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October 20, 2008

BY VIA FEDERAL EXPRESS

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



Re: Global NAPs, Inc. CLEC Certification Forfeit Under PUC 431.13(a)

Dear Ms. Howland:

I received a call yesterday from Ms. Kate Bailey to the effect that because there were some purported deficiencies in Global NAPs, Inc.'s Annual Report filings, they were not acceptable and thus it was her recommendation to the Commission that Global's authority to provide services within New Hampshire be revoked.¹ This was in response to a call I placed to her inquiring about the Commission's letter of October 8th advising that the Commission was not in receipt of annual reports since 2004, despite my records indicating that these same reports were e-mailed from Global NAPs, Inc. paralegal, Larry Cross to Jody Carmody on or about September 29th. My records further indicate that hard copies were sent the next day to the

¹ Not hearing from her until late morning, in an abundance of caution and continuing efforts to satisfy Staff and the Commission, I had responded in writing to the October 8th Commission letter via First Class Mail, Return Receipt Requested as well as by Federal Express overnight delivery, including the filings that the October 8th letter indicated

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Commission. Finally, I had also sent these electronically, both to Kate Bailey and to Lynn Fabrizio.² Within several days, I followed this up with a motion requesting confidential treatment of these reports.

Despite Global trying to comply with Staff's request to the best of its abilities, Staff continues to want more. Indeed, Staff currently wants to audit the company as well as have the President swear and affirm to inaccurate statements. More importantly, however, as a result of not meeting the particularities of filing the Annual Report, it actually wants to revoke Global's authority to provide service. The Telecommunications Act of 1996 has a clear intent to *promote* competition. In this instance, Staff seems to be posing obstructions to such competition. In order to satiate Staff, Global NAPs, Inc. is refileing these Annual Financial Reports but does so under protest, as the mere filing of these as Staff desires compels the President of Global NAPs, Inc. to state an inaccuracy. An explanation and chronology of Global's attempt to comply would be helpful.

Staff alerted Global to its failure to file Annual Reports in the context of a settlement conference for a different matter. The prior filed statements were filed by Richard Gangi, the deceased Chief Operating Officer. When Mr. Gangi became ill, the task of filing these reports fell through the cracks. It was not a willful failure to file, but the result of a prolonged illness and subsequent grief of the loss of the COO, a brother and a friend. As a result of this discussion Global NAPs, Inc. researched the filings, or lack of, and produced a certified mail receipt but no copy of the actual Annual Financial Report for 2005. Nor could it locate filings for 2006 or

were not received. There was no indication from Staff or the Commission that these were received but rejected and therefore deemed to have not been filed.

² In addition to marking the Reports "Confidential", I have filed a Motion requesting these Reports remain confidential, which Staff has opposed.

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2007. This is not surprising, however, given that the then Chief Operating Officer of Global NAPs, Inc., Richard Gangi, had been fighting a long-term losing battle with an undiagnosed disease with various treatments/medications. He was finally diagnosed with cancer, and within two weeks of such diagnosis, he succumbed to the disease. The COO had responsibility for the finances as well as for filings such as these, but was, to put it mildly, distracted. His forlorn grieving brother was forced to try to pick up the pieces, using the best financial information available to him, for example.

Searches for the missing filings were fruitless and it was clear that new ones would be required to be produced. Given the deceased Chief Operating Officer's oversight of the finances, this was no easy task. Concomitant with this task, counsel for Global was consumed with litigation in New Hampshire and other jurisdictions. Late on a Friday afternoon (September 26 @ 3:08 pm), Kate Bailey sent an e-mail with a copy of its recommendation to revoke Global's authority to operate. Despite the late hour on Friday and it being the weekend, being aware of Damaclese's sword over it's head, Global dropped every other task to focus exclusively on the complained of regulatory compliance filings. As a result, Global was able to e-mail a copy of the complained of Annual Reports late on Sunday evening, (September 28 @ 10:19 pm).

The lateness of the hour should indicate the seriousness of Global's attempt to provide the missing reports. There were repeated discussions over the weekend to complete the forms. One of these included the necessary change to the signature block. The successor President, still laboring under the grief of his brother's long painful illness and death, was reluctant to sign the form as it was because he was not assured that he had "the original books," so instead it was agreed that he used the best information available, which presumably would mirror such records.

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Another change was strictly ministerial – changing “our” to “my” in representing preparation of the form(s).³ Finally, Global did not know its status, so on the safe side – and irrespective that it was not providing toll service to end-users – checked the both box, indicating that it was a CTP. This proved to be a minor error, but with no harm as it did not affect the revenue figure(s) reported. Following completion, a long-time family friend from his youth was kind enough to notarize the filings - even at this late hour. The following day, hard copies were sent to the Commission by expedited overnight delivery.

In Global’s mind, the filings were done; the threat was lifted. This proved not to be the case, however. Without any indication of dissatisfaction or requested changes or modification, and rather than calling or e-mailing to advise how to correct any complained of deficiencies, the next communication was a letter from the Commission dated October 8 advising that Global would forfeit its authority to operate for not filing the Annual Reports. There was no indication of how or why the reports were not accepted, so immediately following receipt of this notice, a call was placed to Kate Bailey to determine why the Commission wanted Global to forfeit its authority to operate in light of the electronic and hard-copy filings made. It wasn’t until receiving an e-mail from Kate Bailey yesterday afternoon (October 16 @ 1:37) which was not sent directly to me, but instead to all parties in another action that I gained an understanding of why Staff deemed our repeated filings as “unacceptable” and asked that Global’s license be forfeit. The two filings, Staff Memo on ARs and Memo to Revoke GNAPs Authority were provided to the Commission more than a week before without any indication from Staff of its

³ One issue posed by Staff is that The County of Norfolk was written in later. This was done with the express verbal consent and permission of the notary, who notarizes the signature. There is no reason to believe that this in any way invalidated the identification of the President and his signature.

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dissatisfaction, no opportunity to cure – indeed no explanation or communication whatsoever prior to my call.

In addition to what we consider to be ministerial details in making the form comply so as not to expose the President to making inaccurate statements, Staff complained in this Global NAPs did not provide any financial detail other than on the line labeled “all other New Hampshire revenue.” That is just not true. A quick review of the filed forms reveal that Global put such information on the supplemental sheet, *i.e.*, identified as “[u]se this sheet to provide comments and additional information”. On this sheet, Global stated:

Global NAPs, Inc. does not provide traditional end-user dial tone services, but instead provides services inbound to ISPs from other LECS and outbound transport and termination services to ESPs to other LECs and ITSP services in order that information service providers may access both broadband and traditional telephony subscribers.

Rather than giving Global any benefit of the doubt, or recognizing the extreme efforts that the few at Global toiled under to produce these reports over a weekend immediately following Staff’s recommendation, Staff states in its Memo on ASRs on page one that “[a]ll of these abnormalities question the validity of the filed reports.” These ministerial mistakes do not place in question the reports any more than Staff’s apparent oversight of Global’s supplemental explanation on the filings. Staff is asking the Commission to impose on Global – through the threat of forfeiture – burdens that Global can not comply with. However, it is not that Global won’t, but rather that it can’t provide these. It doesn’t prepare them; it is not a public company and does not do so in the regular course of business.⁴ And, if providing something that doesn’t

⁴ “To the extent there is any ambiguity in the Commission’s order, and to address the questionable annual reports Global NAPs filed, Staff recommends the Commission order Global

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exist is not enough, in contrast to Global's request, Staff recommends that the filings made be public.⁵ This is absurd; the public is not clamoring for this.

In a litigated proceeding that is, at best, tangentially related to these filings, Staff supported the Independents in requesting Global provide audited financial statements. But, Global was not obligated to prepare information for discovery – merely to provide what is available. Now, it seems that Staff is trying to require their preparation by threatening Global's very existence in New Hampshire.

Global files herewith revised filings in an effort to comply with the Commission requirements – even though Global does so under protest as it believes it forces inaccurate statements. Global asks that requests for unavailable, unprepared, non-existent audited financials be rejected and that Global's filings be confidential. Global asks Staff to communicate swiftly and directly with Global to the extent it believes the amended filings are unsatisfactory so that Global can cure any perceived deficiencies. Global is a small competitive provider. It does not have full-time personnel dedicated to satisfying compliance issues. It has done the best it can to file forms satisfactory to the Commission despite the lengthy illness and death of Richard Gangi and his succession by his grieving brother. If there is something more we can do, we will try to. However, given the extreme difficulties Global faces and our Herculean efforts to provide Staff with the filings at issue, we ask the Commission to rescind its letter of October 8th requesting forfeiture, but if it is bound and determined to continue this witch-hunt, then Global requests a hearing in accordance with the Commission's letter of October 8th.

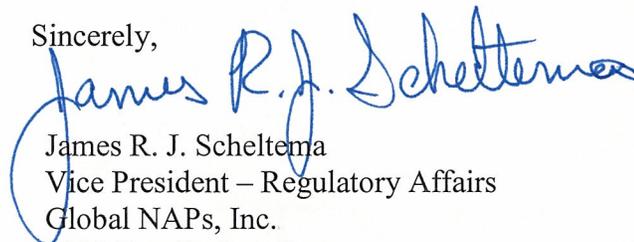
NAPs to file audited financial statements, including balance sheets, income statements and footnotes for calendar years 2004 through 2007. " Staff Memo on ARs, page 2.

⁵ *Id.* page 3.

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Thank you for your attention to this matter. If you have any questions regarding this matter, please feel free to e-mail or call me.

Sincerely,



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CC:Kate Bailey
Cf/jrs