

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: August 19, 2010
AT (OFFICE): NHPUC

FROM: Michael Ladam, Assistant Director, Telecommunications Division *ML*
Lynn Fabrizio, Staff Attorney *LF*

SUBJECT: DT 10-137 FairPoint Request for Authorization
to Disconnect Service to Global NAPs

TO: Chairman Getz
Commissioner Below
Commissioner Ignatius
Debra Howland, Executive Director
F. Anne Ross, Esq., General Counsel
Kate Bailey, Director, Telecommunications Division



Procedural Background

On May 13, 2010, pursuant to Commission Order No. 25,043, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) filed a motion for authority to disconnect and block the termination of all traffic carried by Global NAPs, Inc. and any of its affiliates (Global NAPs) that interconnect with FairPoint in the State of New Hampshire. According to FairPoint, GNAPs has been delivering traffic to FairPoint for termination to customers in each of FairPoint's exchanges and records demonstrate that the traffic constitutes toll service subject to applicable interstate and intrastate access charges. In its motion, FairPoint complained that GNAPs has failed to pay the applicable access charges set forth in FairPoint's access tariffs. In accordance with Order No. 25,043, FairPoint's motion was filed pursuant to its intrastate access tariff and requested authority to disconnect services to Global NAPs for failure to pay intrastate access charges.

Docket No. DT 10-137 proceeded according to schedule, with various motion filings, technical sessions, discovery, and two rounds of briefing.

On June 17, 2010, FairPoint submitted to Global NAPs a demand for financial assurances pursuant to the parties' Interconnection Agreement (ICA) on file with the Commission under Puc 421.02(d). In its demand, FairPoint stated that it would exercise its right to disconnect service to Global NAPs on July 17, 2010, in the absence of such assurances.

On July 7, 2010, Global NAPs filed a motion with the Commission requesting an order to prevent FairPoint from disconnecting service under the ICA, arguing that FairPoint had no right to disconnect before resolution of the pending motion filed by FairPoint on May 13, 2010, in Docket No. DT 10-137. FairPoint objected to Global NAPs' motion on July 14,

2010. By secretarial letter issued on July 16, 2010, the Commission determined that as the dispute and demand for assurances had arisen from the parties' ICA on grounds separate from the pending proceeding, it would take no action on the motions.

On July 21, 2010, the Destek Networking Group (Destek), a customer of Global NAPs, filed a motion for emergency relief requesting an extension of FairPoint's disconnection date. FairPoint filed an objection to Destek's motion on July 30, 2010, while voluntarily agreeing to extend the disconnection date until Monday, August 16, 2010. On August 13, 2010, Staff filed a memorandum outlining a chronology of the Destek dispute and recommending denial of Destek's motion. No further correspondence was filed with the Commission by any party following Staff's August 13 memorandum.

On Monday, August 16, 2010, FairPoint disconnected service to Global NAPs.

In conversations with FairPoint and Destek, Staff learned that the two companies had reached agreement on terms and pricing under which FairPoint would provide ISDN PRI trunking and related services that would enable Destek to transfer its customers to a new provider. On August 16, 2010, FairPoint filed a Special Contract proposal with the Commission reflecting this agreement. In its filing, FairPoint indicated its intent to complete installation and turn-up in a matter of days, contingent on the Commission's approval of the contract.

Analysis and Conclusion

FairPoint disconnected service to Global NAPs pursuant to the terms of the ICA in effect between the two companies. As the Commission noted in its July 16, 2010 secretarial letter, FairPoint's demand for assurances involved a dispute between two businesses pursuant to the terms of an ICA, and Global NAPs had the power under those terms to avoid disconnection by providing financial assurances on the undisputed obligation to pay for use of collocation facilities, SS7 links, and interconnection trunks. FairPoint's original May 13, 2010 motion in Docket No. DT 10-137 invoked FairPoint's right under Commission rules and pursuant to Order No. 25,043 to disconnect service for failure to pay for access services rendered under FairPoint's intrastate tariff. The consequence of the August 16, 2010 disconnection of Global NAPs' use of collocation facilities, SS7 links and interconnection trunks is that all services are disabled, including intrastate access. As a result, the controversy addressed in Docket No. DT 10-137 is moot to the extent that FairPoint sought termination of Global NAPs' free use of FairPoint facilities in contravention of applicable tariffs. The only outstanding issue raised in FairPoint's motion is the request for attorneys' fees. Given the fact that Global NAPs is in receivership, it is questionable whether the additional time and resources required to reach a determination on the issue of attorney fees are warranted.

Recommendation

In light of the above, Staff recommends that Docket No. DT 10-137 be closed without prejudice as to the recovery of attorney fees accrued during the course of the proceeding.