



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE REFER TO OUR FILE

Bp8#- 2217748

January 7, 2011

Rosemary Chiavetta  
Secretary  
PA Public Utility Commission  
Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17105

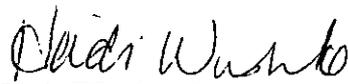
**Re: Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff  
v. Global NAPs South, Inc., Global NAPs, Pennsylvania, Inc., Global NAPs,  
Inc., and other affiliates: C-2010-2208511**

Dear Secretary Chiavetta:

Enclosed for filing please find the original motion for judgment on the pleadings.  
Service has been made in accordance with the attached certificate of service.

If you have any questions regarding this filing, please contact me.

Very truly yours,

  
Heidi Wushinske  
Assistant Counsel

cc: Joseph K. Witmer, Assistant Counsel  
Kathryn G. Sophy, Deputy Chief Counsel  
Certificate of Service (w/enc)

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## **NOTICE**

A. **You must file an answer or other responsive pleading within 20 days of the date of service of this motion.** See 52 Pa. Code § 5.102(b). The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this motion and notice. See 52 Pa. Code § 1.56(a). An original and three copies of your answer should be sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

B. Alternative formats of this material are available for persons with disabilities by contacting the Public Utility Commission at (717) 787-5620.

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**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Law Bureau Prosecutory Staff	:	
	:	
v.	:	Docket No. C-2010-2208511
	:	
Global NAPS South, Inc.;	:	
Global NAPs Pennsylvania, Inc.;	:	
and other affiliates	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS**

AND NOW, comes the Law Bureau Prosecutory Staff (LBPS), pursuant to 52 Pa. Code § 5.102 and files its motion for judgment on the pleadings as set forth below.

**I. Basis for the Motion for Judgment On the Pleadings**

1. On November 2, 2010, LBPS instituted a complaint against Global NAPS South, Inc; Global NAPs Pennsylvania, Inc; and its subsidiaries, affiliates, and related entities (collectively "GNAPs"), a public utility certificated at A-310771.
2. In the complaint, LBPS alleged that GNAPs failed to comply with or obey the Commission's orders, failed to provide safe and reliable service that conforms to the regulations and orders of the Commission, and refused to pay tariffed access charges.
3. The complaint charged that GNAPs' above actions violate 66 Pa. C.S. §§ 501, 1501, and 3017(b), respectively.

4. The complaint sought an order from the Commission canceling GNAPs' certificate of public convenience.
5. GNAPs' counsel was served on November 10, 2010.
6. An answer to the complaint was due on or before November 29, 2010.
7. On December 6, 2010, GNAPs filed a request for an extension of time in which to respond to the complaint.
8. On December 6, 2010, the Secretary of the Commission granted GNAPs an extension of time until December 16, 2010, in which to file its answer.
9. To date, GNAPs has filed no answer to the complaint with the Commission.
10. On December 9, 2010, based on its receivership proceedings, GNAPS filed an expedited motion for further instructions and proposed order with the United States District Court, District of Massachusetts (District Court). In its motion, GNAPSs asked the District Court to: (a) determine that the LBPS complaint violates the restraining order instituted by the District Court based on its receivership; (b) dismiss LBPS's complaint now before the Commission without prejudice; and (c) order the Commission to cease and desist from attempting to revoke GNAPs' certificate (See Attachment A).
11. On December 23, 2010, LBPS filed an Answer (Federal Answer) asking the Federal District Court for the District of Massachusetts in Docket Nos. Civil Action 02-12489-RWZ and Civil Action 05-10079-RWZ to deny GNAPs' motion, explaining that the District Court has no jurisdiction because the Commission is not a creditor. LBPS further explained that the Commission is

not seeking any monetary compensation from GNAPs, but is merely seeking revocation of GNAPs' certificate based on its refusal to comply with or obey the Commission's orders and failure to provide safe and reliable service that conforms to the regulations and orders of the Commission. The Commission noted that a certificate is a privilege and not a right nor an asset under Pennsylvania law and that federal receivership law prohibiting actions against entities in receivership creates an exception if the action concerns the public safety or welfare, including public utility service.<sup>1</sup> (See Attachment B).

12. As set forth in the complaint and reiterated in the Federal Answer, GNAPs' continued operation in the Commonwealth is harmful to the public interest.

13. LBPS requests a judgment on the pleadings for the following reasons:

**Timeliness:** Answers to complaints must be filed within 20 days after the date of service. 52 Pa. Code § 5.62. Despite receiving an extension of time in which to file its answer, to date GNAPs has not filed an answer to the complaint filed against it with the Commission.

**Admission:** Failure to file a timely answer may be deemed a default and relevant facts stated in the pleadings may be deemed admitted. 52 Pa. Code § 5.61

**Continued Failure to Comply:** By its failure to answer the complaint, GNAPs may be deemed to have admitted each allegation contained therein, including failure to comply with Commission orders. GNAPs has abandoned its obligations set forth in the Public Utility Code and, accordingly, should not be permitted to continue its unreasonable service within Pennsylvania.

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<sup>1</sup> The District Court has scheduled this case for oral argument on February 15, 2011.

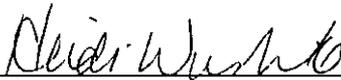
## II. Relief Requested

14. LBPS requests this Honorable Commission to grant the relief requested in the complaint:

- a. To immediately revoke GNAPs' certificate of public convenience;
- b. To order GNAPs to immediately cease and desist from any and all operations in the Commonwealth of Pennsylvania; and
- c. To order GNAPs to proceed with all deliberate speed to surrender its certificate of public convenience to the Commission.

THEREFORE, LBPS requests that the Commission grant its motion for judgment on the pleadings.

Respectfully submitted,



---

Heidi Wushinske, Assistant Counsel  
Attorney I.D. No. 93792

Joseph K. Witmer, Assistant Counsel  
Attorney I.D. No. 74939

Kathryn G. Sophy, Deputy Chief Counsel  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: January 7, 2011

# VERIFICATION

I, Heidi L. Wushinske, Assistant Counsel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 11/7/11 Heidi Wushinske

Heidi L. Wushinske, Assistant Counsel

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Attachment A

DONALD H. C. LIBBEY P.C.

A PROFESSIONAL CORPORATION  
ATTORNEY AND COUNSELOR AT LAW

P.O. Box 920612  
210 HIGHLAND AVENUE, STE. 2  
NEEDHAM, MASSACHUSETTS 02492  
(781) 444-0044 FAX (781) 444-0944

OF COUNSEL  
EUGENE M. MAGIER, P.C.  
STEVEN J. MARULLO

December 9, 2010

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

RE: Law Bureau Prosecutory Staff v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., and other affiliates,  
Docket No. C-2010-2208511

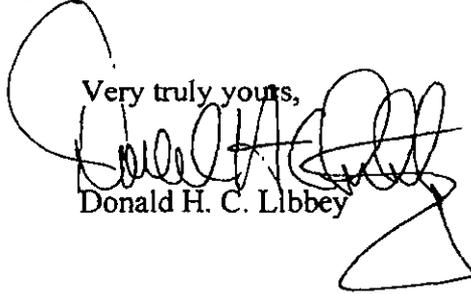
Dear Ms. Chiavetta:

At your request, I have enclosed for inclusion in the above-captioned matter a hard-copy of the Receiver's Expedited Motion for Further Instructions and Orders and Proposed Order that was filed today with the United States District Court for the District of Massachusetts in the matter entitled *Global NAPs, Inc. et al. v. Verizon, et al.*, Docket No. 1:02-CV-12849-RWZ. This will confirm that I also emailed you a copy of the motion and proposed order earlier today.

To save both a tree, and the extra cost to the Receivership Estate of mailing you a copy of the Complaint filed in the above-captioned matter, I have not included a copy of that Complaint, which was Exhibit "A" filed with the Receiver's motion.

Please contact me should you have any questions. Thank you for your anticipated cooperation in advance.

Very truly yours,

  
Donald H. C. Libbey

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DONALD H. C. LIBBEY  
DHCLIBBEY@LAWOFFICES.COM

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SECRETARY'S BUREAU

GLOBAL NAPS, INC., )  
Plaintiff, )  
v. )  
VERIZON NEW ENGLAND, INC., )  
Defendant. )

Civil Action No. 02-12489-RWZ

Civil Action No. 05-10079-RWZ

**EXPEDITED MOTION BY RECEIVER, CARL F. JENKINS FOR  
FURTHER INSTRUCTIONS AND ORDERS**

Now comes Carl F. Jenkins, as Receiver of Global NAPS, Inc., and its subsidiaries, affiliates, and related entities (hereinafter collectively the "Judgment Debtors"), by and through his counsel, and hereby moves on an *expedited* basis for further instructions and orders pursuant to Paragraph 12 of this Honorable Court's Amended Order For Appointment Of Keeper And Receiver dated May 13, 2010. This *expedited* motion pertains specifically to the interpretation and application of this Court's injunctive language contained in Paragraph 11 of its Amended Order.

In support of this Motion, the Receiver states as follows:

1. On May 5, 2010, this Court appointed Carl F. Jenkins as Receiver of the Judgment Debtors pursuant to the Order For Appointment Of Keeper And Receiver entered by this honorable Court on May 6, 2010. Thereafter, this Court entered an Amended Order For Appointment Of Keeper And Receiver on May 13, 2010 (hereinafter the "Amended Order").
2. Pursuant to Paragraph 12 of the Amended Order, the Receiver and others are authorized to seek further instructions and orders related to the Amended Order and for additional powers to enable the Receiver to perform the Receiver's duties.
3. The Receivership Estate incorporates a variety of diverse and complex assets including airplanes, automobiles, business assets, personal property, real property, and continuing business

operations, all of which the Receiver is evaluating for liquidation by private sale or public auction as part his Receivership duties. The continuing business operations include certain licenses and permits to operate such businesses.

4. In conjunction with his duties as Receiver, Carl F. Jenkins has filed several definitive motions with this Court outlining the process which he intends to follow with respect to the sale of certain Receivership Estate assets (hereinafter the "Sale Motions") which process includes seeking this Court's permission to sell such assets in an effort to obtain the highest and best value therefore.

5. In furtherance and his duties and responsibilities, and in conjunction with the Sale Motions, the Receiver has employed the consulting firm of Altman Vilandrie & Company, has compiled corporate and financial data, and has scheduled and conducted multiple meetings with several potential buyers of the operating companies included in the Receivership Estate.

6. The sole difference in this Court's May 6, 2010 Order appointing Carl F. Jenkins as the Receiver herein and the Amended Order of May 13, 2010, is the wording in Paragraph 11 of each Order. Specifically, the last sentence of Paragraph 11 of the earlier Order limits the injunctive language against any and all persons from commencing any action in any court or elsewhere against the Receiver by stating in relevant part that "(s)uch restraint is not intended to bar any current action asserted against the Judgment Debtors or their affiliates in this or any other court. . . ."

7. The Amended Order eliminates the last sentence of the earlier Order, so that Paragraph 11 states:

Any and all persons claiming any interest in any of the Receivership Property shall be and hereby are enjoined from commencing any action in any court or elsewhere against the Receiver in connection with or otherwise based upon the discharge of the duties of the Receiver herein, except with the express permission of this Court obtained after filing a motion on notice to the Receiver, all parties to this action, and SNET[.]

8. Paragraph 11 infers that this Court's restraint extends to any and all actions concerning any interest in the Receivership Estate whether existing at the time of the entry of this Court's Receivership Order or thereafter in "any court or elsewhere".

9. On or about November 2, 2010, the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff filed a Formal Complaint (the "Complaint") against Global Naps South, Inc., Global NAPS Pennsylvania, Inc., and other affiliates of Global NAPS, Inc. before the Pennsylvania Public Utility Commission seeking revocation of Global NAP's Pennsylvania Certificate of Public Convenience ("Certificate").

10. The Certificate is Global NAPS' license to provide services in and through the Commonwealth of Pennsylvania and establishes Global NAPS Pennsylvania as part of the Global NAPS network and operating entities, and, therefore, such Certificate is an asset of the Judgment Debtors.

11. Although the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff cites Pennsylvania law requiring that a public utility, in this case Global NAPS, "is required to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in conformity with Commission orders", the sole premise for the revocation of Global NAPS' Certificate is its failure to pay a March 16, 2010 bill from Palmerton (Pennsylvania) Telephone Company in the amount of \$193,063.38\* and certain other sanctions against Global NAPS for its failure to comply with the Public Utilities Commission's order to pay such bill. (A true and accurate copy of the Complaint is attached hereto as **Exhibit "A"** ("Complaint" at ¶ 6)).

12. The above-described bill represents a pre-Receivership claim which Palmerton Telephone Company and the Law Bureau Prosecutory Staff seek to recover by encouraging the Pennsylvania

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\* Relating to Palmerton's Formal Complaint for such indebtedness before the P.U.C. on March 4, 2009.

Public Utilities Commission to revoke Global NAPS' Certificate, because of Global NAPS failure to pay.

13. This attempt by the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff to revoke Global NAPS' Certificate violates this Court's prior restraining order contained in its May 6, 2010 Order and May 13, 2010 Amended Order, directly impacts a potentially significant asset of the Receivership Estate, and circumvents this Court's lawful jurisdiction over the Receivership.

14. Global NAPS Answer to the Complaint was due on or before December 8, 2010, but at the Receiver's request, the Pennsylvania Public Utility Commission has granted additional time, until December 16, 2010, for Global NAPS to file its Answer otherwise plead.

15. The Receiver's counsel has discussed the Complaint and the Amended Order with Assistant Counsel for the Law Bureau Prosecutory Staff, but without resolution, thus necessitating this motion.

16. On information and belief, if no Answer is filed by Global NAPS on or before the expiration of the time to Answer, the Pennsylvania Public Utilities Commission will revoke the Global NAPS Certificate without delay.

17. The Receiver understands and therefore avers that in order to file a formal Answer to the Complaint will require retaining local and outside counsel on behalf of GNAPS at significant cost and expense to the Receivership Estate.

18. The Receiver understands that the Pennsylvania Public Utilities Commission, and its Law Bureau Prosecutory Staff, had actual notice of this Court's Amended Order.

WHEREFORE, for any one or all of the foregoing reasons, the Receiver respectfully requests that this Honorable Court on an *expedited* basis:

- A. Determine that the Complaint filed by the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff seeking to revoke Global NAPS' Certificate of Public Convenience violates this Court's prior Restraining Order contained in the Amended Order;
- B. Upon determination that the aforementioned Complaint violates the said Restraining Order of the Amended Order, enter a further order that Complaint filed by the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff be dismissed without prejudice;
- C. Enter a further order that the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff or any other person, agency, or entity, **cease and desist** from attempting to revoke the Pennsylvania Certificate of Public Convenience of Global NAPS absent further order of this Court; and
- D. Grant such further relief as this honorable Court deems just and equitable.

Respectfully submitted,  
Carl F. Jenkins, Receiver  
By his attorneys,

/s/ Donald H. C. Libbey  
Donald H. C. Libbey BBO #638397  
Steven J. Marullo BBO # 323040  
Donald H. C. Libbey, P.C.  
P.O. Box 920612  
210 Highland Avenue, Ste. 2  
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[sjmlaw@verizon.net](mailto:sjmlaw@verizon.net)

Date: December 9, 2010

GNAPsEXN1120610/dl/1536-3

CERTIFICATE OF SERVICE

I hereby certify that I served the within document(s) through ECF system, and that copies will be sent electronically to registered participants on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated a non-registered participants as of the date herein, and to the Pennsylvania Public Utilities Commission, and to Joseph Witmer, Esq., Assistant Counsel, and Heidi Wushinske, Esq., Assistant Counsel for the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff.

/s/ Donald H. C. Libbey  
Donald H. C. Libbey

DATED: December 9, 2010

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
GLOBAL NAPS, INC., )	Civil Action No. 02-12489-RWZ
Plaintiff, )	Civil Action No. 05-10079-RWZ
)	
v. )	
)	
VERIZON NEW ENGLAND INC., )	
Defendant. )	
_____ )	

**ORDER ON RECEIVER'S *EXPEDITED* MOTION  
FOR FURTHER INSTRUCTIONS AND ORDERS**

The Receiver's *Expedited* Motion for Further Instructions and Orders (the "Motion")  
having come before the Court and due cause appearing therefore, it is hereby

ORDERED, that the Motion is granted; and it is further

- A. ORDERED, that the Complaint filed by the Pennsylvania Public Utilities  
Commission's Law Bureau Prosecutory Staff seeking to revoke Global NAPS'  
Certificate of Public Convenience violates this Court's prior Restraining Order  
contained in the Amended Order; and it is further
- B. ORDERED, that the aforementioned Complaint shall be dismissed without prejudice  
and the Pennsylvania Public Utilities Commission's Law Bureau Prosecutory Staff,  
or any other person, agency, or entity, shall cease and desist from attempting to  
revoke the Pennsylvania Certificate of Public Convenience of Global NAPS absent  
further order of this Court.

\_\_\_\_\_  
Rya W. Zobel, United States District Judge

DATED: \_\_\_\_\_

DONALD H. C. LIBBEY, P.C.  
P.O. BOX 920612  
NEEDHAM, MASSACHUSETTS 02492

BOSTON MA 021

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|||||  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg , PA 17105-3265

# Attachment B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GLOBAL NAPS, INC.,	)	
	)	
Plaintiff	)	Civil Action No. 02-12489-RWZ
v.	)	Civil Action No. 05-10079-RWZ
	)	
VERIZON NEW ENGLAND, INC.,	)	
	)	
Defendant	)	

**ANSWER OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PROSECUTORY STAFF IN OPPOSITION TO THE  
EXPEDITED MOTION BY RECEIVER, CARL F. JENKINS  
FOR FURTHER INSTUCTIONS AND ORDERS**

Now comes the Pennsylvania Public Utility Commission Prosecutory Staff (prosecutory staff) and hereby submits this answer. This Answer asks this Honorable Court to *deny* the expedited Motion filed by the receiver on behalf of Global NAPS, Inc., and its subsidiaries, affiliates, and related entities (hereinafter collectively the "GNAPS"). In support of its opposition to the motion, the prosecutory staff states as follows:

1. The prosecutory staff opposes the motion which attempts to dismiss a formal complaint filed with the PaPUC. On November 2, 2010, the prosecutory staff filed a formal complaint seeking revocation of the GNAPS' Certificate of Public Convenience (Certificate), a certificate numbered A-310771 and issued under Section 1102 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1102. The Certificate is a *privilege* that allows the GNAPS to provide telecommunications service as a public utility under state law, so long as it remains in good standing, including compliance with state law, regulations and PaPUC orders.

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2. The prosecutory staff filed a complaint and seeks revocation of the certificate based on the GNAPS' failure to comply with a PaPUC Order and its lack of legal fitness needed to prevent further harm to the public convenience, interest, and safety.

3. The prosecutory staff seeks denial of the motion to dismiss for several reasons. Denial of the motion is appropriate because: (1) the PaPUC is not a creditor subject to this Court's jurisdiction; (2) a Pennsylvania certificate of public convenience is not a property right; and (3) the appointment of a federal receiver does not preempt all state law.

#### I. The PaPUC Is Not a Creditor

4. GNAPS mischaracterizes the PaPUC as a creditor or agent coming within the scope of this Court's jurisdiction and further focuses on the PaPUC's concern with GNAPS' payment for services rendered. In fact, the PaPUC is not a creditor nor is the prosecutory staff seeking to collect payments from the Debtors on behalf of anyone.

5. The PaPUC has **no financial interest** in whether GNAPS pays or does not pay for access services it receives in Pennsylvania. Rather, the primary concern has been to minimize further harm to the public convenience, interest, and safety. Prosecutory staff has argued that the PaPUC should not permit continued operations in Pennsylvania given GNAPS' apparent unwillingness or inability to comply with PaPUC Orders and requirements, which include an obligation to remit compensation for services rendered.

6. Concern with the public convenience, interest, and safety is separate and apart from creditors' pecuniary interests in ensuring that a receiver provides them compensation for services rendered. GNAPS is free to not pay for access services, whether by choice or otherwise; that is a concern for GNAPS' various creditors. But it has no entitlement to maintain its state-granted

Certificate if it fails to obey a lawful and unappealed PaPUC order.

7. Every public utility licensed by the PaPUC, under state law, is obligated to obey the PaPUC's lawful and unappealed orders. 66 Pa. C.S. § 501(c); there is no exception for public utilities that, for whatever reason, decline to obey such orders.

## II. A Pennsylvania Certificate of Public Convenience Is Not a Property Right

8. GNAPS conflates the public regulatory concern about the public interest, health, and safety with a private pecuniary interest. Prosecutory staff seeks to prohibit the leveraging of GNAPS' Certificate of Public Convenience, which is a privilege granted by the Commonwealth of Pennsylvania. Such certificates cannot be granted, abandoned or transferred without the approval of the PaPUC. 66 Pa. C.S. § 1102(a).

9. Moreover, there is no assurance that the PaPUC would authorize a transfer or resale of this particular certificate given the underlying lack of legal fitness of the current holder.

Attempts to sell one's Pennsylvania certificate to an unwitting buying would be akin to selling a medical license. What is conveyed loses all value the moment it is relinquished.

10. Through its complaint, prosecutory staff seeks the revocation of a privilege that allows GNAPS to operate as a public utility within Pennsylvania. Revocation is justified based upon GNAPS' failure to comply with PaPUC Orders and its lack of legal fitness, as evidenced by a propensity to ignore Commission mandates.

11. GNAPS incorrectly portrays the PaPUC-issued certificate as a "potentially significant asset" i.e., property right, of the receivership estate. This assertion is incorrect as a matter of Pennsylvania law.

12. A receivership serves the purpose of preserving, liquidating, or operating *property*, pending final disposition of a case, which may ultimately be applied toward the satisfaction of substantive rights. *Zitman v. McGrath*, 341 U.S. 446 (1951); *Adelman v. CGS Scientific Corp.*, 332 F.Supp. 137 (E.D.Pa. 1971) (emphasis added). The fund or *property* in litigation, of which the receiver takes possession *pendent lite*, is held subject to any rights or equities that can be asserted against the owner. *Powell v. Maryland Trust Company*, 125 F.2d 260 (4<sup>th</sup> Cir. 1944) (emphasis added). Still, conjectures about the value of a privilege does not transform the privilege into a property right, and does not support an assertion that the Certificate is an asset that can be sold or transferred at will.

13. Pennsylvania law is clear; a PaPUC-issued certificate, granted pursuant to 66 Pa. C.S. §§ 1102-1103, is a privilege and not a property right. *Western Pennsylvania Water Co. v. Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973) (“[A] certificate of public convenience is neither a contract nor a property interest under which its holder acquires vested rights. The certificate is a privilege granted by the Commonwealth.”). A revocable privilege cannot give rise to a property interest characteristic of an asset subject to this Court’s authority.

14. Because Pennsylvania jurisdictional utilities have no property right in the certificate they hold, the PaPUC has authority to grant, deny, or even condition a utility’s request to begin, transfer or abandon service. *Borough of Duncannon v. PaPUC*, 213 A.2d 139 (Pa. Super. 1965); *Modern Transfer v. PaPUC*, 125 A.2d 463 (Pa. Super. 1956). Because it has no inherent property value and cannot be sold or transferred without the review and approval of the PaPUC, GNAPS’ certificate of public convenience is properly the subject of a PaPUC proceeding, which has no bearing on the matter before this Court.

### III. Appointment of a Federal Receiver Does Not Preempt State Law

15. GNAPS mistakenly relies on federal law to displace state law concerns with its existence and operations. The federal court in *In re: Grace Coal, Inc.*, 155 B.R. 5 (1993), held that receivership does not exclude an entity from state law which governs its existence and operation. The proceeding before the PaPUC addresses GNAPS' existence and operation in Pennsylvania under 66 Pa. C.S. §§ 1102-03. Receivership cannot shield GNAPS from its service obligations in Pennsylvania and, in particular, its obligations including legal fitness and compliance with lawful and unappealed PaPUC orders as inherent conditions for the maintenance of its Certificate.

16. A trustee in receivership cannot displace the PaPUC's state authority to seek revocation of a privilege. The federal courts reject attempts to supersede or preempt state statutes or regulations that are reasonably designed to protect the public health or safety from identified hazards, including an ongoing obligation to comply with local codes regarding the delivery of public utility service. *Robinson v. Michigan Consolidated Gas Company, Inc.*, 918 F.2d 579, 588-589 (6<sup>th</sup> Cir. 1990) citing *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 501 (1986). The federal courts exercise special caution before finding state health and safety regulations invalid under the supremacy clause. *Robinson*, 918 F.2d at 589, citing *Saravia v. 1736 18<sup>th</sup> Street N.W., Ltd.*, 844 F.2d 823 (D.C. Cir. 1988).

17. The proceeding before the PaPUC addresses distinctly Pennsylvania issues, including public safety and an interest in a stable and functioning telecommunications infrastructure. Prosecutory staff has alleged that GNAPS' Pennsylvania operations harm the public safety and interest, and jeopardize the willingness and ability of infrastructure owners to deliver access at just and reasonable rates. The underlying pattern of securing access to networks without the ancillary obligation to remit compensation for that access ultimately imposes higher costs on

other network users, including GNAPS' own end-user consumers.

18. GNAPS claims that the Motion to Dismiss without prejudice should be granted because the prosecutor staff's concern is solely limited to payments reflected in a Commission Order. This assertion fails to address the Order's focus on GNAPS' legal fitness in terms of its compliance with all rules necessary to remain a public utility in good standing under Pennsylvania law and the PaPUC's regulations. Indeed, several factual events occurring and uncovered since issuance of the Commission's Order may further support the prosecutory staff's filing to revoke GNAPS' certificate for lack of legal fitness apart from any compensation issue.

19. For example, it now appears that GNAPS may have failed to file an Annual Report and other documentation required by the Commission's rules for public utilities to remain in good standing. Also, the attached Letter, Affidavit and supporting documentation indicate that GNAPS is accessing the Pennsylvania telecommunications infrastructure without complying with the ancillary obligation to remit compensation for that access as required by Pennsylvania law.

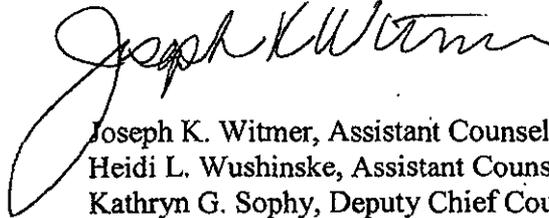
20. As shown in the attached Affidavit, it is alleged that GNAPS owes Ironton the sum of \$911,910.97 and Service Electric is owed the amount of \$129,509.16. These appear to be post-petition bills for access service that remains unpaid and, if validated by prosecutor staff, indicate a propensity by GNAPS to not fulfill its public utility obligations and conditions for maintaining its Certificate under Pennsylvania law.

21. Those observations warrant further investigation and possible enforcement action to protect legitimate state concerns with legal fitness and the public convenience, interest, and safety of public utility service, a matter that the courts except from a federal court's jurisdiction in receivership. As such, the Motion to Dismiss seeks to thwart Pennsylvania's interest in ensuring that certificated public utilities remain in good standing within the Commonwealth.

WHEREFORE, for any or all of these reasons, the prosecutory staff respectfully asks this Honorable Court exercise its legal and equitable authority to:

- A. Deny the Motion by Receiver Carl F. Jenks on behalf of GNAPS for Dismissal without Prejudice; and
- B. Grant such other relief as it deems just and equitable.

Respectfully Submitted,



Joseph K. Witmer, Assistant Counsel, BBO 543584  
Heidi L. Wushinske, Assistant Counsel  
Kathryn G. Sophy, Deputy Chief Counsel  
Prosecutory Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000  
Email: [joswitmer@state.pa.us](mailto:joswitmer@state.pa.us)

/s/ Robert Glotzer  
Email: [lawyerglotzer@hotmail.com](mailto:lawyerglotzer@hotmail.com)  
(617) 742-8700

Date: December 23, 2010



THOMAS, LONG,  
NIESEN & KENNARD

*Attorneys and Counsellors at Law*

NORMAN J. KENNARD  
Direct Dial: 717.255.7627  
nkennard@thomaslonglaw.com

December 23, 2010

Joseph Witmer, Esquire  
Pennsylvania Public Utility Commission  
Law Bureau  
Post Office Box 3265  
Harrisburg, PA 17105-3265

Re: Prosecutorial Action Against Global NAPs

Dear Mr. Witmer:

We understand that the Prosecutory Staff is pursuing a complaint against Global NAPs for its failure to comply with Pennsylvania Commission rules and violation of the Commission's directives in the *Palmerton v. Global NAPs* action.

You should be aware that Global NAPs' illegal actions are continuing. Specifically, Global NAPs has been sending traffic to our client telephone companies in Pennsylvania, specifically Service Electric Telephone Company, a competitive local exchange carrier, and Ironton Telephone Company, a rural telephone company. We have attached an Affidavit from Timothy Hausman of those two companies explaining the situation.

In short, Global NAPs continues to victimize Pennsylvania local exchange carriers by utilizing their tariffed services and then refusing to pay.

As set forth in the attached Affidavit, Global NAPs has sent traffic to Service Electric and Ironton starting in August 2010, which amounts are \$1,041,420.10, a very considerable sum for these small companies. This amount is due and owing immediately. Global NAPs has not disputed the bills, they have simply ignored them, as they did with Palmerton Telephone Company.

The traffic sent by Global NAPs to Service Electric and Ironton is routed and sent in exactly the same manner as that which was at issue in the *Palmerton* case. In other words, there does not appear to be a valid dispute, even if one were raised by Global NAPs and, according to the Commission's Decision in the *Palmerton v. Global NAPs* case, non-payment to these two other Pennsylvania telephone companies violates the Commission's Order.

December 22, 2010

Page 2

Service Electric and Ironton intend to intervene in your prosecutorial action and raise these matters, inasmuch as they support the termination of Global NAPs' certificate, so that a legitimate bill-paying carrier can deliver the traffic, rather than Global NAPs.

Should you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By



Norman J. Kennard

NJK:tlt  
Attachment



within thirty (30) days of the statement date. The attached bill summaries identify the billing date and the entity to whom the bill was sent, in this case, Global NAPs Inc., PO Box 690315, Quincy, Massachusetts, 02269.

6. At the present time, Global NAPs owes Ironton the sum of \$911,910.97, and Service Electric is owed the amount of \$129,509.16. All bills, except the bills issued by Ironton on December 1, 2010 in the amount of \$205,903.47 and by Service Electric on December 15, 2010 in the amount of \$37,521.78 are well past due. These current bills will become past due on December 30, 2010 and January 14, 2011, respectively.

7. All bills have been properly and accurately calculated and submitted to Global NAPs according to our state and federal tariffs.

8. Global NAPs has neither disputed nor paid the bills. Ironton and Service Electric have contacted Global NAPs seeking payment, who refuses to return our calls.

9. Were Global NAPs removed from the picture by the revocation of its certificate, there are many other carriers with whom Ironton and Service Electric are connected that do pay their exchange access bills, that would deliver the traffic to us and our customers.

10. The monies that are due and owing for the services we provide to Global NAPs are used to support our network, which provides local voice and broadband services to our local service customers.

11. The monies due and owing by Global NAPs are very large to our small companies and make our ability to meeting our legal obligations to our customers and the Pennsylvania Public Utility Commission more difficult.

12. These are tough economic times generally, and particularly so for the rural carriers operating in Pennsylvania.

13. Our problems are simply exacerbated by Global NAPs' refusal to pay for the exchange access services that they obtain from us.

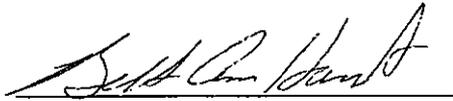
14. Ironton Telephone Company and Service Electric Telephone Company intend to participate in the prosecutorial action before the Pennsylvania Public Utility Commission seeking to revoke Global NAPs' certificate and will present testimony consistent with the above.

15. The facts set forth are true and correct to the best of my knowledge, information and belief, and that I expect said entities to be able to prove the same at any hearing thereof.

  
\_\_\_\_\_  
Timothy Hausman

Sworn to and subscribed before me,

this 22 day of December, 2010

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Beth Ann Harwick, Notary Public  
North Whitehall Twp., Lehigh County  
My Commission Expires Sept. 5, 2013

ITC		GLOBAL NAPS, INC					CIC CODE
		PO BOX 690315					#4660
		QUINCY, MA 02269					
CONTACT:				FAX:			
BILL DATE			MONTH	AMOUNT	PAID	PD DATE	CK NUMBER
09/01/10	5082	INTER - SW	JUL	166560.19			
	5084.2	INTRA - SW	JUL	96640.30			
				<b>263200.49</b>	<b>0.00</b>		
10/01/10	5082	INTER - SW	AUG	175098.53			
	5084.2	INTRA - SW	AUG	58046.68			
				<b>233145.21</b>	<b>0.00</b>		
11/01/10	5082	INTER - SW	SEPT	174344.12			
	5084.2	INTRA - SW	SEPT	35317.68			
				<b>209661.80</b>	<b>0.00</b>		
12/01/10	5082	INTER - SW	OCT	166647.86			
	5084.2	INTRA - SW	OCT	39255.61			
				<b>205903.47</b>	<b>0.00</b>		
01/01/11	5082	INTER - SW	NOV				
	5084.2	INTRA - SW	NOV				
				<b>0.00</b>	<b>0.00</b>		
02/01/10	5082	INTER - SW	DEC				
	5084.2	INTRA - SW	DEC				
				<b>0.00</b>	<b>0.00</b>		
		<b>totals</b>		<b>911910.97</b>	<b>0.00</b>	<b>\$911,910.97</b>	

SET		GLOBAL NAPS				CIC CODE	
						4660	
CONTACT:							
BILL DATE			MONTH	AMOUNT	PAID	PD DATE	CK NUMBER
02/15/10		INTERSTATE	JAN	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
03/15/10		INTERSTATE	FEB	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
04/15/10		INTERSTATE	MAR	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
05/15/10		INTERSTATE	APR	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
06/15/10		INTERSTATE	MAY	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
07/15/10		INTERSTATE	JUN	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
08/15/10		INTERSTATE	JUL	0.00	0.00		
		INTRASTATE		0.00	0.00		
				0.00	0.00		
09/15/10	5082	INTER - SW	AUG	11535.67			
	5084.2	INTRA - SW		18436.35			
				29972.02	0.00		
10/15/10	5082	INTER - SW	SEP	10845.48			
	5084.2	INTRA - SW		18067.10			
				28912.58	0.00		
11/15/10	5082	INTER - SW	OCT	11793.86			
	5084.2	INTRA - SW		21308.92			
				33102.78	0.00		
12/15/10	5082	INTER - SW	NOV	12945.04			
	5084.2	INTRA - SW		24576.74			
				37521.78	0.00		
01/15/11	5082	INTER - SW	DEC				
	5084.2	INTRA - SW					
				0.00	0.00		
		<b>totals</b>		129509.16	0.00	\$ 129,509.16	

**SERVICE BY FIRST CLASS MAIL POSTAGE PREPAID**

I hereby that I have this day served a true copy of the foregoing document upon parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Notification by first class mail addressed as follows:**

Joel Davidow, Esquire  
Kile Goekjian Reed & McManus, PLLC  
1200 New Hampshire Ave., N.W.  
Suite 570  
Washington, DC 20036

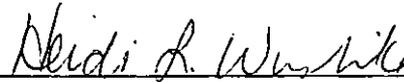
Donald Libbey, Esquire  
Donald H.C. Libbey P.C.  
P.O. Box 920612  
210 Highland Avenue  
Needham, MA 02492

Norman J. Kennard, Esquire  
Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108

**RECEIVED**

JAN 07 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



Heidi L. Wushinske  
Assistant Counsel  
Attorney ID # 93792  
(Counsel for Pa. Public Utility Commission)

P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: January 7, 2011