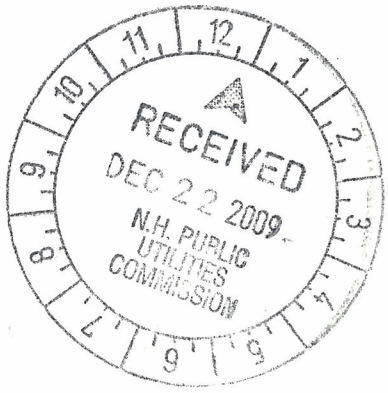
DEVINE MILLIMET

ATTORNEYS AT LAW



December 22, 2009

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Debra A. Howland, Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

Re: DT 08-028; Hollis Telephone Co., Inc., Kearsarge Telephone Co., Merrimack County Telephone Co. and Wilton Telephone Co. Joint Petition for Authority to Block the Termination of Traffic from Global NAPS

Dear Ms. Howland:

On behalf of Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc. and Dixville Telephone Company (the "RLEC Intervenors") we hereby object and respectfully request that the Commission strike the Declaration of David Shaw ("Declaration") and the accompanying cover letter ("Letter") filed by Global NAPS, Inc. on December 16, 2009. For the reasons set forth below, the Letter and Declaration should be treated as an unauthorized submission that should be stricken from the record in its entirety.

On December 16, 2009, GNAPS filed the Declaration of David Shaw, accompanied by a letter proposing to submit a bond of $6,000 to secure the claims of the Joint Petitioners during the pendency of the stay of the Commission's Order 25,043 that GNAPS requested on December 2, 2009. In support of the proposed amount of $6,000, GNAPS submitted the sworn declaration of David Shaw, stating that at the "standard" industry rate of $.00045 for termination of VoIP traffic, GNAPS would owe the Joint Petitioners slightly less than $6,000 over an arbitrarily selected period of six months.

As an initial matter, the proposed bond is absurdly inadequate. In fact, given the circumstances, the amount of the proposed bond is so miniscule that it exposes this letter as a patently disingenuous attempt by GNAPS to enter into a closed record its meritless argument regarding a "standard industry" rate. The Letter and Declaration should be treated as yet another unauthorized submission that must be stricken.

Ever since the Commission issued its judgment in favor of the Joint Petitioners, GNAPS has been affecting an implausible deniability, ostensibly oblivious to the fact that the proceeding is concluded and the Commission has already rendered a judgment against GNAPS for an amount that, as of October 31, 2009, stands at over $650,000. Unreasonably contending that there are

still issues of fact to decide, GNAPS has proposed a token bond in an amount that is orders of magnitude lower than that dictated by traditional civil practice.

Whether referred to as a judgment bond, appeal bond, or supersedeas bond, the security posted during the appeal of a judgment is not merely a gesture, but is instead designed to ensure that the plaintiff in the action will be made whole if the defendant fails on appeal. The standard treatise on this subject provides that:

> The bond shall be conditioned for the satisfaction of the *judgment in full* together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to *satisfy in full* such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the *whole amount of the judgment* remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond.[1]

The RLEC Intervenors have already objected to a stay of the Order, as GNAPS has offered no argument in support such a stay nor met any of the legal standards.[2] However, in the event that the Commission does find that a stay is in order, it should condition such a stay on GNAPS posting a bond for the *full amount* of the judgment. To do otherwise will allow GNAPS to continue to abuse the Commission's procedural rules at no cost and without penalty.

With it being established that the GNAPS letter is not a good faith proposal to secure the Joint Petitioners' rights, the only conclusion that can be drawn is that the Letter is really a pleading in disguise, merely a means of placing the Declaration before the Commission in order to advance the specious argument regarding a "standard industry" rate of $0.00045 for termination of GNAPS traffic to the Joint Petitioners.[3] Therefore, it is in all respects an additional brief, with testimony filed out-of-time.

It is far too late for these shenanigans. As the Commission has noted, GNAPS has entirely failed, despite repeated opportunities, to confirm the nature and jurisdiction of the traffic

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[1] Wright, Miller & Kane, Stay Of Proceedings To Enforce A Judgment ,11 Fed. Prac. & Proc. Civ. § 2905 (2d ed.) (emphasis supplied).

[2] DT 08-028, Objection by Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc. and Dixville Telephone Company to Motion by Global NAPS, Inc. for Stay and for Rehearing (Dec. 8, 2009).

[3] Shaw Declaration at 2.

it terminates to the Joint Petitioners or to provide evidence to rebut the Commission's ultimate finding that GNAPS is terminating switched access traffic subject to tariffed switched access rates. Furthermore, GNAPS has provided no previous evidence on the record regarding the provenance of this "standard" rate, nor cited to any governing law, authority or treatise that establishes this charge as a "standard" in the industry for any kind of traffic. Therefore, for all of the reasons described in the Joint Petitioners' Objection to the GNAPS Reply,[4] the Commission should strike this submission.

It has now been the better part of two years since the Joint Petitioners initiated this Docket. The GNAPS free ride on the public switched telephone network and its anti-competitive cost shifting must come to an end. The record of this proceeding is closed, and the Commission should not reward GNAPS' consistent bad faith by allowing GNAPS to pack this docket with spurious filings intended to delay and distract. The RLEC Intervenors respectfully request that, in addition to granting the RLEC Intervenors' previous request to strike GNAPS' unauthorized Reply of December 10th, the Commission also strike the Letter and the Shaw Declaration in their entirety.

An original and seven (7) copies of this letter are being filed with the Commission, as well as a copy on CD-ROM.

Very truly yours,

Harry N. Malone, Esq.

HNM:

cc: Electronic Service List

[4] DT 08-028, Joint Petitioners' Objection to "Respondent's Reply to Filed Objections to its Motion for Reconsideration" (Dec. 11, 2009).