

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 252(b) OF THE : DOCKET NO. 3437  
TELECOMMUNICATIONS ACT OF 1996 TO :  
ESTABLISH AN INTERCONNECTION :  
AGREEMENT WITH VERIZON RHODE ISLAND :

**ORDER DENYING VERIZON-RHODE ISLAND'S MOTION FOR  
RECONSIDERATION OF THE FINAL ARBITRATION DECISION**

**I. Travel**

Verizon Rhode Island ("VZ-RI") has filed a Motion for Reconsideration of the Commission's Final Arbitration Decision and Order ("Final Arbitration Decision") in the instant docket, specifically, the Commission's findings with regard to intercarrier compensation for VNXX calls as applied to ISP-bound traffic.<sup>1</sup>

On June 3, 2002, Global NAPs, Inc. ("GNAPs") filed with the Rhode Public Utilities Commission ("Commission") a Petition for Arbitration of an Interconnection Agreement ("ICA") with VZ-RI pursuant to Section 252 of the Telecommunications Act of 1996 ("Act").

On June 27, 2002, VZ-RI responded to GNAPs' Petition. An arbitrator was appointed and after holding hearings and accepting briefs from the parties, the arbitrator issued a Recommended Arbitration Decision on October 16, 2002 and a Supplemental Recommended Arbitration Decision ("Recommended Decisions") on October 23, 2002. The arbitrator found in favor of VZ-RI on all but three issues, none of which are the subject of the instant Motion for Reconsideration.

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<sup>1</sup> Order No. 17350 (issued January 24, 2003).

The parties filed Exceptions to the Recommended Decisions on October 31, 2002 and their respective Replies on November 6, 2002. On November 21, 2002, GNAPs filed a Motion for Oral Arguments before the Commission. After hearing the parties' arguments on December 3, 2002, the Commission considered the evidence presented and rendered a Bench decision. The Commission affirmed the arbitrator's recommendations on all issues that are the subject of the instant Motion for Reconsideration. However, in affirming the recommendations, the Commission also clarified its position regarding Issues 3 (local calling areas) and 4 (VNXX).

Specifically, the Commission affirmed the arbitrator's finding that VNXX voice calls should be rated as local or toll based on the geographic end points of the call. The Commission further agreed that, "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."<sup>2</sup> However, the Commission also determined that this rule would not apply to ISP-bound traffic, which has its own intercarrier compensation scheme as defined by the Federal Communications Commission ("FCC"). It is on this point that VZ-RI has requested reconsideration.

## **II. VZ-RI's Motion**

VZ-RI requested that the Commission "reconsider its interpretation of the ISP Remand Order<sup>3</sup> and declare that to the extent intrastate access charges would otherwise apply to calls between two Rhode Island end-users, the existing access charge regime

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<sup>2</sup> Order No. 17350 (issued January 24, 2003), quoting Order No. 17236 (issued November 12, 2002).

<sup>3</sup> In the Matter of Local Competition Provision in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand, 16 FCC Rcd 9151 (rel. April 27, 2001) ("ISP Remand Order"), remanded, WorldCom, Inc. v. Federal Communications Comm'n, 288 F.3d 429 (D.C. Cir. 2002).

applied to interexchange calls regardless of whether they are ISP-bound.”<sup>4</sup> According to VZ-RI, in its ISP Remand Order, the FCC was attempting to control arbitrage schemes where the geographic endpoints were in the same local calling area.<sup>5</sup> VZ-RI argued that the FCC’s holding in the ISP Remand Order did not divest state commissions of their jurisdiction over intrastate traffic, even if it was ISP-bound traffic.<sup>6</sup> In fact, VZ-RI asserted, the FCC specifically intended existing intrastate and interstate access charge regimes to remain in effect for ISP-bound traffic.<sup>7</sup> The purpose of this, according to VZ-RI, was to avoid arbitrage schemes regarding traffic where the geographic endpoints are in different local calling areas.<sup>8</sup> Therefore, VZ-RI suggested that, in ruling that access charges do not apply to ISP-bound traffic, the Commission has interpreted the preemptive jurisdictional language in the ISP Remand Order in a manner that is contrary to the FCC’s intent.

Next, VZ-RI indicated that since the issuance of the Commission’s Final Arbitration Decision, two other state commissions, Massachusetts and Vermont, issued decisions in similar arbitrations between the parties to the instant docket. According to VZ-RI, both state commissions found that the ISP Remand Order did not divest state commissions of their authority in defining local calling areas and likewise, did not alter the existing intercarrier access charge compensation schemes. Therefore, both state

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<sup>4</sup> Motion of Verizon-Rhode Island for Reconsideration of Final Arbitration Decision and Order, pp. 1-2.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. at 2-3.

<sup>7</sup> Id. at 4.

<sup>8</sup> VZ-RI noted that the ISP Remand Order only addresses local calls and the Commission has determined that any calls in which the geographic endpoints are not in the same local calling area are toll. However, due to the use of VNXX technology (in which GNAPs is assigned a Providence-based NXX code), GNAPs is able to also avoid paying access charges to VZ-RI for any calls which, if they were voice calls, would incur access charges from GNAPs to VZ-RI.

commissions found that GNAPs should not be able to avoid paying access charges that would otherwise be due simply because the traffic was defined as ISP-bound traffic.<sup>9</sup>

VZ-RI asserted that the Massachusetts Department of Telecommunications and Energy (“DTE”) rejected GNAPs argument that it was not required to pay Verizon access charges when it used VNXX arrangements to deliver Internet-bound calls.<sup>10</sup> Additionally, VZ-RI indicated that the Vermont Service Board prohibited the use of VNXX codes for the purposes of avoiding toll charges on internet-bound traffic.<sup>11</sup>

### **III. GNAPs’ Objection**

GNAPs objected to VZ-RI’s Motion, arguing that the FCC’s intent in the ISP Remand Order was to set up a bill-and-keep compensation system under which neither carrier would collect any money from an interconnecting carrier, whether characterized as reciprocal compensation or access, for the exchange of ISP-bound traffic.<sup>12</sup> According to GNAPs, as long as the traffic is ISP-bound, it is irrelevant where the geographic endpoints of the call are. GNAPs also argued that only the FCC should be interpreting the intent of its ISP Remand Order and, therefore, VZ-RI has chosen the wrong venue in which to make its arguments.<sup>13</sup>

### **IV. VZ-RI’s Reply**

In response to GNAPs’ Objection, VZ-RI reiterated the arguments posited in its Motion.<sup>14</sup>

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<sup>9</sup> Motion of Verizon-Rhode Island for Reconsideration of Final Arbitration Decision and Order, pp. 7-9.

<sup>10</sup> Id. at 7-8.

<sup>11</sup> Id. at 8-9.

<sup>12</sup> GNAPs’ Opposition to the Motion of Verizon Rhode Island for Reconsideration of Final Arbitration Decision and Order, pp. 3-4.

<sup>13</sup> Id. at 4-5.

<sup>14</sup> Reply of Verizon Rhode Island, pp. 1-4.

## V. Commission Findings

Generally, in order to prevail on a Motion for Reconsideration, the party requesting the relief must make a showing that there is new evidence that could not have reasonably been presented during the proceedings or prior to the Commission's decision, or that the facts and circumstances have changed so significantly as to warrant a revisiting of the issues in dispute.

In its Motion and Reply, VZ-RI provided evidence regarding decisions rendered by two other state commissions within the Verizon New England service territory. These commissions found that, despite the holdings in the FCC's ISP Remand Order, it would be inappropriate to allow a carrier to utilize VNXX technology to avoid access charges on "internet-bound calls"<sup>15</sup> when the same calls would not be rated as local if they were voice calls. Both of these decisions were issued after this Commission issued its Final Arbitration Decision in the instant docket.

The Commission has set forth two policy positions in the instant docket. First, the Commission has indicated that in considering the positions of the arbitrating parties, the Commission will give greater weight to the position that would produce the most consistency among the states. Second, the Commission has determined that it would be inappropriate to alter existing intercarrier compensation schemes, upon which other competitive local exchange carriers currently rely, in the context of a two-party proceeding.

Normally, these two policy positions are not in conflict. However, in this matter, they are. VZ-RI has provided information to the Commission indicating that other states

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<sup>15</sup> Although referencing ISP-bound traffic, both Massachusetts and Vermont used the term "internet bound calls".

have interpreted the FCC's ISP Remand Order differently than this Commission when addressing whether the ISP Remand Order divests a state Commission of jurisdiction over all intercarrier compensation as it relates to ISP-bound traffic. Therefore, the Commission could grant VZ-RI's Motion to Reconsider. However, in doing so, the Commission would be violating its own policy not to alter the existing intercarrier compensation scheme upon which other competitive local exchange carriers currently rely.

In weighing these policy considerations at an open meeting, the Commission determined that it can render a decision that will not force the Commission to choose between the competing policy considerations. The Commission therefore denies VZ-RI's Motion for Reconsideration of the Final Arbitration Decision. The Commission has issued several orders addressing the ISP Remand Order. However, the orders in those cases did not address the application of the ISP Remand Order to the question of whether access charges should be applied to ISP-bound traffic where the geographic endpoints of the call are in different local calling areas. Accordingly, while the Commission is denying review of the Final Arbitration Decision in the instant docket, if VZ-RI wishes the Commission to address the application of the ISP Remand Order to the question of whether access charges should be applied to ISP-bound traffic, it should file a Petition in a generic docket in order to allow all interested competitive local exchange carriers and the Division of Public Utilities and Carriers the opportunity to express their positions with regard to the appropriate interpretation of the ISP Remand Order, the public policy effect and any effects on intercarrier compensation.

Accordingly, it is

(17465) ORDERED:

1. The Motion of Verizon Rhode Island for reconsideration of the Commission's Final Arbitration Decision (Order No. 17350) is hereby denied.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO A BENCH  
DECISION ON APRIL 1, 2003. WRITTEN ORDER ISSUED MAY 21, 2003.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner