

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 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**

Now come Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc. and Dixville Telephone Company (the "RLEC Intervenors") and hereby object to the "Motion of Global NAPs to Stay Disconnection and Payment Order Based on Section 251 Negotiations between Global and the TDS Plaintiffs, for Reconsideration Based on New Law and New or Corrected Facts and for a Rehearing pursuant to RSA 541:3" dated December 2, 2009 (the "Motion"). The Motion relates to this Commission's Order No. 25,043 dated November 10, 2009 in this Docket (the "Order"). For the reasons set forth below, the RLEC Intervenors assert that the Motion should be denied in its entirety.

I. INTRODUCTION

This Commission, in its earlier Procedural Order and Order on Motion to Compel Discovery Responses, Order No. 24,894 in this Docket (the "Procedural and Discovery Order"), observed as follows with respect to Global NAPs, Inc. ("GNAPs"):

“This case presents an example of a proceeding in which one party clearly benefits from delay. This case also highlights the numerous ways in which pre-trial motions and other procedural devices can frustrate the speedy resolution of a dispute.”

Id. p. 5. With the Motion, GNAPs strikes again. In an inch-thick scattershot of vague, repetitious and irrelevant claims, GNAPs once again seeks to use delay to continue procuring access services from telecommunications carriers without paying for it. The Order is thorough and well reasoned. The GNAPs claims are without basis, and the Motion should be denied.

II. THE GNAPS MOTION FOR STAY

The Motion requests a stay but does not present the Commission with evidence in support of a stay or even a statement of the legal standard to be applied by the Commission in ruling on the motion for a stay. The stay should be denied on that basis alone.

To the extent that GNAPs is requesting that the Commission suspend the Order under RSA 541:3 in response to the motion for rehearing, it should be denied for the reasons set forth in Section III below. If GNAPs is asking for something else, it has not provided authority for such Commission action. The Commission has previously applied by analogy the jurisdiction granted to the Supreme Court to issue a stay pending appeal pursuant to RSA 541:18. Re: Freedom Ring Communications, LLC d/b/a BayRing Communications, Order No. 24,913 dated October 31, 2008, p. 7. The standard articulated by the Supreme Court for granting such a stay is that such an order may be granted if “the plaintiff has demonstrated two conditions are present. First, there must be a showing that the plaintiff will suffer irreparable harm, occasioned by circumstances beyond his control, if the order is given immediate effect. Second, it must be clear that the harm to the plaintiff outweighs the public interest in enforcing the order for the duration of the appeal.” Union Fidelity Life Ins. Co. v. Whaland, 114 N.H. 549, 550 (1974).

“The mere fact that an administrative decision may cause injury or inconvenience to the plaintiff

is insufficient to warrant a suspension of order. *Id.* The Commission in the *BayRing* case also cited administrative efficiency as a possible ground. *BayRing*, p. 7. GNAPs has presented no evidence substantiating any such basis for a stay. There is no showing of irreparable harm; GNAPs can simply pay what is owed. There is no public interest in allowing GNAPs to continue to use the networks of other carriers without paying for it. The RLEC Intervenors are regulated on a rate of return basis. To the extent that GNAPs is allowed to use the RLEC Intervenors' networks without paying for it, other paying customers are exposed to having to make up for the shortfall. The public interest favors the innocent paying customers. As for administrative efficiency, the Commission has already observed that this case "highlights the numerous ways in which pre-trial motions and other procedural devices can frustrate the speedy resolution of a dispute." Procedural and Discovery Order, p. 5. Administrative efficiency will best be served by rejecting the GNAPs stay request.

III. THE GNAPS MOTION FOR REHEARING:

The GNAPs motion for rehearing again does not address the legal standard for granting the requested relief. Pursuant to RSA 541:3, the Commission may grant a rehearing when the motion states good reason for such relief. Good reason may be shown by identifying specific matters that were either "overlooked or mistakenly conceived" by the deciding tribunal. *See Dumais v. State*, 118, N.H. 309, 311 (1978). *See also Appeal of the Office of the Consumer Advocate*, 148 N.H. 134, 136 (Supreme Court noting that the purpose of the rehearing process is to provide an opportunity to correct any action taken, if correction is necessary, before an appeal to court is filed). None of the claims asserted by GNAPs provide the requisite "good reason".

In the Motion, GNAPs asserts that it has written to the TDS companies proposing negotiations for an interconnection agreement. This claim has no relevance for at least two

reasons. First, the service provided by the TDS companies for which payment is sought is access service governed by the relevant access tariff, not an interconnection agreement. Second, this case relates to access service taken in the past and not paid for. Whatever the possible future arrangements may be, the current bills are due and owing for access service rendered, and the carriers that provided access service to GNAPs are entitled to be paid or to discontinue service.

GNAPs then says for the first time that the TDS companies were required to provide evidence that the traffic delivered by GNAPs to the TDS companies for termination was carried over Feature Group D trunks. GNAPs did not raise this issue in its briefs or as an item to be included in the stipulated facts. GNAPs did not even raise this issue in response to the express directive by the Commission for GNAPs to state specifically the factual issues for which an evidentiary hearing was requested. In any event, this claim is but another dilatory tactic, a classic “red herring”. There is no requirement in the applicable access tariff that access service be furnished over Feature Group D trunks. The TDS companies had no such burden of proof.

GNAPs again raises its claim that the TDS companies bear the burden of establishing the nature of the traffic that GNAPs arranges to deliver to them as access traffic through the FairPoint tandem. Since GNAPs asserts that some of this traffic likely is “ESP” traffic, the TDS companies bear the burden of showing that it is not. The Commission fully considered this argument in the Order. Importantly, the Commission pointed out that under the applicable tariffs, the interexchange carrier delivering the traffic for termination must maintain records of percentage of interstate usage and make those records available for inspection. Order, p. 21. GNAPs, the party that delivers this traffic, is the party in a position to identify the nature and jurisdiction of that traffic. It did not do so in this case. The Commission carefully considered this issue and appropriately allocated the burden of proof.

GNAPS rehashes its “ESP exemption” argument with snippets from transcripts and a copy of an Administrative Law Judge initial decision in Pennsylvania that has not been adopted by the Pennsylvania Public Utility Commission.¹ This Commission carefully considered the GNAPs “ESP exemption” argument in the Order. There is nothing new in the Motion to merit rehearing.

GNAPs next makes the new argument that it, as an “intermediate carrier”, cannot be charged with knowledge regarding the origins of calls. This is nonsense. By arranging to receive this traffic and deliver it as interexchange traffic to the TDS companies (and to the other New Hampshire incumbent local exchange carriers), GNAPs is performing the service of an interexchange carrier. The relevant access tariffs make clear that it is the responsibility of the interexchange carrier to structure its arrangements so that it can provide information regarding the jurisdictional nature of the traffic for inspection. This requirement has been a feature of the service provided by interexchange carriers since the AT&T break-up in 1984. There is nothing here that the Commission has overlooked or which otherwise serves as a basis for rehearing.

GNAPs makes a generalized claim that it has been denied due process, but the Commission considered carefully the opportunities provided to GNAPs to substantiate GNAPs’ claim that an evidentiary hearing was required. The Commission pointed out:

Despite multiple opportunities to support its arguments with data and information through discovery, technical sessions, and two rounds of briefing, as well as mandated compliance with a Commission order requesting further information, Global NAPs failed to produce any evidence to substantiate its claims that the calls carried over TDS’ network are ESP traffic and exempt from access charges.

Order, p. 23.

¹ It is remarkable that GNAPs touts as victory an order determining to impose sanctions on GNAPs in the amount of \$1,000 per day from May 29, 2009, which would now total more than \$190,000.

GNAPS has not provided good reason for the Commission to grant rehearing, and that request should be denied.

IV. CONCLUSION:

It has now been the better part of two years since the TDS companies initiated this Docket. The GNAPs free ride on the public switched telephone network must come to an end. The RLEC Intervenors respectfully request that the Motion be denied in its entirety.

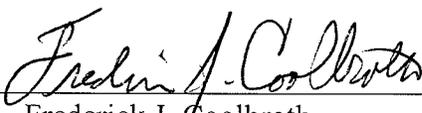
Respectfully submitted,

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DUNBARTON TELEPHONE COMPANY, INC.
BRETTON WOODS TELEPHONE COMPANY,
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By Their Attorneys,

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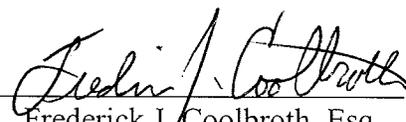
Dated: December 8, 2009

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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: December 8, 2009

By: 
Frederick J. Coolbroth, Esq.