).

As an initial matter, it is improper for Global NAPs to attach and rely upon an FCC filing that it did not seek to admit into the evidentiary record at the hearing.² But in any event, Global NAPs takes Verizon’s positions in that ex parte filing out of context.

¹ Due to the limited nature of its involvement in this dispute, Verizon will not address every factual and legal contention raised by Palmerton and Global NAPs in their lengthy main briefs, but Verizon’s silence should not be construed as agreement with these assertions.

² It is well-settled that the parties may not attach to their briefs evidence that has not been made a part of the evidentiary record, including testimony or briefs from other proceedings. *See, e.g., Joint Application of Verizon Communications, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*, 2006 Pa. PUC LEXIS 22, 42 (2006), *aff’d sub nom. Popowsky v. Penn. Pub. Util. Comm’n*, 937 A.2d 1040 (2007) (adopting ALJ Rainey’s initial decision striking extra-record evidence from the main brief of a party); *Application of Pennsylvania-American Water*, 2001 Pa. PUC LEXIS 6, * 187 (Initial Decision January 19, 2001), *adopted in relevant part*, 2001 Pa. PUC LEXIS 5 (Opinion and Order entered February 13, 2001); *Pennsylvania Public Utility Commission, et al. v. National Fuel Gas Distribution Corporation*, Docket No. R-00922499, 1993 Pa. PUC LEXIS 95 (Opinion and Order entered July 30, 1993) (upholding ALJ Cocheres’ order striking those portions of a party’s brief and appendices containing testimony from other cases that had not been made part of the record in the proceeding).

Verizon filed its September 2008 Ex Parte to express its views as to what *the FCC* should do to remedy the arbitrage opportunities inherent in the current system of intercarrier compensation. Specifically, rather than have different intrastate and interstate rates, Verizon has urged the FCC to transition to a uniform, nationwide default rate of \$0.0007 for all traffic routed on the Public Switched Telephone Network ("PSTN"). The private billing dispute that is before the Commission here is a manifestation of the kind of problem that would be resolved through a uniform, default terminating rate set at the federal level. But it says nothing regarding what this Commission should do to resolve this particular billing dispute between Palmerton and Global NAPs in the absence of an FCC ruling, and Verizon has not taken a position on that issue in this case.

Because the larger issues of comprehensive intercarrier compensation reform and treatment of VoIP traffic are being – and must be – addressed by the FCC, this Commission's decision with regard to the private billing dispute between Palmerton and Global NAPs should be confined to the specific parties before it and the particular facts of this case. The Commission should be cautious not to take on more sweeping holdings than are necessary to resolve the dispute based on the specific facts before it, which – given the keen industry interest in VoIP issues – would generate controversy and complexity and risk inconsistency with pending FCC rulings.

Specifically, the question of what kind of regulatory treatment is appropriate for VoIP services – including the precise question of whether local telephone companies can, in the absence of an agreement, impose intrastate access charges on Internet-protocol enabled traffic – is now before the FCC in a number of proceedings. These include the

IP-Enabled Services docket³ (seeking comment on “the extent to which access charges should apply to VoIP . . . services” and “under what authority could the [FCC] require payment for these [access] services”); and the *Unified Intercarrier Compensation* docket⁴ (seeking comment on whether intrastate access charges should be preempted “if it is impossible or impractical to separate the interstate and intrastate components” for “calls that originate or terminate with . . . types of VoIP service”).

In the end the FCC is the appropriate regulatory forum to address these issues. Any other result would “risk eliminating or hampering” innovation by allowing “50 different jurisdictions” to impose conflicting regulatory requirements.⁵ Indeed, the General Assembly’s enactment of the “Voice-Over-Internet Protocol Freedom Act” establishes a Pennsylvania policy to minimize state regulation of IP-enabled services.⁶ Accordingly, the Commission should address the present dispute in a manner that, to the greatest degree possible, allows it to confine its decisions to the specific facts and parties before it.

³ Notice of Proposed Rulemaking, *IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 60-62 (2004) (“*IP-Enabled Services*”).

⁴ Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, ¶ 80 (2005) (“*Unified Intercarrier Compensation*”).

⁵ *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 199 FCC Rcd 22404, ¶ 35 and 37 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F. 3d 570 (8th Cir. 2007).

⁶ Palmerton mischaracterizes this statute when it states that “IP-origination is no defense under State law to the payment of access charges,” and asserts that “State law *requires* the application of access charges from all calls and specifically from those originating in IP,” and that “[n]o type of IP-origination is a defense under State law to the payment of access charges.” (Palmerton Main Brief at 8, 33). Actually, the statute simply says that the Act “shall not be construed to modify” the Commission’s “authority . . . to enforce applicable . . . statutes or regulations relating to . . . switched network access rates or other intercarrier compensation rates for interexchange services” 73 P.S. § 2251.6. This language does not require or prohibit the payment of access charges on IP-originated traffic. It simply means that if the Commission otherwise had authority to impose intrastate access charges on IP-originated traffic, then the Act does not take that authority away. The Act does not create any new authority or statutory obligations in this regard.

Therefore, for the reasons set forth above, the Commission should ignore Global NAPs' characterization of Verizon's "views" regarding issues beyond the scope of this case, since Verizon does not take any position or express any views regarding this limited, private dispute between Palmerton and Global NAPs.⁷

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

Dated: July 27, 2009

⁷ Following the development of a record and the filing of main briefs by the principal parties, it is clear that Verizon's role in this case was limited to simply providing evidence as a fact witness relating to the specific traffic in dispute – no different from the other telephone carriers that either provided live witnesses at the hearing or provided depositions that were admitted into the record, but were not made involuntary parties to the case. The record demonstrates that Verizon's involvement in the facts of this dispute is limited to: (1) its status as an intermediate tandem provider, whereby it merely passes on to Palmerton any traffic from Global NAPs together with any signaling information it receives from Global NAPs, (Tr. at 674-677; 698-699); and (2) that Verizon – like the other non-parties presenting testimony in the case such as Windstream, Frontier, D&E, Ironton, Paetec, Comcast, CommPartners and XO – was the originating local exchange carrier for some of the calls in Palmerton's traffic study, (Palmerton Exhibit 6 revised), which calls were handed off to unaffiliated interexchange carriers selected by the end users (thus ending any Verizon involvement). (Tr. at 679-682). In light of the record, Verizon therefore reserves its right to renew its challenge on exceptions to its designation as an "indispensible party" to this case.