

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

FLORIDA DIGITAL NETWORK, INC. *D/B/A*
FDN COMMUNICATIONS,

Plaintiff,

CASE NO.: 48-2006-CA-000788-0

v.

GLOBAL NAPS, INC.

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR STAY OF PROCEEDING**

Defendant, Global NAPs, brings this "Motion to Dismiss Complaint or, in the alternative, Stay Proceedings." Global NAPs thoroughly explains the complexities and relationships between the various telecommunications parties involved in this case and in general. Specific emphasis was placed on the Federal Communications Commission's decisions and rulemaking notices regarding service charges and regulation of internet telephone. Exempt service providers, enhanced services, and VoIP are wrapped up in the instant case as well as national telecommunications law.

Global NAPs contends that the doctrine of primary jurisdiction should apply in this situation. Florida precedent is replete with cases invoking this doctrine and in situations that could easily be analogized to the present scenario. Many courts have stayed cases pending decisions by administrative bodies charged with regulatory duties in the same field as the subject matter of the case.

In the circumstance where the primary jurisdiction doctrine is applicable, the judiciary, although possessing subject matter jurisdiction to pass upon the asserted claim, stays its hand and defers to the administrative agency in order to maintain uniformity at that level or to bring specialized expertise to bear upon the disputed issues. *Hill Top Developers v. Holiday Pines Service Corporation*, 478 So. 2d 368, 370 (Fla. 2d DCA 1985) citing *Northeast Airlines, Inc. v. Weiss*, 113 So. 2d 884 (Fla. 3d DCA 1959).

In *Hill Top*, the court was presented with a dispute between a regulated utility and a developer regarding an alleged contractual debt for water and sewage services. *Id.* at 369. The Second DCA ruled that the trial court had overstepped its bounds by awarding a judgment to the regulated utility, when the Public Service Commission (PSC) had primary jurisdiction and rightly had the power to set the amounts charge. *Id.* at 370. Finally, the court noted that “[t]he trial court, by asserting its jurisdiction and awarding [the utility] a judgment, literally cast itself in the role of the PSC.” *Id.* at 371. In the instant case, there is a contractual dispute involving the highly regulated telecommunications industry. In ruling on this contractual dispute, this Court would be placing itself in the role of the FCC, because there has yet to be a final rulemaking regarding these particular telecommunications services.

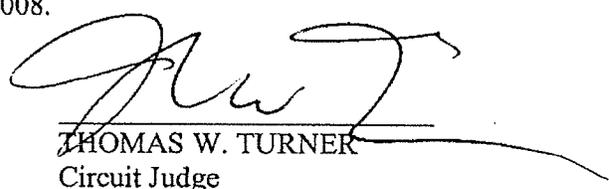
Rather than issue a ruling that may ultimately be contrary to the policy of the FCC, this Court will refrain from ruling at this present time. Indeed, that is the reasoning behind primary jurisdiction. “The doctrine of primary jurisdiction enables a court to have the benefit of an agency's experience and expertise in matters with which the court is not as familiar, protects the integrity of the regulatory scheme administered by the agency, and promotes consistency and uniformity in areas of public policy.” *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037 (Fla. 2001). See also *Key Haven Associated Enters. v. Bd. of Trustees of the Internal Improvement Trust Fund*, 427 So.2d 153, 157 (Fla.1982); *Hill*

Top, 478 So.2d at 370. At such time when the FCC has issued rules, this Court will gladly re-evaluate this case.

With these principles in mind, it is clear that the doctrine of primary jurisdiction is applicable and should be applied to this case.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's "Motion to Dismiss Complaint or, in the alternative, Stay Proceedings." is **GRANTED**. The proceedings will be stayed pending decisions by the FCC regarding access tariffs for enhanced services and VoIP.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 5th day of May, 2008.


THOMAS W. TURNER
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 5 day of May, 2008, to the following: James R. Scheltema, 4475 Woodbine Rd., Ste 7 Milton, FL, 32751; Glenn B. Manishin, Kelley, Drye & Warren, LLP, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, DC, 20007; Justin D. Jacobson, Jacobson, Sobo & Moselle, P.O. Box 19359, Plantation, FL, 33318-0359.

Via fax

/s/ Sheryl Sharp

Judicial Assistant