

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF THE ARBITRATOR’S :
DECISION IN GLOBAL NAPS, INC.’S :
PETITION FOR ARBITRATION PURSUANT :
TO SECTION 2529(b) OF THE : DOCKET NO. 3437
TELECOMMUNICATIONS ACT OF 1996 TO :
ESTABLISH AN INTERCONNECTION :
AGREEMENT WITH VERIZON RHODE ISLAND :

FINAL ARBITRATION DECISION AND ORDER

I. Travel

On June 3, 2002, Global NAPS, Inc. (“GNAPs”) filed with the Public Utilities Commission (“Commission”) a Petition for Arbitration of an Interconnection Agreement (“ICA”) with Verizon-Rhode Island (“VZ-RI”) pursuant to the Telecommunications Act of 1996 (“Act”), specifically Section 252 of the Act. In its Petition, GNAPs identified nine unresolved issues between the parties. On June 27, 2002, VZ-RI responded to GNAPs’ Petition and raised three supplemental issues.

On September 27, 2002, Commission appointed arbitrator, Steven Frias¹ (“Arbitrator”), held an arbitration hearing to be the finder of fact on behalf of the Commission pursuant to its Regulations Governing Arbitration, Mediation, Review and Approval of Interconnection Agreements (“Arbitration Regulations”).

On October 16, 2002, the Arbitrator issued an Arbitration Decision (“Recommended Decision”) addressing all issues raised by GNAPs and VZ-RI.² On October 23, 2002, the Arbitrator issued a Supplemental Arbitration Decision (“Supplemental Decision”) at the request of the parties to clarify that certain contract

¹ Mr. Frias is the Commission’s Executive Counsel.

² Order No. 17193 (issued October 16, 2002).

language was in conformance with his Recommended Arbitration Decision.³ In his Supplemental Decision, the Arbitrator specifically stated, “[w]ith the exception of Section 7.3.8, the draft Interconnection Agreement (“ICA”) submitted by VZ-RI on October 30, 2002 appears to be in conformance with Order No. 17193.”⁴

II. Summary of Arbitrator’s Findings

The Arbitrator found in favor of VZ-RI on all Issues but for Issue 2, VZ-RI’s VGRIPs proposal, Issue 6, as it relates to forecasting of network traffic, and Issue 8, as it relates to additional insurance requirements. In his analysis, the Arbitration provided the Commission with persuasive evidence from other states that had already ruled on the issues GNAPs raised in this arbitration proceeding.

III. Exceptions

Pursuant to the Commission’s Arbitration Regulations, the parties filed their Exceptions to the Recommended Decision on October 31, 2002 and their Replies on November 6, 2002.⁵ GNAPs filed specific Exceptions to the Recommended Decision on Issue 3, Defining Local Wholesale Calling Areas, and Issue 4, the use of VNXX and related compensation. GNAPs also filed a blanket objection to the findings on Issues 5 through 12 but pointed to no errors in the analysis.⁶ GNAPs’ arguments to the Commission were variations on its arguments to the Arbitrator in its Pre-filed testimony and Post-Hearing Brief. As such, the arguments have been addressed in the Recommended and Supplemental Decisions.

³ Order No. 17236 (issued November 12, 2002).

⁴ Id. at 3.

⁵ GNAPs’ Exhibit C (Comments to the Arbitration Decision), GNAPs’ Exhibit D (Reply Comments), VZ-RI’s Exhibit C (Verizon’s Exceptions to the Arbitration Decision), VZ-RI’s Exhibit D (Verizon’s Reply Comments).

⁶ GNAPs’ Exhibit C (Comments to the Arbitration Decision).

VZ-RI filed Exceptions to the Recommended Decision on Issue 2, VZ-RI's VGRIPs proposal, Issue 6 to the extent that the Recommended Decision requires each party to forecast its own network traffic, and Issue 8 to the extent that the Recommended Decision requires VZ-RI to name GNAPs as an additional insured on its insurance policy.⁷ VZ-RI's arguments on Issues 2 and 6 were variations on its arguments before the Arbitrator in its Pre-filed testimony and Post-Hearing Brief. As such, the arguments have been addressed in the Recommended and Supplemental Decisions.

With regard to Issue 8, VZ-RI not only argued to the Arbitrator that it should not have to name GNAPs as an additional insured on an insurance policy, but also that it should not be required to carry an insurance policy with limits equal to that which it requires of GNAPs. In its Exceptions to the Commission, however, VZ-RI only argued that it should not be required to name GNAPs as an additional insured on its insurance policy.

VZ-RI argued that in their respective Arbitration Decisions, New York, Ohio, California and Pennsylvania did not require Verizon to name GNAPs as an additional insured on Verizon's policy because as the host collocation facility, Verizon faces more risk than GNAPs in their course of dealings with one another. According to VZ-RI, because the requirement puts the companies in the same position as if neither had named the other as an additional insured, the effectiveness of the requirement is canceled out. Furthermore, VZ-RI argued that it would be overly burdensome for VZ to have to name every CLEC as an additional insured, not only administratively, but in the aggregate as the costs assessed by insurers for that practice would be substantial.⁸

⁷ VZ-RI's Exhibit C (Verizon's Exceptions to the Arbitration Decision).

⁸ VZ-RI's Exhibit C (Verizon's Exceptions to the Arbitration Decision), pp. 8-15.

In response, GNAPs argued that VZ-RI should face all of the same requirements as it requires of GNAPs, including naming GNAPs as an additional insured because, according to GNAPs, VZ-RI never showed how it faces more risk than GNAPs in their course of dealings.⁹

IV. Commission Proceedings

On November 21, 2002, GNAPs filed a Motion for Oral Argument before the Commission to be held on December 3, 2002. GNAPs represented that VZ-RI did not object to the Motion. The Commission granted the Motion for Oral Argument and set time limits for the presentation of arguments and rebuttal with no objections from the parties.

The following appearances were entered:

FOR GNAPs: James R.J. Scheltema, Esq.
Craig Eaton, Esq.

FOR VERIZON-RHODE ISLAND: Thomas C. Singher, Esq.
Keefe B. Clemons, Esq.

FOR COMMISSION: Cynthia G. Wilson, Esq.
Senior Legal Counsel

GNAPs argued that calls into Providence should be rated locally for purposes of wholesale intercarrier compensation regardless of the geographical endpoints of the call because the FCC's ISP Remand Order took the word "local" from its rules regarding ISP-bound traffic. Mr. Scheltema explained that all of GNAPs' Rhode Island ISP carriers currently have to have facilities in Providence to benefit from the fact that all Rhode Island residents can call into Providence without incurring a toll charge, but GNAPs would like to be able to allow someone to call into their ISP carrier to a Providence-based

⁹ GNAPs' Exhibit D (Reply Comments).

number that could be in Quincy, Massachusetts without GNAPs having to pay the access charges to Verizon for the interstate call. He argued that, under the ISP Remand Order, as long as the traffic was *information access traffic*, it should not matter for purposes of intercarrier compensation where the call begins and terminates.¹⁰ GNAPs also argued that a VNXX call should not be subject to access charges if it the NXX is “homed” in Providence because VZ-RI can not determine whether the call is toll or not.¹¹

VZ-RI argued in favor of VGRIPs as a means of sharing transport costs with CLECs to counterbalance the fact that CLECs are not required to establish more than one point of interconnection (“POI”) per LATA.¹² VZ-RI also argued that because GNAPs is primarily an ISP provider, it is in the best position to forecast its own traffic.¹³ Finally, VZ-RI argued that the requirement that each party name the other as an additional insured on its insurance policy negates the effectiveness of the policy.¹⁴ In response to GNAPs’ arguments, VZ-RI argued that the FCC ISP Remand Order changed nothing with respect to intercarrier compensation for intrastate and interstate *exchange traffic*.¹⁵

In response to questions from the Bench, the parties indicated that despite the fact that Ohio had ordered each party to forecast its own traffic, GNAPs was not yet providing service and as such, the parties did not know how accurate the respective forecasts would prove to be.¹⁶ In response to a question of whether VZ-RI would object to naming a CLEC as an additional insured if VZ-RI collocates at the CLEC’s facility, counsel

¹⁰ Tr. 12/3/02, pp. 9-13.

¹¹ Id. at 17-18. GNAPs also provided oral arguments on issues 5 through 12, which were not set forth in GNAPs’ exceptions. Id. at 28-32.

¹² Id. at 19-20.

¹³ Id. at 20-21.

¹⁴ Id. at 21-24.

¹⁵ Id. at 32-35.

¹⁶ Id. at 45.

responded, “[w]ith respect to reciprocity, in that regard I don’t think we would be heard to object.”¹⁷

V. Commission Findings

On December 3, 2002, following the hearing and after no objection from the parties, the Commission considered the evidence presented and rendered a Bench decision, unanimously affirming the findings contained in the Recommended Decision and Supplemental Decision on all Issues but for Issue 8. As such, the Recommended Decision and Supplemental Decision are hereby incorporated by reference as if fully set forth herein and are attached hereto as Appendices A and B respectively.

With regard to Issue 8, the Commission affirms the Recommended Decision to the extent that it requires each party to carry reciprocal amounts of insurance. However, the Commission finds that VZ-RI should not be required to name GNAPs as an additional insured unless VZ-RI collocates at a GNAPs facility, at which time, VZ-RI shall be required to name GNAPs as an additional insured as to that specific facility.

At the crux of VZ-RI’s argument is that if it is required to allow competitive local exchange carriers (“CLECs”) to collocate in its facilities, it bears more of a risk of loss than a CLEC. In the Virginia Arbitration, the FCC Wireline Bureau rejected one CLEC’s arguments that Verizon’s insurance requirements should be reciprocal. The Bureau specifically found that while there may be some risk that Verizon’s actions could cause harm to a CLEC’s network, the CLEC simply had not established that this risk warrants extending the same insurance provision to Verizon.¹⁸ Likewise, GNAPs has provided no

¹⁷ Id. at 49-52.

¹⁸ In the Matter of Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding

evidence that its current risk from Verizon is the same as Verizon's risk from GNAPs. In its Arbitration Decision, California required reciprocal amounts of insurance but did not require Verizon to name GNAPs as an additional insured finding that VZ faces more risk than GNAPs. The Commission finds that California's approach was reasonable.

At the request of both parties, the Commission will clarify its position on the Recommended Decision as it relates to Issues 3 and 4. Simply put, intercarrier compensation for *ISP-bound traffic* is subject to the FCC's findings in its ISP Remand Order. Regarding ISP-bound traffic only, the FCC stated, “[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic...state commissions will no longer have authority to address this issue.”¹⁹

However, intercarrier compensation for traffic other than ISP-bound traffic is governed by this Commission. We note that the FCC, in its ISP Remand Order, did not, as GNAPs argues, divest the state commissions from defining the wholesale calling areas for intercarrier compensation for non-ISP-bound traffic. The ISP Remand Order specifically recognized that intrastate access regimes in place prior to the Act remain unchanged until action by the state commissions and that calls that travel to points beyond the local exchange are subject to access charges.²⁰

Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration, DA 02-1731 (released July 17, 2002) (“Virginia Arbitration Order”), ¶ 741.

¹⁹ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order, FCC No. 01-131 (released April 27, 2001) (“ISP Remand Order”), ¶ 82.

²⁰ Id. at ¶¶ 37, 39. See In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc., Entry on Rehearing, Case No. 02-876-TP-ARB, p. 7. In addressing the issue of LATA-wide intercarrier compensation, the FCC Wireline Competition Bureau stated that the “[FCC] has previously held that state commissions have the authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for these areas where the LECs’ service

The Arbitrator found that VNXX calls will be rated as local or toll based on the geographic end points of the call. In other words, “GNAPs should not be allowed to avoid access charges for calls that are destined for points outside the Providence exchange but arrive first at GNAPs’ Providence Point of Interconnection (“POI”).”²¹ On this point, we affirm. Alterations of the existing wholesale market are not the appropriate subject of a two-party arbitration.

Accordingly, it is

(17350) ORDERED:

1. The recommendations for the Arbitrator set forth in Order Nos. 17193 (issued October 16, 2002) and 17236 (issued November 12, 2002) are hereby approved and adopted, with the exception of the additional insured requirement.
2. VZ-RI is required to carry the same amount of insurance as it requires of GNAPs. GNAPs’ insurance policy shall name VZ-RI as an additional insured. In the event VZ-RI collocates at a GNAPs facility, if required by GNAPs, VZ-RI’s insurance policy shall name GNAPs as an additional insured as to that specific GNAPs facility.
3. The parties shall comply with all other findings and instructions as contained in this Final Arbitration Decision and Order.

areas do not overlap.” Thus, the FCC’s Wireline Competition Bureau “decline[ed] to disturb the existing distinction in Virginia between those calls subject to access charges and those subject to reciprocal compensation.” Virginia Arbitration Order, ¶ 549.

²⁰ In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North, Inc., Entry on Rehearing, Case No. 02-876-TP-ARB, p. 7.

²¹ Order No. 17236 (issued November 12, 2002), p. 1.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO A BENCH
DECISION ON DECEMBER 3, 2002. WRITTEN ORDER ISSUED JANUARY 24,
2003.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

*Chairman Germanin concurs with the Decision but is unavailable for signature