

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

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 VERIZON

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The Petition filed here by Global NAPs (“GNAPs”) highlights several issues that require prompt Commission action regarding the regulatory rules that apply to Voice over Internet Protocol (“VoIP”) services and traffic.² A number of the specific requests included in GNAPs’ Petition are part of its continuing quest to game the current intercarrier compensation rules, however, and should be denied.

As an initial matter, the Commission should reaffirm, once and for all, that all VoIP services — regardless of provider or technology — are interstate for jurisdictional purposes and are subject to the Commission’s exclusive jurisdiction.³ The Commission should also clarify the regulatory classification of VoIP services and establish what the intercarrier compensation regime is for VoIP traffic on a going-forward basis. The Commission also should proceed to

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Petition, *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 (filed Mar. 5, 2010) (“Petition”).

³ See, e.g., Comments of Verizon and Verizon Wireless at 5-21, WC Docket Nos. 05-337 *et al.*, CC Docket Nos. 96-45 *et al.* (filed Nov. 26, 2008); Comments of Verizon Telephone Companies at 31-42, *IP-Enabled Services*, WC Dockets No. 04-36 & 04-29 (filed May 28, 2004).

expeditiously complete its broader intercarrier compensation reform efforts by adopting a single, uniform regime that governs all traffic and all providers.⁴

Many of the specific requests in GNAPs' Petition, however, are just the latest chapter in its long history as a regulatory arbitrageur. GNAPs now asserts that the traffic it carries supposedly includes some amount of either IP traffic or TDM traffic that it has "enhanced" in some way (such as by inserting white noise on the line). Based on that assertion, it claims to owe no intrastate access charges — and, in many cases, to owe nothing at all — to the carriers that terminate *any* of the traffic that it carries, including TDM traffic. But even if some amount of the traffic it carries is VoIP, a sizeable portion appears to be traditional TDM traffic or, at best, run-of-the-mill "IP-in-the-middle" traffic. There is no question that traffic is subject to either intrastate or interstate access charges, depending on the locations of the parties to the call. GNAPs is simply trying to employ the Commission's good offices to make it all but impossible for other carriers and state commissions to identify TDM traffic or to require GNAPs to pay the access charges that unquestionably are due on that traffic. There is no basis for the Commission to entertain any of these requests, and they should be denied.

ARGUMENT

Although GNAPs correctly notes that the Commission has already found VoIP to be inseverable and, therefore, jurisdictionally interstate, the Petition seeks a series of rulings that would exempt GNAPs from whatever intercarrier compensation obligations apply when it delivers any traffic, VoIP or otherwise, to local exchange carriers for termination. For example, GNAPs seeks a ruling that would exempt its TDM-originated traffic from appropriate access

⁴ See FCC, *Connecting America: The National Broadband Plan* 148 (Mar. 16, 2010) (the Commission "should adopt a framework for long-term intercarrier compensation (ICC) reform that creates a glide path to eliminate per-minute charges").

charges, simply because GNAPs supposedly intermingles some VoIP traffic with its TDM traffic. GNAPs seeks another ruling that carriers cannot use telephone numbers as a proxy for determining the jurisdiction of any type of traffic, including TDM traffic, even though no better proxy exists. And GNAPs seeks a ruling that would exempt it from access charges on all of its traffic, including its TDM traffic, simply because it is supposedly mixing some VoIP traffic in with its TDM traffic. GNAPs also argues in the alternative that the Commission should preempt state commissions from determining the appropriate compensation owed on any of GNAPs' traffic, including its TDM traffic, simply because GNAPs claims to intermingle some VoIP traffic with its TDM traffic. The Commission should not entertain any of these requests, which are merely the latest in GNAPs' long-running campaign to game the current regulatory regime.

A. The Commission Should Reaffirm Its Conclusion That All VoIP Traffic is Jurisdictionally Interstate and Subject to this Commission's Exclusive Jurisdiction

The GNAPs Petition raises intercarrier compensation issues that are inextricably intertwined with the question of jurisdiction over VoIP and IP-enabled services. Therefore, it is necessary for the Commission to confirm that all VoIP and IP-based services, whether nomadic or facilities-based, and regardless of the provider or technology employed, are interstate services subject to the Commission's exclusive jurisdiction, including for purposes of determining the appropriate intercarrier compensation for VoIP traffic. This is the conclusion the Commission previously reached in *Vonage Order*. There, although the Commission was specifically presented with a state attempt to regulate a nomadic VoIP service, the Commission made clear that its conclusions about the interstate jurisdiction of VoIP services applied equally to "cable companies" and other "facilities-based providers" of so-called "fixed" VoIP services.⁵

⁵ *Vonage Order* ¶ 25 n.93, 32.

Nonetheless, some persist in claiming that states retain authority to regulate the entry, rates, and other terms and conditions on which facilities-based providers offer VoIP and IP-based services.⁶ This claim is wrong. The Commission has already determined that all VoIP and IP-enabled services, regardless of provider, are jurisdictionally interstate. To avoid confusion going forward, the Commission should reaffirm that legal conclusion here.

Moreover, as a policy matter it makes sense for the Commission to confirm the interstate nature of VoIP and IP-enabled services as it begins to implement the National Broadband Plan and a strategy to promote widespread deployment of the broadband networks that support VoIP and other IP applications. Broadband platforms and the IP-based services that ride over those platforms are being rolled out over wide geographic areas without regard to state boundaries. This approach to deploying broadband and IP networks and services — and uniform, federal rules for those networks and services — allows these networks and services to be deployed with common systems, platforms, and processes, and results in efficiencies that provide enormous cost savings. In contrast, state or local regulation would require these platforms and services to be redesigned and re-engineered to conform to disparate state and local requirements, which would eliminate those efficiencies and increase costs. A piecemeal, localized approach deploying broadband and IP networks and services would undermine widespread deployment and adoption of broadband and the IP services that ride over them.

In addition, the Commission must also resolve once and for all the proper regulatory classification of VoIP and other IP services as either telecommunications or information services. Verizon has supported classifying VoIP and IP-based services as information services

⁶ See, e.g., Comments of National Association of Regulatory Utility Commissioners, *IP-Enabled Services*, WC Docket Nos. 04-36 *et al.*, at 22 (Nov. 26, 2008) (arguing that “there is no question it is possible to separate intrastate non-nomadic facilities-based VoIP calls from interstate calls” and that, therefore, “the FCC has no jurisdiction over such intrastate calls”).

going forward in the context of comprehensive intercarrier compensation reform, and that approach continues to make sense.⁷ Lack of clarity on the classification issue has persisted for many years and has resulted in costly disputes (in court and elsewhere) between providers and state and local regulators about which regulatory system applies to IP-based services. This significant open question has deterred competition and market entry, and discouraged investment in and deployment of broadband and IP networks and services.

In the absence of industry-wide Commission rulings confirming that all VoIP and IP-enabled services are jurisdictionally interstate and resolving the regulatory classification of these services, the industry and regulators will continue to face an uncertain landscape that will hinder the roll-out of next generation communications services that consumers expect and demand.

B. GNAPs' Specific Requests Are an Attempt to Further the Latest Effort in Its Long Running History of Gaming the Regulatory Process and Refusing To Pay Carriers What It Owes

GNAPs has a lengthy track record as an arbitrageur that attempts to profit by gaming the existing regulatory regime. As the California Public Utilities Commission has found, GNAPs has a “history of expressing unconventional interpretations of applicable telecommunications law and regulations in order to evade paying access and other network charges.”⁸

GNAPs' initial strategy involved traffic bound for Internet service providers (ISPs). Because ISP-bound traffic only flows in one direction, a carrier with a high proportion of ISP

⁷ See, e.g., Verizon Comments, at 25-27. As Verizon has previously explained, those classifications do not alter carriers' ability to interconnect and exchange traffic under the Act. See Ex Parte Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, CC Docket No. 01-92, WC Docket No. 04-36, at 1-2 (Oct. 3, 2008).

⁸ *Cox Calif. Telecom, LCC v. Global NAPs California, Inc.* Case 06-04-026, Order Modifying Decision (D.) 07-01-004 and Denying Rehearing of Decision as Modified (Decision 07-08-031) (Aug. 23, 2007), at 8 n.18.

customers stood to “gain a windfall in a reciprocal compensation scheme.”⁹ The Commission has emphasized that these arrangements are “classic regulatory arbitrage,” which creates “incentives for inefficient entry” and drives prices “to uneconomical levels.”¹⁰ GNAPs ultimately lost before several different courts and state commissions, but not before it reaped hundreds of millions of dollars in windfall payments through its ISP-bound traffic schemes.

GNAPs’ next strategy was simply refusing to pay other carriers for the services they provided. As a result, GNAPs currently faces judgments totaling nearly \$100 million in courts across the country, including a \$57 million judgment in Massachusetts in favor of Verizon¹¹ and a \$37 million judgment in North Carolina in favor of AT&T.¹²

To frustrate those creditors and others, GNAPs has structured its operations in a manner designed to conceal its assets. The Seventh Circuit Court of Appeals has noted that “the corporate structure that [GNAPs’ founders] have created appears to be designed to keep all its assets in corporations that have no liabilities and all its liabilities in corporations that have no assets.”¹³ Yet another court has refused to grant a stay that would “further [GNAPs’] interests in avoiding satisfaction of a multi-million dollar judgment.”¹⁴

⁹ *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 64 (1st Cir. 2006) (emphasis added); see also *Global NAPs, Inc. v. FCC*, 247 F.3d 252, 260 (D.C. Cir. 2001) (noting GNAPs’ attempts to “game the [then-]existing rules” regarding ISP-bound traffic).

¹⁰ *Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶ 21 (2001).

¹¹ See *Global NAPs Inc. v. Verizon New England, Inc.*, Nos. 02-cv-12489, 05-cv-10079, at 4, 10 (D. Mass. Jan. 22, 2009).

¹² See *Global NAPs North Carolina, Inc. v. BellSouth Telecommunications, Inc.*, No. 04-cv-96, at 17 (E.D.N.C. Mar. 15, 2010).

¹³ *Illinois Bell Tel. Co. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 597 (7th Cir. 2008).

¹⁴ *Global NAPs California, Inc. v. Public Utils. Comm’n of Calif.*, No. 09-cv-1927, at 2 (C.D. Cal., Jan. 12, 2010); (also noting “the plethora of other cases around the country involving [GNAPs]”).

GNAPs typically stonewalls any attempt to track down its assets to satisfy those judgments. One district court has found that GNAPs and its affiliated entities “destroy[ed] bank statements and invoices,” ran “shredding software” on their computers, and provided “inherently incredible” explanations about their business practices.¹⁵ Another court found “unavoidable” “the conclusion that [GNAPs] has willfully destroyed or hidden financial documents in violation of this court’s orders.”¹⁶ The court held that GNAPs “committed a fraud upon this court,” “squandered judicial resources,” and “prejudiced, indeed likely destroyed [the plaintiff’s] ability to prove its case.”¹⁷

GNAPs’ current scheme — the one its Petition effectively asks the Commission to approve — involves disguising the sources of its traffic in order to avoid paying access charges. GNAPs often asserts that it does not owe any intercarrier compensation at all, because the traffic it hands off to a terminating LEC supposedly includes some VoIP traffic and that its TDM traffic has somehow been “enhanced.” But those assertions wither upon further inquiry; as when it is put to its proof, GNAPs is unable to substantiate its claims about the traffic it delivers. For example, the Illinois Commerce Commission found that GNAPs’ documentary evidence about the nature of its traffic was “highly questionable,” “raise[d] far more questions than it answer[ed],” and was “even more suspicious when considered in light of the entirety of the record.”¹⁸ Several other state commissions have reached similar conclusions.¹⁹

¹⁵ Transcript of Proceedings, *Global NAPs Inc. v. Verizon New England, Inc.*, Nos. 02-cv-12489, 05-cv-10079, at 4-5 (D. Mass. Dec. 3, 2008).

¹⁶ *Southern New England Tel. Co. v. Global NAPs, Inc.*, 251 F.R.D. 82, 92 (D. Conn. 2008); (also finding that one of GNAPs’ founders “intentionally lied to the court with the purpose of delaying the discovery of bookkeeping records” at 94).

¹⁷ *Id.* at 96.

¹⁸ *Illinois Bell Tel. Co. v. Global NAPs Illinois, Inc.*, No. 08-0105, at 45 (Ill. Comm. Comm’n, Feb. 11, 2009).

GNAPs typically contends in these cases that the ordinary, TDM-originated traffic it delivers has purportedly been enhanced in some way. For example, GNAPs has asserted that the “removal of background noise, the insertion of white noise, [and] the insertion of computer developed substitutes for missing content” were all “enhancements.”²⁰ But the Pennsylvania Public Utilities Commission properly rejected that contention.²¹ GNAPs’ traffic is, at most, “IP-in-the-middle” traffic, which the Commission has squarely held is not exempt from switched access charges.²²

C. The Commission Should Not Issue the Rulings That GNAPs Requests In Order To Further Its Latest Effort To Game the Current Rules

Several of GNAPs’ specific requests are merely efforts to further its latest attempt to evade paying intercarrier compensation on *any* traffic, including TDM traffic. The Commission should reject these proposed rulings.

GNAPs argues in the alternative that the Commission should preempt certain specific state commission orders.²³ In the *Vonage Order*, the Commission has already established that all VoIP traffic — regardless of provider or technology — is inseverable and, therefore, interstate

¹⁹ See *Hollis Telephone, Inc. et al.*, Order No. 25,043, DT 08-028, at 22-23 (N.H. P.U.C., Nov. 10, 2009) (GNAPs offered nothing beyond “generic, boilerplate language” in support of its argument that its traffic was exempt from access charges); Order, *Request for Expedited Declaratory Ruling*, 2009 WL 2588844 (Ga. P.S.C., July 31, 2009) (rejecting GNAPs’ “unsubstantiated claims” regarding the nature of its traffic); *Palmerton Tel. Co. v. Global NAPs South, Inc.*, No. C-2009-2093336, at 32-33 (Pa. P.U.C., Feb. 11, 2010) (“GNAPs is unable to explain the presence of more conventional intrastate interexchange ILEC, CLEC, and wireless calls in the stream of traffic that it transports and indirectly terminates at [the local ILEC’s] PSTN facilities . . . and GNAPs’ own testimony does not totally exclude their presence”).

²⁰ *Palmerton*, *supra* note 19, at 36.

²¹ *Id.* at 37.

²² *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, ¶¶ 1, 17 (2004) (“*IP-in-the-Middle Order*”).

²³ See *Petition* at 24-33.

for jurisdictional purposes. To the extent a state commission order is inconsistent with this rule, it is preempted. The Commission should reaffirm that prior holding, but there is no basis in the context of the current Petition for preempting states from enforcing their existing rules governing compensation for TDM-based traffic.

1. *The Fact That GNAPs Supposedly Carries Some VoIP Traffic Does Not Exempt It From Paying Appropriate Intercarrier Compensation on TDM-Originated Traffic that GNAPs Carries*

GNAPs seeks a broad rule that would, for all intents and purposes, allow GNAPs to avoid all liability for intrastate access charges on the TDM-originated traffic it delivers. GNAPs proposes that “once a carrier’s traffic has been determined to be primarily [VoIP], the remainder of its traffic must be treated as interstate absent clear proof of purely in-state calls.”²⁴ GNAPs asserts that it mixes some VoIP traffic with TDM-originated traffic and then refuses to pay access charges for any of that traffic, including the TDM traffic.²⁵ But even if the assertion that some of its traffic is VoIP were true, that fact does not exempt GNAPs from paying the appropriate intercarrier compensation that is owed on its TDM traffic. Nor would it exempt GNAPs from complying with the terms of any interconnection agreements it has entered into governing the exchange of either VoIP or TDM traffic.

Accordingly, while it is correct that, for VoIP traffic, the Commission should promptly resolve whether access charges or some other intercarrier compensation regime applies, the request GNAPs makes here must be denied. There is no question whatsoever that access charges are owed for TDM-originated interexchange traffic that one carrier delivers to another for

²⁴ Petition at 2.

²⁵ See *Palmerton*, *supra* note 19, at 36-37.

termination. GNAPs' decision to intermingle supposed VoIP traffic with TDM-originated traffic cannot free GNAPs from its obligations to pay access charges on TDM-originated traffic.

2. *State Commissions and Terminating LECs Should Not Be Precluded from Using Telephone Numbers To Determine Whether Access Charges Are Due*

GNAPs also asks the Commission to “clarify” that telephone numbers may not be used to determine the end points of a call for purposes of assessing intrastate access charges on any traffic, including TDM traffic.²⁶ Once again, GNAPs is just trying to game the current regime by precluding terminating LECs from using telephone numbers to determine the applicability of intrastate access charges to GNAPs' TDM-originated traffic and, to the extent interconnection agreements provide for the use of telephone numbers to determine the compensation due, to evade those agreements as well. If accepted, that proposed rule would forbid LECs from using what remains a reasonable — although far from perfect — generally available means available for determining the jurisdictional status of TDM-originated traffic. For example, in a recent Ohio case, GNAPs asserted that it was only delivering VoIP traffic to AT&T for termination. But, based on the phone numbers from which the calls were made, AT&T was able to show that many of those calls actually originated on AT&T's own network in TDM protocol.²⁷ Under those circumstances, AT&T was able to use phone numbers to prove the origin of the traffic GNAPs delivered to AT&T for termination, because AT&T can confirm that its own customers' numbers were still being used for TDM-based services in a specific location when the calls were placed.

²⁶ See Petition at 16-20.

²⁷ See AT&T Ohio's Initial Brief, *AT&T Ohio v. Global NAPs Ohio, Inc.*, Case No. 08-690-TP-CSS, at 23-24 (Ohio P.U.C., Sept. 10, 2009).

Furthermore, some existing interconnection agreements specify whether and how carriers will use telephone numbers to determine jurisdiction. Other interconnection agreements also specify intercarrier compensation terms for VoIP more generally. Those agreements are binding upon the parties, and the Commission should take care not to disrupt them.

None of this is to dispute the fact that, in recent years, telephone numbers have become an increasingly less reliable “proxy for . . . subscribers’ geographic locations when making or receiving calls” — that is, for the end points of a voice communication.²⁸ Wireless services, location-independent services, “pick-your-own-area-code” services, number portability, and call forwarding have all strained the link between a customer’s telephone number and his or her physical location. But, at the same time, telephone numbers remain a good tool for determining the jurisdictional status of TDM-originated calls (jurisdictional factors, which some carriers use to determine jurisdiction, require, among other things, auditing and similar accuracy checks).

Indeed, if terminating LECs were prohibited from relying on telephone numbers in this regard, they would lose one important means of rebutting GNAPs’ repeated (and repeatedly rejected) claims that all of its traffic, including its TDM traffic, is somehow exempt from intrastate access charges.

3. *The Commission Has Squarely Held That Carriers Identically Situated to GNAPs Are Required To Pay Applicable Intercarrier Compensation Charges*

GNAPs claims that “[c]onnecting carriers of VoIP traffic are immune from access charge liability.”²⁹ As support for this proposition, GNAPs cites the Wireline Competition Bureau’s

²⁸ *Vonage Order* ¶ 26.

²⁹ Petition at 20.

Time Warner Declaratory Ruling.³⁰ But, far from supporting GNAPs' contention, that ruling expressly imposes on carriers like GNAPs an obligation to pay any intercarrier compensation that is appropriately due to the terminating LEC, such as the access charges that clearly are owed on GNAPs' TDM traffic.

In that proceeding, Time Warner — a VoIP provider that used wholesale carriers like Sprint and MCI to connect its customers to the public switched telephone network — sought a declaratory ruling that its CLEC partners could obtain interconnection with ILECs to deliver Time Warner's VoIP traffic. Several small LECs were refusing to interconnect with the CLECs, arguing that those carriers were not “telecommunications carriers” insofar as they were providing a wholesale service to Time Warner.³¹ The Wireline Competition Bureau granted Time Warner's request.³² At the same time, the Bureau emphasized that the specific CLECs that were seeking interconnection to deliver Time Warner's VoIP traffic had “assumed responsibility for compensating the incumbent LEC for the termination of traffic.”³³ Indeed, the Bureau specifically noted that Sprint — one of those CLECs — offered to provide “intercarrier compensation, including exchange access and reciprocal compensation” to the terminating LECs.³⁴ The Bureau held that those “arrangement[s]”— that is, the CLEC's agreement to pay

³⁰ See *Time Warner Request for Declaratory Ruling that CLECs May Obtain Interconnection Under Section 251 to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) (“*Time Warner Declaratory Ruling*”).

³¹ See *id.* ¶ 3.

³² *Id.* ¶ 8.

³³ *Id.* ¶ 17.

³⁴ *Id.* ¶ 17 n.53 (also noting that Verizon offered wholesale services to Time Warner for “administration, payment, and collection of intercarrier compensation”).

the terminating LEC any intercarrier compensation that is due — constitute “an explicit condition to the section 251 rights provided herein.”³⁵

GNAPs cannot have it both ways. If GNAPs wants to offer a wholesale service and deliver other providers’ traffic to terminating LECs, GNAPs must pay any intercarrier compensation, including any access charges, that is appropriately due. Otherwise, GNAPs has no right to offer that wholesale service at all.

In support of its argument, GNAPs relies on a footnote in the *IP-in-the-Middle Order*, which states that access charges “should be assessed against interexchange carriers and not against any intermediate LECs that may hand off the traffic to the terminating LECs, unless the terms of any relevant contracts or tariffs provide otherwise.”³⁶ The Commission did not elaborate further on the meaning of an “intermediate” LEC in that context. But, whatever the exact scope of that term, the *Time Warner Declaratory Ruling* — which was issued three years after the *IP-in-the-Middle Order* — makes clear that wholesale carriers like GNAPs are responsible for paying the intercarrier compensation charges that are due on the traffic they deliver to ILECs.

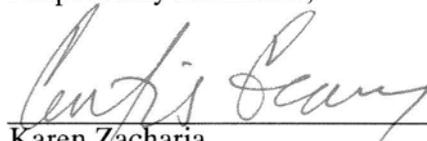
³⁵ *Id.* ¶ 17.

³⁶ *IP-in-the-Middle Order* ¶ 23 n.92.

CONCLUSION

The Commission should reaffirm its conclusion from the *Vonage Order* that all VoIP traffic, regardless of technology or provider, is inseverable and, therefore, subject to exclusive federal jurisdiction. At the same time, the Commission should refuse to grant the additional rulings that GNAPs seeks, which would only serve to facilitate GNAPs' long-running efforts to avoid paying the appropriate intercarrier compensation charges it incurs.

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