

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Global NAPs)	
Ohio for Arbitration Pursuant to Sections)	
251 and 252 of the Telecommunications Act)	
of 1996 to Establish an Interconnection)	Case No. 09-195-TP-ARB
Agreement with the Ohio Bell Telephone)	
Company d/b/a AT&T Ohio.)	
)	

AT&T Ohio's Reply

The Ohio Bell Telephone Company d/b/a AT&T Ohio ("AT&T Ohio") hereby submits its reply to Global NAPs Ohio, Inc.'s ("GNAPs") memorandum contra AT&T Ohio's motion to dismiss the petition for arbitration. As explained previously, the parties' current interconnection agreement ("ICA") does not provide a basis to grant GNAPs' petition for arbitration. Even if it did, the issues sought by GNAPs can more appropriately be resolved in Case No. 08-690-TP-CSS.

GNAPs has no legal right to obtain new terms regarding the exchange of Voice over Internet Protocol ("VoIP") traffic to its current ICA, which already provides for interconnection for the termination of VoIP traffic. The existing ICA between AT&T Ohio and GNAPs, previously approved by the Commission, clearly anticipates compensation for GNAPs' VoIP traffic. That compensation is already at issue in, and should be addressed in, the complaint case. GNAPs is trying to hide behind the ICA so that it does not have to deal with the compensation issue in the open complaint case. If, as GNAPs suggests, the ICA clearly permits GNAPs to arbitrate new terms and conditions, why did GNAPs wait *years* until AT&T Ohio's complaint case was well underway to first make such an argument?

GNAPs cannot hide behind its hollow arguments that there was a reservation of rights for the purpose of later amending the ICA to incorporate entirely new rates, terms and conditions to govern VoIP traffic. This attempt at delaying the adjudication of the complaint case must stop.

GNAPs erroneously relies on Section 16.9 of the Reciprocal Compensation Appendix to the ICA to support its argument. GNAPs contends that it has a contractual right under this section to address a single, previously-deferred set of issues. That section does not entitle GNAPs to “arbitrate” new issues as the only method of “advocating” its respective positions before the state commission. GNAPs clearly has had and will continue to have the ability to “advocate” its position in the already pending complaint case. It has already had many months to do so. Initiating an arbitration for this limited issue is a waste of resources, not only for the two companies, but for the Commission as well. The Commission can fairly resolve the compensation issue in a fair and concise manner in the complaint case. The Commission has established carrier-to-carrier rules for the purpose of handling issues like those before it in the complaint case. GNAPs will not be short-changed in the complaint process. It will, however, be required to move forward and begin to advocate its position on the compensation issue so the Commission can get the matter resolved.

It is curious as to why GNAPs just now moves forward to exercise its “reserved” right to have the Commission arbitrate terms for VoIP traffic. GNAPs previously refused to pay a single penny to AT&T Ohio – even into an escrow account – but GNAPs now concedes that “some” amount was owed to AT&T Ohio for terminating the traffic GNAPs now claims is VoIP. GNAPs claims that the parties have not entered into a Section 251 arrangement. As explained previously, GNAPs is wrong. There is an existing ICA between the parties, which was entered into pursuant to Section 251 and was approved by the Commission pursuant to Section 252. It is

under this current ICA that AT&T Ohio is entitled to be paid. Negotiating a new agreement is not an appropriate or efficient way to resolve the compensation issue. Even if the ICA is amended or renegotiated, any new provisions would only apply to traffic on a prospective basis and would not be applicable to traffic covered by the existing ICA.

GNAPs' suggestion that AT&T Ohio is somehow "striv[ing] so diligently to avoid being paid" is ludicrous. Nowhere in any document has AT&T Ohio relinquished its right to be paid appropriately for traffic delivered to it by GNAPs and transported and/or terminated by AT&T Ohio. Perhaps more importantly, AT&T Ohio plainly has been striving to be paid – it has filed two lawsuits against GNAPs to recover the charges it is owed, and it is *GNAPs* that has repeatedly and consistently delayed those proceedings, doing everything possible to avoid a decision on the merits. While GNAPs asserts that "[t]here is, by now, a well-established body of law and practice establishing commercially reasonable rates, terms, and conditions for the exchange of VoIP traffic," GNAPs fails to explain why it cannot raise that body of law and practice in the pending complaint case. And contrary to GNAPs' claim that "AT&T fears" being "compelled to face the Commission's involvement and oversight," AT&T Ohio has, in fact, raised the issue before the Commission in its complaint case.

GNAPs claims its right to arbitration is based on "a contractual right to address a single, previously-deferred set of issues because, in Section 16.9 of the Reciprocal Compensation Appendix, the parties signed a clause on mutual consent, agreeing to 'reserve the right...to advocate their respective positions' before state commissions in 'arbitrations under Sec.252 of the Act.'" In quoting selective language from Section 16.9 and in defining the word "reserve" ad nauseum, GNAPs attempts to divert the Commission from the underlying intent of Section 16.9. As AT&T Ohio stated in its Motion, "Section 16.9 provides, in full:

The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol (VOIP) or other Internet Telephony traffic under the Dispute Resolution provisions of this Interconnection Agreement. 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. By entering into this Appendix, both Parties reserve the right to advocate their respective positions *before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec.252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.*" (emphasis added)

The intent of this Section is not to establish a method for GNAPs to once again delay legal payment to AT&T Ohio. The language simply states that each party has a right to argue its position in any of the listed proceedings. It does not bestow the right to seek arbitration on an issue already addressed in the Agreement, which has already been signed by both parties and approved by the Commission. Moreover, forcing GNAPs to "advocate [its] respective position" in the pending complaint case is entirely consistent with Section 16.9.

In its Memorandum Contra, Global agrees that AT&T Ohio has the right to bring a complaint against Global for failure to pay termination charges. However, asking the Commission to address the same issue in two different dockets involving the same parties is a waste of time and resources for not only the parties but also the Commission and its staff. Unresolved issues pertaining to this Interconnection Agreement were addressed in Case No. 01-3096-TP-ARB. Global has had ample opportunity to negotiate or arbitrate a successor agreement, including VoIP transport and termination provisions, pursuant to Section 5.6 of the Interconnection Agreement. That Section states:

If either Party serves notice of expiration pursuant to Section 5.2 or Section 5.4, CLEC shall have ten (10) calendar days to provide SCC-13STATE written confirmation if CLEC wishes to pursue a successor agreement with SBC-13STATE or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with SBC-13STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover.

Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.

But GNAPs has never invoked this Section to negotiate and arbitrate a successor agreement.

Because GNAPs has not taken this action, it must abide by the terms and conditions of the ICA that is currently in effect. If GNAPs wishes to negotiate or arbitrate a new agreement, it must comply with the provisions to which it has agreed. Therefore, in addition to AT&T Ohio's position that the request for mediation is procedurally improper, GNAPs' Petition for Arbitration is procedurally improper because GNAPs has failed to terminate the current Agreement. AT&T Ohio has asked the Commission to determine that GNAPs is obligated to pay reciprocal compensation for transport and termination and transiting charges for the transport and delivery of GNAPs' traffic in Case No 08-690-TP-CSS. Determination of the proper treatment of this traffic under the agreement should appropriately be made in the pending complaint case, and the Petition for Arbitration should be dismissed.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing has been served by U. S. Mail, first class postage prepaid, and by e-mail, as noted below, this 27th day of April, 2009 on:

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Summary: Reply to GNAPs' Memorandum Contra AT&T Ohio's Motion to Dismiss GNAPs' Petition for Arbitration electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio