

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on March 19, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-C-0059 - Complaint of TVC Albany, Inc. d/b/a Tech Valley
Communications Against Global NAPs, Inc. for
Failure to Pay Intrastate Access Charges.

ORDER DIRECTING NEGOTIATION

(Issued and Effective March 20, 2008)

BY THE COMMISSION:

INTRODUCTION

On January 12, 2007, TVC Albany, Inc. d/b/a Tech Valley Communications (TVC) filed a complaint against Global NAPs, Inc. (GNAPs) demanding that GNAPs pay intrastate access charges for termination of toll calls that GNAPs transports for its customers for termination on the TVC facilities-based network.¹ TVC requests that the Commission order GNAPs and any of its affiliates operating in New York to pay all allegedly past due² and future intrastate access charges, with interest, to TVC for termination of these toll calls. If GNAPs fails to pay

¹ TVC claims that toll traffic from GNAPs is delivered to a Verizon New York Inc. (Verizon) tandem and routed by Verizon to the TVC network.

² TVC claims \$41,070.78 is due for bills issued from December 15, 2003 through December 15, 2006.

intrastate access charges owed, TVC requests that the Commission (1) authorize it to block GNAPs' service and (2) revoke GNAPs' Certificate of Public Convenience and Necessity (CPCN).³

In its response and replies, GNAPs claims that it is not required to pay intrastate access charges to TVC because the calls it routes to TVC's customers are nomadic Voice over Internet Protocol (VoIP) calls. GNAPs asserts these calls are subject to exclusive federal jurisdiction, exempt from state regulation,⁴ and under existing Federal Communication Commission (FCC) rules, not subject to imposition of intrastate access charges.

In this Order, we decline to require GNAPs to pay access charges to TVC for termination of calls routed through the TVC network. We conclude that instead, TVC and GNAPs should negotiate a compensation agreement governing the joint rates, terms and conditions for services over their networks. If negotiation fails, then TVC may request that it be relieved of any obligation to complete calls routed to its network from GNAPs' customers.

PETITION

TVC states that, while there are no direct interconnections between GNAPs and TVC, Verizon routes GNAPs traffic to TVC. This arrangement, according to TVC, entitles Verizon and TVC to assess intrastate access charges for the portions of service provided by the two carriers. TVC asserts that its tariff authorizes intrastate access charges for terminating GNAPs' traffic through an intermediate carrier and that any telecommunications company providing service under a

³ GNAPs is an affiliate of GNAPs Networks, a national carrier operating a national fiber optic backbone network.

⁴ Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, 19 F.C.C. 22404 (2004) (Minnesota/Vonage Order).

CPCN is required to comply with the terms of that tariff. TVC further argues that its termination of toll calls provides a direct economic benefit to GNAPs by making collection of toll revenues from GNAPs' customers possible. TVC therefore asserts that GNAPs failure to pay for services unjustly enriches GNAPs at TVC's expense. TVC maintains that GNAPs' failure to pay intrastate access charges constitutes an unjust and unreasonable practice and a willful violation of Public Service Law (PSL) §91 and §201 of the Act (although it offers no specific rationale under §201). TVC argues that the Commission has jurisdiction to order payment of intrastate access charges in this case, because TVC's intrastate tariff controls.

ANSWER AND REPLIES

On February 8, 2007, GNAPs filed an Answer to TVC's Complaint. On March 1, 2007, TVC filed a Reply to GNAP's Answer; and, on March 7, 2007, GNAPs filed a Reply to TVC's Reply. On April 6, 2007, TVC submitted a letter to the Secretary to the Commission presenting further arguments; and, GNAPs, on April 10, 2007, submitted a letter to the Secretary to the Commission, replying to some of the points raised in the TVC letter.

FCC Jurisdiction and Preemption of State Regulation

GNAPs argues that VoIP services are interstate and not subject to intrastate access charges based on the FCC's determinations that VoIP traffic is jurisdictionally interstate, preempting state jurisdiction over VoIP services.⁵ Because VoIP services are interstate and not subject to intrastate tariffs or

⁵ In its letter to the Secretary, GNAPs discusses the Eighth Circuit's Vonage decision), affirming the FCC's Minnesota/Vonage Order, Minnesota Public Utilities Commission v. Federal Communications, 483 F.3d 570 (2007) (Eighth Circuit decision).

to state regulation, GNAPs concludes that intrastate charges may not be imposed.⁶

TVC asserts that the FCC determination regarding VoIP services and related judicial decisions do not resolve issues relating to imposition of intrastate charges for VoIP traffic and that prior determinations deal solely with general state requirements for certification, filing of tariffs, and provision of 911 emergency services. TVC further argues that the basis of the FCC's decision to preempt state regulation over VoIP services was based on an acknowledgment that transmission of VoIP service over the Internet precludes any practical method of identifying or separating the interstate and intrastate components of the service for purposes of establishing a dual federal/state regulatory scheme. TVC goes on to assert that this basis adopted by the FCC (i.e., impossibility of identifying and separating interstate and intrastate traffic) is weakened by a subsequent determination,⁷ in which the FCC authorizes VoIP providers, if possible, to calculate contributions to the Universal Service Fund (USF) based on the actual percentage of interstate and intrastate revenues, as indicated by traffic studies or actual measurements. The FCC recognized that a VoIP provider with the capability to track

⁶ In its letter to the Secretary, GNAPs states that the Eighth Circuit Vonage Decision made clear that the FCC determined that VoIP is jurisdictionally interstate, subject to the FCC's exclusive jurisdiction, and that the FCC preempted state regulation for a number of reasons, including the possibility that state policies may conflict with federal policies.

⁷ WC Docket 06-122, Universal Service Contribution Methodology, et al., Report and Order and Notice of Proposed Rulemaking, 21 F.C.C. 7518 (2006) (Universal Service Contribution Order).

customer calls could become subject to state regulation.⁸ TVC maintains that based on the FCC's recognition that VoIP traffic can be distinguished as interstate or intrastate, the Commission is not foreclosed from requiring GNAPs to pay TVC's switched access charges.

In reply, GNAPs asserts that TVC only partially describes the basis for the FCC's preemption of state regulation over VoIP service. It adds that the FCC also decided that, Vonage's service is too "multi-faceted" to rely on a user's location for establishing state or federal jurisdiction. GNAPs states that, although the FCC's Universal Service Order may, as TVC claims, call into question the FCC's justification for asserting exclusive jurisdiction over VoIP traffic, the FCC has not changed its decision regarding VoIP service jurisdiction and, thus, TVC has no legal basis for ignoring the preemption ruling.

Applicability of Intrastate Tariff

GNAPs states that TVC's intrastate access tariff does not apply to interstate services because: (1) the tariff does not explicitly state that it imposes intrastate access charges on interstate services or refer to VoIP services, (2) TVC and GNAPs have not agreed to apply the intrastate tariff to GNAPs services, and (3) the FCC has not specifically authorized imposition of access charges for VoIP traffic and this issue is within the exclusive jurisdiction of the FCC and the subject of a pending FCC rulemaking.

⁸ In its Letter to the Secretary, TVC states that the Eighth Circuit decision supported this argument: "the FCC recognized the potentially limited temporal scope of its pre-emption of state regulation in this area in the event technology is developed to identify the geographic location of nomadic VOIP communications."

In its response, TVC noted GNAPs' statement that if a contractual agreement exists between the two carriers or if an applicable tariff imposes charges then an intermediate carrier may be liable for charges to a terminating carrier. TVC states that GNAPs' use of the TVC network and constructive ordering of access services did constitute an agreement between the carriers. Therefore, according to TVC, this agreement supersedes any requirement that its access tariff specifically state it applies to VoIP traffic, because its terms refer to provision of a two-point communications path between a customer designated premises and an end user's premises, and, thus, apply broadly to non-local traffic delivered for termination.⁹

In its reply, GNAPs contests TVC's claim that its tariff is broadly written to apply to any non-local traffic. GNAPs claims that TVC's tariff is limited to non-local intrastate traffic and the tariff does not apply to GNAPs' VoIP traffic because the FCC has ruled that VoIP traffic is jurisdictionally interstate. GNAPs further maintains that customers lack notice that termination of VoIP traffic is subject to access charges, that TVC provided no notice to its customers that it would impose access charges on VoIP traffic, and that no order of any agency calls into question the exclusive federal jurisdiction over VoIP traffic to permit these charges. GNAPs concludes that TVC's tariff does not refer to VoIP service, that the FCC decided that VoIP service is jurisdictionally interstate, and that, under the filed rate doctrine, TVC may not charge rates for services not referenced in the tariff.

Commission Authority

GNAPs, referring to the Minnesota/Vonage Order, asserts that the Commission has no jurisdiction to approve

⁹ PSC No. 3- Telephone Access Services Tariff, §1 and §6.1.

intrastate access charges because the FCC precluded state regulation over rates and services for VoIP services. It asserts that the Minnesota/Vonage Order prohibits the Commission from regulating rates and terms applicable to VoIP services.

In reply, TVC states that, as GNAPs acknowledges, since the FCC has not definitely ruled on the issue of imposing intrastate access charges on VoIP traffic, this Commission may resolve the issue, as TVC claims the Commission did in another case.¹⁰

In reply, GNAPs maintains that the FCC asserted exclusive jurisdiction over VoIP services and that this means that this Commission is without authority to resolve issues of compensation that the FCC reserves to itself. It claims that the only exception to this rule is state Commission interpretation of an interconnection agreement entered into pursuant to §252 of the Act.

Classification of VoIP as a Telecommunications Service

GNAPs asserts that the FCC has not classified VoIP as a telecommunications service or an information service, that the obligation to pay access charges is limited to telecommunications service, and thus, access charges are not applicable to the VoIP services provided by GNAPs.

In its reply, TVC looks at the lack of classification of VoIP services from a different perspective, claiming that, since the FCC did not specifically classify VoIP as an information or telecommunications service, no exemption from intrastate access charges pertains to VoIP.

¹⁰ Case 01-C-1119, Frontier Telephone of Rochester - Intrastate Carrier Access Charges, Order Requiring Payment of Intrastate Carrier Access Charges (issued May 31, 2002).

Enhanced Service Provider Exemption

GNAPs maintains that, unless the FCC rules that VoIP is a telecommunications service, it is not subject to access charges because the traffic falls within the FCC's general exemption from payment of certain access charges established for Enhanced Service Providers (ESP).

In response, TVC argues that the FCC declined to determine the status of Vonage as a telecommunications carrier or an information service provider (ISP) and, in the VoIP Universal Service Contribution Order, determined that providers of VoIP service are providers of interstate telecommunications. TVC further submits that several states have rejected GNAPs' argument that the FCC general exemption of ESPs from payment of interstate access charges applies to VoIP providers.¹¹ It further argues that GNAPs' ESP exemption argument is without merit because the scope of the FCC exemption applies to ESP-bound traffic, which is not the traffic at issue here, and the FCC made no clear statement preempting a state's ability to determine whether intrastate access charges apply to VoIP traffic.

In reply, GNAPs states that TVC's reliance on the California Public Utility Commission's decision is misplaced because that decision interpreted the terms applicable to VoIP traffic established in an interconnection agreement between the parties. GNAPs states that the decision has no relevance to the issues presented in TVC's complaint because the parties have no interconnection agreement to interpret. Further, TVC's tariff, limited to intrastate services, does not apply to jurisdictionally interstate traffic.

¹¹ E.g., Matter of Cox California Telecom, LLC v. Global Naps California, Inc., Case 06-04-026, Opinion Granting Complainant's Motion for Summary Judgment (issued January 11, 2007).

GNAPs Status as an Intermediate Carrier

GNAPs states that the FCC determined that terminating local exchange carriers, such as TVC, are not permitted to impose access charges on intermediate carriers, such as GNAPs, that do not provide originating end-user dial tone, unless such charges are imposed under a contract or tariff. GNAPs maintains that TVC's tariff does not include specific provisions authorizing recovery of access charges from intermediate carriers and TVC and GNAPs have not entered into any contracts governing interconnection. GNAPs disputes any claim that it is an interexchange carrier, asserting such a carrier now establish a billing relationship with the end-user customer.

In response, TVC rejects GNAPs argument that as an intermediate carrier GNAPs is not subject to the application of certain charges. According to TVC, the case that GNAPs submitted in support of its argument (Iowa Network Services v. Qwest, 385 F. Supp. 2d 850 (S.D. Iowa 2005)) related solely to cellular (CMRS) carriers and did not consider an exemption from charges for a carrier transmitting VoIP calls from an ISP to a Competitive Local Exchange Carrier (CLEC). In addition, TVC questions whether GNAPs is, in fact an intermediate carrier. In asserts that if Vonage is an ESP as GNAPs claims, GNAPs itself is an originating carrier and should, therefore, be subject to its tariffed access charges since it delivers traffic from Vonage. In reply, GNAPs challenges TVC's analysis of its intermediate carrier issue, stating that the authority that TVC relies upon is unpersuasive because the type of traffic at issue in this proceeding is irrelevant to the court's analysis.

Procedural Requirements

GNAPs submits that the decision to require intermediate carriers to pay access charges is a decision of national significance and affects other similarly situated carriers. It thus argues that the Commission have a generic

proceeding to resolve issues, solicit public participation, assess impact on intermediate carriers' operational and financial planning, evaluate the possibility of discontinuance of service by VoIP providers due to the increased costs, and analyze effects of authorizing access charges on deployment of advanced services. In the alternative, GNAPs suggests that the Commission defer to the FCC for determination on the issue of applicability of access charges to VoIP traffic.

In response, TVC asserts that GNAPs' request for a formal rulemaking is a stalling tactic that would enable the company to continue unjustly enriching itself at the expense of TVC. It also maintains that further information is required for this Commission's determination of jurisdictional issues, including nature of the calls, relationship of GNAPs to Vonage and its customers, routing of the traffic and capability of tracking the originating and terminating points of the calls. TVC proposes that the parties gather more factual evidence through the submission of interrogatories and discovery requests.

In reply, GNAPs proposes that the FCC is the proper forum for a determination on the issues that TVC presents. It recommends that TVC seek a ruling from the FCC that geographically separable traffic is subject to intrastate switched access charges.

Negotiated Settlement

GNAPs states that it will not pay intrastate access charges to terminate traffic that is jurisdictionally interstate. GNAPs goes on to assert that it is prepared to discuss with TVC the costs of originating and terminating traffic between their networks, that TVC's insistence that its tariff alone governs the access charges precludes such

discussions, and that the discussions must include costs of transporting traffic originating from TVC's customers.

BACKGROUND

Preemption of State Rate Regulation over nomadic VoIP Traffic

In 2004, the FCC determined, in part, that nomadic VoIP services¹² provided by Vonage should be deemed exclusively interstate for jurisdictional purposes.¹³ The FCC's determination was based, in part, on the jurisdictionally mixed nature of Vonage's service and the impracticality, if not impossibility,¹⁴ of separating intrastate and interstate portions of nomadic VoIP service and also accurately determining geographical locations of the origination and termination points of nomadic VoIP calls. The FCC's determination arguably applies to similar VoIP-to-VoIP, VoIP-to-landline and landline-to-VoIP calls (interconnected VoIP calls) because the VoIP part of the call is not confined to the geographic location associated with the customer's billing address or assigned telephone number.¹⁵

The FCC also determined that compliance with state rate and entry regulations would negate valid federal policies and undermine objectives of promoting continued development of the Internet and encouraging deployment of advanced telecommunications services. The FCC made no determination relating to classification of VoIP services generally as information services, exempt from federal and state regulation,

¹² Nomadic VoIP describes a service used to place a call at any location through a broadband Internet connection.

¹³ See generally, Minnesota/Vonage Order.

¹⁴ 47 U.S.C. §152(b).

¹⁵ "The Internet's inherently global and open architecture obviates the need for any correlation between Vonage's DigitalVoice service and its end users' geographic locations" Minnesota/Vonage Order at pp. 23-24.

or as telecommunications services, subject to a broad array of state and federal requirements.¹⁶

In 2007, the Eighth Circuit Court of Appeals upheld the FCC's preemption of state regulation as it applies to nomadic VoIP services.¹⁷ The Court granted deference to the FCC's findings that the difficulty of identifying call points for nomadic VoIP¹⁸ made it impractical, if not impossible, to separate service into intrastate and interstate components.¹⁹

To date, the FCC has not determined a specific regulatory classification and compensation scheme for VoIP and there are currently at least three open dockets at the FCC addressing the proper classification of VoIP, whether access charges should apply and whether to forbear from applying the ESP exemption to VoIP originated traffic.

¹⁶ The FCC deferred this decision because regulatory classification of VoIP is the subject of its IP-Enabled Services Proceeding (IP-Enabled Services, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 F.C.C. Rcd 4863 (2004) (IP-Enabled Services proceeding)).

¹⁷ The court noted that there were fundamental differences between Vonage's digital voice service and telephone service provided over the circuit-switched network. Specifically, the court noted that the geographic locations of traditional circuit-switched communications are readily known, while VoIP communications are not tied to identifiable geographic locations. The court further contrasted a distinction between nomadic VoIP and fixed VoIP because the latter communication, while using the same technology, originates and terminates at a fixed location.

¹⁸ The Court decided that the FCC only suggested that it would preempt state regulation of fixed VoIP services and did not actually make a final agency determination. Therefore, VoIP providers who can track the geographic end-points of calls do not qualify for the preemptive effects of the Vonage order.

¹⁹ Minn. Pub. Utility Comm'n v. FCC, 483 F.3d 570 (8th cir. 2007).

DISCUSSION

GNAPs claims that the traffic it sends for termination over the TVC's network is interconnected VoIP.²⁰ GNAPs further claims that, because interconnected VoIP has not been classified as a telecommunications service or an information service, there is no obligation to pay access charges because that obligation is limited to a telecommunication service. TVC disagrees and suggests that the lack of classification does not preclude the application of intrastate access charges here.

The FCC raised the issue of the classification of interconnected VoIP in 2004 in its IP Enabled Services proceeding. Specifically, the FCC requested comments on "[w]hich classes of IP-enabled services, if any, are 'telecommunications service' [and] ... [w]hich, if any, are 'information services'?"²¹ Although the FCC has applied many other telecommunications regulations to interconnected VoIP services since 2004, it has refrained from classifying VoIP as either a telecommunications service or an information service. For purposes of the dispute at issue in this proceeding, it is not necessary to decide whether interconnected VoIP constitutes a telecommunications service or an information service. Resolution of that issue can await the outcome of the FCC's IP-Enabled Services proceeding.

Classifying interconnected VoIP as either a telecommunications service or in information service will not

²⁰ Under the circumstances presented in this proceeding, GNAPs, a competitive local exchange carrier (CLEC), transports calls to a Verizon, an incumbent local exchange carrier (ILEC), tandem. Verizon then transports the calls to the TVC, also a CLEC, network. TVC terminates the calls to its end-users through its facilities.

²¹ IP-Enabled Services, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, ¶ 43 (2004) (IP-Enabled Services proceeding).

have any affect on the FCC's subsequent holding that nomadic VoIP is exclusively interstate. In 2004, the FCC declared that, notwithstanding the classification of interconnected VoIP, nomadic VoIP is an interstate service because it would be impractical, if not impossible, to separate interstate and intrastate components of that call.

On November 26, 2007, Department of Public Service Staff (Staff) requested that GNAPs provide evidence to support its claim that the traffic it sends to the TVC network for termination is primarily VoIP, largely for the benefit of Vonage (i.e., nomadic VoIP) customers. GNAPs responded under protective cover dated December 4, 2007. GNAPs provided affidavits from its customers that send traffic to New York representing that the traffic it handles is VoIP, largely for the benefit of Vonage and other similarly situated providers of interconnected VoIP. Staff has advised that it appears from the evidence submitted by GNAPs most, if not all, the traffic GNAPs sends to the TVC network for termination is nomadic VoIP.

The Commission determines here that because the Minnesota/Vonage Order and Eighth Circuit Court of Appeals decision establishes that nomadic VoIP service is interstate, our authority to impose intrastate access rates over nomadic VoIP service is precluded because rate treatment of nomadic VoIP service falls under the exclusive jurisdiction of the FCC.

TVC alternatively requests that the Commission require GNAPs to pay intrastate access charges based on TVC's tariff on file with the Department of Public Service. TVC states that its access tariff need not specifically state that it applies to VoIP traffic, because its terms apply broadly to non-local traffic delivered to it for termination. GNAPs states that the traffic routed to Verizon and onto to the TVC network is primarily, if not exclusively, nomadic VoIP. GNAPs argues that the Minnesota/Vonage Order and Eighth Circuit decision foreclose

this Commission from applying intrastate tariffs on interstate calls.

For reasons stated above, we agree with GNAPs.²² Because nomadic VoIP is interstate in nature, and because its rates are exclusively under the FCC's jurisdiction, we are similarly precluded from imposing the TVC intrastate access tariff. Under the FCC's decisions, nomadic VoIP is treated as interstate subject to exclusive federal rate jurisdiction. Applying the TVC intrastate access tariff to an interstate service would be inappropriate and conflict with valid federal laws and policies.²³

Our analysis does not end here, however. Under PSL §97(3), the Commission has broad authority to require interconnection among telecommunication carriers regardless of the nature of the traffic. That authority is not preempted by federal law. Any telecommunications carrier that delivers traffic over the public switched telephone network (PSTN) for another carrier can reasonably expect to be compensated irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. TVC further asserts that it is unwilling to allow calls to continue to terminate for free because it claims it results in an unjust enrichment for GNAPs and is confiscatory.

²² As for GNAPs claim that the traffic at issue is subject to the FCC's ESP exemption, the FCC has not yet classified VoIP traffic as telecommunication, information, or enhanced service. We agree with TVC that, until the FCC makes a determination on the classification of VoIP service, the issue remains open and the ESP exemption should not apply.

²³ Applying an intrastate tariff rate to an interstate service could also sidestep the FCC's exclusive jurisdiction over the regulatory classification and intercarrier compensation of nomadic VoIP.

We believe it is important to preserve a fully interconnected telecommunications network. Interconnection is a critical component of growth for facilities-based competition in New York. However, this Commission also has a long history of ensuring that the one carrier's use of another's network is not without reasonable compensation. TVC claims it has a constitutional right to a fair and reasonable return on its network investment. Granting TVC's request to authorize it to block calls routed from GNAPs could potentially compromise this seamless telecommunications network causing a disruption in customer calls. We, therefore, need to balance the importance of a seamless telecommunications network with TVC's expectation that it will be compensated for its use of that network.

Our preferred course of action in the first instance is for GNAPs and TVC to enter into private contract negotiations on the rates, charges, terms and conditions for the exchange of nomadic VoIP traffic. For its part, GNAPs indicates that it is willing to discuss with TVC the costs of originating and terminating traffic on their networks. TVC and GNAPs operate as competitive carriers in the telecommunications markets and are in the best position of determining the market value of the routing services in question, including the termination of calls on TVC's network and the possible origination of calls by TVC customers to the GNAPs' system.

Absent a private contract, the Commission will consider TVC's request to discontinue accepting incoming traffic from GNAPs. Any such consideration will be done in accordance with the Commission's migration guidelines and policies. We do not take lightly a request to discontinue service and will only be considered under extreme circumstances. Should negotiations fail, TVC can renew its request to discontinue service to GNAPs.

Finally, while GNAPs claims that it is not subject to access charges because it is an intermediate carrier, this claim

is moot. We have already decided that we cannot impose intrastate access charges on nomadic VoIP because it is an interstate service. We need not determine the merits of GNAPs claimed exemption under its intermediate carrier status. GNAPs and TVC should enter into private negotiations.²⁴

CONCLUSION

Based on our findings, the Commission concludes that it is without jurisdiction to require GNAPs to pay intrastate access charges to TVC to the limited extent the traffic is nomadic VoIP as defined by the FCC and upheld on deferential grounds by the Eighth Circuit Court of Appeals. Similarly, the TVC intrastate tariff does not apply to nomadic VoIP traffic. Therefore, the parties should work out a traffic exchange agreement establishing rates, charges, terms and conditions for nomadic VoIP traffic.

The Commission orders:

1. The complaint of TVC Albany, Inc. d/b/a Tech Valley Communications is denied to the extent it requests authorization to recover intrastate access charges from Global NAPs, Inc. for termination of nomadic VoIP traffic.

2. TVC Albany, Inc. d/b/a Tech Valley Communications and Global NAPs, Inc. are directed to negotiate rates, terms, and conditions for the exchange of traffic between them consistent with the discussion in the body of this Order.

²⁴ See, WC Docket No. 06-55, In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Telecommunications Act of 1934, as Amended, to provide Wholesale Telecommunication Services to VoIP Providers, Memorandum and Opinion and Order ¶17 (issued March 1, 2007).

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3. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary