

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Objection to Global NAPs, Inc.'s Motion for Evidentiary Hearing

NOW COME Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company, Inc., Dixville Telephone Company and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") (collectively, the "Joint Intervenors"), by and through the undersigned counsel, and hereby state as follows in support of the Joint Intervenors' Objection to a Motion for Evidentiary Hearing recently filed by Global NAPs, Inc. ("Global NAPs"):

1. This Commission held a prehearing conference on May 14, 2008. Following that prehearing conference, the parties and the Commission's Staff met in a technical session and agreed upon a discovery schedule. All parties agreed in May that a stipulation of facts would be drafted during a technical session to be held on July 9, 2008. In fact, the parties drafted the stipulation as previously agreed. Two individuals participated on behalf of Global NAPs – Attorney James. R.J. Scheltema and Mr. Jeffery Nowak. At no point did these representatives of Global NAPs advise the parties or the Commission Staff that they could not bind Global NAPs with respect to the stipulation of facts. At no time thereafter did these representatives advise the

Commission, its Staff or the parties to this case that they needed additional time to secure approval from other Global NAPs representatives with respect to the Stipulated Facts.

2. Yet, Global NAPs now seeks to delay this case through the filing of a Motion for Evidentiary Hearing on July 24, 2008. Among other things, Global NAPs now claims that the parties reached concurrence 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 Motion for Evidentiary Hearing, ¶ 3. Global NAPs now is attempting to avoid a previous agreement to the detriment of all other parties to this case. As demonstrated below, however, Global NAPs should be held accountable for its actions and this Commission may decide this case based upon the Stipulated Facts.¹

3. This Commission has held telecommunications carriers accountable for the actions of counsel in the past. As amply stated in *OneStar Long Distance, Inc.*, DT 03-197, Order No. 24239, "...it is not the Commission's obligation to question the authority of the witnesses who profess to speak for an entity appearing before it." See *OneStar*, p. 13 (November 20, 2003). It is well settled law in New Hampshire that attorneys can bind their clients. *Id.* citing *Beliveau v. Amoskeag Co.*, 68 N.H. 225, 226 (1894) and *Manchester Housing Authority v. Zyla*, 118 N.H. 268, 269 (Supreme Court holding in *Zyla* that "[i]t is firmly established that action taken in the conduct of and disposition of civil litigation by an attorney in the scope of his authority is binding upon his client."). The authority of attorneys to bind their clients "...is essential to the orderly and convenient dispatch of business, and necessary for the protection of the rights of the parties." *Zyla*, 118 N.H. at 269 citing *Beliveau* (emphasis added).

¹ The Joint Intervenors hereby submit the Stipulated Facts as Exhibit A, incorporated by reference as if fully set forth herein.

4. In *OneStar*, the prior counsel to the company and a company representative reached an agreement to continue certain of the Commission's proceedings. OneStar determined who would participate in the proceedings. After discussing and agreeing to terms to continue the case, neither OneStar's representative nor its outside counsel asked for clarification, spoke out against the terms of the agreement or requested time to consult with others within OneStar about the terms of the agreement. See *OneStar*, p. 12. When OneStar attempted to avoid its obligations under the agreement, this Commission held - rightfully so - that "[w]e will not allow the Commission process to be abused as OneStar seeks to do." See *OneStar*, p. 13. The Commission enforced the agreement at issue. *Id.*

5. This Docket is no different than *OneStar*. Global NAPs knew since May 14, 2008, that stipulated facts would be entered and the Commission would decide the case on legal briefs. Global NAPs certainly could have requested an evidentiary hearing well before the briefing deadline approached - which it clearly did not do. Instead, Global NAPs participated in discovery (albeit the Joint Intervenors submit that such participation was not in good faith) and participated in the technical session of July 9.

6. Global NAPs decided who among its employees should represent the company during the technical session. Global NAPs' representatives never indicated that they needed time to consult with others within the company with respect to the Stipulated Facts nor did they object to any of the facts.² Indeed, it is important to note that Global NAPs never even claimed in its Motion for Evidentiary Hearing that its counsel had no authority to bind the company. As in *OneStar*, the Commission should not allow Global NAPs to abuse the process. The Commission should adopt the Stipulated Facts and decide the issues in this Docket based upon the Stipulated

² Only Union Telephone Company objected to one of the facts and this "fact" was removed from the Stipulated Facts provided herein under Exhibit A.

Facts and the parties' Briefs. Such action is warranted and necessary for the orderly dispatch of the Commission's business and the protection of the rights of the parties. *Cf. Zyla*, 118 N.H. at 269.

7. The Commission should deny the motion for an evidentiary hearing and decide the issues in this Docket based upon the briefs scheduled to be submitted on August 1, 2008.

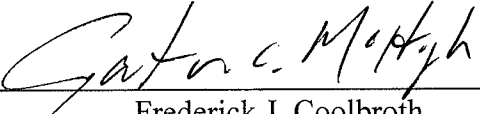
Respectfully submitted,

GRANITE STATE TELEPHONE, INC.
DUNBARTON TELEPHONE COMPANY, INC.
NORTHLAND TELEPHONE COMPANY OF
MAINE, INC.
BRETTON WOODS TELEPHONE COMPANY,
INC.
DIXVILLE TELEPHONE COMPANY
NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC D/B/A FAIRPOINT
COMMUNICATIONS-NNE

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: July 29, 2008

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing objection was forwarded this day to the parties by electronic mail.

Dated: July 29, 2008

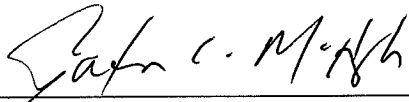
By: 
Patrick C. McHugh, Esq.

EXHIBIT A

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**Joint Petition of Hollis Telephone Company, Inc.,
Kearsarge Telephone Company, Merrimack County
Telephone Company, and Wilton Telephone Company,
Inc. (“Joint Petitioners”), for Authority to Block the
Termination of Traffic from Global NAPs, Inc., to
Exchanges of the Joint Petitioners on the Public
Switched Telephone Network**

DT 08-028

- 1.
- 2.

STIPULATION OF FACTS

This Stipulation of Facts (“Stipulation”) is entered into as of this 15th day of July, 2008, by and among the following undersigned parties to the above-captioned proceeding: Hollis Telephone Company, Inc. (“Hollis”), Kearsarge Telephone Company (“Kearsarge”), Merrimack County Telephone Company (“MCT”), Wilton Telephone Company, Inc. (“Wilton”) (the four foregoing collectively, the “Joint Petitioners”), Global NAPs, Inc. (“GNAPs”), Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., d/b/a FairPoint Communications (“FairPoint Telecom Group”), Bretton Woods Telephone Company, Inc., Dixville Telephone Company (the five foregoing collectively, the “NHTA ILECs”), Union Telephone Company d/b/a Union Communications (“Union,” and, with the Joint Petitioners and the NHTA ILECs, the “Independent ILECs”), Freedom Ring Communications, LLC d/b/a BayRing Communications (the two foregoing collectively, the “Union Companies”), and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint-NNE”) (all of the foregoing collectively, the “Stipulating Parties”).

11. Global NAPs customers represent in their contracts with Global NAPs that they are Enhanced Service Providers ("ESPs"); however, Global NAPs has not independently verified and does not independently verify the nature of the traffic being delivered to the Global NAPs affiliated companies.

12. Global NAPs has three gateways. It can accept, switch and/or terminate traffic in time division multiplexing ("TDM"), asynchronous transfer mode ("ATM") or Internet protocol ("IP") formats.

13. Global NAPs does not know the original format of the traffic it receives.

14. Global NAPs does not distinguish the format of the traffic it receives.

15. Traffic received by Global NAPs that is not in ATM format is converted to ATM format by Global NAPs.

16. Global NAPs Networks, Inc., carries traffic on its network in ATM format and converts the format to TDM for termination on the public switched network.

17. Global NAPs Networks, Inc., transfers all traffic at issue in this proceeding to FairPoint-NNE in traditional TDM format at the FairPoint-NNE tandem in Manchester, New Hampshire.

18. 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.

19. The Global NAPs operating carrier number ("OCN") is 4976 in New Hampshire, 4975 in New York and 7755 in Massachusetts.

20. The Industry Numbering Committee Company Code Assignment Guidelines state: An Operating Company Number (OCN) is a four-character numeric or alphanumeric code

I. STIPULATED FACTS

1. Global NAPs Inc. is certified as a Competitive Local Exchange Carrier ("CLEC") in New Hampshire by Order No. 22,976, dated July 8, 1998.

2. Global NAPs Inc., Global Naps Networks, Inc., Global NAPs Realty, Inc. and Global NAPs New Hampshire, Inc. (collectively "Global NAPs") combine to provide services in New Hampshire.

3. There is no annual report or assessment report for Global NAPs, Inc., on file at the NHPUC for 2005, 2006 and 2007.

4. Global NAPs, Inc. is not a registered CTP in the State of New Hampshire.

5. Global Naps Networks, Inc., Global NAPs Realty, Inc. and Global NAPs New Hampshire, Inc., are not certified as CLECs or as CTPs in New Hampshire.

6. To Global NAPs' knowledge, no separate check has been paid to Verizon or FairPoint for invoiced transit traffic charges.

7. Transit traffic charges from Verizon and FairPoint to Global NAPs Inc. and Global NAPs Inc. charges to Verizon and FairPoint for reciprocal compensation are in dispute and are currently being litigated in the United States District Court for the Eastern District of New York.

8. Global NAPs does not provide dial tone service to any customer in New Hampshire.

9. Global NAPs terminates calls for Voice over Internet Protocol ("VoIP") providers.

10. Global NAPs Inc. delivers calls to Internet Service Providers ("ISPs") and e-fax service providers.

that uniquely identifies a provider of local telecommunications service in accordance with the ANSI T1.251 industry standard.

21. TDS receives industry standard call detail records ("CDRs") from FairPoint-NNE showing traffic with OCN 4975.

22. The Global NAPs Carrier Identification Code ("CIC") is 5133.

23. CICs are 4-digit numeric codes which are currently used to uniquely identify local exchange carriers ("LECs"), carriers who purchase access services, and Billing and Collections Clearinghouses that provide third-party bill aggregation services on behalf of access purchasers. These codes are primarily used for routing from the local exchange network to the access purchaser and for billing between the LEC and the access purchaser.

II. MISCELLANEOUS

24. Parties agree that all discovery responses and exhibits attached thereto shall be admitted into evidence without further hearing.

25. This Stipulation may be executed in multiple counterparts, which together shall constitute one agreement.

WHEREFORE, the undersigned Stipulating Parties offer this Stipulation for the reasons and purposes stated herein.

DATED as of the date first above written.

Hollis Telephone Company, Inc., Kearsarge Telephone
Company, Inc., Merrimack County Telephone Company,
and Wilton Telephone Company, Inc.

BY: Primmer Piper Eggleston & Cramer PC, Their Attorneys

BY: _____
Paul J. Phillips

Global NAPs, Inc.

By: _____
James R. J. Scheltema

Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., d/b/a FairPoint Communications, Bretton Woods Telephone Company, Inc., and Dixville Telephone Company

By: Devine, Millimet & Branch, P.A., Their Attorneys

By: _____
Frederick J. Coolbroth

Union Telephone Company d/b/a Union Communications

By: _____
Jasper Thayer

Freedom Ring Communications, LLC d/b/a BayRing Communications

By: _____
Ben Thayer

Northern New England Telephone Operations LLC d/b/a
FairPoint Communications-NNE

By: Devine, Millimet & Branch, P.A., Their Attorneys

By: _____
Patrick C. McHugh