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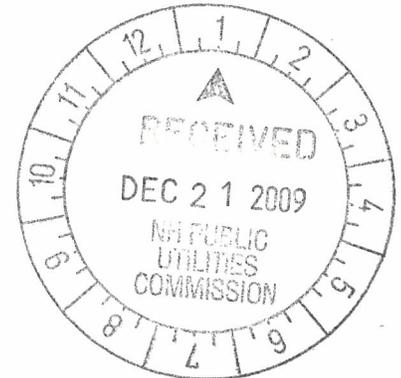
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VIA HAND DELIVERY

December 21, 2009

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301



Re: Docket No. DT 08-028 (Joint Petition of Hollis Telephone Company, Inc., et al.)

Dear Ms. Howland:

Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc. (the "Joint Petitioners" or "TDS") hereby respond to the letter of December 16, 2009, from Joel Davidow, Esq., on behalf of the Respondent, Global NAPs, Inc. In that letter, GNAPs asserts that "TDS has complained that it would be injured by the delay caused by considering" either of "the options" GNAPs has proposed – namely, an interconnection offer from GNAPs and a "fact hearing" on GNAPs' post-judgment factual proffer. GNAPs offers to post a bond in the amount of \$6,000.00 with the Public Utilities Commission "in order to assuage that concern." The Joint Petitioners strongly object to GNAPs' mischaracterization of TDS's position in these matters, and they oppose yet another tactic in GNAPs' long campaign to delay and confuse the issues in this proceeding.

First, the Joint Petitioners have *not* "complained that [they] would be injured" by the "delay" in negotiating an interconnection agreement with GNAPs. The Joint Petitioners made clear in their filing of December 8, 2009, that they "take the GNAPs request for interconnection seriously and will respond to the request in accordance with federal law". See Joint Petitioners' Objection to Respondent's Motion for Reconsideration, Rehearing and Suspension (filed Dec. 8, 2009), at 4. The Joint Petitioners in no way complained about any purported "delay" in negotiating such an agreement. Rather, they simply made clear that GNAPs' request for interconnection is *entirely unrelated* to the matters at issue in this Docket and has *absolutely no legal effect* on the prompt disposition of the present case.

This case concerns GNAPs' violations of New Hampshire law in its continued refusal to pay for several years' of terminating access charges for toll calls terminated to the Joint Petitioners' networks in New Hampshire. In Order No. 25,043 (Nov. 10, 2009), the PUC concluded that GNAPs is not a registered toll provider under N.H. Admin. Rule Puc 451.01, see Order, at 14,

but has nevertheless delivered intrastate toll traffic, without any payment whatsoever, to the Joint Petitioners' networks in New Hampshire, *id.*, at 23. The Commission ordered GNAPs to pay the Joint Petitioners in full, plus interest, for GNAPs' use of the Joint Petitioners' networks in New Hampshire, and, if such payment was not timely made, the PUC authorized the Joint Petitioners to disconnect GNAPs from further termination services in New Hampshire. Order, at 25. Apparently in reaction to the PUC's Order, GNAPs has now requested negotiation of a local interconnection agreement for the exchange of local traffic with the Joint Petitioners in the future. The Telecommunications Act of 1996 establishes guidelines and deadlines for the resolution of local interconnection requests, none of which has any bearing on the present dispute involving past-due toll access charges. GNAPs' suggestion that the present Docket could or should be delayed while its local interconnection request is resolved is simply an attempt to obscure the issues for the sole purpose of delaying the effectiveness of the Commission's November 10th Order.

Moreover, GNAPs is not presently authorized to provide local exchange service in the Joint Petitioners' service areas in New Hampshire. See *Petition of Global NAPs, Inc., for Authority to Provide Local Telecommunications Services*, Docket No. DE 98-024, Order Nisi Granting Authorization (Order No. 22,976, July 8, 1998) ("GNI's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED") (emphasis added). Thus, even if GNAPs' request for interconnection might otherwise have a legal effect on these proceedings, the question of interconnection is entirely speculative until the Commission determines whether GNAPs is even qualified to serve as a competitive local carrier in the Joint Petitioners' service areas. Given GNAPs' record of violating the Commission's rules of procedure and binding orders in this Docket, its long periods of non-compliance with the Commission's regulatory requirements, and its extensive regulatory, legal and financial difficulties in many other states, there is no guarantee that GNAPs could pass muster as a competitive local exchange carrier in the Joint Petitioners' service areas today. So it strains credulity for GNAPs to suggest that its request for interconnection operates to suspend the present proceedings.

The Joint Petitioners have suggested that GNAPs' post-judgment request for a hearing would create needless delay in the administration of justice in this case, not because of the inherent time involved in conducting a hearing, but rather because GNAPs is not entitled to a hearing under the New Hampshire Administrative Procedures Act and because GNAPs, having deliberately chosen to withhold material evidence prior to the entry of judgment, should not now be rewarded for its earlier evasions by gaining an evidentiary hearing following the entry of judgment. A bond requirement in such circumstances is entirely beside the point. The Docket is replete with evidence that GNAPs repeatedly failed to file annual reports, failed to pay its state assessments, violated the Commission's rules and the Joint Petitioners' tariffs, failed to comply with discovery deadlines, and failed to abide by the Commission's procedural orders. If none of the requirements of New Hampshire law were enough to motivate GNAPs' compliance prior to the entry of judgment, there is no reason for the Commission to believe that a \$6,000 bond will ensure GNAPs' compliance now that a substantial judgment has been entered against it.

The Commission should no longer tolerate these late-blossoming tactics of GNAPs to avoid its obligations in the State of New Hampshire.

Finally, even if the Commission were inclined to overlook GNAPs' strategic decision to wait until the post-judgment phase of this case to proffer its "evidence," GNAPs has still failed to show that a hearing on its proffered evidence would alter the outcome of the PUC's November 10th Order. Although it evaded direct discovery requests to produce the evidence to support its factual and legal claims, GNAPs now insists that a hearing is required to show that "Global is primarily a conveyer of enhanced traffic" *supplied* by enhanced service providers, and "that Global's traffic [i]s primarily nomadic VoIP, [i]s significantly enhanced and thus [i]s not subject to traditional access charges." GNAPs Motion for Rehearing, at 12-13. GNAPs fails to acknowledge, however, that the so-called "ESP exemption" that it claims for its traffic applies only to traffic *bound* for enhanced service providers ("ESPs") (including Internet service providers ("ISPs")), and not to traffic *originating from* ESps. Since As the Federal Communications Commission has explained:

Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, since 1983 it has exempted ESps from the payment of certain interstate access charges. Pursuant to this exemption, ESps are treated as end users for purposes of assessing access charges, and the Commission permits ESps to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs rather than through interstate access tariffs. Thus, ESps generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices. In addition, incumbent LEC expenses and revenue associated with **ISP-bound** traffic traditionally have been characterized as intrastate for separations purposes. ESps also pay the special access surcharge when purchasing special access lines under the same conditions as those applicable to end users. In the *Access Charge Reform Order*, the Commission decided to maintain the existing pricing structure pursuant to which ESps are treated as end users for the purpose of applying access charges. Thus, the Commission continues to discharge its interstate regulatory obligations by treating **ISP-bound** traffic as though it were local.

In re: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Notice of Proposed Rulemaking (FCC 99-38, Feb. 26, 1999) ¶ 5, at 3-4 (footnotes omitted and emphasis added). The FCC subsequently reiterated this distinction in the IP-Enabled Services proceeding (WC Docket No. 04-036), when it explained:

an "enhanced" service contains a basic service component but also "employ[s] 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.” The Commission concluded that enhanced services were subject to the Commission’s jurisdiction. It further found, however, that the enhanced service market was highly competitive with low barriers to entry; therefore, the Commission declined to treat providers of enhanced services as “common carriers” subject to regulation under Title II of the Act.⁸⁷ In separate orders, the Commission also determined that exempted enhanced service providers (ESPs) should not be subjected to originating access charges for ESP-bound traffic.

In re: IP-Enabled Services, WC Docket No. 04-036, Notice of Proposed Rulemaking (FCC 04-28, Mar. 10, 2004) ¶ 25, at 18 (emphasis added). The Commission went on:

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.

Id. ¶ 33, at 23.

In applying the foregoing principles set forth by the FCC, the California Public Utilities Commission (“CPUC”) has twice rejected GNAPs’ claims that the traffic it transports to the public switched telephone network is subject to the so-called “ESP exemption”. See *Cox California Telecom v. Global NAPs California, Inc.*, Docket No. 06-04-026, Opinion Granting Complainant’s Motion for Summary Judgment (Decision 07-01-004, Jan. 11, 2007), at 6 (“Cox”); and *Pacific Bell Telephone Company, Inc. v. Global NAPs California, Inc.*, Docket No. 07-11-018, Modified Presiding Officer’s Decision Finding Global NAPs California in Breach of Interconnection Agreement (Decision 08-09-027, Sept. 18, 2008), at 16-17 (“Pacific Bell”). In *Cox*, the CPUC granted summary judgment to Cox California Telecom in an action seeking the payment of terminating access charges by Global NAPs California, Inc. *Cox*, at 6. The CPUC ruled that GNAPs was not entitled to claim the so-called “ESP exemption” for traffic that allegedly originated from ESPs:

Global NAPs argues that because the traffic it sent to Cox originated with Internet Service Providers (ISPs), it was exempt from access charges. But this response misreads applicable law. The only relevant exemption from the access, charge regime under Federal law is for *ISP-bound traffic* rather than *ISP-originated* traffic

Id. (emphasis in original).

Similarly, in *Pacific Bell*, the CPUC found GNAPs California in breach of its interconnection agreement with PacBell for failure to pay terminating access charges to PacBell. Citing to its

earlier *Cox* decision, the CPUC rejected GNAPs California's claims that the traffic it terminated to PacBell was exempt from such charges under the so-called "ESP exemption". The CPUC also responded to GNAPs California contention that the CPUC had erroneously interpreted the FCC's *ISP Remand Order* as applying the "ESP exemption" only to traffic sent *to* ESPs but not to traffic delivered *from* ESPs:

GNAPs cites to ¶ 11 of the *ISP Remand Order* for its proposition that an ESP exemption applies to traffic that is routed to *or from* ISPs. To the contrary, nothing in ¶ 11 refers to traffic that is routed *from* ISPs By its plain language, ¶ 11 refers to ISPs strictly in the context of their utilization of local exchange carrier services to provide their customers with access to the Internet. Here, in contrast, the traffic at issue is traffic that GNAPs receives *from* its ISP customers, not that it delivers *to* them.

Pacific Bell, at 17.¹

In addition, the CPUC rejected GNAPs' reliance on the FCC's decision in *Vonage Holdings*² on the basis that an "ESP exemption" can be claimed only by a VoIP provider itself and not by an intermediate carrier such as GNAPs. In the CPUC's reasoning:

GNAPs' reliance on *Vonage* is misplaced. *Vonage* was solely a VoIP provider which sought to avoid regulation by the Minnesota PUC, whereas GNAPs is not a VoIP provider. The federal district court concluded in its *Order Denying Motion for Preliminary Injunction* in this proceeding that "[t]he fact that Global NAPs may use Internet protocols to receive traffic from its ESP customers before transmitting that traffic to an end point on the PSTN through Cox's facility does not make it a VoIP provider. Rather,

¹ Paragraph 11 of the *ISP Remand Order* reads, in its entirety:

11. ISPs, one class of enhanced service providers (ESPs), also may utilize LEC services to provide their customers with access to the Internet. In the *MTS/WATS Market Structure Order*, the Commission acknowledged that ESPs were among a variety of users of LEC interstate access services. Since 1983, however, the Commission has exempted ESPs from the payment of certain interstate access charges. Consequently ESPs, including ISPs, are treated as end-users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to LEC central offices and the public switched telephone network (PSTN). Thus, despite the Commission's understanding that ISPs use *interstate* access services, pursuant to the ESP exemption, the Commission has permitted ISPs to take service under *local* tariffs.

In re Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order (FCC 01-131, Apr. 27, 2001) ("*ISP Remand Order*") ¶ 11, at 8 (footnotes omitted).

² *In re: Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order (FCC 04-267, Nov. 12, 2004), *aff'd sub nom. Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570, 579 (8th Cir. 2007).

GNAPs is a certificated carrier, licensed by this Commission, and subject to its jurisdiction.

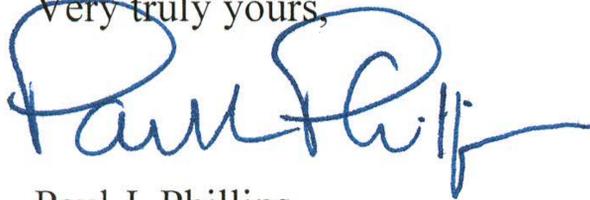
Id., at 11-12.

The reasoning of the California Public Utilities Commission applies with equal force to the facts at issue in the present case. Although GNAPs would very much like to delay and avoid the New Hampshire PUC's November 10th Order, the PUC should conclude that GNAPs has offered nothing by way of new evidence or argument that would alter the final judgment of the Commission. Even if GNAPs were allowed to present its evidence, despite having withheld it strategically from the parties during discovery, the evidence would not bring the traffic at issue in this proceeding within a federal "ESP exemption," because the traffic at issue all terminates on the PSTN in New Hampshire and because GNAPs is not an ESP or VoIP provider but instead is a certificated CLEC in New Hampshire.

GNAPs' creative interpretations of state and federal caselaw are unavailing, as is its attempt to use a local interconnection request to suspend the PUC's final judgment on unpaid toll charges. After nearly two years of dealing with GNAPs' evasions, violations and delays, the Joint Petitioners respectfully seek finality from the PUC through the denial of the motion for rehearing and through the affirmance of the November 10th Final Order.

Please let me know if you have any questions.

Very truly yours,



Paul J. Phillips

PP:st

cc: Attached Service List, Docket No. DT 08-028 (copies e-mailed where shown)

**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., for Authority to Block the Termination of Traffic from Global NAPs, Inc., to Exchanges of the Joint Petitioners in the Public Switched Telephone Network

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