

**FILE**

**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.,

Respondent,

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**GLOBAL NAPS OHIO, INC.'S MOTION TO COMPEL RESPONSES TO  
RESPONDENT GLOBAL NAPS' DATA REQUESTS TO COMPLAINANT AT&T OHIO  
AND MEMORANDUM IN SUPPORT**

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**I. GLOBAL NAPS OHIO'S MOTION TO COMPEL RESPONSES TO  
RESPONDENT GLOBAL NAPS' DATA REQUESTS TO COMPLAINANT  
AT&T OHIO**

Respondent Global NAPS Ohio, Inc., pursuant to section 4901-1-23 of the Ohio Administrative Code ("OAC"), moves this Court for an order to compel Complainant, AT&T Ohio, to respond to discovery pursuant to OAC 4901-1-19, OAC 4901-1-20, and 4901-1-22 and produce materials and data, as specified in Global NAPS First Set of Interrogatories, Request for Production of Documents and Request for Admissions ("Data Requests") served on Complainant's counsel via regular U.S. mail. Further, Respondent requests that this Court award his reasonable expenses, including attorney fees, incurred in obtaining this order. A memorandum in support of this motion is attached hereto.

**II. MEMORANDUM IN SUPPORT**

This matter is before the Commission on the Motion of Respondent Global NAPS Ohio, to compel the production of discovery. A copy of the Global NAPS Ohio's Data Requests was

mailed to Complainant's counsel, Hans Germann, on February 2, 2008. (See Respondent's Data Requests attached hereto as Exhibit "A").

The Attorney Examiner's Order in this case required AT&T Ohio's counsel to provide an appropriate response within five (5) days after service. Accordingly, Plaintiff's responses to the First Request for Production of Documents were due on or before February 7, 2009.

Pursuant to OAC 4901-1-23, Respondent's counsel has made a reasonable effort to resolve this matter. The Parties conversed by phone and tried to resolve their disagreements, but these efforts ultimately failed.

**A. Context:**

AT&T's Complaint alleges three substantive causes of action. Count I asserts that Global NAPs failed to pay Reciprocal Compensation for "the transport and termination of local traffic that Global Ohio hands off to AT&T. . ." Complaint, ¶30. Count II alleges that AT&T has improperly delivered "interexchange, interLATA traffic" over trunks reserved for local and intraLATA use. Complaint, ¶35. Count III alleges that Global has failed to pay for "transiting service," which AT&T asserts it has provided pursuant to Section 9.1 of the interconnection agreement between Global and AT&T ("ICA"), Reciprocal Compensation Appendix ("Appendix"). Complaint, ¶38. Section 9.1, in turn, specifies that "Transiting Service allows one Party to send Local, Optional, intraLATA Toll Traffic, and 800 intraLATA Toll Traffic to a third party network through the other Party's tandem." Counts I and III of AT&T's Complaint seek money damages.

On or about January 24, AT&T filed testimony that the Attorney Examiner has correctly described as AT&T's "case in chief." In that testimony, AT&T disclosed and addressed for the first time, the actual issues in this dispute: whether and to what extent the traffic that Global is sending to AT&T is Voice over Internet Protocol ("VoIP") traffic and, to the extent that it is VoIP, what are the

contractual consequences of that fact.

As AT&T has explained, it has two central claims. First, it asserts that at least some of the traffic that Global was sending to it was not "true" VoIP but was traditional telephony. Second, it asserts that even if some or all of the traffic is VoIP, the ICA between the Parties intends, or should be read to intend<sup>1</sup> that such traffic be treated in the same manner as traditional local and toll traffic. In support of its first proposition, AT&T submitted in its case in chief, testimony and data referred to as the "three minute reports" that, AT&T asserts, prove that some or all of the Global traffic is not, in fact, VoIP.

With the case clarified by AT&T's testimonial filings, Global sought the right to request discovery to test the basis of these assertions. That request was granted and, on February 2, Global served discovery requests on AT&T.

Global's discovery requests go to the core of AT&T's two principal contentions. With respect to AT&T's first contention, Global has asked questions and requested data that would allow Global to test the nature, methodology, accuracy and relevancy of AT&T's "three minute reports." Even prior to discovery, there were obvious anomalies to be probed. AT&T's principal damage claim asserts the right to collect reciprocal compensation for the transport and termination of "local" traffic. AT&T apparently asserts that the traffic that it has labeled – and billed as – "local" is traditional local traffic, not VoIP traffic. But AT&T's three minute reports appear to address only traffic that AT&T handed off to Interexchange Carriers ("IXCs"), which would not be local traffic. Why did it study and submit data for the wrong market; what relevance does AT&T assert these studies have for its local traffic claims and what data, if any, does AT&T have that would show the nature of the traffic in the local market that is, in fact, the focus of its complaint? Global does not

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<sup>1</sup> AT&T's position on this is far from clear.

know. Second, the three minute reports appeared to address traffic that originated on the AT&T PSTN. Global NAPs, however, is not an interexchange carrier, does not have Feature Group D trunking arrangements with AT&T (or anyone else) and only receives traffic from enhanced service providers. This raised obvious factual and legal questions regarding the parties that AT&T was routing the calls to, how and why those calls were then being forwarded to Global for termination, and what was being done to the calls in between.<sup>2</sup>

With respect to AT&T's second contention, Global sought information from AT&T regarding how it has interpreted the provisions of the ICA -- principally Section 19.6 of the Agreement -- that AT&T discounts or interprets against the text in the present proceeding-- in dealings with other carriers with which AT&T has had VoIP discussions or disputes. It is worth noting that AT&T does not assert that the ICA between the Parties actually states that VoIP traffic is to be treated in the same manner as traditional local and toll traffic. Indeed, the contrary is the case. Section 16.9 states that: "The Parties further agree that this Appendix shall not be construed against either Party as a "meeting of the minds" that VOIP or Internet Telephony traffic is or is not local traffic subject to reciprocal compensation." AT&T did not articulate a claim that this provision is not binding on the Parties or is not to be read as written until it filed its case in chief. Indeed, it was not until AT&T submitted its Brief in Opposition to Global's Request for Arbitration, that AT&T stated its apparent claim in this case. AT&T states therein: "Even if the parties did not agree into which "bucket" VoIP traffic might fall, that just means the Commission must now determine the appropriate treatment of the traffic."

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<sup>2</sup> Global knows, for example, that approximately one-third of all traffic that Global terminates comes from Transcom. A federal court has already determined that Transcom's network "provides its customers with enhanced capabilities" and "changes the content of every call that passes through it." Hence, the Court ruled that Transcom's system "fits squarely within the definitions of "enhanced service" and "information service," and "falls outside of the definition of telecommunications service." In Re. Transcom Enhanced Services, LLC., United States Bankruptcy Court, Northern District of Texas, Dallas Division, April 28, 2005, pp. 9-11.

The ICA says nothing of the kind, which means that, at best for AT&T, the parole evidence rule comes into play. The clause at issue, Section 19.6, was drafted by AT&T and presumably was used by it in other ICAs with other carriers. We also know that AT&T has negotiated different and more directly applicable agreements regarding VoIP when it intends to reach, rather than defer, agreement on this issue. Evidence regarding both classes of ICA may be probative of the intent of the Parties here. Global's questions attempted to explore this subject.

On February 9, AT&T submitted its Objections and Responses to Global's Requests. As is routine, the Reply was more Objections than Responses. As instructed by the Attorney Examiner, the Parties conferred briefly by phone. When they were unable to resolve all of the discovery disputes, the Examiner directed Global to file this Motion to Compel.

**B. Global's Requests:**

**Global NAPs Ohio Request 1-1**

Please produce all documentation, including memoranda, emails, spreadsheets and notes, referring or relating to the objectives, design, creation and results of the three minute reports, referred to in AT&T Ohio Ex. 2, p. 14 . (Henceforth, referred to as the Ohio three minute reports).

**Global's Objection to AT&T's Response.**

AT&T responded to Request 1-1 [and also to part of 1.2 that asked a similar question as to studies in other states] by producing three minute raw data reports. It did not, however, produce any memoranda, emails or notes. In discussions, AT&T counsel asserted that AT&T had conducted a search and had not uncovered any such documents. Global finds this inherently implausible for several reasons. First, the three minute reports are not a type of study that AT&T routinely conducts in the ordinary course of its business. These studies represent a unique and ad hoc effort by AT&T, prepared to address disputes or potential disputes with, apparently, a

variety of specific carriers. In addition to Global NAPs, AT&T admits to having used similar studies in disputes with UTEX and has "generated a limited number of 'three minute reports' for a limited number of other CLECs."

These ad hoc studies do not simply materialize out of the air. Rather, someone first had to propose them and, in the process of making the proposal, presumably state the purpose, objectives and perhaps suggests a methodology for the study. Another person typically would have responded by describing the kinds of data that were available, potential uses of the data and the deficiencies and limitations of available data. For example, in the present case someone decided to limit the studies to toll and not local traffic. Presumably this decision was discussed; it certainly did not happen randomly. Someone also proposed that the studies measure 3 minute calls and not 2 minute or 4 minute calls. This proposal was also presumably discussed, and a conscious decision rendered after some discussion. In response to Request 1-2, AT&T counsel asserted that certain 3 minute studies were conducted with respect to of CLECs, but were never used or even disclosed to those CLECs. Presumably, there was some conscious decision making process followed and documented in making these decisions to reveal and rely on some studies but conceal and not use others. It is difficult, if not impossible, to believe that these decisions were made at random and with no internal discussion or direction. It is certainly highly unlikely.

Under these circumstances, Global has insisted that, if AT&T truly intends to produce no written discovery in response to this data request, AT&T should produce a sworn attestation by a knowledgeable witness that he or she has supervised a diligent search and that this search uncovered no responsive documents.

## Global NAPs Ohio Request 1-2:

Please produce all documentation, including memoranda, emails, spreadsheets and notes, referring or relating to the objectives, design, creation and results of three minute reports, of the type referred to in AT&T Ohio Ex. 2, p. 14, in states other than Ohio or in Ohio but with respect to traffic of carriers other than Global NAPs Ohio. (Henceforth referred to as three minute reports.)

## Global's Objection to AT&T's Response.

AT&T's answer to Request 1-2 is similar to its answer to 1-1 in that it promises to produce written documentation relating to three minute reports in other states, but does not do so.

In addition, however, AT&T states:

AT&T has generated a limited number of "three minute reports" for a limited number of other CLECs."

Global finds this answer unsatisfactory because of its obvious vagueness. How many is a "limited number" for either reports or CLECs? Who are these CLECs?

In discussions over this issue, AT&T refused to provide greater specificity, but was also unable to articulate either a coherent or a factual basis for its refusal. AT&T's counsel speculated that the reports might be confidential to the CLECs. However, he also asserted that the reports might never even have been disclosed to the CLECs. He even suggested that the fact that the traffic had been studied had been concealed from these CLECs which, he suggested, might make the reports confidential to AT&T.

First, AT&T cannot refuse to answer a discovery request on the basis of counsel's guesses. Second, neither argument makes sense. If AT&T did these studies on its own behalf, and never disclosed even the fact of their existence to the CLEC, the *fact* that these studies were conducted and the identity of the CLEC investigated cannot be confidential to the CLEC. It is only the details of the study data that could conceivably be confidential to the CLEC, and these



can be redacted. That such studies were done, the names of the CLECs that AT&T elected to study, and any issues, problems or disputes that may have arisen in conjunction with the studies<sup>3</sup> is discoverable material. If AT&T wishes to argue that the studies are confidential to AT&T, then these studies are discoverable in this litigation under an appropriate protective order.

#### Global NAPs Ohio Request 1-7:

For each originating/terminating number pair in the JHW-2, 3, 4 and 5 attachments, please specify:

- A. Which of the calls are interstate calls;
- B. Which of the calls are intrastate, interLATA calls;
- C. Which of the calls are local calls.

#### Global's Objection to AT&T's Response.

AT&T responded that Global can determine for itself which calls are interstate, intrastate and local by looking at the originating and terminating numbers. Hence, AT&T refused to answer the question. This answer has several problems. First, Global is not just seeking to determine what the jurisdictional bases of these calls are, it is trying to determine what AT&T's study represents them to be; which may be the same thing or it may not. It is the accuracy of the study that Global is, in part, exploring.

Second, while Global can determine from the data AT&T has provided which calls were likely interstate, Global does not have the capability to determine which intrastate calls were jurisdictionally local and which were jurisdictionally intrastate toll. In contrast, AT&T obviously knows which NPA-NXX's are in the same AT&T local calling areas, and has computer programs to determine whether calls are local by looking at the originating and terminating numbers.. Indeed, AT&T has already done work on precisely these calls sufficient

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<sup>3</sup> Why, for example, were some studies disclosed and others were not?

to provide an adequate answer to this request as part of its bill preparation process. AT&T's witness, Mr. William Cole, has testified in this proceeding, that AT&T can and has determined which of Global's calls to AT&T are local or IntraLATA toll. He states:

AT&T Ohio takes the NPA-NXX of the originating number and matches it to internal tables to determine horizontal and vertical (V&H). AT&T Ohio will also take the terminating NPA-NXX of the call and do the same matching process. From the V&H determination process, AT&T Ohio will verify if the call is local or toll based on the call's geographic destination points. Cole Testimony at, p. 8

Third, Global's difficulty in trying to determine which calls fall into which categories is further complicated by the fact that, contrary to AT&T's representation in opposing this request, for nearly 1,500 of the calls in AT&T's study, there is no Carrier Identification ("CIC") code. Instead there is a zero in the CIC code column. This is a very large percentage of the total number of calls reported in AT&T's study; indeed, the largest single category. If these are toll calls, as AT&T represents, there should be a CIC code for each call. There isn't, and AT&T has not explained what this means. Perhaps it means that these are local calls, but AT&T hasn't said so either. In any event, Global cannot, as AT&T asserts, make an independent determination of the identify of the IXC (if it is an IXC) for these calls by looking at the LERG because AT&T did not provide CIC codes in the LERG. In short, Global is entitled to this information.

Global NAPs Ohio Request 1-9:

For each interstate originating/terminating number pair in the JHW-2, 3, 4 and 5 attachments, please identify the interexchange carrier ("IXC") to whom the call was directed by AT&T Ohio. If any calls were directed to something other than an IXC, please identify and explain.

Global's Objection to AT&T's Response.

AT&T responded to this Request that Global can "refer to the LERG (Local Exchange

Routing Guide) to determine the name of the IXC for each CIC on the report.”

AT&T's answer is unacceptable for the same reason as stated above. At Global's current count, 1,459 of its study calls have a CIC code of 0. The zero category is, in fact, the largest single category in the entire study. Obviously, Global cannot look to the LERG to determine who the carrier was that received these calls from AT&T local. Moreover, our Request also specified “If any calls were directed to something other than an IXC, please identify and explain.” If these zero CIC fields are not IXCs, then AT&T has failed to answer the question.

Global NAPs Ohio Requests 12 and 16

Global NAPs Ohio Request 1-12:

Please provide 3 minute raw data reports for each of the days identified in JWH-2, 3, 4 and 5 for all local calls on those days.

Global NAPs Ohio Request 1-16:

For each of the days identified in JWH 2,3,4 and 5, please identify all local calls billed by AT&T Ohio to Global NAPs. For each such call, provide from the records used to prepare AT&T Ohio's bills to Global NAPs, the date of connection, connection time, originating number, terminating number and originating carrier, if known.

Global's Objection to AT&T's Responses to Requests 12 and 16.

Obviously, one of the most important issues to be addressed in this proceeding is whether and to what extent calls with respect to which AT&T seeks reciprocal compensation were traditional local calls or VoIP calls. It is for this reason that it is striking that the three minute reports that AT&T has submitted in support of its claims are for toll calls, and, at least it is claimed, not for local calls.

It is unclear how AT&T proposes to use its study of toll traffic to prove its claims as to local traffic. Perhaps AT&T's position is that its studies are simply irrelevant to its reciprocal

compensation claims in Count I, but AT&T has not specifically said this. More likely, AT&T intends to argue that evidence from its toll study is probative of likely usage patterns in the local market.

Even cursory consideration will show that this assertion is unlikely to be true. Toll traffic is not like local traffic from either a network architecture or an economic perspective. It is possible for toll calls to originate with AT&T local service customers and to then be routed as 1+ traffic to a designated IXC. The IXC then has a decision to make; how to route the call. Some IXCs may choose to route their calls to enhanced service providers for commercial reasons that are as yet unknown. Those enhanced service providers might then route the calls to Global to terminate to AT&T customers in Ohio. This is at least plausible, if not necessary true.

However, as AT&T concedes, there is no comparably plausible explanation for routing a locally dialed call that originates on the public switched network and terminates, via Global, to an AT&T local end user also on the PSTN. Consider the obvious options. A call originated by an AT&T local PSTN customer will always be routed by the AT&T local switch to another AT&T local switch if it is to be terminated to an AT&T end user. It will never be routed to a third party, will never be converted into IP and will never be sent to Global to terminate to an AT&T end user. The same will invariably hold true for a call originated by a UNE-P or reseller carrier.. A call originated by a UNE-L customer will be carried over an interconnection arrangement that the carrier *must* have to do business, directly to AT&T.<sup>4</sup>

In Request 1-15 Global asked AT&T to identify "all known routing arrangements" by which a call could originate and terminate on the AT&T network and be routed to Global in

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<sup>4</sup> Global's Request 1-14 asked AT&T to identify all local calls that originated with a LEC subject to an interconnection agreement with AT&T. AT&T refused to answer that question as well.

between. AT&T came up with a single example:

“...if the customer dials 1010XXX to place a local call, AT&T would deliver the call to the carrier associated with the dial pattern and the call could be routed to Global NAPs Ohio before being delivered to AT&T Ohio for termination.”

We agree that this is the only technically possible way for a *local* call to do what AT&T is claiming happens here; originate on the PSTN, be sent directly or indirectly to Global and then be routed by Global back to AT&T local. However, since it is both economically irrational and wildly inconvenient for the calling party, it is unlikely to be of practical significance for this case. Indeed, it would be surprising to find a single case of this routing. AT&T has testified, by way of example, that in the toll market, AT&T knows of no case where such bizarre routing took place, stating “AT&T Ohio is not aware of any cases where the dialed number and the terminating number differ.” Response to Request 1-8.

There is, therefore, no known commercially relevant way for a local call to both originate and terminate on the public switched network and still pass through Global NAPs. What does make sense, however, is if the calls that AT&T has identified and billed as local did *not* originate on the public switched network because they originated from a VoIP provider. In such a case, the VoIP carrier cannot send its IP-originated call directly to AT&T because AT&T will not accept terminating calls in IP format. The VoIP carrier would have to send the call by some route to a carrier, such as Global NAPs, that has the ability to translate the call from IP to TDM format and has an interconnection arrangement with AT&T to hand off the call for completion.

This conclusion uses little more than rudimentary telecommunications knowledge. Proof to support these conclusions should be similarly simple, except for one substantial and unavoidable complication. All of the relevant information is in AT&T's hands and only in AT&T's hands, and AT&T is willfully refusing to disclose it in violation of the Commission's

rules. Accordingly, Global asked in Request 12 that AT&T do for the local market what it had done for the toll market; prepare sample 3 minute raw data reports for local traffic.

AT&T's response to this request was the cryptic statement that "AT&T does not have 3 minute raw reports for *all* local calls." The first necessary conclusion from this answer is that this is an admission that AT&T has such reports for *some* local calls, and AT&T should be required to produce them.

More broadly, if it made sense for AT&T to do studies at all to prove its claim that the traffic Global is sending it in Ohio is not VoIP traffic, then AT&T may reasonably be asked to replicate, at least in part, the study for the local market which is at the center of its own case. AT&T has, of course refused to comply with this request.

Global has offered AT&T an alternative that should be easier and perhaps be as effective. It is the testimony of AT&T witness, Mr. Cole, that AT&T prepared its bills to Global NAPs "using the same systems and operating procedures to bill carriers throughout the State of Ohio for many years." Cole, p. 10. Mr. Cole also testified that a critical part of that methodology was examining the originating and terminating phone numbers, which were then matched by AT&T's billing system to segregate out those calls that were local. This, Mr. Cole testified, was how "AT&T Ohio determine[d] if Global Ohio's Traffic is local or intraLATA toll." Cole, p. 8. In short, Mr. Cole has testified that AT&T has already determined the originating number of each call that Global delivered to AT&T for termination, and has already determined which originating numbers were originating local calls. Global simply wants the numbers that AT&T used to bill Global reciprocal compensation charges.

Accordingly, Global requested in Request 18 that, for each of the same sample of days AT&T used in its testimony, AT&T identify all local calls and, "from the records used to prepare

AT&T Ohio's bills to Global NAPs, the date of connection, connection time, originating number, terminating number and originating carrier if known."

While Global had asked questions 12 and 16 as separate requests, in discussions with AT&T counsel Global offered to treat an answer to this billing record inquiry as a satisfaction of both requests. AT&T flatly refused.

The relevancy of these requests to the present case is obvious. First, these inquiries seek to test the proposition that AT&T's toll studies are probative of what is going on in the local market. AT&T asserts that its toll studies show significant numbers of toll calls terminated by Global but originated by AT&T local PSTN customers. Is this true for the local market? Is it really the case that hundreds if not thousands of local calls are being made using 1010XXX dialing and, if so, why? If the calls don't originate from AT&T customers, who originates the calls and how and why are they reaching Global NAPs?

Our expectation is that if AT&T is compelled to answer this question, it will be possible to identify at least some of the local carriers who are initiating these calls by comparing the originating number with the LERG. It is also our expectation that these data will show that all, or virtually all calls that AT&T has labeled local and billed at reciprocal compensation rates are VoIP originated calls. This is the only commercially plausible explanation for any such calls ever reaching Global NAPs.

AT&T has refused to produce three minute report data on local calls in its possession. It has refused to perform new studies for local calls, and it has refused to produce the billing record data that its own witness relied upon to justify AT&T's bills that are at the center of the present dispute. The only explanation that AT&T has offered for refusing to provide any of this information is that Global should have the ability to identify the originating number from its own

records. This is untrue. First, Global NAPs does not know the originating number of calls sent to it because, as AT&T itself correctly asserts in its complaint, Global has no end user customers. Global is an intermediate carrier. Second, Global's business model does not require it to capture or keep records of the originating numbers of calls sent to it, because it does not bill its customers on a per call basis. While Global NAPs has in other states done specialty studies, its business in Ohio is too small ever to have warranted such a study. Hence, Global has no records of any kind that would show the originating numbers of calls that it received and terminated to AT&T in Ohio.

The importance of this issue is obvious; it is central to AT&T's principal claim as explained in its case in chief. And, of course, it was only after it filed its case in chief that Global learned that AT&T intended to rely on a study of toll traffic usage patterns to prove local traffic usage patterns. If AT&T produces the originating phone numbers of a reasonable and random sample of the calls for which it billed Global reciprocal compensation charges, it should be possible for both sides to determine conclusively what kinds of traffic are being routed, by whom, to whom and why. An examination of these data is the only way the case will proceed on the basis of facts, not baseless rhetoric.

Global NAPs Ohio Requests 1-17 through 1-19:

As explained above, AT&T's secondary claim is that, even if the traffic that Global sends to it to terminate is VoIP traffic, the contract as AT&T interprets it allows AT&T to treat VoIP traffic as either traditional local traffic or traditional toll traffic. Nothing in the ICA says this. Hence, the resolution of this claim will turn on whether there is a way, notwithstanding the absence of direct support for its position, that AT&T can piece together several sections of the ICA to support its interpretation.



One potentially fruitful source of information regarding any such theory AT&T may propose is, did AT&T pursue this same interpretation with other carriers with identical language in their ICAs? Global NAPs, like most CLECs, signed an ICA based upon the AT&T template. Hence, for any particular provision that AT&T might use as a basis for its claims, it is highly likely that there are other carriers whose ICA includes identical language. This is particularly true with respect to Section 16.9 of the Appendix, a central provision in this case. This is AT&T-crafted language and, presumably, can be found in other ICAs. Did AT&T argue there, as it is apparently prepared to argue here, that the intent of the parties was to agree to the clear and express terms of section 16.9 but still treat VoIP traffic as local traffic subject to reciprocal compensation requirements? How did the other carrier respond? Was the matter litigated or settled?

The other type of contract that would be relevant here would be contracts that actually settle VoIP issues with substantive terms. These contracts set rates for VoIP; they may specify routing arrangements or traffic measurement systems. Disclosure of such contract provisions may well inform the Parties and the Commission of the reasonableness or unreasonableness of AT&T's claims that it is entitled to treat VoIP traffic like traditional traffic despite the fact that it is not like traditional traffic, despite the fact that the Parties never reached agreement on how to handle VoIP and despite the fact that the ICA specifies that the Parties didn't reach agreement.

Procedural issues may also have been directly addressed in other contracts. AT&T appears to contend that, even though the Parties' ICA specifies that they did not reach agreement on the proper treatment of VoIP traffic, they did agree that, at any time in the future, either Party could petition the Commission to impose a rule for the treatment of VoIP *and* to have that rule apply retroactively years into the past. Other AT&T ICAs may have considered the issue of

retroactive application of a rule on VoIP. If so, what did they say and how did they say it?

AT&T has refused to respond to any of these three questions.

#### Global NAPs Ohio Requests 1-17

Please identify each competitive local exchange carrier or other type of carrier (in which case, specify the type) with whom AT&T Ohio has entered into a contract that references by name, Voice over Internet Protocol, VoIP or IP-to-PSTN traffic.

#### Global NAPs Ohio Request 1-18:

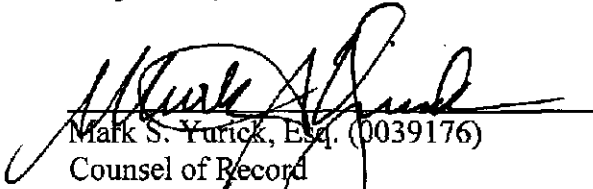
Please identify each incumbent local exchange carrier or other type of carrier (in which case, specify the type) with whom any AT&T entity that is terminating VoIP traffic has entered into a contract that references by name Voice over Internet Protocol, VoIP or IP-to-PSTN traffic.

#### Global NAPs Ohio Request 1-19:

For each carrier identified in Requests 18 or 19 as a carrier with whom an AT&T entity has entered into a contract, please provide a copy of the cover page of the contract and all sections of the contract that references Voice over Internet Protocol, VoIP or IP-to-PSTN traffic.

For the foregoing reasons, Respondent respectfully requests that the Attorney Examiner issue an Order compelling Complainant to fully and completely respond to Respondent's Data Requests *instanter* and provide copies of all documents in the care, custody and control of the Complainant. Respondent further requests that Complainant be ordered to pay his reasonable expenses, including court costs and attorney fees incurred in obtaining this order.

Respectfully Submitted,



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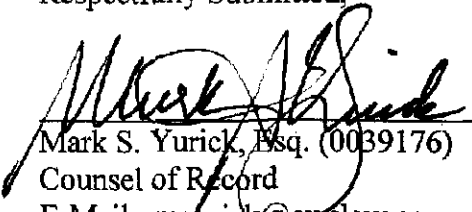
**Attorney for Global NAPS Ohio, Inc.**

**AFFIDAVIT OF COUNSEL PURSUANT TO OAC 4901-1-23**

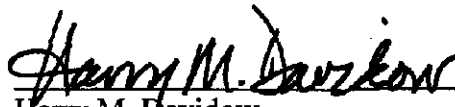
This statement of Counsel is to certify the efforts to resolve the Complainant's non-response to Respondent's Data Requests.

1. Respondent's data requests were served February 2, 2009 via e-mail (see Exhibit "A").
2. On February 9, 2009 Respondent's counsel corresponded via e-mail to counsel for Complainant regarding the status of discovery. Documents that were responsive were not thereafter provided by Complainant's counsel.
3. Counsel for Respondent has not received an adequate response to the Data Requests.
4. Counsel for Complainant indicated by telephone that he did not intend to produce materials responsive to Respondent's Data Requests. Due to failure Complainant's Counsel's refusal to produce the outstanding discovery requested, Respondent filed his Motion to Compel Discovery

Respectfully Submitted,

  
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**NOTICE OF HEARING**

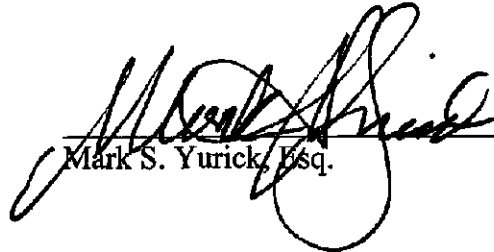
The foregoing Motion will come on for hearing before Attorney Examiner, Hon. Jay S. Agranoff, at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215, Hearing Room\_\_\_\_, on the\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_  
\_.M.

\_\_\_\_\_  
Attorney at Law

ND: 4850-9835-2899, v. 6

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on February 20, 2009.



Mark S. Yurick, Esq.

### **SERVICE LIST**

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