

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 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 CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission (CPUC or California) submits these comments in response to the Public Notice issued by the Federal Communications Commission on March 18, 2010.<sup>1</sup> In the Public Notice, the FCC sought comment on the Petition for Declaratory Ruling and Alternative Petition for Preemption to the Pennsylvania, New Hampshire and Maryland State Commissions (Petition),<sup>2</sup> filed on March 5, 2010, by Global NAPs, Inc. and its affiliates (GNAPs).<sup>3</sup>

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<sup>1</sup> Commission March 18, 2010 Public Notice, “Pleading Cycle Established for Comments on Global NAPs Petition for Declaratory Ruling and for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020397244> (Public Notice).

<sup>2</sup> *Petition for Declaratory Ruling and for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions*, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020396291>.

<sup>3</sup> *Id.* at 1 (“Global NAPS [sic], Inc., Global NAPs Pennsylvania, Inc., Global NAPs South, Inc., and other Global NAPs affiliates”).

California's primary purpose in submitting these comments is to assist the FCC in developing a full record in this proceeding by adding contextual information not contained in GNAPs' Petition. In its Petition, GNAPs claims that a Commission ruling is necessary and appropriate "to guide state commissions and federal courts in resolving controversies between Global and several local exchange carriers ('LECs') regarding the tariff treatment of Voice over Internet Protocol ('VoIP') traffic terminated to end users of interconnected LECs through Global."<sup>4</sup> In the March 18<sup>th</sup> Notice, the Commission directed interested parties to comment on the specific issues that GNAPs raises in its Petition, including the following:

(1) whether federal law prohibits state commissions from subjecting VoIP traffic to intrastate tariffs;

(2) once a carrier's traffic has been determined to be primarily nomadic VoIP, must the remainder of its traffic be treated as interstate absent clear proof of purely in-state calls;

(3) whether the Local Exchange Routing Guides (LERG) is not a "reliable proxy" for determining the true geographic point of origination of a call, and thus cannot be utilized to prove the applicability of intrastate tariffs to VoIP calls; and

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<sup>4</sup> *Id.* at 1.

(4) whether connecting carriers which forward VoIP traffic [to whom?] are not subject to interstate switched access charges, and are also immune from intrastate access charges.<sup>5</sup>

GNAPs does not inform the Commission, however, that it has made many of these same arguments to the CPUC, and that many these issues are now on review before at least two Federal Courts in California – *Global NAPs California Inc. v. California Public Utilities Commission*, Ninth Circuit Court of Appeals Case No. 09-55600; and *Global NAPs California Inc. v. Public Utilities Commission of the State of California*, United States District<sup>6</sup> Court for the Central District of California, Case No. CV09-1927 ODW(PJWx). In both of these cases, GNAPs appeared before the CPUC as a competing local exchange carrier (CLEC). Both of these cases involve intercarrier compensation disputes regarding traffic that went from GNAPs to a California incumbent local exchange carrier (ILEC), either for delivery to that ILEC’s customers or for transport to and termination on another California CLEC’s network. In both of these cases, GNAPs entered into an interconnection agreement (ICA) with either the terminating CLEC (Cox in the Ninth Circuit case) or with the terminating/transporting ILEC (AT&T in the Central District case). In at least one of these cases, the ICA incorporated the LEC’s tariff by reference. In both cases, the CPUC determined that GNAPs’ was liable for the

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<sup>5</sup> Notice at 1.

<sup>6</sup> The pleadings and procedural history of the CPUC decisions now before the Ninth Circuit can be reviewed at <http://docs.cpuc.ca.gov/published/proceedings/C0604026.htm>; the pleadings and procedural history of the CPUC decisions now before the Central District can be reviewed at <http://docs.cpuc.ca.gov/published/proceedings/C0711018.htm>.

rates and costs set out in the ICA and/or the referenced tariff. GNAPs appealed both cases to Federal Court.

These two cases suggest that GNAPs' *modus operandi* is to establish an ICA with a connecting carriers, interconnection which it can obtain as a matter of right *only as a telecommunications carrier* under 47 U.S.C. § 251, then proceed to send its traffic pursuant to the terms of the ICA (on "trunks," "tandems," or other facilities identified in the ICA), and only object when the transporting or terminating carrier asks for payment pursuant to the ICA. At that point, GNAPs raises many of the same objections it does here.

In both of the above-cited cases, the CPUC determined that the disputed traffic was cognizable under the ICA, either because the connecting carriers have presented evidence to the CPUC that the disputed traffic was associated with specific California telephone numbers and call detail records showing it was delivered and terminated to the transporting/terminating LEC's customers within that same LATA, or because GNAPs itself had identified the traffic as local or intraLATA, notwithstanding GNAPs' belated claims that all of the traffic was IP-initiated.<sup>7</sup>

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<sup>7</sup> See, e.g., CPUC Decision 09-01-038, at 4 ("the evidence indicated that GNAPs service requests identified all its traffic as 99-100% local and intraLATA traffic, as contemplated under the ICA"), available at [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/96832.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/96832.htm).

While GNAPs' raises some interesting questions, questions that the Commission could well address in a general rulemaking,<sup>8</sup> they take on quite a different character when placed in specific context. And the context here is the ICA. The Telecommunications Act of 1996 (1996 Act) mandated that

[I]nterconnection agreements have the binding force of law. See 47 U.S.C. § 252(a)(1). Indeed, the point of § 252 is to replace the comprehensive state and federal regulatory scheme with a more market-driven system that is self-regulated through negotiated interconnection agreements.

*Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9<sup>th</sup> Cir. 2003). At least one District Court judge has agreed with the CPUC.<sup>9</sup> Moreover, the CPUC believes its enforcement of the ICAs at issue in these cases was consistent with the Commission's general policy that the public telephone network should be supported on an equitable basis:

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*

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<sup>8</sup> The CPUC notes, in particular, GNAPs' allegation that the LERG is not a reliable proxy for determining the originating point of a call. Petition at 16 *ff.* Leaving aside the fact that the entire telecommunications industry relies on the LERG, which is based on the V&H coordinates of rate centers, as the means to determine where a call originates and where it terminates, as well as the fact that GNAPs offers no alternative means of making such a determination, the appropriate venue for reconsidering use of the LERG for these purposes would be a rulemaking, not a petition for declaratory ruling.

<sup>9</sup> See Court's December 23, 2008 Amended Order Granting Respondent's Motion for Summary Judgment, in *Global NAPs California Inc. v. PUC*, CV 07-4801 MMM(SSx), *supra*, Slip Op. at 15 ("the FCC in *Vonage* . . . in no way communicated an intent to preclude state commissions from enforcing ICAs that require the payment of interconnection charges on VoIP calls that terminate on the public switched telephone network").

*network.* We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.<sup>10</sup>

And therein lies the rub: GNAPs appears unwilling to pay anything for its use of the PSTN,<sup>11</sup> and ready to exploit ambiguities in the current regulatory approach to interconnection to achieve that result -- as witnessed by GNAPs' litigation across the country.<sup>12</sup>

Thus, while there *are* pressing questions associated with IP-PSTN traffic that the Commission should clarify as soon as possible, any such resolution should be general, not limited to GNAPs, and not retroactively change the terms of existing ICAs, including the ICAs into which GNAPs has entered with connecting carriers.

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<sup>10</sup> *In the Matter of IP-Enabled Services*, WC Docket 04-36, 19 FCCR 4863, 4864-68 (March 20, 2004), at ¶¶33, 61 (Emphasis added).

<sup>11</sup> See, e.g., *Global NAPs, Inc. v. Verizon New England Inc.*, 454 F.3d 91, 103 (2d. Cir., 2006) (“where a company [GNAPs] ... is not willing to pay for using another company’s infrastructure, we see no need for judicial intervention”); *Illinois Bell Tel. Co. v. Global NAPs, Illinois et al.*, 551 F.3d 587, 597 (7<sup>th</sup> Cir. 2008) (“The corporate structure that the Gangi brothers [GNAPs’ owners] 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”).

<sup>12</sup> An April 1, 2010 search of the LEXIS database of Federal Court Cases returned 66 decisions naming GNAPs and/or its affiliates as parties, the vast majority of which addressed intercarrier compensation disputes. See, e.g., *S. New Eng. Tel. Co. v. Global Naps, Inc.*, 595 F. Supp. 2d 155, 159 (D. Mass. 2009) (noting GNAPs’ efforts to avoid judgment debt by “resisting court-issued disclosure and discovery orders, making false representations in the financial documents that were submitted to the courts and hiding and destroying financial records”); *S. New Eng. Tel. Co. v. Global NAPs, Inc.* 251 F.R.D. 82, 96 (D. Conn. 2008) (“defendants have committed a fraud upon this court”).

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Respectfully submitted,

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