

Decision **PROPOSED DECISION OF ALJ BEMESDERFER** (Mailed 5/21/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cox California Telcom, LLC (U-5684-C),
Complainant,

vs.

Global NAPs California, Inc. (U-6449-C),
Defendant.

Case 06-04-026
(Filed April 28, 2006)

**OPINION SUSPENDING REGISTRANT'S CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

Summary

The Certificate of Public Convenience and Necessity (CPCN) held by Global NAPS California, Inc. (GNCI) is suspended until such time as GNCI pays Cox California Telcom, LLC (Cox) the sum of \$985,439.38 plus interest on overdue amounts at the rate of one and one-half per cent per month as previously ordered by this Commission.

Background

In Decision (D.) 07-01-004, effective January 12, 2007, we granted Cox's motion for summary judgment against GNCI and ordered GNCI to pay Cox the sum of \$985,439.38 plus interest on overdue amounts at the rate of one and one-half percent per month. In entering this order, including the provision for interest on overdue sums, we were enforcing the terms of an Interconnection Agreement between the parties.

On February 13, 2007, GNCI timely filed an application for rehearing. On February 27, 2007, Cox filed its response to GNCI's rehearing application. On March 2, 2007, GNCI filed "Request for Stay or Suspension of D.07-01-004 Pending Ruling on Application for Rehearing." On April 16, 2007, we denied the Application for Stay.

On February 15, 2007, Cox filed a motion requesting an order directing GNCI to pay the judgment entered in the decision. On March 23, 2007, assigned Commissioner Rachelle Chong and assigned Administrative Law Judge (ALJ) Karl Bemederfer issued a joint ruling granting Cox's motion and setting a hearing for April 9, 2007, at which GNCI was ordered to appear and either demonstrate that it had paid Cox in accordance with the decision or show cause why it should not have its CPCN suspended for failure to comply with the decision.

At the April 9th hearing, GNCI, appearing through its counsel, argued that the Commission lacked legal authority to sanction GNCI for its failure to pay Cox as ordered in the decision. In support of this position, GNCI argued that the April 9th hearing was an in-substance contempt proceeding and that GNCI could not be found in contempt of the Commission for failing to pay Cox because GNCI had no money with which to pay. GNCI introduced an affidavit of its Treasurer, Richard Gangi, stating that "GNCI does not have any liquid assets." Gangi's affidavit also stated that GNCI owned no California real estate and had no offices or bank accounts in California.

On April 12, 2007, the assigned Commissioner and the ALJ issued a second joint ruling, directing GNCI to supplement the record by identifying any source of funds to which the creditors of GNCI could look for satisfaction of their debts. The April 12th ruling further directed GNCI to explain how it would minimize

the effect of a suspension or revocation of its CPCN on its customers. On April 19, 2007 GNCI filed a second declaration by Richard Gangi, reiterating the company's lack of assets, directing its creditors to look to their legal remedies and requesting not less than 30 days' notice of a Commission decision to suspend or revoke its CPCN. In the second Gangi affidavit, GNCI also reiterated its position that the Commission lacks authority to suspend or revoke its CPCN for failure to comply with the ordering paragraphs of D.07-01-004.

Discussion

Pub. Util. Code § 702 is unequivocal:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specific to this part or in any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents and employees.

There is no doubt that GNCI is in violation of Section 702. There is also no doubt that a fine is ineffectual as a response to this violation because GNCI has admitted that it has no money and its debts are not guaranteed by its parent or any other solvent entity.

GNCI's argument that the Commission lacks authority to suspend its license for failure to obey a Commission order is based on the idea that any sanction imposed for failure to obey an order is in the nature of a citation for contempt. This argument is erroneous in two respects.

First, Pub. Util. Code § 2113 establishes contempt as an independent and separate sanction that is in addition to any other remedy we may impose:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, demand, or requirement of the commission or any

commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. **The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.** (Emphasis added.)

Second, although no specific provision of the Public Utilities Code authorizes us to suspend a carrier's license for violating Section 702, such authority is clearly implied by the broad grant of power in Section 701:

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, necessary and convenient in the exercise of such power and jurisdiction.

A CPCN is a license to do business subject to applicable state laws. The power to grant such a license necessarily includes the power to suspend it if we determine that a licensee is not complying with such laws. Recognizing that due process entitled GNCI to notice and a hearing before we suspended its license, we gave GNCI timely notice that we were considering suspension and we granted it a hearing at which the possibility of suspension was extensively discussed. The hearing established that GNCI has neither complied with D.07-01-004 nor possesses the means to comply. Accordingly, GNCI's violation of Section 702 will not be cured in the foreseeable future and we should suspend its CPCN as quickly as possible consistent with protecting the interests of its customers.

Comments on Proposed Decision

The proposed decision of ALJ Bemederfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments

were filed on June 11, 2007, and reply comments were filed on June 16, 2007. Comments reargued positions previously taken in briefs and were accorded no additional weight.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Karl Bemederfer is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.07-01-004, the Commission ordered GNCI to pay Cox \$985,439.38, plus interest in unpaid termination charges.
2. GNCI has failed to pay Cox as ordered by D.07-01-004.
3. GNCI has no assets or bank accounts in California.
4. GNCI has no resources with which to pay its debts to Cox.

Conclusions of Law

1. GNCI is in violation of Pub. Util. Code § 702.
2. GNCI received timely notice that its CPCN might be suspended and an opportunity to appear and contest that potential sanction.
3. The Commission has authority under Pub. Util. Code § 701 to fashion an appropriate remedy for a violation of Pub. Util. Code § 702.
4. Suspension of GNCI's CPCN is an appropriate remedy for its violation of Pub. Util. Code § 702.
5. GNCI's license should be suspended as quickly as possible consistent with protecting the interests of GNCI's customers.

O R D E R

IT IS ORDERED that:

1. The Certificate of Public Convenience and Necessity issued to Global NAPS California, Inc. (GNCI) (U-6449-C) is suspended effective 30 days from the mailing date of this decision.
2. GNCI shall promptly notify its customers that it will cease providing service to them on the suspension date and assist the customers without charge in finding alternate service on or before the suspension date.
3. The suspension will remain in effect until GNCI has complied with Decision 07-01-004. Proof of compliance shall be in the form of a written report satisfactory in form and substance to the Commission's Communications Division furnished to the Director of the Communications Division not less than 45 days in advance of the date GNCI proposes to resume transmitting calls for termination in the state of California. The suspension will be lifted by a vote of the Commission upon the written recommendation of the Director of the Communications Division.
4. Case 06-04-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

