

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

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

**REPLY COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

On March 5, 2010, Global NAPS and its affiliates (collectively, “GNAPS”) filed a petition with the Federal Communications Commission (“FCC” or “Commission”) seeking a declaratory ruling that

1) because [voice over Internet protocol] VoIP was declared jurisdictionally interstate in *Vonage*, federal law prohibits state commissions from subjecting such traffic to intrastate tariffs; 2) once a carrier’s traffic has been determined to be primarily nomadic VoIP, the remainder of its traffic must be treated as interstate absent clear proof of purely in-state calls; 3) because millions of telephone numbers are “sold” or ported by carriers to VoIP companies, Local Exchange Routing Guides (“LERGs”) are 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; 4) connecting carriers forwarding VoIP traffic are not subject to interstate switched access charges, and are also immune from intrastate access charges because forwarders of telecommunications traffic that do not sell toll services are not paid by the original caller and do not convey the call out of the originating caller’s Local Access Transport Area (“LATA”) are “intermediate carriers” and not interexchange carriers (“IXCs”) as those term are used in footnote 92 of the AT&T Declaratory (*IP-in-the-Middle*)

ruling, and thus are not subject to access charges.¹

In short, GNAPS was seeking to avoid making any payments to other carriers for the use of their networks, and using asserted “clear” federal law as the basis for doing so.

On March 18, 2010, the Commission put the GNAPS petition out for public comment.² Comments were filed on April 2, 2010 by a wide variety of commenters: rural carriers, state commissions. The vast majority of the comments – from incumbent carriers, competitive carriers, state regulatory commissions, and state utility consumer advocates -- opposed the GNAPS petition, in whole or in part.³ Only one commenter – the Voice on the Net Coalition (“VON”) – supported the petition.

The National Association of State Utility Consumer Advocates (“NASUCA”)⁴ hereby joins the chorus of those who assert that the GNAPS petition should be denied. Given the strength and the numerosity of the comments opposing the petition, NASUCA will not repeat them here. It should suffice to remind the Commission of NASUCA’s

¹ GNAPS Petition at 1 (citations omitted).

² DA 10-461.

³ Ad-Hoc Group of Rural Telephone Companies (“RLEC Companies”); AT&T Inc. (“AT&T”); California Public Utilities Commission and the People of the State of California (“CA PUC”); CenturyLink, Frontier and Windstream (“CenturyLink, et al.”); Core Communications, Inc. (“Core”); New Hampshire Public Utilities Commission (“NH PUC”); New York Public Service Commission (“NY PSC”); Pennsylvania Office of Consumer Advocate (“PA OCA”); Pennsylvania Public Utility Commission (“PA PUC”); Pennsylvania Telephone Association (“PTA”); Public Service Commission of Maryland (“MD PSC”); Qwest Communications International Inc. (“Qwest”); TDS Telecom Companies (“TDS”); Telecommunications Association of Michigan (“TAM”); TVC Albany, Inc. (“TVC”); twenty-one national and state carrier associations (“NECA, et al.”); United States Telecom Association (“USTelecom”); Verizon.

⁴ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. The PA OCA is a NASUCA member.

longstanding position that carriers that use other carriers' networks should pay for such use. And it really does not matter if some (or all) of that traffic is VoIP; compensation should be due.

We will respond, however, to a couple of issues raised in the comments. VON argues that VOIP services are not telecommunications services but information services, and thus are exempt from paying for the use of other carriers' networks.⁵ It is simply not true that "VoIP service takes full advantage of the flexibility and efficiency of IP-based transmissions by enabling the user to manipulate, generate, store, transform and make information services available to others."⁶ Most if not all VoIP calling depends upon precisely the characteristics of traditional voice calling: an unaltered transmission of the caller's words to the called party. Most if not all of the manipulation, generation, storage, and transformation available to VoIP callers are mere adjuncts to the traditional calling capabilities that VoIP users rely on.

And we also reject Verizon's assertion that all VoIP traffic is jurisdictionally interstate and thus subject only to FCC jurisdiction.⁷ Although Verizon never comes out and says so – referring only generically to intercarrier compensation⁸ – this would mean that intrastate access charges could not apply to VoIP traffic, despite the fact that, as Verizon admits, telephone numbers remain an effective means of identifying the beginning and end points of a telephone call.⁹ And if a call begins in one state and ends

⁵ VON Comments at 1-4.

⁶ Id. at 2.

⁷ Verizon Comments at 3-5.

⁸ See id. at 9-10.

⁹ Id. at 10-11.

in the same state, it is an intrastate call; if the call is also an interexchange call, intrastate access charges should be paid.

Finally, because such agreement is so unusual as to be notable, NASUCA agrees with AT&T's comments that

when a wholesale telecommunications service provider (like Global) exercises its rights under section 251 of the 1996 Act to interconnect with a LEC and sends interexchange traffic to the LEC for termination to the LEC's plain old telephone service (POTS) customer on the PSTN, the wholesale carrier is responsible for paying access charges to the LEC – regardless of the format in which the communication originated, and regardless of whether the wholesale carrier's customer offers a retail VoIP service. The so-called enhanced service provider exemption (ESP Exemption) does not (and was never intended to) apply in that circumstance, nor was it ever intended to preempt state regulation. Global's request for a blanket ruling that wholesale carriers whose customers are retail VoIP providers are “immune” from all access charges – interstate and intrastate – should accordingly be denied.¹⁰

And NASUCA also agrees with AT&T that the Commission should immediately address the appropriate intercarrier compensation applicable to VoIP.¹¹ As AT&T states, “Absent action by this Commission, the endless stream of costly disputes over termination of IP/PSTN traffic will continue to produce conflicting rulings without ultimately resolving the key regulatory questions.”¹² Yet NASUCA does disagree with AT&T that the resolution of this issue requires federal preemption of states' ability to set **intrastate** intercarrier compensation rates.¹³

The GNAPS Petition should be denied.

¹⁰ AT&T Comments at 2. Although NASUCA agrees with AT&T's comments, we are constrained to note that AT&T is part of VON. VON Comments at 1, n.1.

¹¹ AT&T Comments at 3.

¹² Id.

¹³ Id. at 4 and n.12.

Respectfully submitted,

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