LARGE FILING SEPARATOR SHEET

CASE NUMBER: 08-690-TP-CSS

FILE DATE: 8/18/2009

SECTION: (Part 5 of 5)

NUMBER OF PAGES: 49

DESCRIPTION OF DOCUMENT:

Exhibits for transcript electronically filed 8/18/09 continued.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 3:04 CV 2075 (JCH)
GLOBAL NAPS, INC., GLOBAL NAPS NEW HAMPSHIRE, INC., GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC., AND FERROUS MINER HOLDINGS, LTD.,	)	
Defendants.	)	July 7, 2008

DECLARATION OF JOHN F. ASHLEY

I, John F. Ashley, hereby declare as follows:

1. Further to my prior declaration and expert report in this matter, dated April 8, 2008. I have been asked by counsel for the defendants to explain the nature of Peachtree accounting software.

2. I have worked in the fields of computer forensics and electronic discovery constantly since 1989 and have encountered the majority of financial accounting software packages, including Peachtree, on many occasions. I have a thorough understanding of how Peachtree works.

3. Back in the late eighties and early nineties it was commonplace for corporations to maintain both written and electronic financial accounting records. However, over time, the maintenance of corporate paper based accounting records has diminished and been replaced by electronic accounting packages.

4. Financial accounting software, including Peachtree, can best be described as databases that are capable of generating many forms of standard or customized reports, including a General Ledger report, for any period of time that raw data has been input into the system. Users of Peachtree and similar software can "slice and dice their data" in a variety of ways. They can then generate reports based on parameters they select, including for a particular time period, and either review the report electronically or print it to paper.

5. Similarly, Peachtree does not require particular explanations of accounting transactions. A user may choose to annotate or describe transactions in as much or little detail as she wants when entering the transaction.

6. Unless directed by the user, Peachtree does not automatically generate a General Ledger report, or any other report. Therefore, one can choose not to generate a General Ledger for any particular period of time and, even if one does generate a General Ledger, one can choose not to print it. In many cases users do not print, or even save a particular report, because the software can regenerate it later. For that reason it is not unusual for Peachtree users not to print or keep a comprehensive General Ledger similar to that one would often expect to find in the days of paper accounting. The absence of a comprehensive General Ledger in a Peachtree user's paper records is not, for that reason, surprising. The user may not print such a document in the ordinary course, because the report, and indeed more specifically tailored and useful reports can be generated by Peachtree at the user's convenience.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 7, 2008

John F. Ashley

CERTIFICATE OF SERVICE

I certify that on July 8, 2008 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Eric C. Osterberg

EXHIBIT G

produce certain equipment and there was a reason I did

that. I think in the face of we can't find it and what can't be found is very small I would think about rethinking that.

MR. MANISHIN: If you look at Exhibit 2 to our motion to reconsider amend, it is declaration of Matthew Pallet (phonetic).

THE COURT: I may not have that handy because I may not have all the exhibits with the motion. I apologize. I didn't bring out everything.

MR. MANISHIN: I will supply my copy to the court.

THE COURT: You can tell me what it says.

MR. MANISHIN: It says a Sycamore card worth approximately $1500 to $2500. Sysco card would be $225 and face plates with Sycamore card, the dollar value is minimal. We don't have a particular value. By my calculations that's somewhere between 2725 and 3000.

THE COURT: Can we resolve this in a reasonable fashion?

MR. BINNIG: I think we can resolve this piece in a reasonable fashion. We haven't done an independent assessment of the value of these missing pieces from the June 2006 list but we think it is reasonable for purposes of establishing a bond to adopt Mr. Pallet's opinion as to the value and so we would be willing to agree to the

bond in the amount of $3,000.

THE COURT: Is that acceptable to your client?

MR. MANISHIN: Did I hear $3000?

THE COURT: Yes.

MR. MANISHIN: That's acceptable.

THE COURT: On the condition that the defendant files a bond running to the favor of the plaintiff in the nature of prejudgment remedy bond. It is not payable now. It is payable upon judgment entering in favor of the plaintiff. Then the court will deny the motion to reconsider which is one part of 494. We'll amend the Court's prior order to provide that at this point following substantial compliance by the defendant, that complete compliance, the remaining compliance can be satisfied by the filing of this $3000 bond, prejudgment remedy type bond in favor of the plaintiff which, of course, I suppose then is also a grant of the portion of the motion which requests to relieve defendant from the order imposing contempt sanctions. It is granted to the extent that I substituted the final compliance of the defendant with this bond condition. I hope that's clear. Obviously if you don't post the bond, then, it is all conditional on your posting the bond. How much time would you ask to do so?

MR. MANISHIN: As your Honor knows from

experience, I'm hardly an expert of logistics in posting bonds.

THE COURT: How about two weeks?

MR. MANISHIN: I think two weeks would be adequate. It is possible we might be able to post this in cash. Does the bond go to court or the plaintiffs?

THE COURT: If it's a surety bond it is a piece of paper. I think in the case you would probably file it and serve on the plaintiffs. I'm not sure where the original goes but I'm sure the plaintiff will be satisfied. Attorney Jensen probably knows better than I do. One or your Connecticut partners would know better. It's been awhile since I did state court PJR's. I want it clear I'm not in any way changing my ruling of several months ago in the sense of reconsidering it or altering it. What I'm in effect doing is amending it by adding to it the condition that with respect to these few remaining pieces, the court's prior order can be satisfied by the substitution of cash or bond in the amount of $3,000 of a prejudgment remedy type bond because of the fact that the representation of the defense that those remaining pieces cannot be located. On that representation the court would permit that substitution as satisfaction. I also want to make it clear, in my view, my recollection is that the compliance, the substantial compliance with the

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 3:04 CV 2075 (JCH)
GLOBAL NAPS, INC., GLOBAL NAPS NEW HAMPSHIRE, INC., GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC., AND FERROUS MINER HOLDINGS, LTD.,	)	
Defendants.	)	JULY 25, 2008

DECLARATION OF FRANK GANGI IN SUPPORT OF DEFENDANTS' MOTION TO STAY ENFORCEMENT OF DEFAULT JUDGMENT

I, Frank Gangi, declare:

1. I am the President of Global NAPs, Inc., Global NAPs New Hampshire, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc. and Ferrous Miner Holdings, Ltd. (collectively "Defendants").

2. The assets of Global NAPs, Inc. primarily consist of certain telecommunications licenses and interconnection agreements, a roughly $26 million acknowledged debt from Verizon that Verizon currently is asserting as an offset against disputed claims asserted by it against Defendants, and certain monies deposited the bank in of Global NAPs New Hampshire, Inc. Global NAPs, Inc. also has a "zero balance" bank account in which monies are deposited to pay current debts accrued in the ordinary course of business and in litigation and then immediately paid out to satisfy those debts.

3. The principal asset of Global NAPs New Hampshire, Inc. is a bank account with TD BankNorth into which monies belonging to the "Global" defendants (Inc., Realty and Networks) are deposited. The balance of that account rises when customers prepay for services (approximately $1 million per month) and falls substantially when money promptly is disbursed to service and facilities providers and to other Global entities to pay their bills.

4. The assets of Global NAPs Networks, Inc. consist of certain telecommunications equipment used in the Global NAPs Networks telecommunications network. Much of that equipment is Sycamore equipment, the majority purchased used. The value of that equipment is likely only salvage value both because it is used and I believe that Global NAPs is the only company of which it is aware that uses the Sycamore equipment. Networks also is the owner of certain monies deposited in the Global NAPs New Hampshire, Inc. bank account, and a "zero balance" account.

5. The assets of Global NAPs Realty, Inc. consist of certain telecommunications "huts" and co-location facilities and a "zero balance" account.

6. The assets of Ferrous Miner Holdings, Ltd. ("Ferrous Miner") consist of approximately $674 in its own bank account, and stock in Global NAPs, Inc., Global NAPs Networks, Inc., Global NAPs New Hampshire, Inc. Ferrous Miner also owns stock in various other companies which either exist solely to hold telecommunications licenses or serve no function. The total liquid assets of those entities are in the form of bank deposits. There is less than $5,000 total on deposit in those entities' accounts.

7. Depending on the outcome of certain FCC and state regulatory proceedings Defendants may have claims against Verizon and AT&T in excess of $200 million for payments wrongfully withheld.

8. Defendants' businesses currently operate as "cash in, cash out." Customers prepay for services each month. When that money comes in, it is used to pay wages and expenses. One of their largest variable expenses currently is legal bills. The size of those bills currently is largely determinative of whether defendants are profitable or break even in any given month. If SNET executes on Defendants' accounts, Defendants, like any other business without hordes of cash, no longer will have sufficient cash flow to pay employees, utilities, etc. and will have significant difficulty sustaining operations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 25, 2008.

Frank Gangi

EXHIBIT I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 3:04 CV 2075 (JCH)
GLOBAL NAPS, INC., GLOBAL NAPS NEW HAMPSHIRE, INC., GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC., AND FERROUS MINER HOLDINGS, LTD.,	)	
Defendants.	)	JULY 25, 2008

DECLARATION OF JANET LIMA IN SUPPORT OF DEFENDANTS' MOTION TO STAY ENFORCEMENT OF DEFAULT JUDGMENT

I, Janet Lima, declare:

1. My company, Select & Pay is the bookkeeper for Global NAPs, Inc., Global NAPs New Hampshire, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc. (collectively "Defendants"). I am the person principally responsible for doing the work.

2. . Global NAPs, Inc. has a "zero balance" bank account in which monies are deposited to pay current debts accrued in the ordinary course of business and in litigation and then immediately paid out to satisfy those debts.

3. Global NAPs New Hampshire, Inc. has a bank account with TD BankNorth into which monies belonging to the "Global" defendants (Inc., Realty and Networks) are deposited. The balance of that account rises when customers prepay for services (approximately $1 million per month) and falls substantially when money promptly is disbursed to service and facilities providers and to other Global entities to pay their bills.

4. Ferrous Miner Holdings, Ltd. ("Ferrous Miner") has approximately $674 in its own bank account.

5. Defendants' businesses currently operate as "cash in, cash out." Customers prepay for services each month. When that money comes in, it is used to pay wages and expenses. One of their largest variable expenses currently is legal bills. The size of those bills currently is largely determinative of whether defendants are profitable or break even in any given month. If SNET executes on Defendants' accounts, Defendants like any other business will no longer have sufficient cash flow to pay employees, utilities, etc. and will have significant difficulty sustaining operations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 25, 2008.

Janet Lima

EXHIBIT J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 3:04 CV 2075 (JCH)
GLOBAL NAPS, INC., GLOBAL NAPS NEW HAMPSHIRE, INC., GLOBAL NAPS NETWORKS, INC., GLOBAL NAPS REALTY, INC., AND FERROUS MINER HOLDINGS, LTD.,	)	
Defendants.	)	JULY 22, 2008

DECLARATION OF SAMUEL ZARZOUR IN SUPPORT OF DEFENDANTS' MOTION TO STAY ENFORCEMENT OF DEFAULT JUDGMENT

I, Samuel Zarzour, declare:

1. I am an attorney in the Global NAPs, Inc. legal department.

2. Following entry of the default judgment against Global NAPs, Inc. and the other Defendants, I attempted to engage a bonding company to post a supersedeas bond on behalf of Defendants for the amount of the default judgment.

3. On July 11, 2008, I contacted Northeast Surety, LLC, a bonding company located in Farmington, Connecticut and spoke with Kenneth Coco, the managing member. He explained to me that he had thirty years experience and was very familiar with the process of appeal bonds. I had follow-up conversations with him again on July 14 and 15.

4. Mr. Coco explained that there are about ten bonding companies that have the ability to give a bond in the amount necessary in this matter and that his company acts as broker for all of them.

5. Mr. Coco informed me that all of the bonding companies he represents would require submission of the following:

i. Financial statements for each Defendant and very likely for all the affiliates of the Defendants as well, as of the end of fiscal year 2007, prepared by a CPA.

ii. A recent financial statement for the ultimate individual shareholder of the parent, Ferrous Miner Holdings, Ltd., prepared by a CPA.

iii. Indemnification agreements executed by all the Defendants, the ultimate individual shareholder and very likely by all the affiliates of the Defendants as well.

iv. Cash or its equivalent (e.g. letter of credit) in the full amount of the bond as collateral. Real estate or other fixed assets, such as telecommunications equipment, are not acceptable.

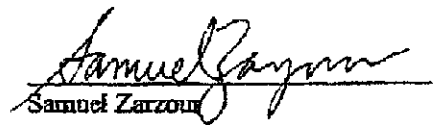
v. Copies of certain pleadings.

6. I informed Mr. Coco that I believe that the Defendants do not have the required amount of cash or the equivalent, nor the means to secure a letter of credit for the full amount of the judgment. I specifically asked Mr. Coco if it would be possible to obtain a bond on a portion of the value of the non-cash assets. He advised that without cash or its equivalent, that it was very unlikely that the Defendants could obtain a bond in any amount.

7. Based on the foregoing, and what appears to be a universal requirement that Defendants' demonstrate cash assets as a condition of any bond or loan, it is apparent that Defendants will be unable to post a bond in the full amount of the default judgment, or even for a portion of the amount.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2008.



Samuel Zarzour

PHP-26

CRC/KJB/tcg 4/12/2007

FILED
04-12-07
03:04 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cox California Telecom, LLC (U-5684-C), Complainant, v. Global NAPS California, Inc., (U-6449-C), Defendant.	Case 06-04-026

JOINT RULING ORDERING DEFENDANT TO SUPPLEMENT RECORD

Background

On March 23, 2007, the Assigned Commissioner and the Assigned Administrative Law Judge (ALJ) issued a joint ruling granting defendant Global NAPS California, Inc. (GNCI) fifteen days within which either to pay or post security for the amounts due Cox California Telecom, LLC (Cox) under Decision (D.) 07-01-004 or appear and show cause why sanctions should not be imposed on it for failure to obey a Commission order.

On April 9, 2007, GNCI appeared through counsel at the show cause hearing and introduced an affidavit from Richard Gangi, identified as the Treasurer of GNCI, which states that GNCI has no liquid assets, no offices, no real or personal property and no bank accounts in California. Gangi's affidavit also states, in numbered paragraph 4:

> 4. On January 12, 2007, Global NAPS California, Inc. did not have sufficient cash or other capital on hand to pay the amount required by [Decision D.07-01-004]. At no time between January 12, 2007 and the date of this declaration has Global NAPS California, Inc. had sufficient cash or other capital on hand to pay the amount required by the Decision.

In response to questions at the hearing, GNCI's counsel indicated that not only did his client not have cash or other capital to pay the amount required by the decision, it did not have sufficient cash or capital to post a bond securing the debt due Cox. [1]

Discussion

Gangi's affidavit and counsel's statements raise serious questions about GNCI's ability to satisfy D.07-01-004 as well as its ability to conduct ongoing business operations in the State of California. In D.00-12-039 issued December 21, 2000, GNCI was granted its Certificate of Public Convenience and Necessity (CPCN). The certificate was based in part on GNCI's representation that its parent, Global NAPS, Inc., had guaranteed for a period of not less than 12 months that GNCI had on hand at least $100,000 in cash or cash equivalents plus sufficient additional cash or cash equivalents to cover deposits required by other telecommunications carriers in order to provide the proposed service.[2] Global NAPS, Inc. having no obligation to provide a guarantee past the initial 12-month period of GNCI's operations, Gangi's affidavit and counsel's

---

[1] Reporter's Transcript of Hearing April 9, 2007 at 21.

[2] The financial requirements that a non-dominant interexchange carrier must meet in order to obtain a CPCN are set forth in D.91-10-041.

statements imply that creditors of GNCI may look only to GNCI's non-existent California assets for satisfaction of their claims or, to put it bluntly, that GNCI is unable to pay its debts and Global NAPS, Inc. is unwilling to do so.

Under these circumstances, the Commission may move promptly to suspend or revoke GNCI's CPCN based on its lack of financial fitness. To obtain information necessary for these determinations, we direct GNCI to supplement the record in this proceeding as described in the ordering paragraphs below.

IT IS ORDERED that:

No later than 5:00 p.m., Thursday, April 19, 2007, GNCI shall supplement the record in this proceeding with an affidavit of a responsible officer stating

1. Whether Global NAPS, Inc. presently guarantees the financial obligations of GNCI and, if so, to what extent;
2. If Global NAPS, Inc. does not presently guarantee the debts of GNCI, to what assets may creditors look for satisfaction of their debts; and
3. What steps GNCI will take to minimize the negative effects on its customers should the Commission determine to suspend or revoke its Certificate of Public Convenience and Necessity.

Dated April 12, 2007, at San Francisco, California.

/s/ RACHELLE B. CHONG
Rachelle B. Chong
Assigned Commissioner

/s/ KARL J. BEMESDERFER
Karl J. Bemesderfer
Administrative Law Judge

C.06-04-026 CRC/KJB/tcg

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 12, 2007, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

********** SERVICE LIST **********
Last Update on 11-APR-2007 by: SMJ
C0604026 LIST

********** APPEARANCES **********

Theresa Cabral
COX COMMUNICATIONS, INC.
2200 POWELL ST., SUITE 1035
EMERYVILLE CA 94608
(510) 923-6221
theresa.cabral@cox.com
For: Cox Communications, Inc.

Laurie Deyoung
RICHARD W. DAVIS
DAVIS DEYOUNG LLP
1901 AVENUE OF THE STARS, STE. 200
LOS ANGELES CA 90067
(310) 553-5400
For: Global, NAPs California, Inc.

Richard W. Davis
Attorney At Law
DAVIS DEYOUNG, LLP
1901 AVENUE OF THE STARS, STE 200
LOS ANGELES CA 90067
(310) 553-5400
rdavis@davisdeyoung.com
For: Global Naps California, Inc.

William Rooney, Jr
GLOBAL NAPS, INC.
89 ACCESS ROAD, SUITE B
NORWOOD MA 02062
(781) 551-9707
wrooney@gnaps.com
For: GLobal NAPs California, Inc.

Joseph S. Faber
Attorney At Law
LAW OFFICE OF JOSEPH S. FABER
3527 MT. DIABLO BLVD., SUITE 287
LAFAYETTE CA 94549
(925) 385-0043
jsf@joefaber.com
For: Cox California Telecom, LLC

Margaret Tobias
Attorney At Law
MANDELL LAW GROUP
THREE EMBARCADERO CENTER, 6TH FLOOR
SAN FRANCISCO CA 94111
(415) 969-6772
mtobias@mlawgroup.com
For: Cox California

********** STATE EMPLOYEE **********

Karl Bemesderfer
Administrative Law Judge Division
RM. 5006
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1199
kjb@cpuc.ca.gov

********** INFORMATION ONLY **********

James R. Scheltema
Director-Regulatory Affairs
GLOBAL NAPS, INC.
5042 DURHAM RD W
COLUMBIA MA 21044
(410) 340-0655
jscheltema@comcast.net

PHP-27

STATE OF CALIFORNIA
Governor

ARNOLD SCHWARZENEGGER,

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 14, 2008 LEC 1001 regtss@att.com

To: All Facilities-Based Carriers

Subject: Suspension of Operating Authority for Global NAPs California, Inc. (U-6449-C)

On June 21, 2007, the CPUC issued Decision (D.) 07-06-044, directing the suspension of the Certificate of Public Convenience and Necessity (CPCN) for Global NAPs California, Inc. (U-6449-C) (GNAPs), effective 30 days after the mailing of that decision. On September 20, 2007, the CPUC affirmed that holding in D.07-09-050.

Following issuance of each of these CPUC decisions, I directed carriers to cease exchanging traffic with GNAPs.[1] Before each letter became effective, the California Court of Appeal for the Second District issued a stay of the respective orders. The most recent stay, issued November 7, 2007, has now been lifted by an order of the Court of Appeal issued January 10, 2008. In the January 10th order, the Court of Appeal also summarily denied both of GNAPs' petitions for write of review. Pursuant to Public Utilities Code sections 1735 and 1761-1764, D.07-06-044 and D.07-09-050 are now effective.

I am thus re-issuing my directive that carriers comply with the Commission's orders and cease exchanging traffic with GNAPs.[2] Pursuant to D.07-06-044, and given that GNAPs to date has failed to comply with D.07- 06-044, **I am instructing carriers to cease exchanging telecommunications traffic in California with GNAPs after March 15, 2008.**

---

[1] See Letters dated July 17, 2007 and October 11, 2007.

[2] GNAPs has filed a petition for review with the California Supreme Court. I have informed GNAPs that it retains the option to place the disputed amounts in escrow with the CPUC, and if that were to occur within a reasonable period of time, carriers are put on notice that we would rescind this directive and notify them accordingly.

I also note that I sent a letter to GNAPs dated September 24, 2007, in which I requested that GNAPs provide to the CPUC a list of its current customers. To date, GNAPs has not provided the requested information, nor are we aware of any efforts taken by GNAPs to transition its customers to other carriers. Without GNAPs' cooperation, the CPUC has no ability to contact GNAPs' customers directly nor can it confirm that GNAPs' customers will be informed of the termination of traffic exchange. Carriers should be aware of this.

If you have any further questions, please contact Helen Mickiewicz, Assistant General Counsel, at 415.703.1319, or Staff Counsel Christopher Witteman at 415.355.5524.

Sincerely,

/S/ John M. Leutza
John M. Leutza
Director

cc: GNAPs California agent for service of process
GNAPs Inc.
Lionel B. Wilson, Acting General Counsel
Helen Mickiewicz, Asst. General Counsel
Christopher Witteman, Staff Counsel

PHP-28

INITIAL DECISION

Docket No. 21905-U **Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc.**

I. INTRODUCTION AND JURISDICTION

This matter comes before the Commission for resolution based on a November 17, 2005 request for expedited declaratory ruling (the "Request") filed by four (4) independent telephone companies – Blue Ridge Telephone Company ("Blue Ridge"), Citizens Telephone Company ("Citizens"), Plant Telephone Company ("Plant") and Waverly Hall Telephone LLC ("Waverly Hall") (hereafter collectively referred to as the "Independent Companies"). In March of 2006, Hart Telephone Company ("Hart") filed for intervention and party status in this matter, alleging that it confronted similar circumstances that gave rise to the same concerns that prompted the filing of the Request in the first instance – the failure by Global Naps, Inc. ("GNAPs") to pay what Hart (as well as the other companies) contended to be properly assessed intrastate access charges. Hart was granted intervenor/party status in May of 2006.

As noted, the instant controversy involves issues associated with non-payment of intrastate access charges – a form of intercarrier compensation – assessed by each of the Independent Companies to GNAPs and whether such access charges are applicable to the traffic that is the focus of this proceeding.[1] The Independent Companies request that the Commission declare that its decisions in Docket No. 14529-U, *In Re: Petition for Arbitration of Interconnection Agreement Global NAPs, Inc. v. ALLTEL Georgia, Inc.; ALLTEL Georgia Communications Corp.; Georgia ALLTEL; Telecom, Inc.; Georgia Telephone Corp.; Standard Telephone Company, Order On Disputed Issues,* issued November 20, 2002 (the "*Alltel Decision*") and in Docket No. 16772-U, *In Re BellSouth Telecommunications, Inc.'s Petition for*

[1] Independent Companies' Signaling System No. 7 ("SS7") record evidence indicated that some of the traffic may have been associated with interstate calls. However, this traffic was not designated as interstate by GNAPs and GNAPs has not properly or timely objected to the intrastate billing send by Independent Companies. The fact that some of the traffic was misidentified by GNAPs and may be interstate does not disturb our findings here in that GNAPs never reported a Percent Interstate Use factor to the Independent Companies or disputed with specificity the billings made by the Independent Companies.

a Declaratory Ruling Regarding Transit Traffic, Order on Transit Traffic Involving Competition Local Carriers and Independent Telephone Companies, issued March 24, 2005 (the "*Transit Order*") apply to the instant situation when GNAPs terminates traffic to them through the exchange access arrangement that each of the Independent Companies has with BellSouth Telecommunications, Inc. n/k/a AT&T Georgia ("BellSouth"). GNAPs, in turn, disagrees.

GNAPs contends that: (1) the Independent Companies' respective intrastate access tariffs were not properly filed with the Commission; and (2) the Commission does not have jurisdiction over this matter because of certain federal actions related to services provided by Enhanced Service Providers ("ESPs") and Internet Service Providers ("ISPs"). GNAPs further contends that recent action by the Georgia Legislature through its enactment of Senate Bill 120 ("SB 120") precludes the substantive resolution of the issues presented in the Independent Companies' Request.

Recent action by the Commission in Docket No. 12921-U regarding an interconnection dispute and subsequent disconnection by BellSouth of GNAPs, may have significant impacts on the flow of traffic by GNAPs to the Public Switched Telephone Network ("PSTN") that is ultimately destined for termination by each of the Independent Companies. And while the matter and controversy in Docket No. 12921-U, are separate and apart from the issues raised in this proceeding, the Commission's decision in Docket No. 12921-U does not render this proceeding moot.

It is vital that Commission decisions and pronouncements are applied properly and consistently, particularly so true in the area of intercarrier compensation, as that form of compensation provides one of the foundations for how competitive, facilities-based carriers (and the markets they serve) will function. Should carriers be uncertain with respect to their expectations as to the enforceability of this Commission's rulings in the area of intercarrier compensation, the foundational aspect of an interconnected systems of networks and the rights and responsibilities associated with their use by carriers will be undermined.

While the decision in this proceeding is limited to *intrastate* traffic, the public policy pronouncement of the Federal Communications Commission ("FCC") that no carrier should, in effect, receive a "free ride" on the PSTN should be acknowledged and followed. While a variety of FCC decisions are consistent with this overarching policy, the FCC has summarized this policy as follows in a relatively recent proceeding addressing new methods of delivering traffic

to the PSTN.

> [A]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.

In the Matter of IP-Enabled Services, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28, released March 10, 2004 ("*IP-Enabled Proceeding*") at para.33.

At the same time, the decision in this proceeding reconfirms the Georgia Commission jurisdiction over the subject matter and issues presented in the Independent Companies' Request.

Based on the facts developed in the record and the application of law and rational public policy to those facts, it is the finding of the Hearing Officer that the traffic that is being terminated by GNAPs to the networks of the Independent Companies was and is subject to Georgia Public Service Commission jurisdiction. It is a further finding and conclusion of the Hearing Officer that, consistent with Commission's *Alltel Decision* and *Transit Order* decision, coupled with the proper application of O.C.G.A. § 46-5-162(12)(definition of "local interconnection services") and O.C.G.A. § 46-5-162(19)(definition of "toll service"), the traffic at issue here is subject to the rates, terms and conditions of each of the Independent Companies' respective intrastate access tariffs. Finally, the Hearing Officer finds and concludes that SB-120 does not apply to the instant controversy as the record in this proceeding does not demonstrate that the forms of end user services addressed in SB 120 are provided by GNAPs.

While the factual record in this case demonstrates that the traffic is not ESP traffic, Commission jurisdiction over the subject matter is not altered as a result of whether the traffic delivered for termination to the PSTN by GNAPs is or is not ESP traffic delivered to the PSTN for termination or Internet Protocol-enabled ("IP-enabled") traffic. Although the FCC may, in the future, determine that some alternative regulatory framework should apply to these types of traffic, for now it has not. Thus, the FCC's framework, which recognizes this Commission's jurisdiction over intrastate traffic, continues unabated and must and should be applied. In the absence of these conclusions, GNAPs would, as the Independent Companies contend and the record here demonstrates, be receiving a "free ride" on the PSTN. That result is inconsistent

with the public interest.

II. ISSUES

Due to the status of this case, there are two primary issues that need to be address and resolve. These issues can be stated succinctly as follows:

1. Whether the Independent Companies' respective intrastate access tariffs apply to the terminating traffic identified as GNAPs' traffic?

2. Whether GNAPs provided sufficient factual evidence supporting GNAPs' assertion that the traffic it delivers over the PSTN to the Independent Companies is exempt from the Commission's jurisdiction?

III. DISCUSSION

A. Validity of Independent Companies' Intrastate Access Tariffs

As to the first issue, the record in this proceeding amply demonstrates that each of the Independent Companies have filed, and have followed the requirements for filing, their intrastate access tariffs with the Commission. While GNAPs initially contended that the tariffs were not properly filed and thus could not be in effect, the Hearing Officer finds that contention without merit for the following reasons.

First, the conclusion that the Independent Companies have in effect tariffs that govern the provision by them of their respective intrastate access services has already been addressed by the Commission at the time that the intrastate access environment in Georgia arose almost 16 years ago. At that time, the Commission was clear with respect to its intent that all proper filing requirements and rules had been followed by the Georgia Telephone Association (the "GTA") and the Independent Companies in ensuring that the Independent Companies had intrastate access tariffs in effect.

> On August 30, 1991, the GTA and Southern Bell filed a de-pooling proposal with the Commission, as set forth in Appendix A, attached hereto. Also included with this filing was a copy of the National Exchange Carrier Association (NECA) Tariff No. 5, which was being concurred in by all GTA pool participants with the exception of GTE-South, Inc. (GTE) and Contel Of The South, Inc. (Contel). The intent being that the rates and charges specified in NECA tariff No. 5, would become the basis for the proposed intraLATA access compensation arrangement and would replace the existing intraLATA pooling compensation arrangement, effective January 1, 1992. . . . .
>
> On October 15, 1991, the GTA filed on behalf of twenty nine (29) of its members tariff amendments, as appropriate, to the NECA Tariff No. 5 . . . .
>
> . . . It is therefore in the public interest to approve the tariffs as filed to become effective January 1, 1992.

Docket No. 3921-U *IN RE: The Commission's Rule Nisi Investigation to Adjust Intrastate Rates and Charges for Telephone Service in the State of Georgia for Southern Bell Telephone and Telegraph Company, Order Establishing the Georgia Depooling Plan Procedures and Requirements for IntraLATA Toll Revenue,* January 2, 1992 at 4-6.

Second, the Commission's statements in its January 2, 1992 Order in Docket No. 3921-U with respect to the filing of the tariffs were corroborated by the Commission Staff affidavits in this proceeding. These affidavits reflect the filing records from the Commission during the August 1991 time period when the terms and conditions of the Independent Companies' access tariffs were filed by their trade association, the GTA (hereinafter the "GTA Member Tariff.")

Third, as the record reflects in this proceeding, the Independent Companies' witness Staurulakis submitted a copy of the terms and conditions of the GTA Member Tariff, along with the transmittal letter used for that filing. Consistent with this Exhibit, each of the Independent Companies' company witnesses also submitted as part of their testimonies the current rates they are each using for the assessment of intrastate access charges to carriers.

Finally, Mr. Staurulakis' testimony indicates that carriers have continued to pay the Independent Companies' intrastate access charges over the approximately 16 years that the GTA Member Tariff and the Independent Companies' intrastate access rates have and continue to be in effect. It is implausible that such action would have occurred if the Independent Companies' intrastate access tariff rates, terms and conditions were not in effect. The industry practice reflected in the record that carriers have been paying the intrastate access charges of the Independent Companies further supports and corroborates the conclusion here that the

Independent Companies' intrastate access tariffs – made up of their company-specific intrastate access rates and the terms and conditions of the GTA Member tariff – are and have been lawfully filed and in effect as a result of specific Commission requirements.

Thus, based on the above, any suggestion that the Independent Companies tariff rates, terms and conditions for their respective provision of intrastate access services are not in effect is without merit. Industry practice, Commission filing logs, copies of the terms and conditions and rate sections, and the Commission's own statements and conclusions fully supports this conclusion.

Turning to the application of the tariffs to the GNAPs' traffic, from the outset, the record is devoid of any substantive challenge that the Independent Companies have failed to properly apply the terms and condition (and, for that matter, the rates) that are included in their tariffs. Regarding the minor number of interstate calls reflected in the SS7 record evidence submitted in this proceeding, GNAPs could have challenged the classification of a particular call using the appropriate procedures in the applicable tariff, but it did not and GNAPs has thus waived any right to do so now.

With respect to the tariffs' terms and conditions, they speak for themselves. The applicable terms and conditions governing this matter are those found in Sections 1, 2, 3, 5, 6, and 15.1 of the tariff. The terminating switched access charges in the GTA Member Tariff are, in turn, comprised of four rate elements:

1. Local Transport (Section 6.1.3(A) of the GTA Member Tariff) – This rate element provides for the use of common transport facilities between the Independent Companies' meet-point with BellSouth and the Independent Companies' end office switch that serves the end user customer.

2. Local Switching (Section 6.1.3(B)(1) of the GTA Member Tariff) – This rate element establishes the charges related to the local end office switching and end user termination functions necessary to complete the transmission of Switched Access communications to and from the end users served by the local end office.

3. Information Surcharge (Section 6.1.3(B)(2) of the GTA Member Tariff) – This rate element is part of the end office rate category.

4. Carrier Common Line (Section 3 of the GTA Member Tariff) – This rate element provides for the use of the connection between the Independent Companies' end office and the premises of the end user customer.

Moreover, the specific rates for each of the switched access rate elements for the Independent Companies are in Section S of each of the Independent Companies' General Subscriber Services Tariff on file at the Commission. Provisions for late payment charges are found in Section 2.4.1(C)(2) of the GTA Member Tariff.

Accordingly, the Hearing Officer finds and concludes that these sections govern the issues in this proceeding and, as a result of these tariff sections' proper application by each of the Independent Companies that GNAPs is required to pay the appropriate intrastate access charges that it has been assessed *by each* of the Independent Companies. Since, GNAPs has used (and could continue to use) the Independent Companies' terminating networks through GNAPs' tandem arrangement it has with BellSouth, GNAPs has constructively ordered the Independent Companies' terminating intrastate access services and must pay for those services.

GNAPs collateral attacks regarding the lack of reliability of the records – the EMI 101011 records -- that the Independent Companies receive from BellSouth for billing are not convincing. These records are the ones expected from BellSouth and, when provided, alleviated BellSouth from the obligation to pay the Independent Companies' respective intrastate terminating access charges. These EMI records are industry standard records, are required by prior Commission decisions, and are those for which BellSouth has a financial incentive with respect to their accuracy in order for BellSouth to avoid payment obligations with respect to traffic. GNAPs has not demonstrated these findings to be inaccurate or subject to question. Accordingly, GNAPs' suggestion that these records cannot be relied upon for billing is rejected.[2]

Also unpersuasive is GNAPs' claim that it is not an interexchange carrier ("IXC") and thus cannot be considered a "customer" for purposes of the tariff. The definition of "customer" under the GTA Member Tariff is defined as follows:

> The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges. (GTA Member Tariff, Section 2.6, Original Page 2-72.)

Based on GNAPs' testimony, there can be no question that GNAPs is a "corporation engaged for

[2] We also find that while the EMI records are legitimate for billing use as GNAPs failed to challenge the specific billing other than to repeat the general claims of ESP or ISP traffic. Accordingly, GNAPs has waived its right to challenge the billings.

hire" when it provided its outbound service to the GNAPs customers. Similarly, the services provided by GNAPs depend on the utilization of wire facilities, as the GTA Member Tariff states, "between two or more exchanges" which the Independent Companies have properly identified in their testimonies as the jointly provided exchange access arrangements that each has with BellSouth and the physical connection at the meet point between each of them and a BellSouth tandem. Moreover, this conclusion is corroborated by the fact that GNAPs has been assigned a four-digit carrier identification code – 5133 -- by the North American Numbering Plan Administrator exactly like the four-digit codes assigned other carriers.

Also rejected are GNAPs' claims for an accounting of the charges assessed to it by the Independent Companies based on allegations that BellSouth has already paid these charges. The record demonstrates that the charges at issue have not been paid by BellSouth.

Finally, the sample data provided to the Independent Companies by BellSouth indicates the traffic that GNAPs terminates to each Petitioner utilizing the jointly provided facilities between BellSouth and Independent Companies originates as voice traffic and, as explained by each of the Independent Companies, terminates as voice traffic. Thus, GNAPs efforts to contend that the terms and conditions contained in the GTA Member Tariff are not applicable is without basis and will be given no weight.

B. The Commission is not Preempted from Rendering this Decision

On March 12, 2007, the Hearing Officer issued a decision indicating that GNAPs bore the burden of proof with respect to establishing that its traffic is some form of ESP or ISP-bound traffic. *See generally Global NAPs Inc. Motion to Dismiss*, Docket No. 21905-U, issued March 12, 2007; *see also* O.G.C.A. § 24-4-1; *Fulton-DeKalb Hospital Authority v. Fanning,* 196 Ga.App. 556, 558, 396 S.E.2d 534, 535 (1990) *citing Pembrook Mgmt. v. Cossaboon,* 157 Ga.App. 675, 278 S.E.2d 100 (1981) *and Parsons v. Harrison,* 133 Ga.App. 280, 211 S.E.2d 128 (1974). GNAPs failed to make that showing.

Review of the record and testimonies of GNAPs' witnesses confirms that GNAPs made generalized unsupported statements regarding the alleged nature of the traffic GNAPs delivers for termination to each of the Independent Companies. Not only has GNAPs not provided any specific facts as to the nature of the GNAPs' customers (only unexplained contract terms) and how the traffic is purportedly converted from Internet Protocol to Time Division Multiplexed

format for the initial delivery of the traffic to BellSouth, GNAPs' witnesses provide no explanation (or for that matter rebuttal) as to why the Independent Companies' demonstration that the traffic initiates and terminates as traditional voice traffic is somehow wrong.

The Independent Companies have provided evidence from each of the company witnesses that the traffic being terminated is traditional voice traffic. In combination with these company witnesses' testimonies, the Independent Companies provided evidence regarding the sample SS7 records obtained from BellSouth during the discovery process in this case. These SS7 records demonstrate that the traffic at issue is voice traffic. In their most basic form, the SS7 records demonstrate that purportedly ESP traffic is delivered to the PSTN by a traditional wireline or wireless carrier and is terminated over the PSTN as traditional wireline or wireless traffic. At best, therefore, the traffic is the same type of IP-in-the-Middle traffic that the FCC has decided is subject to access charges. *See In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charge, Order,* WC Docket No. 02-361, FCC 04-97, released April 21, 2004 (the "*AT&T Decision*") at 1 and n.61.

These same conclusions are reached regarding the Commission jurisdiction even if GNAPs had demonstrated that the traffic it delivered to the Independent Companies for termination was ESP or ISP traffic. The *AT&T Decision* resolves the fact that Commission has jurisdiction over the traffic in the event that GNAPs' traffic is IP-in-the-Middle traffic. Moreover, even if the traffic was Voice over Internet Protocol (or "VoIP"), the FCC has also already determined that the carrier (which would in this case be GNAPs) that delivers traffic for termination to the PSTN is the party with the financial responsibility for the intercarrier compensation (in this case intrastate access charges) associated with that traffic. *See In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and* Order, WC Docket No. 06-55, DA 07-709, released March 1, 2007 ("*TWC Order*") at para.17.

GNAPs' reliance on the FCC's decision regarding Vonage (*In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, WC Docket No. 03-211, FCC 04-267 released Nov. 12. 2004 ("*FCC Vonage Decision*"), the FCC's pronouncements regarding

ISP-bound traffic (*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation of ISP-Bound Traffic: Order on Remand and Report and Order,* 16 FCC Rcd 9151 (2001), *remanded but not vacated, WorldCom, Inc. v. FCC,* 288 F.3d 429 (D.C. Cir. 2002)), and the FCC's *IP-Enabled Proceeding.* is unpersuasive As a matter of law, GNAPs must show that the preemption it claims exists must be clear. *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 at 73, *citing Hillsborough County v. Automated Med. Labs, Inc.* 471 U.S. 707 (1985) ("*Hillsborough County*"). Moreover, since the Commission has engaged in the regulation of intrastate access arrangements for almost the last 16 years, the United Stated Supreme Court has stated that, "[w]here . . . the field that Congress is said to have pre-empted has been traditionally occupied by the States 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Hillsborough County,* 471 U.S. at 715, *citing Jones v. Rath Packing Co.,* 430 U.S. 519, 525 (1977). Under these standards, GNAPs' claims that we are preempted are denied.

With respect to the *FCC Vonage Decision*, the FCC's discussion related to the specific service that Vonage provided. *See, e.g. FCC Vonage Decision* at paras. 1, 5, 6 and 8. As such, the record here demonstrates no fact that the traffic delivered by GNAPs for termination to the Independent Companies reflects characteristics like those described by the FCC with respect to Vonage's end user service. Likewise, even if such GNAPs-related service did contain such characteristics, GNAPs has not demonstrated by clear language that the FCC preempted this Commission's jurisdiction over intercarrier relationships which are the focus of this proceeding.

GNAPs claims regarding the FCC's preemption of all related ISP-bound traffic have been rejected by the courts. "The FCC's helpful brief . . . supports the conclusion that *the [ISP Remand] order did not clearly preempt state regulation of intrastate access charges.*" *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir 2006) at 74 (emphasis added). The United States First Circuit Court of Appeals held that "the FCC did not expressly preempt state regulation of intercarrier compensation for non-local ISP-bound calls as are involved here, leaving the [Massachusetts Department of Telecommunications and Energy] free to impose access charges for such calls under state law." *Id.* at 61. The factual situation before the First Circuit Court is generally the same as here since the traffic being delivered for termination by GNAPs originates outside of the Independent Companies' respective local calling areas.

Similarly the traffic at issue in this proceeding is traditional voice traffic and is not bound to ISPs located within the service areas of the Independent Companies. Finally, GNAPs fares no better with respect to the FCC's *IP-Enabled Proceeding*. At best, the FCC's discussion raises the issue of potential preemption, but comes to no conclusions regarding such action. *See IP-Enabled Proceeding* at para. 41.

GNAPs' claims that SB 120 preempts the Commission from addressing the issues in this proceeding are also rejected. First, there has been no reliable facts presented by GNAPs to suggest that the services covered by SB 120 – broadband, VoIP and wireless service -- are at issue in this proceeding. Second, and even if such services were demonstrated to be at issue, like the *FCC Vonage Decision,* SB 120 addresses retail service offerings and not intercarrier compensation issues. And, as to the latter point, SB 120 carves out Commission jurisdiction over intercarrier matters such as those addressed in the *Alltel Decision* and the *Transit Order*. *See* O.G.C.A. §46-5-222(c)("Except as otherwise expressly provided in this Code section, *nothing in this Code section shall be construed to restrict or expand any authority or jurisdiction of the Public Service Commission*.") (emphasis added). This reading of SB 120 is appropriate as it is based upon the plain reading of the language that the Georgia Legislature chose to use. *See Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); Webb *v. Hodel,* 878 F.2d 1252, 1255 (10th Cir. 1989).

IV. CONCLUSION AND ORDERING PARAGRAPHS

The Hearing Officer certifies the record in this docket to the Commission and issues this recommendation pursuant to O.C.G.A. 46-2-58(d) and 50-13-17(a). The issues presented to the Commission for decision should be resolved in accordance with the discussion in the preceding sections of this order. Based upon the evidence, the Hearing Officer recommends that it is appropriate to order the following with respect to the November 17, 2005 Petition of the Independent Companies.

WHEREFORE IT IS ORDERED, that having found and concluded that the Independent Companies' intrastate access tariffs are in effect and establish the rates, terms and conditions that govern the intrastate traffic that has been terminated by GNAPs to the Independent Companies, and having found and concluded that GNAPs has failed to demonstrate

that the Commission is preempted from reaching the issues in this proceeding, the Independent Companies' Request granted and hereby find and conclude that:

(1) each of the Petitioner's rates, terms and condition contained in their intrastate access tariffs are to be applied to the GNAPs' traffic;

(2) GNAPs has unreasonably refused to pay properly assessed intrastate access charges by each of the Independent Companies;

(3) that GNAPS must comply with the terms and conditions of each of the Petitioner's lawfully filed intrastate access tariff, including, without limitation, the payment and interest sections of such tariff; and

(4) that the Commission directs GNAPs to pay immediately all charges that each of the Independent Companies have billed GNAPs pursuant to the terms and conditions of each Independent Company's tariff.

ORDERED FURTHER, in the event that such payments are not made within 30 days and assuming that the termination of GNAPs' connectivity by BellSouth does not continue, each Independent Company shall be permitted, with the assistance of BellSouth, to disconnect GNAPs so as to preclude it from continuing to terminate traffic to the Independent Companies.

ORDERED FURTHER, that the findings and conclusions associated with the relief granted herein are entirely consistent with the law, rational public policy and the facts developed in the record in this proceeding.

ORDERED FURTHER, that all findings, conclusions and decisions contained in the preceding sections of this order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion of reconsideration, rehearing or oral argument shall not stay the effectiveness of this order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

So ordered this the 8th day of April 2008.

Philip J. Smith
Hearing Officer

Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Initial Decision, by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon, except where indicated otherwise) to the following persons:

Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta Georgia 30334
(By Hand)

Mr. Leon Bowles
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334-5701
(By Hand)

Daniel S. Walsh, Esq.
Assistant Attorney General
Department of Law
40 Capitol Avenue, SW
Atlanta, GA 30334-1300
(By Hand)

Tremelle Fishburne, Esq.
Consumers' Utility Counsel
2 Martin Luther King, Jr. Drive
Suite 356
Atlanta, GA 30334
(By Hand)

Thomas J. Moorman, Esq.
Woods & Aitken, LLP
2154 Wisconsin Avenue, NW
Suite 200
Washington, DC 20007

James A. Overcash, Esq.
Woods & Aitken LLP
301 South 13th St., Suite 500
Lincoln, NE 68508

Kennard B. Woods, Esq.
Friend, Hudak & Harris, LLP
Three Ravinia Drive
Suite 1450
Atlanta, GA 30346

Meredith E. Mays, Esq.
General Counsel –AT&T Georgia
1025 Lenox Park Boulevard
Atlanta, GA 30309-5309

This the 8th day of April 2008.

Philip J. Smith
Hearing Officer

Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GLOBAL NAPS, INC., Plaintiff,	)	
vs.	)	
VERIZON NEW ENGLAND, INC., d/b/a/ VERIZON MASSACHUSETTS Defendant, Counterclaim Plaintiff	)	Civil Action No. 02-12489-RWZ
vs.	)	
GLOBAL NAPS NEW HAMPSHIRE, INC.; GLOBAL NAPS NETWORKS, INC.; GLOBAL NAPS REALTY, INC.; CHESAPEAKE INVESTMENT SERVICES, INC.; 1120 HANCOCK STREET, INC.; FERROUS MINER HOLDINGS, LTD.; and FRANK GANGI, Counterclaim Defendants.	)	

BEFORE: THE HONORABLE RYA W. ZOBEL

EVIDENTIARY HEARING
DAY THREE - SECOND SESSION

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210
Wednesday, December 3, 2008
12:05 p.m.

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, MA 02210
(617)439-3214

APPEARANCES:

For the Plaintiff:

DREIER LLP
By: Eric C. Osterberg, Esq. and
Joseph M. Pastore, III, Esq.
Paul Dehmel, Esq.
One Landmark Square
20th Floor
Stamford, CT 06901

For the Defendant Verizon New England, Inc.:

VERIZON NEW ENGLAND, INC.
By: Richard P. Owens, Esq.
185 Franklin Street
Room 1301
Boston, MA 02110-1585

- and -

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
By: Scott H. Angstreich, Esq. and
Andrew M. Hetherington, Esq.
Andrew C. Shen, Esq.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

- and -

GIBSON, DUNN & CRUTCHER LLP
By: Robert L. Weigel, Esq. and
Jason W. Myatt, Esq.
200 Park Avenue
47th Floor
New York, NY 10166-0193

(See Day Three - Session One transcript for proceedings prior to recess)

(Recess taken)

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 12, Boston, Massachusetts, on Wednesday, December 3, 2008):

THE LAW CLERK: All rise.

THE COURT: Please be seated.

Let me start by thanking all of you for the most cooperative and professional way you did this hearing, and also for your helpful arguments.

Now, I think what was before me or, at least, as I have treated this hearing as being a hearing, really, on Count Three of the Counterclaim, which is that which calls for piercing of the corporate veils, and the issues, as we talked earlier, with respect to that part of the case are, one, did the defendants violate -- I mean defendants now as the defendants in the counterclaim -- did the defendants violate the discovery rules and Court Orders; and, two, if so, A, was Verizon prejudiced, and, B, what is the appropriate sanction, if it was.

With respect to the first question, whether defendants

violated the discovery rules, I find that they did. I am persuaded that Ms. Lima lied about what she prepared and what she destroyed. It is incredible that the bookkeeper of as complex a group of companies as this would destroy invoices and bank statements and then rely on the bank for any information that would have been on those statements. That, simply, makes no sense to me.

I do credit her testimony that what she did do she did on orders from Richard Gangi and, at times, Frank Gangi. I further find wholly incredible the story about the fall and breaking of the first computer. There is, furthermore, no evidence that the hard drive itself was broken and none as to the disposition of that broken computer. Indeed, the evidence permits the inference, which I draw, that it was withheld or even purposely destroyed at a later date, and the evidence that permits this inference is Mr. Taylor. How else would he be able to get easily the data for the 2006 tax returns other than from the allegedly totally broken computer?

I do credit, also, Ms. Lima's testimony that she ran Window Washer, although I do not believe the reason she gave. Given the use of the shredding software and the defragmenter later on, I am persuaded that the cleansing of the later computer was part of a concerted effort to destroy the information contained on that computer.

Lima's and Mr. Gangi's testimony about their practice

of routinely and regularly destroying financial data and relying on bank statements at the bank is, to me, both inherently incredible and contradicted by the evidence of Ms. Conway's activities. Now, she was not a witness at this hearing, but, certainly, there was a good deal of testimony about her activities from both Ms. Lima and Mr. Taylor.

So, it turns out that these companies did, after all, behave rationally and that they did have and produced for the outside accountant general ledgers or roll-ups on a monthly basis, which, certainly, should be available at this stage.

I also do not believe that the very large last production last Sunday was entirely the product of inadvertence. I do not, by this statement, mean to imply any wrongdoing by present or even past counsel.

With respect to the objections about which you, Mr. Osterberg, argued, the documents are clearly relevant, and the objections are now overruled. That is, the motion before me is not just for summary judgment but to compel production, and it seems to me that, since these documents have been shown to be highly relevant to the merits of the case, they are now ordered to be produced.

In sum, I find that the defendants violated the rules and the Court's earlier Orders.

Now, with respect to the second part of the inquiry, whether Verizon was prejudiced, not only was its trial

preparation on all counts compromised, but it had to attend to this additional litigation as a result of the fact that there was such withholding of information.

Now, as to the appropriate sanction, first, I think that the proof adduced in this hearing shows that there was misconduct by the Global companies and Mr. Gangi, whose testimony I also do not believe. I do not, however, believe there is sufficient evidence of wrongdoing by Chesapeake, 121, or whatever the number is, Hancock, CJ3, RJ Equity (sic) or Heath Street, the Heath Street Trust, to apply any sanctions against them.

With respect to Ferrous, I believe and so rule that it is collaterally estopped from contesting the rulings in the *Southern New England Telephone* case and, therefore, from contesting Count Three in this case and, therefore, will enter default judgment against it with respect to that.

The appropriate sanction as to the Global companies and Mr. Gangi, it seems to me, is that they shall not be able to contest Count Three, which, again, is, effectively, a default judgment on that count.

With one exception, the motion is denied as to the remaining defendants and the remaining counts, to the extent that they're in them. The exception is that the Count One defendants are precluded from relying on the late production -- on any of the documents contained in the late production at the

trial on the merits.

That is my ruling on Count Three and with respect to the matters that we heard the last two days.

Now, you had also asked for a pretrial conference, and I think that the trial on the merits, really, has three parts to it. One is, what are the number of minutes, what is the applicable rate, and, three, the question as to whether any charge can be assessed, that is, the intrastate-interstate issue.

Some of these, I believe, are really legal questions, and I think you should be entitled to argue them before I decide just how we proceed with them. So, I would suggest that we adjourn now until tomorrow morning and then proceed to argue these legal issues that are inherent in each of these three questions that I think drive the trial on the merits. If you think I'm wrong about that, of course, you're entitled to tell me that.

I am sorry that the out-of-state counsel would, thereby, be required to stay longer, for another day, but I have a full afternoon, including a criminal sentencing, so I can't really do it today, and, also, I think it's useful to digest the results of the current hearing and then address the remainder of the case in light of that, and I invite you to make whatever comments and suggestions of how we should proceed tomorrow morning.

Mr. Weigel, will that work for your team? Mr. Owens?

MR. WEIGEL: Yes.

MR. OWENS: Your Honor, that's fully acceptable to us, and our counsel are all prepared to be here for tomorrow morning.

THE COURT: How about you, Mr. Pastore?

MR. PASTORE: Yes, we can stay.

THE COURT: So, tomorrow morning I really would like to have a pretrial conference and invite you to, first of all, tell me that I misstate what the issues are, and, if so, or, if not, what the legal questions are that I need to decide before we go to hear the evidence. All right?

MR. WEIGEL: Thank you, your Honor.

MR. OSTERBERG: Thank you, your Honor.

THE COURT: Thank you all. We are in recess until 2:00.

THE LAW CLERK: All rise.

(Proceedings adjourned at 12:20 a.m.)

CERTIFICATE

I, Brenda K. Hancock, RMR, CRR and Official Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 8, constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Global NAPs v. Verizon, Civil Action No. 02-12489-RWZ.

/s/ Brenda K. Hancock

Brenda K. Hancock, RMR, CRR

Official Court Reporter