

State of New Hampshire
Before the New Hampshire Public Utilities Commission

Joint Petition of Hollis Telephone Company,
Inc., Kearsarge Telephone Company,
Merrimack County Telephone Company, and
Wilton Telephone Company, Inc., for Authority
to Block the Termination of Traffic from
Global NAPS, Inc., to Exchanges of the Joint
Petitioners in the Public Switched Telephone
Network

Plaintiffs,

v.

GLOBAL NAPS, INC.,

Defendant

Case No. DT 10-137

**RESPONSE OF GLOBAL NAPS, INC. IN FAVOR OF PREVENTING CUT
OFF BY FAIRPOINT AND GLOBAL'S PROVISION OF SECURITY BOND**

FairPoint asked this Commission for permission to block interstate telecommunications traffic from Global, on the grounds that Global had failed to pay standard access rates for the traffic it sent to FP over the last two years. Motion for Authority to Disconnect Global NAPS (Filed May 13, 2010) (Mot. for Disconnection) at ¶¶1,9. Global responded that the parties' ICA contains a prohibition against charging traffic that touches the internet at higher rates than those set by the FCC for such traffic. Global NAPS' Opposition to FairPoint Motion to Terminate (filed March 25, 2010) (Global Opp.) at 2, 4 (citing §8.1 of FP-Global ICA). Global stated that it had protested the charges and offered to prove promptly that it did in fact send traffic that always touched the internet. Global Opp. at 11-14, 17. This Commission, rather than granting FP's motion, set the dispute down for a pre-hearing conference and a technical hearing on

June 30. Order of Notice (Issued June 9, 2010) at 4. Global attended the technical hearing with technical witnesses and an expert witness who supported its position. FairPoint did not bring any witnesses.

The result of the hearing was a briefing schedule ending on July 26. *See* Staff Report on Technical Session (Issued July 2, 2010) at 2. Nevertheless, FairPoint renewed its threat, stated in its letter sent before the hearing, to cut off service unless Global promptly posted an assurance of \$394,214, which covered two months of service under FP's disputed rates. FairPoint Demand for Assurance of Payment (Filed June 17, 2010) at 2. Global then moved this Commission to order FP not to block traffic until its motion had been resolved. Global NAPs Motion Requesting that the Commission Issue Order to Prevent FairPoint from Disconnecting Global NAPs before Resolution of Motion to Disconnect (Filed July 7, 2010) at 2, 6. FP has responded with a defense of its proposed premature cut-off. FairPoint Objection to Global's Motion (Filed July 14, 2010) (FP Obj.). In the alternative, FP suggested that the Commission should set a bond, in the new amount of \$788,428, calculated using the monthly cost of all charges FP had claimed in its disputed invoices and assuming four more months of service. FP Obj., at 11.

Global has pointed out during these proceedings that the appropriate rate for VoIP compensation is \$.00045. Hearing Trans., at 35, lines 1-4, at 179, lines 29-31, 180, lines 1-12. The FCC has always insisted that enhanced traffic should not be subjected to "rate shock" that would deprive callers of new, low-cost services.¹ Major carriers thus charge

¹ *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 977 (2005) (stating that the FCC has found it "...unwise to subject enhanced service to common-carrier regulation given the fast moving competitive market in which they are offered."); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, 2633 (1988) (stating that "the imposition of access charges ...could cause such disruption...that the provision of enhanced services might be impaired."); *In the Matter of MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC

\$.00045 for VoIP termination. Verizon, FP's predecessor, testified in a Global case in New York² that they charged VoIP carriers a unitary rate of \$.00045 per MOU. *See* Attached Transcript. This fact is exhibited (in section 3(a) at 34) in an ICA on file with the Commission, between Verizon and SBC.³ Two things follow from the above: First, the \$.00045 rate, having been approved in filed ICAs (in New Hampshire as well as other states), is based on cost. 47 U.S.C. 252(d)(1)(A)(i). Second, charging a rate higher than \$.00045 for termination of VoIP traffic would be discriminatory, non-cost based and anti-competitive, in violation of the TCA. *See* 47 U.S.C. 251(c)(2)(D); 47 U.S.C. 252(d)(1)(A)(i-ii).

Accordingly, Global has calculated its probable number of minutes to be sent to FP for termination in New Hampshire during the two months that should be the maximum for terminating this case (Global disagrees with FairPoint's 4-month estimate, given that the briefing of the issues presented in FairPoint's Motion to Disconnect ends this month), and determined that the sum of \$13,500 would cover those minutes at the rate of \$.00045. We enclose with this reply a check to the Commission for deposit in an escrow account. Thus, we accept FP's suggestion that the Commission should set and accept a bond of appropriate size. We assume that FP is saying that, if that is done, it will not cut Global off prior to the end of this proceeding.

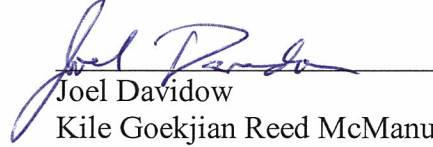
2d 682, ¶¶ 77-83 (1983) (noting rate shock that enhanced service providers would experience if full access charges were imposed).

² *Manhattan Telecommunications Corp. (MetTel) v. Global NAPs Inc.*, 2010 WL 1326095 at*1 (S.D.N.Y. Findings of Fact and Conclusions of Law issued March 31, 2010).

³ Amendment Available at:

<http://www.puc.nh.gov/Telecom/Filings/Interconnection%20Agreements/DT%2008-156%20FairPoint%20and%20ComTech%2021%20LLC%20Interconnection%20Agreement.pdf>

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Joel Davidow", is written over a horizontal line.

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Dated: July 16, 2010

9994MAN1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x
2
3 MANHATTAN TELECOMMUNICATIONS CORP.,

4
4 Plaintiff,

5 v.

08 CV 3829 (JSR)

6 GLOBAL NAPS, INC.,

7 Defendant.
8
8 -----x
9

9 New York, N.Y.
10 September 9, 2009
10 11:20 a.m.
11

12 Before:

13 HON. JED S. RAKOFF
13

14 District Judge
14

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25

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9994MAN1

Munsell - cross

1 compensation and you mentioned access charges. Do you recall
2 that?

3 A. Yes.

4 Q. When there is an ICA, that ICA can set up any method of
5 billing at all, can't it; it doesn't have to be either
6 reciprocal comp or access charges?

7 A. I don't know the answer to that.

8 Q. I am saying that the contract rates in an ICA do not have
9 to be the rates that would result from either of the things you
10 mentioned, is that correct?

11 MR. KLEIN: Objection; speculation, ambiguous.

12 MR. DAVIDOW: The witness testified he is an expert in
13 negotiating ICAs?

14 THE COURT: I don't think he did but in any event I
15 think he has indicated previously he doesn't have knowledge to
16 answer this question. But I will allow the question just to
17 make sure that I have an understanding.

18 Do you have the question?

19 THE WITNESS: Yes.

20 THE COURT: What's your answer?

21 THE WITNESS: I don't know.

22 THE COURT: That's the answer: I don't know.

23 Put another question.

24 Q. In regard to carriers who send to traffic and who tell you
25 they are sending you VoIP traffic, have you developed a unitary

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9994MAN1 Munsell - cross

1 rate to charges those carriers?

2 A. In certain contracts, yes.

3 Q. What is that unitary rate?

4 A. I believe it's 00045; it might be 0045.

5 Q. So your first answer was 00045, four one-hundredths of a
6 cent?

7 A. Right.

8 MR. KLEIN: Objection to the characterization of the
9 testimony.

10 THE COURT: Sustained.

11 Q. Would your testimony in Pennsylvania refresh your
12 recollection on that point?

13 A. As to the rate?

14 Q. Yes.

15 A. Yes.

16 Q. When a carrier, would it be the case that --

17 THE COURT: I heard from your last question you were
18 going to show him the relevant portion.

19 MR. DAVIDOW: It will take a little while to get; I
20 have to see if there is and break and then come back to that.

21 THE COURT: Go ahead.

22 MR. DAVIDOW: I had not anticipated it would change.

23 THE COURT: Fine.

24 Q. If the carrier did not represent to you that they were
25 delivering VoIP, would the rate they would pay you be higher

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CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing to be served on the attached service list.

Executed this day, July 16, 2010.

A handwritten signature in black ink, appearing to read 'Victoria Romanenko', written over a horizontal line.

Victoria Romanenko

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DT 10-137

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