

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 011354-TP

In the Matter of

**Petition by Global NAPs, Inc. for
arbitration pursuant to 47 U.S.C.
252(b) of interconnection rates,
terms and conditions with ALLTEL,
Florida, Inc.**



**ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.**

PROCEEDINGS: PREHEARING CONFERENCE

**BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer**

DATE: Monday, January 6, 2003

**TIME: Commenced at 1:30 p.m.
Concluded at 1:55 p.m.**

**PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida**

**REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850)413-6732**

DOCUMENT NUMBER DATE

00386 JAN 13 2003

FPSC-COMMISSION CLERK

1 **APPEARANCES:**

2 **JON C. MOYLE, JR., Esquire and CATHY SELLERS,**
3 **Esquire, Moyle Flanigan, Katz, Raymond and Sheehan, P.A.,**
4 **118 North Gadsden Street, Tallahassee, Florida 32301, on**
5 **behalf of Global NAPS, Inc.**

6 **J. JEFFRY WAHLEN, Esquire, Ausley & McMullen,**
7 **Post Office Box 391, Tallahassee, Florida 32302; and**
8 **STEPHEN T. REFSELL, Esquire, ALLTEL Corporate**
9 **Services, Inc., One Allied Drive, Little Rock, Arkansas**
10 **72202, on behalf of ALLTEL Florida, Inc.**

11 **WAYNE D. KNIGHT, Esquire, and ADAM J. TEITZMAN,**
12 **Esquire, Florida Public Service Commission, 2540 Shumard**
13 **Oak Blvd., Tallahassee, Florida 32399-0850, on behalf of**
14 **the Commission Staff.**

15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

1
2 **COMMISSIONER BAEZ: Let's call this prehearing to**
3 **order.**

4 **Counsel, can you read the notice?**

5 **MR. KNIGHT: Notice was given on December 20th, 2002,**
6 **in Docket Number 011354-TP, Petition of Global NAPS,**
7 **Incorporated, for arbitration pursuant to 47 U.S.C. Section**
8 **252(b), of interconnection rates, terms, and conditions with**
9 **ALLTEL Florida, Incorporated, that a hearing would be heard at**
10 **this time and place for the purpose set forth in the notice.**

11 **COMMISSIONER BAEZ: All right. Let's take**
12 **appearances.**

13 **MR. WAHLEN: Commissioner, I'm Jeff Wahlen of the**
14 **Ausley and McMullen law firm, P.O. Box 391, Tallahassee,**
15 **Florida 32302, appearing on behalf of ALLTEL Florida, Inc. I**
16 **would also like to make an appearances on behalf of Stephen T.**
17 **Refsell of AITEL Corporate Services, Inc., One Allied Drive,**
18 **Little Rock, Arkansas 72202. Both of us are appearing on**
19 **behalf of ALLTEL Florida, Inc.**

20 **MR. MOYLE: Jon Moyle, Jr., with the Moyle Flanigan**
21 **law firm here in Tallahassee appearing behalf of Global NAPs.**
22 **Cathy Sellers is also on the pleadings in the case. And with**
23 **me is Jim Scheltema of Global NAPS who can enter an appearance**
24 **on behalf of the company, as well.**

25 **COMMISSIONER BAEZ: Okay. Mr. Knight.**

1 **MR. KNIGHT:** The parties did introduce -- well,
2 actually, **ALLTEL** did introduce a motion for qualified
3 representative.

4 **COMMISSIONER BAEZ:** I'm holding it in my hand, Mr.
5 Knight. Why don't we enter an appearances for Mr. Knight, as
6 well.

7 **MR. KNIGHT:** Sorry. Wayne Knight and Adam Teitzman
8 for the Florida Public Service Commission.

9 **COMMISSIONER BAEZ:** First one of the year, is it?

10 **MR. KNIGHT:** Yes.

11 **MR. WAHLEN:** Commissioner, we filed that motion about
12 an hour ago. **Global NAPS** has also filed one for Jim Scheltema.
13 We have conferred among ourselves, and neither of us object to
14 granting those motions.

15 **COMMISSIONER BAEZ:** If there is no objections, we are
16 going to grant both of them.

17 **MR. MOYLE:** We have no objection.

18 **MR. WAHLEN:** Thank you.

19 **COMMISSIONER BAEZ:** All right. We have got a couple
20 of preliminary matters. And I'm showing here responses to
21 discovery requests. Can you walk us through that, Mr. Knight,
22 these preliminary matters I'm showing here?

23 **MR. KNIGHT:** Okay. As we discussed earlier, the
24 order establishing procedure had indicated that the discovery
25 requests would be due within 20 days. **Global NAPS** was not able

1 to respond within 20 days. It did get the materials which were
2 due on November 27th into us on December 12th. Staff would
3 just like to remind them of the necessity to be prompt in
4 responding to discovery requests pursuant to the order
5 establishing procedure.

6 COMMISSIONER BAEZ: Okay.

7 MR. KNIGHT: On the other issues, the prehearing
8 statements.

9 COMMISSIONER BAEZ: Right. I'm going to let Mr.
10 Moyle address that, or Mr. Scheltema, if he sees fit. I just
11 want to say one thing. I guess the information that I'm
12 receiving kind of troubles me a little bit. I know that it has
13 been the holidays and, you know, time constraints kind of fly
14 out the window around that time, but I'm not really seeing, and
15 I hope to get some kind of explanation as to what all has been
16 going on to cause these delays.

17 In terms of what the back and forth of communications
18 with GNAPS in particular and staff has been, I do want to
19 remind you all that this is a fairly well set out process. I
20 mean, you all have been here before the Commission on several
21 occasions, including on behalf of these particular parties.
22 There is no reason why the staff should have to track anyone
23 down. I know that in the case of GNAPS in particular,
24 especially since they are the ones that brought the docket
25 forth, I'm not sure that that is excusable at this point.

1 **Mr. Moyle, I will let you educate me as to why it**
2 **would be, but I'm having a little bit of trouble accommodating**
3 **staff's ability to prepare properly and all of these things**
4 **with the current time schedule that we have. So I would look**
5 **forward to hearing something from you that is going to dissuade**
6 **me from taking some action that would probably extend this**
7 **hearing schedule in order to let the Public Service Commission**
8 **staff really prepare adequately as should be their job.**

9 **Mr. Moyle.**

10 **MR. MOYLE: Yes. I will comment in that we have**
11 **discussed with staff and with Mr. Wahlen the prehearing**
12 **statement that was filed. Mr. Scheltema, who you have**
13 **graciously admitted pro hoc, practices in a number of states**
14 **and took the lead in preparing and filing the prehearing**
15 **statement. Not being familiar with the Florida process, we**
16 **have indicated that what we would propose to do -- and I have**
17 **to take some responsibility for not giving him proper guidance**
18 **in that respect, so I will apologize on the record for that.**

19 **But that to the extent that it was acceptable, we can**
20 **reformat the prehearing statement in a way that is consistent**
21 **with the practice here, have that in by close of business**
22 **Thursday. And if that provides sufficient time we can stick to**
23 **the current schedule. If staff believes that doesn't provide**
24 **sufficient time and has a need to explore things in greater**
25 **detail, then we would surely accommodate any request to push**

1 things back.

2 **COMMISSIONER BAEZ:** And I appreciate your willingness
3 to try and work with the schedules that we already have. I
4 guess, Mr. Moyle and Mr. Scheltema, I think the problem that
5 I'm seeing -- and, Mr. Wahlen, you get to chime in at some
6 point, I'm sure, as well -- the problem that I'm seeing is that
7 the staff's discovery, staff's deposition scheduling has all
8 been sort of pushed back to the limit of the hearing schedule.
9 And I'm not getting a sense from staff -- and, Mr. Knight, if
10 I'm wrong you clarify, that their follow-up on depositions and
11 that certainly the discovery, the initial discovery requests
12 having not been responded to on time hasn't afforded the staff
13 to be able to follow-up and get the information that they need
14 in order to be properly prepared and furthermore to prepare
15 recommendations at the end of the day and so on.

16 So I don't know how -- you know, the question of
17 reformatting the prehearing statements, all that is well and
18 good. And certainly as soon as you can, I'm going to ask you
19 to do that, nevertheless. But there are other questions a
20 little bit broader, a little bit more present in my mind, and
21 I'm just not sure how we can address that with the little time
22 that we have left. I mean, I guess we are, what, two weeks
23 out?

24 **MR. KNIGHT:** A little bit more than two weeks.

25 **COMMISSIONER BAEZ:** A little bit more than two weeks.

1 And with depositions certainly being scheduled, as I understand
2 it, next week, it doesn't seem like there is a whole lot of
3 time in order to follow-up on them and get discovery requests
4 or follow-up requests that might be necessary in order to
5 prepare for the hearing. Frankly, that is just from staff's
6 perspective of which I am familiar with. I don't know what
7 ALLTEL is going to say. Mr. Wahlen, do you have anything to
8 say in that regard?

9 MR. WAHLEN: Well, I don't really have any comments
10 on the timeliness of Global NAPS' discovery and the prehearing
11 statement issue. We don't object to them taking a little time
12 to get their prehearing statement positions conformed with the
13 way the issues were framed when we met earlier. That is
14 certainly not going to prejudice us.

15 We are prepared to do the depositions next week. We
16 are hopeful that that will move the ball forward. But
17 obviously if anybody, particularly staff, thinks that we might
18 need a little more time to prepare for the hearing, we would
19 not object to a continuance, pushing the hearing back.
20 Whatever makes sense for the parties.

21 COMMISSIONER BAEZ: Thank you, Mr. Wahlen.

22 Any other comments? Yes, Mr. Scheltema.

23 MR. SCHELTEMA: Actually, I appreciate Mr. Moyle
24 apologizing on my behalf, but basically I am the one who should
25 be eating crow. I am responsible, I made the filing.

1 **COMMISSIONER BAEZ:** Well, and you can enter one on
2 your behalf, as well.

3 **MR. SCHELTEMA:** Okay. So noted, right?

4 **COMMISSIONER BAEZ:** So noted.

5 **MR. SCHELTEMA:** The hearing, I believe, is currently
6 scheduled for the 29th of January. To the extent that staff or
7 anybody believes that additional time is required, frankly, you
8 know, I'm in no rush in terms of the hearing. If there is any
9 modification to the schedule, that doesn't trouble me at all.
10 If you need some sort of waiver from the federal guidelines, I
11 could certainly volunteer to do that. I don't think that you
12 follow the federal guidelines anyway.

13 **COMMISSIONER BAEZ:** We don't have federal guidelines
14 in play here, do we?

15 **MR. KNIGHT:** We do have a time period.

16 **COMMISSIONER BAEZ:** Do we?

17 **MR. WAHLEN:** My understanding is that, if I may,
18 Commissioner, that when this case was filed there was a federal
19 deadline. But early on in the proceeding the parties filed a
20 motion to extend that schedule, and there was a waiver by
21 Global NAPS so we could get this kind of tracking along with
22 the generic docket. So I don't think the federal guidelines
23 are in play at this point.

24 **MR. SCHELTEMA:** Essentially, to the extent that
25 anything is required, and I certainly understand that I am the

1 cause of it. I mean, I will do whatever it takes to make sure
2 that the Commission has the information that it needs to make a
3 reasoned decision.

4 COMMISSIONER BAEZ: Well, I am much more comfortable
5 having heard you say that. Because at this point, understand
6 what is happening, what is going to happen now, Mr. Scheltema,
7 is that if we continue the case, and I have a pretty good
8 feeling we will, then you are back in queue. And we have to be
9 dealing with other staff schedule -- I mean, now staff's
10 scheduling constraints start to take precedence. So we are
11 looking at -- and I forget what the dates are, but I think they
12 are somewhere late June or July.

13 MR. KNIGHT: Right, with the selection of dates.
14 Your secretary indicated July 25th.

15 COMMISSIONER BAEZ: July 25th. And that is what we
16 are talking about.

17 MR. SCHELTEMA: I understand. Can I just add one
18 other thing, Commissioner Baez?

19 COMMISSIONER BAEZ: Sure.

20 MR. SCHELTEMA: And that is that the parties here
21 have discussed the possibility of perhaps doing an all paper
22 hearing, or at least narrowing the issues so that only those
23 issues that staff and the Commission need live testimony and
24 have some questions on might go to a hearing. So it might even
25 be possible to essentially do the whole docket without having

1 the need to go to hearing so that that would almost be an
2 irrelevant step. Alternatively, the hearing process might be
3 shortened to where it is only, say, for example, a three-hour
4 hearing.

5 **COMMISSIONER BAEZ:** Mr. Scheltema, I appreciate that,
6 and to the extent that ALLTEL is willing to concede to that
7 possibility. Now my understanding is that there is at least a
8 couple of issues here that seem to be first impression that the
9 Commission would probably want to hear testimony on. So I
10 think we are starting to fall into line into perhaps an
11 abbreviated hearing, if that is at all a possibility. I don't
12 recall offhand which of those issues they may be, but that is
13 something that we can straighten out later.

14 I don't know if actually contemplating at least a
15 paper hearing in large part is going to change the scheduling
16 on that.

17 **MR. KNIGHT:** I don't think it would change the
18 scheduling, but when we do meet it would be much narrower.

19 **COMMISSIONER BAEZ:** Okay. What is it that we need to
20 do at this point? Well, first of all, I am inclined just to go
21 and confirm with Mr. Wahlen that your positions are accurate
22 here. We will just go and make sure that we can get at least a
23 partially final draft of this prehearing, pending Mr. Moyle's
24 submission of the prehearing positions in proper format and
25 answering the corresponding subparts, et cetera, and you can do

1 that offline.

2 Mr. Knight, is end of business Thursday going to work
3 now with this continuance?

4 MR. KNIGHT: Yes, that will work.

5 COMMISSIONER BAEZ: Okay. End of business Thursday
6 for that. And we said July 25th?

7 MR. KNIGHT: Correct.

8 COMMISSIONER BAEZ: So we will enter a continuance of
9 the hearing schedule to July 25th, specific time to be set
10 later.

11 MR. KNIGHT: Correct.

12 COMMISSIONER BAEZ: Mr. Knight, are there any
13 corresponding changes that need to be made to the procedural
14 order, in addition?

15 MR. KNIGHT: No, not at this time.

16 COMMISSIONER BAEZ: Not at this time. All right.

17 And you will work with my office just to make sure that that is
18 clear?

19 MR. KNIGHT: Right.

20 COMMISSIONER BAEZ: All right. Everybody has a draft
21 of the prehearing order before them?

22 MR. WAHLEN: Commissioner, I could probably help move
23 this along. ALLTEL has reviewed the draft that Mr. Knight has
24 prepared, and the positions for ALLTEL as stated in the
25 prehearing statement don't need to be modified there. They are

1 okay the way they are.

2 I have talked with Mr. Knight. We did file a request
3 for confidential classification, I understand that has been
4 ruled on.

5 COMMISSIONER BAEZ: That has been ruled on already.

6 MR. WAHLEN: So that doesn't need to be in the
7 prehearing order. For planning purposes, it strikes me that we
8 should assume that we are going to have the hearing, and that
9 all of the issues will be subject to discussion or --

10 COMMISSIONER BAEZ: That is correct.

11 MR. WAHLEN: -- being addressed at the hearing. And
12 we would, I think, recommend that the direct and the rebuttal
13 testimony of all the witnesses be taken at once instead of
14 having people on and off.

15 COMMISSIONER BAEZ: Any objections to that, Mr.
16 Moyle?

17 MR. MOYLE: No.

18 COMMISSIONER BAEZ: Okay. Then let the prehearing
19 order show that the direct and rebuttal testimony will be taken
20 at the same time.

21 MR. WAHLEN: I have given Mr. Knight a couple of
22 tweaks to the prehearing order that are typing issues that I
23 don't think we need to go over at this time.

24 COMMISSIONER BAEZ: I'm sorry, what kind of issue?

25 MR. WAHLEN: Just typos.

1 **COMMISSIONER BAEZ:** Okay. Grammar check everybody.

2 **MR. WAHLEN:** Well, I'm the last guy that is good at
3 that. But if you don't type it, it's easier for you to see.

4 **COMMISSIONER BAEZ:** I think we have a room full of
5 experts on that.

6 **MR. WAHLEN:** And I guess the only other issue that we
7 would raise at this time is that it seems to be fairly common
8 these days for the discovery responses that are provided to
9 staff and the deposition transcripts be admitted into the
10 record as exhibits. And if that is okay with everybody, we
11 could all plan on that, and perhaps the need to identify
12 cross-examination exhibits and things like that would be
13 minimized.

14 **COMMISSIONER BAEZ:** Mr. Knight. We are going to run
15 it the way we always run it.

16 **MR. KNIGHT:** Right. We would have no objection to
17 that.

18 **MR. MOYLE:** I guess the only point I would make, I'm
19 not sure that that is live at this point in terms of admitting
20 depositions that haven't been taken or anything. I mean, if we
21 were trying to do this --

22 **COMMISSIONER BAEZ:** I'm not making a ruling on that,
23 that will be up to the presiding officer. But I'm not seeing
24 any problem with that.

25 **MR. WAHLEN:** I believe that kind of covered my little

1 list of items to discuss, unless there are questions.

2 COMMISSIONER BAEZ: I'm sorry, you have only got one
3 witness. I was just making sure that you had everything in
4 order, but an order of one is pretty much self-explanatory.

5 MR. WAHLEN: Right.

6 COMMISSIONER BAEZ: To the extent that you can make
7 any, that you have any changes to make today, Mr. Moyle, now is
8 your chance.

9 MR. MOYLE: Given the decision to push the hearing
10 back and whatnot, I think it probably would just be more
11 expeditious for us to go ahead and get in the revised
12 prehearing statement by close of business Thursday. I presume
13 we might have another one of these prior to the hearing in
14 July. That is just a presumption, but --

15 COMMISSIONER BAEZ: You anticipated my question. We
16 don't need -- at this point, I mean, obviously --

17 MR. KNIGHT: No, we would not normally.

18 COMMISSIONER BAEZ: Don't proceed on that
19 presumption. I mean, obviously if something becomes necessary
20 we are here to address it, but I think this will be the last --
21 at this point this is the last prehearing before we actually go
22 to hearing. Do we have anything else?

23 MR. KNIGHT: We have no other issues.

24 COMMISSIONER BAEZ: No other issues. Okay. Things
25 we need to follow-up on, just make sure we have got it by close

1 of business on Thursday. If there are any other matters that
2 come up, you will contact -- just let me know. And also keep
3 an eye out for whatever -- if we do need another prehearing
4 before this time, you know, let me know about that, too,
5 although we are not anticipating it.

6 If there is nothing else? All right. Happy New Year
7 everyone, while I've got you here. We are adjourned.

8 (The prehearing concluded at 1:55 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 9th day of January, 2003.



**JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732**