

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-382T

IN THE MATTER OF THE APPLICATION OF GLOBAL NAPS COLORADO, INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FOR A LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SETTING PREHEARING CONFERENCE,
AND IDENTIFYING ISSUES FOR DISCUSSION**

Mailed Date: September 7, 2004

I. STATEMENT

1. On July 23, 2004, Global NAPs Colorado, Inc. (GNCI or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services (Application). GNCI did not file its direct testimony and exhibits with its Application. The Application commenced this docket.

2. On July 27, 2004, the Commission gave public notice of the Application. *See* Posting of Application Filed (Notice), dated July 26, 2004. In that Notice, the Commission established a 20-day intervention period. To the extent that the Notice may have established a procedural schedule in this proceeding, this Order will vacate that schedule.

3. On August 10, 2004, GNCI responded to a letter dated July 27, 2004 from Mr. Jerry Enright of Commission Staff. Applicant answered numerous questions with respect to its Application. That letter is contained in the Commission's file in this matter.

4. On August 25, 2004, the Commission deemed the Application complete as of August 31, 2004.

5. On September 2, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing. This is the only intervention in this proceeding.

6. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. To do so, a prehearing conference will be held on **September 28, 2004**. The provisions of Rules 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) will govern this prehearing conference.

7. Firstly, the parties must be prepared to discuss the issue of the Commission's subject matter jurisdiction in this matter.

8. By its Application GNCI seeks a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange telecommunications services in Colorado. Applicant states that it "has no plans to provide local exchange service, but instead, at least initially, plans on providing information access services." August 10, 2004 letter at 1; *see also id.* at 3, 4. GNCI then discusses "information access service" as used in the Application and concludes "that information access service is solely and exclusively governed by federal law. ... [I]n the *Declaratory Ruling*, the [Federal Communications Commission] concluded that Internet-bound traffic was jurisdictionally interstate." *Id.* at 2-3. At no time does GNCI describe the precise service it intends to offer.

9. Rule 4 CCR 723-25 governs applications for CPCNs to provide local exchange telecommunications service. Rule 4 CCR 723-25-2.8 defines “local exchange telecommunications services” as:

Basic local exchange service and such other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (e), C.R.S.; or any of the above singly or in combination.

10. In light of Applicant’s statement concerning the nature of the service it intends to offer and its statement that it “does not plan on providing local exchange services in Colorado” (August 10, 2004 letter at 4), it appears that the Commission may have no subject matter jurisdiction with respect to the CPCN sought.¹ At the very least, it appears that this Application may be premature given GNCI’s current plans. The parties are directed to be prepared to discuss this issue, including providing legal citation and argument,² at the prehearing conference.

11. By its Application, GNCI seeks a Letter of Registration (LOR) to provide emerging competitive telecommunications services in Colorado. The Application states that GNCI will offer “Information Access Services” and *none* of the services listed in § 40-15-301(2), C.R.S.³ As noted above, Applicant explains the meaning of information access services in its letter but does not identify or describe the precise service it intends to offer in Colorado.

¹ The ALJ is aware that, under the federal Telecommunications Act of 1996, the Commission has responsibilities which are not dependent on state authority (*e.g.*, arbitration of unresolved issues in connection with interconnection agreements pursuant to 47 U.S.C. § 252(b)). The CPCN and the Letter of Registration, however, are sought under, and may be granted only pursuant to, state law.

² When the parties present their arguments, each should cite any Federal Communications Commission (FCC) order by the name by which it is commonly known and by its FCC order number (*e.g.*, the FCC’s *Triennial Review Order* is FCC 03-36. In the alternative, a party citing an FCC order must provide the ALJ with a copy of the cited order at the prehearing conference.

³ This statutory provision lists the telecommunications products and services which are subject to regulation by the Commission, at least initially, as emerging competitive telecommunications services.

12. Rule 4 CCR 723-25 also governs applications for LORs to provide emerging competitive telecommunications services. Rule 4 CCR 723-25-2.6 defines “emerging competitive telecommunications services” as: “Services and products regulated by the Commission in accordance with Title 40, Article 15, Part 3, C.R.S.” Section 40-15-301(2), C.R.S., contains the initial list of emerging competitive telecommunications services. The services which Applicant proposes to offer do not appear to be on this list. However, the proposed services may be products and services which are not subject to the Commission’s jurisdiction. *See* § 40-15-401(1), C.R.S. (initial list of services and products exempt from regulation in Colorado); GNCI letter of August 10, 2004 and cited authorities.

13. In light of Applicant’s statement concerning the nature of the service it intends to offer, it appears that the Commission may have no subject matter jurisdiction with respect to the LOR sought. The parties are directed to be prepared to discuss this issue, including providing legal citation and argument,⁴ at the prehearing conference.

14. Secondly, the parties must be prepared to discuss these matters at the prehearing conference: (a) date by which Applicant will file its direct testimony⁵ and exhibits; (b) date by which Staff will file its answer testimony and exhibits; (c) date by which Applicant will file its rebuttal testimony and exhibits; (d) date by which each party will file its corrected testimony and exhibits; (e) date by which each party will file its prehearing motions;⁶ (f) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (g) date by which the parties will file any stipulation reached;⁷ (h) hearing dates; and (i) date for each

⁴ *See* note 2, *supra*.

⁵ Testimony is filed in question and answer format.

⁶ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

⁷ This date should be at least seven calendar days before the first day of hearing.

party to file its post-hearing statement of position are necessary (assuming the parties wish to file such statements of position) and whether response should be permitted. In addition, Applicant and Staff should be prepared to discuss any matters pertaining to discovery if the procedures of Rule 4 CCR 723-1-77 are not sufficient. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5).

15. Thirdly and finally, any party may raise any additional issue.

16. In considering proposed dates, parties should keep in mind that the Commission deemed the Application complete as of August 31, 2004. Absent Applicant's waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, on or before March 29, 2005). *See* §§ 40-6-109.5(2) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and must allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁸ all of which should occur by March 29, 2005.

17. The Administrative Law Judge (ALJ) expects the parties to come to the prehearing conference with proposed dates for all deadlines. In addition, the parties must consult prior to the prehearing conference with respect to the listed matters. Finally, the parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to both parties.

⁸ As a general rule, and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the end of the hearing, the filing of statements of position, or the filing of responses to statements of position, whichever occurs last.

18. The parties are advised that the ALJ will be unavailable from September 13, 2004 through and including September 24, 2004. Any procedural matter which arises during this time period should be addressed to Administrative Law Judge Dale Isley for resolution.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule, if any, established in the Posting of Application Filed, dated July 27, 2004, is vacated.

2. A prehearing conference in this docket is scheduled as follows:

DATE: September 28, 2004

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

3. The parties must be prepared to discuss the matters set forth above.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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