

**State of New Hampshire
Before the New Hampshire Public Utilities Commission**

DT 08-028

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

JOINT PETITIONERS' RESPONSE TO ANSWER OF GLOBAL NAPS, INC.

April 14, 2008

Submitted on behalf of:

**HOLLIS TELEPHONE COMPANY, INC.
KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE COMPANY
WILTON TELEPHONE COMPANY, INC.**

By:

PRIMMER PIPER EGGLESTON & CRAMER PC

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

JOINT PETITIONERS' RESPONSE TO ANSWER OF GLOBAL NAPs, INC.

1. Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc. (collectively, the "Joint Petitioners" or "TDS Telecom Companies"), by and through the undersigned counsel and pursuant to N.H. Admin. Rule Puc 204.04(a), hereby respond to the "Answer of Global NAPs, Inc." (the "GNAPs Answer"), which was filed on March 18, 2008, with the New Hampshire Public Utilities Commission ("Commission") on behalf of Global NAPs, Inc. ("GNAPs" or "Respondent"), in the above-referenced proceeding.

2. In accordance with Puc 204.04(a), the Joint Petitioners advise the Commission that, for the reasons stated below, they are not satisfied with the GNAPs Answer and respectfully ask the Commission to commence such investigation as may be needed and to grant the relief requested by Joint Petitioners in their Joint Petition of February 19, 2008.

3. The Joint Petitioners further respectfully request that, in the event the Commission determines that further investigation is needed, such investigation be conducted on an expedited basis so as to provide relief to the Joint Petitioners at the earliest opportunity.

4. In the GNAPs Answer, Respondent raises erroneous contentions designed to distract attention from the relevant facts and thereby delay the prompt consideration and adjudication of Joint Petitioners' claims.

5. Principally, Respondent erroneously contends that the Commission lacks jurisdiction over the traffic in question because, according to Respondent, such traffic consists only of "traffic to Internet Service Providers ['ISPs'] and traffic from Enhanced Service Providers ['ESPs']" that "is subject to the exclusive jurisdiction of the FCC [Federal Communications Commission]." *See* GNAPs Answer ¶1, at 1, and ¶14, at 2.

6. The known facts, however, do not support Respondent's contention. cursory review of terminating traffic records for Kearsarge Telephone Company, appears to amply refute GNAPs' contentions. These records identify the traffic in question with an originating Operating Company Number ("OCN") of 4975, which the Local Exchange Routing Guide ("LERG") identifies as belonging to GNAPs. The records further show that at least a portion of the GNAPs traffic originates within New Hampshire and terminates to the exchanges of Kearsarge Telephone Company in New Hampshire.

Respondent's traffic originates and terminates within New Hampshire, thereby making the subject traffic indisputably intrastate in nature and thus subject to intrastate access charges payable to the Joint Petitioners under the Joint Petitioners' respective intrastate access tariffs.

7. In addition, the aforesaid records of GNAPs traffic show a variety of originating and terminating telephone numbers, such as is typical of voice traffic, and not a single or limited number of end-user customers such as would be typical of ISP-bound traffic. The average hold time on the subject calls was 3.44 minutes, which is also not indicative of ISP-bound traffic.

8. The aforesaid records also show that a number of different local exchange carriers ("LECs"), including, without limitation, Verizon New England, Inc., other independent New Hampshire incumbent LECs, competitive LECs, and CMRS providers, serve the originating telephone numbers in question. The variety among the originating LECs makes it unlikely that the subject traffic originates in Internet Protocol ("IP") format or is otherwise ESP traffic.

9. "Enhanced services," according to the FCC's definition, are "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."¹

10. To be an "enhanced service," there must be a "net protocol conversion" on the traffic.² Protocol processing that is internal to the call (i.e., occurring solely within a network

¹ 47 C.F.R. §64.702(a).

² See *In the Matter of Federal-State Board on Universal Service: Report to Congress*, CC Docket No. 96-45, FCC 98-67 (1998) at para.50 ("*Stevens Report*") ("[c]ertain protocol processing services that result in no net protocol conversion to the end user are classified as basic services; those services are deemed telecommunications services.").

rather than between or among end-users) produces no net conversion of the traffic and does not reclassify a telecommunications service as an enhanced service.³

11. The contention by GNAPs that "[t]raffic originating from TDS companies is inbound ISP traffic and traffic terminating to TDS is Enhanced Service Provider traffic" (GNAPs Answer ¶ 14, at 2) is without factual or legal support.

12. Based on the known facts, the GNAPs traffic that terminates on the networks of the TDS Telecom Companies in New Hampshire is no different from any other traffic that terminates on those networks and is subject to applicable tariffed rates, including access charges for toll traffic.

13. GNAPs also erroneously contends that it "has no interconnection with TDS, nor does it have an agreement to do so in effect." GNAPs Answer ¶ 15, at 2. Instead, GNAPs contends that it "transports traffic to FairPoint Communications, successor in interest to Verizon" and that "no traffic has been delivered to a TDS company by Global NAPs, Inc." *Id.* ¶ 20, at 2.

14. Presumably, GNAPs uses the term "agreement" to mean an "interconnection agreement" ("ICA") arising from Section 251(b) or 251(c) of the Telecommunication Act of 1996 (47 U.S.C. § 251(b) or (c)). While it is true that GNAPs does not have an ICA with any of the TDS Telecom Companies in New Hampshire, the existence or absence of an ICA

³ *Id.*, at para. 50 & f.n. 106. See also *Petition for Declaratory Ruling that AT&T's Phone-Phone IP Telephone Services Are Exempt from Access Charges*, WC Docket No. 02-361 (released Apr. 21, 2004), at para. 13 & f.n. 54 ("End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be 'internetworking' conversions, which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T's specific service constitutes a telecommunications service.") (footnotes omitted).

between GNAPs and any of the TDS Telecom Companies is wholly irrelevant. Rather, this proceeding concerns the proper application of Commission policies regarding the use of telecommunications network facilities in New Hampshire.

15. GNAPs has arranged its service so that it relies upon the transiting service of Verizon New England, Inc. d/b/a Verizon New Hampshire ("Verizon") and its successor-in-interest, FairPoint Communications, Inc. ("FairPoint"), to terminate GNAPs traffic on the TDS Telecom Companies' networks.

16. Under its chosen arrangement, GNAPs is billed directly by the TDS Telecom Companies for GNAPs' use of the TDS Telecom Companies' networks. GNAPs, however, has not paid the lawful charges it has incurred for such use, and by its Answer GNAPs has now made clear that it will not pay such charges unless compelled to do so by order of the Commission.

17. The TDS Telecom Companies specifically deny each Affirmative Defense raised by GNAPs in its Answer and further contend that each such Affirmative Defense is without basis in fact or law.

18. The TDS Telecom Companies do not oppose the "Motion of Global NAPs, Inc. to Accept the Late Filed Answer to Joint Petitioners' Request for Authority to Block the Termination of Traffic from Global NAPs, Inc. to Exchanges of the Joint Petitioners on the Public Switched Telephone Network," which accompanied the GNAPs Answer dated March 18, 2008.

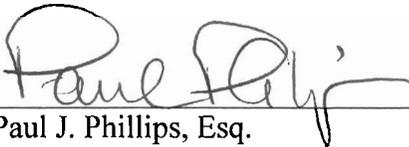
WHEREFORE Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc., jointly submit the foregoing Response to the Commission and respectfully renew their requests for prompt consideration and adjudication of their Joint Petition and for a prompt grant of the relief requested therein.

DATED at Plymouth, New Hampshire, this 14th day of April, 2008.

Respectfully submitted,

HOLLIS TELEPHONE COMPANY, INC.,
KEARSARGE TELEPHONE COMPANY,
MERRIMACK COUNTY TELEPHONE COMPANY,
AND WILTON TELEPHONE COMPANY, INC.

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