

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of: )  
 )  
 GLOBAL NAPS SOUTH, INC. )  
 Complaint and Request for Emergency )  
 Declaratory Statement Regarding )  
 BellSouth Telecommunications, Inc.'s )  
 Proposed Denial of Service )

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Docket No. \_\_\_\_\_  
 Date Filed: November 2, 2002

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**GLOBAL NAPS SOUTH, INC.'S COMPLAINT AND REQUEST  
 FOR EMERGENCY DECLARATORY STATEMENT REGARDING  
 BELLSOUTH TELECOMMUNICATIONS, INC.'S  
PROPOSED DENIAL OF SERVICE**

Global NAPs South, Inc. ("Global NAPs"), pursuant to Chapter 364, Florida Statutes, and Section 120.565, Florida Statutes, and Rules 28-105, Florida Administrative Code (F.A.C.) and 25-22.036, F.A.C., files this action before the Florida Public Service Commission, seeking an emergency Declaratory Statement and lodging a Complaint against BellSouth Telecommunications, Inc. ("BellSouth") regarding its Proposed Denial of Service to Global NAPs. In support of this action, Global NAPs states the following:

Background and Statement of Global NAPs' Interest in this Matter

1. Global NAPs is a certificated carrier in the State of Florida. Global NAPs provides facilities-based competitive telephone services in Florida through its switch located in Miami, Florida.

2. Global NAPS and BellSouth have entered into an Interconnection Agreement that provides for the exchange of traffic and compensation rates and conditions under which compensation is due with respect to the exchange of traffic. This Interconnection Agreement was approved by this Commission on September 7, 2001. Docket No. 991220-TP, Order No.

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PSC-01-1806-FOF-TP (Sept. 7, 2001). Accordingly, this Commission has jurisdiction to resolve disputes, including the instant dispute, arising under this Interconnection Agreement.<sup>1</sup>

3. Currently all or virtually all of the traffic that Global NAPs exchanges with BellSouth under its Interconnection Agreement is Internet traffic, *i.e.*, Internet service provider-bound “information access services”.<sup>2</sup>

4. Regulation of intercarrier compensation related to carriage of information access services is within the sole and exclusive jurisdiction of the Federal Communications Commission (“FCC”).<sup>3</sup>

5. Traffic originates from BellSouth’s customers to Internet service providers who are Global NAPs’ customers.

6. The carriage of BellSouth’s traffic (and those independent carriers who rely on BellSouth for carriage of transit traffic) relies on transport being provided by BellSouth from its customers up to the point of interconnection (“POI”) with Global NAPs.

7. Global NAPs assumes financial and physical responsibility for traffic at the point of interconnection where the companies exchange their respective customers’ traffic.

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<sup>1</sup> The Interconnection Agreement, General Terms and Conditions, Part A, section 12, expressly states in pertinent part: “the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission for a resolution of this dispute.”

<sup>2</sup> “Information access” was meant to include all access traffic routed by a LEC “to or from” providers of information services, of which ISPs are a subset. *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001)(“*ISP Remand Order*”) at ¶ 44.

<sup>3</sup> *Id.*

8. BellSouth has made repeated demands for payment of trunking/transport facilities. Global NAPs has disputed payment of such amounts<sup>4</sup> pursuant to the processes agreed to by the parties in the Interconnection Agreement.

9. On or about October 31, 2002, BellSouth notified Janet Lema, of Global NAPs' Accounts Receivable group, that BellSouth demanded payment for such trunking/transport, or services to Global NAPs would be "shut-down". A telefax containing this notification subsequently was forwarded to Robert Fox and/or Jeffrey Noack of Global NAPs.

10. Contrary to the terms of the Interconnection Agreement, BellSouth has not sought redress of its grievances through the Commission or through other legal action(s) in other forums, but instead proposes simply to deny Global NAPs service -- which is in clear contravention of the terms of the Interconnection Agreement. The Interconnection Agreement prescribes processes for resolving disputes, and those processes do not include allowing one party to simply "shut down" the other party's service.

11. Service denial would irreparably damage Global NAPs' customer relations, and, even more importantly, would deny BellSouth's customers (as well as the customers who rely on BellSouth facilities to provide transit services) access to the Internet.

12. To prevent the wrongful denial of services and prevent customer service outages, Global NAPs files this Complaint and Request for an emergency Declaratory Statement, and seeks an order from the Commission preventing BellSouth from unilaterally and unreasonably acting to "shut down" Global NAPs' service.

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<sup>4</sup> Global NAPs has complied with the process prescribed in Section 3 of the General Terms and Conditions, Part A, Interconnection Agreement, concerning billing disputes. The amount BellSouth asserts it is entitled to is currently \$184,969.28; Global NAPs is seeking charges of \$569,212.90. Thus, the net difference due to Global NAPs is \$384,243.62. BellSouth should not be permitted to threaten to "shut down" Global NAPs when BellSouth owes Global NAPs money.

### Factual and Legal Issues

13. At issue in this matter is whether BellSouth may deny service to its customers, to independent carriers who rely on its services, and to Global NAPs' customers, as a result of a billing dispute regarding trunking and transport facilities which provide ISP-bound information access services traffic. Global NAPs contends that BellSouth may not do so under the terms of the Interconnection Agreement.

14. BellSouth asserts that under the Interconnection Agreement provisions, Global NAPs is responsible for payment of trunking/transport facilities. However, as noted above, intercarrier compensation is governed solely and exclusively by operation of federal law. To the extent that there is a conflict between federal law and contract provisions, federal law is controlling. As such, the intercarrier compensation regime contemplated in the *ISP Remand Order* provides for a balanced and complete recovery between carriers. The *ISP Remand Order* significantly limits the amount(s) due to Global NAPs when terminating ISP-bound traffic, but also provides that there be no origination charges on the traffic carried by BellSouth.<sup>5</sup> As such, federal law precludes additional charges, such as those sought by BellSouth for

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<sup>5</sup> C.F.R. §§ 51.703(a)(2) and 51.703(b) preclude the imposition of additional charges for transport on the ILEC's side of the POI.

trunking/transport.<sup>6</sup> Indeed, intercarrier compensation for ISP-bound traffic is not an appropriate subject for an interconnection agreement because it is interstate in nature.<sup>7</sup>

15. Alternatively, even if such traffic were an appropriate subject for an interconnection agreement, BellSouth has failed to provide adequate notice required by operation of the parties' Interconnection Agreement. Instead of abiding by the Notice provisions of the Interconnection Agreement, BellSouth provided notice to two individuals who were not authorized to receive such notice. To the extent that the Interconnection Agreement of the parties is relevant, which Global NAPs asserts it is not, this failure must be, at a minimum, rectified prior to BellSouth taking further action. Upon receipt of such notice, Global NAPs' representatives notified Global NAPs' counsel. It was only at this point that the parties held a conference call to discuss BellSouth's proposed denial of service and Global NAPs' assertion that such unilateral action would lead to customer outages as well as violate federal law.

16. On a conference call between the parties' counsel, Global NAPs asserted that: (1) charges for trunking/transport violated federal law; (2) unilateral action by BellSouth to terminate services was a denial of due process as contemplated by the Notice provisions and implied good faith negotiations of contract provisions between the parties; and, (3) a denial of

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<sup>6</sup> Federal law also states that Bellsouth bears full financial responsibility for delivering Global-bound traffic from Bellsouth's own customers to the single point of interconnection. See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610, ¶¶ 70, 72 (Apr. 27, 2001) ("Intercarrier Compensation NPRM"); see also *In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237, ¶¶ 233-235 (Jan. 22, 2001) ("Oklahoma/Kansas 271 Order").

<sup>7</sup> *ISP Remand Order* at ¶ 82; see also *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint, Case No. 01-2811-TP-ARB, In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms and conditions and Related Arrangements with Ameritech Ohio, Case No. 01-3096-TP-ARB*, [Consolidated] Arbitration Award (May 9, 2002) at 8 fn. 7: In 01-724, the Commission determined that the FCC's ISP Remand Order governs calls to ISPs. In Georgia, the 11<sup>th</sup> Circuit determined that the Georgia Public Service Commission could not interpret the interconnection agreement provisions.

service would create chaos not only among Global NAPs' customers, but also would deny independent customers and even BellSouth's own customers competitive access to the Internet.

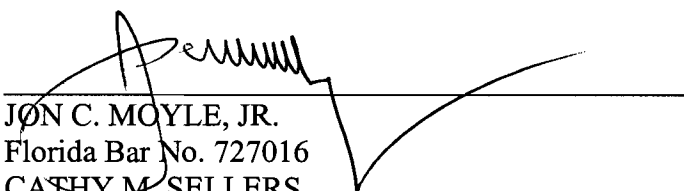
RELIEF REQUESTED

Global NAPs requests the following relief from the Commission:

17. Issuance of a Declaratory Statement, declaring that its rules and related state law are not controlling, but that federal law is controlling for purposes of determining appropriate intercarrier compensation related to "information access" traffic.

18. Alternatively, enter an Order based on the parties' Interconnection Agreement providing that unless and until such time as BellSouth has complied with (a) the required notice and other relevant provisions of the contract to resolve disputes and (b) sought legal redress of its grievance in an appropriate tribunal of original jurisdiction, trunking/transport facilities currently in-place and as required to provide continued service shall be provided for the carriage of information access traffic to/from BellSouth (and other carriers that rely on BellSouth for transit services) to Global NAPs without interruption.

Respectfully submitted,



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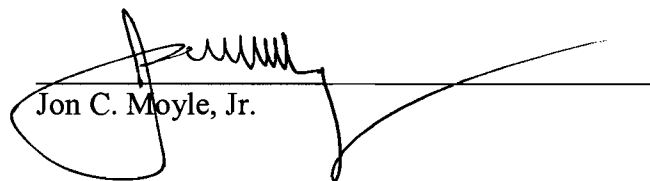
Attorneys for Global NAPs South, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Global Naps South Inc.'s Request for Emergency Declaratory Statement From BellSouth's Proposed Denial of Service has been served via U.S. Mail this 7<sup>th</sup> day of November, 2002, to the following:

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