

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 011666-TP  
ORDER NO. PSC-03-1204-FOF-TP  
ISSUED: October 23, 2003

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
BRAULIO L. BAEZ  
CHARLES M. DAVIDSON

ORDER REQUIRING THE PROPER EXECUTION OF A CONFORMED INTERCONNECTION AGREEMENT WITHOUT ALTERATION OR ADDITION

BY THE COMMISSION:

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.

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

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memorializing our 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 by GNAPS 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 Order addresses Verizon's Motion Require Signature of Conformed Interconnection Agreement Without Alteration and to Clarify its Effect.

### Discussion

On July 9, 2003, we issued our Final Order on the arbitration which is the subject of this Docket. After ruling on all the arbitrated issues, we 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 unilaterally-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 we take all steps within the scope of our authority to compel GNAPS' compliance with our lawful orders and require GNAPS to sign the agreement in unaltered form.

We believe 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, GNAPS is holding the Agreement hostage to its efforts to control an issue in which it did not prevail during the hearing process. 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. 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 its present Order. We agree with the actions of the Massachusetts Department of Telecommunications & Energy. Disregard of the orders of this Commission by the companies it regulates will not be tolerated.

We hereby provide notice to the parties that, pursuant to Order No. PSC-03-0805-PCO-TP and Order No. PSC-03-0928-PCO-TP, a conforming signed and unmodified agreement shall be submitted to this Commission within ten (10) days of the effective date of this Order. If the parties file said agreement, our staff shall review and administratively approve the final agreement if it complies

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with our 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 this Order, the existing agreement under which the parties have continued to operate shall be deemed terminated, and declared null and void after the close of business on the Eleventh day following the effective date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon Florida Inc.'s Motion to Require Signature of Conformed Interconnection Agreement Without Alteration and to Clarify its Effect is hereby granted as described in the body of this Order. It is further

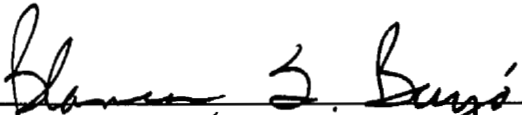
ORDERED that a conforming signed and unmodified agreement shall be submitted to this Commission within ten (10) days of the effective date of this Order. If the parties file said agreement, our staff shall review and administratively approve the final agreement if it complies with our orders and the Telecommunications Act. It is further

ORDERED that If the parties do not file a conforming signed and unmodified agreement within 10 days of the effective date of this Order, the existing agreement under which the parties have continued to operate shall be deemed terminated, and declared null and void after the close of business on the Eleventh day following the effective date of this Order. It is further

ORDERED that Docket No. 011666-TP shall remain open pending either the receipt and approval by our staff of the new Agreement, or the termination of the Agreement under which the parties are now operating. Thereafter, this Docket shall be administratively closed.

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By ORDER of the Florida Public Service Commission this 23rd  
Day of October, 2003.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by

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the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.