

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 10-137

**Northern New England Telephone Operations, LLC
d/b/a FairPoint Communications-NNE
Petition for Authority to Disconnect Global NAPs**

OBJECTION TO MOTION OF GLOBAL NAPs, INC.

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) in objection to the Motion of Global NAPs, Inc. (“GNAPs”) Pursuant to the Commission’s June 9, 2010 Order (“Motion”).

I. THE MOTION IS AN UNTIMELY AND IRREGULAR SERIES OF IRRELEVANT DATA REQUESTS.

In its Motion, GNAPs requests that the Commission issue five data requests to FairPoint related to Voice over IP and/or Internet traffic termination and certain provisions of the interconnection agreement between FairPoint and GNAPs. As an initial matter, the requests are irrelevant, as they do not relate to any of FairPoint’s claims in its Motion to Disconnect. Instead, they relate to GNAPs’ unsupported claims that 1) the traffic at issue is Internet traffic and 2) that this categorization is somehow dispositive of this matter. However, as the TDS Companies did in the original proceeding in DT 08-08 that precipitated FairPoint’s Motion to Disconnect, FairPoint has simply and clearly claimed that the traffic at issue is toll traffic subject to FairPoint’s applicable access tariffs. Regarding GNAPs’ claims to the contrary, the Commission has already held that the burden of proof falls on GNAPs, not FairPoint, since “Global NAPs is in a position of uniquely controlling the information necessary to identify with certainty the

nature of the traffic in question.”¹ And, as the Commission found at that time, GNAPs did not, and still has not, provided any evidence supporting the threshold fact that the traffic is Internet traffic and that its disputes are legitimate.² Consequently, the requests are not relevant to any factual issues that FairPoint has raised in this proceeding and cannot “lead to the discovery of admissible evidence,”³ since the evidence (if any) already resides with GNAPs.

This behavior should not be countenanced by the Commission. RSA 541-A:33, II states in part that “the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.” Commission Rule Puc 203.23 likewise provides that the Commission may exclude irrelevant, immaterial or unduly repetitious evidence. As the Commission has stated, “[t]hese principles are important in the discovery context because, in general, discovery that seeks irrelevant or immaterial information is not something we should require a party to undertake.”⁴

In addition to being irrelevant, the requests are untimely as well. It is highly irregular, if not unprecedented, to propound data requests before the positions of the parties and the procedural schedule have been defined in the prehearing conference and first technical session. The Commission’s practice guide provides that “[a]fter the pre-hearing conference and a technical session . . . the Commission will issue an Order or a letter specifying the procedural schedule that will apply for the remainder of the case.”⁵ The practice guide further explains that

¹ DT 08-028, Order No. 25,043 at 21.

² *Id.* at 23. “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.”

³ City of Nashua, 91 PUC 452, 454 (2006)

⁴ *Id.*

⁵ <http://www.puc.state.nh.us/Regulatory/practiceguide.htm>

[t]he Commission typically schedules an initial technical session immediately following the pre-hearing conference, at which the parties and Commission Staff are expected to formulate a proposed procedural schedule and deal with other matters as requested by the Commission in the order of notice or at the pre-hearing conference. *The discovery process may also commence during the initial technical session.*

The schedule that the Commission approves at the beginning of a case will usually include dates for technical sessions, *deadline for the submission of data requests and deadlines for responding to data requests.*⁶

These provisions of the practice guide describe the standard procedures on which practitioners rely and which contribute to the orderly conduct of matters before the Commission.

Consequently, GNAPs' requests are premature and improper.

GNAPs' requests are nothing more than its latest attempt to waste the Commission's and FairPoint's resources and time by advancing its position outside the normal process. FairPoint rejects the legitimacy of these requests and, furthermore, reserves all rights to object if they are resubmitted in the future.

II. THE MOTION VIOLATES THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

The Motion, filed June 11, 2010 requests that the Commission direct FairPoint to respond by June 18, 2010, seven calendar days. This violates the Commission's rules regarding motions and discovery.

Rule Puc 203.07(e) states that "[o]bjections to a motion, except for motions for rehearing, shall be in writing and filed within 10 days of the date on which the motion is filed." Rule Puc 203.09(f) states that "[a] response to a data request shall be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the commission." Subsection (g) of the same rule applies the same deadline to objections to data requests. GNAPs' arbitrary

⁶ *Id.* (emphasis supplied).

seven day deadline ignores these rules in an attempt to gain an improper tactical advantage. Furthermore, GNAPs has supplied no justification for this unreasonably compressed timeframe, despite Commission Rule Puc 203.07(d)(1) that a motion "shall clearly and concisely state the facts and law which support the motion."

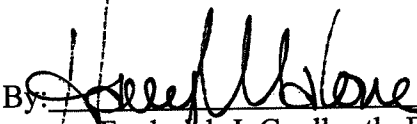
III. CONCLUSION

The GNAPs Motion is a vexatious pleading filed in disregard of the Commission's rules and standard practices. There can be little doubt that it is a preview of GNAPs' strategy to unilaterally drive the procedural schedule and discovery process for the purposes of misdirection and delay. FairPoint respectfully requests that the Commission deny the Motion as it pertains to any demands on FairPoint, and resist further attempts by GNAPs to commandeer this proceeding.

Respectfully submitted,

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By its Attorneys,
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