

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 08-028

**HOLLIS TELEPHONE COMPANY, INC., KEARSARGE TELEPHONE COMPANY,
MERRIMACK COUNTY TELEPHONE COMPANY AND WILTON TELEPHONE
COMPANY, INC.**

Joint Petition for Authority to Block Traffic from Global NAPs, Inc,

Order Compelling Filing and Scheduling Hearing on Confidential Treatment

ORDER NO. 24,907

October 17, 2008

I. PROCEDURAL HISTORY

Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. (collectively the TDS Companies) filed a joint petition on February 19, 2008 seeking to block Global NAPs, Inc. (Global NAPs) traffic from terminating on the local telephone networks of the TDS Companies. On March 3, 2008, the Commission directed Global NAPs to answer the allegations set out in the joint petition before March 13, 2008. On March 19, 2008, Global NAPs filed an answer to the joint petition together with a motion to accept the late-filed answer. The TDS Companies filed a joint response to the Global NAPs answer on April 14, 2008. An Order of Notice was issued on April 22, 2008 scheduling a prehearing conference and technical session which were held on May 14, 2008.

In a May 20, 2008 secretarial letter, the Commission approved a procedural schedule that had been recommended by the parties and Staff. The procedural schedule provided for initial discovery on all parties, a technical session on July 9, 2008 to develop stipulated facts, and briefs

from all parties by August 1, 2008. On August 6, 2008, the TDS Companies filed a motion to compel Global NAPs to answer certain data requests.

On September 17, 2008, the Commission issued Order No. 24,894 compelling Global NAPs, Inc. to file responses to certain of the TDS Companies' discovery requests. In particular, TDS Companies' Request 26 sought information on CLEC-2 and CLEC-3 forms from Global NAPs for the years 2004 through 2007. In the event those forms were not filed with the Commission, TDS had requested copies of audited financial statements, including balance sheets, income statements and footnotes. In Order No. 24,894, the Commission stated that it had asked Staff to file a memorandum describing all filings made by Global NAPs with the Commission. The Commission further required Global NAPs to file the requested financial statements for 2004 through 2007 for the Global NAPs entity registered as a competitive local exchange carrier (CLEC) in New Hampshire.

On September 23, 2008, Staff filed a memorandum reporting that Global NAPs had filed an annual report for 2004 and an assessment report for 2006, but no annual reports for 2005, 2006 or 2007, and no assessment reports for 2005 or 2007. On September 26, 2008, Staff filed a memorandum recommending Global NAPs be fined and that its authority to operate be revoked.¹ Staff based its recommendation on Global NAPs' responses, or failure to respond, to certain data requests addressed in Order 24,894. In particular, Staff noted that Global NAPs' response to TDS Data Request 22, which was supplemental to TDS Data Request 7, did not include any additional or clarifying information to what had been submitted in the original, underlying data requests.

¹ A separate proceeding will be opened to consider Staff's recommendations concerning fines and revocation of authority.

On October 2, 2008, Global NAPs filed with the Commission a letter requesting confidential treatment pursuant to RSA 91-A:5, IV and Puc 204.06 [sic] of annual reports it had filed on September 29, 2008. On October 8, 2008, Staff filed a memorandum reporting that Global NAPs had filed annual reports for 2005, 2006 and 2007 by e-mail on Sunday, September 28, 2008, and by hard copies filed on Tuesday, September 30, 2008. Staff's memorandum outlined certain deficiencies Staff believes are present in those filings, and recommended the Commission order Global NAPs to file audited financial statements for the calendar years 2004-2007 pursuant to Order No. 24,894. Staff further recommended that the Commission not accord confidential treatment to Global NAPs annual reports.

II. COMMISSION ANALYSIS

A. Filing Requirements for Global NAPs in Docket No. DT 08-028

In Order No. 24,894, Global NAPs was directed to provide responses to, *inter alia*, the TDS Companies' Data Request 26 concerning CLEC-2 and CLEC-3 forms for the years 2004 through 2007 and, if not filed, for audited financial statements, including balance sheets, income statements and footnotes. Furthermore, Staff was instructed to report on all filings Global NAPs had made with the Commission, and Global NAPs was required to file the requested financial statements for 2004 through 2007 for the Global NAPs entity registered as a CLEC in New Hampshire.

Upon review of the filings made by Global NAPs and the memorandum outlining Staff's view of deficiencies in those filings, we have determined that the filing of the requested audited financial statements, including balance sheets, income statements and footnotes is appropriate. As noted in Order No. 24,894, the information sought will lead to evidence relevant to the issues in the case in accordance with RSA 541-A:33, II and Puc 203.23. We also note that Puc 449.04

(g), concerning the filing requirements for CLEC annual reports, provides that “[t]he CLEC shall attach a balance sheet and an income statement for the year reported,” which Global NAPs has not done. We, therefore, direct Global NAPs to resubmit its 2005, 2006 and 2007 annual report filings with balance sheets and income statements in compliance with Puc 449.04(g). We repeat here that the requested 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. We thus require Global NAPs to file the requested financial statements with the Commission and to provide copies to parties to Docket No. DT 08-028. If Global NAPs seeks confidential treatment of these financial statements it should submit a motion for confidential treatment with its filings and, to the extent not already executed, conclude any appropriate non-disclosure agreements with the parties to this docket.

Order No. 24,894 also addressed Global NAPs’ responses to TDS Data Requests 7 and 22, among others. Upon review of Global NAPs’ compelled responses, Staff’s September 26, 2008 memorandum, and the underlying record concerning TDS Data Requests 7 and 22, we find that the information Global NAPs has resubmitted in response to our directive in Order No. 24,894 does not clarify the corporate entities and relationships associated with the provision or funding of services offered in New Hampshire. We therefore direct Global NAPs to provide an annotated listing of each corporate entity related to Global NAPs’ operations and services in New Hampshire. The listing shall include full, official corporate names, names of all officers and any registered agents of each entity, corporate addresses of each entity, and meaningful descriptions of the relationship and function of each entity related to Global NAPs, Inc. as depicted in the corporate family structure provided in Global NAPs’ original (and re-submitted)

response to TDS Data Requests 7 and 22. As noted previously, this information is relevant to the issues subject to adjudication in this docket.

B. Motion for Confidentiality

Although Global NAPs filed its request for confidential treatment pursuant to RSA 91-A:5, IV rather than RSA 378:43, II, and erroneously cited Puc 204.06, we understand the company to seek confidential treatment of its annual report filings under RSA 378:43, II and Puc 203.08.

RSA 378:43 requires that any information filed by a telephone utility with the commission be maintained confidentially if the information satisfies the requirements of paragraph II, which states:

...[T]he telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

- (a) Pertain to the provision of competitive services; or
- (b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

As the filings include only a single number representing gross revenue for New Hampshire, we are uncertain why Global NAPs believes the reports to be “highly proprietary and competitively sensitive,” as it argues in its motion for confidential treatment. Nor is it clear why the release of those particular numbers “could be harmful to Global’s business position and could affect financial markets.” Although Global NAPs asserts that the information is not general public knowledge, Staff’s memorandum suggests that the same information is available through

the Commission's annual assessment reports. Moreover, we note that Commission files show that Global NAPs submitted its 2004 annual report as a public document, although it contained the same figure for gross revenue in New Hampshire.

As a result, we will schedule a hearing pursuant to RSA 378:43, III to determine whether the information merits confidential treatment. To the extent that Global NAPs seeks confidential treatment of the requested audited financial statements with income statements, balance sheets and footnotes, we will consider that request at the same hearing. In the meantime, Global NAPs is directed to submit redacted copies of its 2005, 2006 and 2007 annual reports for filing with the Commission, and to provide unredacted copies under protective agreement to the parties in Docket No. DT 08-028.

Based upon the foregoing, it is hereby

ORDERED, that Global NAPs file with the Commission and the parties to Docket No. DT 08-028 by close of business on October 27, 2008 audited financial statements for Global NAPs, Inc. for the years 2004 through 2007, including balance sheets, income statements and footnotes; and it is

FURTHER ORDERED, that Global NAPs resubmit to the Commission by close of business on October 27, 2008 its 2005, 2006 and 2007 complete annual reports with balance sheets and income statements conforming with Puc 449.04, including redacted, public versions, if confidential treatment is sought, and unredacted copies under protective agreement to the parties to Docket No. DT 08-028; and it is

FURTHER ORDERED, that Global NAPs submit by close of business on October 27, 2008 an annotated listing of each corporate entity related to Global NAPs' New Hampshire operations and services; such listing shall include full, official corporate names of each entity,

names of all officers and any registered agents of each entity, corporate addresses of each entity, and meaningful descriptions of the relationship and function of each entity related to Global NAPs, Inc. and its operations in New Hampshire as depicted in the corporate family structure provided in Global NAPs' original (and re-submitted) response to TDS Data Request 22; and it is

FURTHER ORDERED, that a hearing be scheduled on November 10, 2008 at 10:00 a.m. to hear arguments concerning Global NAPs' motion for confidential treatment of its annual reports for 2005, 2006 and 2007 and, as appropriate, its audited financial statements for the years 2004 through 2007.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director