

DT 00-223

INVESTIGATION INTO WHETHER CERTAIN CALLS ARE LOCAL

Order on Motions to Compel

O R D E R N O . 23,658

March 22, 2001

I. INTRODUCTION and BACKGROUND

Docket DT 00-223 was initiated in October, 2000, to investigate the treatment of calls that originate in one rate center and are delivered to an Internet Service Provider (ISP) or other Competitive Local Exchange Carrier (CLEC) physically located in a rate center outside the originator's local calling area but are delivered through the use of an NXX code¹ assigned for rating purposes to the originator's local calling area. The docket consolidated the common issue from three open dockets before the Commission.

In accordance with the procedural schedule established by Order No. 23,595, a number of parties filed testimony and submitted to discovery.

Granite State Telephone Inc., Merrimack County Telephone Company, Wilton Telephone, Company, Inc.; Hollis Telephone Company, Inc., Dunbarton Telephone Company, Inc.,

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In a seven digit local phone number, the first three digits identify the specific telephone company central office which serves that number and are referred to as the NXX code.

Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company Inc. and Dixville Telephone Company together with the Independent Telephone Companies (ITCs) propounded data requests on Global NAPS, Inc. (GNAPs) as a result of testimony that was filed by the GNAPs. The requests were propounded on Jan. 22, 2001.

Two days later, GNAPs objected to a substantial portion of the requests, including questions 1 - 21, 23, 25, 26, 36-38, 41-43, 46 and 52. Additionally, the ITCs propounded requests on BayRing Communications (BayRing). On January 26, 2001, BayRing objected to a substantial portion of the questions including questions 1-8, 11-20, 22, 23, 25, 28, 31, 32, 39-41, 45, 50, 54, 57, 59, 63, 65, 71, and 72. Both GNAPs and BayRing had similar objections, both general and specific. BayRing's general objections indicated that the information sought exceeds that required by Commission rules and that the information was protected by one or more privilege. GNAPs also made general objections; namely, that the information sought was irrelevant, beyond the scope of the witness' testimony and confidential.

As a result of the objections the ITCs filed Motions to Compel with this Commission on January 31, 2001 and February 2, 2001, against GNAPs and BayRing respectively. The

motions stated the need for the answers to the discovery questions. The motions discussed each of the objected to questions and explained that the information sought was either relevant, within the scope of the witness' testimony or not confidential. The motions also addressed the specifics as to why the answers were required.

Both GNAPs and BayRing timely objected to the motions to compel providing rationale as to why they should not be required to produce answers. The response by BayRing also included answers to some of the questions to which it had previously objected. The GNAPs objection argued that the ITCs misunderstand the nature of the case. GNAPs states, "[t]he ITCs seem unable to decide whether this is a broad, generic policy investigation of universal service, rates, numbering resources, and competition, or a narrowly focused inquisition of Global NAPs and other New Hampshire CLECs." GNAPs goes on to aver that it is neither and that the issue lies in the proper regulatory treatment of calls to VNXXs. GNAPs Objection to Motion to Compel, p. 3.

On February 12 Verizon New Hampshire (Verizon) filed Comments in Support of the ITC Motion to Compel and Cross-Motion to Compel Responses to Verizon's Discovery. Verizon disputes GNAPs and BayRing's (the CLECs) assertion that

information regarding the "extent of "virtual" NXX traffic" is not relevant to the proceeding. Verizon believes that the CLECs "non-responsiveness to either the ITC or Verizon discovery requests must be corrected so that the Incumbent LECs have a fair and complete opportunity to address the issue of whether calls made by use of "virtual" NXX numbers are local and, more importantly, that the Commission appreciate fully the extent to which the practice of misassigning "virtual NXX" numbers currently takes place." Verizon Comments, p. 6.

Both Verizon and the ITCs demand relief in the form of this Commission requiring the CLECs to respond to all of the unanswered discovery requests. The ITCs also ask that a hearing be held on the motion.

II. DISCUSSION

Our Staff has reviewed the filings and has made a recommendation to us regarding the discovery. In reviewing the materials we hereby deny the motion to compel in part and affirm in part. We will require that both GNAPs and BayRing answer some of the questions. We also will require the ITCs to rephrase a number of its questions if it still believes the material is needed to adequately proceed with the docket.

While we are cognizant of the fact that New

Hampshire courts construe the permissible scope of discovery liberally, see Verizon Comments at p. 3, citing *Barry v. Horne*. 117 N.H. 693 (1977), we are also aware that discovery should be relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. Here, we agree with GNAPS that many of the questions relate too narrowly to CLEC specific information or too broadly to universal service or basic rates.

Our proceeding is limited to the policy considerations regarding the proper regulatory treatment of a certain type of call.

Therefore, we will not require GNAPS or BayRing to answer a number of questions because we believe the information sought is not relevant to the policy aspect of the docket. Some information the ITCs seek is so specific to the GNAPS and BayRing operations that it will not lead to the resolution of the docket but will cloud the central issues.

Consistent with this reasoning, the questions we have found no response necessary for are as follows:

ITC to GNAPS questions 1-9, 14, 16 -18, 20, 25, 26, 41, and 52.

ITC to BayRing questions 4-7, 14, 16 -18, 31, 32, 45, and 50.

Verizon to GNAPS questions 1 -6.

Verizon to BayRing questions 1-7.

We have also found that some questions are simply not relevant to the proceeding. Thus, the following do not need to be answered:

ITC to GNAPs questions 38, 43, and 46

ITC to BayRing question 72.

We also believe some of the information sought answers that would have the witness merely speculate. We do not believe this is proper. Therefore, we will not compel answers to the following:

ITC to GNAPs questions 21, and 42

ITC to BayRing 28, and 65.

We believe that some questions should be answered, but will require the ITCs to rephrase the questions. These include:

ITC to GNAPs questions 13, 36, 37

ITC to BayRing question 13

We consider the information required from GNAPs in question 13 to be public information but would require the ITCs to define what is meant by the word "arrangement." Questions 36 and 37 are related to the GNAPs witness' testimony and they should also be rephrased giving GNAPs specific assumptions so GNAPs can provide a meaningful answer. Once given the assumptions, GNAPs should attempt to answer the requests as adequately as

possible. With regard to the ITCs' question 13 to BayRing, we require the ITCs to describe what is meant by "arrangement," to the extent BayRing's response that it has no interconnection agreement with the ITCs was inadequate.

Finally, the questions to which we will require a response include:

ITC to GNAPs questions 10 -12, as these are public documents and it would not be burdensome for GNAPs to produce.

ITC to GNAPs questions 15, 19, 23.

ITC to BayRing question 11, and 25.

We will also require an answer to question 22, if Mr. Gates knows the answer without making a legal conclusion.

Based upon the foregoing, it is hereby

ORDERED, that the Motions to Compel are granted in part and denied in part as discussed in the body of this Order.

By order of the Public Utilities Commission of New
Hampshire this twenty-second day of March, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary