PLUNKETT COONEY

April 2, 2010

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

<u>Via Electronic Filing</u>

Re: In the Matter of Global NAPs Petition for Declaratory Ruling and Alternative Petition for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions
WC Docket No. 10-60

Dear Ms. Dortch:

Enclosed for filing are the Comments of the Telecommunications Association of Michigan in the above-captioned matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Michael A. Holmes

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MAH/amh

Enclosure

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

In the Matter of	)	
	)	
Global NAPS Petition for Declaratory Ruling And Alternative Petition for Preemption of The Pennsylvania, New Hampshire and Maryland State Commissions	)	WC Docket No. 10-60

COMMENTS OF THE TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN

TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN
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Dated: April 2, 2010

INTRODUCTION AND SUMMARY

In response to the request of the Federal Communications Commission (Commission) in the Public Notice released on March 18, 2010 in the above-referenced docket, the Telecommunications Association of Michigan (TAM)[1] submits the following comments on the Petition for Declaratory Ruling and Alternative Petition for Preemption to the Pennsylvania, New Hampshire, and Maryland State Commissions ("Petition") filed on behalf of Global NAPs and its affiliates (collectively, Global). In the Petition, Global, a wholesale telecommunications service provider, asks the Commission to "clarify" its prior orders by making four separate declarations regarding "the tariff treatment of Voice Over Internet Protocol (VOIP) traffic terminated to end users of interconnected LECs through Global."[2] A common theme of each of the separate declarations requested by Global is that VOIP traffic originated by the VOIP providers which are customers of Global should be exempt from all access charges – both interstate and intrastate.

TAM respectfully disagrees with this assertion. The Commission should confirm that all inter-exchange IP/PSTN traffic, regardless of the format, i.e., circuit switched or IP based, sent to the interconnected LEC[3] for termination to end users on the LEC's public switched telephone network (PSTN) is subject to terminating access charges.

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[1] TAM is a trade association whose principal members are 37 incumbent local exchange companies (ILECs) providing local exchange and other telecommunication services in different areas throughout Michigan. All of TAM's ILEC members, other than AT&T Michigan, serve exclusively rural and small town areas of Michigan.
[2] Global Petition, p 1
[3] The interconnection by most CLECs with rural ILECs like the TAM members is indirect by means of interconnection trunks for meet point arrangements with non-rural ILECs.

The Traffic Delivered by Petitioners for Termination on the PSTN is and Should Remain Subject to Access Charges.

The IP based traffic delivered by Petitioners to the LECs for termination to end users on the PSTN arrives in the same manner and requires the use of the same facilities to be terminated as circuit switched traffic. From the terminating LEC's prospective, the functions performed to terminate these calls to the end users are the same and the same network costs are incurred to perform those functions. Those calls are and continue to be subject to terminating access charges, either intrastate or interstate.

To treat such calls otherwise is to elevate form over substance and create an artificial distinction for regulatory purposes. The Commission has previously held that the regulatory status of the service provided to the end user (calling party) by the customer of the wholesale provider, such as Global, is irrelevant to the rights and duties of that wholesale provider, vis-à-vis, the LEC to which the traffic is delivered for termination.[4] That principle applies equally to the obligation of the wholesale provider to pay access charges to the LEC which terminates the call to its end user on the PSTN.

Granting the relief requested in the Petition would create serious problems of asymmetrical and discriminatory treatment of similar traffic. While Global requests the Commission to declare VOIP to PSTN traffic exempt from access charges, the same is not true for PSTN to VOIP traffic.[5]

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[4] *Time Warner Cable's Request For Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under § 251 Of The Communications Act of 1934, As Amended, To Provide Wholesale Telecommunication Services To VOIP Providers, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) ("Wholesale Telecommunication Service Order),* ¶ 15.

[5] See various comments in WC Docket No. 03-266

Moreover, a declaration that VOIP to PSTN traffic is not subject to terminated access charges would have profound consequences for universal service support to rural ILECs. The Commission has repeatedly recognized the importance of access revenues to ILECs to continue to provide affordable basic local exchange service to their end users.[6] The loss in terminating access revenues to rural ILECs which would result from granting the Petition would create further need to increase federal universal service support.

CONCLUSION

TAM recognizes that there are a number of proceedings which have been initiated by or are pending before the Commission seeking comprehensive reform of the Commission's intercarrier compensation regime. Indeed, the Commission has identified comprehensive reform of intercarrier compensation as a key step needed in the implementation of the National Broadband Plan.[7] Until such comprehensive reform is completed however, the Commission should clarify that all inter-exchange IP/PSTN traffic sent to an interconnected LEC for termination to end users on the LEC's PSTN is subject to terminating access charges, regardless

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[6] See *e.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges,* First Report and Order, 12 FCC Rcd 15982, 15996 ¶ 31 (1997) (*Access Charge Reform Order*) ("By providing incumbent LECs with a stream of subsidized revenues from certain customers, the system [of implicit access charge subsides] allows regulators to demand below-cost rates for other customers, such as those in high-cost areas."); Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service,* 18 FCC Rcd 22559, 22571 ¶ 22 & n. 55 (2003) *("Universal Service Remand Order")* ("About half the states report setting intrastate long distance access charges above cost to subsidize basic local service."); *id* ("substantial amounts of universal service support [are] built into most state rate designs."); Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, 9623 ¶ 31 (2001) *("Intercarrier Compensation NPRM")* (noting that "in order to encourage universal service, this Commission and state regulators historically set access charges above cost")

[7] Connective America: The National Broadband Plan delivered to Congress by the Commission on March 16, 2010, Recommendation 8.7, p. 148

of the format in which the traffic was originated. To the extent the relief sought by Global in the Petition is inconsistent with that principle, the Petition should be denied.

Respectfully submitted,

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