

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Global NAP's Petition for Declaratory Ruling)	WC Docket No. 10-60
and for Preemption of the Pennsylvania, New)	
Hampshire and Maryland State Commissions)	
)	

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. (NECA),
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION (NTCA),
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE (ITTA),
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES (OPASTCO), EASTERN RURAL TELECOM
ASSOCIATION (ERTA), WESTERN TELECOMMUNICATIONS ALLIANCE (WTA),
TELECOMMUNICATIONS ASSOCIATION OF THE SOUTHEAST
And the
ARIZONA LOCAL EXCHANGE CARRIER ASSOCIATION
RURAL ARKANSAS TELEPHONE SYSTEMS
COLORADO TELECOMMUNICATIONS ASSOCIATION
GEORGIA TELEPHONE ASSOCIATION
INDIANA EXCHANGE CARRIER ASSOCIATION
MINNESOTA INDEPENDENT COALITION
MINNESOTA TELECOM ALLIANCE
MONTANA TELECOMMUNICATIONS ASSOCIATION
NORTH CAROLINA TELECOMMUNICATIONS INDUSTRY ASSOCIATION
OKLAHOMA TELEPHONE ASSOCIATION
OREGON TELECOMMUNICATIONS ASSOCIATION
TENNESSEE TELECOMMUNICATIONS ASSOCIATION
WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION
WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION**

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The Federal Communications Commission (“FCC or Commission”) has requested comment on Global NAP’s petition for declaratory ruling and in the alternative a preemption of

the Pennsylvania, New Hampshire and Maryland State Commissions.¹ The above-named associations, representing rural incumbent local exchange carriers (ILECs) throughout the United States (collectively, the Associations)² urge the Commission to deny Global NAPs' ("GNAPs") petition and instead confirm, among other things, that access charges apply to Interconnected Voice over Internet Protocol "VoIP" traffic.

¹ *Comment Sought on Global NAP's Petition for Declaratory Ruling and for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions*, Public Notice, WC Docket No. 10-60, DA 10-461 (Mar. 18, 2010) (*Public Notice*).

² NECA's primary responsibilities involve preparation of interstate access tariffs and administration of related revenue pools. NECA is also responsible for collecting certain high-cost loop data from its member ILECs, and has served as administrator of the interstate Telecommunications Relay Services (TRS) fund since that fund's inception in 1993. NECA also conducts extensive training for its member companies and other industry participants, publishes reports and studies relating to its member companies' technical service capabilities and cost characteristics, and files at the Commission's request quarterly reports of interstate access usage levels. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. ITTA is an alliance of mid-sized local exchange carriers that collectively provide service to 24 million access lines in 44 states, offering subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services in mostly rural and suburban areas. OPASTCO is a national trade association representing over 520 small ILECs serving rural areas of the United States. ERTA is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. WTA is a trade association that represents over 250 rural telecommunications companies operating in the 24 states west of the Mississippi River. Most members serve fewer than 3000 access lines overall and fewer than 500 access lines per exchange. The Telecommunications Association of the Southeast is an association representing rural ILECs from Florida, Mississippi and Alabama. The Arizona, Rural Arkansas, Colorado, Georgia, Indiana, Minnesota, Montana, North Carolina (These Comments are supported by the following member companies of the NC Telecommunications Industry Association: ATMC, CenturyLink, Comporium, Ellerbe, North State, Randolph, SkyLine, Star, Surry, TDS, Tri-County, Wilkes, Windstream and Yadkin Valley Telephone. Verizon and AT&T are filing their own separate comments.), Oklahoma, Oregon, Tennessee, Washington and Wisconsin (Verizon, a WSTA member, does not join in these comments and is filing separate comments in this proceeding.) associations similarly represent ILECs in their respective states.

I. SUMMARY

Global NAPs has requested the Commission declare that: “(1) federal law prohibits state commissions from subjecting VoIP traffic to intrastate tariffs; (2) once a carrier's traffic has been determined to be primarily nomadic VoIP, the remainder of its traffic must be treated as interstate absent clear proof of purely instate calls; (3) Local Exchange Routing Guides (LERGs) are not a reliable proxy for determining the true geographic point of origination of a call, and thus cannot be utilized to prove the applicability of intrastate tariffs to VoIP calls; and (4) connecting carriers forwarding VoIP traffic are not subject to interstate switched access charges, and are also immune from intrastate access charges.”³

GNAP's petition must be denied on the basis of fact and law. As the Commission has recently made clear in a similar dispute involving the Texas Public Utilities Commission (“TPUC”), state Commissions are expected to adjudicate the issues raised in GNAP's petition based on existing law.⁴ GNAPs' petition is simply an attempt to stage an end-run around state decisions it does not like.⁵ As such it should be denied promptly.

The Associations recognize that the issue of whether access charges apply to interconnected VoIP traffic is the subject of much contention and ongoing litigation at both the

³ *Public Notice* at 1. See also Global NAPs Petition for Declaratory Ruling and Alternative Petition for Preemption of the Pennsylvania, New Hampshire and Maryland State Commissions, WC Docket No. 10-60, at 1 (filed Mar. 5, 2010) (*GNAPs Petition*).

⁴ See *Petition of UTEX Communications Corporation, Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas*, WC Docket No. 09-134, Memorandum Opinion and Order, 24 FCC Rcd 12573 (2009) (*UTEX Order*).

⁵ E.g., *Palmerton Telephone Company v. Global NAPs*, Docket C-2009-2093336, Opinion and Order (PA PUC, Mar. 16, 2010); *Cox California Telecom v. Global NAPS California*, Case No. 06-04-026, Order Granting Complainant's Motion for Summary Judgment (CA PUC, Apr. 28, 2006); *Pacific Bell Telephone Company, d/b/a/ AT&T California v. Global NAPS California, Inc.*, Case No. 07-11-018, Modified Presiding Officer's Decision Finding Global NAPS California in Breach of Interconnection Agreement (CA PUC, Nov. 19, 2007).

federal and state level.⁶ And, as the National Broadband Plan (“NBP”) makes clear, the Commission does need to resolve these issues.⁷ However, contrary to GNAPs’ claims, the traffic GNAPs and similarly-situated “least cost routers” terminate on the Associations members’ networks is the functional equivalent of traditional voice telephone services, imposes the same costs on the network as those services, and is therefore subject to access charges. Continued failure to confirm this obvious result will continue to cause chaos and confusion throughout the industry, and impede the development and deployment of broadband networks throughout rural America.⁸

GNAPs’ remaining requests are likewise meritless. As shown herein, the Commission’s *Vonage Order* preempting state regulation of “nomadic” VoIP providers⁹ in no way forbids assessment of intrastate access charges on intrastate interexchange traffic, regardless of the technology used to originate the calls. Further, the Commission has made clear that the proper jurisdiction of calls may be determined based on an analysis of calling and called telephone numbers¹⁰ in conjunction with the Local Exchange Routing Guide (“LERG”).

Accordingly, the Associations urge the Commission to reject GNAPs’ petition and instead promptly confirm under current law access charges apply to all interexchange calls delivered by GNAPs and similarly-situated interconnecting carriers, regardless of the technology

⁶ *E.g.*, NECA Comments, GN Docket Nos. 09-47, 09-51, 09-137 (Dec. 7, 2009), at 28.

⁷ Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010), Chapter 8, Recommendations, at 153 (*National Broadband Plan*).

⁸ *See, e.g.*, Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption, WC Docket No. 08-152 (July 17, 2008), at 20-23

⁹ *Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (*Vonage Order*).

¹⁰ *See Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (*Prepaid Calling Card Order*).

used to originate or carry such calls. Further, the Commission should affirm such calls may be jurisdictionalized in accordance with standard industry billing practices, and that GNAPs and similarly-situated interconnecting carriers are responsible for payment pursuant to Association member's interstate and intrastate access tariffs.

II. The Commission Should Deny GNAPs' Petition and Instead Confirm Access Charges Apply to Interconnected VoIP Traffic.

a. Access Charges Apply to Interconnected VoIP Traffic

In the Internet Protocol ("IP")-Enabled Services NPRM, the Commission made clear that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the 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."¹¹

GNAPs and similarly-situated interconnecting carriers frequently claim some or all of the traffic they terminated on behalf of interconnected VoIP providers is "enhanced" and therefore exempt from access charges. While the Associations recognize that at some point, IP-enabled enhancements may serve to transform the fundamental nature of interconnected VoIP service offerings, the Commission has made plain this is not the case with respect to services that "look and feel" like plain old telephone service and are marketed to the public in direct competition with services provided by traditional common carriers.¹² Furthermore, these voice calls arrive

¹¹ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004), at ¶ 61 (*IP NPRM*).

¹² *See, e.g., Universal Service Contribution Methodology*, WC Docket Nos. 04-36, 06-122, Report and Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006), at ¶48; *Communications Assistance for Law Enforcement Act and Broadband Access Services*, ET

on the PSTN in the same manner, use the same facilities, and, where recorded, create the same call detail records as traditional voice calls. Quite simply, there is no legal basis for distinguishing such VoIP traffic from traditional voice traffic on the PSTN for purposes of assessing access charges. The fact these services use IP during some portions of a call simply makes no difference from the end user's perspective, makes no difference from the terminating carrier's perspective, and should not make any difference from a regulatory perspective. There is nothing special about Internet Protocol, compared to other protocols, when it is being used to provide basic telephone service over the PSTN.

Providers such as GNAPs, who seek exemption from intercarrier compensation obligations also routinely fail to account for the fact that the services they provide depend on the existence of a reliable, ubiquitous PSTN and the viable carriers that operate it. Moreover, the broadband telephone market itself depends on the availability of reliable high-speed connections to the Internet. Some networks are more expensive than others to maintain, particularly those deployed by rural ILECs serving high-cost areas. These companies depend on three principal revenue streams: end user rates and charges, intercarrier compensation, and high-cost universal service fund ("USF") support.¹³ Take away or restrict one of these sources and many

Docket No. 04-296, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005), at ¶42; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, IP-Enabled Services, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007), at ¶56; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability*, CC Docket No. 95-116, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), at ¶18.

Association members will be unable to continue investing in their networks to extend the availability and improve the quality of their broadband services, consistent with the goals of the National Broadband Plan.¹⁴

A basic precept of the interconnected PSTN is that network operators receive fair compensation from those who make use of their networks.¹⁵ Since 1984, interexchange carriers (“IXCs”) have paid access charges to local exchange carriers (“LECs”) for the exchange access services provided by the LECs. To a LEC terminating a toll call, how the call is originated is immaterial. The ILEC still must terminate the call. While current intercarrier compensation regimes are currently under review,¹⁶ the Commission’s *current* rules require that ILECs allocate network costs to access elements and that ILECs recover these costs via tariffed access charges.¹⁷ To the extent IP-enabled service providers generate interexchange traffic for termination on the PSTN, they are subject to access charges to the same extent as any other provider offering interexchange services.¹⁸

¹³ NECA Comments, GN Docket No. 09-51 (June 8, 2009), at 17; NECA Comments, WC Docket No. 05-337 (May 8, 2009), at 9; NECA Comments, CC Docket No. 01-92 (May 23, 2005), at 4.

¹⁴ *National Broadband Plan*, Chapter 8, (8.3), at 158.

¹⁵ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001), at ¶¶ 19-21 (*Intercarrier Compensation NPRM*).

¹⁶ *Id.* See also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342 (2009); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

¹⁷ See generally Part 69 of the Commission’s Rules, 47 C.F.R §69.1 *et seq.*

¹⁸ *Supra* n. 11

b. Connecting Carriers, such as GNAPs, are Responsible for Paying Access Charges for Traffic transferred to the PSTN for Termination

GNAPs' has requested that the Commission declare that "connecting carriers forwarding VoIP traffic are not subject to interstate switched access charges, and are also immune from intrastate access charges."¹⁹

GNAPs' claim it is exempt from access charges as an "intermediate carrier" rather than an "IXC" is wrong. The Commission made clear in its March 2007 Time Warner Order that the classification of the service provided to the ultimate end-user has no bearing on a wholesale provider's regulatory status, nor its *obligation* to pay for the termination services it receives via interconnection with the PSTN.²⁰ As an interconnecting carrier terminating interexchange traffic to the PSTN, GNAPs and other similarly-situated carriers/providers are responsible for paying access charges for their traffic.

Additionally, it must be pointed out that carriers similarly-situated to GNAPs like to play both sides of the fence when it comes to what traffic is subject to access charges. As AT&T and others have pointed out to the Commission, providers who routinely claim the traffic they deliver to the PSTN is exempt from access charges have no hesitation in assessing access charges on traffic terminating on their own networks.²¹ GNAPs and other least-cost routers cannot have it both ways.

¹⁹ *GNAPs Petition* at 10.

²⁰ *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*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007), at ¶ 15.

²¹ Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Mar. 15, 2010) (*AT&T Ex Parte Letter*) "Carriers that provide wholesale interconnection services to VoIP routinely assess jurisdictionalized switched access charges on PSTN-VoIP calls, even while they assert the right to terminate VoIP-PSTN calls as 'local'." See also, "MagicJack, Attacks", Connected Planet Online, Sarah Reedy (May 2, 2008), "As a VoIP company, we don't

Accordingly the Commission should deny GNAPs' claim it, and similarly-situated interconnecting carriers, are exempt from access charges for interexchange traffic they deliver to the PSTN.

c. State Commissions are not Prohibited from Subjecting Interconnected VoIP Traffic to Intrastate Tariffs

The Commission has also requested comment on GNAPs' request that "federal law prohibits state commissions from subjecting VoIP traffic to intrastate tariffs."²² GNAPs relies heavily on the Commission's determination in the *Vonage Order* that the "impossibility doctrine" requires federal preemption of state regulation over "nomadic" VoIP traffic.²³

The impossibility doctrine as applied in *Vonage* is based on the premise that there was no feasible method of separating traffic originated by users of Vonage's nomadic DigitalVoice product into interstate and intrastate components.²⁴ That concern does not apply to other types of traffic, including non-nomadic traffic originated by fixed IP-based services such as digital voice cable providers.²⁵

GNAPs misrepresents the nature of its traffic by asserting it is substantially similar to the

have to pay for access charges," he said. "Telephone companies do have to pay access charges to terminate calls to our customers. That took us three and a half years to build. The network is very important, and it makes everything work for us."

<http://connectedplanetonline.com/voip/news/magicjack-attacks-0502/>

²² *Public Notice*, at 1.

²³ *See Vonage Order* at ¶¶ 23-23.

²⁴ *Id.* at n. 64, citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986) (finding a basis for Commission preemption where compliance with both federal and state law is in effect physically impossible).

²⁵ As the Commission's counsel explained to the Court in the appeal of the *Vonage Order*, the order only applied to those services "having basic characteristics similar to Digital Voice, and does not specifically address fixed VoIP service providers." *Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570, 582.

traffic addressed in the *Vonage Order*. In the Associations' members' experience, the vast majority of traffic delivered by GNAPs and similarly-situated carriers actually consists of either ordinary PSTN-PSTN traffic, "IP-in-the-middle" traffic (for which access charges clearly apply)²⁶ or "fixed" VoIP traffic.²⁷ Calls utilizing these technologies can easily be jurisdictionalized using standard industry practices. Accordingly, the application of intrastate tariffs on the traffic submitted for termination by companies like GNAPs does not frustrate any federal purpose and does not warrant preemption based on the Commission's impossibility doctrine.

It is also important to note that state utility commissions have the authority to rule on issues associated with intrastate traffic and the application of intrastate tariffs.²⁸ In fact, the Commission recently declined to grant a preemption request filed by the UTEX Communications

²⁶ See *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Memorandum Opinion & Order, 19 FCC Rcd 7457 (2004) (*IP in-the-Middle Order*).

²⁷ For example, in support of ongoing litigation in the United States District Court in Montana, *3 Rivers Telephone Cooperative. et al. v. CommPartners, LLC*, Docket No. 08-68, over the refusal of an interconnected carrier to pay access charges for interexchange traffic terminated on ILEC networks, an analysis of the carrier's traffic showed approximately 70 percent of the calls were from sources not likely to be VoIP originated. *Id.*, Plaintiffs' and Intervenor's Joint Response to CommPartners, LLC's Motion to Dismiss Without Prejudice, (filed on Feb. 23, 2010). In a similar dispute with GNAPs in Pennsylvania, *Palmerton Telephone Company v. Global NAPs*, Docket C-2009-2093336, Opinion and Order (PA PUC, Mar. 16, 2010), at 44. Further, in one of the many state disputes involving GNAPs, the Georgia Public Service Commission determined ILECs had submitted persuasive evidence that traffic sent from GNAPs was traditional voice traffic and not from enhanced service providers ("ESPs"). See also, *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.*, Docket No. 21905-U, Initial Decision (GA PUC, Apr. 8, 2008); Order Adopting in Part and Modifying in Part the Hearing Officer's Initial Decision (July 31, 2009).

²⁸ 47 U.S.C. § 251.

Corporation.²⁹ The underlying issue of whether the TPUC had the ability to address the “regulatory treatment of VoIP traffic” in the absence of an FCC ruling on such treatment is similar to the instant matter. In that decision the Commission ruled that there were “no legal obstacles” to the PUC’s resolution of the proceeding before it and that it should rely on existing law to do so.³⁰

d. The Local Exchange Routing Guide Provides a Reasonable Method for Determining Geographic End Points of Interexchange Calls

The Commission also seeks comment on whether the Local Exchange Routing Guide (“LERG”) is a “reliable proxy for determining the true geographic point of originations of a call” and if it can be utilized to prove the applicability of intrastate tariffs to VoIP calls.³¹ The answer is clearly yes. For the vast majority of PSTN terminated calls, the best proxy for determining the end points, and thus proper billing jurisdiction, are the originating and terminating calling party number (“CPN”). The CPN can be analyzed using the LERG, which is a publicly available database that stores technical information on all telecommunications service providers in the United States. The various data sets contained in the LERG can be used to: identify telephone numbers assigned to each carrier by the North American Numbering Plan (“NANP”) Administrator; determine which carrier “owns” specific blocks of telephone numbers based on the area code, prefix and number block combinations (the ten digit phone number); and, determine the type of carrier that owns the number, e.g. ILEC, wireless, Regional Bell Operating Company (“RBOC”), CLEC, etc. The use of the CPN in conjunction with the LERG to

²⁹ See *UTEX Order*.

³⁰ *Id.* at ¶ 9.

³¹ *Public Notice* at 1.

determine jurisdictions is the industry standard and is consistent with the Commission's long standing "entry-exit surrogate" method for determining proper call jurisdiction.³² Since, as noted above, the vast majority of traffic delivered by similarly-situated carriers such as GNAPs or Commpartners is "TDM", "IP in the Middle" or "fixed VoIP", there is no basis for determining industry-standard methods cannot be applied to such traffic for billing purposes.³³

Further the Associations note, pursuant to Commission rules, all carriers are required to provide the CPN as part of the SS7 signaling message for any traffic they may pass along.³⁴ The Commission's 2006 Calling Card Order recognized this point and stated that "the carriers involved in the call should be able to determine jurisdiction based on the comparison of the calling and called party telephone numbers."³⁵ While the same order also discussed the potential effects of the "emergence of wireless and IP-based calling options" on this method, the Commission recognized that "for now carriers continue to rely on telephone numbers as a proxy for geographic locations."³⁶

In addition, IP-based networks are clearly capable of transmitting accurate CPN data with calls originated by customers with assigned NANP numbers.³⁷ Accordingly, there are no

³² Under the EES method of jurisdictional separation, calls that enter an IXC network in the same state as that in which the called party is located are deemed to be intrastate, and calls that terminate in a different state than their IXC point of entry are considered interstate. *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, CC Docket No. 85-124, Memorandum Opinion and Order, 4 FCC Rcd 8448, 8450, n.5 (1989).

³³ *Supra* n. 27.

³⁴ 47 C.F.R. § 64.1601.

³⁵ *Prepaid Calling Card Order at ¶ 32. See also Starpower Communications v. Verizon South*, File No. EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625 (2002).

³⁶ *Id.*, n. 89.

³⁷ Industry standard "RFC 3398" spells out how to map the CPN of a VoIP call (SIP Request-URI) into the ISUP SS7 signal on the PSTN. A SIP-ISUP Gateway can use this standard to

technological barriers for using CPN in conjunction with the LERG to determine proper jurisdiction for billing purposes, regardless of the technology used to originate calls or the regulatory classification of the provider.³⁸

III. The Commission Must Act Promptly to Confirm Access Charges Apply to Interconnected VoIP Traffic

The Associations recognize the issues raised in GNAPs' petition have become the subject of much litigation and/or administrative proceedings.³⁹ Carriers in over 13 states have been attempting to obtain payment for termination services they provide to GNAPs alone.⁴⁰ Other similarly-situated

forward the CPN onto the PSTN. Also, industry standard T1.678, to which J-STD-025-B refers, supports law enforcement access to call-identifying information on voice over packet services provided over wireline using two call set-up protocols: SIP and H.323- based VoIP services. See <http://www.ietf.org/rfc/rfc3398.txt>.

³⁸ It is also important to note that when applying E911 requirements to interconnected VoIP providers, the Commission acknowledged that VoIP services connected to the PSTN function like "regular telephone" service. *IP-Enabled Services*, WC Docket No. 04-36, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005), at ¶23; see also 47 C.F.R. § 9.5(e). Accordingly, the Commission required interconnected VoIP providers to transmit all 911 calls with a calling party number (CPN) and the caller's "Registered Location." *Id.* at ¶ 37.

³⁹ See *GNAPs Petition* at 3-5. See also, *AT&T Ex Parte Letter*, stating that the "failure of previous Commissions to provide guidance with respect to the appropriate intercarrier compensation for traffic between the PSTN and VoIP endpoints, had resulted in substantial litigation, irrational asymmetries and chaos."

⁴⁰ See *supra* n. 5. In addition to GNAPs general refusal to pay ILECs for access tariffs, receipt of payment has only proven to be more difficult because of GNAPs' corporate structure. The Seventh Circuit found that Global NAPs, Illinois "is a shell. For aught that appears, the only reason for its [Global NAPs, Illinois] existence is that Ferrous Miner [Global NAPs parent] does not want to pay for the communications services that it bought from the plaintiff in the name of the shell." *Illinois Bell Telephone v. Global NAPS Illinois*, 551 F.3d 587, 597 (7th Cir. 2008). See also, *Ohio Bell Telephone v. Global NAPS Ohio*, Case No. C2-06-CV-549, Opinion and Order, at 16 (S.D. Ohio, Mar. 15, 2010) "AT&T Ohio ... has successfully determined that Global Ohio was indeed merely a façade for Ferrous."; *MyBell, Inc., Application for a certificate of local authority to operate as a facilities based carrier of telecommunications services in Chicago in the State of Illinois*, 07-0063, Request for Reconsideration of Ruling on Petition for Leave to Intervene and Motion to reopen record to Hear Additional Evidence, at 5

carriers, such as Commpartners, Choice One and One Communications, who provide termination services for VoIP providers, also claim they are entitled to a “free ride” based on claims their traffic is “IP-originated” and therefore exempt from access charges.

NECA recently provided evidence to the Commission as to the effects regulatory uncertainty in this area is having on rural telephone companies in California and New England.⁴¹ NECA tariff participants are experiencing rapid growth in the numbers of access minutes sent by interconnected VoIP providers and other carriers who refuse to pay the tariffed charges based on claims that the “FCC hasn’t decided whether access charges apply.”⁴² Many ILECs have reported to NECA that the volume of traffic under dispute has increased dramatically over the last few years, often equaling between 10 percent and 20 percent of switched access revenue.⁴³

To meet the needs of rural customers and comply with Commission service requirements, the Associations’ member companies must continue to build networks capable of supporting next-generation broadband services. Yet, as described above, rural ILECs are increasingly being required to transport and deliver traffic for retail service providers who generate significant revenue from their services, who place significant importance on optimum delivery of content via high capacity broadband networks, and yet bear none of the responsibility for the costs imposed on the local networks. Prompt resolution of this issue by the Commission is necessary as continued “free” use of rural networks by

(Ill. Com. Comm., Mar. 7, 2007). Illinois Bell Telephone Company (“AT&T Illinois”) argued that the “GNAPs organization has been purposefully structured so as to intentionally deprive certificated entities like Global NAPs of Illinois, Inc. of sufficient financial resources to provide service on a legitimate basis and to provide a source of financial recourse for creditors.”

⁴¹ See Letter from Joe Douglas, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (May 15, 2009) (*NECA May 2009 Ex Parte Letter*); Letter from Colin Sandy, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (July 9, 2009) (*NECA July 2009 Ex Parte Letter*).

⁴² *NECA May 2009 Ex Parte Letter*, attachment, at 7.

⁴³ See generally, *NECA’s May 2009 and July 2009 Ex Parte Letters*.

such providers can only result in abuse of network capacities, service degradations and increased pressure on access tariffs and high-cost funding mechanisms.

IV. Failure to Confirm Access Charges Apply to Interconnected VoIP Traffic Will Undermine the Commission's National Broadband Plan

The Commission's National Broadband Plan ("NBP") recognizes the importance of clarifying the regulatory uncertainty surrounding the applicability of access charges to interconnected VoIP traffic.⁴⁴ Further, the NBP addressed the importance of access revenues to allow carriers to upgrade their networks in compliance with the goals of the NBP. Specifically, the Commission stated:

The continued decline in revenues and free cash flows at unpredictable levels could hamper carriers' ability to implement network upgrade investments or other capital improvements. Any consideration of how government should provide supplemental funding to companies to close the broadband availability gap should recognize that ICC revenue is an important part of the picture for some providers.⁴⁵

Additionally, given the NBP's goal to rely on private sector investment for the deployment of broadband, the Commission must also recognize the effect that regulatory uncertainty is having on rural ILECs' ability to borrow funds for the build out of their networks.⁴⁶ In fact, CoBank recently noted it has had to reduce rural ILECs' access to capital by

⁴⁴ *National Broadband Plan*, Chapter 8, Recommendation 8.7, at 166. While the NBP calls for the eventual transition away from the access charge regime, such transition will take years. In the interim, the Commission must address the regulatory uncertainty surrounding VoIP in order to reduce arbitrage.

⁴⁵ *Id.* at 160 (Chapter 8).

⁴⁶ *Id.* at 161.

30-40 percent due to the uncertainty over current cost recovery mechanisms and that they will be forced to further reduce lending if the uncertainty continues for much longer.⁴⁷

The absence of financial stability provided by stable high-cost funding, intercarrier compensation revenues and access to capital to fund network deployment will continue to have a serious negative effect on rural customers throughout the country. The Associations urge the Commission to end its silence on this regulatory issue. Contrary to the intentions of the Commission and the NBP, such a breakdown in the rule of law and widely-held business expectations can only have a negative effect on rural investment in broadband and advanced services.

V. Conclusion

GNAPs' petition must be denied. Contrary to claims, interconnected VoIP traffic is subject to access charges under existing law regardless of the technology used to originate the traffic, and intermediate carriers/wholesale providers/"least cost routers" such as GNAPs are responsible for payment of such charges for traffic they deliver to the PSTN for termination. While the Commission may have preempted state regulation over "nomadic" VoIP traffic, the majority of traffic sent to the PSTN by GNAPs and similarly-situated carriers is simply ordinary PSTN-to-PSTN traffic, "IP-in-the-middle" traffic or from fixed VoIP service providers. Such traffic is not subject to preemption under the "Impossibility Doctrine" and can therefore be jurisdictionalized and billed under interstate and intrastate tariffs, using standard industry practices and procedures including the LERG. Accordingly, the Associations urge the

⁴⁷ CoBank Comments, GN Docket No. 09-47 (Jan. 8, 2010), at 5.

Commission to deny each of GNAPs requests and to confirm instead that interconnected interexchange VoIP traffic is subject to access charges as discussed herein.

April 2, 2010

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 2nd day of April, 2010 by electronic filing and e-mail to the persons listed below.

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