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February 4, 2010

Jay Agranoff, Esq.
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: In the Matter of Complaint of The Ohio Bell Telephone Company
("AT&T Ohio") v. Global NAPs Ohio, Inc.
PUCO Case No. 08-690-TP-CSS

Dear Examiner Agranoff:

I am writing in response to Mr. Davidow's letter of February 3, 2010, attaching as "supplemental authority" a Hearing Examiner's Proposed Decision ("Proposed Decision") in a proceeding before the Maryland Public Service Commission that does not involve the parties to this proceeding (nor any affiliate of AT&T Ohio). The Proposed Decision is not "supplemental authority" at all and should be disregarded, for several reasons.

First, as you know, under Ohio law, an Attorney Examiner's proposed decision has no legal authority or effect. The same is true under Maryland law for a proposed decision that has been appealed to the Maryland PSC, which is the case with the Proposed Decision.

Second, the Proposed Decision has nothing to do with AT&T Ohio's complaint in this matter, which asserts claims based on AT&T Ohio's Commission-approved interconnection agreement with Global NAPs Ohio. The Proposed Decision says nothing about either the law or facts applicable to those claims. With regard to applicable law, in the Maryland proceeding, the parties (Armstrong Telephone and Global NAPs Maryland) *had no* interconnection agreement. The Maryland Hearing Examiner did not and could not (and the Maryland PSC cannot and will not) undertake the task of interpreting and enforcing an existing, negotiated interconnection agreement, as the Commission must do in this proceeding. Rather,

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the legal issue that the Maryland Hearing Examiner addressed was whether, *in the absence of an interconnection agreement*, Armstrong Telephone could apply its state tariff to the traffic it terminated for Global NAPs Maryland. That legal issue does not exist in this proceeding.

Likewise, the Maryland Hearing Examiner's proposed factual findings are based on the evidentiary record developed in the Maryland proceeding regarding traffic delivered to Armstrong Telephone, not the evidentiary record developed in this proceeding. Of course, it is axiomatic that this Commission's findings must be based on the evidentiary record in *this* proceeding. Accordingly, the Proposed Decision provides no support for Global NAPs Ohio's assertion that the traffic it delivered to AT&T Ohio was purportedly "VoIP" traffic – even if that assertion were relevant to this proceeding, which it is not, for all the reasons AT&T Ohio previously has explained in its briefs.

Sincerely,

/s/Mary Ryan Fenlon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following, by electronic service and first class mail, postage prepaid, on February 4, 2010:

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/s/ Mary Ryan Fenlon

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Summary: Correspondence to examiner Agranoff electronically filed by Mrs. Verneda J. Engram on behalf of AT&T Ohio