

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

AT&T OHIO’S OPPOSITION TO GLOBAL NAPs OHIO’S

MOTION TO POSTPONE HEARING

Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”), by and through counsel, hereby submits its response in opposition to the motion of respondent Global NAPs Ohio, Inc. (“Global Ohio”) to postpone the evidentiary hearing in this matter to conduct additional discovery. The Commission should deny Global Ohio’s motion, and proceed with the hearings on January 28 and 29, 2009, as scheduled.

The thrust of Global Ohio’s motion is that Global Ohio should be permitted to delay the hearing and conduct additional discovery to “avoid unreasonable surprise,” in light of evidence presented by AT&T Ohio witness James Hamiter showing that significant portions (at a minimum) of the traffic Global Ohio delivered to AT&T Ohio was not Voice over Internet Protocol (“VoIP”) traffic. Global Ohio’s argument is baseless, because none of AT&T Ohio’s argument or evidence included in its pre-filed testimony is a surprise to Global Ohio, and Global Ohio already had every opportunity to conduct any necessary discovery.

As AT&T Ohio will demonstrate in its post-hearing brief, whether or not the traffic Global Ohio delivered to AT&T Ohio was “VoIP,” as Global Ohio now suggests (after falsely

asserting for years that the traffic was “ISP-bound”), is irrelevant. Global Ohio must pay the charges at issue even if it delivered VoIP traffic to AT&T Ohio. Contrary to Global Ohio’s suggestion, the parties did *not* agree in their interconnection agreement (“ICA”) to treat VoIP differently from other traffic, or to negotiate and apply a separate intercarrier compensation scheme for VoIP traffic. Rather, they merely reserved the right to disagree about which compensation arrangement (*i.e.*, reciprocal compensation or access charges) applied to VoIP traffic, and to raise that disagreement in a complaint proceeding before this Commission. Moreover, this Commission has previously concluded that the appropriate intercarrier compensation treatment for VoIP traffic currently is to treat it like any other traffic – which is exactly what AT&T Ohio has done.

In addition, contrary to Global Ohio’s suggestion, AT&T Ohio has not made any new claim or failed to comply with the Commission’s complaint rules. Whether the traffic delivered by Global Ohio is or is not VoIP traffic is not an element of AT&T Ohio’s claims, and thus is not part of the basis of AT&T Ohio’s complaint. Rather, Global Ohio asserts as a *defense* that its traffic is all VoIP, which means (according to Global Ohio) the charges AT&T Ohio seeks to recover are not applicable – and *Global Ohio* bears the burden to prove its defense and demonstrate that its traffic is VoIP.

In any event, as Global Ohio is well aware, AT&T Ohio and its affiliates have long denied, and consistently denied, that the traffic delivered by Global Ohio and its affiliates is VoIP traffic. For example, in a California complaint proceeding parallel to this proceeding, AT&T California presented testimony regarding “Three Minute Report” studies showing that much of the traffic Global NAPs California delivered to AT&T California was not VoIP, but originated on the public switched telephone network (“PSTN”) of one of twelve AT&T

incumbent local exchange carriers (“ILECs”). Months later, in another parallel proceeding, AT&T Illinois presented Three Minute Reports for Illinois that established much of the traffic Global NAPs Illinois delivered to AT&T Illinois was not VoIP, but originated on the PSTN of the AT&T ILECs.

In its January 21, 2009 pre-filing, AT&T Ohio presented the Three Minute Reports for Ohio, demonstrating that much of the traffic Global Ohio delivered to AT&T Ohio was not VoIP, but originated on the PSTN of the AT&T ILECs. Any suggestion by Global Ohio that it was “surprised” by AT&T Ohio’s pre-filing of Mr. Hamiter’s testimony addressing the Three Minute Reports is disingenuous, in light of the prior proceedings. The California, Illinois, and Ohio commission proceedings involve substantially identical issues, are pending at the same time, and involve many of the same counsel – including Global NAPs, Inc.’s in-house counsel, James Scheltema, who has participated extensively in all three proceedings.

In short, if Global Ohio wanted to conduct discovery regarding the Three Minute Reports, it had every opportunity to do so previously. As a result, the Commission should deny Global Ohio’s motion.

Respectfully submitted,

AT&T OHIO

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Summary: Memorandum Contra Global NAPs Ohio's motion to postpone hearing electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio