

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-1202

September Term, 2003

Filed On: October 28, 2003^[781319]

Global Naps, Inc.,

Petitioner

v.

Federal Communications Commission and
United States of America,

Respondents

Verizon Telephone Companies, et. al.,
Intervenors

Petition for Review of an Order
of the Federal Communications Commission

Before: EDWARDS and GARLAND, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*

J U D G M E N T

This cause was considered on a petition for review of an order of the Federal Communications Commission and was briefed and argued by counsel. It is

ORDERED AND ADJUDGED that the petition for review of the order of the Federal Communications Commission is hereby denied.

We deny the petition solely on the FCC's rationale that petitioner's tariff was indeterminate in violation of 47 C.F.R. § 61.2(a). This case is governed by *Global NAPs, Inc. v FCC*, 247 F.3d 252 (D.C. Cir. 2001) ("*Global NAPs I*"), which upheld the Commission's invalidation of Global NAPs' first tariff for connecting internet-bound calls. *Global NAPs I* held that the tariff was invalid if "a party could not reasonably ascertain the 'proper application' of the tariff at the time it was filed." *Id.* at 258 (quoting 47 C.F.R. § 61.2(a)). Assuming that a tariff could be filed, the Commission correctly determined that Global NAPs' second tariff was unlawfully indeterminate because "a carrier cannot discern from the face of the Tariff whether it has incurred any charges thereunder." *In the Matter of Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 F.C.C.R. 20,665, at 20,674 (2000).

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There was much discussion in the parties' briefs and at oral argument about whether the parties mutually understood that compensation for internet-bound traffic would be governed exclusively by the provisions of interconnection agreements undertaken pursuant to 47 U.S.C. § 251(b)(5). We say nothing about that issue. Agency counsel stated at oral argument that the scope of § 251(b)(5) with regard to internet-bound traffic is currently the subject of proposed rulemaking. See Intercarrier Compensation; Reciprocal Compensation, Notice of Proposed Rulemaking, 66 Fed. Reg. 28,410 (May 23, 2001).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Michael C. McGrail

Deputy Clerk