

DT 01-240

Global NAPs, Inc.

**Motion for Confidential Treatment of Annual Report
Order Granting Conditionally the Motion of Global NAPs, Inc.**

O R D E R N O. 23,912

February 4, 2002

Global NAPs, Inc.(Global NAPs) filed its annual report for the year 2000 (the Report) with the New Hampshire Public Utilities Commission (Commission), as required by New Hampshire administrative regulations. Global NAPs is an authorized competitive local exchange carrier (CLEC). CLECs file annual reports pursuant to N.H. Admin. Rules Chapter Puc 1308.01(d).

Concurrently with its Report Global NAPs filed a motion requesting confidential treatment of all or a portion of the information contained in the Report. Pursuant to Puc 204.05(b), documents submitted to the Commission accompanied by a motion for confidentiality shall be protected as provided in Puc 204.06(d) until the Commission rules on the motion. Such motions are made pursuant to N.H. Admin. Rule Chapter Puc 204.06 and are governed by RSA 91-A and 378:43.

The information for which Global NAPs seeks confidential treatment includes the amount of the carrier's New Hampshire intrastate revenues, the number of its New

Hampshire customers, the number of its pre-subscribed New Hampshire access lines, the amount in miles of its fiber and copper cable, the minutes-of-use traffic in New Hampshire, and its balance sheets and income statements for New Hampshire operations. (collectively, the Information).

RSA 378:43 governs these motions for confidential treatment. RSA 378:43, which became effective on August 24, 1999, states in pertinent part:

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

(a) Pertain to the provision of competitive services; or

- (b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs or general application.

RSA 378:43,I(a) carves out a specific exemption from RSA 91-A and thereby eliminates the application of rule Puc 204.06 to telephone utilities.

Global NAPs makes no representation that its Information is not general public knowledge or published elsewhere or that measures have been taken in the ordinary course of business to prevent its dissemination, although Global NAPs does assert that its "financial information is maintained as highly confidential and proprietary." (Emphasis added.) The Commission can infer that at least the financial information is not general public knowledge, is not published elsewhere, and that measures have been taken against disclosure in the normal course of business. Global NAPs also fails to make any representation describing the Information for which protection is sought, other than that its disclosure would "materially damage [Global NAPs'] competitive and financial positions ...to the detriment of the consuming

public." The Commission can infer that the information pertains to the provision of competitive services or is confidential financial information.

Global NAPs fails to meet the requirements of 378:43, but the Commission can infer that confidential treatment of the Information is appropriate. Therefore, we will grant its motion conditioned on Global NAPs' filing a statement, within ten days of the date of this order, that explicitly meets the statute's requirements. We take this opportunity to indicate that future filings that require an inference of compliance with 378:43 will not be granted.

We note that all regulated utilities in New Hampshire, including telecommunications utilities, are subject to annual assessment for Commission expenses, pursuant to RSA 363-A:2. The Commission calculates a particular utility's assessment by allocating expenses in direct proportion as the utility's revenues relate to the total New Hampshire utility revenues as a whole. Pursuant to RSA 363-A:3, a list of the assessments is certified to the state treasure and is subject to RSA 91-A. An interested person could obtain the assessment information and determine the range within which the particular utility's revenue falls for that year. This observation does not affect our decision, mandated by RSA

378:43, to grant confidential treatment to the Information that is the subject of this order.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Global NAPs, Inc. is hereby GRANTED CONDITIONALLY; and it is

FURTHER ORDERED, that Global NAPs shall file with the Commission within ten days of the date of this order a statement in compliance with RSA 378:43, II as discussed herein.

By order of the Public Utilities Commission of New Hampshire this fourth day of February, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary