

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

Joint Intervenors' Response to Global NAPs, Inc.'s Objection to Stipulation of Facts

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 (collectively, the "Joint Intervenors"), by and through the undersigned counsel, and hereby state as follows in response to the Objection to Stipulation of Facts (the "Objection") recently filed by Global NAPs, Inc. ("Global NAPs")¹:

1. The present motion practice resulted from Global NAPs' filing of a Motion for Evidentiary Hearing on July 24, 2008. Among other things, Global NAPs claimed 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. In response, the Commission issued a Secretarial Letter, dated July 30,

¹ A representative of Global NAPs electronically submitted the Objection to certain members of the service list, excluding members of the Commission's Staff, in this Docket via an e-mail of 4:54 PM on Friday, August 1, 2008. However, the Objection was not submitted to the full service list until circulated by a member of the Commission's Staff during the afternoon of Monday, August 4, 2008.

2008 (the “Secretarial Letter”), in which it ordered (in relevant part, from the third (3rd) paragraph) that (with emphasis added):

...the Commission directs Global NAPs to file on or before August 4, 2008, specific objections to each of the 25 stipulated facts² attached as Exhibit C to its Motion [for Evidentiary Hearing]. The Commission further instructs Global NAPs to ***describe any evidence it believes supports its objection to each disputed fact.*** Global NAPs’ failure to object to a proposed stipulated fact will be deemed to be an admission of that fact.”

2. As demonstrated below, (i) Global NAPs failed to abide by the Commission’s Secretarial Letter, (ii) Global NAPs should be held accountable for its actions and (iii) this Commission may decide this case based upon the Stipulated Facts. Moreover, the Joint Intervenors submit that the letter filing made on behalf of the Joint Petitioners by Attorney Paul Phillips, dated August 5, 2008 (the “TDS Letter Filing”), justifies in further detail the Commission’s adoption of the Stipulated Facts and the resolution of the issues raised by the Joint Petitioners in this Docket via an expedited briefing schedule.

3. The TDS Letter Filing contains ample support for a decision from this Commission to the effect that Global NAPs failed to follow the Commission’s directive in the Secretarial Letter. As a first matter, however, the Secretarial Letter could not have been more clear - Global NAPs should have filed by August 4, 2008, a pleading which described evidence tending to support a dispute with any of the facts listed with in the Stipulated Facts. Global NAPs clearly failed to follow this directive. The most egregious example is referenced within the TDS Letter Filing, on page 2, concerning Stipulated Fact #18. This fact, among others not repeated herein to minimize the redundancy of the Joint Intervenors’ Response with the Joint Petitioners’ filings, clearly and unequivocally was agreed to by the parties in May 2008. Why Global NAPs waited until August 4 to advise the Commission that it had to “deny” this fact

² Exhibit C to Global NAPs’ Motion is labeled “Stipulation of Facts” and hereinafter is referenced in this Response as the “Stipulated Facts”.

because of “...insufficient information” is never explained in its Objection. The Joint Intervenors submit that such a failure should not be excused by the Commission and, accordance with the Secretarial Letter, Stipulated Fact #18 should be deemed admitted by Global NAPs.

4. The TDS Letter Filing contains other examples of Global NAPs’ failure to adhere to the Secretarial Letter. Within pages 3-4 of the TDS Letter Filing, the Joint Petitioners methodically explain why Global NAPs’ purported objections to Stipulated Facts 2, 7, 12 ,13, 21 and 23 should be overruled. Global NAPs failed to raise any valid objection to these Stipulated Facts. Specifically, in all of its objections to these facts, Global NAPs failed to provide any evidence tending to disprove the facts at issue and failed to describe evidence which supports the objection. As Global NAPs failed to comply with the Secretarial Letter, the Commission should find no basis in the objections and should deem the Stipulated Facts as admitted by Global NAPs. In all other respects, the Joint Intervenors adopt and incorporate by reference the terms of the Joint Petitioner’s Letter Filing as if fully set forth herein.

5. Furthermore, the Joint Intervenors note that two individuals participated in the technical session of July 9, 2008 (during which the Stipulated Facts were drafted), 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.

6. As explained in the Joint Intervenors Objection to Global NAPs’ Motion for Evidentiary Hearing, filed July 29, 2008, 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).

7. The same standard should apply in this Docket. 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. 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. Indeed, it is important to note that Global NAPs never even claimed in its Motion for Evidentiary Hearing or its Objection to the Stipulated Facts that its counsel had no authority to bind the company. The Commission should not allow Global NAPs to abuse the process. The Stipulated Facts should be deemed admitted by Global

NAPs. The right to due process of law is not a right to unreasonable delay. Global NAPs has provided no basis for the Commission to conclude that an evidentiary hearing is warranted, and the parties should be directed to proceed with a briefing schedule. 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.

8. In fact, Global NAPs is no stranger to delay tactics and egregious abuse of the judicial process. In *Southern New England Telephone Company v. Global NAPs, Inc. et al.*, the United States District Court for the District of Connecticut entered a judgment in favor of Southern New England Telephone Company ("SNET") in a civil collections action in an amount of over \$5.2 million in monetary damages, plus \$645,760 in attorneys fees due to Global NAPs' (i) willful violation of the Court's discovery orders, (ii) lying to the Court about the ability to obtain documents from third parties, (iii) destroying and withholding documents that were within the scope of the discovery requests and orders and (iv) committing a fraud upon the Court. *See Southern New England Telephone Company v. Global NAPs, Inc. et al.*, Civil Action No. 3:04-cv-2075, Second Amended Ruling on Plaintiff's Motion for Default Judgment, July 1, 2008. The Court found that Global NAPs had actively destroyed evidence in the case at issue and, in trying to intentionally delete information from computer files, used a computer program known as "Window Washer". *Id.* at p4, *5³. In destroying the evidence, a special option was selected whereby the user chose the "(shred) wash with bleach option" on multiple occasions (*see id.*) The Court cited multiple other abuses of the discovery process and explained how a Global NAPs' executive lied to the Court (*see id.*, p. 9, *11). *See generally id.* at ps. 5-12, Section IV.

³ All citations to the *SNET* decision are to the version of the decision provided as an attachment to the Joint Petitioners' Motion to Compel Global NAPs, Inc. to Respond to Data Requests, filed along with the TDS Letter Filing. That decision is referenced in paragraphs 26-27 of said motion.

9. The Commission should not allow Global NAPs to engage in similar conduct in New Hampshire. Attending a technical session, accepting stipulated facts and then later refusing to accept that which it agreed to amounts to bad faith on the part of Global NAPs. The Joint Petitioners and Joint Intervenors, along with other parties, spent time and money attending the technical session of July 9 and participating in same in good faith. Global NAPs should not be permitted to benefit procedurally or otherwise from its delay tactics. Each day of delay allows Global NAPs to utilize the Joint Petitioners' network for free. Such conduct is not in the public interest nor in the best interests of anyone other than Global NAPs.

10. Importantly, in an attempt to allow Global NAPs to explain its objections to the Stipulated Facts, the Commission provided a process through the Secretarial Letter to justify the need for an evidentiary hearing. The process was ignored. Global NAPs failed to cite or explain evidence in support of its so-called objections to the Stipulated Facts. Such conduct further demonstrates Global NAPs' commitment to delay and its refusal to abide by orders of various judicial and administrative entities.

11. This sort of disregard for the adjudicative process and the Commission's rules should not be countenanced in this Docket. The Commission should deny the motion for an evidentiary hearing, overrule Global NAPs' Objection and decide the issues in this Docket based upon an expedited briefing schedule.⁴

⁴ As noted in footnote 3 above, the Joint Petitioners filed a Motion to Compel in the event that the Commission sustains Global NAPs' Objections to the Stipulated Facts. While the Joint Intervenors believe that the Commission should not sustain any of Global NAPs' objections, the Joint Intervenors support the relief requested in the Motion to Compel in the event the Commission disagrees and schedules an evidentiary hearing in this Docket.

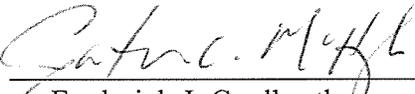
Respectfully submitted,

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NORTHLAND TELEPHONE COMPANY OF
MAINE, INC.
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By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: August 7, 2008

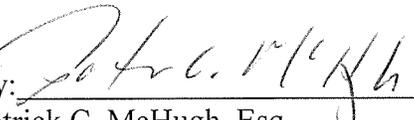
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CERTIFICATE OF SERVICE

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

Dated: August 7, 2008

By: 

Patrick C. McHugh, Esq.