

DT 01-127

GLOBAL NAPs

**Petition for an Order Directing Verizon
to Comply with its Interconnection Agreement**

Order Denying Motion for Reconsideration

ORDER NO. 24,367

September 2, 2004

The New Hampshire Public Utilities Commission (Commission) by Order No. 24,336 (June 18, 2004) denied a petition from Global NAPs, Inc. (GNAPs) requesting payment from Verizon New Hampshire (Verizon) of reciprocal compensation. GNAPs had claimed compensation was due under the terms of an interconnection agreement (Agreement) with Verizon. On July 19, 2004, GNAPs filed a Motion for Reconsideration¹ (Motion), in response to which Verizon filed an Objection on July 27, 2004.

I. POSITIONS OF THE PARTIES

GNAPs claims that the Commission's conclusion that GNAPs does not hand off traffic to internet service providers (ISPs) located in New Hampshire was "factually wrong." Motion at p. 2. GNAPs argues, first, that because the Federal Communications Commission has established that internet-bound calls have no distinct start or termination point, the Commission cannot determine conclusively that the traffic passed from Verizon to GNAPs went either "down the street in Concord or across international boundaries." Motion at p. 3. Second, GNAPs argues that the Commission should infer

¹ Although GNAPs styled it as a Motion for Reconsideration, the pleading was filed pursuant to RSA 541:3 which governs motions for rehearing, and will be treated as such.

from GNAPs' presence in New Hampshire that some traffic must have been carried for the benefit of New Hampshire customers. Third, GNAPs contends the Commission should consider the fact that GNAPs terminates calls from Verizon customers which makes Verizon itself a GNAPs customer located in New Hampshire.

GNAPs also claims the Commission was wrong to conclude that GNAPs had failed to prove its switching facilities existed in New Hampshire prior to March 1, 2001, another prerequisite for the payment of the disputed reciprocal compensation. According to GNAPs, because Verizon sent traffic to GNAPs without blockage, the equipment must have existed. Further, GNAPs reasons the existence of the equipment is proven because the testimony it filed in this docket asserted the presence of switching equipment at GNAPs facilities on or before March 1, 2001, an assertion that, GNAPs points out, Verizon did not challenge as perjury. GNAPs also contends that the Commission is incorrect to limit the interpretation of "central office switch" so as to exclude packet switching and require the provision of dial tone to end users in New Hampshire. Finally, GNAPs disputes arguments made by Verizon that its witness's testimony was inconsistent with prior testimony and that its New Hampshire switching equipment's Common Language Location Identifier (CLLI) code constitutes proof of geographic location.

Verizon requests that the Commission deny GNAPs' Motion, claiming it fails to meet either the procedural or substantive requirements of RSA 541. Procedurally, Verizon raises two issues. First, Verizon asserts that GNAPs failed to comply with the requirement of RSA 541:3 that an application for rehearing be filed within 30 days of the order's issuance. Verizon calculates that the Motion was filed two days late. Next,

Verizon asserts that GNAPs failed to serve its counsel with a copy of the Motion, in violation of N.H. Admin. Rule Puc 202.18(d). Puc 202.18(d) requires that motions for rehearing must be served on all parties in such a way as to ensure that parties receive the motion on the same day it is filed with the Commission. Verizon states that its counsel received the motion from another Verizon representative.

Substantively, Verizon argues that GNAPs' Motion does not meet the standard of RSA 541 and applicable case law. According to Verizon, GNAPs failed to identify any matter the Commission overlooked or misconceived in the record that would require a further examination pursuant to New Hampshire law. *Dumais v. State*, 118 N.H. 309, 312, 386 A.2d 1269 (1978). Further, Verizon avers that GNAPs has failed to provide the Commission with good reason for the requested rehearing, as required by RSA 541:3. In Verizon's opinion, GNAPs has put forth neither new evidence nor new arguments regarding the dispute and the order. *See, Connecticut Valley Electric Company/Public Service of New Hampshire*, DE 03-330, Order No. 24,189 (July 3, 2003), *Verizon New Hampshire*, 87 NH PUC 334 (1992), *LOV Water Co.*, 85 NH PUC 523 (2000).

Verizon further argues that GNAPs' Motion proves the truth of the Commission's conclusion in Order No. 24,336 that GNAPs does not come within the provisions of the Agreement. In support, Verizon points to admissions by GNAPs that it does not provide dial tone to New Hampshire customers, thus GNAPs does not originate calls, and that its switch is not a circuit switch.

II. COMMISSION ANALYSIS

We address first Verizon's assertion that procedural defects in GNAPs' filing should result in its dismissal. Verizon asserts that the motion was not timely filed. We

disagree. Order No. 24,366 was issued on June 18, 2004, thus bringing the filing deadline for a motion for rehearing to July 19, 2004. *See* Puc 202.03(b) for standards applied when calculating filing dates. In the case of motions for rehearing filed pursuant to RSA 541:3, the Commission allows use of facsimile copies. Puc 202.18(a). GNAPs' facsimile version of the Motion was date stamped by the Commission on Monday, July 19, 2004, and, therefore, was timely filed.

Verizon further asserts that GNAPs violated Puc 202.18(d) for its failure to serve counsel on the same day it served the Commission. We agree. According to Puc 202.18(b), a party using facsimile filing must also submit service copies by facsimile to the parties, which GNAPs failed to do. In addition, Puc 202.18(d) requires that a motion for rehearing must be served on the parties on the same day it is served on the Commission, which GNAPs failed to do.

Finally, Verizon asserts service was improper because GNAPs failed to serve two of the people most involved in the docket, Alan S. Cort and Victor D. Del Vecchio, Esq. The July 20, 2004 paper version of the Motion indicated that copies were sent to the "Appended Service List." Although the Commission's file does not contain a copy of that Appended Service List, the filing does contain a signed Certificate of Service stating that service was made on July 19 by Federal Express overnight mail to Keefe Clemons, Esq., and Donald Boeke, Esq., at Verizon, 185 Franklin Street, Boston, Massachusetts. Mr. Clemons and Mr. Boeke are on the Service List appended to the Commission's Order No. 24,336, along with Mr. Del Vecchio, also at 185 Franklin Street and Mr. Cort of Manchester, New Hampshire. GNAPs should have served all people listed on the service list, particularly given the short response time for Objections to motions for

rehearing, and a request from Verizon for a waiver of the five day objection response would likely have been granted in these circumstances, pursuant to Puc 201.05. We do not find GNAPs' omission of two of the four Verizon names on the service list, however, to constitute a violation of our rules.

Though we find that GNAPs violated Puc 202.18(b) and (d), we will not dismiss the motion on procedural grounds. GNAPs is advised, however, to strictly conform to our administrative rules in any future proceedings with the Commission.

We turn instead to the merits of the Motion. To grant such a motion, the movant must demonstrate "good reason" that the relevant order is unlawful or unreasonable. RSA 541:3, 541:4 and 541:13. Good reason may be shown by new evidence that was unavailable at the original hearing, or by identifying specific matters were either "overlooked or mistakenly conceived". *Dumais v. State*, 118 N.H. 309, 386 A.2d 1269 (1978). As Verizon correctly noted, this must be more than merely reasserting prior arguments and requesting a different outcome. *See, Connecticut Valley Electric Company/Public Service of New Hampshire*, DE 03-330, Order No. 24,189 at p. 3 (July 3, 2003).

We find no good reason to reconsider or rehear our determinations in Order No. 24,336. GNAPs makes no new arguments and raises no new evidence that was unavailable during the course of this docket. Moreover, we find that no factual matter was overlooked or mistakenly conceived. GNAPs' argument regarding the nature of internet traffic is irrelevant to the factual determination that it was unable to provide any credible evidence of actual customers in New Hampshire or of switching facilities in

New Hampshire during the necessary period. We will not infer the existence of ISP customers or facilities, particularly when GNAPs itself appears to unable to identify such customers or facilities in actuality. Therefore we deny GNAPs' Motion.

Based on the foregoing, it is hereby

ORDERED, that the motion of Global NAPs, Inc., for reconsideration is DENIED.

By order of the Public Utilities Commission of New Hampshire this second day of September, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director