

**DT 01-127**

**GLOBAL NAPS, INC.**

**Petition for an Order Directing Verizon-NH to Comply  
With its Interconnection Agreement Obligation  
To Pay Reciprocal Compensation**

**Order Denying Petition**

**ORDER NO. 24,336**

**June 18, 2004**

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On October 2, 2003, the New Hampshire Public Utilities Commission (Commission) issued Order No. 24, 217 requiring Verizon- NH to pay reciprocal compensation to Global NAPS, Inc. (GNAPs) provided GNAPs had established switching facilities in New Hampshire before March 1, 2001<sup>1</sup>. That order further required GNAPs to advise the Commission and Verizon-NH, within five business days, of the date upon which the GNAPs switch was activated. Based on information filed by GNAPs, Verizon and Commission Staff (Staff), the Commission issued Order No. 24, 233 on November 4, 2003, finding that further proceedings were necessary to determine whether a GNAPs switch existed within the meaning of its interconnection agreement with Verizon-NH. Order No. 24,233 stayed the effectiveness of Order No. 24, 217 and re-opened the proceedings for the purpose of making the aforementioned factual determination. The Order also directed GNAPs to pre-file testimony to address the following questions about

---

<sup>1</sup> Verizon-NH had ceased paying reciprocal compensation for minutes of use (MOU) exchanged beginning March 1, 2001, due to discrepancies in GNAPs' MOU reports.

its switching facilities: 1) What is the exact equipment referred to by GNAPs as “switching facilities”? 2) When was the equipment installed and activated? 3) How is traffic routed to and from the equipment? and 4) How does the equipment meet the definition of a switch contained in the Interconnection Agreement between GNAPs and Verizon? Lastly, the order established a procedural schedule that, *inter alia*, afforded Verizon-NH the opportunity to file responsive testimony and included dates for a technical session, settlement discussions and a hearing.

On November 17, 2003, GNAPs filed the direct testimony of Jeff Nelson. Rebuttal testimony of Ann-Marie Kowalczyk on behalf of Verizon-NH was filed on December 1, 2003. By memorandum dated December 19, 2003, Staff advised the Commission that based on discussions at the technical session it was determined that the parties needed to conduct additional discovery and to file supplemental testimony detailing their interpretation of the technical requirements of the interconnection agreement at issue in this matter. On behalf of the parties, Staff submitted a revised procedural schedule to permit the filing of data responses and supplemental testimony, and a conference call to determine future process, all of which the Commission approved by secretarial letter dated December 19, 2003.

By letter dated January 21, 2004, Verizon-NH requested a further revision to the procedural schedule to extend the dates for filing surrebuttal testimony and conducting the status call. The Commission granted this request by Secretarial Letter dated January 26, 2004. Thereafter, Verizon-NH filed surrebuttal testimony of Ms. Kowalczyk and GNAPs filed rebuttal/supplemental testimony of Jeffrey Nelson.

On February 19, 2004, the Commission issued a secretarial letter noting that Staff had filed a status report indicating that settlement was not possible, that there was disagreement among the parties as to the four questions (i.e., the date of installation of the switch, the type of switch installed, the location of the switch and the location of GNAPs' New Hampshire customers) and that there was need for further discovery. The Secretarial Letter also set out a new procedural schedule with deadlines for additional, limited discovery, prefiled supplemental testimony and summary of argument. The letter further noted the parties' agreement that the issues could be decided without a hearing based on the written filings. Verizon-NH and GNAPs made the filings as contemplated in the Secretarial Letter, therefore this matter is now ripe for decision.

## **II. POSITIONS OF THE PARTIES**

### **A. GNAPs**

GNAPs contends that the switching equipment needed to satisfy the requirements of the interconnection agreement as well as the Commission's reciprocal compensation order is and was in place prior to March 1, 2001. In support of its claim, GNAPs relies on its Direct Testimony and asserts that it contains sufficient facts "to determine the installation date satisfies the conditions of the Commission's Order".

Rebuttal/Supplemental Testimony of Jeffrey Nelson, January 29, 2004, lines 62-63. Mr. Nelson's Direct Testimony states that: GNAPs presently has three pieces of equipment in place in New Hampshire; the actual installation dates for each piece of equipment is somewhat difficult to discern; the New Hampshire optic fiber ring and switching facilities necessary to handle traffic on the ring were in place on or before October 8, 1998, as indicated by copies of faxes and e-mails contained in Attachment 1 to Mr. Nelson's

testimony; and the type of installed equipment has varied over time. In response to Staff's observation that GNAPs' annual reports filed with the Commission in 2000 and 2001 do not indicate the presence of a switch in New Hampshire, Mr. Nelson states that he has "been assured by counsel that this oversight has been corrected by supplementary filings amending the compliance reports accordingly." Direct Testimony of Jeffrey Nelson, November 13, 2003, lines 123-125. In addition, GNAPs points to "proof of payment for the police escort of transporting the switching equipment to its destination in Manchester." Rebuttal/Supplemental Testimony of Jeffrey Nelson, January 29, 2004, lines 67-68. GNAPs also states that even prior to the installation of its ICS2000 switch, Global was field testing Convergent "A and B prototypes" in New Hampshire. *See* Supplemental Testimony of Jeff Nelson, March 15, 2004, lines 32-35.

As for the type of switch installed in New Hampshire, GNAPs asserts that its equipment in Manchester meets the definition of "Tandem Office Switch" contained in paragraph 1.15 (b) of the interconnection agreement. GNAPs avers that such equipment has billing and recording capabilities, connects and switches trunk circuits between and among the various GNAPs switches and that it carries aggregated traffic from Verizon to these and other switch facilities, "chief amongst which is the switch at the Global NAPs, Inc., facilities in Quincy, Massachusetts." Direct Testimony of Jeffrey Nelson, November 13, 2003, lines 93-95. GNAPs also stresses that the critical feature of the manner in which traffic is routed to and from the switch is that "a dedicated circuit path is maintained for the entire duration of the call." Rebuttal/Supplemental Testimony of Jeffrey Nelson, January 29, 2004, lines 84-85.

## **B. VERIZON-NH**

Verizon-NH asserts that GNAPs has failed to meet its burden of proving that it complies with the terms of its interconnection agreement. More specifically, Verizon-NH argues that GNAPs has not proven that it has a Qualified Central Office Switch installed in New Hampshire nor that it has customers located in this state and that both of these things are prerequisites for the payment of reciprocal compensation.

In support of its position, Verizon-NH asserts as follows: All traffic handed off by Verizon-NH utilizes the GNAPs switch in Quincy, Massachusetts; GNAPs did not provide any evidence to corroborate its assertion that its ISC2000 switch is a circuit switch (which is prerequisite for reciprocal compensation under the amended interconnection agreement) and therefore the only reasonable conclusion that can be drawn from the information provided by GNAPs is that the switch is a packet switch; GNAPs' claims about the type and location of its switch are undermined by the unspecific and unresponsive answers to relevant discovery questions and also by the sworn testimony of Mr. Fred Goldstein who indicated on May 16, 2000, in proceedings before the Commission in Docket No. DT 00-001, that GNAPs had not deployed a switch in New Hampshire; GNAPs has not satisfactorily explained why its switch, purported to be in New Hampshire, still carries a Massachusetts Common Language Location Identifier code; GNAPs' web site does not list New Hampshire as one of its switching locations; and that none of GNAPs' customers are physically located in New Hampshire as required by Section 1.94 of the Interconnection Agreement Amendment.

## **III. COMMISSION ANALYSIS**

The starting point for our determination of whether GNAPs is entitled to reciprocal compensation payments from Verizon-NH is the language of the parties' interconnection agreement. Under Section 1.94 of the amended interconnection agreement between Verizon-NH and GNAPs, reciprocal compensation is paid for internet traffic that is transmitted to a central office switch of the other party that is physically located in the State of New Hampshire, and is then handed off by that party to an internet service provider located in the State of New Hampshire. In order for GNAPs to be entitled to reciprocal compensation, all of the following questions must be answered in the affirmative: 1) Does GNAPs possess facilities that constitute a "central office switch"? 2) Is the switch physically located in New Hampshire? 3) Was the switch activated prior to March 1, 2001? and 4) Does the switch hand off traffic to an internet service provider located in the State of New Hampshire? Based on the record before us, we find that GNAPs has failed to demonstrate that its facilities hand off traffic to internet service providers located in the State of New Hampshire. We thus find that GNAPs is not entitled to reciprocal compensation, irrespective of whether its facilities meet the definition of a switch contained in its interconnection agreement or whether such facilities were in operation prior to March 1, 2001 in New Hampshire.

The record in this case is voluminous, primarily because the parties focused their discovery and prefiled testimony on the questions of whether GNAPs' equipment met the interconnection agreement's definition of central office switch and whether such equipment was in place in New Hampshire on or before March 1, 2001. While we recognize that such questions were posed by the Commission itself, we also note that Order No. 24,233 which reopened this matter, directed GNAPs to prefile testimony on

how traffic is routed to and from its equipment and to explain how the equipment meets the definition of a switch contained in its interconnection agreement. Answers to both of these questions necessarily require information about the location of GNAPs' customers who are internet service providers. Yet despite the Commission's directives in Order No. 24,233, GNAPs did not affirmatively assert in its filings that it hands off traffic to internet service providers located in New Hampshire. Further, the small amount of information on this point that does exist in the record simply does not establish that GNAPs does so. This conclusion is based upon the answer GNAPs itself provided to the Commission's data request seeking information about the location of its customers. GNAPs' response to Information Request No. 4 in the Commission's Secretarial Letter dated February 19, 2004, shows that according to GNAPs, none of the equipment handling calls for its New Hampshire customers is located in New Hampshire. In addition, in Verizon-NH's surrebuttal testimony dated January 29, 2004, Verizon states that GNAPs provided data dated March, 2001 which shows the location of the customer equipment that handles the GNAPs calls to be out of state. Upon review of the proprietary data contained in Verizon's surrebuttal testimony, and in response to Information Request No. 4, we find GNAPs has failed to demonstrate that GNAPs' customers are picking up traffic from GNAPs in New Hampshire.

In addition to the questions posed in Order 24,233, the Commission's secretarial letter dated February 19, 2004 indicated that the location of GNAPs' New Hampshire customers was one of the issues still in dispute and allowed the parties to conduct further discovery and set a deadline for filing supplemental testimony. However, despite this opportunity for additional discovery and filings, GNAPs did not provide the Commission

with any evidence to either rebut or refute Verizon-NH's assertion regarding the location of GNAPs' customers or Verizon-NH's conclusion that GNAPs' responses to Data Request No. 4 reveal that it does not hand off traffic to internet service providers in New Hampshire. GNAPs therefore has failed to demonstrate that it meets the requirement of Section 1.94 of the amended interconnection agreement which requires that GNAPs hand off traffic to internet service providers located in New Hampshire. Its claim for reciprocal compensation must therefore be denied.

Even assuming, *arguendo*, that GNAPs had demonstrated that its facilities hand off traffic to internet service providers located in New Hampshire, GNAPs petition must nonetheless be denied because GNAPs has also failed to prove by a preponderance of the evidence that as of March 1, 2001, it had a switch in New Hampshire within the meaning of its interconnection agreement. While the record reveals that Verizon-NH and GNAPs both submitted substantial information concerning the nature of the GNAPs equipment and conflicting claims concerning whether the equipment meets the definition of a central office switch for purposes of reciprocal compensation, we need not reach a determination of whether that equipment meets the definition of central office switch because we find that GNAPs has failed to meet its burden of proving that such facilities were installed in New Hampshire on or before March 1, 2001. Despite the numerous opportunities afforded the company to substantiate its claims that qualified central office switching equipment was installed on or before March 1, 2001, GNAPs has not provided sufficient evidence for us to conclude that a switch was in place at that time. For example, while GNAPs asserts that it had a Fujitsu switch in New Hampshire in early 1998, that it had switching facilities in New Hampshire on or before June 10, 1999, and that it moved a

new ICS2000 switch to New Hampshire in April or July, 2000, the switching facility in place at the time in question was assigned a Common Language Location Identifier (CLLI) code that indicates it is located in Quincy, Massachusetts. GNAPs direct testimony Attachment pgs 8-9; Verizon Rebuttal Testimony page 8.

In addition, although GNAPs asserts that the exact equipment it refers to as “switching facilities” are: 1 Cisco ONS 15454 with 2 OC 48 (which was installed in April 2000, replacing a Fujitsu FLM 600 which was installed on or before June 10, 1999); 1 Convergent ICS2000; and 1 Cisco ONS15454 with 2 OC12 Cards, GNAPs concedes that the actual installation dates for each piece of equipment used to provide service is “somewhat difficult to discern”. Nelson Direct Testimony at lines 45-46. Nonetheless, GNAPs goes on to state that “it is with relative certainty that the New Hampshire fiber optic ring and switching facilities necessary to handle traffic on the ring were in place on or before October, 1998 as indicated by the attached faxes of e-mails and diagrams to and from Mr. Robert Fox of Global Naps, Inc. (Attachment 1).” Nelson Direct Testimony at lines 44-49. A review of Attachment 1 reveals that the only specific reference to a switch contained therein appears in an e-mail from Robert Fox to David Russell dated 9/10/98 which states “(w)e will be using the Quincy Switch (QNCYMACEOOT) with a point code of 005-038-032.” In light of the foregoing, we are not persuaded by GNAPs contention (at lines 62-63 of Mr. Nelson’s Rebuttal/Supplemental Testimony) that its Direct Testimony contains sufficient facts to determine that the installation date satisfies the conditions of the Commission’s Order.

The following additional information further supports our finding that GNAPs has failed to demonstrate that it had switching facilities in New Hampshire as of March 1, 2001:

1. A GNAPs witness testified in proceedings before the Commission on May 16, 2000, in DT 00-001 that GNAPs had not deployed a switch in New Hampshire and that call switching occurred in Quincy, Massachusetts. (Transcript of DT 00-001, pgs. 43 and 64).

2. The GNAPs 2003 annual report filed with the Commission, and sworn to be complete and accurate, states there is no New Hampshire switch.

3. When asked by the Commission, in its October 17 Secretarial letter, to provide the CLLI code for the switch, GNAPs responded on October 22, 2003, by its attorney that the CLLI code for the switch was assigned in July 1998 and was MNCHNHNIFF2 (which would indicate a Manchester NH location). However, the attachments to the witness's filed testimony indicate that GNAPs had asked Verizon in September 1998 to use a Quincy, MA CLLI code for routing purposes. Further, Verizon-NH claims that there is no Point Code associated with the Manchester CLLI code provided by GNAPS, and GNAPs has not refuted this assertion. Verizon-NH provided additional information in its data responses that shows the CLLI code is now QNCYMACE05T, which would also be indicative of a switch located in Quincy, MA.

4. In response to Verizon-NH's Information Request No. 7 which asked for documentation that specifically supports GNAPs' claim that the QNCYMACE05T switch is now located in Manchester, NH, GNAPs simply referred to testimony of Mr. Nelson, the Technical Session and invoices from the Massachusetts State Police authority

for escort. We agree with Verizon-NH's characterization that this response was "very non-specific". GNAPs did not provide a date for the alleged transfer of the equipment from Quincy to Manchester. In response to Staff's request for documentary support of this particular claim, GNAPs provided copies of cancelled checks made out to the Massachusetts State police but with no other information about the service provided.

5. GNAPs claims that an earlier version of the ICS2000 switch was in place prior to the time of the installation of the ICS2000. Yet GNAPs has not asserted that there have been any changes made in the routing of its traffic to New Hampshire internet service providers after the installation of the ICS2000 switch. In light of this, the date on which the ICS2000 switch was installed is irrelevant to our inquiry even though GNAPs spent considerable time and energy trying to demonstrate that the ICS2000 installation occurred prior to March 1, 2001.

**Based upon the forgoing, it is hereby**

**ORDERED**, that GNAPs is not entitled to reciprocal compensation from Verizon for the traffic at issue in this docket.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 2004.

---

Thomas B. Getz  
Chairman

---

Susan S. Geiger  
Commissioner

---

Graham J. Morrison  
Commissioner

Attested by:

---

Debra A. Howland  
Executive Director & Secretary