

SUMMARY OF CERTAIN STATE PROCEEDINGS

The Connecticut Department of Public Utility Control (DPUC) found in Docket No. 01-01-29, DPUC Investigation of the Payment of Mutual Compensation for Local calls Carried over foreign Exchange Service Facilities (“FX Decision”), that “[a]s of the effective date of the [FCC’s] ISP Order, state commissions will no longer have the authority to address intercarrier compensation for ISP-bound traffic on a prospective basis.”¹

The Illinois Commerce Commission found in *Essex Telecom, Inc., vs. Gallatin River Communications, L.L.C.* that “with the adoption of the [FCC’s] ISP Remand Order, the [Illinois] Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls.”² The Illinois Commission restated this finding in the Global NAPs Arbitration with Verizon.³

The New Hampshire Public Utilities Commission similarly held that “[b]ecause the FCC determined that inter-carrier compensation for ISP-bound traffic is within its jurisdiction under 47 U.S.C. §201, our consideration of the issues raised in this docket excludes any rulings regarding inter-carrier compensation for ISP-bound traffic.”⁴

In Ohio, the Public Utilities Commission of Ohio found:

“Ameritech’s reliance on particular paragraphs in the ISP Remand Order that summarize the FCC’s actions in its previous ISP declaratory ruling does not convince the Commission that the FCC concluded that non-local ISP traffic should be exempt from the ISP compensation regime published in that order. Specifically, at paragraph 82 of the ISP Remand Order, the FCC states:

...Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have the authority to address this issue.

¹ Docket No. 01-01-29, DPUC Investigation of the Payment of Mutual Compensation for Local calls Carried over foreign Exchange Service Facilities (“FX Decision”), January 30, 2002, Findings of Fact at page 47.

² *Essex Telecom, Inc. vs. Gallatin River Communications, L.L.C.*, Docket 01-0427, July 24, 2002, ¶ 27.

³ Global NAPs Illinois, Inc., Petition for arbitration pursuant to section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc. f/k/a/ GTE South Incorporated, Docket No. 02-0253, November 7, 2002, at 17.

⁴ DT 00-223, *Investigation as to whether Certain Calls are Local* and DT 00-054, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, Order No. 24,080, October 28, 2002, at 44-45.

Thus, as we stated previously, the Commission agrees with Allegiance that all calls to FX/virtual NXX that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order.”⁵

In Oregon, the Public Utility Commission stated at page 9 in its Order entered May 27, 2003, in UM 1058, *In the Matter of the Investigation into the Use of Virtual NPA-NXX Calling Patterns*, “Regulation of the terms and conditions in interconnection agreements relating to compensation for ISP-bound traffic has been preempted by the FCC from the Commission.”

Similarly, other states have also recognized that ISP-bound traffic is subject to the FCC’s jurisdiction, including North Carolina⁶ and Wisconsin,⁷ and the Decision and Recommendation of the Arbitrator in North Dakota.⁸

⁵ *Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award, 2001 Ohio PUC LEXIS 712 (Oct. 4, 2001) at 8-9.

⁶ *MCImetro v. Bell South Arbitration*, Dkt. No. P-474, Sub 10 (April 3, 2001) and *Order Ruling on Objections and Requiring the Filing of the Composite Agreement*, Dkt. No. P-474, Sub 10 (August 2, 2001).

⁷ *Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms, and Conditions*, Docket No. 05-MA-130, Order Approving an Interconnection Agreement (Wisc. P.S.C. Feb. 13, 2003), at 8-9.

⁸ *Level 3 Communications, LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC’s Interconnection Arbitration Application (N.D.P.S.C. Mar. 3, 2003) at 22-23.