



ORIGINAL

EX PARTE OR LATE FILED

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
124 HALSEY STREET  
F:\PROVOST\CMMTFCCC.WPDPO BOX 45029  
NEWARK, NJ 07101  
E-Mail: provost@smtp.lps.state.nj

CHRISTINE TODD WHITMAN  
Governor

JOHN J. FARMER, JR.  
Attorney General

JEFFREY J. MILLER  
Assistant Attorney General  
Director

(973) 648-3709

RECEIVED  
JUL 14 1999

July 13, 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Honorable Magalie Roman Salas, Secretary  
Federal Communications Commission  
445-12th Street, S.W.  
Washington, DC 20554

Re: I/M/O Petition of Global NAPS, Inc. for Preemption of  
Jurisdiction of the New Jersey Board of  
Public Utilities Pursuant to Section 252(e) (5) of the  
Communications Act  
CC Docket No 99-154

Dear Secretary Salas:

Enclosed please find an original and five (5) copies of  
Supplemental Comments of the New Jersey Board of Public Utilities  
filed in the above-referenced matter pursuant to the Commission's  
rules for ex parte presentations.

Please file-stamp one copy and return it to me in the  
enclosed envelope.

Very truly yours,

JOHN J. FARMER, JR.  
ATTORNEY GENERAL OF NEW JERSEY

By: Eugene P. Provost  
Eugene P. Provost  
Deputy Attorney General

EPP:ac  
Encl:

- c: Herbert H. Tate, President  
Carmen J. Armenti, Commissioner  
Frederick F. Butler, Commissioner  
Mark W. Musser, Secretary  
Christopher W. Savage, Esq.  
Anthony Centrella

No. of Copies rec'd 044  
List ABCDE



New Jersey Is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable

John J. Farmer, Jr.  
Attorney General  
Attorney for the New Jersey Division  
of Youth and Family Services

EX PARTE OR LATE FILED

By: Eugene P. Provost  
Deputy Attorney General  
Division of Law - PO Box 45029  
124 Halsey Street  
Newark, New Jersey 07101  
(973) 648-3709

RECEIVED

JUL 14 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the matter of: )  
)  
Petition of Global NAPS, Inc. for )  
Preemption of Jurisdiction of the ) CC Docket No 99-154  
New Jersey Board of Public Utilities )  
Pursuant to Section 252(e)(5) of the ) AFFIDAVIT OF SERVICE  
Communications Act )

I, Audrey Costa, being of full age, deposes and says:

1. I am employed as a Legal Secretary in the Department of Law and Public Safety, Division of Law. In that capacity I am assigned to work with Deputy Attorney General Eugene P. Provost.

2. On July 13, 1999, I caused a copy of the foregoing supplemental comments of the New Jersey Board of Public Utilities in the above-referenced matter to be sent via United Parcel Service (UPS) Next Day Air mail, postage prepaid, to the following:

Ms. Magalie Roman Salas, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, D.C. 20554

Ms. Janice Miles  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room S-325  
Washington, D.C. 20554

Mr. Barry S. Abrams  
Vice President, General Counsel & Secretary  
Legal Department  
Bell Atlantic-New Jersey  
540 Broad Street, Room 2000  
Newark, N.J. 07101

Christopher W. Savage, Esq.  
Cole, Raywid & Braverman, L.L.P.  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

I also caused a copy of the supplemental comments to be sent via first class mail to:

International Transcription Service, Inc. (ITS)  
1231 20th Street, N.W.  
Washington, D.C. 20036

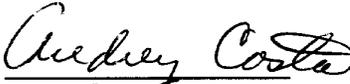
Blossom A. Peretz, Esq.  
Division of the Ratepayer Advocate  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, N.J. 07101

William J. Rooney, Jr., Esq.  
General Counsel, Global NAPs Inc.  
Ten Merrymount Road  
Quincy, MA 02169

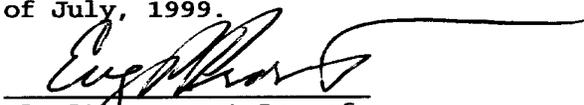
Mark C. Rosenblum, Esq.  
Roy E. Hoffinger, Esq.  
AT&T Corp.  
Room 3249J1  
295 North Maple Avenue  
Basking Ridge, N.J. 07920

Gary Phillips, Esq.  
Larry A. Peck, Esq.  
Counsel for Ameritech  
1401 H Street, N.W.  
Suite 1020  
Washington, D.C. 20005

R. Dale Dixon, Jr., Esq.  
Lisa B. Smith, Esq.  
Kecia Boney, Esq.  
MCI Worldcom, Inc.  
1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006

  
Audrey Costa

Sworn to and subscribed  
before me this 13th day  
of July, 1999.

  
An Attorney-at-Law of  
the State of New Jersey

ORIGINAL

RECEIVED

EX PARTE OR LATE FILED

JUL 14 1999

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

Federal Communications Commission  
Office of Secretary

In the matter of:	)	
	)	
Petition of Global NAPS, Inc. for	)	
Preemption of Jurisdiction of the	)	CC Docket No 99-154
New Jersey Board of Public Utilities	)	
Pursuant to Section 252(e)(5) of the	)	
Communications Act	)	

**SUPPLEMENTAL COMMENTS  
OF THE  
NEW JERSEY BOARD OF PUBLIC UTILITIES  
FILED AS AN EX PARTE PRESENTATION  
PURSUANT TO 47 C.F.R. §1.1206**

The New Jersey Board of Public Utilities ("Board") herewith files Supplemental Comments in the above-referenced matter as an ex parte presentation pursuant to 47 C.F.R. §1.1206.

The purpose of this filing is to apprise the Commission of actions taken by the Board subsequent to its submission on May 21, 1999 of Comments in this matter, and to provide copies of Board Orders reflecting those actions.

Attached as Exhibit A is a copy of the Board's Decision and Order in I/M/O the Petition of Global NAPs, Inc. For Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Bell Atlantic-New Jersey, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, BPU Docket No. TO98070426 (July 12, 1999). This Decision and Order reflects action taken by the Board at its July 7, 1999 public agenda meeting to resolve all unresolved issues in the arbitration proceeding between Global NAPs, Inc. ("GNI") and Bell Atlantic-New Jersey, Inc. ("BA-NJ"). It is regarding this arbitration that the petition for preemption was filed.

We note that in its Reply Comments submitted to the Commission on June 3, 1999, GNI advised the following:

Global NAPs, in fact, would strongly prefer prompt action by the Board that moots the pending petition to the further delays that

could easily follow a Commission decision to take responsibility for resolving this dispute, even is this Commission moves forward promptly. ... Global NAPs essentially agrees with the Board that it would be reasonable for the Commission to base its decision on what the Board actually does over the next several weeks.

[Reply Comments of Global NAPs, Inc. at 5].

The Board respectfully submits that its action resolving all unresolved issues, as evidenced by the Board's Decision and Order attached as Exhibit A hereto, renders GNI's petition for preemption moot, and the petition should therefore be denied.

Attached as Exhibit B is a copy of the Board's Order of Approval in I/M/O the Petition of Global NAPs, Inc. For a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services, BPU Docket No. TE98060386 (June 21, 1999). The Order of Approval reflects action taken at the Board's public agenda meeting of June 9, 1999 in which the Board authorized GNI to provide local exchange and exchange access telecommunications services in New Jersey. This action directly relates to the first issue in GNI's arbitration with BA-NJ in which the Arbitrator determined that GNI is eligible to enter into an interconnection agreement with BA-NJ.

WHEREFORE, in light of the actions taken by the Board as reflected in the attached Orders, and for the reasons set forth in its Comments dated May 21, 1999, the Board respectfully requests that the FCC deny the petition of Global NAPS, Inc. for preemption.

Respectfully submitted,

JOHN J. FARMER, JR.  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for the New Jersey  
Board of Public Utilities

Dated: July 13, 1999

By:

  
\_\_\_\_\_  
Eugene P. Provost  
Deputy Attorney General

**EXHIBIT A**



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

IN THE MATTER OF THE PETITION OF ) TELECOMMUNICATIONS  
GLOBAL NAPS INC. FOR ARBITRATION OF )  
INTERCONNECTION RATES, TERMS, ) DECISION AND ORDER  
CONDITIONS AND RELATED ARRANGEMENTS )  
WITH BELL ATLANTIC-NEW JERSEY, INC. )  
PURSUANT TO SECTION 252(b) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 ) DOCKET NO. TO98070426

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes final action taken by the New Jersey Board of Public Utilities (Board) in the arbitration requested by Global NAPs, Inc. (GNI) by letter dated June 30, 1998, and will resolve all outstanding and unresolved issues in GNI's interconnection dispute with Bell Atlantic-New Jersey, Inc. (BA-NJ).

PROCEDURAL HISTORY

On January 26, 1998, GNI requested interconnection and network elements from BA-NJ pursuant to section 251 of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 *et seq.* (hereinafter, the Act). During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day after receipt of an interconnection request, the carrier or any other party to the negotiation may petition the State commission to arbitrate any outstanding issues. The State commission is required to resolve each issue set forth in any such proceeding “not later than 9 months after the date on which the local exchange carrier received the [interconnection] request under this section.” 47 U.S.C. §252(b)(4)(C).

By letter dated June 30, 1998 and pursuant to section 252(b)(1) of the Act, GNI filed with the Board of Public Utilities (Board) a Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief. GNI essentially sought affirmation through the arbitration process that it was entitled to opt into an interconnection agreement previously

approved by the Board between BA-NJ and MFS Intelenet of New Jersey, Inc. (MFS)<sup>1</sup>, and to do so without any limitations or restrictions which it believed BA-NJ improperly sought to impose. By letter dated July 16, 1998, GNI advised the Board that it believed that the parties had reached an agreement for interconnection, had apparently resolved the issues raised in the petition, and requested that the Board suspend further action on the petition for arbitration pending successful execution of an interconnection agreement

The parties having failed to reach an interconnection agreement, and pursuant to the Board's arbitration procedures,<sup>2</sup> on September 15, 1998, Ashley C. Brown from the Kennedy School of Government at Harvard University was chosen as the Arbitrator. On September 28, 1998, both parties submitted a joint statement of the unresolved issues to the Arbitrator and each party separately submitted a statement of their response to these issues. By letter dated October 2, 1998, the parties jointly submitted a letter to the Board stating that they had agreed not to file any motions with the Federal Communications Commission (FCC) for preemption of state jurisdiction for twenty days after the expiration of the nine-month time limit imposed by the Act. Notwithstanding the efforts of Board Staff and the Arbitrator to facilitate a mutually acceptable agreement, on October 20, 1998, each party separately submitted updated statements to the Arbitrator of the unresolved issues to be decided. By Order dated October 21, 1998 in this Docket, William J. Rooney, Esq., General Counsel for GNI, and Christopher W. Savage, Esq., were granted leave to appear pro hac vice on behalf of GNI, and Robert A. Lewis, Esq., was granted leave to appear pro hac vice on behalf of BA-NJ.

On October 21, 1998, an arbitration hearing was held in Boston, Massachusetts. Post-hearing briefs were submitted on October 23, 1998. The Arbitrator issued a decision which he termed a "Recommended Interim Final Decision" on October 26, 1998 (hereinafter, the Arbitrator's Decision).

The Arbitrator recast the submitted issues into six issues and resolved them in the following manner:

- (1) Is GNI an entity eligible for an interconnection agreement?

---

<sup>1</sup> See Order Approving Interconnection Agreement, I/M/O the joint Petition of Bell Atlantic-New Jersey, Inc. and MFS Intelenet of New Jersey, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 and I/M/O the Bell Atlantic-New Jersey, Inc. Interconnection Agreement with MFS Intelenet of New Jersey, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, Docket Nos. TO96070527 and TO96070526 (March 10, 1997).

<sup>2</sup> See Order, I/M/O The Board's Consideration of Procedures for the Implementation of Section 252 of the Telecommunications Act of 1996, Docket No. TX96070540 (August 15, 1996) (hereinafter, Arbitration Order).

Decision: GNI is eligible for an interconnection agreement with BA-NJ. Arbitrator's Decision at 5.

(2) Is GNI entitled to most favored nation (MFN) status in regard to other interconnection agreements?

Decision: GNI is entitled to MFN status in regard to opting into other interconnection agreements between BA-NJ and other competitive local exchange carriers (CLECs), including the interconnection agreement between BA-NJ and MFS Intelenet of New Jersey, Inc. (MFS). *Ibid.*

(3) When opting into a preexisting interconnection agreement under MFN status, is a party bound to the agreement in its entirety, or is it free to opt in on a provision by provision basis?

Decision: If GNI opts into the MFS agreement, it may only do so on an all or nothing basis. It is not free to "pick and choose" among the provisions of that agreement and is bound to the terms and conditions as of the date they are permitted to "opt in" to the MFS agreement. *Id.* at 6.

(4) If GNI is entitled to opt in to the MFS agreement, what should the duration of the contract be?

Decision: The duration of the interconnection agreement between BA-NJ and GNI should be nineteen days less than three years from the date of execution. *Id.* at 8.

(5) Are calls to Internet Service Providers (ISPs) eligible for reciprocal compensation under the MFS interconnection agreement?

Decision: Calls to ISPs are eligible for reciprocal compensation under the MFS interconnection agreement. *Id.* at 9.

(6) Are the applicable reciprocal compensation rates those set forth in the MFS interconnection agreement, or the generic rates established by the Board in Docket No. TX95120631?

Decision: The reciprocal compensation rates applicable to GNI and BA-NJ if GNI opts into the MFS interconnection agreement, are, for the duration of the time that the terms therein are applicable between GNI and BA-NJ, those set forth in that agreement. *Id.* at 10.

Meanwhile, on the federal level, the FCC was already engaged in its consideration of the issue of whether reciprocal compensation was the appropriate form of compensation for ISP-bound traffic. On October 30, 1998, the FCC issued a Memorandum Opinion and Order in GTE Telephone, GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292 (October 30, 1998) (hereinafter, GTE Telephone). In GTE the FCC concluded an investigation of an access offering by the GTE Telephone Operating Companies, and found that GTE's offering, which would permit Internet Service Providers to provide their end-user customers with high-speed access to the Internet, was an interstate service properly tariffed at the federal level. GTE Telephone at ¶1. In GTE Telephone, the FCC expressly stated that its Order did "not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit switched dial-up traffic originated by interconnecting LECs." Id. at ¶2. The FCC stated instead that it intended "in the next week to issue a separate order specifically addressing reciprocal compensation issues." Ibid. Thereafter, the Board, along with much of the telecommunications community, waited with great anticipation for further word from the FCC on the issue of compensation for ISP-bound traffic.

With regard to the Arbitrator's Decision, and as required in the Board's Arbitration Order, the parties were required to submit for Board consideration a fully executed interconnection agreement encompassing the arbitration decision within five (5) days of the Arbitrator's decision. On November 2, 1998, GNI filed a motion requesting that the Board issue an order to the effect that:

(a) [GNI] is for all purposes deemed to have entered into an interconnection agreement with BA that reflects the [Arbitrator's Decision], with an effective date of today, November 2, 1998; and (b) to the extent that BA's actions in any way delay the date on which [GNI] can begin exercising its rights under the agreement, the termination date of the agreement is deemed extended, day for day, during the period that BA continues to engage in such delaying efforts.

[November 2, 1998 Motion of GNI at 2, 10].

GNI attached a form of interconnection agreement, executed by GNI, which purports to incorporate the Arbitrator's Decision.

At its public meeting of November 4, 1998, the Board authorized its Secretary to send a letter to the parties advising them of their duties to submit a mutually executed agreement for Board consideration. The Secretary's letter was sent the same day. By letter dated November 5, 1998, GNI responded to the Board referencing its November 2, 1998 Motion and asking that the Board, in addition to the other relief requested, direct that BA-NJ pay to GNI

reasonable incurred attorney's fees in connection with GNI's efforts to reach an agreement with BA-NJ during the period November 2-5, 1998. On November 5, 1998, BA-NJ submitted two versions of interconnection agreements. The first modified the GNI agreement previously submitted to the Board by GNI on November 2, 1998. The second contains modifications to the original MFS agreement based on BA-NJ's interpretation of the Federal Communications Commission (FCC) Memorandum Opinion and Order in GTE Telephone, GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292 (October 30, 1998) (hereinafter, GTE Telephone). At the same time, BA-NJ submitted its Opposition to GNI's Motion. By letter dated November 6, 1998, GNI filed an answer BA-NJ's Opposition to its Motion. By letters dated November 10, 1998 and November 12, 1998 BA-NJ and GNI, respectively, submitted additional responsive papers. BA-NJ submitted additional comments by letter dated November 19, 1998, to which GNI responded by letter dated November 20, 1998.

By letter dated November 18, 1998, the Division of the Ratepayer Advocate (Advocate) submitted comments on the Arbitrator's Decision and noted the fact that the Board had before it three forms of interconnection agreements submitted by the parties. In its letter, the Advocate disagreed with the Eighth Circuit Court of Appeals rejection of the FCC's "pick and choose" rule<sup>3</sup> and the Board's adoption of the Eighth Circuit's interpretation. Nevertheless, the Advocate supported an interconnection agreement as recommended by the Arbitrator, and urged the Board to approve the interconnection agreement which in effect would reflect the MFS agreement. By letter dated November 25, 1998, BA-NJ responded to the Advocate's comments and stated that the Board should not approve an interconnection agreement based on the Arbitrator's Decision, but should find that the MFS agreement which GNI seeks to adopt must contain rates which conform to the Board's December 2, 1997 Generic Order in Docket No. TX95120631 and should extend for a term which expires on July 1, 1999, the termination date of the MFS Interconnection Agreement. In addition, BA-NJ stated that the Board should clarify that, pursuant to the FCC's determination in GTE Telephone, Internet traffic is jurisdictionally interstate. By letter dated December 1, 1998, GNI disagreed with BA-NJ and stated that the FCC's analysis in GTE Telephone did not affect the proper treatment of reciprocal compensation for ISP-bound traffic. As of the date of this Order, the Parties have failed to mutually execute a comprehensive interconnection agreement based on their continuing differences in interpreting the Arbitrator's Decision and FCC Orders.

Finally, on February 26, 1999, the FCC released its Declaratory Order in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, I/M/Q Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 99-38 (February 26, 1998) (hereinafter, Declaratory Ruling). In the Declaratory Ruling, the FCC advised that it considered ISP-bound traffic to be interstate traffic not subject to the reciprocal

---

<sup>3</sup> See Iowa Utilities Board v. FCC, 120 F.3d 753, 800 (8th Cir. 1997); aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., \_\_\_ U.S. \_\_\_, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

compensation obligations imposed by section 251(i)(5) of the Act, Declaratory Ruling at ¶¶1, 18, 27 and fn 87, and advised further that, in the absence of a federal rule governing inter-carrier compensation for such traffic, states are free either to impose or not impose reciprocal compensation for ISP-bound traffic, depending upon the circumstances before the state commission, including the existence of interconnection agreements, Declaratory Ruling at ¶¶1, 21, 25-27.

## DISCUSSION

With regard to the first issue recited above, we FIND that the Arbitrator correctly determined that GNI is eligible to enter into an interconnection agreement. We note that at its public agenda meeting of June 9, 1999, the Board found that GNI had demonstrated that it possessed the requisite financial, technical and managerial expertise and resources which are necessary to provide local exchange and exchange access telecommunications services in New Jersey, and accordingly, the Board authorized GNI to provide local exchange and exchange access telecommunications service in New Jersey subject to the approval of its interconnection agreement and tariffs. See Order of Approval, I/M/O the Petition of Global NAPs, Inc. For a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services, Docket No. TE98060386 (June 21, 1999). Accordingly, we agree with the Arbitrator that GNI is an entity eligible for an interconnection agreement.

We also FIND that the Arbitrator is correct that as an approved local exchange carrier, GNI is entitled to opt into a pre-existing interconnection agreement through the so-called "most favored nation," or "MFN," process pursuant to section 252(i) of the Act. With regard to the third issue, subsequent to the Arbitrator's Decision, the Supreme Court reinstated 47 C.F.R. §51.809, allowing carriers to "pick and choose" parts of interconnection agreements, as well as opt into an entire agreement through the MFN process. See AT&T Corp. v. Iowa Utils. Bd., \_\_\_ U.S. \_\_\_, 119 S.Ct. 721, 738, 142 L.Ed.2d 835 (1999). Thus, we MODIFY the Arbitrator's Decision to comport with the Supreme Court decision with regard to the FCC's reinstated "pick and choose" rule.

We next turn to the fourth issue which confronted the arbitrator, the duration of the interconnection agreement created as a result of GNI opting into the terms and conditions of the MFS agreement. At the outset, we note that the FCC is currently seeking comment on just the situation that faced the Arbitrator in the matter now before the Board. In its February 26, 1999 Declaratory Ruling in CC Docket No. 96-98, the FCC noted that an arbitrator recently allowed a CLEC to opt into an interconnection agreement with a three year term for a new three year term, raising the possibility that an ILEC "might be subject to the obligations set forth in [the original] agreement for an indeterminate length of time, without any opportunity for renegotiation, as successive CLEC's opt into the agreement." Declaratory Ruling at ¶35. The FCC, therefore, is seeking comment on "whether and how section 252 (i) and MFN rights affect parties' ability to negotiate or renegotiate terms of their interconnection agreements." Ibid.

Because the Board is also concerned about the procedural and substantive rights of both ILECs and CLECs involved with the MFN and "pick and choose" processes, the Board **HEREBY DIRECTS** its Staff to prepare a rulemaking pre-proposal which will elicit ideas, views and comments from the industry regarding these issues. Of more immediate import, we note our preliminary belief that interconnection agreements should not exist into perpetuity without a right to have such agreements reviewed and renegotiated. Thus, on an interim basis, and subject to possible reexamination based upon the pending FCC and Staff actions noted above, we indicate herein our view that any existing agreement MFN'd by a CLEC should extend for a period of time equal to the remaining term of the original MFN'd agreement or one (1) year, whichever is greater. We further note our preliminary view that an original interconnection agreement may only be MFN'd during the original term of the agreement, and that once MFN'd for the additional term just noted, neither the original interconnection agreement nor the subsequent interconnection agreement may be subject to further adoption by any CLEC through the MFN process. This preliminary general view notwithstanding, however, we note that parties may, through negotiation, agree to adopt rates, terms and conditions which are identical to those contained in any other interconnection agreement and for a term of any length which they mutually desire. We stress that these are preliminary views which we fully expect to be commented upon by the industry in the context of both the FCC's and our own rulemaking processes.

We note also that the FCC has already expressed its view regarding how a carrier seeking interconnection, network elements or services pursuant to section 252(i) should proceed. The FCC has advised that such a carrier "need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis." First Report and Order, I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (August 8, 1996) at ¶1321. The FCC has also stated that it "leave[s] to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis." Ibid. In this regard, we remind carriers that the Board has already adopted a dispute resolution process which is made available expressly to resolve on an expedited basis petitions by carriers related to service-affecting issues and assertions of anti-competitive conduct, and is an appropriate means to resolve section 252(i) disputes. See Order on Reconsideration, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (June 19, 1998).

With specific regard to the interconnection agreement between GNI and BA-NJ, however, we do not believe that the general view we have just announced regarding the duration of interconnection agreements adopted through the MFN process is necessarily appropriate. The GNI/BA-NJ Arbitrator rendered his decision on October 26, 1998. According to our arbitration guidelines, the parties should have submitted an interconnection agreement to the Board for its review within five (5) days thereafter. On November 2, 1998, GNI filed a motion requesting that the Board issue an order providing that the interconnection agreement between GNI and BA-NJ attached to its motion and based upon the MFS interconnection agreement shall be deemed

effective on November 2, 1998, and extended day to day thereafter for every day that BA-NJ delays in signing the attached agreement. Not including any such extensions, GNI's proposed interconnection agreement incorporated a termination date of October 14, 2001, 19 days less than three years, as approved by the Arbitrator's Decision.

We have already indicated above our preliminary view that an interconnection agreement which is adopted through the MFN process should extend for a term no less than 12 months. However, as noted above in the within matter, the parties, including the Advocate, continued to file comments on the Arbitrator's Decision through the month of November, 1998, the last submission being by GNI on December 1, 1998, and the Board delayed the decision on this arbitration further while it awaited the FCC's expected determination of the issue of the nature of ISP-bound traffic. In order not to penalize GNI for delay not caused by it, we HEREBY ADOPT a term which reflects the minimum one year term of an MFN'd agreement, and in addition reflects the delay which occurred from December 1, 1998 until July 7, 1999, a period of 219 days. Accordingly, we FIND that a term of one year and 219 days, or slightly more than 19 months, is appropriate in this case. Assuming that a signed interconnection agreement which conforms to our Decision is submitted within five (5) days of the date of this Order and is approved at the Board's July 26, 1999 public meeting, this interconnection agreement will therefore terminate one year and 219 days from July 26, 1999, or March 2, 2001. Because the Decision we make herein rests upon the unique nature of the circumstances surrounding the parties and this interconnection agreement, the Board believes that it is not in the public interest to permit this agreement to be adopted through the MFN process.

With regard to the fifth issue, whether calls to ISPs are eligible for reciprocal compensation under the MFS interconnection agreement, we must begin our analysis by noting again the FCC's most recent declarations regarding ISP-bound traffic. In its October 30, 1998 GTE Telephone Memorandum Opinion and Order, the FCC presaged its later declaration that ISP-bound traffic is interstate in character by concluding that a high speed Internet access offering by the GTE Telephone Operating Companies, was an interstate service properly tariffed at the federal level. GTE Telephone at ¶1. While the FCC expressly stated that its Order did "not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit switched dial-up traffic originated by interconnecting LECs," it did state that it intended "in the next week to issue a separate order specifically addressing reciprocal compensation issues." Id. at 2.

On February 26, 1999, the FCC finally released its Declaratory Ruling, concluding that ISP-bound traffic is largely interstate, but "[i]n the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, we therefore conclude that parties should be bound by their existing interconnection agreements, as interpreted by state commissions." Declaratory Ruling at ¶1. The FCC stated that the reciprocal compensation obligations imposed by section 251(b)(5) of the Act apply only to the transport and termination of local telecommunications traffic. Id. at ¶7. Continuing its tradition of determining the

jurisdictional nature of communications by reference to the end points of the communication, the FCC stated that a substantial portion of ISP-bound traffic is interstate because “the communications at issue do not terminate at the ISP’s local server, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.” *Id.* at ¶¶10-18. The FCC advised that “pending adoption of a rule establishing an appropriate interstate compensation mechanism,” it found “no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic.” *Id.* at ¶21. The FCC further advised the following:

[i]n the absence of a federal rule, state commissions that have had to fulfill their statutory obligation under section 252 to resolve interconnection disputes between incumbent LECs and CLECs have had no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation. Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed in section 252(b)(5), so long as there is no conflict with governing federal law. A state commission’s decision to impose reciprocal compensation obligations in an arbitration proceeding -- or a subsequent state commission decision that those obligations encompass ISP-bound traffic -- does not conflict with any Commission rule regarding ISP-bound traffic. By the same token, in the absence of governing federal law, state commissions are also free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism.

[*Id.* at ¶26 (footnotes omitted)].

The FCC asserted that the adoption of rules governing inter-carrier compensation for ISP-bound traffic would serve the public interest, and proposed rules which, in the first instance, would rely on commercial negotiations as the ideal means to establish the terms of interconnection arrangements, *id.* at ¶28, but might also rely on arbitration on the state or even federal level, *id.* at ¶¶30-32.

The FCC recognized that its conclusion that ISP-bound traffic is largely interstate might cause some state commissions to reexamine conclusions that reciprocal compensation is due from ILECs to CLECs which carry this traffic to the extent that those conclusions are based

on a finding that ISP-bound traffic terminates at an ISP server. *Id.* at ¶27. In fact, that has already occurred. In Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered into under Sections 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116-C (May 19, 1999) (hereinafter, Complaint of MCI WorldCom), the Massachusetts Department of Technology and Energy (Mass. DTE) reversed an earlier decision in which it determined that ISP-bound traffic was local based upon its understanding that such traffic was severable into two components, one call terminating at the ISP, and another call connecting the ISP to the target Internet website. Complaint of MCI WorldCom, Summary. The Mass. DTE stated that, in light of the Declaratory Ruling, the basis for its earlier decision had crumbled and that decision was now a "nullity," and "[u]nless and until modified by the FCC itself or overturned by a court of competent jurisdiction, the FCC's view of the 1996 Act must govern this Department's exercise of its authority over reciprocal compensation." Complaint of MCI WorldCom at 19-31. The Mass. DTE ruled that "[r]eciprocal compensation need not be paid for terminating ISP-bound traffic (on the grounds that it is local traffic), beginning with (and including payments that were not disbursed as of) February 26, 1999." *Ibid.*

In determining whether reciprocal compensation obligations apply to ISP-bound traffic which GNI will carry, the Board does not have the benefit of earlier arbitrations which have addressed this issue, nor was the issue addressed in the Board's Generic Proceeding. *See* Decision and Order, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (December 2, 1997). Although the MFS interconnection agreement was the result of both negotiations and arbitration, the reciprocal compensation issue was decided wholly through negotiations between MFS and BA-NJ. Section 5.7 of the MFS/BA-NJ agreement provided for reciprocal compensation for the transport and termination of local traffic, defined in section 1.44 of the agreement as "traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ('EAS') area, as defined in BA's effective Customer tariffs." The negotiations which led to the adoption of these provisions occurred well before the FCC's declaration that ISP-bound traffic was interstate, a significant change in the law not known to either party to the negotiations and not reflected in the interconnection agreement which GNI desires to MFN.<sup>4</sup> The Board notes well the FCC's statements that in the absence of a federal rule regarding inter-carrier compensation for ISP-bound traffic, "parties should be bound by their existing interconnection agreements, as interpreted by state commissions." Declaratory Ruling at ¶1. In this case, however, the Board does not have an existing interconnection agreement between GNI and BA-

---

<sup>4</sup> We note, however, that pursuant to section 28 of the MFS agreement, FCC action or other legal developments which require modification of material terms contained in the agreement allows either Party to require a renegotiation of the terms that are reasonably affected by the change in the law. Thus, even were we not to exclude ISP-bound traffic from reciprocal compensation provisions of the agreement at this time, we conclude that section 28 of the MFN'd agreement could soon lead to the same result which the Board herein reaches.

NJ to interpret. Because of GNI's right to MFN an existing interconnection agreement, we FIND that it is appropriate to apply to GNI and BA-NJ the rates and terms in the existing MFS agreement which GNI desires to MFN with respect to reciprocal compensation obligations for traffic which is truly local. ISP-bound traffic, as determined by the FCC, is interstate in character, and, therefore, in the Board's view, is not entitled to reciprocal compensation. All other local traffic carried by GNI shall be subject to reciprocal compensation at the negotiated rates in the MFS interconnection agreement, that is \$0.009 for local traffic delivered to a tandem switch and \$0.007 for local calls delivered to an end office.

We expect that GNI will be compensated by its end user customers and/or by ISPs themselves for the ISP-bound traffic which it carries. Nevertheless, the Board is mindful of the FCC's ongoing rulemaking with regard to the appropriate form of inter-carrier compensation mechanism for ISP-bound traffic. We assure carriers that the Board shall review the FCC's ultimate ruling regarding such compensation and take appropriate action, as needed. Of course, the parties themselves are not foreclosed from further negotiations to develop more appropriate forms of compensation.

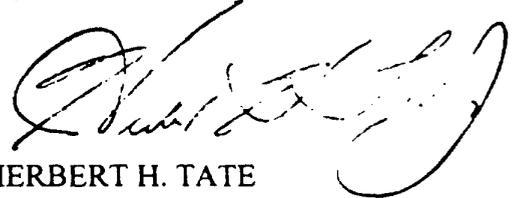
Accordingly, to clarify the last issue decided by the Arbitrator, the Board herein FINDS that the MFS interconnection agreement rates for reciprocal compensation, and not the Board's generic rates, shall apply to the interconnection agreement between the parties. The Arbitrator found that negotiated rates took precedence over rates determined by either regulation or by arbitration. Accordingly, he determined that the rates for reciprocal compensation negotiated by and between MFS and BA-NJ are applicable to the local traffic exchanged between GNI and BA-NJ. The Board agrees with the Arbitrator in this regard, but clarifies that the MFS interconnection agreement rates do not apply to the ISP-bound traffic carried by GNI since that traffic is interstate traffic pursuant to the FCC's Declaratory Ruling.

In conclusion, the Board FINDS that the resolution of all open arbitration issues set forth above and the conditions imposed herein upon the parties is consistent with the public interest and in accordance with law. The Board HEREBY APPROVES an interconnection agreement between the parties which is the same as the MFS agreement referenced above, as modified herein, as meeting the requirements of the Act for agreements which are in part

negotiated and in part arbitrated. The Board DIRECTS the Parties to submit to the Board for its approval a fully executed interconnection agreement reflecting the decisions set forth herein within five (5) business days of the date of this Order.

DATED: *07/29/99*

BOARD OF PUBLIC UTILITIES  
BY:



HERBERT H. TATE  
PRESIDENT



CARMEN J. ARMENTI  
COMMISSIONER



FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:



MARK W. MUSSER  
SECRETARY

**In the Matter of the Petition of Global NAPs, Inc.  
For Arbitration of Interconnection Rates, Terms, Conditions  
and Related Arrangements with Bell Atlantic-New Jersey, Inc.  
Pursuant to Section 252(b) of the Telecommunications Act of 1996  
BPU Docket No. TO98070426**

SERVICE LIST

Anthony Centrella  
James Murphy  
Division of Telecommunications  
New Jersey Board of Public  
Utilities  
Two Gateway Center  
Newark, New Jersey 07110

Eugene P. Provost  
Deputy Attorney General  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

Blossom A. Peretz, Esq.  
Division of Ratepayer Advocate  
31 Clinton Street - 11th Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Frank T. Gangi, President  
Global NAPs, Inc.  
89 Access Road  
Norwood, MA 02062

William J. Maione, Esq., P.C.  
P.O. Box 248  
Mendham, New Jersey 07945

William Rooney, General Counsel  
Global NAPs, Inc.  
10 Merrymount Road  
Quincy, MA 02169

Barry S. Abrams  
Vice President, General Counsel  
& Secretary  
Bell Atlantic - New Jersey, Inc.  
540 Broad Street  
Room 2000  
Newark, New Jersey 07101

**EXHIBIT B**

---



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

IN THE MATTER OF THE PETITION OF )                    TELECOMMUNICATIONS  
GLOBAL NAPS, INC. FOR A CERTIFI- )  
CATE OF PUBLIC CONVENIENCE AND )                    ORDER OF APPROVAL  
NECESSITY TO PROVIDE LOCAL EX- )  
CHANGE TELECOMMUNICATIONS )  
SERVICES )                    DOCKET NO. TE98060386

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 22, 1998, Global NAPS, Inc. (GNI or Petitioner), filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and exchange access telecommunications services in the State of New Jersey.

Global NAPS, Inc. is a Delaware corporation formed on September 6, 1998, as a wholly-owned subsidiary of Ferrous Miner Holdings, LTD. Attachment A to the petition includes GNI's Certificate of Incorporation. Attachment B contains GNI's Certificate of Good Standing from the Secretary of State of New Jersey. GNI's principal offices are located at 10 Merrymount Road, Quincy, Massachusetts 02169. GNI has received authority to provide local exchange telecommunications services in Florida, Massachusetts, Maine, New Hampshire, New York, and Rhode Island. Petitioner has pending requests for operating authority in Connecticut, Washington D.C., Maryland, Delaware, and Virginia.

By letter dated October 20, 1998, Petitioner requested exemption from N.J.A.C. 14:1-5.15, which requires public utilities to maintain their books and records within New Jersey. GNI advised that it will produce any required books requested by the Board at such time and place as the Board might designate, and will pay the Board any reasonable expenses or charges incurred by the Board for any investigation which necessitates examination of its books. GNI also requested relief from its obligations under N.J.A.C. 14:10-1.16 to maintain its records under the Uniform System of Accounts (USOA). GNI currently maintains its books and records utilizing Generally Accepted Accounting Principles and wishes to be relieved of the financial burden associated with maintaining multiple sets of books and records according to diverse accounting principles.

In its petition, GNI seeks authority to provide local exchange and exchange access telecommunications services to small and medium size business customers in New Jersey. GNI stated that it will offer service interconnecting its own facilities with those of Bell Atlantic-New Jersey, Inc. (BA-NJ) and United Telephone of New Jersey. Petition at 5. GNI asserted that it will lease cross-LATA trunks from another facilities-based carrier to deliver traffic to the meet point for calls routed to BA-NJ. Ibid. In addition, according to the petition, GNI customers in New Jersey will be receiving dial tone from the GNI switch over these same facilities. GNI advised that as demand warrants, may build or buy additional facilities in New Jersey for handling New Jersey-based customers. Ibid. At the present time, pending before the Board is the docket related to GNI's request for arbitration to resolve interconnection agreement issues with BA-NJ. See I/M/O Petition of Global NAPS, Inc., for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Bell Atlantic-New Jersey, Inc., Docket No. TO98070426.

With regard to managerial qualifications, GNI has submitted the professional biographies of the members of its senior management team which, according to GNI, demonstrate extensive experience in the telecommunications industry. Petition at 4, Attachment D. GNI also asserts that the backgrounds of these key executives is evidence that they possess the managerial qualifications required to provide local service. Ibid.

GNI asserted that it has the necessary technical qualifications to provide local exchange and exchange access telecommunications services. Id. at 3. In its petition, GNI also pointed to the extensive experience of its officers, directors and employees, as well as their technical abilities. Ibid. In support of its financial qualifications, GNI asserted that it has the financial resources and access to funds required to operate as a provider of both local exchange and exchange access services in the State of New Jersey. Ibid. In support of its financial qualifications, GNI submitted unaudited compiled financial statements which are current as of March 31, 1998. Id. at Attachment C.

By letter dated August 4, 1998, the New Jersey Division of the Ratepayer Advocate (Advocate) advised the Board that "to the extent that the Board finds that GNI possesses the requisite financial, technical and managerial integrity requirements for entry..., the Ratepayer Advocate does not object to this Company's petition to provide local exchange and interexchange telephone service." Advocate Letter at 2. The Advocate noted that, since the petition does not provide information regarding an attorney of record who is licensed to practice in New Jersey, the Petitioner must either retain local co-counsel or submit a *pro hac vice* motion to the Board. Ibid. In addition, the Advocate recommended that GNI is required to seek Board approval of its local exchange tariffs prior to the provision of local exchange service in New Jersey. Ibid.

#### BA-NJ's Petition to Intervene and Motion to Suspend and Investigate

By letter dated October 30, 1998, BA-NJ filed a Petition to Intervene and a Motion to Suspend and Investigate. In its Petition to Intervene, BA-NJ referenced its obligation as an incumbent local exchange carrier (ILEC) pursuant to 47 U.S.C. §251(c)(2) to provide for the interconnection of the facilities and equipment of any requesting telecommunications carrier

with the ILEC's network for the transmission and routing of telephone exchange service and exchange access. BA-NJ asserted that GNI, if granted local exchange authority by the Board, will request to interconnect with BA-NJ and will seek payment of reciprocal compensation. BA-NJ thus argued that any action taken by the Board in this matter will have a direct financial and operational impact on BA-NJ, and it therefore is entitled to intervene in this proceeding. BA-NJ also stated that information that has recently come to light directly affects GNI's qualifications and is required by the Board in order to have a complete record in this matter. BA-NJ Petition at 1-2.

In its Motion to Suspend and Investigate BA-NJ stated that based upon GNI's performance in Massachusetts, there is strong reason to believe that GNI has no present intention to provide local exchange or exchange access services in New Jersey, but "instead intends only to set up as a front for Internet service providers to collect reciprocal compensation payments from BA-NJ for exclusively one-way Internet traffic." BA-NJ Motion at 1. BA-NJ argued that based on GNI's application, proposed tariff and supporting materials, the Board cannot conclude that GNI intends to provide basic local exchange and exchange access services as proposed in its application. *Id.* at 2-3. BA-NJ stated, on information and belief, that GNI does not intend to provide local exchange services or exchange access services to any New Jersey business or residential customer. *Id.* at 3. Rather, according to BA-NJ, GNI's sole business will be the provision of Internet access services to database providers, some of which may be located in New Jersey, but most of which will be located outside of New Jersey. *Ibid.*

BA-NJ submitted an affidavit of Jeffrey A. Masoner, Bell Atlantic Corporation Vice President, Interconnection Services, which described that in Massachusetts, where Bell Atlantic-Massachusetts (BA-MA) facilities are interconnected with GNI facilities, in slightly more than 11 months, BA-MA delivered over 1.2 billion minutes of traffic to GNI, but, in contrast, only a de minimis amount of traffic was sent from GNI to BA-MA. *Id.* at 3-4 and Attachment 1, ¶4. Mr. Masoner also asserted that BA-NJ is not aware that in Massachusetts GNI has established 911 or operator service connections through BA-MA or provides dial tone line service to any customers. *Id.* at Attachment 1, ¶¶5-6. Mr. Masoner concluded that GNI's current business consists entirely of handing off Internet traffic to Internet service providers (ISPs), and that GNI intends to continue to pursue this strategy in New Jersey. *Id.* at Attachment 1, ¶¶8-9.

BA-NJ also submitted copies of state utility commission decisions in Massachusetts and Maine which indicate that the Massachusetts Department of Technology and Energy (DTE) has initiated a proceeding to investigate whether ISPs are identifying themselves as competitive local exchange carriers (CLEC) solely to receive reciprocal compensation, and that the Maine Public Utility Commission (PUC) is investigating the improper use of central office codes by a CLEC which may not be providing local exchange service. BA-NJ Motion at 4-6, Attachments 2 and 3.

In conclusion, BA-NJ requested that the Board issue an Order suspending further action on GNI's petition for authority, institute an investigation to determine whether or not GNI will, in fact, provide local exchange and exchange access services in New Jersey, and whether the intended operation of GNI will improperly accelerate the exhaustion of central office codes in New Jersey. BA-NJ Motion at 7.

## GNI's Opposition to BA-NJ

On November 9, 1998, GNI filed an Opposition to BA-NJ's Petition and Motion. GNI requested that the Board recognize that BA-NJ's filings are "efforts to deny [GNI] the right to compete for the patronage of customers, including ISPs, that Bell Atlantic Corporation (Bell Atlantic) has not served well." GNI Opposition at 3. GNI asserted that BA-NJ has alleged three grounds for delaying the grant of GNIs' Certificate as a competing local exchange carrier. According to GNI, the first claim is that GNI won't really be a local exchange carrier because it will not originate traffic, but will rather provide service to ISPs, who historically tend to receive traffic; the second is that GNI does not provide 911 and operator services in Massachusetts; and the third is that GNI has misused NXX codes in Massachusetts. *Id.* at 2.

GNI answered that these claims are baseless because the FCC has ruled, and the courts have affirmed that ISP dial-in connections are local exchange service as a matter of law. It asserted that it does not yet provide 911 and operator services because its customers have not demanded those services during GNI's start-up phase, but is prepared to do so and has, for example, established 911 trunks to Bell Atlantic in Massachusetts for that purpose. GNI asserted that it has obtained as many NXX codes in Massachusetts as it has only because Bell Atlantic has refused its request to use a single NXX code applicable to all of GNI's customers within a given area code. *Ibid.* GNI argued that under New Jersey law, the Board must examine whether GNI will offer safe, adequate, and proper service to its customers. GNI further argued that the mere fact that its initial market-entry strategy focuses on an identifiable group of frequently dissatisfied BA-NJ customers is not suggestive of any actual or potential failure by GNI to offer safe, adequate, and proper service. *Id.* at 3.

Relying largely on Southwestern Bell v. FCC, 153 F.3d. 523, 541-543 (8th Cir. 1998), GNI argued that ISPs' dial-in connections are classified as intrastate business local exchange service, whether the ISP buys its service from BA-NJ, from GNI, or from anyone else. *Id.* at 5-7. GNI argued that most ISPs in Bell Atlantic's territory (including New Jersey) still obtain their dial-in service from Bell Atlantic itself and that when Bell Atlantic provides that service, the ISPs are purchasing intrastate business local exchange service. GNI further asserted that when ISPs choose to disconnect from Bell Atlantic and obtain their dial-in service from GNI (or any other CLEC), the nature of the service remains the same -- intrastate business local exchange service. *Id.* at 7. GNI argued that BA-NJ does not address the fact that the services it provides to ISPs are local exchange services, but instead focuses on two irrelevancies: the fact that ISPs predominantly receive rather than originate traffic, and the fact that this results in reciprocal compensation payments being due from BA-NJ to GNI. *Id.* at 8. GNI asserted that whenever either BA-NJ or GNI provides ISPs with dial-in services, each is providing local exchange services. *Ibid.* Referencing an attached affidavit of its president, Frank T. Gangi, GNI asserted that in Massachusetts GNI switches generate a dial tone. *Id.* at 8 and Attachment 1.

GNI also contended that in the current legal and regulatory environment, if ILECs were not required to compensate CLECs for activities such as GNI's, then no CLEC could ever afford to provide service to ISPs. Thus, according to GNI, without reciprocal compensation, ISPs, as a customer group, would be foreclosed from any possibility of receiving service from anyone other than the ILEC and would be captive customers to the monopolist ILECs. *Id.* at 9.

GNI also noted that BA-NJ claims that calls to ISPs are not telephone exchange service are irrelevant to this proceeding. *Id.* at 10. According to GNI, there are only two options for classifying dial-in connections to ISPs: telephone exchange service or exchange access, and under the Communications Act, a "local exchange carrier" is defined as any person who provides either "telephone exchange service or exchange access." *Ibid.*, citing 47 U.S.C. §153(26). GNI argued that if BA-NJ is right that ISPs' dial-in connections do not constitute telephone exchange service, then it follows that those connections must be exchange access, that GNI is providing exchange access as opposed to telephone exchange service, and GNI is still a local exchange carrier under federal law and a local exchange telecommunications company under New Jersey law, fully entitled to interconnect with BA-NJ, and fully entitled to a certificate of public convenience and necessity from this Board. *Id.* at 10-11.

With regard to its Massachusetts operations, GNI stated that with its present customer base in Massachusetts consisting largely of ISP dial-in services, and only a year into commercial operations, it should not be surprising that GNI customers have not yet demanded that GNI provide operator or 911 services. *Id.* at 12. GNI explained that its customers simply do not use the local exchange services that GNI provides in a manner that would invoke such capabilities. *Id.* at 12, Attachment 1 at ¶4. GNI asserted that it stands ready to provide these services, both in Massachusetts and in New Jersey, and will do so when its customers so require. *Id.* at 12. According to GNI, it expects that over time it will provide a wider array of services to its customers, and also plans over time to offer services to a broader group of customers than just ISPs. *Ibid.* As an example, GNI stated that in Massachusetts, in addition to ISPs, GNI already provides service to customers who offer so-called "voice-over-Internet Protocol" services, voice mail, outbound fax services, and other services. *Ibid.* GNI asserted that it plans to expand into the intraLATA toll business as well. *Id.* at 12, Attachment 1 at ¶3. GNI asserted that it would be anticompetitive to accept BA-NJ's implicit claim that only firms that can immediately find market acceptance across a wide range of customers and services are "really" qualified to be LECs. *Id.* at 13.

Regarding its use of NXX Codes in Massachusetts, GNI asserted that Bell Atlantic insisted that GNI obtain a separate NXX code for each Bell Atlantic rate center, causing GNI to obtain numerous NXX codes, a situation that only exists because Bell Atlantic itself insisted on it. *Id.* at 13, Attachment 1 at ¶5. GNI attacked as irrelevant the rulings of the Massachusetts DTE and the Maine PUC that BA-NJ submitted with its motion. *Id.* at 14, footnote 12. GNI asserted that the Massachusetts proceeding was planned to investigate whether CLECs that only served a single affiliated ISP customer might not be fully qualified as carriers, and GNI is not such an entity. *Ibid.* And, regarding the Maine proceeding, GNI argued that it is not yet operational in Maine and has had no involvement in the events leading up to the initiation of that proceeding. *Ibid.*

GNI argued that BA-NJ's motion suggests that any new firm that focuses its marketing efforts on ISPs, and does not provide "traditional" local exchange services is not qualified to receive a Certificate. *Id.* at 15. GNI stated that at its arbitration hearing, BA-NJ introduced its interconnection agreement with DIECA Communications, Inc., d/b/a Covad, as an exhibit to support its arguments against ILEC provision of reciprocal compensation for routing dial-in calls to ISPs. *Id.* at 16. GNI asserted that although Covad will not provide traditional

local exchange service or dial tone to anyone, including ISPs and will instead only offer high-speed data services using unbundled loops and packet-switched data networks to connect individual customers with interstate corporate networks and with ISPs, BA-NJ has no objection either to entering into an interconnection agreement with Covad or to Covad's certification as a New Jersey LEC, and no concerns about Covad's underlying status as such. *Id.* at 16-17, and Attachment 2. GNI pointed out that Section 1.15 of BA-NJ's interconnection agreement with Covad defines the term "CLEC" as "any Local Exchange Carrier other than [BA-NJ], operating as such in [BA-NJ]'s certificated territory in New Jersey," and states without qualification that Covad is a CLEC. *Id.* at 17, and Attachment 3. GNI asserted that if Covad is a CLEC, then plainly it is as well, and BA-NJ's acceptance of Covad's serving arrangements even as it objects to GNI's arrangements indicates that BA-NJ's objections to GNI's certification are a pretext to slow GNI's entry into the market. *Id.* at 18. GNI asserted that BA-NJ's objections to GNI's application are therefore not merely anti-competitive, but also frivolous and abusive, and requested that the Board direct BA-NJ to pay GNI reasonable costs and attorneys fees in developing its opposition to BA-NJ's petition and motion in this matter. *Id.* at 18-19.

GNI's final argument is that, although, the Board must assess an applicant's ability to provide safe, adequate and proper service under N.J.S.A. 48:2-23, nothing in BA-NJ's motion suggests that GNI's service in New Jersey will be anything other than safe, adequate, and proper. *Id.* at 20. GNI asserted that the issues raised by BA-NJ do not relate to GNI's qualifications and are not at all relevant to whether it is entitled to operate. *Id.* at 20-21. GNI concluded that in New Jersey, it will operate under the supervision of this Board, and in accordance with its interconnection agreement. *Id.* at 23.

#### BA-NJ's Reply to GNI's Opposition

By letter dated November 23, 1998, BA-NJ replied to GNI's opposition. According to BA-NJ, GNI avoided stating that it will provide local exchange service to any New Jersey end users at all, and BA-NJ asserted that the services GNI will provide are not basic local exchange services. BA-NJ Reply at 1. BA-NJ suggested that on the basis of this record, the Board has insufficient information to determine that GNI is entitled to certification as a local exchange carrier in New Jersey. *Ibid.* BA-NJ asserted that the new facts in its submissions provide ample support for BA-NJ's intervention, and support a full Board investigation of whether GNI is entitled to certification. *Id.* at 2.

BA-NJ stated that GNI's contention that FCC decisions indicate that GNI provides local exchange service is without merit. *Id.* at 3. BA-NJ argued that the FCC has merely exempted ISPs from payment of interstate access charges, and did not state that ISP service provided by a CLEC is "local exchange service." *Ibid.* Citing the FCC's Memorandum Opinion and Order in GTE Telephone, GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, BA-NJ asserted that the FCC has explicitly rejected the argument that an ISP call consists of a "local" intrastate component and a second, interstate transmission. *Id.* at 3, citing Memorandum Opinion and Order at ¶¶15, 20. BA-NJ also argued that GNI's statement that its line of local services will be comparable to that offered by BA-NJ is not accurate and supports the need for a full Board investigation. *Id.* at 4. BA-NJ asserted that GNI's intentions to obtain and use NXX codes in New Jersey and the impact of those actions on the telephone

number resources in New Jersey bears directly on GNI's ability to provide proper service. Id. at 5. Regarding GNI's "Covad arguments," BA-NJ responded that it is required to enter into good faith negotiations with entities which request interconnection arrangements, and this obligation does not foreclose examination of GNI's application. Ibid.

BA-NJ repeated its contention that although GNI has requested that the Board authorize it to provide local exchange service in New Jersey, Bell Atlantic's actual experience with GNI demonstrates that GNI does not, in fact, provide local exchange service. Id. at 6. BA-NJ asserted that actual experience with GNI raises serious questions concerning statements made in GNI's New Jersey application that it will provide "basic local exchange services and exchange access services." Ibid. BA-NJ argued that whether GNI will provide "basic local exchange services and exchange access services," as it represents in its application, is a key aspect of "proper service" which is not supported by the record evidence. Id. at 7.

### Discussion

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 11 Stat. 56, codified at 47 in scattered sections of U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. § 253 (a)].

Therefore, Board approval of GNI's entry into the local exchange and exchange access telecommunications marketplace is required, assuming Petitioner meets all other requirements, including but not limited to a demonstration of financial and management integrity.

In considering this application, the Board recognizes its obligation not to unduly prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunication services, and its findings that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a) (4); N.J.S.A. 48:2-21.16(b) (1) and (3).

GNI compares its proposed service to ISPs with BA-NJ's service to ISPs. There is no question that the provision of such a service is appropriate for a local exchange carrier. In fact, BA-NJ itself provides the same service. Whether the traffic a LEC delivers to an information service provider, particularly an ISP, is local and entitled to the reciprocal compensation provisions of 47 U.S.C. §251(b)(5), or is interstate traffic beyond the scope of 47 U.S.C. 251 (b)(5), is not relevant to our analysis of whether or not an applicant for authority to provide local exchange services is qualified to do so and merits an award by the Board of

authority to provide local exchange service. Whether GNI presently provides operator and 911 services is also not relevant. GNI is correct when it points to the fact that the Board has already granted local authority to applicants whose initial business strategy does not include the provision of what may be described as traditional "plain old telephone service," i.e., POTS. See, e.g., Order of Approval, I/M/O Petition of DIECA Communications, Inc. for Authority to Provide Facilities-Based and Resold Interexchange Toll Service and Facilities-Based and Resold Intrastate Switched Special Access and Local Exchange Telecommunications Services, BPU Docket No. TE98060350 (November 4, 1998).

GNI is also essentially correct that BA-NJ has not presented evidence that GNI is not qualified to provide local exchange services. We do not believe that BA-NJ can. GNI's application and supporting documentation indicates that it has the requisite financial, managerial and technical resources to enable to provide safe, adequate and proper services to its customers. Thus, no further inquiry is now required.

Moreover, the issues which BA-NJ raised in its Motion can be addressed elsewhere. The nature of GNI's traffic and whether it is subject to the provisions of 47 U.S.C. §251(b)(5) may be examined within the context of the Board's review of the arbitrator's recommendation in I/M/O Petition of Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangement with Bell Atlantic-New Jersey, Inc. Pursuant to Section 252 (b) of the Telecommunications Act of 1996, BPU Docket No. TO98070426, or in any dispute about the terms of the GNI/BA-NJ interconnection agreement which emanates from the arbitration proceeding. GNI's use of NXXs in New Jersey is not ripe for Board consideration because, until now, GNI has not had the requisite State authorization to provide local telecommunications services and therefore has neither requested nor used such codes. Similarly, issues related to GNI's provision of local exchange services such as dial tone, operator and 911 services, are also not ripe for review because GNI has as yet no customers in New Jersey and has therefore not yet been called upon to provide such services. Furthermore, in approving requests for local exchange authority, the Board has consistently refrained from requiring CLECs to provide any specific service or adopt any particular business strategy, whether initial or ongoing.

Therefore, in consideration of the foregoing, the Board believes that an entity that has the financial, managerial and technical integrity to provide safe, adequate and proper service should be granted authority to offer telecommunications services within New Jersey. Because we are convinced that GNI possesses all the requisite qualifications to provide local exchange and interexchange telecommunications services, we do not believe that granting BA-NJ's Petition for Intervention and Motion to Suspend and Investigate will serve any useful purpose.

Because we find that GNI's application for authority provides prima facie evidence for meeting the Board's qualifications as a local exchange carrier, and because we have seen nothing in BA-NJ's submissions to the Board which contradict that evidence, the Board DENIES both BA-NJ's Petition for Intervention and its Motion to Suspend and Investigate. Because the issues which BA-NJ has attempted to raise are not frivolous, there is no reason to consider GNI's request for an award of costs.

Therefore, having thoroughly reviewed GNI's petition and the information

supplied in support thereof, the Board FINDS that GNI has demonstrated that it possesses the requisite financial, technical and managerial expertise and resources which are necessary to provide local exchange and exchange access telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES GNI to provide local exchange and exchange access telecommunications service in New Jersey subject to the approval of its interconnection agreement and tariffs. The Board notes that GNI will not be able to provide telecommunications services until its tariffs are approved by the Board.

Regarding GNI's requests for waivers of Board rules, the Board FINDS that GNI has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b)1, of its requirements to maintain all books and records under the USOA and in New Jersey. Therefore, subject to GNI's continuing responsibility to provide the Board its books and records when and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of those books and record, the Board APPROVES GNI's request for an exemption from maintaining its books and records under the USOA as required by N.J.A.C. 14:1-4.3 and maintaining its books and records within New Jersey as required by N.J.A.C. 14:1-5.15(a).

DATED: 062199

BOARD OF PUBLIC UTILITIES

BY: 

HERBERT H. TATE  
PRESIDENT



CARMEN J. ARMENTI  
COMMISSIONER



FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:



MARK W. MUSSER  
SECRETARY

**In the Matter of the Application of Global NAPS, Inc.  
For Certificate of Convenience and Necessity to  
Provide Local Exchange Telecommunications Services  
BPU Docket No. TE98060386**

**SERVICE LIST**

Anthony Centrella  
James Murphy  
Division of Telecommunications  
New Jersey Board of Public  
Utilities  
Two Gateway Center  
Newark, New Jersey 07110

Eugene P. Provost  
Deputy Attorney General  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

Blossom A. Peretz, Esq.  
Division of Ratepayer Advocate  
31 Clinton Street - 11th Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Frank T. Gangi, President  
Global NAPS, Inc.  
89 Access Road  
Norwood, MA 02062

William Rooney, General Counsel  
Global NAPS, Inc.  
10 Merrymount Road  
Quincy, MA 02169

William J. Maione, Esq.  
GIEGERICH, GACHKO &  
MAIONE, P.C.  
126 South Ave. East  
P.O. Box 517  
Cranford, New Jersey 07016

Barry S. Abrams  
Vice President, General Counsel  
& Secretary  
Bell Atlantic - New Jersey, Inc.  
540 Broad Street  
Room 2000  
Newark, New Jersey 07101