

**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 *

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WC Docket No. 10-60

COMMENTS OF CORE COMMUNICATIONS, INC.

Core Communications, Inc. (“Core”) hereby submits its comments in the above-styled proceeding, in accordance with Public Notice issued by the Commission on March 18, 2010. The Public Notice seeks comment on the Global NAPS (“Global”) Petition for Declaratory Ruling and for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions, (“Petition”) filed at the Commission on March 5, 2010.

If granted, Global's Petition would wipe out the very few state commission decisions clarifying LECs' duty to compensate other LECs for the traffic termination function, in the VOIP context, without replacing those decisions with a clear federal mandate to pay. Because some state commissions have stepped forth in an effort to hold Global accountable for the traffic it delivers to terminating carriers, Global now seeks “preemption” and the imposition of federal law. But importantly, the prevailing state of federal law with respect to intercarrier compensation (and VOIP traffic in particular) is less than perfectly clear. Accordingly, the practical result of Global's Petition would be that Global will continue to claim complete immunity from any form of intercarrier compensation (which is precisely what its Petition requests), even as it continues to use terminating carriers' networks. Commission approval of Global's Petition (without further clarification of the federal intercarrier compensation system) will only aid Global in its quest for immunity.

The most notable facet of Global's Petition is that, while it claims federal preemption has been or should be imposed, it fails to clearly acknowledge any federal rule establishing a mechanism for payment. However, simply because there is no federal rule exactly on point with respect to the specific blend of telecommunications Global handles, does not mean that there is a void in the law whereby Global can terminate its traffic for free. Under the Communications Act, 47 U.S.C § 251, all telecommunications are compensable under the reciprocal compensation regime, 47 U.S.C. §§ 251(b)(5) and 252(d)(2), unless they fall within the access charge exclusion found in section 251(g). 47 U.S.C. § 251(g).

As the Commission has found:

We find that the better reading of the Act as a whole, in particular the broad language of section 251(b)(5) and the grandfather clause in section 251(g), supports our view that the transport and termination of all telecommunications exchanged with LECs is subject to the reciprocal compensation regime in sections 251(b)(5) and 252(d)(2).

Notwithstanding section 251(b)(5)'s broad scope, we agree with the finding in the ISP Remand Order that traffic encompassed by section 251(g) is excluded from section 251(b)(5) except to the extent that the Commission acts to bring that traffic within its scope. " Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, 2008 WL 4821547 (F.C.C.)(Released: November 5, 2008)(" *Order on Mandamus*"), at ¶¶ 15-16.

But there is no indication in Global's Petition that it has ever sought to enter into a reciprocal compensation arrangement. Instead, Global refers vaguely to the possibility of "arms-length negotiations," Petition, at 21, which, without more, amounts to a euphemism for nonpayment and free use of other carriers' networks.

Although styled as a request for "clarification," Global's petition actually seeks an anarchic scenario in which federal law is found to "preempt" state law, but there is no clear federal requirement to compensate terminating carriers. The fundamental problem inherent in Global's petition (as well as

its advocacy before the state commissions) was identified by the Southern District of New York in a decision dated March 31, 2010:

The tension inherent in Global's position is obvious: defendant contends that it is not subject to MetTel's filed tariff rates, while arguing that the statutory rate system precludes the unjust enrichment claims. The Court rejects Global's contention as legally unsupported. Findings of Fact and Conclusions of Law, *Manhattan Telecommunications Corp. v. Global NAPS, Inc.*, U.S. District Court for the Southern District of New York, Case No. 08 Civ. 3829 (JSR), at 6-7. ("*Met-Tel*") A copy of this document is attached hereto.

The court correctly concluded that Global is not entitled to leverage potential gaps in the federal intercarrier compensation scheme to escape all liability for payment. The court found that Global was subject to state common law unjust enrichment claims, and cited the Communications Act provision, 47 U.S.C. § 414, preserving such claims. *Met-Tel*, at 7.

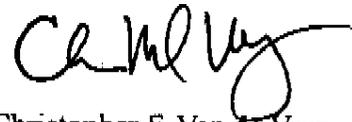
While Core takes no position at this time on the specifics of the court's reasoning, the thrust is clearly correct as a matter of law and policy. Carriers should not and cannot receive free service by shifting forums and exploiting uncertainty in the law. As the Pennsylvania Public Utility Commission recently stated in another case involving Global:

Costs indeed attach to the termination of *any type of traffic* that [the plaintiff LEC] receives, and such costs do not "magically disappear" when the traffic includes VoIP calls... Opinion and Order, *Palmerton Telephone Company v. Global NAPs South, Inc. et al.*, Pa. P.U.C. Docket C-2009-2093336, at 25 (February 11, 2010)(emphasis in the original).

Core welcomes any Commission effort to restate or clarify the fundamental principles of intercarrier compensation as they apply to new scenarios and new disputes. The Commission could address these issues in a number of existing dockets, including the *IP-Enabled Services* proceeding. See, Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 , at ¶ 61 (released March 10, 2004)("As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the

traffic originates on the PSTN, on an IP network, or on a cable network.”) But the Commission should reject Global's attempt to override sensible state commission orders that fill the gaps in federal law, and simply hold Global accountable for the costs it imposes on other carriers' networks.

Respectfully submitted,



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