

exemption to Global after specifically contrasting Global's forwarding service to AT&T's role as an IXC in *IP-in-the-Middle*, stating that:

Global is . . . clearly "in the middle" in a structural sense . . . Global, as a transporter of VoIP telephone traffic, does not directly connect with ordinary customer premise equipment, does not originate (but does terminate) calls on the public switched telephone network, and effects a protocol conversion of its traffic to TDM at Verizon's switch. These characteristics and actions are the opposite of those that the FCC determined, in its *IP in the Middle*⁴⁸ order, defined carriers subject to local access charges. Therefore, I conclude that on the basis of the FCC's *Phone-to-Phone IP Telephony* order Global is an intermediate carrier not subject to local access charges.⁴⁹

Most courts and administrative bodies have not reached the intermediate carrier issue, instead focusing their orders on the impact of the presence of VoIP traffic to their jurisdiction or on various other exemptions from intrastate tariffs.⁵⁰ Even the broad reaches of the full commission order rendered by the Pennsylvania PUC do not include the slightest reference to the intermediate carrier issue.⁵¹ In any event, sufficient confusion about the applicability of access charges to either intermediate carriers of VoIP traffic or to intermediate carriers in general militates in favor of clarification by this Commission of its 2004 statements.

⁴⁸ *IP-in-the-Middle*, at para. 1.

⁴⁹ *Armstrong* at 23-24. (Emphasis in original).

⁵⁰ *See TVC* at 16-17 ("Finally, while [Global] claims that it is not subject to access charges because it is an intermediate carrier, this claim is moot. We have already decided that we cannot impose intrastate charges on nomadic VoIP because it is an interstate service. We need not determine the merits of [Global's] claimed exemption under its intermediate carrier status.").

⁵¹ However, Global's motion for summary dismissal due to its status as an intermediate carrier was denied.

II. ACTIONS OR THREATS BY THE NEW HAMPSHIRE, PENNSYLVANIA AND MARYLAND STATE COMMISSIONS TO ENFORCE INTRASTATE ACCESS CHARGES ON NOMADIC VOIP TRAFFIC MERIT PREEMPTION UNDER THE *LOUISIANA PSC* TEST.

The jurisprudence on the Commission's interstate jurisdiction being so clear, Global respectfully requests a ruling that any action by the state commissions imposing rates on jurisdictionally interstate services is preempted. The use of federal jurisdiction to supplant state law was delineated by the Supreme Court in the *Louisiana PSC* case:

The Supremacy Clause of Article VI of the Constitution provides Congress with the power to pre-empt state law. Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977), when there is outright or actual conflict between federal and state law, e.g., *Free v. Bland*, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed.2d 180 (1962), where compliance with both federal and state law is in effect physically impossible, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963), where there is implicit in federal law a barrier to state regulation, *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983), where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947), or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941). Pre-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation. *Fidelity Federal Savings & Loan Assn. 1'. De la Cuesta*, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982); *Capital Cities Cable, Inc. 1'. Crisp*, 467 U.S. 691, 104 S.Ct. 2694, 81 L.Ed.2d 580 (1984).⁵²

⁵² *Louisiana PSC*, 476 U.S. 355 at 368-69.

The Commission itself has noted that: "It is well-established that . . . 'a federal agency acting within the scope of its congressionally delegated authority may preempt state regulations.'"⁵³

The Commission has regularly used this authority to prevent the erosion of its jurisdiction, to implement its rules and policies on a nationwide basis, and to implement the mandates of the Communications Act.⁵⁴ Section 253 of the Communications Act, as amended by the Telecommunications Act of 1996, provides the Commission with express authority to preempt state regulations that "prohibit or have the effect of prohibiting the ability of an entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253. In addition, the Commission has found implied preemption authority in other sections of the Act, including Sections 154(i) and 251.⁵⁵

As Global demonstrates below, any order by the state commissions mentioned above granting any of the relief sought by the relevant ICOs would merit preemption under several of the provisions of the *Louisiana PSC* test. Such orders: 1) directly contradict statements of law and policy established by this Commission in the *Vonage*

⁵³ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition/or Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Red. 15168, 15172, para. 8 (2000) (citing *Fidelity Federal Sav. and Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153-54 (1982)).

⁵⁴ *E.g., Vonage Holdings Corp.*, 19 FCC Red. 22404 (2004); *Petition for a Declaratory Ruling filed by National Association for Information Services, Audio Communications, Inc. and Ryder Communications, Inc.*, 8 FCC Red. 698 (1993), *aff'd* 10 FCC Red. 4153 (1995).

⁵⁵ *See BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, 20 FCC Red. 6830, 6839, para. 19 (2005).

preemption order; 2) effectively ignore the Commission's desire for uniformity, instead imposing multiple disparate interpretations of intrastate tariff application; and 3) would constitute a barrier to the competitive provision of both interstate and intrastate services in contravention of 47 U.S.C. § 253.

A. **This Commission has Either Preempted or Expressed a Clear Intent to Preempt State Actions Impeding the Development and Utilization of VoIP Services.**

The Court of Appeals for the Eighth Circuit affirmed this Commission's retention of jurisdiction over nomadic VoIP services, stating that "[t]he impossibility exception . . . is dispositive of the issue whether the FCC has authority to preempt state regulation of VoIP services."⁵⁶ Because of the nature of Internet-related services, it is technically impossible to apply the state regulations imposed by orders in New Hampshire and Pennsylvania to traffic which is admittedly at least partially interstate in nature. Indeed, because the Internet-based nature of Global's services makes it impossible or impractical to distinguish intrastate from interstate communications and nomadic from fixed VoIP,⁵⁷ the New Hampshire and Pennsylvania commissions cannot enforce their respective orders without imposing state tariffs on services the Commission expressed its desire to regulate and without also interfering with Global's ability to provide interstate services. Clearly, this Commission possesses the power to preempt state actions affecting interstate communications: "questions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service are to be

⁵⁶ *The Minnesota Public Utilities Comm'n v. FCC*, 483 F.3d at 578 (8th Cir. 2007).

⁵⁷ *Chairman's Motion* at 24 (noting how Palmerton ". . . cannot identify the actual physical location of the calling party.").

governed solely by federal law and . . . the states are precluded from acting in this area.”⁵⁸

Moreover, when this Commission issued its impossibility-based preemption order in *Vonage*, it stated that:

[T]he practical insurmountability of other types of IP-enabled services having basic characteristics similar to DigitalVoice *would* likewise preclude state regulation. . . . Accordingly, to the extent other entities, such as cable companies, provide VoIP services, we *would* preempt state regulation to an extent comparable to what we have done in this Order.⁵⁹

Thus, this Commission has already concluded that preemption is warranted with respect to services sharing similar basic characteristics to that of Vonage, including a requirement for broadband connection from the customer’s location, utilization of broadband compatible customer premises equipment, and a service offering allowing for interaction with traditional network infrastructure. The Federal Regulations incorporate this description as the definition for “interconnected VoIP”⁶⁰ services—the very services Global provides.

Global only asks this Commission to follow through on its previously expressed intent to preempt state commissions consistently with *Vonage*. Global has been found to provide a form of interconnecting VoIP service—a service integral to the interaction of VoIP with traditional network infrastructure. There can be no doubt that state commissions are either directly or indirectly regulating and hindering the provision of

⁵⁸ *Ivy Broadcasting Co. v. American Tel. & Tel. Co.*, 391 S.2d 486, 491 (2d Cir. 1968) (emphasis added).

⁵⁹ *Vonage* at para. 32. (Emphasis added).

⁶⁰ *The Minnesota Public Utilities Comm’n v. FCC*, 483 F.3d at 574-75 (8th Cir. 2007) (citing 47 C.F.R. § 9.3).

this service by levying intrastate access charges and/or blocking or threatening to block the transmission of Global's VoIP traffic to various states. Federal courts have also already recognized a total preemption of *any* state court action impacting VoIP services by this Commission.⁶¹ Thus, all that remains is for the Commission to either clarify the scope of its preemption in *Vonage*, or expand its preemption in *Vonage* to prevent imposition of intrastate tariffs on interconnected VoIP traffic.

B. This Commission has Clearly Expressed its Desire to Implement a Uniform System of Regulation for VoIP Services.

One import of *Vonage* and its prodigy is that there should be a single national policy to ensure the continued development of advanced and Internet-related services. As noted in Section I.A., *supra*, none of the final orders in these cases employs the same rationale or reaches the same conclusion with respect to applying *Vonage* to VoIP-based intrastate tariff disputes. If the local ILECs ultimately prove successful in seeking to impose their extremely high-priced intrastate tariffs, the end-result will be a dual system of pricing: one low rate for major carriers/localities and a second high rate for the smaller, more rural carriers/localities. Thus, in the absence of preemption by this Commission, VoIP services will not only be subject to multiple disparate interpretations of *Vonage*, but also to multiple pricing regimes imposed under those varying interpretations.

Moreover, due to the conflict between these higher prices and the consumer-friendly pricing of VoIP services, carriers of VoIP traffic may ultimately be forced into denying traffic transmission in rural areas. This Commission's emphasis on the

⁶¹ See, e.g., *Vonage Holdings Corp. v. Nebraska Public Service Commission*, 564 F.3d 900, 905 (8th Cir. 2009).

competitive provision of all rural services (including broadband services) over the past two years strongly militates against this result.⁶²

As of the time of this petition's filing, each of the state proceedings in question remains in flux. In New Hampshire, the order to pay all ICO bills or have traffic blocked was suspended in December due to Global's motion for reconsideration.⁶³ In Pennsylvania, an opinion has been published,⁶⁴ but no final order has issued. In Maryland, the ALJ's decision was favorable to Global, but the staff supported the ICO's appeal, urging Global should pay all intrastate tariff bills regardless of the presence of nomadic VoIP. Briefing has just been completed, so the matter is now before the full commission.

C. **This Commission Clearly Expressed its Desire to Protect Both Providers and "Connecting Carriers" of VoIP Traffic from Tariff Charges.**

This Commission has declared on three occasions that intermediate carriers of VoIP traffic are not subject to access tariffs, but only to negotiated charges under 47 U.S.C. § 251.⁶⁵

In 2004, the Commission opened a proceeding to determine whether and to what extent IP telephony services should pay access charges. However, events quickly

⁶² See generally <http://www.fcc.gov/cgb/rural/>

⁶³ DT 08-028. *Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. Joint Petition for Authority to Block the Termination or Traffic from Global NAPs, Inc., Suspension or Order*, issued December 15, 2009.

⁶⁴ *Chairman's Motion*.

⁶⁵ See Section I.D., *supra*; FCC Press Release, November 26, 2004; *Time Warner, supra* at para. 17 (March 1, 2007); *IP-in-the-Middle, supra* at n. 92.

outpaced that project. That year, SBC (now AT&T) sought FCC approval of a tariff that would explicitly and automatically subject VoIP traffic to switched access charges (at a somewhat reduced rate). The Commission withheld approval. Only when SBC confirmed that its tariff was purely optional did the Commission finally approve the optional tariff (though it does not appear that SBC ever actually used it).

In connection with the approval, the chairman of the FCC issued a press release to clarify the understanding and ensure the industry was aware of the agency's view that switched access tariffs should not apply to VoIP traffic unless and until the FCC said so.

The Press Release states:

Should we conclude that this [optional] tariff is being used to justify the imposition of traditional tariffed access charges on VoIP providers or to discriminate against SBC's competitors, the Commission will take appropriate action including, but not limited to, initiating an investigation of SBC's interstate tariff and any other tariff that proposes similar terms. Nothing in this tariff should be interpreted to force a set of compensation relationships on VoIP providers and their connecting carriers at this commission or in other venues. FCC Press Release, November 26, 2004. (Emphasis supplied).

This press release is especially significant because the Commission expressly exempted both VoIP providers "and their connecting carriers" (like Global) from traditional access charges, and warned against contrary policies "in other venues," which can only be interpreted as involving state commissions. Thus, the only rational conclusion to be drawn from this statement is that interconnecting carriers are entitled to the access charge immunity extended to VoIP providers.

This result is both fair and logical due to the fact that intermediaries are unable to provide estimates of interstate use or origination data on calls. The inability to generate

this information renders intermediaries particularly susceptible to victimization by intrastate tariff-hungry ICOs.

Moreover, the conclusions of the state commissions that VoIP providers may be exempt from access charges but that the interconnecting carriers that carry their traffic towards termination are not, directly contradicts the FCC's decision in *Time Warner*. There, this Commission correctly recognized that a demand by ICOs that interconnecting carriers of VoIP traffic interconnect only by purchasing access facilities would violate federal law and public policy. The Order discusses the critical importance to competition and to the deployment of new technology of "ensuring the protections of section 251 interconnection" are available to wholesale LECs serving VoIP providers:

We further find that our decision today is consistent with and will advance the Commission's goals in promoting facilities-based competition as well as broadband deployment. Apart from encouraging competition for wholesale services in their own right, ensuring the protections of section 251 interconnection is a critical component for the growth of facilities-based local competition. Moreover, as the Commission has recognized most recently in the VoIP 911 Order, VoIP is often accessed over broadband facilities, and there is a nexus between the availability of VoIP services and the goals of section 706 of the Act. *Id.*, para. 13.

This general rule and underlying rationale has been recognized by the Maryland ALJ, but rejected in New Hampshire and Pennsylvania.⁶⁶ Thus, there is both prior justification and a clear and present need for a preemption order against imposition of intrastate access charges on VoIP forwarders.

D. The Commission has the Right to Preempt State Actions that Impose Barriers to Competition.

Section 253 of the federal Communications Act provides for the "Removal of Barriers to Entry." This section of the Act states:

⁶⁶ See discussion in Section I.C., *supra*.

[253](a) IN GENERAL. - No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service,

(b) STATE REGULATORY AUTHORITY, - Nothing in this section shall affect the ability of a State to impose, on a competitive neutral basis. . . requirements necessary to . . . protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers,

(d) PREEMPTION, - If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such a violation or inconsistency,

The relief sought by the ILECs involved in state actions with Global and the resulting state commission orders would restrict both intrastate and interstate competition in multiple respects, and so fall within the express Congressional preemption mandate. Although 47 U.S.C. § 253, by its very terms, only applies to “telecommunications services,” this Commission may nonetheless preempt state commissions under similar logic to that employed in *Time Warner Cable* because parallel rationales underlie the application of 47 U.S.C. §§ 251 and 253 to interconnected VoIP companies. Thus, the Commission need not classify interconnected VoIP as either a “telecommunications” or “information service” for the purposes of applying its preemptive powers under this section.

The order of the New Hampshire PUC and the proposal of the plaintiff in Pennsylvania have been that if Global fails to pay every penny of the in-state tariff

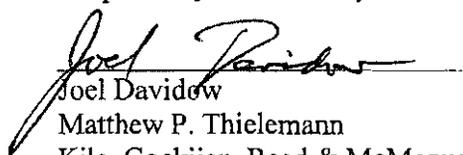
charges for which it has been billed, it should be expelled from the state.⁶⁷ Allowing or endorsing this expulsion produces the anomalous result that a dispute with a recipient of 1% of a carrier's traffic could lead to a ban on transmitting any interstate calls to the other 99% of the carrier's traffic recipients. That ruling turns this Commission's ruling in *Vonage* on its head. There, this Commission found under the impossibility doctrine that VoIP traffic must be presumed to be entirely interstate. 47 U.S.C. § 253 was drafted to prevent exactly this form of state action. Thus, this Commission should preempt the state commissions from blocking the transmission of Global's traffic, including interconnected VoIP.

CONCLUSION

Global appreciates the Commission's reluctance to engage in piecemeal pronouncements setting compensation rules for Internet-related traffic, but believes this petition should not be regarded as such a request. Global seeks only to have the Commission reaffirm and enforce rulings it made in 2004 that have been well understood and correctly followed by some state commissions and administrative law judges but distorted or disregarded by other state commissions and/or their staffs. Further, foreclosing the states once and for all from seeking to impose access charges on nomadic VoIP and its interconnecting carriers will better clear the way for a unitary intercarrier compensation solution orchestrated by this Commission.

⁶⁷ See, e.g., DT 08-028. *Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. Joint Petition for Authority to Block the Termination or Traffic from Global NAPs, Inc.*, Order No. 25,043 issued November 10, 2009.

Respectfully submitted by


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Dated March 5, 2010

CERTIFICATE OF SERVICE

I, Matthew Thielemann, do hereby certify that the foregoing **PETITION FOR DECLARATORY RULING AND ALTERNATIVE PETITION FOR PREEMPTION TO THE PENNSYLVANIA, NEW HAMPSHIRE AND MARYLAND STATE COMMISSIONS** was hand delivered on this the 5th day of March 2010 to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554


Matthew P. Thielemann

EXHIBIT A

9994MAN1
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2
3 MANHATTAN TELECOMMUNICATIONS CORP.,
3

4 Plaintiff,

5 v.

08 CV 3829 (JSR)

6 GLOBAL NAPS, INC.,
7

7 Defendant.
8
8 -----x

9
9 New York, N.Y.
10 September 9, 2009
10 11:20 a.m.
11

12 Before:

13 HON. JED S. RAKOFF

14 District Judge
14

15 APPEARANCES

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21

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23
24
25
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(212) 805-0300

999SMAN2 Masuret - direct

- 1 A. Yes. I graduated from Boston College High School and then
2 on to Boston College where I received a BS in business.
3 Q. And how long have you been in the telecommunications
4 business?
5 A. I have been in the telecom since 1990.
6 Q. Approximately 19 years?
7 A. Yes.
8 Q. Were they all with Global Naps?
9 A. No, they were not.
10 Q. Who else did you work for in telecom?
11 A. I worked for U.S. Telecenters for approximately 2 years. I
12 went on to work for Ray Calvin Datacom for approximately 3
13 years. I went on to U.S. Robotics for approximately 2 years,
14 and that should bring us up to May '98 where I went to work for
15 Global Naps.
16 Q. What are your duties at Global Naps?
17 A. I do the selling of the Global Nap products to the customer
18 base.
19 Q. What kind of telecommunications business is Global Naps in?
20 A. Currently I would say that we have two product lines. The
21 first would be an inbound application where we provide
22 telephone service or DID service, which stands for direct
23 inward dialing service, to Internet service providers seem to
24 be the company that is most attracted to that product. And the
25 second product line could be described as a forwarding of

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999SMAN2

Masuret - direct

1 voiceover IP traffic.

2 Q. Is the first business sometimes called dial-up Internet?

3 A. Yes, the application is dial-up Internet that would go over
4 that product, yes.

5 Q. And in regard to your voiceover Internet protocol business,
6 your VoIP business, who are your customers? Who pays you for
7 that forwarding?

8 A. The customer base I would refer to as enhanced service
9 providers.

10 Q. And how many customers do you have for your whole income as
11 a VoIP program?

12 A. It has ranged over the course of the past many years but
13 it's always been a relatively small number. So I would say
14 approximately 85 to 95 -- 85 to 90 percent of our business
15 comes from three of the enhanced service providers and there
16 are approximately two or three additional enhanced service
17 providers or VoIP carriers, pure VoIP carriers that account for
18 the rest.

19 Q. And let's start with your top three. Who are they?

20 A. The top three would be Transcom, COMM Partners --

21 Q. Would you spell that?

22 A. COMM Partners. I believe they are referred to in this case
23 as TPC, the letters TPC, and the last company of the big three
24 would be Point One, also known as UNE-Point.

25 Q. What is the central location of Transcom?

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999SMAN2

Masuret - direct

- 1 A. Texas.
- 2 Q. What is the central location of COMM Partners?
- 3 A. Las Vegas.
- 4 Q. What is the central location of Point One?
- 5 A. Texas.
- 6 Q. Could you describe the remainder of your customers, the
7 smaller ones, in terms of name and location?
- 8 A. Sure.
- 9 NTERA is no longer a customer now. They went bankrupt
10 I would like to approximate maybe 3 or 4 years ago. I can't be
11 exactly sure of that date. We also terminate traffic for Magic
12 Jack, also known as YMAX, and we also terminate traffic for
13 Broad Voice. There is one more account that has turned up a
14 couple of months ago and their name is Raynwood Communications.
- 15 Q. Do you have any end-user customers, that is, businesses or
16 people who want to make telephone calls for purposes of your
17 VoIP business?
- 18 A. No, we do not have any direct end users if that is what you
19 are asking.
- 20 Q. Do you deliver any calls in which you were paid by minute
21 of use as you met with them?
- 22 A. We offer a flat rate product.
- 23 Q. And what do you mean by a flat rate product?
- 24 A. Similar to, say, a residential product that you may have at
25 home where you pay a flat monthly price and you can terminate

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999SMAN2

Masuret - direct

- 1 or make as many phone calls as you would like for that dollar
2 amount. We provide a product to the enhanced service provider
3 where they sign up for a specific amount of simultaneous
4 sessions, which is the ability to make a single phone call, and
5 they would buy them typically in increments of 672, which is
6 the number of channels or DS3 circuit, and they would pay a set
7 price for that, ability to make that many simultaneous calls,
8 and they could either make one call or 10 million calls.
9 Q. Are the calls made in large numbers in more than 1 million
10 calls?
11 A. Yes, they are typically made in large numbers.
12 Q. What parts of the country do you serve once you are doing
13 this service?
14 A. We currently provide this outbound service to I guess a
15 good way to describe it would be the New England territories,
16 so from Maine, New Hampshire and Vermont, down south until
17 Pennsylvania, Virginia. We also provide service in Cleveland
18 as well.
19 I can list the territories if that is what you would
20 like.
21 Q. In about how many states is that?
22 A. Approximately ten right now.
23 Q. Do you have facilities for switching this traffic?
24 A. Yes, Global Naps has a large network that consists of
25 telephone switches and fiber optic equipment.

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999SMAN2

Masuret - direct

1 Q. Where are your major switching locations?

2 A. The major facilities that we bring traffic back into where
3 our switches are located, there are three main areas currently.
4 They are Quincy, Massachusetts, New York, New York, and Reston,
5 Virginia.

6 Q. When you speak of carrying voiceover Internet traffic, do
7 you carry, for want of a better word, more than one kind of
8 VoIP?

9 A. I would say that voiceover IP traffic can come in different
10 flavors, so I would describe the first type of voiceover IP as
11 a nomadic VoIP application where the user -- the most common
12 name that you might hear would be a Vonage application where
13 the user can get a phone number that is a virtual phone number.
14 It does not have to be affiliated with any specific location
15 where they would be making a phone call from. So that is why
16 we call it nomadic in nature.

17 The second type of voiceover IP application I would
18 refer to as more of a static application and a cable company
19 would probably fall into that sort of a category where the
20 physical location making the call is more stationery.

21 And the third type of voiceover IP would be more of
22 the conversion to IP takes place in the middle of a call and at
23 the same time because all the traffic that is associated with
24 Global Naps comes to us from an enhanced service provider, it's
25 that core or that middle piece, this IP, which is where the

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999SMAN2 Masuret - direct

1 enhancement of a call takes place. So I would refer to that as
2 voiceover IP, IP in the middle where the call is enhanced.

3 Q. Going back to nomadic VoIP, other than the fact that you
4 can have phone numbers in more than one place, what is the
5 relevance of things called adapters?

6 MR. KLEIN: Objection, your Honor, foundation.

7 Q. Is it part of your business to know what an adapter is?

8 A. I mean, I come across it, yes.

9 Q. What is the relevance --

10 THE COURT: What is it? Let's start with that.

11 Q. What is an adapter?

12 A. An adapter can come in the form of a physical
13 square-looking device or an adapter can really be nowadays an
14 IP enabled device. It looks just like a cell phone but it's a
15 SIP phone, session Internet protocol -- session initiation
16 protocol I believe it is. And the use of this device allows a
17 user to make phone calls anywhere in the world as long as they
18 have access to Internet protocol or IP, so they could be in
19 Europe and as long as they have access to Internet band width,
20 whether they are at a hotel or a cafe, or where ever they may
21 be, as long as they have the adapter, whether it's the physical
22 square device or a SIP enabled device such as a phone, they can
23 make a phone call and they can call wherever their provider
24 will allow them to.

25 THE COURT: I understand.

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999SMAN2

Masuret - direct

1 Go ahead.

2 Q. What nomadic VoIP companies have you personally worked with
3 or become personally aware of in the conduct of your business
4 that you are carrying the traffic?

5 A. I am aware that we carry the traffic of Vonage, Magic Jack
6 and Broad Voice.

7 (Continued on next page)

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9994MAN3

Masuret - direct

1 BY MR. DAVIDOW:

2 Q. How did you become aware, can you name at least one way in
3 which you became aware that you were carrying the traffic of
4 Vonage?

5 A. Sure. There are several ways. One way where I became
6 aware that Vonage was the traffic that we were carrying on the
7 network being handed to us from a hand service provider is over
8 the course of account management, so as part of selling, I
9 manage the accounts, and when a customer has a problem, a
10 problem with the product that we are delivering to them,
11 meaning calls are not successfully completing for one reason or
12 another, it occasionally gets escalated up.

13 In the case of Vonage I have been on phone calls with
14 Vonage, our ESP customer, our network operations center and
15 myself as well as the actual sales rep that handles it. His
16 name is David Shaw. So I am aware that Vonage's calls were on
17 our network. That's one way.

18 Q. Can you recall any particular one of your ESP customers who
19 was on the same call concerning trouble shooting for Vonage
20 calls?

21 A. Yes.

22 Q. Who was that?

23 A. CommPartners.

24 Q. How were you aware that you carry the VoIP calls of
25 BroadVoice?

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9994MAN3

Masuret - direct

- 1 A. In the case of BroadVoice that traffic is sent directly to
2 us.
3 Q. You have a direct business relationship with BroadVoice?
4 A. That's correct.
5 Q. Do you terminate BroadVoice traffic to, for instance, New
6 York?
7 A. Yes.
8 Q. And New Jersey?
9 A. Yes.
10 Q. Essentially to all ten states?
11 A. We terminate BroadVoice traffic to all of the areas LATAs
12 states that we provide coverage in.
13 Q. How do you become aware that you are transmitting the VoIP
14 traffic of Magic Jack?
15 A. We have a direct relationship with Magic Jack also known as
16 YMAX.
17 Q. Can you describe that relationship other than the word
18 direct?
19 A. Yes. So, they contract for services. It's not a written
20 contract currently; it's an oral contract. It's been going on
21 I believe since I would like to say the March timeframe of
22 2009, so it's a fairly recent relationship. So they purchase
23 these outbound services from us and they pay us on a monthly
24 basis. In the process of that you have to turn up and
25 establish interconnections with your customers.

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EXHIBIT B