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October 16, 2000

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Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

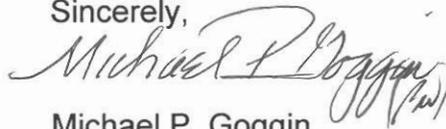
**Re: Docket No. 991220-TP (Global NAPS Arbitration)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Global NAPs, Inc.'s Motion for Reconsideration and/or Clarification, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Michael P. Goggin

cc: All Parties of Record  
Nancy B. White  
Marshall M. Criser III  
R. Douglas Lackey

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**CERTIFICATE OF SERVICE  
Docket No. 991220-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 16<sup>th</sup> day of October, 2000 to the following:

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Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: ) Docket No. 991220-TP  
)  
Petition by Global NAPs, Inc. for )  
Arbitration of Interconnection Rates, )  
Terms and Conditions and Related )  
Relief of Proposed Agreement with )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ ) Filed: October 16, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
RESPONSE TO GLOBAL NAPs, INC.'S MOTION FOR  
RECONSIDERATION AND/OR CLARIFICATION**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to Global NAPs, Inc.'s ("GNAPs") Motion for Reconsideration and/or Clarification (the "Motion"). In its Motion, GNAPs requests that the Commission reconsider its Order No. PSC-00-1680-FOF-TP (the "Order") in this matter with respect to two issues: the rate of reciprocal compensation for internet bound traffic, and the manner in which the parties shall interconnect their networks. GNAPs does not claim that the Commission overlooked or failed to consider any point of law or fact in its Order. Rather, GNAPs has belatedly decided to ask the Commission to decide two issues GNAPs neglected to raise during negotiations or in its Petition. Accordingly, the Motion should be denied.

On August 26, 1999, Global NAPs, Inc. filed a request for arbitration under the Telecommunications Act of 1996 seeking to resolve certain unresolved issues between Global NAPs and BellSouth that arose in their negotiations toward a new interconnection agreement.<sup>1</sup> In its Petition, GNAPs raised only two

<sup>1</sup> On March 20, 2000, the Commission decided that the parties' prior agreement had expired on July 1, 1999, thus disposing of the first issue raised by Global NAPs' petition.

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issues—namely, whether reciprocal compensation should be imposed in connection with the handling of internet bound traffic, and whether the 1997 DeltaCom agreement it had adopted had expired in July of 1999, or should be deemed to continue in effect for two years from the date it had been adopted. Petition at ¶¶ 13-24. In response, BellSouth stated that the adopted agreement had expired, attached the standard agreement that had formed the basis of the parties' negotiations, and identified a number of issues known to be in dispute. BellSouth Telecommunications, Inc.'s Response to Global NAPs South, Inc.'s Petition for Arbitration (Filed Sept. 20, 1999). In its response, BellSouth requested that the Commission rule that the adoption agreement had expired, and approve the standard agreement it had proposed. *Id.* at ¶ 34. On March 20, 2000, the Commission determined that the adoption agreement had expired on July 1, 1999. Order No. PSC-00-0568-FOF-TP. On September 19, 2000, the Commission issued its final order on the issues identified by the parties in this matter. Order No. PSC-00-1680-FOF-TP (the "Order").

A motion for reconsideration must identify a point of fact or law that was overlooked, or that the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962). In its Motion, GNAPs does not mention this standard, nor does it suggest that its Motion meets this standard. For this reason alone, its Motion should be denied.

In its Motion, GNAPs takes issue with the Commission's decision to require the parties to charge and pay reciprocal compensation rates for internet

bound traffic that differ from those that apply to local traffic. Motion at 1-3.

GNAPs does not argue that the Commission overlooked or failed to consider any point of law or fact in reaching its decision on this issue. Indeed, it notes that the Commission's determination is based on record evidence. Motion at 1-2.

Instead, GNAPs, for the first time, proposes a specific two-part rate scheme that would apply both to local traffic and to internet bound traffic. *Id.* at 1-3. GNAPs does not suggest that the Commission overlooked or failed to consider any point of fact or law in failing to adopt this proposal, nor could it have done so. GNAPs is not asking the Commission to reconsider its decision in order to *conform* it to the record. GNAPs is asking the Commission to begin to consider a new proposal made *outside* the record.

GNAPs states in its Motion that it suggested a two part rate structure in its testimony, but GNAPs admittedly provided no evidence to support such a proposal. Accordingly, the Commission found specifically that the record was "insufficient to develop a two-part rate." Order at 23. The ostensible reason for GNAPs' failure to submit evidence, it contends, is that "it did not understand that the Commission was interested in making an adjustment to the per-minute rate to reflect variability in call length." Motion at 2. GNAPs now attempts to belatedly remedy its failure to provide evidence by improperly doing so in an attachment to its Motion.

Still, GNAPs' stops short of acknowledging that it is now attempting to improperly supplement the record and, instead, bases its request on an assertion that evidence from the record purportedly could be employed to support the new

rate proposal it wishes to make. However, the fact remains that the rate proposal GNAPs now wishes to make was never made during the arbitration. The fact that GNAPs apparently overlooked or failed to consider whether rates other than those which it *did* propose might be supported by the evidence does not constitute grounds for reconsideration. Indeed, if the Commission were ever to grant GNAPs wish under the guise of reconsideration, such an action would effectively deprive BellSouth of due process. Because GNAPs never proposed such rates, BellSouth did not have an opportunity to cross examine GNAPs witnesses or present any evidence of its own with respect to this new proposal. Accordingly, GNAPs suggestion that the Commission adopt rates that were never proposed during the proceedings should be denied.

The second issue raised by GNAPs in its Motion is also new. GNAPs purportedly takes issue with the Commission's ruling on Issue 13, which concerned the appropriate language relating to local traffic exchange. During the proceedings, GNAPs limited its objections on this issue to BellSouth's proposed definition of local traffic, and the Commission's Order was similarly limited. Order at 26-27. Global NAPs apparently does not disagree with the Commission's decision on this issue, but instead suggests that the Commission should have decided an issue that Global NAPs did not raise during the proceedings—the manner in which the carriers' networks are to be physically interconnected. Motion at 3-4.

BellSouth proposed its standard agreement to GNAPs more than a year ago. GNAPs never took issue with the interconnection provisions BellSouth

proposed during the negotiations that preceded this matter or during the arbitration. Now, after a final Order has been issued, GNAPs offers pages of argument as to why it should not be required to abide by these provisions and suggests for the first time that the Commission take up the issue. The Commission should not permit GNAPs to raise this issue now, simply due to GNAPs apparent failure to read the language before now.

GNAPs suggests that the Commission “clarify” its order to say that BellSouth should be obligated to act in accordance with the “parties’ existing agreement” -- the 1997 DeltaCom agreement that GNAPs adopted in early 1999—as it relates to interconnection. Motion at 4. GNAPs apparently has overlooked or failed to consider the fact that the Commission already has held that that agreement expired on July 1, 1999. These parties do not have an “existing agreement.” The purpose of this proceeding was to decide specific terms upon which the parties were unable to agree during negotiations for a *new* agreement to *replace* that expired agreement. If GNAPs did not agree with the interconnection language BellSouth proposed during the parties’ negotiations, it should have told BellSouth as much at that time. At the very least, it could have asked the Commission to review the issue when it filed for arbitration. It should not be permitted to raise the issue for the first time now, after the final Order has been issued.<sup>2</sup>

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<sup>2</sup> GNAPs incorrectly suggests that the language in BellSouth’s standard agreement regarding interconnection would invite violations of the Telecommunications Act. Motion at 5-8. The very same language, however, is included in many agreements that the Commission already has approved. Moreover, if in the future GNAPs were able to show that BellSouth violated its interconnection obligations under the Telecommunications Act (based on facts rather than the conjecture that fills GNAPs’ Motion), the Commission could certainly provide an adequate remedy.

Again, nowhere does GNAPs suggest that the Commission, in deciding Issue 13, overlooked or failed to consider any point of law or fact. Accordingly, GNAPs' Motion does not meet the standard for reconsideration with respect to this issue. Nor does GNAPs cite any authority for its suggestion that the Commission should "clarify" its order by deciding a new issue after the final Order has been decided.

For the reasons stated above, BellSouth respectfully requests that the Motion be denied.

Respectfully submitted this 16th day of October, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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