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VIA ELECTRONIC MAIL & FIRST-CLASS POSTAGE PREPAID

August 5, 2008

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



**Re: DT 08-028 (Joint Petition of Hollis Telephone Company, Inc., et al.)
– Joint Petitioners' Opposition to GNAPs' Request for Hearing**

Dear Ms. Howland:

I write on behalf of Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc. (the "Joint Petitioners") in response to the "Objection to Stipulation of Facts" filed on August 1, 2008, on behalf of Global NAPs, Inc. ("GNAPs" or "Respondent"). The Joint Petitioners take issue with the objections raised by GNAPs and respectfully ask the Commission to overrule those objections and to affirm the parties' previous agreement on the full set of Stipulated Facts.

In the event the Commission sustains GNAPs' objections and determines that hearings are required in this proceeding, the Joint Petitioners respectfully ask:

1. that the Commission first rule on the attached "Motion to Compel GNAPs Data Responses," an original and seven (7) copies of which are appended hereto; and
2. that the Commission issue a Scoping Order stating the facts that remain in dispute and that require resolution through hearings in this matter.

In its July 30th letter, the Commission suspended the previous briefing schedule and directed GNAPs to file "specific objections to each of the 25 stipulated facts" and "to describe any evidence it believes supports its objection to each disputed fact." In its Objections, GNAPs has

denied, in whole or in part, eight (8) of the Stipulated Facts (Facts #2, 7, 12, 13, 18, 21, 23 and 24). The remainder of the Stipulated Facts are deemed admitted.¹

The Respondent's Objections raise several concerns. First, GNAPs has not described the evidence that supports any of its objections, despite a clear directive from the Commission to do so if GNAPs wishes not to have each fact deemed admitted for purposes of these proceedings. The lack of supporting evidence for each objection means that GNAPs is asking the Commission to sustain objections that are not supported with evidence and to strike Stipulated Facts to which all the parties, including GNAPs, gave their oral assent at the July 9th Technical Session. The Commission should not release GNAPs from its earlier commitment when GNAPs has ignored the express condition set by the Commission for such release.

In addition to lacking supporting evidence, the GNAPs objections create striking, if not puzzling, inconsistencies with the Docket proceedings to date. Perhaps the oddest of GNAPs' denials concerns Fact #18, which reads, "FairPoint-NNE terminates the traffic at issue in this proceeding the same way it terminates a traditional voice call, that is, through meet point billing with the Independent ILEC." GNAPs now responds to Fact #18 as follows: "Deny. Global has insufficient information upon which to base an admission." See GNAPs, DT 08-028, Objections to Stipulation of Facts (Aug. 1, 2008), at 6-7. But Fact #18 is actually an issue that was fully resolved at the very outset of this case, during the first technical session held by Staff on May 14, 2008, following the prehearing conference in this Docket. In its May 15th report to the Commission concerning the technical session, the Staff's attorney wrote:

The parties agreed to work toward a stipulation of facts for filing with the Commission at the conclusion of discovery. Toward that end, parties agreed to the following: that Global NAPs transfers all traffic at issue in this proceeding to FairPoint in traditional time division multiplexing (TDM) format and FairPoint terminates that traffic the same way it terminates a traditional voice call through meet point billing with the independent.

L. Fabrizio, DT 08-028, Letter to Executive Director (May 15, 2008), at 1 (emphasis added). But now, with its most recent objection, GNAPs not only disavows the Stipulated Fact that it agreed to in the July 9th technical session, but disavows the very fact that it originally agreed to in the May 14th technical session, and to which it raised no objection or dispute at any time thereafter until now. The Commission should overrule the GNAPs Objection to Fact #18.

Similarly, GNAPs now objects to Fact #13, which reads, in its entirety: "Global NAPs does not know the original format of the traffic it receives." The GNAPs response reads: "Deny."

¹ GNAPs admits eight of the Stipulated Facts (Facts #1, 4, 5, 8, 16, 20, 22 and 25) and admits "with explanation" nine of the Stipulated Facts (Facts #3, 6, 9, 10, 11, 14, 15, 17 and 19). In its "admissions with explanations," GNAPs has not asked for changes in any of the Stipulated Facts in question, and so the Joint Petitioners ask that those "admissions with explanations" be deemed full admissions of fact for the purpose of the Commission's determination.

Responding to this proposed fact depends on the word 'original'. If this means from the ESP's customer? Agreed. If this means from the ESP connected to GNAPs and how they hand the traffic the traffic *[sic]* to GNAPs? Disagree." But in its responses to the first set of data requests in this proceeding, GNAPs raised no such objection. The GNAPs answer to the first set of Data Requests reads as follows:

TDS:Global-2: Please identify the facts and criteria that GNAPs relies upon to establish the status that an ESP is exempt from the payment of terminating access charges for traffic that originates in time division multiplexing ("TDM").

Reply: Global makes no such determination independent, nor could it because Global does not know the format in which traffic is originated. Instead, it relies on its customers' affirmations regarding the traffic which is buttressed by court determinations such as that relating to Transcom.

GNAPs Response to Data Request TDS:Global-2 (dated June 6, 2008), at 4 (emphasis added). By its current denial, however, GNAPs appears to disavow its own Data Response and to seek a factual determination at odds with that earlier response. The Joint Petitioners ask that the Commission overrule the GNAPs Objection to Fact #13.

Of the six remaining GNAPs Objections, three of them (GNAPs Objections to Facts #2, 7 and 12) relate to Stipulated Facts that GNAPs specifically asked, at the July 9th Technical Session, to have included in the Stipulation. Because GNAPs offers no evidence to support its new Objections, it is unclear why GNAPs objects to the very statements of fact that it previously sought to include. GNAPs should abide by its earlier commitment, and so the Joint Petitioners ask the Commission to overrule the GNAPs Objections to Facts #2, 7 and 12.

Two of the remaining GNAPs Objections (to Facts #21 and 23) relate to industry standard practices – the use of Call Detail Records ("CDRs") and Carrier Identification Codes ("CIC codes") – that should not provoke any factual disagreements and that should be readily determinable without the need for hearings. The fact that GNAPs previously assented to these Stipulated Facts at the July 9th Technical Session should underscore the Commission's desire to avoid litigation on these familiar industry practices. The Commission should overrule the GNAPs Objections to Facts #21 and 23.

The final GNAPs Objection (to Fact #24) would preclude the uncontested admission of the discovery responses and exhibits that have been produced in this proceeding. As the Commission is aware, its May 20th Secretarial Letter adopted a Procedural Schedule that had been agreed to by all parties, including GNAPs, and that established an expedited schedule with only limited discovery (an initial round of no more than 10 questions and a follow-up round of no more than 15 questions), a July 9th technical session, and a Stipulation of Facts that would allow for resolution of the issues in this case on the briefs, without the need for hearings.

Stipulated Fact #24, to which all parties including GNAPs gave their oral assent at the July 9th Technical Session, was intended to facilitate the Docket's expedited schedule by allowing the Commission to use the discovery responses and exhibits to complete the evidentiary record in this case. At no time did GNAPs object to that expedited schedule, and indeed GNAPs, along with all the parties, has faithfully adhered to that schedule up to the present time. If the Commission agrees that GNAPs should not be permitted to raise unsupported objections that are at odds with GNAPs' commitment at the July 9th Technical Session, then the Commission should overrule the objection to Fact #24.

Finally, the Joint Petitioners vigorously contest the attempt by GNAPs to offer five new Stipulated Facts (Proposed Facts #26 through 30). GNAPs had the opportunity to include these proposals in the original Stipulation of Facts at the July 9th Technical Session but failed to do so. There is no procedural mechanism in place for GNAPs to make a late offer of new proposed facts. Moreover, the "facts" that GNAPs now proposes appear to be legal conclusions rather than factual findings and go to the ultimate legal issues in the case. As such, the GNAPs "facts" are not appropriate for inclusion in a Stipulation and are best raised in a GNAPs legal brief, once the Commission sets a new briefing schedule.

For the foregoing reasons, the Joint Petitioners ask the Commission to overrule the GNAPs Objections, to deem each of the Stipulated Facts as admitted, and to set a new briefing schedule for the expeditious resolution of this case. In the alternative, if the Commission is inclined to schedule hearings in this case, the Joint Petitioners request the relief previously described on page 1 of these comments.

Thank you for considering these comments. Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul J. Phillips", with a stylized flourish at the end.

Paul J. Phillips
Counsel for the Joint Petitioners

cc: Service List, DT 08-028

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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