

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.,

Defendant.

Case No. **DT 08-028**

MOTION FOR AN EVIDENTIARY HEARING

The Defendant, Global NAPS, Inc. (“Global NAPS”, “GNAPS”, or “Global”), moves for an evidentiary hearing in this case. Initially this was requested in a letter from William J. Rooney, Jr., Staff Counsel for Global dated July 16, 2008 (*see* Exhibit A). Staff Counsel advised its preference for Global to file this more formal Motion.

1. This action involves the allegations by the Plaintiffs that Global NAPS is liable for intrastate access charges for communications transported by Global NAPS in New Hampshire.

2. A Pre-Hearing Conference took place, immediately followed by a Technical Conference on May 14, 2008 before this Commission which determined to set a further Technical Conference to discuss issues resulting from Plaintiff’s Complaint. (*See* Exhibit B). No sworn testimony has been questioned or cross examined to date.

3. Such Session took place on July 9, 2008. At such conference an initial proposed stipulation was discussed by the Parties and Staff. General concurrence was reached on a number of peripheral issues with the proviso that each Party would consult with his/her/their respective client(s) to seek consent. (*See Exhibit C*).

4. Subsequent e-mails from Union Telephone led to a lack of agreement with respect to proposed fact # 9, i.e., Global NAPs does not originate traffic. (*See Exhibit C*).

5. Although this is just one of the noted factual disagreements of the Parties, it is indicative of the need for an evidentiary hearing. The gravamen of Global NAPs case revolves around the nature and type of traffic that is exchanged.

6. Global NAPs had proposed a stipulation of facts consistent with already adjudicated facts by the New York Public Service Commission that the traffic it transports is from Enhanced Service Providers (“ESPs”) and/or Voice Over Internet Providers (“VoIP”) outbound to other carriers was VoIP and/or data or a combination thereof, and specifically the majority of such VoIP traffic is nomadic.

7. The fact that Global does not provide originating dial-tone service is critical.¹ For example, if the New Hampshire Commission determined that, in spite of federal prohibitions on determining intercarrier compensation at the state level on this traffic, the Plaintiffs could assess intrastate access charges on it, then Global would be in the position of a net recipient of such access revenues.

8. Further, there has been no evidence on the important fact of the ability to determine to what extent the traffic is interstate rather than intrastate. A recent decision in

¹ Plaintiff’s counsel represented that this fact was “immaterial” in its letter of July 18. Such a statement overlooks a host of legal arguments premised on the nature and origin of the traffic.

Nebraska determined that making such distinction on nomadic traffic was impossible, and thus the state could not apply intrastate access charges on the traffic.

9. The Plaintiffs argue that the origin of the call does not rise to a fact which warrants a hearing. This is absurd given some of Global's anticipated defenses. Further, this fact is not exclusive of all facts upon which a hearing should determine. As indicated above, the nature of the traffic, its identification as VoIP, Data, or a mix thereof as well as the geographical origin is necessary for the application of tariffed intrastate access charges which is the predicate for TDS' complaint that traffic should be blocked.

10. In contrast to TDS' cavalier attitude, Global recommends a course intended to reduce the legal expenditures of the Parties and the Commission. Global seeks to eliminate certain factual disagreements that are material to the case. A decision rendered on a Technical Session without concurrence on the central issues in the case would certainly lead to further appeals and expenditure of legal resources.

11. Finally, as AT&T noted in a recent pleading designed to have the FCC rule expeditiously with respect to VoIP traffic, the current regulatory paradigm is wasteful of resources. Because responses by the FCC are anticipated soon (both to FCC's overtures and also the CoreComm proceeding no later than November 5); rulings with neither sufficient factual premises nor guidance from the FCC would be premature.

12. Wherefore, Global NAPs requests an evidentiary hearing in the above referenced proceeding.

Respectfully submitted,

Dated: July 24, 2008.

GLOBAL NAPS, INC.

By its Attorneys:



James R. J. Scheltema
Global NAPS, Inc.
1311 E. La Rua Street
Pensacola, FL 32501
(617) 504-5513
jscheltema@gnaps.com

William J. Rooney, Jr.
89 Access Road
Norwood, MA 02169
(617) 687-1405
wrooney@gnaps.com

CERTIFICATE OF SERVICE

I, James R. J. Scheltema, hereby certify that on July 24, 2008, I caused a copy of the foregoing to be served on the attached service list by Email.


James R. J. Scheltema
Global NAPs, Inc.
1311 E. La Rua Street
Pensacola, FL 32501

**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**

SERVICE LIST

Original + 7 hardcopies + E-mail:

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

by E-mail:

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

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

James R. J. Scheltema, Esq.
Vice President, Regulatory Affairs
Global NAPs, Inc.
4475 Woodbine Road, Suite 7
Pace, FL 32571
jscheltema@gnaps.com

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

Frederick J Coolbroth
Devine Millimet & Branch, PA
43 N Main St
Concord, NH 03301
fcoolbroth@devinemillimet.com

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

Debra A Martone
TDS Telecom
PO Box 337
11 Kearsarge Av
Contoocook, NH 03229-0337
debra.martone@tdstelecom.com

Patrick McHugh
Devine Millimet & Branch, PA
111 Amherst St
PO Box 719
Manchester, NH 03101
pmchugh@devinemillimet.com

Paul J Phillips
Joslyn L Wilschek
Primmer Piper Eggleston & Cramer, PC
421 Summer St
PO Box 159
St Johnsbury, VT 05819-0159
pPhillips@ppeclaw.com
jwilschek@ppeclaw.com

Darren R Winslow
Union Communications
13 Central St
PO Box 577
Farmington, NH 03901
dwinslow@utel.com

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

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

Chris Rand
Granite State Telephone
600 Southstark Highway, PO Box 87
crand@gstnetworks.com

William Stafford
Granite State Telephone
600 Southstark Highway, PO Box 87
Weare, NH 03281
bstafford@gstnetworks.com

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