RNK Telecom

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January 7, 2000

VIA OVERNIGHT CARRIER

Bill Cayton, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB 204
Washington, DC 20554

Re: RNK Comments in **Docket CC 99-354, Global NAPs Preemption Request**

Dear Secretary Cayton:

Enclosed please find an original and four (4) copies of RNK Inc. d/b/a RNK Telecom's ("RNK") Comments in Docket CC 99-354, Global NAPs Request for Preemption of the Massachusetts Department of Telecommunications and Energy Pursuant to Section 252(e)(5) of the Act.

As discussed Friday, January 7, 2000 over the telephone, on Thursday, January 6, 2000, RNK attempted to timely file its Comments electronically via the Division's ECFS system , but, after numerous attempts, was unsuccessful. RNK called the Commission, and the Commission's helpline, but was unable to contact staff. On January 7, 2000, RNK was contacted by Commission staff and informed that the FCC's server had been out of service, starting sometime during the day on January 6, 2000, and continued to be down. When the system was again functional, RNK successfully filed its Comments electronically, and now also files its Comments in paper form, requesting that it be allowed to late file its Comments, or that the Comments be back-dated to reflect the actual time the Comments would have been filed had the system be working properly. RNK also attaches a printout showing a message that indicates it could not gain access to the Commissions server, and the time and date.

Thank you for your attention in this matter.

Sincerely,

Douglas Denny-Brown
General Counsel, RNK Inc.

Attachment

No. of Copies rec'd 0+4
List A B C D E

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In The Matter of Global NAPs, Inc. Petition for Preemption of Jurisdiction of Massachusetts Department of Telecommunications and Energy Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996	CC Docket No. 99-354

COMMENTS OF RNK TELECOM

RNK TELECOM

By its attorney,
Douglas S. Denny-Brown
General Counsel

1044 Central Street
Stoughton, MA 02072
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January 6, 2000

COMMENTS OF RNK TELECOM

RNK, Inc. d/b/a RNK Telecom ("RNK"), pursuant to Section 1.415 of the Federal Communication Commission's ("Commission" or "FCC") Rules, 47 C.F.R. § 1.415, hereby submits its Comments according to the Commission's pleading cycle in the captioned docket, released on December 23, 1999.

I. INTRODUCTION

RNK is a competitive local exchange carrier ("CLEC") in Massachusetts and throughout New England that competes with Bell Atlantic-Massachusetts ("Bell Atlantic") and other CLECs as both a reseller of Bell Atlantic's services, and a facilities-based competitor offering services such as voice, voice-mail, calling cards, and data transport.

Although RNK does a substantial amount of business through resale of Bell Atlantic's services as per Section 252 of the Act,[1] and offers traditional voice-based telephone and other services, to both residential and business customers. RNK also serves Internet Service Providers ("ISP"). Because RNK has ISPs among its customers, it has been negatively effected, like all CLECs with ISPs as customers, including Global NAPs, by the Massachusetts Department of Telecommunications and Energy's ("DTE" or "Department") decisions involving reciprocal compensation for Internet-bound calls.[2] It is because of the DTE's decisions determining the

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1 Federal Telecommunications Act of 1996 ("Act").

2 RNK uses the term "Internet-bound" for the calls in dispute for purposes of consistency, but, as argued below, believes that the calls terminate at the CLECs switch and become and information service beyond that, and are, therefore, just another type of local call.

treatment of these calls, the negative effect it has had and continues to have on RNK's market entry,[3] and most relevant to this proceeding, the DTE's lack of a timely ruling on the contractual intent of the parties outlined in Global NAPs petition, that RNK files Comments with the Federal Communications Commission ("Commission") today.

II. BACKGROUND

Like Global NAPs, RNK has an Interconnection Agreement with Bell Atlantic that is ambiguous with regard to whether Internet-bound calls are compensable under the reciprocal compensation payments required by Section 252(d)(2) of the Act. Like Global NAPs, RNK has received no compensation for terminating Internet-bound calls since Bell Atlantic stopped paying Massachusetts CLECs for those calls in February 1999, and the DTE approved Bell Atlantic's actions in March 1999.[4] The DTE first authorized Bell Atlantic to put the amounts in question into an escrow account, and then authorized Bell Atlantic to remove the amounts in dispute from escrow, and effectively continue its practice of not compensating CLECs for termination of calls to under the former reciprocal compensation scheme.[5] In its May 1999 decision, the DTE relied

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3 As a direct result of the DTE's decision to allow Bell Atlantic to escrow the monies for Internet-bound calls, and the DTE's later decision to allow Bell Atlantic to not compensate CLECs for termination of those calls, RNK was forced to lay off close to 80% of its employees, and severely postpone or terminate orders for new telecommunications facilities and plans for new services.

4 *See* DTE 97-116-B, *Complaint of WorldCom Technologies, Inc. (successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for alleged breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*DTE 97-116-B (Mar. 1999).

5 *See* DTE 97-116-B (Mar. 1999); DTE 97-116-C (May 1999).

heavily upon the Commission's February 1999 Declaratory Ruling,[6] which the DTE contended defined the calls as InterLATA for jurisdictional, and other purposes, such as reciprocal compensation, thus requiring the DTE to overturn its former decision classifying the calls as local for purposes of reciprocal compensation under the Act.[7]

III. NATURE OF CALLS TO INTERNET SERVICE PROVIDERS

RNK does not currently have a preference for which government entity, federal or state, has jurisdiction over Internet-bound calls, because, regardless of which entity has jurisdiction, the functional nature of the calls for purposes of reciprocal compensation under the Act should be considered local. The vast majority of states deciding the issue of compensation for Internet-bound calls after the Commission's Declaratory Ruling have found the calls to be fully compensable.[8] In the Commission's February 28, 1999 Declaratory Ruling, the Commission stated that it had a long history of treating the calls as local, and laid out a lengthy list of reasons for the calls being considered such for purposes of reciprocal compensation. RNK supports the contention that the calls are local in nature, and that the call terminates at the CLECs switch, and then becomes an information service that proceeds on to the Internet. RNK recognizes as a significantly stronger (although perhaps still not convincing) argument, that voice over IP may be considered InterLATA and Interstate traffic, where the actual telephone call terminates or could

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6 *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (Feb. 26, 1999) ("*Declaratory Ruling*").

7 *See* DTE 97-116 (Oct. 1998); DTE 97-116-C (May 1999).

8 *See e.g.*, RI PUC 2935 (June 29, 1999); Cal PUC 99-06-088 (June 24, 1999); Alabama PSC 26619 (June 21, 1999); Wash. UTC UT-980338 (May 12, 1999); Florida PSC Ord. PSC 99-0658-FOF-TP (April 6, 1999).

terminate in another LATA, state, or country. However, RNK is resolute in its position that calls to ISPs, made to local numbers, terminated on equipment that is within the LATA, and often the very NXX from which the call is made, historically treated as local by the FCC and state commissions, and exempted from Inter and Intra-state access charges, are, in fact, local, and should be treated as such for purposes of reciprocal compensation under the Act.

IV. RNK Provides Conditional Support to Global NAPs' Preemption Request

RNK understands the Department's severe staffing and other constraints, and that it must prioritize the cases it decides. Regardless of the Department's constraints, however, RNK agrees with Global NAPs that in this case, involving this issue, that the DTE should have interpreted Global NAPs' Interconnection Agreement, and done it in an especially timely fashion.[9] Section 252(e)(5) of the Act was created for exactly this situation, regardless of the reason for delinquency on the part of a state public utility commission.

If this case involved a situation where the status quo remained, or a minor amendment to the regulation was at stake, that would have been more easily accepted as getting a lesser priority. Here there is a contractual dispute that is having a massive effect on one of the parties, and potentially a number of parties, and the DTE is responsible for resolving the dispute through interpretation of the Interconnection Agreement as per the Act. The timing of a decision on this issue has been made particularly important by the fact that the DTE created an unstable business environment (certainly for CLECs with ISPs as customers, or potential customers, the ISP's

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9 RNK, however, declines to join Global NAPs in its various characterizations of the DTE with regard to mediation and other actions, and speculation on how the DTE may decide the instant case, should the DTE retain jurisdiction.

themselves, and their customers, and many other entities), with its May 19, 1999 order. That order invalidated the DTE's former order issued just six months earlier that specifically required Bell Atlantic to pay reciprocal compensation for Internet-bound calls, and brought doubt as to the contractual responsibility of the parties.[10] Because of the DTE's May Order and its effect on CLECs (i.e., allowing Bell Atlantic customers to terminate calls to the Internet through ISPs that are customers of CLECs without a realistic chance of reasonable compensation), and because the DTE chose not to consider the issue of contract interpretation in that Order,[11] it was and remains crucial to the development of a fair and stable local telecommunications market where contractual commitments are honored and state and federal decisions and policy can be relied upon, that either the DTE or FCC take immediate action on Global NAPs petition.

In addition, because the language contained within Global NAPs' Interconnection Agreement on the issue of reciprocal compensation is the same or strikingly similar to the language contained within the Interconnection Agreements of other CLECs, like RNK, the application of this decision should be universal (within Massachusetts) to clarify similar disputes of other CLECs on this issue. Because this case has now waited eight months without progressing, which ever agency retains or assumes jurisdiction should decide this case in an expedient fashion on a fast-tract schedule.

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[10] *See* DTE 97-116-C.

[11] *Id.* at 27, note 29.

V. Eleventh Amendment Discussion

RNK provides only brief speculation on the DTE's possible application of the Eleventh Amendment to the instant case. For the DTE to render a decision in this case and then claim an Eleventh Amendment privilege of sovereign immunity (to prevent federal review), however legally legitimate, the DTE would have to think very little of its decision. Even assuming that the DTE made such a claim, there would undoubtably be numerous motions by other parties for legal review of some sort, and if not in federal court, then most likely in the Massachusetts Supreme Judicial Court ("SJC"), where appeals of DTE decisions are traditionally made. There would then likely be Constitutional and other arguments over whether the SJC could decide matters of federal law. RNK feels that this litigation-creating action would also not be in the best interest of development of the local market. and anti-competitive of the DTE to take such a position, and that this is quite contrary to the numerous pro-competitive statements made by the DTE throughout its decisions and public statements. However mistaken RNK may feel the DTE is in not deciding the instant case in a timely fashion, and in making certain related decisions, RNK believes that the DTE favors a fair and competitive market that will bring the benefits of local competition to Massachusetts consumers, and would not bring forth unnecessary litigation that would hamper the creation of that market. Therefore, RNK suggests that the Commission urge the DTE not to consider an Eleventh Amendment claim in its decision, but draw short of making it a requirement (assuming the Commission has the legal authority to make such a requirement), leaving it up to the DTE to decide whether it will take this legal step.

VI. CONCLUSION

In summary, because the DTE has had difficulties resolving Global NAPs petition in a timely fashion, given the potential larger application of an order interpreting Global NAPs Interconnection Agreement, and considering the fact that the DTE created a situation preventing CLECs from recovering costs for terminating Bell Atlantic traffic to ISP customers, that if the DTE does not act immediately to decide Global NAPs' petition in an expedient, thorough, and fair manner, with universal notice and due process, RNK supports Global NAPs position that the FCC should preempt the DTE, and resolve the case on an expedited basis.

Respectfully submitted

RNK TELECOM,

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Dated: January 6, 2000

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