

**STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350**

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April 2, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: In the Matter of Petition for Declaratory Ruling and Alternative Petition or Preemption to the Pennsylvania, New Hampshire and Maryland State Commissions; WC Docket No. 10-60.

Dear Ms. Dortch:

The following comments are submitted on behalf of the New York State Public Service Commission (NYPSC) pursuant to the Federal Communications Commission's (FCC) request for comments on Global NAPs, Inc.'s (GNAPs) petition seeking a declaratory ruling and alternative petition for preemption that federal law prohibits state utility commissions from subjecting voice over Internet protocol (VoIP) traffic to any type of access charges.

The NYPSC supports classification of VoIP as a telecommunication service subject to access charges. As a policy matter, in the TVC Order¹ the NYPSC stated that, although intrastate access tariffs did not apply to nomadic VoIP, every carrier is obligated to pay a terminating carrier for the use of its network. Although acknowledging that VoIP is interstate in nature, GNAPs resists even interstate access charges and asks the FCC to determine that interstate access charges should not apply. While this serves GNAPs' interests, it undermines our ability to develop fair and balanced telecommunications policies. We understand that, to date, GNAPs continues to use TVC's network without adequate payment; and a request by TVC to allow it to begin blocking incoming traffic from GNAPs is pending at the NYPSC. Consistent with our policy of maintaining a level playing field and treating traffic that is functionally equivalent to similar pricing rules, we urge the FCC to find that GNAPs is obligated to pay

¹ 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 March 20, 2008)(TVC Order).

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termination charges for nomadic VoIP pursuant to interstate access charges. The FCC has already declared nomadic VoIP service to be interstate, what remains is to classify the traffic as a telecommunications service and establish a fair and equitable compensation regime.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive style with a large initial "P".

Peter McGowan
General Counsel
Public Service Commission
State of New York
Three Empire State Plaza
Albany, NY 12223-1350