Decision 07-08-031 August 23, 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)

ORDER MODIFYING DECISION (D.) 07-01-004 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. SUMMARY

This decision denies the rehearing of D.07-01-004, which granted the motion of Cox California Telcom, LLC ("Cox") for summary judgment, ordering Global NAPs California, Inc. ("GNAPs") 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. The decision also corrects a non-substantive error, as noted by GNAPs.

II. FACTS/PROCEDURAL BACKGROUND

On January 12, 2007, in D.07-01-004 ("Decision"), the Commission granted a motion for summary judgment filed by Cox against GNAPs. GNAPs is certificated in California as a Competitive Local Exchange Carrier ("CLEC"), and as an Interexchange Carrier ("IXC"). Cox registered as a telephone utility with the Commission and is a licensed telecommunications carrier. GNAPs was ordered 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. The Decision took effect on the date issued.

On February 13, 2007, GNAPs timely filed an application for rehearing. It alleged that the Decision is unlawful for at least two reasons: 1) the Commission unlawfully failed to evaluate Cox's Motion for Summary Judgment and GNAPs' Opposition according to the parameters of the California Code of Civil Procedure ("CCP") Section 437(c); and 2) the Decision unlawfully denied GNAPs due process by depriving GNAPs of its opportunity to present oral argument.

Cox timely filed its response to GNAPs' rehearing application on February 27, 2007. Cox argues the following: 1) GNAPs' rehearing application is invalid because it merely reargues positions GNAPs has previously argued; 2) the Decision properly concludes that there are not triable issues of material fact and Cox is entitled to judgment as a matter of law; and 3) the Commission is not bound by the procedural requirements of CCP 437(c).

On March 2, 2007, GNAPs filed a "Request for Stay or Suspension of Decision 07-01-004 Pending Ruling on Application for Rehearing." GNAPs requested that the Commission stay the effective date of the Decision for 60 days, or until the Commission has ruled on the rehearing application.

Cox filed a Response to Request for Stay on March 8, 2007. It asserted that GNAPs' request for a stay is procedurally improper and substantively invalid. Cox stated that if a stay was granted, the stay should be conditioned on a

stay bond in the full amount that GNAPs owes Cox under D.07-01-004. On April 16, 2007 in D.07-04-048, the Commission denied GNAPs' Motion for Stay.

In the interim, on February 15, 2007, Cox filed a motion requesting an order mandating that GNAPs pay the judgment rendered in the decision. On March 23, 2007, the assigned Commissioner and the assigned Administrative Law Judge ("ALJ") issued a joint ruling granting Cox's motion and setting a hearing ordering GNAPs to appear and demonstrate that it had paid Cox in compliance with the Decision, or show cause why it should not have its Certificate of Public Convenience and Necessity ("CPCN") suspended for failure to comply with the Decision.

At the hearing of April 9, 2007, GNAPs argued that the Commission lacked legal authority to sanction it for failing to pay Cox as the Decision ordered. Although the Commission never referred to the hearing as a contempt proceeding except to rebut GNAPs' mischaracterization of the proceeding, GNAPs asserted that it was an in-substance contempt proceeding. Therefore, GNAPs stated that it could not be found in contempt because it had no money with which to pay.

On April 12, 2007, a second joint ruling was issued, ordering GNAPs to supplement the record by identifying any source of funds that creditors could look to for satisfaction of their debts. GNAPs was also directed to explain how it would minimize the effect on its customers of a suspension or revocation of its CPCN. On April 19, 2007, GNAPs responded with a second declaration reiterating the company's lack of assets, and stating its position that the Commission lacks authority to suspend or revoke its CPCN for failure to comply with D.07-01-004's ordering paragraphs.

A proposed decision was issued on May 21, 2007, which proposed suspending Global NAPs' CPCN. Opening Comments were due no later than June 10, 2007, and reply comments were due five days after Opening Comments

were filed. On June 22, 2007, the Commission issued D.07-06-044, suspending GNAPs' CPCN, effective 30 days after the issuance of the decision.[1]

III. REGULATORY BACKGROUND

In order to place this proceeding in its proper context and to understand the regulatory framework in which these events occurred, a brief examination of the regulatory background is in order. The milieu in which we find ourselves is the Public Switched Telephone Network ("PSTN"), which is comprised of many providers, including local telephone companies, long distance telephone companies, cable telephone providers, and wireless telephone providers. The providers are expected to pay their fair share of costs for using the PSTN.[2] They use different means of transmitting their traffic, but are all considered to be "telecommunications carriers," as defined by State and Federal law.[3]

GNAPs and Cox entered into an Interconnection Agreement that provides for a form of inter-carrier compensation. Inter-carrier compensation occurs whenever two or more carriers collaborate to complete a phone call over the PSTN. Section 251(b)(5) of the Telecommunications Act of 1996 (the "1996 Act"), 47 U.S.C. 251, requires interconnecting local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[4] Thus, reciprocal compensation requires carriers to

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[1] Events subsequent to the issuance of D.07-06-044, which include the dismissal of state appellate court proceedings, will be taken up in the rehearing of D.07-06-044.

[2] See authority cited in footnote 19, below.

[3] "Telecommunications carrier" means "any provider of telecommunications services…A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services." (47 U.S.C. §153(44).) On the federal level, "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." (47 USC §153(43).) "Telecommunications services" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." (47 U.S.C §153(46).) On the state level, see Public Utilities (PU) Code §§ 216, 233-34.

[4] 47 U.S.C. §251(b)(5).

compensate other carriers for transporting and terminating calls to another carrier's network. However, parties are permitted to use an arrangement called "bill and keep," whereby neither party charges the other for terminating traffic that originates on the other network.[5]

The Interconnection Agreement between GNAPs and Cox provides for three types of traffic: "Local Traffic, ISP-bound Traffic and IntraLATA Toll Traffic between the Parties".[6] The Interconnection Agreement states that "[f]or all Local Traffic and ISP-bound Traffic, the Parties agree to mutual traffic exchange without explicit compensation.[7] "Local traffic" stays within the boundaries of a local calling area, whose parameters are set by the state public utilities commission. Customers also know local traffic as "IntraLATA" services, which is service within the local access and transport area (LATA). Section 1.25 of the Interconnection Agreement defines "Local Traffic" as "traffic other than ISP-bound Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other party on that other Party's network."[8] The Agreement also contains additional technical specifications to identify local traffic and separate it, for billing purposes, from traffic subject to the termination fee arrangement.

Another type of traffic, "interexchange traffic," crosses the boundaries of local calling areas, but remains within the LATA. "Local toll" calls fall within the category of interexchange traffic.[9] These calls are also known as

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[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order (1996) 11 FCC Rcd 15499, 16045 ("*Local Competition Order*").

[6] Interconnection Agreement, Section 5.7.

[7] *Id*., Section 5.7.2. This is sometimes referred to as "bill and keep."

[8] Interconnection Agreement, Section 1.25.

[9] See *SBC Communs., Inc. v. FCC* (D.C. Cir. 2005) 407 F.3d 1223, 1227.

"IntraLATA toll" because they are long-distance calls within a single LATA.[10] Under the Interconnection Agreement, toll calls originating and terminating within a single LATA are subject to termination fees.

A. Reciprocal Compensation and Access Charges

Whether a call is "local" or "interexchange" makes a difference in terms of which regime of inter-carrier compensation, i.e., reciprocal compensation or access charges, applies to that call. In the *Local Competition Order*, the Federal Communications Commission ("FCC") determined that the reciprocal compensation provision of Section 251(b)(5) of the 1996 Act applies only to "local" traffic as defined by state commissions, and not to the transport and termination of interexchange traffic.[11] The FCC left with the state commissions the power to define local calling areas "consistent with [their] historical practice of defining local service areas for wireline LECs," and decided that the states should "determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different."[12]

B. "ISP-Bound" toll traffic is not subject to reciprocal compensation requirements.

Whether or not intraLATA toll traffic is "ISP-bound" adds another wrinkle to the issue of inter-carrier compensation. Due to opportunities for regulatory arbitrage, the FCC issued the *Internet Traffic Order*, ruling that ISP-bound traffic was not subject to reciprocal compensation obligations under section

[10] *SBC Communs., Inc. v. FCC* (5th Cir. 1998) 154 F.3d 226, 231, n. 3.
[11] *Local Competition Order*, *supra*, at 16013, ¶1034.
[12] *Local Competition Order*, *supra*, at 16013, ¶1035.

251 of the 1996 Act, 47 U.S.C. Section 251.[13] The D.C. Circuit Court of Appeals vacated the *Internet Traffic Order* and remanded it to the FCC after finding the FCC's rationale for treating ISP-bound traffic as interstate traffic for purposes of reciprocal compensation was inadequate.[14] In response to the remand, in 2001, the FCC issued the *ISP Remand Order,* again declaring that ISP-bound traffic is not subject to the reciprocal compensation obligations of Section 251(b)(5), but rested its decision on a different legal ground.[15] The D.C. Circuit Court of Appeals found the new legal grounds to be inadequate, but it did not vacate the FCC Order.[16] This leaves the *ISP Remand Order* in place. It also leaves in force the pre-1996 Act access charge regime which provides that "*[t]raffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges*."[17]

C. Toll traffic that is not "ISP-Bound" is subject to inter-carrier compensation.

What is involved in this case is inter-carrier compensation for toll traffic that is *not* ISP-bound. This distinction is important because, as explained above, with toll traffic that is ISP-bound, carriers are *not* required to pay compensation under the FCC's reciprocal compensation regime. In contrast, toll

[13] *Internet Traffic Order* (1999)14 FCC Rcd 3689, 3705-06, ¶26, ¶27. Because traffic to an ISP flows exclusively in one direction, it creates an opportunity for regulatory arbitrage because ISPs typically generate large volumes of traffic that is one-way, i.e., delivered to the ISP. Reciprocal compensation flows from the LEC whose customer makes the call to the LEC whose customer receives the call. Some carriers saw the opportunity to sign up ISPs as customers and collect, rather than pay, compensation.

[14] *Bell Atl. Tel. Cos v. FCC* (D.C. Cir. 2000) 206 F.3d 1. The Court rejected the FCC's use of "end-to-end analysis" (which is traditionally used to determine whether a call is within the FCC's interstate jurisdiction) for purposes of reciprocal compensation. Therefore, the Order was vacated and remanded because the FCC failed to explain why its end-to-end analysis was controlling for determining whether calls to ISPs were local for purposes of reciprocal compensation.

[15] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic* (2001) *Order on Remand and Report and Order*, 16 FCC Rcd 9151, 9187 *("ISP Remand Order").*

[16] See *WorldCom, Inc. v. FCC* (D.C. Cir. 2002) 288 F.3d 429, 433-434 (emphasis added).

[17] *Local Competition Order, supra,* at 16012-13, ¶1033.

calls that are not ISP-bound and terminate on the PSTN are subject to access charges. Contrary to GNAPs' claims, the *origin* of its ISP calls is irrelevant for purposes of reciprocal compensation.

IV. DISCUSSION

At first blush, it appears that this application for rehearing is simply a case of whether the Commission should have granted summary judgment to Cox. It is that and more. The underlying issue in this case is whether GNAPs should be required to honor its Interconnection Agreement with Cox and pay its fair share for using the PSTN, or whether it should be allowed to game the system by obfuscating the real issues and justifying its refusal to pay by misinterpreting the law.[18] As D.07-01-004 pointed out, federal policy is to ensure that the cost of terminating calls on the PSTN is shared equitably among all those sending calls to the PSTN, and this includes carriers like GNAPs, which send ISP-originated calls:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, *irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.* We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways. (Emphasis supplied.)[19]

Under this policy, GNAPs should not be allowed to escape its obligation to pay its fair share for using the PSTN based on the pretext that it did not originate the traffic terminated by Cox. The Commission should not allow this to happen for the reasons elucidated below.

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[18] GNAPs has a history of expressing unconventional interpretations of applicable telecommunications law and regulations in order to evade paying access and other network charges. *Global NAPs, Inc. v. Verizon New England, Inc*., 2006 U.S. App. LEXIS 8805 (April 11, 2006) is one such case with issues similar to the matter before this Commission. GNAPs lost this case and failed to cite to it in its discussion of the law, although not required to do so. The ALJ did not appreciate such litigation tactics and warned against its repetition. (See *ALJ Ruling Denying Motion to Dismiss or Stay Proceeding* (filed 7/6/06), p. 4, n. 3.)

[19] See D.07-01-004, p. 5, citing *In the Matter of IP-Enabled Services Notice of Proposed Rulemaking,* WC Docket 04-36 (March 10, 2004), ¶¶33, 61.

A. GNAPs' argument that the Commission must use Code of Civil Procedure Section 437(c) to dispose of the summary judgment motion has no merit.

GNAPs claims that D.07-01-004 is unlawful partly because the Commission did not follow Code of Civil Procedure Section 437(c). This statement is erroneous and without merit. D.07-01-004 states that although Rule 11.2 of the Commission's Rules of Practice and Procedure does not discuss the standards to be applied when the Commission considers a motion for summary judgment, the Commission *generally* follows the standard set forth in "Civil Code 437(c)."[20] As GNAPs correctly noted, the Commission obviously meant CCP Section 437(c). The point is that the Commission acknowledged that it has *generally* followed the standard set forth in CCP Section 437(c). Under that standard, a motion for summary judgment shall be granted when the pleadings demonstrate that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Strict compliance with the procedural requirements of CCP Section 437(c) was neither expressed nor implied in D.07-01-004. The Commission is not bound by the procedural requirements of CCP Section 437(c) because it is endowed by Article XII, Section 2 of the California Constitution with the authority to establish its own rules and procedures.[21] The Commission's Rules of Practice and Procedure do not require GNAPs to be given 75 days' notice of Cox's motion, or that Cox must present a separate statement of undisputed facts, as argued by GNAPs.[22] Nor is GNAPs' claim of an alleged "right" to oral argument to be

[20] D.07-01-004, p. 3. GNAPs latches onto an obvious clerical error rather than focus on issues of substance. Indeed, GNAPs admits that "it is clear that the Commission intended to apply Code of Civil Procedure Section 437(c)." (GNAPs' Rhg. App., p. 3)

[21] Article XII, Section 2 of the California Constitution provides in pertinent part that the Commission may establish its own procedures, subject to statute and due process. (Cal. Const. art XII, Sec. 2) This provision is also contained in Pub. Util. Code, Section 1701(a).

[22] GNAPs reluctantly conceded that "Cox's failure to submit a separate statement, by itself, may not render the Decision unlawful." (GNAPs' Rhg. App., p. 8.)

evaluated under CCP Section 437(c). Rather, the Commission's specific rules addressing oral argument are controlling.

1. GNAPs Did Not Present Any Disputed Material Facts.

GNAPs' claims that the Commission improperly disregarded disputed material facts it presented in opposition to the motion for summary judgment. GNAPs states that it submitted admissible evidence disputing the following facts: 1) the calls at issue originated from GNAPs' Los Angeles switch; and 2) the calls were intrastate, intraLATA calls.[23] GNAPs' allegations have no merit.

With respect to the call origination issue, GNAPs' position is that because the traffic it sent to Cox originated with Internet Service Providers ("ISPs"), the traffic is jurisdictionally interstate and GNAPs is exempt from access charges. D.07-01-004 correctly concluded that GNAPs misreads applicable law because "[t]he only relevant exemption from the access charge regime under Federal Law is for *ISP-bound traffic* rather than *ISP-originated traffic*, a conclusion we reached in our recent *AT&T-MCImetro* decision involving facts very similar to those in this case [citation omitted]."[24] Therefore, the issue is not where the calls originate, but where they are bound. None of the calls at issue were ISP-bound.

GNAPs relies on the Masuret Declaration to dispute Cox's assertion that the calls at issue here all originate from a GNAPs switch located in Los Angeles. GNAPs asserts that "Global NAPs provides no origination dial tone services, … the origination of the communications [at issue] did not originate from Global NAPs switch, [and] ... the communications at issue are received exclusively from [Enhanced Service Providers]…."[25] This statement is neither

[23] GNAPs' Rhg. App., p. 4.

[24] D. 07-01-004, p. 5 (emphasis in original).

[25] GNAPs' Rhg App., p. 4, quoting Masuret Declaration ¶3, ¶4, and ¶5 (emphasis in original).

material or relevant, nor is it a fact. As previously discussed, the only relevant exemption from access charges is for "ISP-bound" traffic, rather than "ISP-originated" traffic. Moreover, GNAPs' use of "Enhanced Service Providers" ("ESPs"), as opposed to "ISPs," is not factually accurate and has the effect of confusing the reader.[26]

Furthermore, for summary judgment purposes, whether or not there is a federal exemption from access charges is a legal, not a factual, question. Thus, GNAPs' submission raises no disputed factual issues. Also, in its response to GNAPs' rehearing application, Cox asserts that the origination of the calls is not a material factual dispute because GNAPs does not dispute that it sent the calls to Cox for termination to Cox end-use customers.[27]

The fact is that Cox's motion for summary judgment was based on three undisputed factual assertions:

1. All the calls for which Cox has billed GNAPs are intra-LATA toll calls [footnote omitted].

2. None of the calls for which Cox has billed GNAPs are ISP-bound calls.

3. The Interconnection Agreement between Cox and GNAPs directs the party originating intra-LATA toll calls that are not ISP-bound to pay termination charges to the terminating party.[28]

Regarding the nature of the calls, it is undisputed that they were intrastate, intraLATA toll calls. As D.07-01-004 points out, GNAPs admitted in its answer to Cox's complaint that the only area of dispute involved intraLATA toll calls in California.[29]

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[26] The more precise term is "ISPs," which is a subclass of "ESPs."

[27] Response of Cox California Telcom, LLC to Application for Rehearing of D.07-01-004, p. 6.

[28] D.07-01-004, p. 4.

[29] D.07-01-004, p. 4, n. 2.

With respect to the second factual assertion, the Commission determined that none of the calls for which GNAPs has refused to make payment were ISP-bound calls.[30] GNAPs has not denied that the calls at issue were not ISP-bound; therefore, this assertion, too, is undisputed.

As to the third factual assertion that the party originating intra-LATA toll calls that are not ISP-bound must pay termination charges to the terminating party, D.07-01-004 determined that the Interconnection Agreement provides for the payment of termination charges for intra-LATA toll calls originated by one party and terminated by the other, and Cox terminated intraLATA toll calls originated by GNAPs.[31] GNAPs does not deny the terms of agreement between the parties or that Cox terminated its calls.[32]

Therefore, GNAPs failed to meet the basic threshold for defeating a motion for summary judgment, i.e., there must be a material, factual dispute. The presence of a factual conflict will not defeat a motion for summary judgment unless the fact in dispute is a material one.[33] GNAPs did not prevail because the Commission determined that there was no triable issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

2. GNAPs is not exempt from terminating access charges.

GNAPs claims to be exempt from terminating access charges because the traffic *originated* with ESPs. We rejected this appellation in D. 07-01-004, and we reject it now because it has the effect of confusing the reader, among other things. "ESPs," the precursors to the 1996 Act's information service providers, offer data processing services, linking customers and computers via the

[30] See D.07-01-004, p. 7, Finding of Fact No. 6.

[31] See D.07-01-004, p. 7, Findings of Fact Nos. 2 and 3.

[32] The obligation to pay for the termination of intraLATA toll calls is found under Section 5.7.5 of the Interconnection Agreement.

[33] *Angelus Chevrolet v. State of California* (1981) 115 Cal.App.3d 995, 1002.

telephone network.[34] The more precise term is "ISPs," which is a subclass of "ESPs." An "ISP" is a company that provides access to the Internet for business and residential customers through a connection, which could be a broadband connection (cable broadband or digital subscriber line ("DSL")), or a dial-up connection. GNAPs may have chosen to describe its traffic as originating with "ESPs" because when the FCC established the access charge regime for long-distance calls in 1983, it exempted ESPs from the access charge system.[35] The FCC reaffirmed this decision in 1991, and again in 1997.[36] We are not dealing with ESPs here; we are dealing with intraLATA toll calls that are not ISP-bound.

GNAPs misrepresented the *ISP Remand Order* in its efforts to avoid compensating Cox for terminating its calls. The *ISP Remand Order* addressed only the question of why ISP-bound traffic should be viewed as interstate. Nowhere in the *ISP Remand Order* did the FCC address ISP-*originated* traffic, which is what GNAPs contends it transports to Cox. Since the calls are intraLATA toll traffic that is not ISP-bound, GNAPs has an obligation to pay access charges pursuant to FCC rules, this Commission's order, and the Interconnection Agreement itself.

B. The Commission did not deny GNAPs due process when it ruled on the summary judgment motion.

GNAPs alleges that the Commission denied it due process when it "expressly adopted" CCP Section 437(c) in ruling on the motion for summary judgment, and denied it the "right" to oral argument on the motion. This argument has no merit. Not only did the Commission not pledge to follow CCP Section 437(c) strictly, but oral argument is not a right under the Commission's Rules of Practice and Procedure. The California Supreme Court states as follows: "[An

[34] *MCI Telcommunications Corp. v. FCC* (D.C. Cir. 1995) 57 F.3d 1136, 1138.

[35] *In the Matter of MTS & WATS Market Structure* (1983) 97 FCC.2d 682, 711-715, ¶¶ 77-83.

[36] *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture* (1991) 6 FCC Rcd 4524, 4534, ¶54, and *In the Matter of Access Charge Reform* (1997) 12 FCC Rcd 15982, respectively.

administrative hearing] consists of any confrontation, *oral or otherwise*, between an affected individual and an agency decision-maker sufficient to allow [an] individual to present his [or her] case in a meaningful manner. Citation omitted]"[37] GNAPs has taken advantage of that opportunity with a hearing and a multitude of filings at the Commission.

Article XII, Section 2 of the California Constitution endows the Commission with the authority to establish its own rules and procedures. Accordingly, the Commission has its own rules pertaining to oral argument. Under the Commission's Rules of Practice and Procedure, the Commission has complete discretion to determine whether oral argument is appropriate in any given matter.

The Commission's Rules do not speak specifically to oral argument in summary judgment; however, they address oral argument in a wide variety of proceedings.[38] Oral argument may be granted on rehearing, pursuant to Rule 16.3, if the Commission determines that it will materially assist the Commission in resolving the application, and the application or response raises issues of major significance for the Commission.[39] GNAPs did not satisfy any of the requirements for oral argument.

GNAPs presented no evidence that it used any of the Commission's procedural vehicles to request oral argument except in this rehearing. Yet, GNAPs asserts that "[t]he ALJ, and then the Commission, exceeded the authority of any other judge hearing and ruling on a motion for summary judgment in that they denied Global NAPs the opportunity to be heard on the Motion. The Decision

[37] See *Lewis v. Superior Ct.* (1999) 19 Cal.4th 1232, 1247 (emphasis in original).

[38] Under the Commission's Rules of Practice and Procedure, the criteria for final oral argument vary according to the type of proceeding. Rule 11.7 provides that oral argument may occur in discovery disputes and other procedural disputes referred to a Law and Motion Administrative Law Judge for resolution. Rule 13.12 applies to oral argument in adjudicatory proceedings. Rule 13.13 applies to oral argument in ratesetting and quasi-legislative proceedings. Rule 16.13 applies to oral argument in applications for rehearing.

[39] Rule 16.3, Cal.Code Regs., tit. 20, Section 16.3.

violates Global NAPs' right to due process."[40] The question of whether the Commission exceeded its authority is a legal question for which oral argument is not required.

V. CONCLUSION

For all of the foregoing reasons, GNAPs has failed to demonstrate grounds for the rehearing of D.07-01-004. Therefore, rehearing should be denied. However, we correct a clerical error cited by GNAPs in the rehearing application.

THEREFORE IT IS ORDERED that:

1. Page 3, last paragraph, last line, should read as follows:

   "…we have generally followed the standard set forth in the Code of Civil Procedure §437(c)…."

2. GNAPs' request for oral argument is denied.
3. GNAPs' application for the rehearing of D.07-01-004, as modified, is hereby denied in all respects.

This order is effective today.

Dated August 23, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
TIMOTHY ALAN SIMON
Commissioners

Commissioners John A. Bohn and Rachelle B. Chong recused themselves from this agenda item and were not part of the quorum in its consideration.

[40] Global NAPs' Rhg. App., p. 9.