

**STATE OF NEW HAMPSHIRE****Inter-Department Communication****DATE: September 26, 2008****AT (OFFICE): NHPUC****FROM:** Kate Bailey, Director, Telecommunications Division *KMB***SUBJECT:** Recommendation to Fine Global Naps and Revoke Authority to Operate**TO:** Commission

On September 17, 2008, the Commission issued Order No. 24,894 in Docket No. DT 08-028 which compelled Global NAPs Inc., to answer certain data requests by September 22, 2008. On September 23, 2008, the petitioners, waiting for the responses, sent an e-mail to Global NAPs reminding it of the now past deadline. Global NAPs e-mailed its responses after close of business on September 23.

In Order No. 24,894, the Commission compelled Global NAPs to provide answers to data requests 7, 22, 23 and 26. In its responses, Global NAPs failed to provide any new or additional information to data requests 7, 22 and 26.

With respect to data requests 7 and 22 the Commission ordered Global NAPs:

“to provide a list of all corporate parents and subsidiaries to the four entities named in stipulated fact number 2.”

Stipulated fact number 2 identifies Global NAPs Inc, Global Naps Network, Inc., Global NAPs Realty Inc. and Global NAPs New Hampshire as the entities that collectively provide service in New Hampshire.

The compelled response Global NAPs provided pursuant to the Commission's order appears to be cut and pasted from its initial response to data request 22 (which was supplemental to data request 7) without any additional or clarifying information. (See attached initial responses and compelled responses.)

Data Request 23 required identification of the corporate officers of each of the four companies listed in Fact 2 and a witness qualified to testify about the financial condition of each of the companies. In response to the Commission's order, Global NAPs identified Frank Gangi as president and treasurer and Michael Couture as secretary of each of the four companies, and Frank Gangi as the qualified witness.

With respect to data request 26, the Commission directed Staff to file a memorandum on reports Global NAPs filed with the Commission between 2004 and

2007. David Goyette filed the memo on behalf of Staff on September 23, 2008. The Commission also ordered Global NAPs “to file the requested financial statements for 2004 through 2007 with the Commission for the Global NAPs entity registered as a CLEC in New Hampshire.” Global NAPs responded to this requirement by stating that “[t]he requested filings shall be made by separate cover.” (See attached response.)

Global NAPs made no filing under separate cover. The Commission ordered Global NAPs to provide this information by September 22. Global NAPs has not done so and, thus, is in violation of the Commission’s order.

In addition, based on Staff’s September 23, 2008 memo, it appears Global NAPs has not filed an annual report since 2004. N.H. Admin. Code Puc 431.09 (a) requires that:

A CLEC shall file Form CLEC-3 Annual Report, described in Puc 449.04, each year, regardless of whether it has initiated operations or has any operating revenues in New Hampshire.

N.H. Admin. Code Puc 431.13 (a) provides that:

A CLEC failing to file an annual report for 2 successive years shall, after notice and opportunity for a hearing, forfeit its authority to operate.

### **Recommendation**

Global NAPs’ failure to obey the Commission’s order to produce information responsive to the data requests it was compelled to answer is an example of Global NAPs’ disregard for regulatory requirements. It appears Global NAPs has willfully failed to obey and comply with the Commission’s order and administrative rules. Pursuant to Puc 431.19 these actions constitute good cause for revocation of Global NAPs’ authority to operate.

Staff is skeptical the Commission will receive the compelled financial information. In a Connecticut District Court Case, it appears Global NAPs Inc., the CLEC certified in New Hampshire, chose to accept a default judgment against it for nearly \$6 million rather than produce financial records compelled by the court. (See Attachment to Joint Petitioners’ Motion to Compel Global NAPs Inc. to Respond to Data Requests, filed on August 6, 2008).

Staff recommends the Commission provide Global NAPs an opportunity to be heard on why its authority to operate should not be forfeited under Puc 431.13 as a result of its failure to file annual reports for the past three years, or revoked for its failure to comply with Commission Order No. 24,894 pursuant to Puc 431.19. Staff further recommends the Commission fine Global NAPs’ officer Frank Gangi pursuant to RSA 365:42 and fine Global NAPs \$10,000 a day until it provides the required information, up to the maximum permitted by law, for failure to obey a commission order pursuant to RSA 365:41.

**GLOBAL NAPS ORIGINAL RESPONSE TO DATA REQUEST #7**  
**June 6, 2008**

**TDS:Global-7:** Please provide a diagram that illustrates and displays the complete corporate structure of Global NAPS, Inc. and its relation to any and all affiliates and subsidiaries; OR, if no such diagram is available, please provide a narrative description of the aforesaid corporate structure that includes, without limitation, an explanation of the relationship of each affiliate and subsidiary to Global NAPS, Inc.

**Reply:** Global objects on the basis of relevancy. Neither its corporate organization nor that of TDS is relevant to the issue of whether or not traffic is subject to access charges.

**GLOBAL NAPS ORIGINAL RESPONSE TO DATA REQUEST #22**  
**July 16, 2008**

**TDS:Global-22:** Provide provide a diagram of all corporate entities affiliated with Global NAPS, Inc., Global NAPS Realty, Inc., Global NAPS Networks. Inc., Global NAPS New Hampshire, Inc., and Ferrous Miner Holdings, Inc.

**Objection:** This is beyond the discovery discussed and exceeds that which would reasonably lead to admissible evidence.

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**GLOBAL NAPS COMPELLED RESPONSE TO DATA REQUESTS #7 AND #22**  
**September 23, 2008**

**Supplemental Responses:**

***From the Order:***

Requests 7 and 22 seek information concerning the Global NAPs corporate family. The TDS Companies claim that in other jurisdictions Global NAPs has evaded payment obligations by failing to disclose what entities actually control funds and assets and by allowing judgments to be entered against Global NAPs affiliates having no assets. We direct Global Naps to provide a list of all corporate parents and subsidiaries to the four entities named in stipulated fact number 2.<sup>1</sup> We find this information relevant because it relates to entities associated with the provision or funding of services offered in New Hampshire

**GLOBAL NAPS CONTINUES ITS OBJECTION(S) TO THESE DATA REQUESTS. NOTWITHSTANDING SUCH OBJECTIONS, IT RESPONDS AS FOLLOWS:**

The following response was previously filed, and is responsive.

**TDS:Global-7:** Please provide a diagram that illustrates and displays the complete corporate structure of Global NAPs, Inc. and its relation to any and all affiliates and subsidiaries, **OR**, if no such diagram is available please provide a narrative description of the aforesaid corporate structure that includes , without limitation, an explanation of the relationship of each affiliate and subsidiary to Global NAPs, Inc.

**TDS: Global -22:** Provide provide a diagram of all corporate entities affiliated with Global NAPs, Inc., Global NAPs Realty, Inc., Global NAPs Networks, Inc., Global NAPs New Hampshire, Inc., and Ferrous Miner Holdings, Inc.

Objection: this is beyond the discovery discussed and exceeds that which would reasonably lead to admissible evidence.

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**GLOBAL NAPS ORIGINAL RESPONSE TO DATA REQUEST #26**  
**July 16, 2008**

**TDS:Global-26:** Please provide true and complete copies of the completed Forms CLEC-2 (Assessment Report) and CLEC-3 (Annual Report) for Global NAPs, Inc., as submitted to the Commission for the fiscal or reporting Years 2004 through 2007, inclusive. If Global NAPs, Inc., did not submit the required Forms CLEC-2 and/or CLEC-3 to the Commission for any of the aforesaid years, please (a) state when Global NAPs, Inc., expects to submit any and all missing Forms CLEC-2 and CLEC-3 to the Commission, and (b) provide in the alternative true and complete copies of the audited financial statements of Global NAPs, Inc., to include, without limitation, a balance sheet, income statement and footnotes, certified by a responsible officer of Global NAPs, Inc. (or an affiliated entity) that the information contained therein is true and correct in all material respects.

**Reply:**

It is not clear that Global has not made filings. I have attached documents purported to represent filings made by Global. Global will work with Staff to complete any missing filings to ensure complete regulatory compliance.

**GLOBAL NAPS COMPELLED RESPONSE TO DATA REQUEST #26**  
**September 23, 2008**

***From the Order:***

Request 26 seeks information on CLEC-2 and CLEC-3 forms for Global NAPs for the years 2004 through 2007 and, if not filed, for audited financial statements, including balance sheets, income statements and footnotes. We have asked Staff to file a memorandum describing all filings made by Global NAPs with the Commission. We will require Global NAPs to file the requested financial statements for 2004 through 2007 with the Commission for the Global NAPs entity registered as a CLEC in New Hampshire. If Global NAPs seeks confidential treatment of its financial information it should file a motion for confidential treatment with its response. This financial information is relevant to issues of whether Global NAPs is able to pay any past or future access charges in the event we find that such charges are owed for the traffic at issue in this case.

**The following response is Supplemental.**

The requested filings shall be made by separate cover.