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NEWARK, N.J.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
June 30, 1998

EX PARTE OR LATE FILED

William J. Rooney, Jr.
Vice President and General Counsel
(617) 507-5111

By FEDERAL EXPRESS

Mr. Mark Musser
Secretary of the Board
New Jersey Board of Public Utilities
2 Gateway Center, 8th floor
Newark, NJ 07102

T098070426

Re: Global NAPS, Inc. Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Bell Atlantic-Maine pursuant to Section 252(b)(1) of the Telecommunications Act of 1996

Dear Mr. Musser:

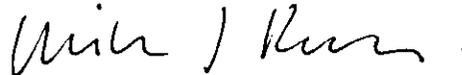
Pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, Global NAPS, Inc. hereby files an original and ten (10) copies of its Petition for Arbitration with Bell Atlantic-New Jersey.

Please date-stamp the extra copy of the Petition for our files and return it to me in the enclosed SASE.

We have been informed by your office that there is a filing fee of \$25.00 for filing our petition. Enclosed please find the check of my co-counsel, Lucy D. Lovrien, made payable to the State of New Jersey.

Please call me if you have any questions concerning this request. I may be reached either at (617) 507-5111 or at (617) 350-0100. Thank you.

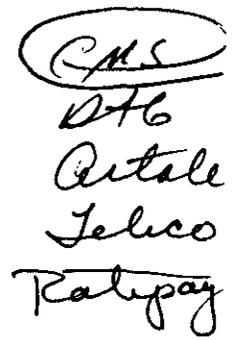
Sincerely,



William J. Rooney, Jr.
Vice President and General Counsel
Global NAPS, Inc.

enc.
cc: Bell Atlantic - John Messenger, Esquire
Bell Atlantic - Jennifer VanScoter
Bell Atlantic - Barry Abrams
Edward Zizmor, Esquire

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Before the State of New Jersey
Board of Public Utilities

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PUBLIC UTILITIES
NEWARK, N.J.

Petition of Global NAPs, Inc. for)
Arbitration of Interconnection)
Rates, Terms, Conditions and)
Related Arrangements with)
Bell Atlantic)

TO 98070426

**PETITION OF GLOBAL NAPs, INC. FOR
ARBITRATION OF INTERCONNECTION RATES,
TERMS AND CONDITIONS AND RELATED RELIEF**

Global NAPs, Inc. ("GNAPS"), by its undersigned attorney, hereby petitions the State of New Jersey Board of Public Utilities (the "Board") for arbitration of rates, terms and conditions for interconnection and related arrangements, concerning a proposed interconnection agreement between GNAPS and Bell Atlantic – New Jersey ("BA"), pursuant to §252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L. No. 104 §101(a), 110 Stat. 70, to be codified at 47 U.S.C. §252(b). GNAPS respectfully requests that, while this arbitration is pending, BA promptly provide GNAPS with interconnection on an interim basis on terms consistent with those provided in the Interim Co-Carrier Agreements provided by BA to other telecommunication companies in New Jersey.

I. INTRODUCTION AND OVERVIEW OF FACTS; INTERIM RELIEF

Background

1. GNAPS is a telecommunications corporation formed in 1996 under the laws of the State of Delaware. GNAPS' offices are located at 10 Merrymount Road, Quincy, MA 02169.
2. Pursuant to its effective tariffs on file with the Board, GNAPS proposes to provide intrastate telecommunications services within the state of New Jersey. GNAPS' application for a tariff of public convenience and necessity in New Jersey is currently pending. GNAPS is awaiting interconnection with BA and does not yet provide services in the field to New Jersey customers. GNAPS, however, does have customers subscribed to take service from it when interconnection arrangements are finalized.
3. GNAPS is a small venture with several innovative approaches to the provision of

telecommunications services in New Jersey. In short, GNAPS is a prototype of the creative venture that the 1996 Act seeks to foster. Indeed, in promulgating its regulations under the 1996 Act, the Federal Communications Board expressly found that:

Competition [under the Act] is intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets. The opening of all markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American customers.

Federal Communications Board, First Report and Order, CC Docket 96-96/96-185 at §5 (August 8, 1996) (emphasis in original).

4. BA is a monopoly provider of local exchange telecommunications within the State of New Jersey. BA is a corporation organized and formed under the laws of the State of New Jersey, having its office at 540 Broad Street, Newark, NJ 07101. BA provides local exchange and other services throughout New Jersey.
5. For purposes of §§251 and 252 of the 1996 Act, BA is and has been at all material times an “incumbent local exchange carrier” (“ILEC”) in New Jersey as defined by §251(h) of the 1996 Act.
6. On January 26, 1998, GNAPS requested interconnection services and network elements from BA pursuant to §251 of the 1996 Act. Consistent with the requirements of §252(b)(1) of the 1996 Act, the filing of this petition for arbitration is therefore occurring between the 135th and 160th date following such request for interconnection.
7. As outlined in paragraph 10 below, GNAPS, as the requesting telecommunications carrier, has negotiated in good faith in accordance with §251(c)(1) of the 1996 Act to attempt to establish terms and conditions for a binding agreement with BA for interconnection services and network elements. GNAPS asserts that BA has not satisfied its duty to negotiate in good faith as required under §251(c)(1) of the 1996 Act and make this claim at such future time and forum as may be necessary or appropriate.
8. The negotiations between GNAPS and BA, to date, have failed to yield a binding, executed interconnection agreement on all issues. Thus, BA has not entered into an agreement with GNAPS covering the terms and conditions of interconnection and unbundling under the 1996 Act notwithstanding the passage of essentially the entire negotiating period contemplated under §252(a)(1) of the 1996 Act.

9. By way of summary of the negotiations on and since January 26, 1998, GNAPS began negotiating an Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Interconnection Agreement") with BA. At all times since January 26, 1998 GNAPS conducted negotiations with BA simultaneously regarding the following states: New York, New Hampshire, Maine, and New Jersey. On February 5, 1998, GNAPS requested negotiation with BA in Vermont. On February 19, 1998, GNAPS added Rhode Island to its list of requested interconnection agreements with BA. After February 19, 1998, negotiations between the parties described herein covered all of the above-named states. BA sent GNAPS its form Interconnection Agreement. This agreement had unreasonable limitations on the payment of reciprocal compensation for traffic handed off from one party to the other party within a BA local calling area for delivery to an Internet Service Provider. GNAPS then requested an interconnection agreement based upon the Interconnection Agreement with MFS Intelenet of New Jersey, Inc. ("MFS"). On April 3, 1998, BA provided GNAPS with a draft agreement based upon the MFS Agreement.
10. The Draft MFS Agreement was unacceptable for two reasons. It included language which required GNAPS to accept any change BA negotiated with MFS and to accept a term less than the three years which was granted to MFS. GNAPS viewed this as a clear violation of the Telecommunications Act of 1996 and applicable regulations since the statute requires that BA provide GNAPS with the same agreement that BA provided to MFS. The agreement BA provided to MFS did not contain any language which would require MFS to accept changes BA negotiated with a third party, and yet the contract BA presented to GNAPS included this language. The contract BA provided to MFS had a three year term which would enable MFS to recoup its capital investment. A recent agreement executed by BA with XCOM Technologies, Inc. ("XCOM"), GNAPS' principal competitor, recently approved by the New York Public Service Board, expires on September 30, 2000. Global NAPs contended that at a minimum, its interconnection agreements should extend as long as the XCOM agreement in New York.
11. In an attempt to reach an agreement with BA, in the last two weeks, GNAPS negotiated with BA regarding a new agreement not based on any other agreement. The parties were left with three unresolved issues: the term of the agreement; the construction and ownership of the SONET ring connection that the parties contemplated; and whether BA could require GNAPS to build entrance facilities for BA.
12. The Petition seeks to set forth all matters that remain open (see Section II below) and all interconnection matters agreed to (see Section III below).
13. As indicated above, the parties, to date, have been unable to reach a binding

agreement on all issues through negotiations under §2352(a)(1) of the 1996 Act. Under §252(b)(1) of the 1996 Act, Congress created a specific arbitration process for ILECs and requesting telecommunication carriers (also called competing local exchange carriers or “CLECs”) to arrive at an interconnection agreement through “compulsory arbitration” by “petition [to] a State Board to arbitrate any open issues” unresolved by negotiation under §252(a). The provision states that either party to the interconnection negotiation may petition the State Board for arbitration “[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section” See 1996 Act at §252(b)(1). In accordance with the scheduling requirements of the 1996 Act, this petition is being timely filed with the Board.

Interim Relief

14. While the arbitration is pending, GNAPS respectfully requests that the Board order BA promptly to provide GNAPS with interconnection on an interim basis on terms consistent with those provided to other telecommunications companies in New Jersey in Interim Co-Carrier Agreements. Such interim relief will enable GNAPS to begin to provide services to New Jersey customers as soon as possible consistent with the goal established in the 1996 Act of increasing competition.

Arbitration Request

15. In accordance with the requirements of §252(b)(2) of the 1996 Act and based upon its current understanding, GNAPS, the Petitioner, states below: those issues that remain unresolved between the parties, and the position of each of the parties with respect to those issues. GNAPS reserves its right to arbitrate any issues which BA may assert are unresolved and to seek the inclusion in its agreement with BA of those provisions incorporated in the connection agreements of other requesting telecommunications carriers as expressly allowed under §252(i) of the 1996 Act. GNAPS also reserves its right to submit additional evidence in support of this petition as may be necessary or appropriate in light of the conduct of such arbitration.

II. UNRESOLVED ISSUES (§252(b)(2)(A)(i-ii) of the 1996 Act)

GNAPS requests that the Board arbitrate the issues discussed below which remain open despite GNAPS’ good faith efforts. GNAPS would emphasize that it seeks to have the scope of this arbitration remain limited and focused on these issues. As noted above, GNAPS is a start-up venture, not currently serving customers in New Jersey. As a start-up venture, GNAPS does not seek to allocate its finite resources to protracted or broad arbitration proceedings. Indeed, the burden of such a process on a start-up venture such as GNAPS could produce results contrary to the goals of the 1996 Act. GNAPS stands ready to abide by reasonable expenditure and timing limitations regarding this arbitration which may be established either with the consent of BA or

pursuant to the Board's order.

The issues for which GNAPS seeks arbitration, including summaries of the parties' position of these issues, are set forth as follows:

1. Is GNAPS required to accept modifications of its interconnection agreement which are negotiated between BA and a third party competitor?

Section 252 (i) of the Telecommunications Act of 1996 provides:

Availability to other Telecommunications carriers. -- a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting Telecommunications carrier upon the same terms and conditions as those provided in the agreement.

In the case at bar, BA has refused to offer GNAPS the same terms and conditions offered to other carriers. Specifically, BA has included a provision in the contract offered to GNAPS which was based upon the MFS contract which states that any amendment to the original agreement between BA and MFS may be incorporated into the new agreement at the option of either BA or GNAPS. GNAPS contends that this is fundamentally unfair and in violation of section 252 (i). The statute requires that BA make available the interconnection upon the same terms the conditions as provided in other agreements. The MFS agreement does not require MFS to accept terms and conditions negotiated between BA and MFS competitors. Consequently, requiring that GNAPS accept terms negotiated between BA and GNAPS' competitors does not constitute the same terms and conditions as provided in the MFS agreement.

2. Where BA gave GNAPS' competitors three year contracts, is GNAPS required to accept a term of less than three years?

As explained above, BA is required to offer the same terms and conditions to GNAPS as it did to MFS. BA offered MFS a three year contract. This provided MFS with ample opportunity to recapture its capital expenditures as a facilities-based CLEC. GNAPS is also a facilities-based CLEC. The agreement offered to GNAPS was coterminous with the MFS agreement. This would result in a term of approximately one year. This would not be enough time to reasonably recapture the capital expenditures that GNAPS must make to enter the market. GNAPS notes that other CLECs have been recently offered three-year terms. There is no reason why GNAPS should be offered a term less than three years. GNAPS' principal competitor XCOM has been granted a term that extends to September 30, 2000 in New York, far in excess of one year.

3. Where BA has built two SONET rings for XCOM, GNAPS' competitor in New

York, and has built SONET rings for other CLECs, including GNAPS in Massachusetts, is BA required to build a SONET ring for GNAPS upon the same terms and conditions that it has built SONET rings for others?

In all of GNAPS' negotiations with BA prior to mediation, it was BA's position that it would build a SONET ring connection between GNAPS and BA. This is completely consistent with the connection in Massachusetts. In Massachusetts, GNAPS and BA agreed that BA would build a SONET ring and GNAPS would pay for half of that cost and own half of the SONET ring. Recently, BA has taken the position that it will not build a SONET ring and insists that there be a midway point connection between GNAPS and BA where GNAPS will own the fiber and the electronics on one side and BA will own the fiber and electronics on the other side. The problem with this plan is that this means that two different engineering teams will be constructing the SONET ring and the fiber will have to be fused or connected in some fashion. This may well result in serious technical problems. GNAPS has suggested three alternatives: that BA build the entire ring and that the fiber remain unbroken, in which case GNAPS will pay half of the cost; that GNAPS will build the ring and BA will pay half the cost; or a third party will build the ring and the cost will be equally divided. BA has absolutely refused to accept this approach. GNAPS has finally offered to let BA deliver its traffic to GNAPS by any means it chooses as long as it results in a DS-1 handoff and GNAPS will deliver its traffic by any means necessary and offer BA whatever handoff it wishes. BA would agree to this only upon the condition that it have the ability to require GNAPS build an entrance facility for BA. This means, that BA can demand that GNAPS build a SONET ring for BA to deliver its traffic to GNAPS. GNAPS has always been willing to build a SONET ring for interconnection if BA would pay half of the cost. Under this approach, GNAPS would be required to build the entire ring at its own expense without the financial participation of BA. As GNAPS is a new CLEC with nowhere near the resources available to it that BA has it is fundamentally unfair to require that GNAPS incur all of this expense.

4. Is GNAPS required to agree to build an entrance facility for BA when it is not in the business of building entrance facilities and will have difficulty obtaining the requisite right-of-way's and access to conduits which BA possesses or has the means to obtain?

BA has demanded that GNAPS agree to build an entrance facility for BA upon demand. As explained above, it is fundamentally unfair for BA to impose upon GNAPS all of the cost of building the SONET ring connection between the two entities. GNAPS has consistently offered to pay half of the cost if BA would build the ring, build the ring itself if BA would pay half of the cost, or split the cost with BA if a third party builds the ring. To impose upon GNAPS the requirement to pay for all of the ring instead of half is just simply unfair and unreasonable.

5. Where BA has built two SONET rings for GNAPS' competitor, XCOM, in New

York City, but has refused to build a SONET ring for GNAPS, has BA engaged in bad faith negotiations?

As explained above, BA refuses to build a SONET ring for GNAPS and split the cost. BA has built SONET rings for a number of CLECs and has divided the cost with the CLECs. In Massachusetts, BA built the SONET ring connection with GNAPS and split the cost with GNAPS. In New York City, BA has built two SONET rings for XCOM, GNAPS' principal competitor. Refusing to build a SONET ring for GNAPS while building SONET rings for its competitor is fundamentally unfair and insistence upon this term in the course of negotiations constitutes bad faith negotiations.

III. OTHER ISSUES DISCUSSED AND RESOLVED BY THE PARTIES (§252(b)(2)(A)(iii) of the 1996 Act)

With the exception of the issues set out above, all other terms regarding interconnection were discussed and resolved by the parties.

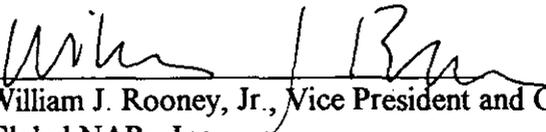
IV. RELIEF REQUESTED

For all the foregoing reasons, GNAPS respectfully requests:

1. That the Board arbitrate the unresolved interconnection issues between GNAPS and BA described in Section II above, and that such arbitration be conducted on an expedited basis with reasonable limitations on procedures (e.g., discovery), timing, hearing dates and arbitration expenses to be incurred by the parties;
2. That in rendering its decision regarding such arbitration, the Board accept the positions of GNAPS reflected in Section II;
3. That the Board direct BA to articulate clearly an interconnection offering to GNAPS and compel BA pursuant to §252(b)(4)(B) of the 1996 Act to provide to GNAPS any and all relevant information regarding the unresolved interconnection issues;
4. That, in order to effectuate the competition sought under the 1996 Act, the Board direct BA to enter into an interconnection agreement with GNAPS immediately upon the conclusion of such arbitration and that, while such arbitration is pending, the Board direct BA promptly to provide GNAPS with interconnection on an interim basis on terms consistent with those provided to other competitive local exchange carriers in New Jersey; and

5. That the Board accord GNAPS such other relief as it deems it necessary or appropriate.

Respectfully submitted by


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