

**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. ("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

**JOINT PETITIONERS' OBJECTION TO RESPONDENT'S
MOTION FOR AN EVIDENTIARY HEARING**

July 29, 2008

Submitted on behalf of:

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

By:

PRIMMER PIPER EGGLESTON & CRAMER PC

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1. Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc. (collectively, the "Joint Petitioners"), by and through the undersigned counsel and pursuant to N.H. Admin. Rule Puc 203.07(e), hereby object to the "Motion for an Evidentiary Hearing" that was filed on July 24, 2008 with the New Hampshire Public Utilities Commission ("Commission") on behalf of Global NAPs, Inc. ("GNAPs" or "Respondent"), in the above-referenced proceeding.

2. Previously, by letter dated July 16, 2008 to the Commission's Executive Secretary, Respondent requested a hearing on the sole issue of whether the deletion of a single item ("Fact #9") from a proposed Stipulation of Facts constituted a "factual dispute". In response, the Joint Petitioners, by letter dated July 18 2008, advised the Commission that the deletion of Fact #9 actually *avoided* a "factual dispute," since an intervenor had disputed the accuracy of the challenged fact while the Joint Petitioners did not consider the challenged fact to be

material to the resolution of claims in this proceeding. The Commission has not taken action on the Respondent's earlier letter-request.

3. Now, by pleading dated July 24, 2008, Respondent reiterates its request for a hearing based only on the deletion of alleged "Fact #9" from the proposed Stipulation of Facts. In Respondent's words, "Although *this is just one of the noted factual disagreements* of the Parties, it is indicative of the need for an evidentiary hearing." Respondent's Motion ¶ 5, at 2 (emphasis added). Contrary to the foregoing contention, however, Respondent has not specified any other "factual disagreements" that have been raised, nor has Respondent cited the Commission to where such disagreements have been (or can be) "noted."

4. In fact, Respondent has raised no "factual disagreements" in the proposed Stipulation of Facts that warrant an evidentiary hearing by the Commission, and the Joint Petitioners accordingly object to the Respondent's Motion and respectfully ask the Commission to deny it forthwith.

5. As the Joint Petitioners explained in their July 18th letter in response to the original GNAPs letter-filing, the Parties agreed at the outset of this case to an expedited Procedural Schedule that encompassed two rounds of Discovery, a Technical Session, a Joint Stipulation of Facts, and the submission of Briefs for possible resolution of the case by the Commission. See DT 08-028, Secretarial Letter dated May 20, 2008 (attached hereto as "Exhibit JP-1").

6. At no time during the course of this Procedural Schedule has Respondent, or indeed any Party, objected to such schedule or raised any claim of a material dispute of facts

that would require curtailing such schedule and replacing it with a full schedule of prefiled testimony and evidentiary hearings.

7. Indeed, the Parties have faithfully cooperated in their adherence to the agreed-upon Procedural Schedule, including cooperative participation in a July 9th Technical Session and the joint drafting of a proposed Stipulation of Facts containing twenty-five (25) separate jointly-stipulated facts.

8. Respondent, through its associate general counsel and its senior technical manager, actively participated in the July 9th Technical Session and proposed many, if not most, of the proposed facts that the Parties agreed to include in the Stipulation of Facts. Also participating in the July 9th Technical Session were counsel and three representatives of the Commission staff, counsel and three representatives of the Joint Petitioners, counsel and one representative of the New Hampshire Telephone Association, two counsel for FairPoint Communications—NNE, and two representatives appearing jointly for Union Telephone Company, Inc. and Freedom Ring Communications, LLC d/b/a BayRing Communications. At no time did any of the foregoing counsel or Parties indicate that they lacked authority to make a binding commitment on behalf of their respective clients.

9. Respondent now asserts that the Parties who participated in jointly drafting the proposed Stipulation of Facts at the July 9th Technical Session did so "with the proviso that each Party would consult with his/her/their respective client(s) to seek consent." The Joint Petitioners dispute this contention. In fact, the Parties at the Technical Session reached a binding oral agreement on the proposed Stipulation of Facts and left the session with the expectation that Parties could offer technical corrections to the draft document but would not

withdraw their oral commitment to execute and submit the proposed Stipulation of Facts to the Commission.

10. As part of its technical review process of the proposed Stipulation of Facts, one of the intervenors, Union Telephone Company, Inc. ("Union Telephone"), objected to the inclusion of "Fact #9," which reads, in its entirety: "Global NAPs does not originate traffic." Union Telephone asked that Fact #9 be stricken from the proposed Stipulation of Facts.

11. The intervenor's objection prompted the Joint Petitioners to review their own call-detail records, which demonstrated the existence of a small number of records tending to show that Respondent does originate calls that terminate on the public switched telephone network in the Joint Petitioners' exchanges. Because the Joint Petitioners had reason to believe that proposed Fact #9 did not reflect an accurate view of the facts, the Joint Petitioners joined Union Telephone in asking that proposed Fact #9 be deleted from the proposed Stipulation of Facts.

12. The Director of the Legal Division, serving as Staff counsel in this matter, thereupon deleted Fact #9 from the proposed Stipulation of Facts and so notified the Parties of the deletion.

13. The deletion of Fact #9 merely eliminates a *negative* assertion ("Global NAPs does not originate traffic"). At no time has any Party asked to include an *affirmative* statement that would suggest that Respondent *does* originate traffic. The deletion of the challenged fact simply leaves the proposed Stipulation silent on the matter, without raising any implication concerning the origination of traffic by GNAPs.

14. The question of traffic origination by GNAPs is immaterial to the resolution of the Joint Petitioners' claims. The Joint Petitioners contend that GNAPs' obligation to pay lawful access charges for the termination of its traffic to the PSTN in the Joint Petitioners' exchanges is the same whether or not GNAPs originates such traffic. Proof, even in the form of a jointly stipulated fact, that GNAPs does not originate traffic does not relieve GNAPs of the obligation, as the identified routing carrier, to pay lawful terminating access charges to the Joint Petitioners.

15. In light of the deletion of proposed Fact #9, however, GNAPs now repudiates the proposed Stipulation of Fact in its entirety, without offering any reasons for its repudiation other than the suggestion that there are numerous, unspecified "factual disagreements of the Parties". Respondent also contends that the Joint Petitioners' characterization of the deletion as immaterial "overlooks a host of legal arguments premised on the nature and origin of the traffic." Respondent's Motion ¶ 7, at 2 f.n. 1 (emphasis added). Beyond this vague claim, however, Respondent has made no attempt to delineate or even to summarize what this "host of legal arguments" might be.

16. Without a specific objection to each of the proposed facts, the Respondent should not be allowed to repudiate its oral commitment to the Stipulation. The Parties and the Staff are entitled to hold Respondent to its word and not to allow Respondent to discard a Procedural Schedule that the Parties have adhered to since May simply because the Respondent now offers an unsupported repudiation of the facts it agreed to at the Commission's July 9th Technical Session.

17. As the Commission has previously stated in a similar context:

"We will not allow the Commission process to be abused ... It is not the Commission's obligation to question the authority of the witnesses who profess to speak for an entity appearing before it. New Hampshire law recognizes the practical needs of settlement to resolve disputes. Authority of attorneys to make settlement agreements 'is, in practice, never questioned.' *Beliveau v. Amoskeag Co.*, 68 N.H. 225, 226 (1894), quoted with approval, *Manchester Housing Authority*, 118 N.H. 268, 269 (1978). If [the company's attorney] agreed to something he should not have, that is a matter for [the company and its attorney] to resolve. We will not relieve [the company] of the commitments it made ..."

In re: OneStar Long Distance, Inc., DT 03-197, Order No. 24,239 (N.H.P.U.C., Nov. 20, 2003), at 13.

18. Disrupting the Procedural Schedule at this point in the proceedings would injure the Joint Petitioners' rights and would undermine the due administration of justice by allowing the Respondent to rescind the oral commitments it has made at each stage of the Procedural Schedule, including, most notably, the oral agreement that it reached with the other Parties at the conclusion of the July 9th Technical Session.

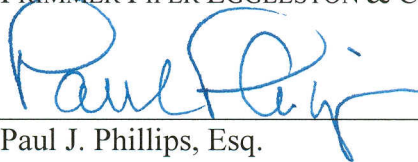
WHEREFORE Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc., jointly object to the Respondent's "Motion for an Evidentiary Hearing" and respectfully ask the Commission to deny that Motion forthwith and to proceed with the Procedural Schedule as adopted on May 20, 2008.

DATED at Plymouth, New Hampshire, this 29th day of July, 2008.

Respectfully submitted,

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

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