

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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CC Docket No. 99-108
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of Global NAPs South, Inc. for)
Preemption of the Jurisdiction of the)
Virginia State Corporation Commission)
Regarding Interconnection Dispute with)
Bell Atlantic-Virginia)

RESPONSE OF BELL ATLANTIC¹

The Commission should deny the Global NAPs South, Inc.'s ("GNAPs") preemption petition. Like other petitions it recently filed, the only issue that GNAPs wants the Commission to rule on here is whether it can opt into the reciprocal compensation provision of an interconnection agreement that is about to expire, and then to extend that provision -- which expressly applies only to "local" calls -- to apply as well to Internet calls for an entirely new three-year term. But as GNAPs itself acknowledges, GNAPs presented the same issue to the Virginia State Corporation Commission -- which is the regulatory agency that this Commission held should decide the issue. And, as GNAPs also acknowledges (and even attaches to its petition), the Virginia Commission recently entered a final order denying GNAPs the right to opt into the expiring agreement. Therefore, the Virginia Commission has decided the issue, and GNAPs'

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

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remedy if it wants that order reviewed lies in federal district court. GNAPs' unfounded attack on the competency of the Virginia Commission provides no basis for requiring the parties to expend the resources to litigate the same issues before this Commission.

ARGUMENT

GNAPs is a so-called "carrier" that exists solely to skim off "reciprocal compensation" payments for calls to the Internet. As GNAPs has said publicly in a filing with the Pennsylvania Commission, 99% of its consolidated revenues have come from "reciprocal compensation" payments in connection with Internet calls, and those payments represented nearly 12 times its costs. And until recently, GNAPs has received more than twelve million dollars a year in such compensation from Bell Atlantic in Massachusetts alone.²

This sort of gaming of the regulatory process does nothing to further the pro-competitive policies of the Act or of this Commission. Instead, GNAPs has merely taken advantage of what the Massachusetts Department of telecommunications and Energy recently called an "arbitrage opportunity derived from regulations that were designed to promote real competition. A loophole, in a word."³ Now it wants to opt into another interconnection agreement that applies by its express terms only to local traffic, to improperly apply the reciprocal compensation provision in that agreement to Internet calls, and to extend that agreement (which expires in a month) for another three-year

² Bruce Mohl, "State ruling could boost on-line fees," BOSTON GLOBE (May 19, 1999).

³ *Complaint of MCI WorldCom Against New England Tel. and Tel. Co d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered Into Under Sections 251 and 251 of the Telecommunications Act of 1996*, D.T.E. 97-116-C at 32 (Mass. D.T.E., rel. May 19, 1999) (footnote omitted).

term. Doing so would merely perpetuate a private gravy train that provides no public benefit.

Much of GNAPs' filing is an attack on the merits of the Virginia Commission's decision denying GNAPs' petition – a decision that, under that agency's procedures, is now final. The Virginia Commission found that the interconnection agreement that GNAPs wanted to opt into expires on July 1, 1999, and that GNAPs' request was made beyond a reasonable time within which a carrier should be permitted to opt into another carrier's agreement.⁴ If GNAPs wants review of Virginia's order, its remedy lies in federal district court. 47 U.S.C. § 252(e)(6). Therefore, GNAPs' claim is not properly before this Commission.

GNAPs' petition suffers from a further fundamental procedural defect. GNAPs' attempt to invoke this Commission's jurisdiction is premised on an allegation that the Virginia Commission has failed to act on its arbitration petition. In view of that Commission's denial of GNAPs' petition, the prerequisite to this Commission's jurisdiction under section 252(e)(5) – state inaction – has not been met.

Moreover, even if this Commission could consider the merits of GNAPs' claim – which it cannot as a matter of law, GNAPs has no right to opt into the provision in question in order to extract "reciprocal" compensation for carrying Internet calls. The agreement at issue here provides for the payment of reciprocal compensation only on local calls, expressly defined as calls that both originate and terminate in the same local calling area, and provides that the nature of the calls must be determined based on the

⁴ *Petition of Global NAPs South, Inc. for Arbitration of Unresolved Issues from Interconnection Negotiations with Bell Atlantic-Virginia, Inc. Pursuant to § 252 of the Telecommunications Act of 1996*, Case No. PUC980173, Final Order (Va. SCC, Apr. 2, 1999).

origination and termination points of the complete end-to-end call. This Commission has expressly held that Internet calls do not terminate at the ISP's local server, but instead continue on to websites across the country and around the world, that Internet calls are not local calls, and that Internet calls are not subject to reciprocal compensation under section 251(b)(5) of the 1996 Act. *Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, FCC 99-38, ¶¶ 12-18 and n. 38 (rel. Feb. 26, 1999).

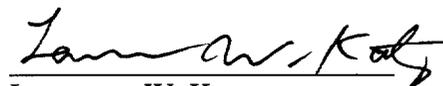
Because section 252(i) only permits other carriers to "opt-in" to provisions of interconnection agreements that are based on the requirements of section 251, and because neither the existing agreement nor section 251(b)(5) require the payment of reciprocal compensation on Internet calls, GNAPs as a matter of law cannot extend the existing agreement to apply to such calls. Nor, as a matter of law, can GNAPs extend an existing agreement that is about to expire for another three-year term, as the Virginia Commission found. Even in instances where 252(i) applies – and here it does not – a carrier opting into an existing agreement must accept all the related terms of that agreement, including the duration. And here the duration is through June of this year.⁵

⁵ The term of the agreement is not for a stated period, as GNAPs claims, but rather expires on a specific date.

For the reasons stated, the Commission should deny GNAPs' petition.

Respectfully Submitted,

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June 15, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 1999, copies of the foregoing "Response of Bell Atlantic" were sent by first class mail, postage prepaid, to the parties on the attached list.



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* Via hand delivery.

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