

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 08-028

Hollis Telephone Co., Inc., Kearsarge Telephone Co.,  
Merrimack County Telephone Co. and Wilton Telephone Co.  
Joint Petition for Authority to Block the Termination  
Of Traffic from Global NAPs

**Brief in Support of Joint Petitioners' Requested Relief**

This brief is submitted on behalf of Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company, Inc., Dixville Telephone Company and Northern New England Telephone Operations LLC, d/b/a FairPoint Communications-NNE ("FairPoint") (collectively, the "Joint Intervenors"). The Joint Intervenors urge the Commission to grant the petition by Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. (the "Joint Petitioners") to block certain access traffic delivered to them by Global NAPs. This case is a simple one in which one carrier is obtaining services from other carriers and refusing to pay for them. The situation is untenable and should not be allowed to continue. The Joint Intervenors further urge the Commission to conduct a compliance audit of Global NAPs.

**BACKGROUND**

Global NAPs, Inc. has been authorized to engage in business in New Hampshire as a competitive local exchange carrier. Stipulated Facts No. 1. Three affiliates of Global NAPs, Inc., namely Global NAPs Networks, Inc., Global NAPs Realty, Inc. and Global NAPs New

Hampshire, Inc. have not been authorized to engage in business as competitive local exchange carriers in New Hampshire. Stipulated Facts No. 5. None of the Global NAPs entities is registered in New Hampshire as a competitive toll provider. Stipulated Facts Nos. 4 and 5. Nevertheless, the Global NAPs entities (collectively, "Global NAPs") "combine to provide services in New Hampshire." Stipulated Facts No. 2.

Global NAPs does not provide dial tone service to any customers in New Hampshire. Stipulated Facts No. 8. Instead, Global NAPs terminates calls for voice over internet protocol ("VoIP") providers and delivers calls to internet services providers ("ISPs") and e-fax service providers. Stipulated Facts Nos. 9 and 10. Global NAPs' customers represent in their contracts with Global NAPs that they are enhanced service providers ("ESPs"); however, Global NAPs does not verify this information or the nature of the traffic being delivered to it. Stipulated Facts No. 11.

Global NAPs can receive traffic in one of three formats: time division multi-plexing ("TDM"), asynchronous transfer mode ("ATM") or internet protocol ("IP"). Global NAPs does not know the original format of traffic it receives, nor does it distinguish the format of the traffic it receives. Stipulated Facts Nos. 13 and 14. Global NAPs converts all traffic it receives into ATM format for transport on its own network. Traffic delivered to the public switched telephone network is converted to the TDM format. Stipulated Facts Nos. 15 and 16. All traffic at issue in this proceeding is delivered by Global NAPs to FairPoint in traditional TDM format at FairPoint's tandem switch in Manchester, New Hampshire. In turn, FairPoint terminates the traffic at issue in this proceeding the same way it terminates a traditional voice call, that is, through meet point billing with the independent ILEC. Stipulated Facts Nos. 17 and 18.

Global NAPs delivers calls to FairPoint for transmittal to the Joint Petitioners with the call identification information typically used for routing and billing telephone traffic on the public switched telephone network. Stipulated Facts Nos. 19-23; Supplemental Responses dated July 10, 2008 to data requests by the Joint Petitioners.

Global NAPs is able to exchange traffic with the Joint Petitioners pursuant to the interconnection agreement between Global NAPs, Inc. and Verizon New England Inc. dated January 17, 2003 (the "Interconnection Agreement"). The obligations of Verizon New England Inc. under the Interconnection Agreement have been transferred to and assumed by FairPoint. The Interconnection Agreement was provided by Global NAPs in its response to NHTA's data request NHTA-1. The Interconnection Agreement provides Global NAPs with the ability to interconnect with FairPoint tandem switches and prescribes terms and conditions for this interconnection and the exchange of traffic. Included with the Interconnection Agreement is an "Interconnection Attachment" (id., p. 52). Section 8 of the Interconnection Attachment provides as follows:

"8. Other Types of Traffic

- 8.1 Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic<sup>1</sup> shall be governed by the terms of the FCC Internet Order<sup>2</sup> and other applicable FCC orders and FCC Regulations; and (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations.

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<sup>1</sup> Defined in Section 2.43 of the Glossary in the Interconnection Agreement as "Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission."

<sup>2</sup> Defined in Section 2.36 of the Glossary in the Interconnection Agreement as "Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131 Docket Nos. 96-98 and 99-68 (adopted April 18, 2001)."

- 8.2 Subject to Section 8.1 above, *interstate and intrastate Exchange Access, information access, exchange services for Exchange Access or information access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.* [Emphasis added.]
- 8.3 For any traffic originating with a third party carrier and delivered by GNAPS to [FairPoint], GNAPS shall pay [FairPoint] the same amount that such third party carrier would have been obligated to pay [FairPoint] for termination of that traffic at the location the traffic is delivered to [FairPoint] by GNAPS.
- 8.4 Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic.

Finally, the Interconnection Attachment also includes the following provisions of distinguishing local traffic entitled to reciprocal compensation from traffic requiring access charges:

“7.3.1 Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access (including, without limitation, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic) except as otherwise provided in section 7.3.8), information access, or exchange services for Exchange Access or information access.”

\* \* \*

“7.3.8 Reciprocal Compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic), defined for use in this Agreement as calls in which a GNAPS Customer is assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such Customer’s station, except as provided in the next sentence. Pursuant to the Arbitration Order and the Final Order, Order No. 24,080 in DT 00-223 and 00-054 dated October 28, 2002 (“Generic Order”) to the extent that the Generic Order remains Applicable Law, and for purposes of this Agreement only, Reciprocal Compensation shall apply (and access charges shall not apply to) to non-Internet traffic originated by [FairPoint] to a GNAPS V/FX number if GNAPS is providing facilities-based local dial-tone service (as specified in the Arbitration and Generic Orders) to, and has certified to the Commission that it is providing such service to, at least one Customer physically located in the [FairPoint] exchange in New Hampshire to which the called

number is rated, as reflected in the LERG.<sup>3</sup> *For the avoidance of any doubt, and except as provided in the previous sentence, GNAPs shall pay [FairPoint's] originating access charges for all V/FX Traffic originated by a [FairPoint] Customer, and GNAPs shall pay [FairPoint's] terminating access charges for all V/FX Traffic originated by a GNAPs Customer.*" [Emphasis added.]

## ARGUMENT

### 1. This Commission Has Jurisdiction Over the Petition by the Joint Petitioners

This Commission clearly has jurisdiction to hear the petition that has been presented to it by the Joint Petitioners. Each of the Joint Petitioners and Global NAPs, Inc. is a public utility under New Hampshire law. In the case of the Joint Petitioners, they are incumbent local exchange carriers with a long standing history of acting as telephone public utilities pursuant to New Hampshire law. In the case of Global NAPs, Inc., it is a public utility by virtue of having been certified as a competitive local exchange carrier. Stipulated Facts No. 1; RSA 362:2; RSA 374:22-g. The other Global NAPs affiliates appear to be involved in providing public utility service without any authorization from this Commission.

RSA 365:1, 3 and 4 provide as follows:

"365:1 Complaint Against Public Utilities. – Any person may make complaint to the commission by petition setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or of the terms and conditions of its franchises or charter, or of any order of the commission.

365:3 Reparation. – If the public utility complained of shall make reparation for any injury alleged and shall cease to commit or to permit the violation of law, franchise, or order charged in the complaint, and shall notify the commission of that fact before the time allowed for answer, the commission shall not be required to take any further action upon the charges.

365:4 Investigation. – If the charges are not satisfied as provided in RSA 365:3, and it shall appear to the commission that there are reasonable grounds therefor, it

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<sup>3</sup> Global NAPs states that it does not provide dial tone service at all in New Hampshire. Therefore, it would not qualify to provide the referenced V/FX service upon final implementation of this Commission's rulings in DT 00-223.

shall investigate the same in such manner and by such means as it shall deem proper, and, after notice and hearing, take such action within its powers as the facts justify.”

The petition by the Joint Petitioners clearly invokes this Commission’s jurisdiction by claiming that Global NAPs is attempting to obtain services without paying for them in contravention of the access tariffs of the Joint Petitioners.

Additionally, Global NAPs’ conduct of obtaining access services without paying for them contravenes the Interconnection Agreement approved by the Commission. The United States Court of Appeals for the First Circuit has characterized the state commission’s jurisdiction in such cases as follows:

“Sections 251-52 [of the Telecommunications Act of 1996] provide for a dual federal-state regime: the FCC determines what UNE elements must be provided and sets pricing policy; state commissions oversee the adoption of agreements or SGATs providing such UNEs to competitors at prices based on those principles. 47 U.S.C. § 252(a), (b), (e), (f). Disputes as to the adoption of the agreements submitted to state commissions go to federal, rather than state, court for review. *id.* § 252(e), *although implementation issues may arise in state proceedings*. In short, the states have a major role under these sections.”

*Verizon New England, Inc. v. Maine Public Utilities Commission*, 509 F.3d 1, 7 (1st Cir. 2007) (emphasis added). This Commission clearly has jurisdiction over this dispute.

2. The Joint Petitioners are Entitled to Be Paid for the Access Services that They Provide to Global NAPs.

The access tariffs are more than mere contracts. They have the force and effect of law. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 565-566 (1980). This basic principle applies to the tariffs of the Joint Petitioners and the Joint Intervenors. The traffic presented to the Joint Petitioners arrives in TDM format and is handled by the Joint Petitioners as traditional access traffic. The Joint Petitioners receive Global NAPs traffic from outside the local calling area and terminate it. The Joint Petitioners do not act on the content of the transmissions or

change the protocol used. The Joint Petitioners provide plain old telephone service in the form of exchange access, and they are entitled to be paid for it as provided in the respective tariffs. Global NAPs has no legal right to transport traffic over the networks of the Joint Petitioners other than under those access tariffs.

Global NAPs apparently claims that because the traffic may have utilized internet protocol at some point during the transmission prior to its arrival at Global NAPs (although Global NAPs does not know this to be case or take steps to verify the same), that such traffic is exempt from access charges. There is no such law, rule or regulation that provides a blanket right to use somebody else's network for nothing. For example, if an internet service provider purchases business exchange lines from an incumbent local exchange carrier for the purpose of receiving internet-bound traffic at dial-up modem banks, the internet service provider cannot take the position that it is exempt from tariffed charges for the business exchange lines. If Global NAPs desires a T-1 line from another LEC to provide the transport of traffic that it claims is ESP traffic, Global NAPs cannot demand that the other LEC provide the T-1 for nothing. The LEC provides the service and is entitled to be paid for it under its tariff. This is case is no different.

Moreover, Global NAPs is obligated under the Interconnection Agreement to pay for access services. The Interconnection Agreement sets terms and conditions for interconnection and the purchase of certain wholesale services from FairPoint and does not exempt this traffic from access charges. On the contrary, Global NAPs, Inc. agrees in the Interconnection Agreement expressly that "interstate and intrastate Exchange Access, information access and exchange services for Exchange Access or information access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and *applicable Tariffs*."

Interconnection Agreement, Section 8.2 [emphasis added]. Section 12 of the Interconnection Agreement provides for tandem transit traffic, which is locally dialed traffic in which the FairPoint function is to transport locally dialed traffic from one carrier to another where neither end user is served by FairPoint. For transiting traffic that is not local traffic, Section 12.1 unequivocally provides that “switched exchange access service traffic is not tandem transit traffic.”

Therefore, for exchange access traffic, applicable tariffs apply. FairPoint’s access tariff, on file with the Commission, provides a process for meet point billing when multiple carriers are involved for exchange access traffic carried over the FairPoint tandem. The meet point billing arrangements apportion the local transport termination and facility and switched access channel mileage recurring charges. Under Section 3.1.2.k of the FairPoint access tariff, “all other recurring charges and [non-recurring charges] for services provided by each exchange telephone company are billed under each company’s applicable rates.”

Accordingly, applicable New Hampshire law, the tariffs of the Joint Petitioners and the Interconnection Agreement which Global NAPs, Inc. has executed, all provide for the payment of access charges to the Joint Petitioners. Global NAPs simply refuses to do so even though it uses these services.

Therefore, Global NAPs is liable to the Joint Petitioners for services rendered for which payment has not been received. To the extent that Global NAPs presses its claim that it has no agreements with the Joint Petitioners or any obligations under the respective tariffs of the Joint Petitioners, the Joint Petitioners have proposed a simple solution: simply allow them to disconnect and block and this traffic. The solution proposed is perfectly logical under the circumstances, and should be adopted by the Commission.



3. The FCC Rulings that Global NAPs Calls the “ESP Exemption” Do Not Bar this Commission from Enforcing the Applicable Access Tariffs.

Global NAPs makes the claim that its traffic is “Internet traffic not subject to access charges.” See “Global Answer to Joint Petition” dated March 18, 2008, ¶ 24. In the same document at ¶ 14, Global NAPs states as follows:

“The NHPUC’s jurisdiction is limited to local and intrastate traffic. Global exchanges traffic which is exclusively interstate in nature. Traffic originating from TDS companies is in-bound ISP traffic and traffic terminating to TDS is Enhanced Service Provider traffic. Both are subject to the sole and exclusive jurisdiction of the FCC. The most recent decisions at the 8th Circuit and a later clarification by a Nebraska federal court confirm such jurisdiction and the impossibility of a carrier to practically segregate inter versus intrastate even should this Commission desire to do so as Petitioners have suggested.”

Global NAPs is wrong. First of all, to the extent that Global NAPs is relying on the FCC order defined in the Interconnection Agreement as the “FCC Internet Order” (see p. 2 above), the United States Court of Appeals for the First Circuit has ended that discussion in *Global NAPs, Inc. v. Verizon New England*, 444 F. 3d 59 (1st Cir. 2006). The Court held that the preemptive effect of the FCC Internet Order was limited to the issue of reciprocal compensation for locally dialed calls to internet service providers. The traffic at issue here is not locally dialed traffic. Therefore, the FCC Internet Order has no effect on the obligations of Global NAPs to pay access charges.

Global NAPs also makes an oblique reference to “recent decisions at the 8th Circuit”. The Joint Intervenors assume that Global NAPs is referring to the decision of the United States Court of Appeals for the Eighth Circuit in *Minnesota Public Utilities Commission v. Federal Communications Commission*, 483 F.3d 570 (8th Cir. 2007). In that case, the Court upheld the action of the FCC in preempting certain state regulation of a certain type of voice over internet protocol (“VoIP”) service. The FCC had ruled that “nomadic” VoIP traffic was jurisdictionally

interstate because it would be “impractical” to separate such traffic into intrastate and interstate components based on current technology. 483 F.3d at 578-579. Importantly, the Court noted that the FCC did not classify VoIP traffic as “information service” traffic and upheld the FCC’s action in that regard. This ruling was dependent on the “nomadic” nature of the traffic at issue (Vonage traffic over the public internet). The Court quoted a paragraph from a separate FCC order on this point:

“[A]n interconnected VoIP provider with a capability to track the jurisdictional confines of customer calls would not longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is so because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.” Id. at 580, citing *Universal Service Contribution Methodology*, 21 F.C.C.R. 7518 at 7546 ¶ 56 (2006).

Global NAPs similarly cites the New York Public Service Commission decision dated March 20, 2008 in *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications Against Global NAPs, Inc. for Failure to Pay Intrastate Access Charges*. The ruling in that case also is confined to “nomadic” VoIP service. It has no bearing on fixed VoIP service or other non-local traffic. Most importantly, the New York Commission’s order starts a process for making sure that compensation is paid to the terminating LEC even for the nomadic VoIP traffic, stating:

“Any telecommunications carrier that delivers traffic over the public switched telephone network (PSTN) for another carrier can reasonably expect to be compensated irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.” Id., p. 15.

That says it all.

In this case, we do not know whether the traffic at issue is nomadic VoIP traffic. Based on the Stipulated Facts, Global NAPs does not know, does not check and, apparently, does not care. There is no basis to conclude what, if any, of this traffic is nomadic VoIP. In such a case,

it is not reasonable for this Commission to conclude that applicable tariff provisions have been preempted.

4. This Commission Should Conduct a Compliance Audit of Global NAPs.

The record in this case plainly shows violations by Global NAPs on New Hampshire laws and rules. There is substantial question whether the certified carrier in New Hampshire is providing any service at all. Instead, it appears likely that entities that are not certified to provide service in New Hampshire are in fact providing telecommunications services in violation of RSA 374:22. All Global NAPs entities admit that they are not certified as competitive toll providers. However, they are apparently carrying toll traffic in New Hampshire. According to the report of the Staff submitted in accordance with the Commission's Order No. 24,894 dated September 17, 2008, Global NAPs, Inc. has not submitted reports to the Commission required by applicable rules. The reports that Global NAPs has filed contain information that is potentially suspect. For example, the annual report for the fiscal year ended December 31, 2006, states that Global NAPs had no utility revenue derived from New Hampshire operations notwithstanding the substantial minutes of traffic delivered to the networks of the Joint Petitioners, not to mention the other exchange carriers in New Hampshire. If the customer base of Global NAPs, Inc. was transferred to an affiliate, were customers notified as required?

The Joint Intervenors urge the Commission to conduct a compliance review of Global NAPs, Inc. and its affiliates.

### **CONCLUSION**

The Joint Intervenors respectfully urge the Commission to take the immediate step of allowing the Joint Petitioners to cease providing exchange access service to Global NAPs and block incoming and outgoing Global NAPs traffic. This result is compelled by applicable

Commission regulations, and by the applicable Commission-approved tariffs and the Interconnection Agreement. The Joint Intervenors further urge the Commission to conduct a general compliance audit of Global NAPs, Inc. and its affiliates.

Respectfully submitted,

GRANITE STATE TELEPHONE, INC.  
DUNBARTON TELEPHONE COMPANY, INC.  
NORTHLAND TELEPHONE COMPANY OF  
MAINE, INC.  
BRETTON WOODS TELEPHONE COMPANY,  
INC.  
DIXVILLE TELEPHONE COMPANY  
NORTHERN NEW ENGLAND TELEPHONE  
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Dated: September 29, 2008

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### CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing response was forwarded this day to the parties by electronic mail.

Dated: September 29, 2008

By:



Frederick J. Coolbroth, Esq.