



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

June 25, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105-3265

Re: Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs
Pennsylvania, Inc., Global NAPs, Inc., and other affiliates; Docket No. C-2009-
2093336

Dear Secretary Chiavetta:

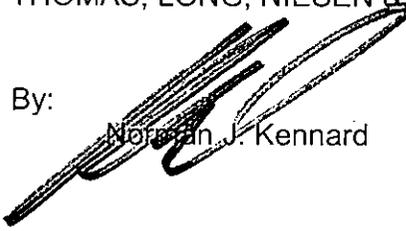
Enclosed please find an Order entered by the Public Utilities Commission of Ohio on June 9, 2010 finding that Global NAPs Ohio Inc. must pay access charges for interexchange traffic to AT&T Ohio. Additionally, the Ohio PUC Staff is ordered to begin an investigation to revoke Global NAPs' Certificate of Operation in Ohio.

Thank you for your attention to this matter.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

cc: Per Certificate of Service
James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Wayne E. Gardner, Commissioner
Robert F. Powelson, Commissioner
William Coleman, Commissioner

RECEIVED
2010 JUN 25 PM 1:26
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Palmerton Telephone Company,	:	
Complainant	:	
	:	Docket No. C-2009-2093336
v.	:	
	:	
Global NAPs South, Inc., Global NAPs	:	
Pennsylvania, Inc., Global NAPs, Inc.,	:	
and other affiliates	:	
Respondents	:	

PROOF OF SERVICE

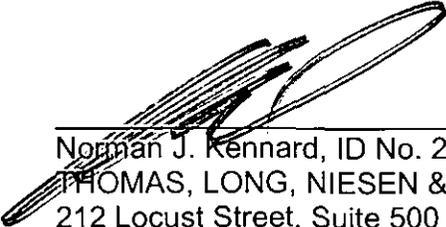
I hereby certify that I have on the 25th day of June, 2010, served a true and correct copy of the foregoing letter upon the parties listed below via first class mail, postage prepaid:

Daniel P. Delaney, Esquire
K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

William Rooney, Esquire
Global NAPs
89 Access Road
Norwood, MA 02062

Suzan Paiva, Esquire
Verizon Pennsylvania Inc.
1717 Arch Street, 10W
Philadelphia, PA 19103

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



Norman J. Kennard, ID No. 29921
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street, Suite 500
Harrisburg, PA 17101
(717) 255-7600

Attorney for Palmerton Telephone Company

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Matter of the Complaint of AT&T Ohio)
)
 Complainant,)
)
 v.) Case No. 08-690-TP-CSS
)
 Global NAPs, Ohio, Inc.)
)
 Respondent.)

OPINION AND ORDER

The Commission, considering the complaint filed on June 10, 2008, the public hearings held on August 4, 5, and 24, 2009, as well as the post hearing briefs and reply briefs submitted, hereby issues its Opinion and Order.

APPEARANCES:

Jon F. Kelly and Mary Ryan Fenlon, AT&T Ohio, 150 East Gay Street, Room 4-C, Columbus, Ohio 43215, and Mayer Brown, LLP, by Christian F. Binning, 71 Wacker Drive, Chicago, Illinois 60606, on behalf of complainant, AT&T Ohio.

Harry M. Davidow, Esq., 685 West End Avenue, Apartment 4C, New York, New York 10025, and Chester, Wilcox & Saxbe, LLP, by Matthew W. White and Mark S. Yurick, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Global NAPs, Ohio, Inc.

OPINION:

I. Introduction

On June 10, 2008, AT&T Ohio filed a complaint against Global NAPs, Ohio, Inc. (Global NAPs Ohio or respondent) alleging that the respondent is in violation of the parties' interconnection agreement (interconnection agreement or ICA) approved in Case No. 01-3096-TP-ARB (01-3096), *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, and has failed to satisfy the minimum requirements of maintaining an operating certificate, as set forth in Rule 4901:1-6-10, Ohio Administrative Code (O.A.C.). Specifically, AT&T Ohio avers that, since at least February 2004, it has

provided Global NAPs Ohio with certain intrastate services, including those related to reciprocal compensation for local traffic, intrastate access for intraLATA (Local Access Transport Area) toll traffic, and transit traffic. According to AT&T Ohio, Global NAPs Ohio has refused to pay anything for these services and that, excluding late payment fees, the unpaid bills totaled more than \$56,000 through May 2008.

AT&T Ohio notes that it originally brought a complaint in federal court for the Southern District of Ohio alleging nine counts, three of which dealt with Global NAPs Ohio's breach of the existing interconnection agreement. Global NAPs Ohio moved to dismiss AT&T Ohio's federal and tariff claims. According to AT&T Ohio, while the court refused to dismiss AT&T Ohio's federal and state tariff claims, the court found that, relative to AT&T Ohio's interconnection claims, AT&T Ohio was "obligated to exhaust its administrative remedies by first litigating its breach of interconnection agreement claims before [the] PUCO" (Complaint at 11, 12 citing *The Ohio Bell Tel. Co., Inc., v. Global NAPs Ohio, Inc., et al.* Case No. 06-CV-549 at 9 [S.D. Ohio March 31, 2008]).

As relief in this matter, AT&T Ohio requests the following relief:

- (a) A finding that Global NAPs Ohio has breached its obligation pursuant to the interconnection agreement by failing to pay for the invoiced amounts that are the subject of this complaint.
- (b) Identify the amounts owed by Global NAPs Ohio to AT&T Ohio for the relevant services (i.e., transport and termination, intrastate access, transit traffic) and order the respondent to pay such amounts, in addition to all applicable late-payments.
- (c) Enjoin Global NAPs Ohio from misrouting interLATA traffic over trunk groups reserved for local and intraLATA toll traffic.
- (d) The revocation of Global NAPs Ohio's certification in light of the fact that Global NAPs lacks the financial resources and abilities (i.e., no assets, customers, revenues, or employees) to serve as a certificated carrier in Ohio.

(*Id.* at 15).

Global NAPs Ohio filed its answer to the complaint on July 14, 2008, denying most of the allegations set forth in the complaint. By attorney examiner Entry of August 22, 2008, reasonable grounds were found to exist for proceeding to hearing in this matter (Entry of August 22, 2008, at 4).

The public hearing was held at the Commission offices on August 4, 5, and 24, 2009. In accordance with the briefing schedule established during the hearing, the

parties filed initial and reply briefs on September 4, 2009, and September 17, 2009, respectively.

II. The Law

Global NAPs Ohio and AT&T Ohio are telephone companies as defined by Section 4905.03(A)(2), Revised Code, and public utilities by virtue of Section 4905.02, Revised Code. Therefore, Global NAPs Ohio and AT&T Ohio are subject to the jurisdiction of this Commission pursuant to Sections 4905.04 and 4905.05, Revised Code. Pursuant to Section 4905.26, Revised Code, the Commission may consider disputes filed regarding the provision of telephone service pursuant to Commission approved interconnection agreements. In a complaint case such as this, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St. 2d 189.

III. Summary of the Evidence

A. AT&T Ohio

AT&T Ohio presented James W. Hamiter, Lance McNeil, Patricia H. Pellerin, and Yolanda Williams in support of the allegations raised in its complaint.

1. James W. Hamiter

Mr. Hamiter, Associate Director – Network Regulatory for AT&T Services, Inc., explains that, among other things, he is responsible for assisting AT&T-owned incumbent local exchange companies (ILECs) in the development of network policies, procedures, and plans from a regulatory perspective (AT&T Ohio Ex. 2 at 3, 4). With respect to this proceeding, Mr. Hamiter provides an explanation of how AT&T Ohio and Global NAPs Ohio's networks function together. In particular, Mr. Hamiter addresses the nature of the traffic exchanged between AT&T Ohio and Global NAPs Ohio and asserts that much of this traffic is traditional telephony, including interstate interLATA traffic (i.e., traditional long distance traffic) (*Id.* at 4). The witness indicates that, prior to traffic being exchanged between AT&T Ohio and Global NAPs Ohio, the companies had to interconnect with each other through facilities and establish trunk groups between their switches (*Id.* at 9, 10). Mr. Hamiter states that Global NAPs Ohio has established both a local/intraLATA trunk group between its switch and AT&T Ohio's local/intraLATA tandem switch and direct end office trunk groups with fifteen AT&T Ohio end offices (*Id.* at 12, 13).

Included within Mr. Hamiter's testimony are sample data from the 44 three-minute reports that he conducted. The three-minute reports depict all calls longer than three minutes in duration that originated on one of AT&T's ILEC networks throughout its 12-state region and were ultimately delivered to AT&T Ohio by Global NAPs Ohio

from January 2005 through October 2008, on the study dates specified for each month (*Id.* at 5, 14, 15). Mr. Hamiter describes how, through a three-minute report, the complainant is able to match the calling party number (Calling Party Number or CPN) on calls originated on one of AT&T's ILEC networks in its 12-state region to the CPN on calls ultimately delivered to AT&T Ohio from Global NAPs Ohio (*Id.* at 14, 15). Mr. Hamiter represents that the only calls reflected in the three-minute reports pertain to interstate or intrastate switched access traffic that both originated and terminated on the public switched telephone network (Public Switched Telephone Network or PSTN) and, therefore, does not include voice over Internet protocol (VoIP) calls, inasmuch as these do not originate over the PSTN (*Id.* at 16).

Mr. Hamiter calculates the captured interstate switched access minutes as a percentage of the total amount of traffic captured by the three-minute report (*Id.* at 17). He also notes that the three-minute reports do not capture all of the traditional telephony traffic originated and terminated on the PSTN due to the fact that the reports only include calls of at least a three-minute duration for specific days and do not take into account calls of less than three minutes (*Id.*). Based on the three-minute reports, Mr. Hamiter concludes that Global NAPs Ohio is incorrect in its contention that its traffic is not traditional telephony. Rather, Mr. Hamiter avers that "there are a lot of traditional long distance calls in the traffic that Global Ohio is sending to AT&T Ohio" (*Id.* at 18).

2. Lance McNeil

Mr. McNeil describes the ordering process that AT&T's Local Service Center utilizes for competing carriers, including Global NAPs Ohio. Mr. McNeil opines that, based on the order forms submitted by Global NAPs Ohio to AT&T Ohio, in 2004 and 2005, Global NAPs Ohio ordered trunks specifically limited to local and intraLATA toll traffic (AT&T Ohio Ex. 3 at 2, 3). In support of his position, Mr. McNeil highlights that the Access Service Request submitted by the respondent reflects that the trunks ordered had a "Percent of Interstate Usage" of 0 and a "Percent of Local Usage" of 99, indicating that the ordered trunks would be used for local, and not interstate, traffic (*Id.* at 4).

3. William Cole

Mr. Cole, Lead Financial Analyst for Carrier Compensation, AT&T Services, Inc., testifies as to certain billing-related aspects of the transport and termination services and transiting services that AT&T Ohio has provided to Global NAPs Ohio with respect to traffic delivered to AT&T Ohio over trunks reserved for local and intraLATA traffic (AT&T Ohio Ex. 4 at 2). Mr. Cole points out that all of the calls in dispute in this proceeding were delivered by Global NAPs Ohio to AT&T Ohio in the Cleveland LATA, and that all of these calls were either terminated to AT&T Ohio end users or transited to third-party carriers in Ohio (*Id.* at 3).

Mr. Cole explains that, since at least 2004, Global NAPs Ohio has utilized AT&T Ohio's network to: (1) terminate or complete, over trunk groups specifically reserved for local and intraLATA traffic, calls to AT&T Ohio end users, and (2) transit, over those same local/intraLATA toll trunk groups, traffic to third-party carriers for termination to those carriers' end users. According to Mr. Cole, the same trunk groups are utilized regardless of whether the traffic involved is local, intraLATA toll, or transit in nature (*Id.*). Because the type of trunk between Global NAPs Ohio and AT&T Ohio is a combined local/intraLATA toll traffic trunk, any call routed into the AT&T Ohio switch will generate an Automatic Message Accounting record. This information includes, but is not limited to, date of connection, connection time, talk time duration, incoming trunk group number, originating number, terminating number, and local routing number (*Id.* at 5). Mr. Cole testifies that both AT&T Ohio's tandem and end office switches record call detail information that is delivered into the AT&T Ohio switch by Global NAPs Ohio (*Id.* at 8). Based on an analysis of recorded call detail, Mr. Cole states that Global NAPs Ohio has delivered interLATA traffic over the trunks ordered from AT&T Ohio in addition to local, intraLATA, and transit traffic (*Id.*). Finally, Mr. Cole avers that beginning in May 2004, each monthly bill issued by AT&T Ohio to Global NAPs Ohio accurately reflects the amount of traffic that AT&T Ohio terminated or transited for Global NAPs Ohio (*Id.* at 9, 10).

4. Yolanda Williams

Ms. Williams, Manager Quality/M&P/Process in the Wholesale Billing Organization of AT&T Services, Inc., testifies that AT&T Ohio has sent Global NAPs Ohio monthly bills for services that AT&T Ohio provided to the respondent pursuant to the parties' interconnection agreement. These services include the transport and termination of traffic delivered over trunk groups reserved for local and intraLATA toll traffic, as well as for transit traffic delivered by Global NAPs Ohio to AT&T Ohio (AT&T Ohio Ex. 5 at 4). Ms. Williams describes the processes involved in the generation of bills for reciprocal compensation and transit traffic. Specific to reciprocal compensation, the witness explains that AT&T Ohio relies on its Carrier Access Billing System (CABS) which, on a monthly basis, summarizes usage for each terminating end office and applies the applicable rate (*Id.*). In regard to transit traffic, the witness describes AT&T Ohio's use of its LEC Services Billing System in order to bill Global NAPs Ohio, on a monthly basis, for the transit traffic functionality (*Id.* at 5). According to Ms. Williams, Global NAPs Ohio has not paid any of the amounts billed for either reciprocal compensation (which as of December 2008, amounted to \$40,339.37, excluding late charges) or transit traffic (which as of December 2008, amounted to \$32,728.66, excluding late charges) (*Id.* at 6). Finally, Ms. Williams notes that Global NAPs Ohio has never challenged the accuracy of the specific amounts charged in any bill but, rather, generically disputes its obligation to pay anything for the services that AT&T Ohio has provided. According to Ms. Williams, Global NAPs Ohio posits that the relevant traffic is Internet Service Provider (ISP)-bound traffic and, therefore, it is

only subject to those charges set forth by the Federal Communications Commission (FCC) (*Id.* at 11).

5. Patricia H. Pellerin

Ms. Pellerin, Associate Director-Wholesale Regulatory Support for the Southern New England Telephone Company, which provides services for AT&T Operations, Inc., testifies in support of the AT&T Ohio's claims that Global NAPs Ohio has failed to pay for services provided pursuant to the parties' interconnection agreement and that the respondent has failed to satisfy the statutory requirements to maintain its certification to provide telecommunications services in Ohio (AT&T Ohio Ex. 1 at 2). She states that, in order to utilize the transiting and transport and termination services contemplated under the parties interconnection agreement, Global NAPs Ohio requested that AT&T Ohio establish trunks to AT&T Ohio's end office and tandem office switches for the purpose of carrying local/intraLATA toll traffic. The witness notes that AT&T Ohio charges reciprocal compensation rates for local traffic, intrastate switched access rates for intraLATA toll, and a separate rate for the transit traffic that is also sent over the same local/intraLATA toll trunks (*Id.* at 5). According to Ms. Pellerin, Global NAPs Ohio has failed to pay AT&T Ohio for any traffic completed to AT&T Ohio end users or for any traffic transited to other carriers serving Ohio end users (*Id.* at 5, 6).

With respect to reciprocal compensation obligations as set forth in the parties' existing interconnection agreement, Ms. Pellerin identifies the following sections of the interconnection agreement, Reciprocal Compensation Appendix, as establishing the relevant terms and conditions: Section 3 (Classification of Traffic), Section 4 (Responsibilities of the Parties), Section 5 (Local Call Termination), and Section 15 (Billing for Mutual Compensation) (*Id.* at 7). In regard to Section 4, Ms. Pellerin explains that the CPN is important for the purposes reciprocal compensation inasmuch as it is used to determine the jurisdiction of a call (i.e., local or toll). She notes that, if there is a technical problem with the transmission of the CPN, the parties will work together to remedy the problem and apply a percent local use factor (PLU) for those calls that cannot be identified as local or toll (*Id.* at 8). Pursuant to Section 5, Ms. Pellerin determines that, where Global NAPs Ohio is directly connected through trunk groups to AT&T Ohio's end office switches, the end office rate elements apply to Global NAPs Ohio's local traffic. Where Global NAPs Ohio connects through trunk groups to AT&T Ohio's tandem switches, the tandem switching and tandem transport rate elements apply in addition to the end office rate elements since AT&T Ohio is providing tandem switching, end office switching, and transport between the switches (*Id.* at 9).

Ms. Pellerin highlights the fact that Global NAPs Ohio has not disputed the contention that it delivered traffic to AT&T Ohio in the quantities alleged in the complaint (*Id.* at 12). The witness notes that Global NAPs Ohio has consistently asserted that its traffic is exempt from compensation obligations because it is ISP-bound

(*Id.* at 18). Ms. Pellerin disputes this contention and asserts that the complaint does not pertain to traffic that is ISP-bound but, rather, is limited in scope to the nonpayment of reciprocal compensation for calls completed to AT&T Ohio's end users and for the nonpayment of transiting charges for calls that AT&T Ohio transited to other carriers for completion to those carriers' end users (*Id.* at 12). In response to a potential claim by Global NAPs Ohio that the traffic to AT&T Ohio is enhanced service provider (ESP)-related and, therefore, is exempt from reciprocal compensation and transit traffic charges, Ms. Pellerin states that the respondent has failed to demonstrate that the traffic in question in this proceeding is subject to an ESP exemption (*Id.* at 13, 19, 20).

In support of her position, Ms. Pellerin concludes that the ESP exemption is very limited and only applies to ESPs themselves and not to downstream carriers delivering traffic from ESPs to third-party end users. At best, Ms. Pellerin opines that the customers of Global NAPs unregulated affiliate, Global Networks, are ESPs (*Id.* at 21, 22). She also focuses on Global NAPs Ohio's recognition that "the trunks over which Global Ohio has delivered telecommunications traffic to AT&T Ohio were established pursuant to the interconnection agreement between Global NAPs Ohio Inc. and AT&T Ohio" (*Id.* at 15 citing United States District Court for the Southern District of Ohio, Case No. 2:06 CV 549, *The Ohio Bell Telephone Company Inc. v. Global NAPs Ohio Inc.*, December 15, 2006, Discovery Response, Attachment PHP-2). Further, Ms. Pellerin asserts that neither Global NAPs Ohio nor any of its affiliates provided transport or other services for VoIP or Internet Protocol (IP) traffic at the time that Global NAPs Ohio ordered trunks (*Id.* at 16).

Notwithstanding its position summarized above, AT&T Ohio opines that, if even one hundred percent of Global NAPs Ohio's traffic originated in an IP format, based on the Commission's January 25, 2006, Arbitration Award in Case No. 04-1822-TP-ARB (04-1822), *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration*, local traffic originated in a IP-format is subject to reciprocal compensation and is not exempt from intercarrier compensation (*Id.* at 26, 27).

Ms. Pellerin explains that AT&T Ohio's transiting service allows Global NAPs Ohio to utilize AT&T Ohio's network to exchange traffic with third-party carriers with which the respondent has no direct interconnection (*Id.* at 28). By doing so, Global NAPs Ohio is able to terminate the originating traffic of its affiliates' customers to the end users of other LECs, CLECs, and wireless carriers (*Id.* at 28). According to the witness, pursuant to rates, terms, and conditions of the Global NAPs Ohio/AT&T Ohio interconnection agreement, Global NAPs Ohio can simply deliver transit calls over the local/intraLATA toll trunks to AT&T Ohio and AT&T Ohio will complete the calls to the appropriate third-party carrier (*Id.* at 28). According to Ms. Pellerin, notwithstanding AT&T Ohio's transiting function charges, it is still the responsibility of the originating and terminating carriers to establish the appropriate intercarrier compensation for calls exchanged between the respective customers (*Id.* at 30). Ms.

Pellerin indicates that Global NAPs Ohio's unpaid balance for transiting traffic dates back to 2004.

Relative to the corporate structure of Global NAPs Ohio, Ms. Pellerin represents that Global NAPs Ohio is structured in the same manner as other Global NAPs entities that are certificated to provide service in various states (e.g., Global California and Global Illinois) and that all of these entities operate under the umbrella of their corporate parent, Ferrous Miner. With respect to the respondent's certification application in Case No. 01-1122-TP-ACE (01-1122), *In the Matter of the Application of Global NAPs Ohio, Inc., for Authority to Resell Local Exchange Services*, Ms. Pellerin notes that Global NAPs Ohio represented that it had the requisite technical, financial, and managerial qualifications to provide the services set forth in the application (*Id.* at 32). Based on the findings of the specified courts and state commissions throughout the United States regarding the operations of the affiliates of Global NAPs Ohio and their refusal to pay other carriers for service bills, AT&T Ohio questions whether the respondent has the requisite managerial resources and abilities to remain certified (*Id.* at 56-59).

Specific to the representations made in Global NAPs Ohio's certification application, Ms. Pellerin submits that some of the representations would be false if they were made today. In particular, Ms. Pellerin focuses on the failure of Global NAPs Ohio to reveal that it is a shell company with no assets, customers, employees, or revenues, and that all of the Global entities operate under the umbrella of Ferrous Miner, which is a wholly owned asset owned and controlled by Frank Gangi (*Id.* at 34-41, 45). AT&T Ohio alleges that, in actuality, the financial information provided in the certification case was not even for Global NAPs Ohio but, instead, was for an affiliate, Global NAPs Inc. (*Id.* at 35). Further, based on the record from litigation in other states, AT&T Ohio opines that the financial information submitted in 01-1122 is no longer accurate inasmuch as Global NAPs Inc. does not have any assets that the Commission can rely upon (*Id.* at 49, 50). AT&T Ohio also points out that, despite the fact that Global NAPs Ohio has been delivering local and transit traffic to it since 2004, the respondent continues to report no intrastate revenues on its Ohio annual reports (*Id.* at 44). Based on the assertions set forth in its testimony, AT&T Ohio does not believe that Global NAPs Ohio possesses sufficient financial resources to provide the services for which it is certified (*Id.* at 36). Rather, AT&T Ohio opines that, in actuality, an uncertified affiliate (Global NAPs Networks Inc.) is using Global NAPs Ohio's certificate to provide service in Ohio and incur liabilities, while keeping the derived revenues for itself (*Id.* at 42, 43, 45, 52). In support of its contention, AT&T Ohio asserts that there are no contracts for the services between Global NAPs Networks Inc. and its affiliates (*Id.* at 42).

B. Global NAPs Ohio

Global NAPs Ohio presented Brad Masuret, William J. Rooney, Jr., and Jeffrey Noack relative the allegations raised against it in the complaint.

1. Bradford G. Masuret

Brad Masuret is employed by Global NAPs Inc. as the Vice President of Sales of Global NAPs Inc., which is an affiliate of Global NAPs Ohio, Inc. (Global NAPs Ohio Ex. 1 at 1). In his testimony, Mr. Masuret focuses on the three-minute reports addressed in the testimony of AT&T Ohio witness Hamiter. In response to AT&T Ohio's contention that all of the calls in its three-minute report were dialed as interexchange calls and handed off to the specified interexchange carrier, Mr. Masuret questions the study methodology and, therefore, disputes any of the conclusions that AT&T Ohio draws from the submitted data.

The witness contends that AT&T Ohio's study failed to investigate how the traffic in its study reached Global NAPs Ohio's network. Specifically, Global NAPs Ohio avers that AT&T Ohio has failed to determine how the calls in its three-minute study traveled from the identified interexchange carriers to Global NAPs Ohio or to demonstrate what was done to the calls after leaving the interexchange carriers (*Id.*). Contrary to the position advocated by AT&T Ohio, Global NAPs opines that traffic is considered to be VoIP either if it is initiated in an IP-format or if it is converted to an IP-format during the transmission process and is enhanced at that time (*Id.* at 3). Therefore, Global NAPs Ohio believes that in order for AT&T Ohio to properly support its position, an analysis must be performed as to what percentage of the calls that originated on the PSTN were actually forwarded to an ESP, converted into an IP format and were, in fact, enhanced (*Id.* at 3).

In response to AT&T Ohio's reliance on its three-minute reports to support its allegations regarding the failure of Global NAPs Ohio to pay reciprocal compensation charges, Mr. Masuret notes that the reports measure only interexchange calls and are void of any analysis of local calls (*Id.*). Mr. Masuret dismisses any attempt on behalf of AT&T Ohio to infer that, because some interexchange-routed long distance traffic originated on the PSTN and terminated through Global NAPs Ohio, some local traffic must have also originated on the PSTN and terminated through Global NAPs Ohio as well. Rather, Mr. Masuret submits that the calls that AT&T Ohio describes as traditional local calls did not originate on the PSTN and are, in actuality, overwhelmingly VoIP (*Id.* at 4, 5).

According to Mr. Masuret, despite Global NAPs Ohio's request for the inclusion of local calls as part of AT&T Ohio's three-minute reports, the complainant refused to do

so. Therefore, Global NAPs Ohio conducted a study of two days of traffic that it was receiving from its customers and terminating to AT&T Ohio where the originating and terminating numbers signified that the calls were local in nature (*Id.* at 19). Based on the results of this study, which encompassed 4,089 calls, 57 percent of the local traffic forwarded to Global NAPs Ohio for termination to AT&T Ohio originated with Broadwing, which is owned by Level 3, a VoIP provider and provider of services to VoIP origination companies (*Id.* at 20). Global NAPs Ohio points out that VoIP providers are not certified carriers and, therefore, cannot be assigned area code (NPA)/central office (NXX) codes by the North American Numbering Plan Administration (NANPA). Therefore, Global NAPs Ohio submits that VoIP providers must purchase services from certified carriers (*Id.*). Additionally, relative to the 4,089 calls in its study, Mr. Masuret submits that 316 of the calls originated from telephone numbers assigned to AT&T Ohio. Inasmuch as AT&T Ohio would never route a local call between two of its PSTN customers off of its network, Mr. Masuret concludes that the telephone numbers involved are registered to AT&T Ohio, but are broadband lines being used by subscribers of VoIP carriers (*Id.* at 22). Mr. Masuret opines that such scenario pertains to the situation in which a carrier with both traditional and broadband services is sending its broadband, VoIP services to ESPs, which route the calls to intermediate carriers such as the respondent in this case.

Relative to AT&T Ohio's three-minute reports, Mr. Masuret asserts that the complainant failed to compare the 6,141 calls that it captured to the universe of all calls that AT&T Ohio received from Global NAPs over these same periods. Rather than AT&T Ohio's determinations, Mr. Masuret submits that AT&T Ohio's own data indicates that only a small percentage of the interexchange traffic sent to AT&T Ohio by Global NAPs Ohio originates on the public switched telephone network of any carrier (*Id.* at 5). In support of this contention, Global NAPs Ohio ran an ESP termination outbound report for the purpose of capturing all calls greater than three minutes sent to AT&T Ohio for termination in LATA 320. The report specifically covered February 20, 2009, and February 25, 2009. The study reflects that, over the two days examined, there were 44,570 toll calls in duration of 3 minutes or more (*Id.*). Extrapolating these results over a 43-day period similar to AT&T Ohio's study, Global NAPs Ohio concludes that there were an estimated 958,255 calls with a call duration of three minutes or more (*Id.*). Therefore, Global NAPs Ohio opines that 6,141 calls reflected in AT&T Ohio's three-minute reports represents only .64 percent of the total estimated number of calls that were terminated to AT&T Ohio and were three-minutes or longer in duration (*Id.* at 5, 6). By excluding local calls, Global NAPs Ohio determined that there were 34,591 interexchange calls over the two-day study, resulting in 743,707 calls over AT&T Ohio's 43-day study. Therefore, Global NAPs Ohio submits that AT&T Ohio's calculated PSTN-to-PSTN interexchange calls were less than one percent of the Global NAPs Ohio traffic for a comparable period (*Id.* at 6). Based on its extrapolated numbers, Global NAPs Ohio submits that a little more than one-half of one percent of the traffic that

Global NAPs Ohio terminates to AT&T Ohio originated on the PSTN, while IP-originated traffic comprises at least 97 percent of the traffic (*Id.* at 6).

Mr. Masuret questions how calls that originated on the PSTN could reach Global NAPs Ohio directly for termination. In support of his position, Mr. Masuret submits that the respondent's only customers are ESPs and that Global NAPs Ohio does not provide terminating telephone service to interexchange carriers and, therefore, does not interconnect with any of the interexchange companies to whom AT&T apparently sent traffic (*Id.* at 8). Specific to the interexchange traffic identified in AT&T Ohio's three-minute reports, Mr. Masuret indicates that Global NAPs Ohio was able to determine the identity of the entities sending such traffic (*Id.* at 9).

Mr. Masuret discusses the operations of the company identified by AT&T Ohio as being one of the largest contributors of traffic that originated on the AT&T network and was terminated by Global NAPs Ohio (*Id.*). Mr. Masuret notes that, with respect to the identified company, Level 3 provides transport facilities for all of the interexchange traffic. All of the identified carrier's traffic carried by Level 3 goes to Transcom Enhanced Services LLC (Transcom) which, according to Mr. Masuret, is an ESP that provides the IP conversion of Time Division Multiplex (TDM) signals sent to it, as well as IP switching, and least cost routing functions (*Id.* at 10). Therefore, according to Mr. Masuret, the traffic that Global NAPs receives from Transcom is enhanced inasmuch as it is changed in both form and content (*Id.* at 17). Additionally, Mr. Masuret describes that, based on the directives of the identified carrier, Transcom will route individual calls to any one of several intermediate carriers with whom the identified carrier has contracted to terminate the calls (*Id.* at 14).

The witness states that Global NAPs Ohio and the identified carrier have no commercial relationship. Rather, Transcom, as an ESP, selected Global NAPs as its partner to terminate the identified carrier's traffic (*Id.* at 15). Specifically, Mr. Masuret reports that Transcom sends Global NAPs Ohio approximately 33 percent of all traffic that Global NAPs Ohio terminates to AT&T Ohio (*Id.* at 12). The witness also describes the fact that the respondent's second and third largest IP switching partners are CommPartners, LLC (CommPartners) and PointOne, each of which send Global NAPs approximately 27 percent of the traffic that the respondent terminates (*Id.* at 13, 14).

According to Mr. Masuret, in addition to Global NAPs, the identified carrier also utilizes an AT&T affiliate as an intermediate LEC for the purpose of terminating its traffic routed through Transcom (*Id.* at 15). Therefore, Global NAPs Ohio opines that AT&T, in its capacity as an intermediate LEC, is not routing the traffic over Feature Group D trunks but, instead, is treating the identified carrier's traffic as Internet traffic and is routing it over IP trunks (*Id.*). To this point, Global NAPs Ohio asserts that the traffic that it is receiving from Transcom and sending to AT&T Ohio over their shared interconnection facilities is identical to the traffic that AT&T, as a CLEC, receives from

the identified carrier. Therefore, Global NAPs Ohio posits that, if AT&T, as a CLEC, receives traffic for termination without requiring the identified carrier to route the traffic over Feature Group D trunks, then AT&T Ohio should not be permitted to require the respondent to do otherwise in this case (*Id.* at 17). Additionally, Global NAPs Ohio opines that the Feature Group D trunks are only necessary for the purpose of billing switched access. In light of the fact that AT&T Ohio is not pursuing switched access charges in this case, the respondent submits that the Feature Group D trunks are unnecessary (*Id.*).

Finally, Mr. Masuret rejects AT&T Ohio's claim that, based on the three-minute reports, it should be paid for transit traffic associated with the termination of interexchange traffic. Specifically, Global NAPs Ohio avers that it is not enough to prove that, because the traffic is IP-in the middle, it is subject to transit traffic and access charges. Rather, according to the witness, AT&T Ohio must also demonstrate that the traffic is not subject to IP switching or, if the traffic is subject to IP-switching, such switching does not materially enhance the traffic. The respondent concludes that no such demonstration has been made and that the record reflects that all of the traffic is demonstrably enhanced. To the extent that some of the traffic is subject to access charges as IP in the middle traffic, Global NAPs Ohio opines that the recovery of the transit charges should be accomplished via meet point billing arrangements in AT&T Ohio's switched access tariffs. Therefore, the respondent insists that AT&T Ohio has already been fully compensated for transiting any traffic sent by Global NAPs Ohio and, therefore, no further recovery for the traffic in question is appropriate (*Id.* at 22, 23).

2. Jeffery Noack

Jeffery Noack is employed as the Director of Network Operations of Global NAPs Inc., and is responsible for building, augmenting, and maintaining networks. According to Mr. Noack, the traffic that Global NAPs Ohio sends to AT&T Ohio for termination is VoIP traffic. Mr. Noack considers this traffic to be a form of enhanced service and, therefore, not a telecommunications service. Consistent with Mr. Noack's belief that the Global NAPs Ohio's traffic is enhanced, he concludes that it is neither local traffic nor interexchange traffic within the meaning of the parties' interconnection agreement (Global NAPs Ohio Ex. 2 at 1, 2).

Specifically, Mr. Noack points out that AT&T Ohio's three-minute reports fail to capture any data regarding local calls, despite the fact that this case is largely about local traffic. Even with respect to interexchange calls, Mr. Noack submits that the three-minute reports fail to capture much of the information regarding how calls that originated on the PSTN are transported to AT&T Ohio over interconnected facilities shared with Global NAPs. Absent this data, Mr. Noack opines that AT&T Ohio can

neither prove nor disprove the conclusions set forth in AT&T Ohio witness Hamiter's testimony (*Id.* at 3).

Based on supplemental data collected by Global NAPs Ohio, the respondent submits that none of the local traffic delivered by it to AT&T Ohio is traditional local traffic. Rather, Mr. Noack submits that all, or substantially all, of such traffic originates on broadband facilities and is VoIP traffic. Additionally, Mr. Noack states that all, or substantially all, of the traffic that is the subject of AT&T Ohio's three-minute reports is enhanced in light of the fact that it is delivered through the switching function of an ESP (*Id.* at 4). In support of his position, Mr. Noack avers that TDM-to-IP-to-TDM traffic does not exist (*Id.* at 16). Specifically, he opines that cost factors would negate AT&T Ohio's proposed hypothesis in which a call, originating on AT&T Ohio's public switched telephone network, passes through an IP-switch and still terminates to an AT&T Ohio local subscriber (*Id.* at 4-9). Mr. Noack also asserts that Global NAPs Ohio cannot be involved in the transport of traditional local traffic due to the fact that its only involvement in the termination of voice traffic is as an intermediate CLEC carrying interexchange traffic sent to it by ESPs (*Id.* at 12). Relative to the transport of local traffic, Mr. Noack explains that the only way that such calls could be transported would be if a customer dials a 1010XXX code to place a local call. Global NAPs Ohio believes that such a scenario is unlikely due to the fact that low-cost local calls would result in high-cost long distance calls (*Id.* at 18).

In regard to calls originating from VoIP service providers (e.g., calls initiated on a cable provider's network), the respondent points out that, while a call may be local in nature, it may be routed from a location that is physically remote from the geographic location associated with the dialing number. Due to the nomadic nature of such calls, Global NAPs Ohio submits that such calls are neither local nor interexchange, but are simply VoIP and should be dealt with separately for the purpose of interconnection agreements (*Id.* at 10). Mr. Noack explains that a VoIP-initiated call does not begin in a TDM format over a local loop but, rather, begins in an IP-format and is carried over a broadband facility to an IP switch that might be several states away from either the origination or termination point. Further, Mr. Noack describes how VoIP providers must make arrangements to transport calls to the ESP IP-switch. The ESP must then determine the route for terminating the call by sending it to an intermediate carrier that has an interconnection arrangement with the ILEC serving the end user receiving the call. The intermediate carrier converts the signal to TDM and routes it over its own interconnection facilities to the local carrier serving the end user receiving the call (*Id.* at 9-11).

Specific to AT&T Ohio's three-minute toll studies, Mr. Noack contends that, while AT&T Ohio has identified the Carrier Identification Code for the interexchange carrier to whom the calls were routed, the complainant fails to determine who the interexchange carrier was, how the carrier routed the call once it received it, or how the

call was sent to Global NAPs Ohio. Similar to his discussion regarding the routing of the local calls in this proceeding, Mr. Noack explains that the toll calls in the three-minute studies had to have passed through the switching networks of the ESP customers served by Global NAPs Ohio. In support of his position, Mr. Noack emphasizes that AT&T Ohio failed to recognize that less one percent of the calls that it received from Global NAPs Ohio actually began on the PSTN (*Id.* at 15, 16). Mr. Noack also argues that, inasmuch as the three-minute studies are limited to toll traffic, they provide no evidence about whether the traffic that AT&T Ohio identifies as local was or was not initiated by a TDM switch instead of a VoIP broadband facility (*Id.* at 17).

3. William J. Rooney Jr.

William J. Rooney Jr. is employed as General Counsel for Global NAPs Inc. He is responsible for the supervision of litigation, selection of outside counsel, and the review of invoices. For the purposes of this proceeding, Mr. Rooney is adopting the prefiled testimony of Mr. James Scheltema, which was filed on January 21, 2009, (Global NAPs Ohio Ex. 3 at 1). Mr. Rooney explains that Global NAPs Ohio does not provide dial tone services to any end user customers in Ohio but, instead, is an intermediate carrier that focuses on the termination of VoIP traffic to AT&T Ohio customers. Specifically, Mr. Rooney opines that enhanced traffic that is converted and terminated over the PSTN is VoIP (*Id.* at 4). Mr. Rooney describes how in a typical arrangement a VoIP provider, such as Vonage, routes its subscribers' calls to a network aggregator, such as CommPartners or Transcom. The network aggregator then contracts with Global NAPs Ohio to receive calls from the aggregator and terminate those calls in a location served by Global NAPs Ohio (*Id.* at 3-5). Mr. Rooney submits that Global NAPs Ohio is not the only provider of interconnection services for VoIP providers. Rather, according to Mr. Rooney, many facilities-based carriers, including AT&T, provide virtually identical services (*Id.* at 4). Specific to Global NAPs Ohio's customers, Mr. Rooney explains that the respondent terminates voice traffic from six customers, all of which have represented that they are ESPs. The witness opines that the traffic sent by its customers for transport and termination to AT&T Ohio is nomadic VoIP (*Id.* at 4-6).

Based on the FCC's decision in WC Docket No. 06-55, *In the Matter of Time Warner Cable Request for a Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, As Amended, to Provide Whole Telecommunications Services to VoIP Providers (Time Warner Declaratory Ruling)*, Memorandum Opinion and Order, WC Docket No. 06-55, rel. March 1, 2007, DA-07-709, Mr. Rooney asserts that intermediate wholesale network service providers, such as Global NAPs Ohio, have the right to interconnect with ILECs pursuant to Section 251 of the Telecommunications Act of 1996 (1996 Act) (*Id.* at 3, 7). The witness represents that, although Global NAPs has repeatedly attempted to seek negotiations with AT&T Ohio to reach agreement on a Section 251 agreement for the termination of VoIP traffic, AT&T Ohio has refused to enter into such discussions (*Id.* at 7). Citing the

existing interconnection agreement (i.e., Reciprocal Compensation Appendix, Section 16.9), Mr. Rooney avers that the parties had previously agreed to further negotiate an amendment to its current interconnection agreement to address VoIP traffic (*Id.* at 8).

In support of his position that the parties should engage in a negotiation of compensation for VoIP traffic, Mr. Rooney distinguishes the VoIP traffic that it terminates to AT&T Ohio from the existing obligation of Global NAPs Ohio to pay reciprocal compensation for local traffic. Specifically, Mr. Rooney avers that, under both federal law and the express terms of the interconnection agreement, terminating VoIP traffic is not local traffic but, rather, is jurisdictionally interstate (*Id.* at 9). Further, Mr. Rooney asserts that the VoIP traffic is not telecommunications traffic but, instead, is an enhanced service and an information service. He also points out that Reciprocal Compensation Appendix, Section 16.9 identifies VoIP as a form of Internet telephony and specifies that there is no "meeting of the minds" as to whether VoIP traffic is or is not local traffic subject to reciprocal compensation (*Id.* at 9, 10).

According to the witness, applying the reciprocal compensation rates set forth in the interconnection agreement would be both *discriminatory and commercially unreasonable*. In support of his position, Mr. Rooney states that "[t]here is now a well established range of rates that have either been ordered or negotiated for VoIP," including contracts that AT&T, as a CLEC, entered into with Verizon (*Id.* at 10). Global NAPs submits that these various decisions and agreements establish a range of reasonableness for pricing of terminating VoIP traffic. Therefore, Mr. Rooney contends that "[t]he application of a substantially higher rate either than AT&T charges others or seeks for itself would be *discriminatory and anticompetitive*" (*Id.*).

Regarding any claim by AT&T Ohio for the payment of transit traffic, similar to its position relative to reciprocal compensation, Global NAPs Ohio states that the interconnection agreement does not contemplate the application of the currently specified charges to Internet telephony. Rather, Mr. Rooney submits that such a rate must be specified between the parties (*Id.* at 11).

In response to AT&T Ohio's contention that Global NAPs Ohio has breached the interconnection agreement by sending interexchange, interLATA traffic over local interconnection trunks, Mr. Rooney opines that VoIP traffic is no more interLATA, interexchange traffic than it is local traffic. Further, Mr. Rooney points out that AT&T Ohio has only two types of interconnection trunks. The first are local trunks, which are managed pursuant to Section 251 interconnection arrangements and the second are Feature Group D trunks, which are subject to switched access charges (*Id.* at 12). Mr. Rooney posits that, while Internet telephony is not subject to switched access charges, it is an industry practice that such traffic is terminated over "local" trunks at negotiated rates. In support of its position, Mr. Rooney submits that AT&T itself uses local

interconnection trunks to terminate its VoIP traffic to other ILECs and accepts such traffic over local trunks from other providers (*Id.*).

Finally, Mr. Rooney contends that AT&T Ohio has no reason to challenge Global NAPs Ohio's certification. Specifically, Global NAPs Ohio submits that there is no claim by any of its customers that it has provided poor or injurious service. Further, Global NAPs Ohio states that it has done nothing to change its corporate structure since the initial certification. To the extent that such a request is motivated by AT&T Ohio's concern that it will not be paid should the respondent prevail in this case, Mr. Rooney opines that such an approach is totally inappropriate here because AT&T Ohio has not demonstrated a probability of success on the merits. Relative to the operations of the Global NAPs Ohio, Mr. Rooney explains "that it is part of a family of Global companies, each of which performs a specific function and is allocated cost and revenue based on that function" (*Id.* at 14). For example, the witness describes how Global NAPs New Hampshire serves as the "banker," for the Global companies and that payments are received and disbursements are made to the earning entity, primarily from the Global NAPs New Hampshire bank account, and allocated to the appropriate entity by management (*Id.* at 14). For Ohio, Mr. Rooney states that revenues and costs are allocated primarily to Global NAPs Networks, Inc. and Global NAPs, Inc. and that those entities are responsible to the extent that the Commission ordered payment in this proceeding. Mr. Rooney also indicates that nothing prohibits Global NAPs Inc. from making payments for Global NAPs Ohio that come due in the ordinary course of business. However, Mr. Rooney explains that, if the Commission were to revoke Global NAPs Ohio's authority, it would make it more difficult for it to pay any sums owed to AT&T Ohio inasmuch as there would be no ongoing revenue attributable to Global NAPs Ohio in order to pay outstanding charges (*Id.* at 15).

IV. Arguments Relative to the Counts of the Complaint

- A. Count I - Since June 2004, Global NAPs Ohio has breached its interconnection agreement with AT&T Ohio by failing to pay reciprocal compensation for the transport and termination of local traffic.
- B. Count III - Since at least August 2004, Global NAPs Ohio has breached its interconnection agreement with AT&T Ohio by failing to pay for those charges pertaining to Global NAPs Ohio traffic that AT&T Ohio transits to third-party carriers.

1. AT&T Ohio

According to AT&T Ohio, the relevant interconnection agreement sets forth the rates, terms, and conditions for the termination of local traffic to AT&T Ohio end users and for the transiting of traffic to end users of other local service carriers (AT&T Ohio

Initial Br. at 5, 6, citing October 2, 2002, ICA, Reciprocal Compensation Appendix, Section 5.2-5.4; Pricing Appendix; AT&T Ohio Ex. 1 at 9, 10, 29; AT&T Ohio Ex. 4 at 5-10; AT&T Ohio Ex. 5 at 4-11). AT&T Ohio states that, pursuant to the parties' interconnection agreement, Global NAPs requested the establishment of trunks to exchange local and intraLATA toll traffic. Specifically, AT&T Ohio's witness testified that Global NAPs Ohio submitted several access service requests (ASRs) requesting the establishment of combined local/intraLATA trunk groups and representing that the respondent would be delivering local and intraLATA toll traffic over these trunks (AT&T Ohio Initial Br. at 6 citing AT&T Ohio Ex. 3 at 3, 4). The complainant notes that, pursuant to the terms of the interconnection agreement, while local and intraLATA toll traffic could be combined on the "Local and IntraLATA Trunk Groups," interLATA traffic was to be transported over a "meet point" trunk group separate from local and intraLATA toll traffic" (*Id.* at 4 citing ICA, Interconnection Trunking Requirements Appendix, Sections 5.3.1.1, 5.3.2.1, 5.4.1).

AT&T Ohio avers that there is no dispute that the traffic in question in this proceeding was transmitted over the local/intraLATA trunks ordered by Global NAPs Ohio (Initial Br. at 6). AT&T Ohio notes that some of the traffic that Global NAPs Ohio delivered over the requested trunks consisted of calls to end user customers of AT&T Ohio, and some of the traffic consisted of calls to end users of other local telephone companies in the state of Ohio pursuant to a transiting function. AT&T Ohio avers that, while it has provided a number of services to Global NAPs Ohio pursuant to the parties' interconnection agreement, Global NAPs Ohio has refused to compensate the complainant. AT&T Ohio represents that these services are used by Global NAPs Ohio or its affiliates to provide service to customers of Global NAPs affiliates, resulting in substantial revenues for those affiliates. AT&T Ohio requests that the Commission find that Global NAPs Ohio is in breach of the applicable interconnection agreement and order Global NAPs Ohio to pay the charges billed by AT&T Ohio (*Id.* at 2-5).

Specific to the reciprocal compensation charges in dispute, AT&T Ohio explains that it used the CPN information to determine the portion of the respondent's traffic that is local in order to bill the local reciprocal compensation rates specified in the interconnection agreement (*Id.* at 7 citing AT&T Ohio Ex. 4 at 5-10; AT&T Ohio Ex. 5 at 4-11). In particular, AT&T Ohio represents that its switches recorded information for every call delivered by Global NAPs Ohio, including CPN (*Id.* citing AT&T Ohio Ex. 4 at 5-8). This information was then used to automatically generate bills to Global NAPs Ohio for reciprocal compensation for specific calls classified as local (*Id.*).

The complainant rejects Global NAPs Ohio's contention that it is inappropriate to rely upon the CPN to classify a call. According to AT&T Ohio, such a standard would prevent carriers from ever collecting intercarrier compensation. In support of its position, AT&T Ohio points out that, while telephone numbers do not always accurately reflect the actual physical location of an end user (e.g., foreign exchange

service), the FCC has determined that intercarrier compensation should continue to be based on telephone numbers (*Id.* at 10, 11 citing *Inter-carrier Compensation*, FNPRM, 20 FCC Rcd at 4696, 4697, ¶¶20-22). Specific to VoIP traffic, AT&T Ohio highlights the fact that the Commission has determined that for IP-PSTN traffic, the physical location of the calling and called party is the deciding factor for intercarrier compensation purposes (*Id.* at 12 citing 04-1822 Arbitration Award at 16). Further, AT&T Ohio states that the existing interconnection agreement specifically provides that the parties are to pass the CPN, where available, and describes how the parties are to address the situation in which the CPN is not provided (*Id.*).

AT&T Ohio highlights the fact that Section 3 of the Reciprocal Compensation Appendix provides that "telecommunications traffic exchanged between CLEC and ILEC will be classified as either Local Calls, Transit Traffic, Optional Calling Area Traffic, IntraLATA Toll Traffic, or InterLATA Toll Traffic" (*Id.* at 8 citing Reciprocal Compensation Appendix Section 3.1). The complainant submits that the interconnection agreement does not provide for the classification of traffic that includes VoIP or enhanced traffic. Therefore, AT&T Ohio opines that Global NAPs Ohio's VoIP or enhanced traffic is also subject to reciprocal compensation inasmuch as the traffic sent by Global NAPs Ohio was either terminated or transited over the local and IntraLATA trunk groups provisioned by the complainant (*Id.*).

According to AT&T Ohio, the respondent asserts that, based on various FCC orders and regulations, it is not required to pay any of the disputed charges because the customers of Global NAPs affiliates are involved in the transmission of VoIP traffic. AT&T Ohio dismisses Global NAPs Ohio's position regarding VoIP traffic and responds that, inasmuch as the existing interconnection agreement is binding, Global NAPs Ohio must compensate AT&T Ohio for the traffic provisioned over the ordered trunks (*Id.* at 2). In support of its position, AT&T Ohio states that the FCC has previously determined that "interconnected VoIP providers provide telecommunications [service]" (*Id.*, at 8, 9 citing *In re Universal Service Contribution Methodology* 21 FCC Rcd. 7518, 2006 WL 1765838 [2006] [VoIP Universal Order]). AT&T Ohio also references the FCC's determination that "... interconnected VoIP providers provide the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received" (VoIP Universal Service Order at ¶39).

AT&T Ohio rejects Global NAPs Ohio's reliance on Section 16.9 of the Reciprocal Compensation Appendix for the respondent's conclusion that the traffic should be terminated for free. AT&T Ohio highlights Pricing Appendix, Section 1.5, which provides that AT&T Ohio "shall not be required to provide a product or service under this Agreement unless and until the Parties have agreed upon a rate element or charge . . . applicable to the requested product and/or service" (AT&T Ohio Reply Br. at 2, 3). AT&T Ohio points out that, if VoIP is not local traffic under the interconnection

agreement, it must be treated as either transit traffic, optional calling area traffic, intraLATA toll traffic, or interLATA toll traffic and is, therefore, subject to some form of compensation (i.e., reciprocal compensation or access charges) (AT&T Ohio Initial Br. at 9 citing Reciprocal Compensation Appendix Section 3.1; AT&T Ohio Reply Br. at 5, 6). To this point, AT&T Ohio emphasizes that, rather than pursuing the issue of whether reciprocal compensation or higher access rates apply to Global NAPs Ohio's traffic addressed in this proceeding, it is only seeking the lower reciprocal compensation rates (*Id.* at 8). AT&T Ohio opines that the interconnection agreements cited by Global NAPs Ohio actually support the complaint's position in this proceeding (*Id.* at 7, 8).

AT&T Ohio asserts that, inasmuch as the respondent has accepted the benefits under the agreement by sending its traffic over the local and intraLATA toll trunks contemplated by the applicable interconnection agreement, Global NAPs Ohio is estopped from denying that its traffic is subject to local reciprocal compensation and transit charges (AT&T Ohio Initial Br. at 10; AT&T Ohio Reply Br. at 9). Specifically, AT&T Ohio contends that Global NAPs Ohio interconnected pursuant to the interconnection agreement and relied upon the agreement to establish local and intraLATA toll trunks with AT&T Ohio with the expectation that the complainant would either transit or terminate traffic for Global NAPs Ohio (AT&T Ohio Initial Br. at 10, 11 citing AT&T Ohio Ex. 1 at 15; Tr. III, 378). Therefore, AT&T Ohio insists that the respondent has the obligation to use the trunks to deliver local and intraLATA toll traffic, the obligation to pay transiting charges for the traffic delivered over those trunks that AT&T Ohio transited, and the obligation to pay reciprocal compensation charges for traffic that Global NAPs Ohio represented was local and was terminated by AT&T Ohio to its end users (*Id.* at 11). In the alternative, AT&T Ohio submits that the Commission should find that Global NAPs Ohio has breached the interconnection agreement by misrouting traffic over trunks reserved for local and intraLATA toll traffic (*Id.* at 3).

In response to Global NAPs Ohio's reliance on Reciprocal Compensation Appendix, Section 3.6, AT&T Ohio argues that, notwithstanding the exemption provided for information service traffic, Global NAPs Ohio, itself, is not a VoIP provider but, rather, is an interconnected telecommunications carrier providing a telecommunications service (i.e., wholesale transport of the purported VoIP traffic) (*Id.* at 3, 4 citing *In the Matter of Time Warner Cable*, 22 FCC Rcd. 3513, 2007 WL 623570 [FCC 2007]).

To the extent that the respondent contends that the traffic in question originates and terminates on the public switched telephone network, but it is converted to IP and enhanced in the middle by the customers of Global NAPs Ohio's affiliates, AT&T Ohio asserts that such "IP in the middle scenarios" have already been determined by the FCC to be telecommunications services subject to access charges (*Id.* at 24-27; AT&T Ohio Reply Br. at 22, 23 citing *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, Order, [rel. April 21, 2004]). As further support for its position, based on 47 C.F.R. Section 9.3, AT&T Ohio submits that interconnected VoIP service includes only traffic that originated in IP-format over a broadband connection and does not include traffic that originates on the PSTN in TDM format and is only converted to IP in the middle (*Id.* at 24).

Based on the FCC's Order in 02-361, AT&T Ohio opines that FCC's primary distinguishing factor focuses on whether the service provider provides enhanced functionality to the end users, and not transparently in the middle of the call. In support of its position, AT&T Ohio references the affidavit, attached to Global NAPs Ohio's Ex. 1, in order to demonstrate that the calls originate and terminate on the public switched telephone network and are only switched in the middle of the transmission path for the purpose of call switching and routing (AT&T Ohio Initial Br. at 26, 27).

AT&T Ohio submits that, notwithstanding Global NAPs Ohio's contention that either the federal law or the FCC's rules exempt the respondent from the charges at issue in this complaint, the terms of the interconnection agreement control regarding the reciprocal compensation and transiting obligations, even under the scenario in which the respondent delivers VoIP or enhanced traffic to AT&T Ohio (*Id.* at 11). In support of its position, AT&T Ohio believes that the "Commission's approval of the applicable interconnection agreement 'made it finally binding on the private parties involved,' and '[f]ederal law gives [AT&T Ohio] the right to insist that it be held only to the terms of the interconnection agreement to which it actually agreed' " (*Id.* at 12 citing *Verizon Maryland, Inc. v. RCN Telecom Seros.*, 232 F. Supp. 2d 539, 551, 555 [D. Md. 2002]). As further support for its position, AT&T Ohio references *Global NAPs California Inc. v. Public Utilities Commission of California*, No. 07-04801 (C.D. Cal. December 23, 2008), in which the federal district court addressed upholding of the California Commission's decision that Global NAPs California was obligated to pay Cox California Telecom's charges for the termination of traffic pursuant to an interconnection agreement. According to AT&T Ohio, the federal district court rejected assertions that because the traffic was VoIP, the California Commission had violated federal law. Specifically, AT&T Ohio references the federal district court's conclusion that: "[t]he parties to an ICA . . . have the power to opt out of any existing regulatory regime by agreement" and thus "[a] state commission can enforce the terms of an ICA even if the agreement is not consistent with the federal baseline" (*Id.* at 12, 13 citing *Global NAPs California* at 16, n. 27).

In response to Global NAPs Ohio's reliance on the FCC's alleged ESP exemption, AT&T Ohio asserts that the exemption merely permits ESPs to establish connectivity with their customers by purchasing certain services from local carriers' tariffs for business carriers and exempts them from certain interstate access charges. According to AT&T Ohio, the exemption does not help Global NAPs here because it is not an ESP

and because the complainant is not seeking access charge payment in this case (*Id.* at 3). In support of its position, AT&T Ohio references the Commission's Arbitration Award in 04-1822 rejecting the argument that IP-based traffic is exempt from the same intercarrier compensation that applies to other traffic (*Id.* at 2, 3, 13-19 citing 04-1822, Arbitration Award at 16). AT&T Ohio points out that other state commissions have similarly rejected attempts, including those of the respondent, to avoid charges pursuant to an alleged ESP exemption (*Id.* at 19, 20).

AT&T Ohio also notes that the exemption has nothing to do with transiting charges that AT&T Ohio seeks to collect inasmuch as they are not for charges for originating or terminating long distance calls on AT&T Ohio's network but, rather, are charges for traffic that AT&T Ohio agreed to transport across its network and hand-off to a third-party carrier on Global NAPs Ohio's behalf. Similarly, AT&T Ohio asserts that the ESP exemption has nothing to do with reciprocal compensation charges and, instead, only pertains to interstate access charges. AT&T Ohio explains that, while the exemption relates to the providers' connections to their customers, the local reciprocal compensation charges that it seeks to collect from Global NAPs Ohio are for the termination of traffic on the PSTN to AT&T Ohio's end users (*Id.* at 17, 18).

With respect to Global NAPs Ohio's reliance on a Texas bankruptcy court decision that Transcom enhances the traffic that passes through its system, AT&T Ohio posits that the respondent has presented no evidence that Transcom enhanced the specific traffic that Global NAPs Ohio delivered to AT&T Ohio. Additionally, AT&T Ohio submits that the cited case does not pertain to the state of Ohio and, therefore, is hearsay (*Id.* at 19, 20). Further, AT&T Ohio notes that the bankruptcy court decision upon which Global NAPs Ohio relies was vacated on appeal and, therefore, has no precedential value as to the issue of the provision of enhanced traffic (*Id.* at 20, 21 citing *AT&T Corp. v. Transcom Enhanced Services LLC*, Memorandum Order, No. 3:05-cv-1209-B [N.D. Tex. Jan. 20, 2006]). Additionally, relying upon the record in this case, AT&T Ohio contends that, while one identified CLEC customer of Transcom delivered PSTN-originated traffic to Transcom, there is no claim that the provider received any enhanced capabilities from Transcom (*Id.* at 21). Also, AT&T Ohio asserts that, based on the fact that the identified CLEC represented that its payments to Transcom included access charges for AT&T Ohio's termination of traffic, it is clear that the CLEC was not purchasing enhanced services from Transcom (*Id.* at 22 citing Global NAPs Ohio Initial Br., Attach. K at ¶13).

Notwithstanding its argument regarding the relevancy of whether or not Global NAPs Ohio's traffic is VoIP or enhanced, AT&T Ohio asserts that the respondent has failed to satisfy its burden to prove that the traffic it delivered to AT&T Ohio was VoIP or enhanced traffic (*Id.* at 21). In support of its argument, AT&T Ohio references the three-minute reports which it presented in this case. Based on these reports, AT&T Ohio insists that substantial traffic sent it to by Global NAPs Ohio for termination or

transiting was not VoIP initiated but, rather, originated from end users on the PSTN (*Id.* at 22, 23 citing AT&T Ohio Ex. 2 at 14-18).

AT&T Ohio responds to Global NAPs Ohio's call study attached to witness Masuret's testimony. AT&T Ohio states that Global NAPs Ohio has failed to demonstrate that any substantial portion of its traffic is IP-originated VoIP traffic (AT&T Ohio Reply Br. at 17). AT&T Ohio disputes Global NAPs Ohio's suggestion that it would make no sense for local, CLEC-initiated TDM calls to be routed to an ESP and then to the respondent. Specifically, AT&T Ohio questions why, if non-local TDM calls are routed to an ESP in order to obtain enhancements, would not carriers want the same enhancements on their local calls? Based on Global NAPs Ohio's representation, AT&T Ohio opines that the only reason why non-local TDM calls would be routed to an ESP would be to avoid access charges (*Id.*). To the extent that Global NAPs Ohio's call study includes calls originated by subscribers of Level 3 and YMAX, AT&T Ohio submits that the respondent failed to present any of the calls originated in IP-format from end user customers of VoIP providers served by these carriers (*Id.* at 18).

AT&T Ohio also disputes the Global NAPs Ohio contention that, based on the results of its two-day study and AT&T Ohio's three-minute study, only approximately two-percent of its traffic originated on the PSTN (*Id.*). In support of its conclusion, AT&T Ohio points out that the studies covered different time frames and that a comparison of the two studies results in "apples to oranges" comparison due to the fact that traffic volumes can vary drastically (*Id.* at 19). Additionally, AT&T Ohio questions Global NAPs Ohio's assumption in its study that if a call did not originate on the PSTN of one of AT&T Ohio's ILECs then it must be IP originated. In support of its criticism, AT&T Ohio notes that calls could originate in a TDM format from wireless and cable providers (*Id.* at 19 citing Global NAPs Ohio Ex. 1, Attach. 2).

AT&T Ohio asserts that the parties have an existing interconnection agreement addressing local and intraLATA traffic pursuant to which Global NAPs Ohio terminated traffic to AT&T Ohio. To the extent that Global NAPs Ohio desires rates specific to VoIP, AT&T Ohio submits that it was incumbent upon Global NAPs Ohio to negotiate such rates prior to entering into the interconnection agreement (AT&T Ohio Reply Br. at 15, 16). AT&T Ohio posits that there is no dispute that its bills accurately measure the amount of traffic that the respondent delivered to it (AT&T Ohio Initial Br. at 28, 29 citing AT&T Ohio Ex. 5 at 5, 11). Therefore, AT&T Ohio asserts that, to the extent that the Commission determines that the transiting and reciprocal compensation charges reflected in the interconnection agreement apply to the traffic that Global NAPs Ohio delivered to AT&T Ohio, the Commission should order that Global NAPs pay the amounts billed by AT&T Ohio, all applicable late fees, plus all additional amounts accrued up to the time of the Commission's decision in this proceeding (*Id.* at 27-29 citing AT&T Ohio Ex. 4 at 5-8, 7, 9, 10; AT&T Ohio Ex. 5 at 4-6).

2. Global NAPs Ohio

Global NAPs Ohio asserts that AT&T Ohio's claim for reciprocal compensation is without merit inasmuch as all of the traffic that it sent to AT&T Ohio was IP-originated VoIP traffic which, according to the terms of the interconnection agreement, is not subject to reciprocal compensation terms and conditions. Rather, Global NAPs Ohio submits that the relevant interconnection agreement requires the parties to negotiate the appropriate treatment of VoIP at a later date (Global NAPs Ohio Initial Br. at 47). Further, the respondent contends that, on three different occasions, AT&T Ohio rejected its requests to negotiate such terms (*Id.* at 48). Therefore, Global NAPs Ohio concludes that AT&T Ohio has not been paid for terminating VoIP traffic because the interconnection agreement does not contain such a rate and the complainant has refused to negotiate one (*Id.* at 49). Additionally, Global NAPs Ohio points out that AT&T Ohio's current billing system is incapable of billing VoIP traffic due to the system's focus on the originating and terminating locations. In order to address this concern, Global NAPs Ohio proposes that the parties must negotiate, on a going forward basis, a unitary rate for the billing of VoIP traffic and engage in the appropriate reconciliation process to determine the volume of VoIP traffic sent by the respondent (*Id.* at 49, 50).

Based on the testimony of its witness Noack, Global NAPs Ohio asserts that it does not have TDM customers and, therefore, none of the traffic that it sent to AT&T Ohio could have originated on the PSTN (*Id.* at 2). While Global NAPs Ohio recognizes that CLEC-initiated local TDM calls could theoretically be routed to AT&T Ohio's TDM network through an ESP and then through Global NAPs Ohio, the respondent submits that there is no economic reason for customers to do so. Therefore, Global NAPs Ohio posits that the traffic that AT&T Ohio identified as local must have originated from broadband carriers and their noncarrier customers (e.g., Vonage, Packet 8, MagicJack). In other words, Global NAPs Ohio opines that all of Global NAPs Ohio's so-called local traffic to AT&T Ohio is really IP to PSTN VoIP (*Id.* at 4-7 citing Global NAPs Ohio Ex. 1 at 20, 21; Global NAPs Ohio Ex. 2 at 5-9; Tr. I, 38; AT&T Answer to Global Discovery Request 1-15).

Global NAPs Ohio contends that, at most, it should only be responsible for reciprocal compensation relative to nonenhanced, PSTN-originated traffic and that AT&T Ohio maintains the burden to determine the applicable volume of such traffic (Global NAPs Ohio Reply Br. at 6). Global NAPs Ohio asserts that AT&T Ohio made no effort to determine the percentage of calls billed as local that were in actuality VoIP (*Id.* at 7; Global NAPs Ohio Initial Br. at 4 citing Tr. I, 84, 119, 126). Similarly, Global NAPs Ohio points out that the three-minute toll reports introduced by AT&T Ohio during the hearing are limited to toll traffic and, therefore, fail to provide any information as to whether the local calls that are the subject of this proceeding actually originated on the PSTN (*Id.* at 5 citing Tr. I, 39, 40; Global NAPs Ohio Reply Br. at 12

citing Tr. I, 38). Further, Global NAPs Ohio argues that, although AT&T Ohio could have performed a study of local traffic, it chose not to do so (Global NAPs Ohio Initial Br. at 5 citing Tr. I, 36). Additionally, Global NAPs Ohio highlights the fact that AT&T Ohio's three-minute reports failed to account for any IP-originated calls (Global NAPs Ohio Reply Br. at 4 citing Tr. I, 28). Global NAPs Ohio also submits that in the local market, which is the basis of this count of the complaint, there were no PSTN-originated calls (*Id.* at 5). Global NAPs Ohio posits that all of its local traffic and between 98-99 percent of the traffic routed through an interexchange carrier was IP originated (*Id.* at 5-8 citing Global NAPs Ex. 1 at 5, 6).

In response to AT&T Ohio's assertions, Global NAPs Ohio avers that the complainant has failed to identify the relevant applicable pricing provisions of the interconnection agreement to support its position in this matter (*Id.* at 7). Rather, the respondent contends that AT&T Ohio has improperly relied upon engineering provisions of the interconnection agreement (e.g., Interconnection Trunking Requirements Appendix, Section 5.1), which do not pertain to the issue of pricing (*Id.* at 14). Global NAPs opines that the Reciprocal Compensation Appendix is the appropriate starting point for the Commission's analysis.

In particular, Global NAPs Ohio notes that the Reciprocal Compensation Appendix, Section 5, specifies that the compensation set forth below will apply to all "Local and Local ISP calls as defined in Section 3.2 of the Appendix" and that Section 3.2 specifies that local calls and local ISP calls will be compensated as long as the originating end user of one party and the terminating end user or ISP of the other party are both physically located in the same ILEC Local Exchange Area. Global NAPs Ohio submits that, if AT&T Ohio's contentions regarding reciprocal compensation are correct, the parties, for billing purposes, would have simply defined "local calls" as calls that are routed over local/intraLATA trunks (*Id.* at 13, 14). As further support, Global NAPs also asserts that Reciprocal Compensation Appendix, Section 16.9, specifies that there is no agreement as to the application of reciprocal compensation for VoIP traffic (*Id.* at 15).

In response to AT&T Ohio's assertions relative to the scope of Reciprocal Compensation Appendix, Section 3.1, Global NAPs Ohio contends that the classification of traffic is not exclusive and that various other provisions of the interconnection agreement establish rates for classifications of traffic not addressed in Section 3.1 (*Id.* at 20). Global NAPs Ohio also references Section 3.6 of the Reciprocal Compensation Appendix which provides for the exclusion of "Information Service" traffic from reciprocal compensation obligations. Based on the definitions of "Enhanced Service" and "Information Service," as provided for pursuant to the 1996 Act, Global NAPs Ohio argues that a service which routinely changes either the form, content, code, or protocol of the telephone call is not a telecommunications service but, rather, is an "Enhanced Service" and an "Information Service" (Global NAPs Ohio Initial Br. at 7, 8).

Consistent with this belief, Global NAPs Ohio opines that AT&T Ohio is incorrect in its assertion that the FCC has ruled that interconnected VoIP carriers provide telecommunications services. In support of this statement, Global NAPs Ohio states that, although the FCC ruled that interconnected VoIP provide telecommunications for the purposes of contributions to the Universal Service Fund, the FCC did not rule that VoIP is a telecommunications service (Global NAPs Ohio Reply Br. at 16, 17 citing *Vonage Holdings Corp. v. Nebraska Public Service Commission*, 543 F. Supp.2d 1062, 1065 (D. Neb. 2008)). Additionally, the respondent opines that the FCC has determined that compensation for terminating VoIP traffic should be established pursuant to a Section 251 arrangement negotiated between an intermediate LEC and a terminating one (*Id.* at 18 citing *Time Warner Declaratory Ruling* at ¶17).

Contrary to the position set forth by AT&T Ohio, Global NAPs Ohio contends that the relevant question for consideration is whether the traffic is enhanced and therefore, it is unnecessary to analyze whether the enhancement was directly provided to the end user (*Id.* at 8). Notwithstanding this point, Global NAPs Ohio submits that the services that it participates in involve bona fide, consumer benefitting enhancements (*Id.* at 8, 9, citing Tr. II, 309-311).

Further, Global NAPs Ohio contends that the applicability of the terms "Enhanced Service" and "Information Service" to VoIP traffic has been confirmed repeatedly by the FCC, federal courts, and state agencies (Global NAPs Ohio Initial Br. at 8). For example, Global NAPs Ohio references the FCC's decision in *In the Matter of Petition of Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 F.C.R. 7457 (2004). The respondent opines that the FCC's decision stands for the proposition that any voice traffic that originates in IP-format and terminates in TDM has undergone a net protocol conversion and, therefore, is an information service known as VoIP (*Id.* at 9). Additionally, Global NAPs Ohio discusses three court decisions involving the traffic of Global NAPs Ohio's largest customer, Transcom, and the determination that all of Transcom's traffic constitutes information service traffic (*Id.* at 9, 10, citing *In re Transcom Enhanced Services*, No. 05-31929-HDH-11, 11 [Bankr. N.D. Tex. Apr. 28, 2005]; *Transcom Enhanced Services, Inc. v. Global Crossing Bandwidth*, No. 05-31929-HDH-11, 5 [Bankr. N.D. Tex. Sept. 20, 2007]; *In re Datacom, Inc.*, No. 02-38600-SAF-11 [Bankr. N.D. Tex. May 28, 2003]).

Global NAPs Ohio contends that standard contract construction reflects the parties' intentions that VoIP traffic should be excluded from the application of those provisions pertaining to reciprocal compensation. In particular, Global NAPs Ohio highlights the fact that "VoIP" and "Internet Telephony" are capitalized, individual terms in the interconnection agreement and, therefore, should be considered as part of the scope of the interconnection agreement. Additionally, Global NAPs Ohio focuses on Section 16.9, Reciprocal Compensation Appendix, and asserts that, while VoIP and

Internet Telephony are recognized traffic types under the interconnection agreement, the terms of Section 16.9 confirm the parties' intention not to have "VoIP" and "Internet Telephony" subject to the same treatment as "Local, intraLATA, and InterLATA toll Traffic." For example, Global NAPs Ohio opines that, had the parties intended for "VoIP" or "Internet Telephony" traffic to be treated exactly in the same manner as "Local, intraLATA, and InterLATA toll Traffic," they would not have defined them as separate terms. To the extent that the parties intended the reciprocal compensation provisions to apply to "Local VoIP," Global NAPs Ohio avers that the agreement would have clearly stated this intent. Rather, Global NAPs Ohio emphasizes that Section 16.9 clearly reflects that the parties had not reached a "meeting of the minds" as to whether "VoIP Traffic" was or was not local within the meaning of the contract. Therefore, Global NAPs Ohio believes that it is incorrect for AT&T Ohio to allege that the parties contracted to treat VoIP traffic as local traffic subject to reciprocal compensation (*Id.* at 11-14).

As additional support for its position, Global NAPs Ohio cites to AT&T Ohio's admission that Reciprocal Compensation Appendix Section 16.9, merely reserves the parties' right to dispute whether VoIP traffic is subject to access charges, or should be treated as local traffic (Global NAPs Ohio Reply Br. at 21 citing AT&T Ohio Initial Br. at 9). Finally, regarding the language of Reciprocal Compensation Appendix, Section 16.9, Global NAPs Ohio submits that nothing in the interconnection agreement requires that traffic between the parties be either subject to reciprocal compensation or access charges (*Id.* at 22). To this point, Global NAPs Ohio submits that, pursuant to the interconnection agreement, information services are not subject to access or reciprocal compensation charges (*Id.* at 23).

Global NAPs Ohio contends that AT&T Ohio has the burden of proving that the traffic that is billed as "Local" is in fact local consistent with the provisions of the interconnection agreement. Even assuming that the interconnection agreement could be interpreted to allow for the payment of reciprocal compensation for local VoIP calls, Global NAPs Ohio believes that AT&T Ohio has failed to demonstrate that the VoIP calls were indeed local. In particular, Global NAPs Ohio asserts that AT&T Ohio has failed to prove that any of the calls that it has billed as local actually originate and terminate to end user customers of the parties who are physically located within the same common local or common mandatory local calling area (Global NAPs Ohio Initial Br. at 21).

Global NAPs Ohio submits that VoIP traffic is so technologically different from traditional telephony that the terms of the interconnection agreement on which AT&T Ohio relies do not fit either the traffic patterns or the carriers engaged in the provision of VoIP traffic (*Id.* at 14-16). Specifically, Global NAPs Ohio surmises that VoIP traffic cannot be billed on the basis of originating and terminating telephone numbers (*Id.* at 17). Further, the respondent states that with respect to the termination of VoIP traffic,

AT&T Ohio, typically, either agrees to a unitary rate that allows it to bill a unitary rate regardless of the origination and termination points of the traffic, or it undertakes a special study to determine how much of the interconnected carrier's traffic is VoIP and how it is to be treated (Global NAPs Ohio Reply Br. at 26, 27 citing Tr. I, 111). Notwithstanding AT&T Ohio's past practice, Global NAPs Ohio asserts that, in this case, AT&T Ohio declined to perform either of these two activities and, therefore, has no ability to identify the specific percentage of VoIP traffic (*Id.* at 27 citing Tr. I, 125, 126).

Specifically, Global NAPs Ohio asserts that, based on the terms of the interconnection agreement defining "Local Calls," AT&T Ohio has the burden to show that: (1) the calls that it billed as local actually originated with a Global NAPs Ohio customer, (2) the customer was a subscriber to a telecommunications service provided by the complainant, (3) the service that Global NAPs Ohio provided was provisioned "at retail", and (4) the complainant's end user was physically located within the same common local or common mandatory local calling area (Global NAPs Initial Br. at 15). In support of its position, Global NAPs Ohio points out that it has no end user customers in the state of Ohio. Further, Global NAPs Ohio submits that none of its customers are physically located in Ohio, purchase telecommunications service, or purchase at retail (*Id.* at 16; Global NAPs Ohio Reply Br. at 24). In recognizing these distinctions, Global NAPs Ohio asserts that AT&T Ohio has no process for distinguishing "traditional" local calls from those calls which appear to be "local" by looking at the (area code) NPA-NXXs but are, in actuality, VoIP calls (Global NAPs Ohio Initial Br. at 16-20 citing Tr. I, 94, 125, 126).

In support of its contention, Global NAPs Ohio references AT&T Ohio's acknowledgement that, due to the unique characteristics of VoIP traffic, a different rate structure (i.e., a uniform rate without regard to geographically-based jurisdictional distinctions) would be required, regardless of the type of trunks utilized to carry the traffic (*Id.* at 19 citing Tr. I, 116, 117; Global NAPs Ohio Reply Br. at 16). Global NAPs submits that, despite its request to AT&T Ohio to negotiate specific VoIP rates, the complainant has refused to do so (*Id.* at 19, 20 citing Case No. 09-195-TP-ARB [09-195], *In the Matter of the Petition of Global NAPs Ohio for Arbitration Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Ohio Bell Telephone Company dba AT&T Ohio*). By refusing to do so, Global NAPs Ohio believes that AT&T Ohio has deprived itself of a legal basis for billing Global NAPs Ohio for VoIP traffic, and deprived itself of the opportunity to put in place a rate structure that it could use for the billing of VoIP traffic (*Id.* at 20).

Regarding AT&T Ohio's claim for transiting charges, Global NAPs Ohio opines that it is without merit since the Reciprocal Compensation Appendix, Section 9.1, does not apply to VoIP or Internet telephony traffic but, instead, extends only to Local, Optional, intraLATA Toll Traffic, and 800 intraLATA Toll Traffic, which are all defined

terms within the interconnection agreement. Further, Global NAPs Ohio asserts that, while VoIP and other Internet Telephony traffic are also defined terms, they are not referenced in Reciprocal Compensation Appendix, Section 9.1 and, therefore, are not subject to transit traffic (*Id.* at 21). Additionally, Global NAPs relies on Reciprocal Compensation, Appendix Section 3.6, which provides that "the compensation arrangements set forth in this Appendix are not applicable to Information Service Traffic" (*Id.* at 22). Based on its assertion that VoIP and Internet Telephony qualify as Information Service, Global NAPs Ohio concludes that such traffic is not subject to Reciprocal Compensation Appendix, Section 9.1 (*Id.* at 22). Further, Global NAPs Ohio argues that, while Section 9.1 only applies to intrastate traffic, VoIP traffic is treated as jurisdictionally interstate (*Id.* at 22 citing *Minnesota Public Utilities Comm. v. FCC*, 483 F.3d 570 [8th Cir. 2007]). Finally, Global NAPs contends that AT&T Ohio cannot support its claims that the billed traffic is either local or intraLATA toll traffic (*Id.* at 22-24).

3. Commission Ruling Relative to Counts I and III

Upon a review of the record relative to the allegations set forth in Counts I and III, the Commission recognizes that the resolution of these disputes centers on the interpretation of the applicable sections of the interconnection agreement.

AT&T Ohio's arguments focus on the belief that the terms and conditions of the interconnection agreement presume that all traffic transported over the ordered trunks must be local or intraLATA toll in nature and, thus, subject to reciprocal compensation. On the other hand, Global NAPs Ohio asserts that, based on a Reciprocal Compensation Appendix, Section 16.9, VoIP traffic is not subject to reciprocal compensation and transiting charges. A review of Section 16.9, indicates that, while the parties did contemplate that VoIP traffic may not be subject to the standard reciprocal compensation terms and conditions, such exclusion requires specific conditions to be satisfied.

Specifically, the applicable language establishes that "[t]he Parties reserve the right to raise the appropriate treatment of Voice over Internet Protocol (VoIP) or other Internet Telephony traffic under the Dispute Resolution provisions of this Interconnection Agreement." Therefore, it is clear that the parties intended that any attempt by Global NAPs Ohio to exempt VoIP traffic from reciprocal compensation and transiting charges would have to be raised and pursued consistent with the Dispute Resolution provisions set forth in the General Terms and Conditions Appendix, Section 10.

The Commission notes that Section 10.3 of the Dispute Resolution language requires that Dispute Resolution ". . . commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its

breach. . . ." Specifically, Section 10.4.1 of the Dispute Resolution language requires that, in order to avail itself of Dispute Resolution arising out of or relating to the Agreement, ". . . . the CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account. . . ." Further, Section 10.4.5 of the Dispute Resolution provides that "[i]f the Non-paying party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-paying party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution Disputes afforded pursuant to Section 10.5 of this agreement. Pursuant to Section, 10.6, "if the parties are unable to resolve the dispute through the informal procedure described through Section 10.5, then either party may invoke the formal dispute resolution procedures described in Section 10.6."

Upon reviewing the record in this case, the Commission determines that Global NAPs Ohio failed to comply with the provisions of Reciprocal Compensation Appendix, Section 16.9 and the provisions of General Terms and Conditions Appendix, Section 10 and, therefore, it has failed to properly rebut its presumed obligation for payment of reciprocal compensation and transit traffic as set forth in Counts I and III of AT&T Ohio's complaint. Consistent with this determination, Global NAPs Ohio must compensate AT&T Ohio for all traffic billed by the complainant to the respondent under the classifications of reciprocal compensation and transit traffic for the respective time frames specified in the complaint, as well as all applicable late charges. Such compensation shall occur within thirty days of the issuance of a final appealable Order in this case. Additionally, in reaching this decision, the Commission focuses on the fact that Global NAPs Ohio does not dispute the accuracy of the AT&T bills relative to the number of minutes billed but, rather, only questions the jurisdictional classification of the traffic.

In support of these determinations, the Commission points out that, pursuant to the provisions of Reciprocal Compensation Appendix, Section 16.9 and the provisions of General Terms and Conditions Appendix, Section 10, to the extent that Global NAPs Ohio sought to dispute the assessment of reciprocal compensation for its traffic, it had the burden to pursue the issue under the established Dispute Resolution procedures. The Commission notes that while Global NAPs Ohio may have submitted some dispute notices to AT&T Ohio raising legal arguments concerning ISP-bound traffic, this does not satisfy the terms of the Dispute Resolution provisions of the interconnection agreement relied upon by the respondent (AT&T Ohio Ex. 5 at 3, 11). The Commission also highlights the acknowledgement of Global NAPs Ohio's witness Rooney that he was uncertain that the company had gone through a dispute resolution process regarding the establishment of a rate other than reciprocal compensation for the transport and termination of Global NAPs Ohio's alleged VoIP traffic (Tr. III, 363).

When reading the Reciprocal Compensation Appendix, Section 16.9 VoIP language together with the General Terms and Conditions Appendix, Section 10

Dispute Resolution language, it is clear that Global NAPs Ohio had the affirmative obligation to raise and pursue its dispute regarding the application of reciprocal compensation and transiting charges raised in this proceeding.. Based on a review of the record, it is apparent that, rather than Global NAPs Ohio affirmatively pursuing its dispute and paying the challenged charges into an escrow account, it made no payments beginning in 2004 and failed to proactively pursue its challenge on a formal basis as contemplated by the terms of the interconnection agreement. Further, the Commission recognizes that it was AT&T Ohio, and not Global NAPs Ohio, that filed this matter with the Commission. Based on its inactivity, it appears as though Global NAPs elected to simply sit on its hands and pay nothing for the termination and transiting services it obtained from AT&T Ohio. Additionally, if Global NAPs Ohio believed that the relevant traffic was in fact VoIP, it could have filed a complaint, rather than waiting to respond to AT&T Ohio's assertions. Global NAPs should not be rewarded for its failure to act as required by the provisions of the interconnection agreement.

While Global NAPs Ohio did file Case No. 09-195-TP-ARB (09-195), *In the Matter of Petition of Global NAPs Ohio for Arbitration Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Ohio Bell Telephone Company dba AT&T Ohio*, this did not occur until March 10, 2009, nine months after the filing of the complaint in this case and over five years from the start of Global NAPs Ohio sending traffic to AT&T Ohio. Additionally, the Commission notes that the arbitration petition filed in 09-195 was not part of the dispute resolution process for the purpose of interpreting the terms and conditions of the existing agreement. Rather, it was limited in scope to establishing new rates and terms for VoIP traffic. See, 09-195, Entry, January 2, 2010, at 6. Global NAPs Ohio should not be rewarded for its failure to pursue its obligations as set forth in the effective interconnection agreement. To the extent that the respondent seeks relief regarding its payment of reciprocal compensation and transiting charges, it can certainly, on a going forward-basis, pursue the resolution of disputes over the treatment of VoIP consistent with the dispute resolution process in the existing interconnection agreement or through the negotiation of a successor interconnection agreement in which all rates, terms, and conditions, including the applicability of reciprocal compensation, transit traffic provisions, and VoIP traffic, can be renegotiated.

Further, the Commission notes that the Reciprocal Compensation Appendix, Section 3.1, provides that:

Telecommunications traffic exchanged between CLEC and ILEC will be classified as either Local Calls, Transit Traffic, Optional Calling Area Traffic, IntraLATA Toll Traffic, or InterLATA Toll Traffic

Despite Global NAPs Ohio's assertions regarding the significance of VoIP traffic relative to this interconnection agreement, this language is clearly silent as to whether VoIP is or is not contemplated as telecommunications traffic for the purposes of this agreement. This point is further substantiated by Global NAPs Ohio's own acknowledgement that, although the parties agreed that VoIP is covered by the interconnection agreement, VoIP itself is not defined (Global NAPs Ohio Initial Br. at 47). Additionally, the Commission highlights the fact that, even if Global NAPs Ohio's traffic is VoIP, the interconnection agreement fails to define the applicable terms and conditions. Therefore, absent Global NAPs Ohio pursuing the Dispute Resolution process provided for under the agreement, the Commission is unable to determine whether VoIP is telecommunications traffic as contemplated by the interconnection agreement, yet alone to determine whether VoIP traffic constitutes Local Calls subject to reciprocal compensation. As further support for its position, the Commission notes that the FCC itself has yet to reach a determination as to the issue of whether VoIP traffic is or is not a telecommunications service or what is the appropriate compensation for VoIP traffic. See *IP-Enabled Service*, WC Docket No. 04-36, Notice of Proposed Rulemaking, ¶61. March 2004.

Further, the Commission finds that Global NAPs Ohio has failed to demonstrate that all of the traffic in question is IP originated. Therefore, the Commission must conclude that the respondent is engaged in the provision of a telecommunications service subject to reciprocal compensation, access charges, or transiting compensation. In support of this conclusion, the Commission focuses on the fact that the record fails to identify that disputed traffic was IP originated and not originated on the public switched network. In particular, the Commission relies on the AT&T Ohio's three-minute study attached to AT&T Ohio Ex. 2, which reflects that at least some percentage of the traffic terminated by Global NAPs Ohio's traffic originated on the public switched network. Additionally, Global NAPs Ohio itself acknowledges that at least some percentage of this traffic terminated on AT&T Ohio's network originated on the public switched network (Global NAPs Ex. 1 at 6).

The Commission notes that, even if Global NAPs Ohio's traffic was IP originated, in the absence of a clear understanding in the existing interconnection agreement regarding compensation terms for VoIP traffic, and consistent with our 04-1822 arbitration decision, Global NAPs Ohio would still be subject to reciprocal compensation for local traffic originated in an IP format and for transit traffic compensation for the alleged IP-originated traffic sent by Global NAPs Ohio to AT&T Ohio for termination on another carrier's network. See, 04-1822, Arbitration Award at 16. Finally, the Commission opines that, in order to avoid the inequitable situation of traffic being terminated, absent any payment, the issue of the treatment of VoIP/Internet Telephony should have been raised by Global NAPs Ohio prior to its sending of such traffic to AT&T Ohio.

C. Count II - Global NAPs Ohio has violated the parties' interconnection agreement by delivering interLATA interexchange traffic over trunks reserved for the exchange of local and intraLATA toll traffic.

1. AT&T Ohio

As discussed above, AT&T Ohio asserts that it has appropriately classified, as local, the traffic that Global NAPs Ohio delivered over trunk groups reserved for local and intraLATA toll traffic. While AT&T Ohio believes that Global NAPs Ohio is estopped from contesting the proper classification of this traffic, to the extent that the Commission determines that the disputed traffic cannot be classified as local, the complainant avers that the Commission should find that Global NAPs Ohio is in breach of the interconnection agreement for delivering the disputed traffic over the local/intraLATA trunks. Further, AT&T Ohio requests that the Commission find that the damages that Global NAPs Ohio owes to AT&T Ohio are at least equal to the reciprocal compensation amounts that the complainant billed for the termination of the traffic (*Id.* at 29, 30). In support of its position, AT&T Ohio notes that the respondent admits that it utilized local trunk groups in order to terminate its purported VoIP traffic. AT&T Ohio submits that, to the extent that the disputed traffic is not local or intraLATA traffic, then it must be interLATA in nature. Consistent with the Interconnection Trunking Requirements Appendix, Section 5.4.1, AT&T Ohio points out that interLATA traffic must be transported over separate trunk groups (*Id.* at 30).

Next, AT&T Ohio responds to Global NAPs Ohio's argument that it is not required to route its interstate VoIP traffic over interLATA toll trunks and that, to the extent that access charges are owed, the charges should be assessed to the applicable interexchange carrier, and not an intermediate carrier like Global NAPs Ohio. Specific to this count of the complaint case, AT&T Ohio asserts that, rather than addressing the aforementioned issues raised by Global NAPs Ohio, the Commission should, based on a contract claim, simply determine that Global NAPs has breached the terms of the interconnection agreement (AT&T Ohio Reply Br. at 13, 14). In response to Global NAPs Ohio's reliance on other interconnection agreements to support its objection to this count of the complaint, AT&T Ohio points out that, unlike the applicable interconnection agreement in this case, the specific interconnection agreements cited by Global NAPs actually provide for a carrier to use local trunks to deliver VoIP traffic, and to pay at least the rate that applies to local traffic (*Id.* at 14 citing Global NAPs' Initial Br. Attachs. H, I).

2. Global NAPs Ohio

Specific to this allegation, Global NAPs Ohio responds that none of its traffic is traditional interexchange traffic but, instead, is either IP-originated or is enhanced traffic (Global NAPs Ohio Reply Br. at 30 citing Tr. I, 4, 56). To the extent AT&T Ohio

now seeks to allege that respondent has improperly routed VoIP traffic over local or intraLATA toll trunks, Global NAPs Ohio submits that it is too late for the complainant to seek such an amendment of its complaint (*Id.* at 31).

Global NAPs Ohio contends that it has not violated the trunking requirements set forth in the interconnection agreement. In support of its position, the respondent asserts that the interconnection agreement neither creates special trunks solely for VoIP traffic nor specifies as to which trunks VoIP traffic should be carried (Global NAPs Ohio Initial Br. at 24 citing Tr. I, 151, 152). Additionally, Global NAPs Ohio avers that *Reciprocal Compensation Appendix, Section 16.9* does not specify how VoIP traffic should be routed. Consistent with this position, Global NAPs Ohio notes that the complainant has not alleged that Global NAPs Ohio cannot route VoIP traffic over local or intraLATA interconnection trunk groups. Rather, AT&T Ohio claims that at least some of the traffic sent of these trunks was not VoIP (*Id.* citing AT&T Ex. 1 at 3).

Global NAPs Ohio opines that the following four questions are germane to this count of the complaint: (1) what categories of VoIP traffic are addressed in *Reciprocal Compensation Appendix, Section 16.9*; (2) how much of Global NAPs Ohio's traffic to AT&T is not IP-originated traffic; (3) is VoIP and Internet telephony limited to IP-originated traffic under the interconnection agreement or does it also include some type of PSTN-originated traffic; and (4) even if PSTN-originated traffic is not VoIP, is it interexchange, interLATA traffic within the meaning of the *Interconnection Trunking Requirements Appendix Sections 5.3 and 5.4*?

With respect to the first question, Global NAPs rejects AT&T Ohio's contention that VoIP equals IP-PSTN (*Id.* at 28). Instead, Global NAPs Ohio asserts that there are actually two forms of traffic that involve a conversion from TDM-to-IP formats. The first is IP-to-PSTN and the second is PSTN-to-IP-to-PSTN (*Id.* at 25 citing Global NAPs Ohio Ex. 2 at 13, 14). Inasmuch as the interconnection agreement fails to define the type of traffic to be included within the definition of VoIP, Global NAPs Ohio submits that it is appropriate to review some of the other agreements entered into between the parties (*Id.* at 25, 26 citing Tr. I, 144).

In particular, Global NAPs Ohio references the 2006 amendment to the interconnection agreement between AT&T and the Verizon companies in which the VoIP traffic was broadly defined to include both IP-to-PSTN and PSTN-to-IP-to-PSTN traffic. Global NAPs Ohio believes that the key factor for these scenarios is that both involve voice communications that are transmitted in part over packet switching facilities using IP-format (*Id.* at 26). Based on this analysis, Global NAPs Ohio posits that the Commission should adopt a similar expansive definition of VoIP in this case (*Id.* at 27). In support of its interpretation, Global NAPs Ohio points out that *Reciprocal Compensation Appendix, Section 16.9* provides that the parties are reserving their rights to argue over the appropriate treatment of VoIP or "other Internet Telephony

traffic" (*Id.* at 27). Therefore, based on the combination of the scenarios addressed in the language set forth in Reciprocal Compensation Appendix, Section 16.9, Global NAPs Ohio believes that its traffic is not subject to reciprocal compensation (*Id.* at 28).

With respect to the second question, Global NAPs Ohio contends that virtually all of Global NAPs Ohio's traffic is IP-PSTN VoIP. Specifically, Global NAPs states that between 98 and 99 percent of the traffic that it sends to AT&T Ohio did not originate on the PSTN, and is IP-PSTN traffic, while the remaining one to two percent of the traffic is enhanced (*Id.* at 30, 35). Further, Global NAPs Ohio reiterates, as discussed *supra*, that none of the traffic that it sends to AT&T Ohio is local PSTN-IP-PSTN traffic (*Id.*). With respect to AT&T Ohio's three-minute reports measuring interexchange traffic, Global NAPs Ohio submits that the three-minute reports only captured information about calls that were routed to an interexchange carrier, and excluded interexchange calls that were routed over the Internet (*Id.* at 31).

Based on the testimony presented, Global NAPs Ohio submits that AT&T Ohio's three-minute reports have inflated the number of calls captured by the three-minute reports by roughly a factor of two (*Id.* at 31, 32 citing Tr. I, 97, 98; AT&T Ohio Ex. 2 at Attach. JWH-1). For example, Global NAPs Ohio states that there were no more than 291 calls greater than three minutes on May 10, 2005, and not the 570 calls reported by AT&T Ohio. Respondent's witness Masuret testified that the number of Global NAPs Ohio PSTN-originated calls transported to AT&T Ohio was 6,141 compared to the 11,000 claimed by AT&T Ohio for the 44 three-minute reports produced by AT&T Ohio (*Id.* at 32 citing Tr. II, 310). Based on these numbers, Global NAPs concludes that the three-minute reports reflect that only 142 calls per day originated across AT&T's 12 state region and were transported to Global NAPs Ohio and terminated with AT&T Ohio. Global NAPs Ohio considers this number to be insignificant (*Id.* at 33). Further, Global NAPs explains that, over a representative two-day period, the respondent sent AT&T Ohio 44,570 calls greater than three minutes in length. Therefore, based on its extrapolation, Global NAPs Ohio submits that over a 44-day period, which is a similar duration to AT&T Ohio's three-minute reports, it transported 980,540 calls to AT&T Ohio. Comparing these results to the 6,270 PSTN-originated calls discussed *supra*, Global NAPs Ohio determines that only .83 percent of the three-minute, non-local calls that Global NAPs Ohio sent to AT&T Ohio over a 44-day period would have been PSTN-originated (*Id.* at 33-36 citing Global NAPs Ex. 1 at 5, 6).

Regarding the third question, Global NAPs Ohio opines that nothing in the interconnection agreement requires IP-PSTN traffic to be routed over interLATA toll trunks (*Id.* at 36). In support of its position, Global NAPs Ohio focuses on the fact that "VoIP" and "Internet Telephony" are separately defined terms, and nothing in the ICA specifies that VoIP traffic must be routed over interLATA trunks groups. Citing interconnection agreements between other CLECs and AT&T affiliates, Global NAPs

Ohio submits that VoIP traffic includes at least IP-originated traffic and that VoIP traffic is always routed over local trunks (*Id.* at 37).

Additionally, Global NAPs Ohio opines that courts and other state commissions have recognized that IP-originated traffic is VoIP, and not telecommunications traffic, and that IP-PSTN traffic should be terminated over local interconnection trunks (*Id.* at 37 citing *Petition of MCImetro* [2006], 05-MA-138 [Wis. Pub. Util. Comm.] at 37, 38). Further, Global NAPs Ohio highlights the fact that, as a CLEC, AT&T agreed that VoIP traffic may be routed in the same manner as required by local traffic (*Id.* at 38 citing AT&T/Verizon Amendment at 36). Finally, Global NAPs Ohio relies on the testimony of AT&T Ohio witness Cole to support its claim that VoIP contracts normally provide for the pricing of VoIP traffic at the same rate as local in order to avoid having to distinguish VoIP from local and without having to try and divide VoIP traffic on a geographic jurisdictional basis (*Id.* at 38 citing Tr. I, 112).

To the extent that its traffic is not IP-originated, Global NAPs Ohio still believes that this traffic should be classified as a VoIP, enhanced information service or Internet telephony due to the fact that it is sent to an ESP in the middle of its transmission path. Global NAPs Ohio notes that AT&T Ohio presented no evidence to establish that the traffic that it received from the respondent was not enhanced (*Id.* at 43, 44 citing Tr. I, 44, 46, 55). According to Global NAPs Ohio, as a result of the transport of traffic to an ESP, the calls are converted from a TDM to and IP-format thereby altering the traffic in both form and content (*Id.* at 38-40 citing Tr. II, 180, 309-311). In support of its position, Global NAPs Ohio cites to *In re Transcom Enhanced Services*, No. 05-31929-HDH-11, 11 (Bankr. N.D. Tex. Apr. 28, 2005), at 5, and *Transcom Enhanced Services, LLC v. Global Crossing Bandwidth Inc.*, Case No. 05-31929-HDH-11 (Sept. 20, 2007), as well as decisions from both the New York Public Service Commission and the Pennsylvania Commission. In light of its position that its customers are not telecommunications service providers, and are not end users, Global NAPs Ohio concludes that the traffic in question cannot be considered as interLATA and provided over interLATA trunks (*Id.* at 41-43).

3. Commission Ruling Relative to Count II

Upon a review of the arguments presented, it is apparent that AT&T Ohio asserts the allegations set forth in this count of the complaint are in the alternative and only to the extent that Global NAPs Ohio's traffic is not classified as local or intraLATA toll traffic under the interconnection agreement (AT&T Ohio Initial Br. 29-31; AT&T Ohio Reply Br. at 13, 14). In light of the Commission's determination in Count I, discussed *supra*, the Commission finds that Count II of the complaint is now moot and no longer in need of Commission resolution.

D. Count IV - The Commission Should Revoke Global NAPs Ohio Certificate of Public Convenience and Necessity.

1. AT&T Ohio

AT&T Ohio believes that the Commission should revisit and revoke its prior issuance of Certificate of Public Convenience and Necessity No. 90-9199 to Global NAPs Ohio in Case No. 01-1122-TP-ACE. In support of its request, AT&T Ohio notes that in granting the application, the Commission indicated that the certificate is revocable if all of the conditions set forth in the approval were not met. Additionally, AT&T Ohio references the fact that Rule 4901:1-6-10(K), O.A.C., provides that the Commission may revoke a certificate upon a demonstration that the company has engaged in a pattern of conduct in violation of Ohio law, including the failure to comply with the rules and regulations of the commission, (e.g., the failure to file the requisite annual reports and the failure to pay all corresponding assessments) (*Id.* at 31). AT&T Ohio asserts that it has standing to pursue this count of the complaint due to the fact that it has been directly affected by Global NAPs Ohio's alleged conduct. In particular, AT&T Ohio points to the fact that it has an interconnection agreement with the respondent but, due to the respondent's alleged misconduct, Global NAPs Ohio has no ability to satisfy any of its obligations (AT&T Ohio Reply Br. at 25).

Based on the evidence that it presented in this proceeding, AT&T Ohio opines that the respondent is an empty shell that lacks the financial and technical resources necessary to provide services in Ohio. Specifically, AT&T Ohio submits that Global NAPs Ohio has no assets (AT&T Ohio Initial Br. at 31 citing AT&T Ohio Ex. 1 at 39; AT&T Reply Br. at 25), no employees (*Id.* citing AT&T Ohio Ex. 1 at 38), no facilities or equipment (AT&T Ohio Initial Br. at 31 citing AT&T Ohio Ex. 1 at 39), and no revenues or customers (*Id.* at 37, 38, 40, 41). Therefore, AT&T Ohio concludes that Global NAPs Ohio is unable to satisfy its obligations as a certificated carrier in Ohio, including the obligations that it incurs to other Ohio carriers with whom it exchanges traffic (*Id.* at 32).

Additionally, AT&T Ohio asserts that the respondent lacks the appropriate managerial resources to provide service in the state of Ohio. AT&T Ohio believes that the sole purpose for creation of Global NAPs Ohio appears to be the intent to defraud creditors while shielding any revenues and assets associated with the provision of service in the state of Ohio. AT&T Ohio contends that, while Global NAPs Ohio holds the operating authority in the state of Ohio, the customers and assets associated with the Ohio operations were assigned to different affiliates so that the respondent remained as an assetless shell (*Id.*). By engaging in this conduct, AT&T Ohio avers that Global NAPs is attempting to enjoy a free ride while other CLECs pay for their services, thereby giving the respondent an unfair competitive advantage relative to competitors and forcing AT&T Ohio and its customers to subsidize the respondent's business (*Id.* at 36).

As part of this alleged arrangement, AT&T Ohio posits that Global NAPs Ohio conspired to allow its affiliates to provide service in Ohio without obtaining the appropriate certifications from the Commission (*Id.* at 32). For example, AT&T Ohio states that Global NAPs Inc. entered into contracts with customers to terminate traffic in Ohio and the purportedly assigned those contract to another affiliate, Global NAPs Networks, Inc. Additionally, AT&T Ohio alleges that the network in question was first owned by Global NAPs Inc. and now Global NAPs Networks, Inc., both of which are not certificated in the state of Ohio (*Id.* at 32 citing AT&T Ex. 1 at 42, 43). Further, AT&T Ohio asserts that Global NAPs Ohio has failed to maintain accounting records according to generally accepted accounting practices and, therefore, has failed to provide a reliable means by which to evaluate Global NAPs Ohio's operations and assess its financial fitness (*Id.* at 33 citing AT&T Ex. 1 at 37). Consistent with its assertions, AT&T Ohio notes that Global NAPs Ohio has reported zero intrastate revenue in its filed annual reports (*Id.* citing AT&T Ohio Ex, 1 at 44; Tr. II. 380, 381).

As additional support for its contentions, AT&T Ohio discusses the activities of the respondent's affiliates in other states for the purpose of questioning the company's managerial resources and abilities (*Id.* at 33, 34). For example, AT&T Ohio notes that the respondent's California affiliate, Global NAPs California Inc., lost its certification to provide service in the state of California. Additionally, AT&T Ohio submits that the California Commission found Global California liable to Cox Communications for approximately \$1 million in intrastate access charges for terminating intraLATA toll traffic and to AT&T California for nearly \$19 million in unpaid local reciprocal compensation, transiting, and intraLATA toll charges (*Id.* at 34 citing AT&T Ohio Ex. 1 at 51-53). According to AT&T Ohio, similar to the Global NAPs Ohio's operations, Global California purportedly has no cash, liquid assets, office, or real property (*Id.* citing AT&T Ohio Ex. 1 at 52). AT&T Ohio describes alleged similar conduct by Global NAPs Ohio affiliates in Connecticut, Illinois, Massachusetts, New York, Georgia, Florida, and North Carolina (*Id.* at 34, 35 citing AT&T Ohio Ex. 1 at 53-55).

Next, AT&T Ohio responds to Global NAPs Ohio's allegations that, similar to the respondent, AT&T Ohio affiliates are engaged in the least cost routing and termination of VoIP service. Specifically, AT&T Ohio submits that the record does not support the respondent's claim that any AT&T affiliate has ever engaged in such activity (AT&T Reply Br. at 26). Further, AT&T Ohio submits that, even if an AT&T affiliate did provide such functionality, there is no evidence that such entity avoided its obligation to pay those charges associated with the use of the PSTN (*Id.* at 26, 27). Specific to Global NAPs Ohio's claims that the pending complaint constitutes anticompetitive intentions, AT&T Ohio responds that Global NAPs Ohio uses the PSTN in exactly the same manner as carriers that send AT&T Ohio non-VoIP local and intraLATA toll traffic for transiting and termination. Therefore, AT&T Ohio submits that the respondent should be subject to the same compensation obligations. According to AT&T Ohio, to

do otherwise will result in Global NAPs Ohio receiving a free ride subsidized by AT&T Ohio and other competitors of AT&T Ohio (*Id.* at 27 citing *IP-Enabled Services*, Notice of Proposed Rulemaking; 04-1822, Arbitration Award at 16).

2. Global NAPs Ohio

Global NAPs Ohio dismisses AT&T Ohio's request that Global NAPs Ohio's certificate be cancelled. In support of its position, the respondent asserts that there are no claims filed against it by its customers or AT&T Ohio customers who are the recipients of the traffic that it forwards (Global NAPs Initial Br. at 51; Global NAPs' Reply Br. at 32). Specific to the allegations set forth in AT&T Ohio's complaint, Global NAPs Ohio states that they are without any legal or factual basis (Global NAPs Ohio Initial Br. at 52). Further, the respondent asserts that, notwithstanding the allegations of this complaint, it continues to provide reliable service to its customers (Global NAPs Ohio Reply Br. at 32).

Global NAPs Ohio surmises that the underlying motivation regarding AT&T Ohio's request for the revocation of the respondent's certificate is the fact that the respondent is a direct competitor for AT&T Ohio's affiliates relative to the termination of IP traffic. Global NAPs Ohio opines that AT&T Ohio now seeks to destroy respondents' ESP customers due to AT&T Ohio's unsuccessful federal litigation against Transcom. Global NAPs submits that "[i]f AT&T can relitigate with Global NAPs all of the failed arguments and factual assertions it raised against Transcom, AT&T may harm competition as much as if AT&T had succeeded against Transcom directly" (Global NAPs Ohio Initial Br. at 53). Finally, Global NAPs Ohio states that, by ultimately removing the respondent from the VoIP and Internet telephony traffic termination market, AT&T Ohio will be able to improve its affiliate's own standing within this market (*Id.*).

3. Commission Ruling Relative to Count IV

With respect to this count of the complaint, the Commission finds that as a certified telephone company in the state of Ohio, AT&T Ohio does not have standing to prosecute the revocation of another public utilities certificate pursuant to a billing dispute. Therefore, Count IV is denied.

Notwithstanding the determination that AT&T Ohio lacks standing to pursue the cancellation of Global NAPs Ohio's certificate, the Commission, based on the record in this proceeding, directs its staff to commence an investigation regarding the respondent's compliance with the Commission's rules and regulations and applicable statutes.

V. Additional Requests Requiring Commission Determination

On November 12, 2009, as amended on November 20, 2009, Global NAPs Ohio filed a letter seeking to supplement the record in this case in order to include a section of a transcript from a 2007 deposition of AT&T Ohio's witness Cole pertaining to the issue of whether there is a process in the AT&T billing system for the purpose of designating Internet traffic. According to Global NAPs Ohio, the deposition was taken as part of the combined discovery of various federal cases between AT&T and Global NAPs in California, Illinois, and Ohio, in which the parties agreed to coordinate discovery since interconnection agreements are substantially the same in each state. In support for its request, Global NAPs Ohio represents that, as part of the process of preparing for trial in the federal cases in Illinois and Ohio, its current counsel reviewed the transcript of the specified deposition transcript that was conducted by its former counsel. Global NAPs Ohio submits that the desired information is not hearsay and that AT&T Ohio will not suffer any prejudice by the admission of the desired portion of the transcript.

On November 17, 2009, AT&T Ohio filed a letter in opposition to Global NAPs Ohio's request to supplement the record. AT&T Ohio considers Global NAPs Ohio's request to be procedurally and substantively improper. In support of its opposition, AT&T Ohio argues that the record is closed. AT&T Ohio submits that, to the extent that Global NAPs Ohio seeks to reopen the record, the respondent, pursuant to Rule 4901-1-34, O.A.C., is required to file the appropriate motion setting forth good cause as to why, with due diligence, the deposition could not have been presented earlier in the proceeding. AT&T Ohio asserts that Global NAPs Ohio has failed to file the requisite motion and has failed to demonstrate that, with due diligence, it could not have discovered the deposition sooner. Finally, AT&T Ohio concludes that the deposition is irrelevant inasmuch as it addresses a hypothetical question and does not address what the parties are actually doing.

Global NAPs Ohio's request to supplement the record is denied. First, the Commission finds that, in making this request, the respondent has failed to comply with the Rule 4901-1-34, O.A.C., inasmuch as Global NAPs Ohio has not filed the requisite motion, accompanied by a memorandum in support, for the purpose of satisfying its burden of proof. Additionally, the Commission agrees with AT&T Ohio that Global NAPs Ohio has failed to demonstrate that, with due diligence, it could not have discovered the deposition sooner.

On February 3, 2010, Global NAPs Ohio filed, as supplemental authority, a proposed Hearing Examiner Order from the Maryland Public Service Commission issued in *In the Matter of the Investigation, Examination and Resolution of Payment*

Obligation of Global NAPs –Maryland Inc., for Intrastate Access Charges Assessed by Armstrong Telephone Company Maryland, Case No. 9177, December 30, 2009. The respondent believes that the issues raised in the Maryland Proposed Order are substantially similar to the issues raised in this case and, therefore, should be brought to the Commission's attention.

On February 4, 2010, AT&T Ohio filed a letter in opposition to Global NAPs Ohio's supplemental authority filing. First, AT&T Ohio asserts that the submitted decision is just a proposed decision and has no legal authority or effect. Second, AT&T Ohio contends that the proposed decision has nothing to do with AT&T Ohio's complaint inasmuch as the decision does not address the existing interconnection agreement between the parties in this case or the specific record developed in this case.

On February 10, 2010, Global NAPs Ohio filed a letter in reply to AT&T Ohio's February 4, 2010, letter objecting to the supplemental authority offered by the respondent. Global NAPs Ohio avers that the record in this case already establishes that the contracts between the Global NAPs entities and their customers are not state specific. Therefore, Global NAPs Ohio asserts that the cited Maryland decision, as well as two other cases cited in its briefs, are being submitted as evidence that all of Global NAPs traffic is VoIP regardless of the state in which the traffic is ultimately terminated.

On February 19, 2010, Global NAPs Ohio filed as supplemental authority, a decision of the Federal District Court for the District of Columbia, *Paetec Telecommunications Inc. v. CommPartners, LLC*, Civil Action No. 08-0397 (February 18, 2010). The respondent submits that this decision supports its contention that, in light of the fact that VoIP traffic is an information service within the meaning of the 1996 Act, consistent with the Reciprocal Compensation Appendix, Section 3.6, it is not subject to reciprocal compensation payments.

On February 24, 2010, AT&T Ohio filed a letter in response to Global NAPs Ohio's letter of February 19, 2010. Among other things, AT&T Ohio states that the *Paetec* decision did not involve the interpretation or enforcement of an existing, binding interconnection agreement. Additionally, AT&T Ohio submits that, although the *Paetec* decision may stand for the proposition that IP-originated voice service is information service, this decision is immaterial inasmuch as Global NAPs Ohio does not provide IP-originated voice or any other VoIP service. Global NAPs Ohio filed a further correspondence on March 1, 2010, and AT&T Ohio responded on March 8, 2010.

With respect to Global NAPs Ohio's submission of the proposed Maryland decision, the *Paetec* decision, as well as the other cited cases submitted in the aforementioned correspondences, the Commission points out that, to the extent that the Commission deems it appropriate, it may take administrative notice of any

judicial or administrative agency decision in the context of deciding matters before it. Therefore, the Commission shall take administrative notice of the referenced decisions. In doing so, the Commission may afford whatever weight to such decisions that it deems appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AT&T Ohio's complaint in this matter alleges that the respondent is in violation of the parties' interconnection agreement approved in Case No. 01-3096-TP-ARB (01-3096), *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, and has failed to satisfy the minimum requirements of maintaining an operating certificate, as set forth in Rule 4901:1-6-10, O.A.C.
- (2) The public hearings were held at the offices of the Commission on August 4, 5, and 24, 2009.
- (3) Global NAPs Ohio and AT&T Ohio are telephone companies as defined by Section 4905.03(A)(2), Revised Code, and public utilities by reason of Section 4905.02, Revised Code, and are, therefore, subject to the jurisdiction of the Commission under authority of Sections 4905.04 and 4905.05, Revised Code.
- (4) The existing interconnection agreement between Global NAPs Ohio and AT&T Ohio was approved in Case No. 01-3096-TP-ARB.
- (5) In a complaint such as this one, the burden of proof rests with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189.
- (6) Global NAPs Ohio has failed to comply with the Dispute Resolution provisions of the effective interconnection agreement.
- (7) Global NAPs Ohio has violated the terms of the current interconnection agreement by failing to pay the requisite reciprocal compensation.

ORDER:

It is, therefore,

ORDERED, That with respect to Counts I and III, AT&T Ohio's complaint is granted. It is, further,

ORDERED, That Global NAPs Ohio should provide AT&T Ohio with the applicable payment within the time frame set forth in this Opinion and Order. It is, further,

ORDERED, That with respect to Count II, AT&T Ohio's complaint is moot. It is, further,

ORDERED, That with respect to Count IV, AT&T Ohio's complaint is denied. It is further,

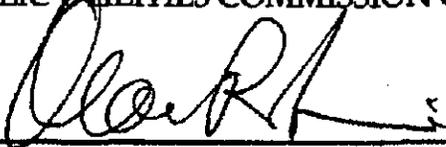
ORDERED, That consistent with this Opinion and Order, the Commission staff commence an investigation regarding the respondent's compliance with the Commission's rules and regulations and applicable statutes. It is, further,

ORDERED, That to the extent not addressed in this Opinion and Order, all other allegations are denied. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That copies of this Opinion and Order be served upon AT&T Ohio, Global NAPs Ohio, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

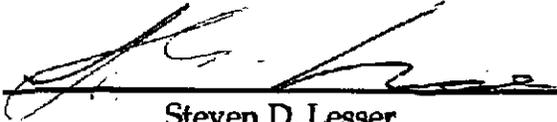


Alan R. Schriber, Chairman



Paul A. Centolella

Valerie A. Lemmie



Steven D. Lesser

Cheryl L. Roberto

JSA/dah

Entered in the Journal

JUN 09 2010



Renee J. Jenkins
Secretary

RECEIVED
2010 JUN 25 PM 1:26
P.U.C.
SECRETARY'S BUREAU