

**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.,

Respondent

Case No. DT 08-028

**RESPONDENT’S REPLY TO FILED OBJECTIONS TO ITS MOTION FOR
RECONSIDERATION**

Respondent Global NAPS, Inc. (“Global”) submits the following Response to the Objections filed by the Joint Petitioners (hereinafter referred to as “TDS”) and the RLEC Intervenors.

I. RESPONSES TO THE TDS BRIEF

Global submits the following brief responses to arguments made by TDS in its Objection:

1. TDS’ assertion that the Public Utilities Commission (PUC) correctly held Global’s continued refusal to pay TDS for use of its networks poses a threat of harm justifying blocking of traffic (Br. 17) ignores the fact that Global has offered to pay TDS non-discriminatory, just and reasonable rates thereby removing any potential harm. A dispute about past invoices provides no

basis for self help or future traffic blockage. Further, Global has offered to post a bond calculated on Verizon's unitary rate for terminating VoIP, \$.00045 per minute of use (MOU). Such bond could stay in place during negotiation and review of ICAs with the members of the TDS group.

2. TDS claims that Global could have offered its evidence during the discovery period. (Br. 7-11). This ignores the fact that Global was unable to obtain Vonage or Transcom testimony until Global's trial in September 2009 in New York where Vonage was subject to the subpoena power of the court, and that the PUC would have had no power to compel either Vonage or Transcom to appear in a New Hampshire proceeding. Further, as the results in Pennsylvania exemplify, much of the key evidence Global now submits was the result of third party discovery and cross-examination, rights Global has not been afforded in this PUC proceeding.

3. TDS argues that Global has no 14th Amendment right to a fact hearing with cross-examination. In fact, the federal district court for the District of Rhode Island held in *New England Tel. & Tel. Co. v. Conversent Communs. Of Rhode Island*, 178 F.Supp.2d 81 (D.R.I. 2001) that Verizon's 14th Amendment rights were violated by the refusal of that PUC to allow a fact hearing.

4. TDS ignores Global's argument that the \$650,000 figure offered by TDS as the tariff owed mixes federal tariff and state tariff claims. As at least half of the tariffs are federal, the PUC lacks the authority to impose them, and TDS should pursue its claim for the federal tariffs in federal court.

5. TDS ignores Global's argument that the PUC's finding that some of the Global traffic is VoIP or enhanced and some is not, does not create a factual basis for the PUC to decide

how much traffic is in fact exempt. The New York Public Service Commission, however, has ruled that because Global's traffic was predominantly VoIP, federal, not state, tariffs apply to it. The PUC did not find that Global's NH traffic is **not** predominantly VoIP, rather it found only that some of the traffic may not be VoIP.

6. TDS also misunderstands, or misstates, the relevance of the FCC's *Time Warner* decision.¹ In *Time Warner*, the Commission ruled, with preemptive effect, that wholesale carriers of interstate telecommunications –whether or not VoIP—are entitled to Section 252 cost-based, non-discriminatory interconnection rates, rather than traditional tariff rates.

The parties have never disputed that Global is a wholesale carrier of interstate telecommunications. The contracts Global submitted indicate that it is a wholesaler of traffic coming from Texas or Nevada, even if the PUC chooses to doubt the warranties about the nature of the traffic. Thus, imposition of tariff charges on Global has been preempted, and it has offered to pay the charges allowable by the FCC.

II. RESPONSES TO THE GRANITE STATE BRIEF

Global submits the following brief response to the arguments made by the RLEC Intervenors.

1. The RLEC Intervenors imply that Global seeks to avoid all payment for access services rendered. This is incorrect. Global is committed to paying for the access services at the non-discriminatory, just and reasonable rates, which are the goal of the 1996 Act.

¹*In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, DA 07-709, Memorandum Opinion and Order, (March 1, 2007).

2. The RLEC Intervenors seek to muddle the difference between a fact hearing with cross examination and third party witnesses and the evidence that can be developed during discovery.

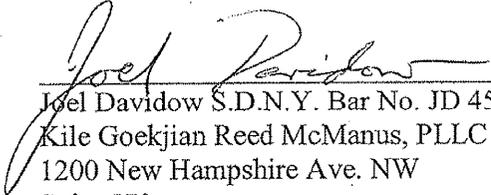
3. The RLEC Intervenors' argument that Global is not an intermediate carrier is fact specific, and requires testimony concerning which carrier took traffic out of the state (the inter-exchange carrier) and which brought it back to the state after enhancement (the intermediate carrier), thereby highlighting the need for a fact hearing in this matter.

III. CONCLUSION

For the reasons set forth herein, Global respectfully requests that the Commission grant Global's motion for a fact hearing, and supervise Global's offer to negotiate Section 252 interconnection rates with the petitioners.

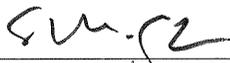
Respectfully submitted,

Dated: December 10, 2009


Joel Davidow S.D.N.Y. Bar No. JD 4500
Kile Goekjian Reed McManus, PLLC
1200 New Hampshire Ave. NW
Suite 570
Washington DC 20036
Tel: (202) 659-8000
Fax: (202) 659-8822
Email: j davidow@kgrmlaw.com
Counsel for Global NAPs, Inc.

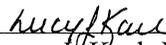
William Rooney, Jr.
Global NAPs, Inc.
89 Access Road, Suite B
Norwood, MA 02062
(781) 551-9956
wrooney@gnaps.com

Dated: December 10, 2009



Steven M. Gordon, Esquire
NH Bar #964
107 Storrs Street
PO Box 2703
Concord, NH 03302-2703
Tel: (603) 225-7262
Fax: (603) 225-5112
sgordon@shaheengordon.com

Dated: December 10, 2009



Lucy J. Karl, Esquire
NH Bar #5547
107 Storrs Street
PO Box 2703
Concord, NH 03302-2703
Tel: (603) 225-7262
Fax: (603) 225-5112
lkarl@shaheengordon.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this 10th day of December 2009 caused a copy of the foregoing to be served on the attached service list.

Dated: December 10, 2009



Steven M. Gordon

State of New Hampshire

Before the New Hampshire Public Utilities Commission

DT 08-028

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SERVICE LIST

Original + 7 copies + email:

Debra A. Howland
Executive Director & Secretary
N.H. Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Executive.director@puc.nh.gov

Via email

Lynn Fabrizio, Esq.
Staff Attorney & Hearings Examiner
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
Lynn.fabrizio@puc.nh.gov

Meredith A. Hatfield
Office of Consumer Advocate
21 S. Fruit Street, Suite 18
Concord, NH 03301-2429
meredith.hatfield@puc.nh.gov

F. Anne Ross,
Director, Legal Division
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
F.anne.ross@puc.nh.gov

Kathryn M. Bailey
Director of Telecommunications
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
kate.bailey@puc.nh.gov

David Goyette
Utility Analyst II
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301
David.goyette@puc.nh.gov

Joel Davidow, Esq.
Kile Goekjian Reed McManus PLLC
1200 New Hampshire Ave, NW Ste 570
Washington, DC 20036
j davidow@kgrmlaw.com

Stephen R. Eckberg
Office of Consumer Advocate
21 S. Fruit St., Suite 18
Concord, NH 03301-2429
(603) 271-1174
Stephen.R.Eckberg@oca.nh.gov

William Rooney, Jr., Esquire
Vice President & General Counsel
89 Access Road, Suite B
Norwood, MA 02062
wrooney@gnaps.com

Darren R. Winslow, Controller
Union Communications
7 Central St., PO Box 577
Farmington, NH 03835-0577
dwinslow@utel.com
(for Union Telephone and BayRing)

Peter R. Healy, Esq.
Corporate and Regulatory Counsel
TDS Telecom
525 Junction Road, Suite 7000
Madison, WI 53717
Peter.healy@tdsmetro.com

Robin E. Tuttle
Fairpoint Communications, Inc.
521 E Morehead St., Ste 250
Charlotte, NC 28202
rtuttle@fairpoint.com

Debra A. Martone
Merrimack County Telephone Company
PO Box 337
11 Kearsarge Avenue
Contoocook, NH 03229-0337
Debra.martone@tdstelecom.com

James R. J. Scheltema, Esq.
Vice President, Regulatory Matters
Global NAPS Inc
4475 Woodbind Road, Suite 7
Pace, FL 32571
jscheltema@gnaps.com

Frederick J. Coolbroth
Devine Millimet & Branch
43 North Main Street
Concord, NH 03301
fcoolbroth@devinemillimet.com

Paul J. Phillips, Esq.
Joslyn L. Wilschek, Esq.
Primmer Piper Eggleston & Cramer,
100 East State St., PO Box 1309
Montpelier VT 05601-1309
(802) 223-2102
pPhillips@ppeclaw.com
jwilschek@ppeclaw.com

Michael C. Reed
Manager, External Relations
TDS Telecom
24 Depot Square, Unit 2
Northfield, VT 05663-6721
mike.reed@tdstelecom.com

Chris Rand
Granite State Telephone
600 South Stark Highway
PO Box 87
Weare, NH 03281
crand@gstnetworks.com

Patrick C. McHugh
Devine Millimet & Branch
43 North Main Street
Concord, NH 03301
pmchugh@devinemillimet.com

Michael J. Morrissey
Fairpoint Communications, Inc.
521 E Morehead St., Ste 250
Charlotte, NC 28202
mmorrissey@fairpoint.com

William Stafford
Granite State Telephone
600 South Stark Hwy
PO Box 87
Weare, NH 03281
bstafford@gstnetworks.com

Jody O'Marra
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Jody.omarra@puc.nh.gov

Kath Mullholand
Segtel Inc.
PO Box 610
Lebanon, NH 03766
kath@segtel.com

Ben Thayer
Bayring Communications
359 Corporate Drive
Portsmouth, NH 03801-2888
bthayer@bayring.com

Amanda Noonan
Consumer Affairs Director
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
Amanda.noonan@puc.nh.gov