
EXHIBIT C

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Ohio P.U.C., 2010

In the Matter of the Petition of Global NAPs Ohio for Arbitration Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Ohio Bell Telephone Company dba AT&T Ohio.

No. 09-195-TP-ARB

Ohio Public Utilities Commission

January 7, 2010

FINDING AND ORDER

BY THE COMMISSION.

The Commission finds:

(1) On March 10, 2009, Global NAPs Ohio (GNAPs or complainant) filed a petition for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 (1996 Act) requesting that the Commission order AT&T Ohio to immediately enter into good faith negotiations with GNAPs to amend the parties' current interconnection agreement to establish rates, terms, and conditions for the exchange of voice over Internet protocol (VoIP) traffic. Additionally, GNAPs requests that the Commission participate in the negotiations and mediate between the parties (Petition at 3).

In support of its request, GNAPs acknowledges that it entered into an interconnection agreement in September 2002, in Case No. 01-3096-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*. Pursuant to Section 16.9 of the interconnection agreement, GNAPs asserts that the parties agreed to defer the issues surrounding the proper treatment of VoIP to later point in time. Specifically, GNAPs cites the following language of Section 16.9 of the Reciprocal Compensation Appendix:

The Parties further agree that this Appendix shall not be construed against either Party as a "meeting of the minds" that VoIP or Internet Telephony traffic is or is not local traffic subject to reciprocal compensation. By entering into the Appendix, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

GNAPs opines that this language was necessary in light of the fact that, at the time of the initial interconnection agreement, it was not in the business of providing transport and termination services for VoIP carriers and AT&T Ohio was not receiving any such traffic from GNAPs. The complainant explains that, beginning in or about 2004, it began sending VoIP traffic to AT&T Ohio for the company to terminate. Although AT&T Ohio attempted to bill GNAPs for terminating the traffic as though it was traditional

voice traffic, GNAPs, relying upon Section 16.9, refused to compensate AT&T Ohio until the parties reached an agreement regarding the rates applicable to VoIP traffic. By refusing to negotiate with GNAPs, the complainant believes that AT&T Ohio has waived its right to compensation under terms of the interconnection agreement for traffic delivered to the present date. GNAPs does recognize that AT&T Ohio has the right to some form of compensation for its role in the termination of VoIP traffic from GNAPs beginning at the point in time that the contract is modified to replace the current Section 16.9 language with language setting applicable rates, terms, and conditions (*Id.* at 6).

According to GNAPs, once a competitive local exchange company (CLEC) submits a request for interconnection, Section 252(b) permits either party to the negotiation to petition a state commission to arbitrate any open issues unresolved by voluntary negotiations (*Id.* at 8). With respect to its petition, GNAPs avers that there should be specific rates for the termination of VoIP traffic that are cost-based and that the rates, terms, and conditions must be just, reasonable, and nondiscriminatory (*Id.* at 10). GNAPs submits that notwithstanding its continued requests for AT&T Ohio to negotiate rates, terms and conditions for the exchange of VoIP traffic, AT&T Ohio believes that the parties intended for the provisions of the interconnection agreement relating to traditional telephony to be also applicable to VoIP traffic (*Id.* at 6).

(2) On April 9, 2009, AT&T Ohio filed a motion to dismiss GNAPs' arbitration petition. AT&T Ohio disputes whether GNAPs has properly requested negotiation of interconnection related to VoIP traffic as contemplated by Section 252 of the Telecommunications Act of 1996. Even if such discussions did constitute a request pursuant to Section 252, AT&T Ohio submits that such a request should be considered untimely. In support of its position, AT&T Ohio notes that Section 252(b)(1) provides that "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier (ILEC) receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." In applying this provision, AT&T Ohio points out that, according to GNAPs, these attempted negotiations occurred in late 2005, which is well beyond the 160-day arbitration window provided for pursuant to Section 252.

Additionally, AT&T Ohio avers that, rather than seeking **arbitration** for the establishment of an **interconnection** agreement pursuant to Section 252, Global NAPs is requesting that the Commission establish **new** terms to an **existing interconnection** relative to the single issue of the exchange of VoIP traffic. Such an approach, according to AT&T Ohio, is contrary to the intent of Section 252 and the intent that interconnection agreements are binding (Motion to Dismiss at 2).

Further, AT&T Ohio rejects GNAPs' contention that the language in Section 16.9 stands for the proposition that the parties would engage in another Section 252 negotiation and arbitration to develop rates, terms and conditions for the exchange of VoIP traffic (*Id.* at 3, 4). Rather, AT&T Ohio submits that, pursuant to the language of Section 16.9, the issue of VoIP traffic should be raised pursuant to the Dispute Resolution provisions of the agreement. Additionally, AT&T Ohio points out that while Section 16.9 does not allow the parties to seek arbitration limited to the issue of VoIP compensation, the language would allow for the arbitration of a successor agreement in its entirety provided the current interconnection agreement was terminated (*Id.* at 3-5).

(3) On April 21, 2009, GNAPs filed its memorandum contra AT&T Ohio's motion to dismiss.

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GNAPs believes that AT&T Ohio's principal argument in opposition to the arbitration petition is the claim that GNAPs has no right to seek arbitration under Sections 251 and 252 with respect to the treatment of VoIP traffic (Memorandum Contra at 6). Citing *In the Matter of 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*, DA 08-709, WC Docket No. 06-55 (rel. March 1, 2007), GNAPs asserts that it has a guaranteed right for the termination of VoIP traffic pursuant to a Section 251 interconnection agreement. GNAPs avers that the existing interconnection agreement does not contemplate terms and conditions relative to a VoIP service classification and that, pursuant to Section 16.9 of the Reciprocal Compensation Appendix, it has a contractual, and not a statutory, right to address a single, previously deferred set of issues (*Id.* at 7). In support of its position, GNAPs contends that, pursuant to Section 16.9, the parties agreed to "reserve the right ... to advocate their respective positions" before state commissions in "arbitrations under Section 252 of the Act" (*Id.*). GNAPs opines that this language did not create a new substantive right but, rather, reserves its existing right to arbitrate to a subsequent point in time (*Id.* at 8).

GNAPs represents that, while it is ready, willing, and able to negotiate with AT&T Ohio regarding the rates, terms, and conditions for terminating VoIP traffic, AT&T Ohio has repeatedly refused to enter into such negotiations (*Id.* at 4). Based on its understanding of AT&T Ohio's position, GNAPs concludes that "AT&T [Ohio] is stuck with the statutory obligation to terminate such traffic, but without a legal right to be paid" (*Id.* at 6,7).

Specifically, GNAPs opines that AT&T Ohio refuses to agree to the arbitration regarding the termination of VoIP traffic, thereby resulting in treating GNAPs less favorably than how AT&T Ohio treats other CLECs or less favorably than how AT&T Ohio insists that it be treated when it is the CLEC terminating VoIP traffic (*Id.* at 5, 6). GNAPs submits that, inasmuch as AT&T Ohio refuses to allow for the arbitration of the rates, terms, and conditions for VoIP traffic, such refusal should result in AT&T Ohio having no right to be compensated for such traffic termination (*Id.* at 5-7).

GNAPs considers its request for mediation to be appropriate based on its belief that Rule 4901:1-7-08(B), Ohio Administrative Code (O.A.C), and the 1996 Act both provide that mediation may be started at any point in the negotiation. In support of its request for mediation, GNAPs contends that AT&T Ohio has failed to negotiate in good faith. Therefore, GNAPs believes that the most commercially reasonable basis for resolving this dispute is to request the Commission's assistance in mediating the dispute.

Finally, GNAPs asserts that granting GNAPs arbitration petition is the most expedient manner to resolve this dispute due to the fact that VoIP is legally, technically, and commercially different from traditional voice telephony. To this point, GNAPs believes that every agreement that AT&T Ohio has voluntarily entered into with another carrier either as the ILEC or as a CLEC sets a single unitary rate for VoIP traffic.

(4) On April 27, 2009, AT&T Ohio filed its reply memorandum. AT&T Ohio believes that it is entitled to be paid for the termination of VoIP traffic pursuant to its existing interconnection agreement. AT&T Ohio also submits that the parties' current interconnection agreement does not provide a basis to grant GNAPs arbitration petition and that, even if it did, the issues sought by GNAPs can more appropriately be resolved in

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Case No. 08-690-TF-CSS (08-690), *In the Matter of the Complaint of AT&T Ohio v. Global NAPs Ohio, Inc.*, in which the issue of compensation has already been raised. AT&T Ohio considers this petition to be nothing more than an attempt at delaying the adjudication of the complaint in 08-690.

AT&T Ohio opines that Section 16.9 of the Reciprocal Compensation Appendix does not create an automatic right to arbitrate the issue of VoIP compensation. Rather, AT&T Ohio believes that the Commission can resolve the compensation issue in a fair and concise manner in the context of the pending complaint case in 08-690. Additionally, AT&T Ohio questions why GNAPS has suddenly decided to now seek arbitration on this issue after refusing to pay anything for the termination of VoIP traffic. Finally, AT&T Ohio notes that GNAPS "had ample opportunity to [terminate its current agreement and] negotiate or arbitrate a successor agreement, including VoIP transport and termination provisions pursuant to Section 5.6 of the General Terms and Conditions of interconnection agreement" (Reply at 4).

(5) Upon a review of the arguments presented, AT&T Ohio's motion to dismiss should be granted. In reaching this determination, the Commission agrees with AT&T Ohio that neither party should be entitled to unilaterally seek arbitration relative to just one aspect of the agreement. Rather, as noted by AT&T Ohio, Section 5.6 of the current interconnection agreement addresses the specific procedure to be complied with in regard to the renegotiation of specific terms and conditions. In particular, a review of the applicable language reflects that, rather than providing for the amendment of specific terms of an existing agreement, the intent of the parties was for the negotiation of a successor agreement in its entirety. Further, the Commission concludes that this interpretation can be applied consistently with the terms in Section 16.9. Specifically, the Commission notes that Section 16.9, in part, provides that:

By entering into this Appendix, both Parties reserve the right to advocate their respective positions before state or federal commissions, whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

While this language provides for the advocating of positions in the context of arbitration proceedings, such arbitrations may only occur in accordance with all of the terms of the existing interconnection agreement, including Section 5.6, discussed *supra*. Finally, the Commission highlights the fact that Section 16.9 also provides that "[t]he parties reserve the right to raise the appropriate treatment of Voice Order Internet Protocol (VoIP) or other Internet Telephony traffic under the Dispute Resolution provisions of this Interconnection Agreement." The filing of this request for arbitration pursuant to Section 251 and 252 of the 1996 Act is not consistent with the referenced Dispute Resolution provisions. Therefore, considering the existing interconnection agreement in its entirety, the motion to dismiss is granted. GNAPS should pursue resolution of the dispute over the treatment of VoIP traffic either through the dispute resolution process in its existing interconnection agreement or through the negotiation of a successor interconnection agreement.

It is, therefore,

ORDERED, That AT&T Ohio's motion to dismiss is granted. It is, further,

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ORDERED, That of this Finding and Order be served upon all parties of record.

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