

**STATE OF NEW HAMPSHIRE****Inter-Department Communication****DATE: October 8, 2008****AT (OFFICE): NHPUC**

**FROM:** Kate Bailey, Director, Telecommunications Division *KMB*  
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**SUBJECT:** Recommendation to Order Global NAPs to File Audited Financial Statements including Balance Sheets, Income Statements, and Footnotes for Calendar Years 2004-2007

**TO:** Commission

On September 26, 2008, Staff submitted a memo recommending Global NAPs' CLEC authority be forfeited, after notice and opportunity for hearing, for failure to file an annual report (CLEC-3) for two consecutive years, or revoked for failure to comply with a Commission Order. A courtesy copy of the memo was e-mailed to counsel for Global NAPs, James Scheltema, on Friday, September 26.

On Sunday, September 28, 2008, at or about 10:19 pm., Staff received e-mails from Mr. Scheltema containing an annual report for 2005, 2006 and 2007 with signed and notarized signature pages. The signature pages which were e-mailed were incomplete. The three date boxes and "county of" box were blank, words on the form had been crossed out and amended, and the page was signed and notarized with a visible seal.

On Tuesday, September 30, the Telecommunications Division received paper copies of these notarized documents with the date box filled in with the date "September 29, 2008", and the "county of" box filled in with Norfolk. Moreover, the notarization date was filled in as the "29<sup>th</sup>" day of "September" even though copies clearly marked with the notarization signature and seal were e-mailed to Staff on September 28. Because these boxes were filled in subsequent to the notary's signature and seal, the notarization is invalid pursuant to RSA 456-B<sup>1</sup> and the annual reports should be deemed unacceptable.

Furthermore, the filed annual reports raise more questions than they answer. In addition to the invalid notarization, Global NAPs did not provide any financial detail other than on the line labeled "all other New Hampshire revenue." It provided incorrect information on its switch location in New Hampshire, and provided "n/a" on the lines by locality and CLEC FX eligibility pages. It also filed the report as both a CLEC and CTP despite the fact Global NAPs is not an authorized CTP in New Hampshire. All of these abnormalities question the validity of the filed reports.

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<sup>1</sup> The notarization also appears to be invalid pursuant to Massachusetts Revised Executive Order No. 455 (04-04) governing Standards of Conduct for Notaries Public.

In addition, Staff believes Global NAPs thinks these annual reports satisfy the Commission's order with respect to TDS data request 26. In addressing TDS' motion to compel a response to data request 26, Order No. 24,894 stated:

Request 26 seeks information on CLEC-2 and CLEC-3 forms for Global NAPs for the years 2004 through 2007 and, if not filed, for audited financial statements, including balance sheets, income statements and footnotes. We have asked Staff to file a memorandum describing all filings made by Global NAPs with the Commission. We will require Global NAPs to file the requested financial statements for 2004 through 2007 with the Commission for the Global NAPs entity registered as a CLEC in New Hampshire. If Global NAPs seeks confidential treatment of its financial information it should file a motion for confidential treatment with its response. This financial information is relevant to issues of whether Global NAPs is able to pay any past or future access charges in the event we find that such charges are owed for the traffic at issue in this case.

To the extent there is any ambiguity in the Commission's order, and to address the questionable annual reports Global NAPs filed, Staff recommends the Commission order Global NAPs to file audited financial statements, including balance sheets, income statements and footnotes for calendar years 2004 through 2007.

On October 1, 2008, Global NAPs filed a motion for confidential treatment of its annual reports, claiming the reports contain highly proprietary and competitively sensitive state-specific revenue information. Global NAPs annual reports contain a single revenue number. That number is used in the Commission's calculation of utility assessments and can be derived from the Commission's List of Utility Assessments Report published annually pursuant to RSA 363-A:3. While Staff agrees certain information required in CLEC annual reports may be competitively sensitive, Global NAPs did not supply that information. Staff believes that Global NAPs' representation that the information contained in its annual report is competitively sensitive and should be exempt from public disclosure is incorrect. Staff recommends the commission provide Global NAPs an opportunity to be heard on why Global NAPs believes the information satisfies the requirements specified in RSA 378:43, II and ultimately, that Global NAPs' annual reports, as filed, be made available to the public.