

COMMONWEALTH OF PENNSYLVANIA



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April 2, 2010

Ms. Marlene Dortch  
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Federal Communications Commission  
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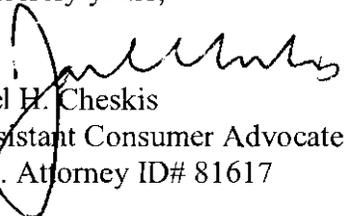
Re: In the Matter of:  
Global NAPS Petition for Declaratory Ruling and  
Alternative Petition for Preemption to the  
Pennsylvania, New Hampshire and Maryland State  
Commissions  
WC Docket No. 10-60

Dear Ms. Dortch:

Enclosed for filing please find Comments of the Pennsylvania Office of Consumer Advocate in the above-referenced matter. Please also note that these Comments have been filed with the Commission **electronically**.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

  
Joel H. Cheskis  
Assistant Consumer Advocate  
PA. Attorney ID# 81617

Enclosure

cc: Wayne E. Gardner, Commissioner  
Tyrone J. Christy, Vice Chairman  
James H. Cawley, Chairman  
Robert F. Powelson, Commissioner  
Douglas Slotten, FCC Wireline Bureau (via e-mail)  
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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

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

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**COMMENTS OF THE  
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE**

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Dated: April 2, 2010

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## I. INTRODUCTION

On March 5, 2010, Global NAPs, Inc., Global NAPs Pennsylvania, Inc., Global NAPs South, Inc. and other Global NAPs affiliates (collectively “GNAPs”) filed a Petition for Declaratory Ruling and Alternative Petition for Preemption to the Pennsylvania, New Hampshire and Maryland State Commission (“Petition”). In its Petition, GNAPs requested that the Federal Communications Commission (“FCC” or “Commission”) clarify four specific issues pertaining to Voice over Internet Protocol (“VoIP”) traffic and, in the alternative, preempt “actions or threats by the New Hampshire, Pennsylvania and Maryland state commissions.” *See generally, Petition* at 24-33. In support of its Petition, GNAPs avers, *inter alia*, that “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.” *Id.* at 33. On March 18, 2010, the FCC issued a Public Notice setting forth a Comment and Reply Comment period.<sup>1</sup>

The Pennsylvania Office of Consumer Advocate (“PA OCA”) is authorized by statute to represent the interests of Pennsylvania’s consumers of utility service, including telephone, electric, gas, water and sewer, before state and federal courts and agencies.<sup>2</sup> The PA OCA urges the FCC to reject the GNAPs Petition in its entirety and not preempt or alter the Opinion and Order entered by the Pennsylvania Public Utility Commission (“PA PUC”) on March 16, 2010 in anyway.<sup>3</sup> The PA OCA submits that the PA PUC correctly determined that GNAPs provides telecommunications services and that the PA PUC has subject matter jurisdiction over the traffic

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<sup>1</sup> *See*, FCC DA 10-461 (dated March 18, 2010).

<sup>2</sup> *See*, 71 P.S. § 309-2.

<sup>3</sup> *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc. Global NAPs, Inc. and Other affiliates*, Docket No. C-2009-2093336, Opinion and Order (entered March 16, 2010) (“PA PUC March 16<sup>th</sup> Order”). GNAPs filed its Petition with the FCC based on a Motion issued by Chairman James H. Cawley at the PA PUC Public Meeting of February 11, 2010 prior to the issuance of the Commission’s Opinion and Order.

at issue in the Pennsylvania proceeding. The PA OCA supports the PA PUC's ultimate conclusion that GNAPs' non-payment of intrastate access charges to Palmerton Telephone Company ("Palmerton"), a Pennsylvania incumbent local exchange carrier ("ILEC"), cannot be condoned as a matter of law and as a matter of sound regulatory policy. The PA OCA further submits that GNAPs has not demonstrated in its Petition that preemption is appropriate in this instance. The PA PUC conducted a lengthy and thorough investigation of the Palmerton complaint and acted within its legal authority.

As such, the GNAPs Petition should be rejected in its entirety.

## **II. SUMMARY**

The proceeding in Pennsylvania that led to the PA PUC's March 16, 2010 Order originated with the filing of a multi-count Formal Complaint by Palmerton against GNAPs on March 4, 2009. In its Complaint, Palmerton alleged that GNAPs: 1) refused to pay tariff access charges for interexchange services provided by Palmerton, 2) obtained interexchange traffic termination service from Palmerton without submitting an access service request, 3) asserted a bad faith dispute of carrier access bills submitted by Palmerton for termination of traffic, 4) failed to pay terminating access bills within thirty days of submission of the bill, 5) operated as an access provider or interexchange carrier without certification, and 6) violated its competitive local exchange carrier ("CLEC") certificate from the PA PUC. The PA PUC held hearings before Administrative Law Judge Wayne L. Weisman del ("ALJ") on July 9 and 10, 2010. Both parties filed Main and Reply Briefs setting forth their respective positions and the ALJ issued his decision on August 7, 2009 setting forth sixty-four (64) Findings of Fact and ninety (90) Conclusions of Law.

The PA PUC issued its 62-page Opinion and Order on March 16, 2010, disposing of Exceptions and Reply Exceptions that had previously been filed by both Palmerton and GNAPs. In its Order, the PA PUC recognized that this matter constituted a case of first impression for the PA PUC, which it summarized as “a dispute over intercarrier compensation involving the termination of certain calls by Palmerton where those calls have been indirectly transmitted to Palmerton by GNAPs.” PA PUC March 16<sup>th</sup> Order at 5. The PA PUC’s March 16<sup>th</sup> Order provides a lengthy discussion regarding applicable state and federal laws governing the facts of the case and how they are applied to the various arguments made by the parties. Id. at 6-46. The PA PUC determined that GNAPs provides telecommunications services and that the Pennsylvania Commission has subject matter jurisdiction. The PA PUC also found that the current state and federal law requires Palmerton to be compensated for the traffic that it terminates at its facilities.

The PA PUC correctly determined that the Palmerton Complaint against GNAPs should be granted and that GNAPs must make full payment to Palmerton of all amounts owed for intrastate interexchange call traffic transported by GNAPs and terminated at the facilities of Palmerton. Id. at 60. As discussed further below, GNAPs has not provided any reason in its Petition why the PA PUC’s March 16<sup>th</sup> Order should be disturbed in any manner. GNAPs has failed to demonstrate any issue that requires clarification by the FCC. Furthermore, GNAPs has failed to demonstrate any reason for preemption. The FCC has not expressed a clear intent to preempt the type of service that was at issue in the PA PUC March 16<sup>th</sup> Order. The PA PUC’s March 16<sup>th</sup> Order does not impose a barrier to competition. The PA PUC’s Order is in the public interest and should not be preempted. GNAPs’ Petition must be rejected in its entirety.

### III. COMMENTS

#### A. GNAPs Has Failed To Demonstrate That Any Of The Identified Issues Require Clarification By The FCC.

In its Petition, GNAPs asks the FCC to declare that: 1) VoIP traffic is never subject to intrastate access charges; 2) the FCC's jurisdiction to set intercarrier compensation for VoIP traffic is exclusive; 3) the geographic end points of calls cannot always be identified by numbering resources; and 4) as an intermediate carrier, GNAPs is exempt from payment of intrastate access charges. According to GNAPs, the FCC should grant its request for a declaratory order and clarification to protect GNAPs from the irreparable harm of being charged non-cost based rates and the possible blockage of GNAPs' interstate traffic. Petition at 7. One of GNAPs' stated goals is the invalidation or preemption of the PA PUC's decision against GNAPs in favor of Palmerton. The PA OCA supports the PA PUC's decision and recommends against grant of GNAPs' request for clarification. If any clarification is issued, the FCC should extend its decision in its UTEX Order<sup>4</sup> where it stated that state commissions have the authority and ability under Section 252 of the federal Telecommunications Act of 1996 ("TA-96") to resolve requests for arbitration of interconnection disputes which involve VoIP traffic under existing law.<sup>5</sup> The PA PUC properly resolved the intercarrier compensation dispute between Palmerton and GNAPs, in the absence of an interconnection agreement, consistent with existing law.

At the outset, it should be noted that Palmerton and the PA PUC recognized that self-help remedies such as the blocking of traffic to solve an intercarrier compensation dispute with

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<sup>4</sup> In re Petition of UTEX Communications Corporation Pursuant to Section 252(c)(5) of the Communications Act, WC Docket No. 09-134, Memorandum Opinion and Order (Oct. 9, 2009) ("UTEX Order").

<sup>5</sup> 47 U.S.C. § 252.

GNAPs are contrary to federal law.<sup>6</sup> As explained by the FCC, call blocking is an unjust and unreasonable practice which could “degrade the reliability of the nation’s telecommunications network.”<sup>7</sup> As the PA PUC found following an extensive investigation, Palmerton was legally obligated to terminate the traffic which GNAPs indirectly delivered, based on Section 251(a)(1)<sup>8</sup> of TA-96 and Palmerton met that obligation “until on or about May 19, 2009 when GNAPs ceased sending traffic to Palmerton.” PA PUC March 16<sup>th</sup> Order at 34. Contrary to GNAPs’ claim, clarification is not needed to prevent the blocking of traffic since no traffic was blocked. Furthermore, GNAPs had already decided on its own – some 10 months before the PA PUC March 16<sup>th</sup> Order – to cease the delivery of traffic otherwise destined for termination on Palmerton’s public switched telephone network. GNAPs’ claim that grant of its Petition is necessary to prevent irreparable harm is decidedly overstated since it is GNAPs that ceased sending traffic to Palmerton.

Nor is clarification needed to protect GNAPs from being charged unreasonable rates. As the PA PUC found, despite GNAPs’ insistence that the traffic it transported must be treated as interstate, due to the inclusion of some nomadic VoIP traffic, GNAPs had paid Palmerton *no* interstate access charges for termination of such traffic, much less intrastate access for termination of local calls. Id. at 32. Yet, in its Petition, GNAPS clearly states that it charges *its* customers for use of GNAPs’ facilities. Petition at 2. The PA PUC’s Order was properly directed at determining what compensation Palmerton was due for GNAPs’ use of Palmerton’s

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<sup>6</sup> Palmerton had requested interim emergency relief in the form of a surety bond from GNAPs or a PA PUC order directing GNAPs to cease sending traffic to Palmerton without compensation. The PA PUC ordered GNAPS to post a surety bond. Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc. Global NAPs, Inc. and Other affiliates, Docket No. C-2009-2093336, Opinion and Order at 3, 6-8 (entered May 5, 2009).

<sup>7</sup> In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, Declaratory Ruling and Order ¶ 5 (June 28, 2007).

<sup>8</sup> 47 U.S.C. § 251(a)(1).

facilities. *See, e.g., PA PUC March 16<sup>th</sup> Order* at 25. In the course of the litigation, the PA PUC noted that GNAPs put forth arguments to suggest that some alternative basis for compensation may be appropriate, however, GNAPs had taken no action to request an interconnection agreement or negotiate a traffic exchange agreement with Palmerton. *Id.* at 33-35. Additionally, the PA PUC itself noted that it had approved “various voluntary interconnection agreement arrangements... that address the exchange of VoIP traffic.” *Id.* at 34, fn. 22. Should GNAPs request an interconnection agreement with Palmerton under federal law, the PA PUC acknowledged that it would be required to “deal with and resolve intercarrier compensation disputes that may implicate interconnected VoIP.” *Id.* at 42-43.<sup>9</sup> Clearly, the regulatory framework exists for GNAPs to negotiate compensation for Palmerton’s termination of traffic different from Palmerton’s Pennsylvania tariffs. No clarification of the proper framework for deciding what compensation GNAPs should pay is necessary. *See, Petition* at 20-23.

GNAPs asks the FCC to correct for a lack of uniformity through a declaration that intrastate access charges do not apply to GNAPs’ traffic, inclusive of some VoIP traffic. *See, Id.* at 14. Based on the record, the PA PUC accepted Palmerton’s evidence that a number of other CLECs who were VoIP service providers paid intrastate access charges for traffic terminated on Palmerton’s network. The PA PUC correctly recognized that granting GNAPs different treatment could create an “anti-competitive environment that artificially and inimically transmits inaccurate price signals to end-user consumers.” *PA PUC March 16<sup>th</sup> Order* at 45. The PA PUC concluded such disparate treatment would also conflict with state policy that “encourage[s] the provision of competitive services by a variety of service providers *on equal terms* throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal

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<sup>9</sup> *Citing, UTEX Order, supra.*

telecommunications service at affordable rates.” Id. (emphasis in original).<sup>10</sup> The PA PUC noted the FCC’s similar concern that a ruling on AT&T’s “IP-in-the-Middle” Petition should not put any carrier at a competitive disadvantage, based on payment of access charges. Id. at 46.<sup>11</sup> As such, again, GNAPs’ request for declaratory relief or clarification is not warranted.

In summary, GNAPs’ Petition should be denied. The PA PUC March 16<sup>th</sup> Order is soundly based on both federal and state law and policy, where directed at resolving a dispute between Palmerton, an ILEC which terminated intrastate traffic indirectly delivered by GNAPS, a CLEC providing wholesale telecommunications service pursuant to a certificate of public convenience. The PA PUC addressed and properly rejected, as other state commissions have done, GNAPs’ argument that the FCC’s 2004 Vonage Order preempts the PA PUC from enforcing intrastate tariffs where delivered traffic may include nomadic VoIP traffic.<sup>12</sup> No clarification is appropriate, based on the specific facts of the Palmerton complaint against GNAPs.

B. GNAPs Has Failed To Demonstrate Any Reason For The FCC To Preempt The PA PUC March 16<sup>th</sup> Order.

1. Introduction.

In its Petition, GNAPs relies on the United States Supreme Court decision in Louisiana PSC v. Federal Communications Commission, 476 U.S. 355 (1986) (“Louisiana PSC”) as its

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<sup>10</sup> Quoting, 66 Pa. C.S § 3011(8).

<sup>11</sup> Quoting, In re Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (FCC Rel. April 21, 2004), Order, FCC 04-97, ¶¶ 19 at 13-14 (“FCC AT&T IP in the Middle Order”).

<sup>12</sup> See, In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (FCC Rel. November 12, 2004), Memorandum Opinion and Order, FCC 04-267, 19 FCC Rcd. 22,404 (2004) (“Vonage Order”), aff’d, Minnesota Pub. Util. Comm’n v. FCC, 483 F.3d 570 (8<sup>th</sup> Cir. 2007).

sole support for preempting the orders of the Pennsylvania, New Hampshire and Maryland Commissions. *See, Petition* at 24-33. In doing so, GNAPs provides:

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, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. 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.

*Id.* at 24 (citations omitted). GNAPs relies significantly on the FCC's supposed "express or clear intent" to pre-empt state action to support why its Petition should be granted. GNAPs also argues that the FCC can preempt state actions that impose barriers to competition. *Id.* at 31-33.

As discussed further below, the PA OCA submits that there is no reason that preemption is appropriate, for either the reasons GNAPs argues in its Petition, or any other reason allowed under *Louisiana PSC, supra*. GNAPs' argument that "**any** order by the state commissions mentioned above granting **any** relief sought by the relevant ICOs would merit preemption under several of the provisions of the Louisiana PSC test," *Petition* at 25 (emphasis added), is overreaching and must be rejected. GNAPs is overstating the FCC's prior determinations regarding VoIP and no pre-emption is legally justified. As such, the GNAPs Petition should be rejected in its entirety.

2. The FCC has not expressed a clear intent to preempt the type of service that was at issue in the PA PUC March 16<sup>th</sup> Order.

In its Petition, GNAPs argues that the FCC has either preempted or expressed a clear intent to preempt state actions impeding the development and utilization of VoIP services. Id. at 26-28. GNAPs argues that “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.” Id. at 26. GNAPs relies on the FCC’s Vonage Order to support its impossibility argument and “asks this Commission to follow through on its previously expressed intent to preempt state commissions consistently with Vonage.” Id. at 27. Yet, GNAPs fails to consider that the type of service it provides that was subject to the PA PUC March 16<sup>th</sup> Order is distinctly different than the type of service that Vonage provided that was the subject of the FCC’s Vonage Order. The PA PUC correctly found as such.

The PA PUC considered the record evidence before it that was developed after a lengthy investigation and correctly distinguished its Order from the FCC’s Vonage Order by noting, *inter alia*, that:

Here, as in many other jurisdictions, we are not dealing with the issue of market entry and regulation of nomadic VoIP service providers. Instead, we are dealing with the issue of GNAPs, a telecommunications utility carrier, which transports and terminates traffic at Palmerton’s PSTN facilities. As in the case of the TDS ILECs in New Hampshire, Palmerton directly receives and terminates traffic that has been transported by GNAPs via the Verizon PA tandem switch on Market Street, Philadelphia, PA.

PA PUC March 16<sup>th</sup> Order at 25 (citations omitted). The PA PUC correctly determined that the “indirect transmission of such traffic by GNAPs to Palmerton constitutes a common carrier

telecommunications service that falls squarely within this Commission’s jurisdiction under applicable Pennsylvania and federal law.” Id.

As the PA PUC determined:

In short, Palmerton finds itself in the same situation as the TDS ILECs in New Hampshire where all interexchange IP-enabled originating traffic that came from GNAPs and terminated at their PSTN facilities appeared to be traditional voice traffic that was subject to the appropriate jurisdictional carrier access charges in accordance with their applicable intrastate and interstate carrier access tariffs.

Id. at 41.<sup>13</sup> The PA PUC correctly rejected GNAPs’ argument that its traffic should be classified as interstate because “here, we are not dealing with individual end-user retail calls to ISPs. Instead, we are dealing with the wholesale telecommunications transport movement and termination of interexchange traffic that includes VoIP or IP-enabled calls.” Id.

The PA PUC quoted the FCC as saying “even if there are multiple communications, the Commission has found that neither the path of the communication nor the location of any intermediate switching point is relevant to the jurisdictional analysis.” Id. at 42.<sup>14</sup> The PA PUC stated:

In the present factual situation, and in accordance with the evidentiary record, we cannot classify a call – even an interconnected nomadic VoIP call – as interstate simply because it may have moved across the Commonwealth’s boundaries while the relevant call origination and termination information clearly indicates an intrastate interexchange classification. We note that even conventional circuit-switched non-VoIP interexchange calls that originate in Pennsylvania are often transported out-of-state before their subsequent in-state termination within the Commonwealth. However, such intermediate transport does not

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<sup>13</sup> *Citing, Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Tel. Co., and Wilton Telephone Co.*, DT 08-28, Order No. 25,043 (NH PUC November 10, 2009) at 21-22.

<sup>14</sup> *Quoting, In re AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services et al.*, WC Docket Nos. 03-133 and 05-68 (FCC Rel. February 23, 2005), Order and Notice of Proposed Rulemaking, FCC 05-41 (“FCC Calling Card Order”).

transform the jurisdictional classification of such calls to “interstate.”

Id.

Furthermore, the PA PUC also effectively distinguished the case before it based on the issues at hand (intercarrier compensation) and not those issues that the FCC has specifically precluded the states from considering. As the PA PUC noted in its Order, while the FCC may have specifically preempted the states regarding operating authority, the filing of tariffs and the provisioning and funding of 911 services, the FCC has not preempted states specifically regarding intrastate access rates. Id. at 24.<sup>15</sup> The PA PUC is not preempted by the FCC in addressing the intercarrier compensation issues that were present in the proceeding involving GNAPs and Palmerton. The PA PUC was correct to determine that “GNAPs’ contention that the FCC somehow ‘has clearly and repeatedly stated its intention’ to preempt state regulatory jurisdiction over intercarrier compensation matters for ‘all VoIP and enhanced traffic’ is without basis in law or fact.” Id. at 26. The PA PUC correctly distinguished the matter involving Palmerton and GNAPs from the FCC’s Vonage Order by stating “we are dealing with GNAPs’ *wholesale transport (inclusive of VoIP or IP-enabled calls), access to and termination of traffic in* Palmerton’s PSTN network facilities, and these are clearly telecommunications functions and services under the Commission’s jurisdiction.” Id. at 27 (emphasis in original). The PA PUC continued: “This Commission is not dealing here with jurisdictional traffic allocations that relate to the retail operations, services, and revenues of a nomadic VoIP provider.” Id. at 28.

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<sup>15</sup> Quoting, Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc., Docket No. 21905 (GA PSC July 29, 2009), Order Adopting in Part and Modifying in Part the Hearing Officer’s Initial Decision, Georgia PSC Document No. 121910.

The PA PUC also correctly noted that its intrastate subject matter jurisdiction, and the proper and lawful application of intrastate carrier access charges, are not altered or nullified because of the presence of the allegedly “unique” VoIP or IP-enabled calls in the traffic that is transported by GNAPs and indirectly terminated at Palmerton’s PSTN facilities. Id. at 29. After reviewing the record developed following a lengthy investigation, the PA PUC found that GNAPs indirectly transports and terminates at Palmerton’s PSTN facilities calls of various categories and originating protocols which GNAPs acknowledged. Id. at 31. The PA PUC correctly found unpersuasive GNAPs’ argument that its traffic is jurisdictionally interstate in nature because it is “enhanced” or an “information service.” Id. at 32.

Finally, the PA PUC found that the evidence in its proceeding does not support the argument that “the nomadic VoIP traffic that GNAPs receives from other entities is somehow already, or becomes, ‘enhanced’.” Id. at 35. The PA PUC found that “the removal of background noise, the insertion of white noise, the insertion of computer developed substitutes for missing content and the added capacity for the use of short codes to retrieve data during a call” did not constitute “enhancements” to the traffic. Id. at 36. Rather, the PA PUC agreed with Palmerton that such activities were ordinary “call conditioning” functionalities that “have been practiced for a very long time even in the more traditional circuit-switched voice telephony.” Id.<sup>16</sup>

As a result, GNAPs’ additional arguments that the FCC has clearly expressed its desire to implement a uniform system of regulation for VoIP services, Petition at 28-29, and that the FCC has clearly expressed its desire to protect both providers and “connecting carriers” of VoIP

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<sup>16</sup> Citing, FCC Calling Card Order, supra. The PA PUC correctly noted that the FCC has previously determined that the decision to use internet protocol to route certain calls is a decision made internally by the carrier. PA PUC March 16<sup>th</sup> Order at 37, quoting, FCC AT&T IP in the Middle Order, supra (clarifying that AT&T’s phone to phone IP telephony service constitutes a telecommunications service).

traffic from tariff charges, Id. at 29-31, must also be rejected.<sup>17</sup> Quite simply, the issues in the case involving Palmerton’s complaint against GNAPs in Pennsylvania are not those issues that the FCC has specifically preempted from the state commissions.

As such, GNAPs’ argument that preemption is appropriate is without merit and should be rejected. The FCC has not expressed a clear intent to preempt the type of service that was at issue in the PA PUC March 16<sup>th</sup> Order.

3. The PA PUC March 16<sup>th</sup> Order does not impose a barrier to competition.

In its Petition, GNAPs argues that “the Commission has the right to preempt state actions that impose barriers to competition.” Petition at 31-33. In making this argument, GNAPs relies on Section 253 of TA-96. GNAPs argues that “the relief sought by the ILECs involved in the 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.” Id. at 32. The PA OCA submits that this argument is also without merit and must be rejected.

Section 253 provides that “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.”<sup>18</sup> The PA PUC’s March 16<sup>th</sup> Order does not prohibit or have the effect of prohibiting GNAPs’ ability to provide any telecommunications service. The PA PUC’s March 16<sup>th</sup> Order merely provides that Palmerton is compensated for providing GNAPs access to and use of their network facilities. As the PA PUC stated:

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<sup>17</sup> GNAPs reliance on a FCC Press Release to support its argument that “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,” Petition at 30, is speculative at best.

<sup>18</sup> 47 U.S.C. § 253(a).

Costs indeed attach to the termination of *any type of traffic* that Palmerton receives, and such costs do not “magically disappear” when the traffic includes VoIP calls whether those are of the nomadic or fixed type. Under the existing and so far unaltered premises of both Pennsylvania and federal law, the Commission determines that Palmerton is entitled to compensation for the traffic that it terminates at its facilities.

PA PUC March 16<sup>th</sup> Order at 25 (emphasis in original).

The PA PUC’s decision, in fact, promotes the competitive provision of telecommunications services by ensuring that carriers pay similar compensation for similar traffic. As the PA PUC noted:

If certain competing telecommunications carriers pay intercarrier compensation for VoIP traffic termination, while others take the position that they may avoid such payments for the termination of similar traffic, there can be an anticompetitive environment that artificially and inimically transmits inaccurate price signals to end-user consumers of telecommunications and communications services.

Id. at 45.

Therefore, GNAPs’ argument that its Petition should be granted because the PA PUC’s March 16<sup>th</sup> Order imposes a barrier to competition is also without merit and must be rejected.

#### 4. Conclusion.

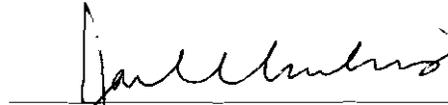
GNAPs’ arguments that the PA PUC’s March 16<sup>th</sup> Order should be preempted by the FCC are without merit and should be rejected. GNAPs has failed to demonstrate that any provision under the Louisiana PSC test has been satisfied that would warrant preemption.

GNAPs’ Petition must be rejected and the PA PUC’s March 16<sup>th</sup> Order must remain undisturbed.

#### IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Federal Communications Commission should reject the Petition filed by Global NAPs, Inc., Global NAPs Pennsylvania, Inc., Global NAPs South, Inc. and other Global NAPs affiliates on March 5, 2010. The Opinion and Order entered by the Pennsylvania Public Utility Commission on March 16, 2010 should not be preempted by the FCC. Nor is there any need for the FCC to provide clarification of any issues as GNAPs argued. GNAPs has not demonstrated that the PA PUC's March 16<sup>th</sup> Order should be modified in any manner.

Respectfully submitted,



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(717) 783-5048

Dated: April 2, 2010  
124186

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

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

I hereby certify that I have this day served a true copy of the foregoing document,  
Comments of the Pennsylvania Office of Consumer Advocate, upon parties of record in this  
proceeding.

Dated this 2nd day of April, 2010.

Respectfully submitted,



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