



Public Service Commission

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DATE: 10/09/03

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (L. FORDHAM) *L.F.H. DL*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MARSH) *RLT*

RE: DOCKET NO. 011666-TP - PETITION BY GLOBAL NAPS, INC. FOR
ARBITRATION PURSUANT TO 47 U.S.C. 252(B) OF
INTERCONNECTION RATES, TERMS AND CONDITIONS WITH VERIZON
FLORIDA INC.

AGENDA: 10/21/03 - REGULAR AGENDA - POST-HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\011666.RCM

CASE BACKGROUND

Pursuant to a petition by Global NAPS, Inc. (GNAPS) for arbitration of unresolved issues in an interconnection agreement with Verizon Florida Inc. (Verizon), this matter was set for an administrative hearing on September 11, 2002. On March 29, 2002, Order No. PSC-02-0430-PCO-TP was issued, establishing the procedure for the conduct of this Docket. On June 4, 2002, the parties filed a joint stipulation to suspend the arbitration schedule, pending outcome of a generic docket which might resolve the present issues.

On October 10, 2002, the parties filed a Joint Motion for a New Arbitration Schedule to resolve remaining issues in this Docket. On October 23, 2002, Order No. PSC-02-1461-PCO-TP was issued, modifying Order No. PSC-02-0430-PCO-TP and establishing a new arbitration schedule.

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A hearing was held on the issues in this proceeding on March 10, 2003. On July 9, 2003, Order No. PSC-03-0805-PCO-TP was issued memorializing the Commission's findings. In that Order, the parties were directed to present to this Commission their Interconnection Agreement by August 8, 2003.

On August 8, 2003, the parties filed a Joint Motion to extend the time for filing their interconnection agreement. In that Motion, the parties asked for 10 additional days, making the due date August 18, 2003. That Motion was granted by the issuance, on August 13, 2003, of Order No. PSC-03-0928-PCO-TP.

On August 18, 2003, Verizon filed its Motion of Verizon Florida Inc. to Require Signature of Conformed Interconnection Agreement Without Alteration and to Clarify its Effect. Attached to that Motion was a copy of the signature page that GNAPS had executed on August 15, 2003, with an addendum stating that it was being signed under protest. The addendum set forth a legal argument regarding the subject of reciprocal compensation for ISP-bound traffic, and stated that any portions of the Agreement addressing that subject are "without effect." GNAPS did not file a response to Verizon's Motion.

This recommendation addresses Verizon's Motion to Require Signature of Conformed Interconnection Agreement Without Alteration and to Clarify its Effect.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission issue an order granting Verizon's Motion and directing that GNAPS sign, without modification or comment, the conforming Interconnection Agreement prepared pursuant to the arbitration proceedings in this Docket?

RECOMMENDATION: Yes. The Commission should issue an order granting Verizon's Motion and directing that GNAPS sign, without modification or comment, the conforming Interconnection Agreement prepared pursuant to the arbitration proceedings in this Docket. If the parties do not file a conforming signed and unmodified

agreement within 10 calendar days of the effective date of the order flowing from this recommendation, staff recommends the existing agreement under which the parties have continued to operate be deemed terminated, and declared null and void after the close of business on the 11th day following the effective date of the aforesaid order. **(L. Fordham, Marsh)**

STAFF ANALYSIS: On July 9, 2003, this Commission issued its Final Order on the arbitration which is the subject of this Docket. After ruling on all the arbitrated issues, the Commission then included the following paragraph:

It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order.

Verizon alleges that GNAPS' refusal to sign the agreement without the added language purporting to render unspecified parts of the agreement "ineffective" constitutes a refusal to cooperate with this Commission in carrying out its function as arbitrator and, also, a failure to negotiate in good faith, as well as a violation of a valid Commission decision. Accordingly, Verizon asks that this Commission take all steps within the scope of its authority to compel GNAPS' compliance with its lawful orders and require GNAPS to sign the agreement in unaltered form.

Staff believes the additional comments added by GNAPS constitute a disregard of the Order of this Commission. A party may not unilaterally alter the terms of a lawful Commission order by adding to or altering its terms and requirements. By withholding its signature absent the addendum, staff believes GNAPS is holding the Agreement hostage to its efforts to control an issue in which it did not prevail during the hearing process. Staff believes this is an unacceptable defiance of the Order of this Commission.

Ours is a society of rule and order. There is an established process for appealing or protesting an adverse ruling, and it does not involve failure to comply with a lawful Commission Order. Staff believes a party who disagrees with a Commission finding is still required to comply with the order setting forth the finding which is the subject of the dispute. Thereafter, the disputed

finding may be appealed to the appropriate court. If the issue is one which a party believes may result in irreparable harm, a temporary stay may be sought by the affected party.

We note that in a recent arbitration involving these same parties in Massachusetts, GNAPS added the identical provision to the signature page. (D.T.E. Order No. 02-45) In that instance, the Massachusetts Department of Telecommunications & Energy strongly disapproved of the actions of GNAPS and ordered it to comply with the original Order of the Department by signing and submitting the unmodified Agreement to the Department within seven days of the present Order. Staff agrees with the actions of the Massachusetts Department of Telecommunications & Energy. Staff believes that disregard of the orders of this Commission by the companies it regulates should not be tolerated.

This Commission may place the parties on notice that if the parties or a party refuses to submit a jointly executed conforming and unmodified agreement, as required by Order No. PSC-03-0805-PCO-TP and Order No. PSC-03-0928-PCO-TP, within a specified period of time, the existing agreement would be considered terminated, null, and void. As such, staff recommends that this Commission provide notice to the parties that a conforming signed and unmodified agreement should be submitted within ten (10) calendar days of the effective date of the order flowing from this recommendation. If the parties file said agreement, staff recommends that it review and administratively approve the final agreement if it complies with this Commission's orders and the Telecommunications Act. If the parties do not file a conforming signed and unmodified agreement within 10 days of the effective date of the order flowing from this recommendation, staff recommends the existing agreement under which the parties have continued to operate be deemed terminated, and declared null and void after the close of business on the 11th calendar day following the effective date of the aforesaid order.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the submission of a properly executed conforming Agreement. Thereafter, it is recommended that staff review the Agreement and, if in compliance, administratively approve the Agreement and close the Docket. **(L. Fordham)**

STAFF ANALYSIS: This docket should remain open pending the submission of a properly executed conforming Agreement. Thereafter, it is recommended that staff review the Agreement and, if in compliance, administratively approve the Agreement and close the docket.