

**State of New Hampshire
Before the New Hampshire Public Utilities Commission**

Joint Petition of Hollis Telephone Company,
Inc., Kearsarge Telephone Company,
Merrimack County Telephone Company, and
Wilton Telephone Company, Inc., for Authority
to Block the Termination of Traffic from
Global NAPs, Inc., to Exchanges of the Joint
Petitioners in the Public Switched Telephone
Network

Plaintiffs,

v.

GLOBAL NAPs, INC.,

Defendant

Case No. DT 10-137

**GLOBAL'S RESPONSE TO FAIRPOINT'S OBJECTIONS TO GLOBAL'S REQUEST
FOR MATERIALS**

On June 9, the PUC issued an order scheduling a pretrial conference and a technical hearing for June 30, 2010. That order also instructed Global to provide copies of its disputes of FairPoint's bills.

On June 11, Global proffered its protests of FairPoint's bills and requested that the Commission ask FairPoint to provide five types of materials prior to the hearing or at the hearing, namely:

1) All contract provisions or other documents indicating the rates that either FairPoint has charged other carriers or other carriers have charged FairPoint to terminate VoIP or other internet traffic;

2) All documents discussing FairPoint's interpretation of clauses 8.1 and 2.43 of its ICA with Global or the same or similar provisions in its ICAs with other carriers;

3) A witness or document explaining whether FairPoint's bills to Global include carryover charges from before Verizon New England transferred its rights under the ICA to FairPoint;

4) A witness or document explaining how FairPoint justifies blocking dial-up internet traffic that is sent to Global for termination and is not and could not be subject to any FairPoint access charges or bills to Global;

5) A witness or document explaining why FairPoint refused to enter into dispute settlement when Global invoked dispute resolution procedures, pursuant to section 14 of the ICA, in its letter of June 16, 2009, from Global's in-house counsel to FairPoint's in-house counsel.

FairPoint has now objected to Global's requests. It does not contend that the requested items would be burdensome to assemble. It claims that Global's requests are irrelevant but does not explain why each request is not germane and does not even address the last three requests (which could provide a basis, under PUC rule 203.09(g)(1) and (h) for deeming it to have waived its right to object). (Objection to Motion of Global NAPs Inc., (Objection) at 1-2). FairPoint opts instead to make the blanket statement that the requests do not relate to the claims it has raised in this proceeding, but does not acknowledge that any evidence in its possession that relates to Global's defense is just as discoverable as the evidence that relates to the issues FairPoint has raised. (Objection, at 1-2). It then cites PUC Rule 203.23, which allows *the Commission*, not the parties, to determine that evidence is irrelevant and exclude it from the hearing (presumably *after* the evidence has already been proffered and the Commission has had a

chance to review it). (Objection, at 2). FairPoint also cites to a 2006 order of the Commission, ruling on a motion to compel discovery, a type of motion that Global has not filed. (Objection, at 2 (citing *City of Nashua*, Order No. 24,681 (October 23, 2006))). That order compelled the party resisting discovery to respond to each non-moot discovery request it had not yet answered and to produce any materials that were not privileged. *City of Nashua*, 1-10. FairPoint has not yet answered any discovery requests or claimed any privilege. Thus, it is not clear why it believes the 2006 order cuts against Global's requests.

Furthermore, contrary to FairPoint's suggestion, Global's requests "related to VoIP and Internet traffic termination and certain provisions of the interconnection agreement between FairPoint and GNAPS" (Objection, at 1), are clearly relevant because, as FairPoint admits, it has "claimed that the traffic at issue is toll traffic subject to FairPoint's applicable access tariffs." *Id.* Certainly evidence which illuminates which billing provisions apply to the traffic at issue is relevant.¹ Furthermore, evidence that relates to dispute resolution and termination of service is also relevant.

FairPoint also attempts to argue that Global's motion is premature, because the discovery process should not have commenced yet. (Objection, at 2-3). But in its most recent demand letter, FairPoint says it intends to cut off service to Global two weeks after the prehearing conference, before any party could have time to engage in full discovery. Since the material Global requests is clearly relevant to the reason for the proposed cut off, it needs to be

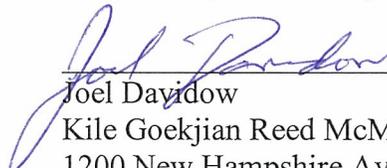
¹ FairPoint's argument that the burden of proof is on Global, (Objection, at 1), goes nowhere, as it completely fails to address the fact that since Global has raised dispositive issues, FairPoint must produce all evidence that would resolve those issues. Furthermore, the Commission never "held that the burden of proof falls on GNAPS, not FairPoint," (Objection, at 1), because it only decided the burden of proof issue with respect to the dispute between Global and TDS. Regardless, the burden of proof would not insulate a party from having to comply with discovery requests.

considered before FairPoint is allowed to block Global's traffic. Global is, of course, prepared to wait for discovery, if FairPoint is prepared to postpone its threatened blockages.

In any event, it seems to Global that if the Commission has asked Global to proffer non-technical evidence before the pre-hearing conference, it could exercise similar discretion to request material from FairPoint, regardless of the procedural rules governing formal discovery. Thus, there is no reason to use formal discovery requirements to dispose of Global's suggestion that the Commission request that FairPoint provide certain documents at or before the pre-hearing conference.

Finally, FairPoint contends that it should be given 10, not 7 days (the amount of time Global was given to produce its documents) to produce the materials Global requests. But it has now been 14 calendar days since Global's request, and FairPoint has still not produced anything.

Respectfully Submitted,


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Dated: June 25, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing to be served on the attached service list.

Executed this day, June 25, 2010.



Victoria Romanenko

State of New Hampshire
Before the New Hampshire Public Utilities Commission

DT 10-137

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