

DT 00-223

INVESTIGATION INTO WHETHER CERTAIN CALLS ARE LOCAL

Prehearing Conference Order

O R D E R N O. 23,595

December 6, 2000

APPEARANCES: Donald Boecke, Esq., for Verizon-NH; Christopher Savage, Esq., Cole, Raywid & Braverman for Global NAPs; Michael Flemming, Esq., Swidler, Berlin, Shereff & Friedman, LLP, for BayRing Communications, RCN.com, Adelpia Business Solutions, and Level 3 Communications; David Fagundus, Esq., for AT&T; Frederick Coolbroth, Esq., Devine, Millimet & Branch, for Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton/Hollis Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Company, Inc., Dixville Telephone Company, and JSI; Douglas Denny-Brown, Esq., for RNK Telecom, Inc.; Joseph Donahue, Esq., Preti, Flaherty, Beliveau, Pachios & Haley, for Union Telephone Company; Thomas Lyle for Vitts Networks, Inc.; Mark Mallett for the New Hampshire ISP Association; Curtis Groves for MCI WorldCom; Scott Sawyer for Conversant Communications; Michael Holmes, Esq., for the New Hampshire Office of Consumer Advocate; and Lynmarie Cusack, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

This docket was opened on October 6, 2000, to consider issues that relate to three separate dockets: DT 99-085 (Internet Traffic Treated as Local Traffic Subject to Reciprocal Compensation) which was later consolidated with DT 99-081 (Complaint Against Bell Atlantic Regarding Reciprocal Compensation) and maintained as DT 99-085; DT 00-001 (Implementation of Number Conservation Methods); and DT 00-054 (Local Calling Areas between independent telephone companies

and CLECs).

On October 16, 2000, an Order of Notice was issued scheduling this Prehearing Conference. The Order of Notice also indicated that any party to one of the three pending dockets will be considered a party to this docket unless the party specifically requested not to participate, and any additional party will be given the opportunity to intervene.

The Order of Notice discussed two issues that had potential ramifications for the other three open dockets. Those issues are:

(a) Whether a call that originates in one rate center and is delivered to an Internet Service Provider (ISP) or other entity physically located in a rate center outside of the originator's local calling area but delivered through the use of an NXX Code assigned for rating purposes in the originator's local calling area is local; and

(b) Whether calls to ISPs and ultimately the internet are considered to be local or jurisdictionally interstate even where the call terminates at the ISP in the same rate center where it originates.

The Order of Notice noted that a final order from this Commission concerning the second issue was not prudent at this time pending F.C.C. action as a result of the remand by

the District of Columbia Court of Appeals. See Bell Atlantic Telephone Companies v. F.C.C., 206 F.3d 1 (C.A.D.C. 2000). Thus, the Order of Notice indicated that the focus of the proceeding should be on the issue of whether calls originating in one rate center and terminating in a rate center physically located outside the local calling area of the originating rate center through the use of an NXX code assigned for rating purposes to the local calling area of the originating rate center are considered local.

A Prehearing Conference was held on November 8, 2000, at which time the Parties and Staff presented their positions for the Commission.

At the Prehearing Conference, Commissioner Brockway disclosed for the record that during her term as the General Counsel for the Massachusetts Department of Public Utilities she employed Douglas Denny-Brown (who represents RNK in this matter) as a paralegal. Commissioner Brockway also disclosed that she was hired by Joseph Donahue (who represents Union Telephone in this matter), then-General Counsel of the Maine Public Utilities Commission. Commissioner Brockway stated that these prior associations would not cause her to have any bias in this matter and welcomed any comments or objections to her participation, to which there were none.

A technical session was held at the conclusion of the Prehearing Conference.

II. POSITIONS OF THE PARTIES AND STAFF

A. Verizon-NH

Verizon-NH (Verizon), considers the issues very important for the development of competition and for customer needs in New Hampshire. Verizon argues that the outcome of this matter will have significant impact on numbering resources in the state and that all carriers must do whatever possible to conserve numbering resources. With respect to Issue (a) above, Verizon's position is an emphatic "No." Mr. Boecke notes that the Maine Commission recently issued orders regarding facts materially identical to those faced in New Hampshire and determined that calls from one local calling area to another local calling area are interexchange calls.

While Verizon believes the Maine decisions are significantly instructive and reached the logically correct conclusion, he urged this Commission to avoid the use of labels for traffic and the talismanic identification of traffic, focusing instead on the nature of the service being provided (i.e., what the customer is receiving, what the customer is paying for, how the carriers are routing traffic, and the means by which the carriers are compensating each

other). Verizon urged the Commission to avoid concluding that a call that is toll-free to the originating caller is therefore a local call, and argues that the rating of a call and the routing of a call are not the same. Verizon asserted that these two matters raise different kinds of issues under today's regulatory structure in that local calls exchanged between an incumbent company and a competitive local exchange carrier (CLEC) are subject to one set of rules, while interexchange calls between exact same carriers have a different form of compensation. Verizon's position emphasizes that this matter should result in the separation of how a call is to be rated to the originating caller, who ultimately pays for the call, and how the carriers that participate in a call are properly and appropriately compensated.

B. Office of Consumer Advocate

The OCA indicated that it was still investigating the matter and would need further information before it would take a position. The OCA intends to remain fully involved in this matter to better determine what is in the best interest of residential customers.

C. Global NAPs

Global NAPs (GNI), did not preliminarily disagree with the broad framework that Verizon put forth in its

position statement and asserted that this is not a case to be decided irrationally based on talismanic incantations of what is and is not a local call. GNI agreed that when deciding what New Hampshire policy should be, it is important to look beyond labels to the actual physical technologies involved and what end-results would be reached by policy decisions. GNI believes that what is fundamentally taking place is a network with a series of rate centers and NXXs that basically correspond to a status of network technologies of 100 years ago, further stating that there is nothing wrong with maintaining a 100-year old technology-based system if you have a slowly-evolving monopoly. GNI alleged, however, that the Telecommunications Act of 1996 (TAct) expressly opens up the world to new carriers, new technologies, and new ways of doing business.

GNI believes the law expressly empowers and expects state regulators to make interpretations as to how the law should apply in specific cases. GNI suggests that there are several states that have, either by agreement among the parties or upon their own motion, imposed similar decisions as those faced by this Commission. GNI believes this Commission has the authority to dictate that Virtual NXX (VNXX) calls, whereby customers would be able to dial calls locally and have

them rated as local calls to the customer from anywhere in the state, even if there is a single point of interconnection, should be treated as local for purposes of intercarrier compensation. From GNI's perspective, a fundamental policy has to do with the degree to which this Commission wants to facilitate the promotion of competition in all aspects of New Hampshire technology and the degree to which the Commission wants to facilitate affordable access to the internet. Those policies rationally affect this case and are what GNI would like to address in this matter. GNI admits that it favors the direction Michigan has taken regarding the same or similar issues.

**D. BayRing Communications, RCN.com,
Adelphia Business Solutions, and Level 3
Communications**

Michael Flemming, on behalf of the CLECs above, stated that calls should be rated by comparing NXX codes of the calling party with the called party and calls that are rated as local should be treated as local. Mr. Flemming articulated four principle reasons for this stand: 1) Under the TAct, CLECs have the right to interconnect at one technically feasible point and the originating carrier has the obligation to bring all tracking to that point of intervention. From that point, the location of the customer

is not relevant to the originating carrier. 2) Comparing telephone numbers to NXX codes would be unduly burdensome and infeasible to consider. 3) The goal, especially for VNXX and ISP traffic, is to allow customers to have local calling options. To deny VNXX would encourage inefficient network deployment because ISPs would need to establish local calling networks in every local calling area instead of just one technically feasible point of interconnection. 4) Allowing VNXXs in New Hampshire would be consistent with the decisions issued in Michigan and California.

E. AT&T

On behalf of AT&T, David Fagundus stated that the company does not at this time have a specific statement on the issues but intends to participate fully in the technical session and the remainder of the proceeding.

F. Granite State Telephone, Merrimack County Telephone, Wilton/Hollis Telephone, Northland Telephone of Maine, Dunbarton Telephone, Bretton Woods Telephone, and Dixville Telephone

Fred Coolbroth, on behalf of several ILECs, emphatically states, in response to Issue (a), that that type of call is not local. Mr. Coolbroth believes that allowing VNXX distinction between local calls and toll calls is a meaningful concept and is certainly still the law. He

believes it makes sense to look to the basic question of where the call began and where it ended as to whether or not it is local, that allowing VNXX would result in misrating of many calls, and that allowing VNXX distorts the rating of access charges since access charges continue to have transport elements that are distance-sensitive. Additionally, he contends that this would distort the rating of reciprocal compensation by identifying calls as local that are not local. Finally, this would result, in Mr. Coolbroth's estimation, in the denigration of the entire toll system, placing upward pressure on basic local service rates as traffic migrates away from toll and toward local, and will have profound universal service implications for telecommunication customers in New Hampshire.

G. RNK, Inc.

RNK Telecom (RNK) believes that VNXX codes are local. An added element, RNK believes, is that products that are local access driven may not come to New Hampshire if VNXXs are shown not to be local calls. For instance, RNK offers a service in Massachusetts, which it hopes to expand to New Hampshire, whereby sightless individuals may call and have the newspaper read to them over local access numbers. If CLECs have to maintain switches in every rate center, they could not

offer such a service statewide. He believes there are many types of products and services, some already available and some that will be invented in the future, that could be offered if VNXX calls are determined to be local. RNK believes it would not be cost-efficient for CLECs to duplicate the incumbent's network.

H. Union Telephone

Union Telephone Company (Union) generally agrees with the opening positions of Verizon and Mr. Coolbroth's clients. Union believes the fundamental issues are how calls will be rated, who will pay for them, and how compensation will be arranged among the various providers. Union's position is that VNXX calls should not be treated as local.

I. Vitts Networks

Vitts Networks (Vitts) would like to monitor how this case progresses but offers no position at this time as to the issues identified.

J. New Hampshire ISP Association

The New Hampshire ISP Association (NHISP) would also like to monitor issues important to ISP customers in New Hampshire and offers no position at this time.

K. MIC WorldCom

Curtis Groves, on behalf of MCI WorldCom (MCI), stated that MIC's position mirrors that of the CLEC representatives that have issued preliminary position statements at this hearing.

L. Staff

Lynmarie Cusack, on behalf of Staff, states that the characteristics of a call and what the compensation for that call should be are easily misunderstood issues that will be challenging to resolve. Historically, this Commission has looked to where the call physically originated and terminated, and has issued orders on EAS where its position has been the desire for a local calling area that is easily understood and is consistent and contiguous. Staff believes it may be imperative for the Commission to view these issues in a manner significantly different from the Commission's past view. It is Staff's goal in this docket to weigh all the issues and positions of the parties and to offer a viable alternative to the Commission regarding the issues outlined above.

III. PROPOSED PROCEDURAL SCHEDULE

After the Prehearing Conference, the Parties and Staff met in a technical session to discuss a procedural

schedule and begin more substantive items for the docket.

The following schedule was recommended:

Draft Stipulation of Facts	November 22, 2000
Conference Call/Potential Technical Session	December 1, 2000
Stipulation of Facts due at Commission	December 15, 2000
Testimony regarding characterization of calls (whether calls should be treated as toll or local calls and why; and an explanation of compensation associated with routing this type of call	December 22, 2000
Discovery - Data Requests	January 12, 2001
Data Responses	January 26, 2001
Hearings	February 13-15, 2001

On November 13, 2000, Staff submitted the above schedule to the Executive Director. The November 13th letter also suggested that the Parties and Staff believe this schedule is appropriate for resolving the issues presented in the Order of Notice dated October 16, 2000, and at the hearing on November 8, 2000. The letter also alleged that it was Parties' and Staff's belief that the procedural schedule would

fulfill the procedural obligations set forth in Order 23,501 and the Stipulation in DT 00-054 in advance of the timeframe outlined in that docket.

Additionally, the Parties and Staff have agreed to electronic communications among the Parties and Staff, understanding that all filings with the Commission must be made in accordance with the PUC rules.

IV. COMMISSION ANALYSIS

The Commission is aware of the myriad complex and challenging issues in this docket. For purposes of focusing and advancing this docket, we wish to ensure that at least the following five specific issues are addressed as this case proceeds: 1) how the networks currently work and how they are expected to work in the future; 2) how calls are now routed and how they may be routed in the future; 3) how intercarrier compensation will work; 4) to what extent are charges driven by tariffs; and 5) final end-user cost and what will best serve the needs of customers in New Hampshire. To that end, we believe the proposed schedule accomplishes the goals of the docket. We find the schedule reasonable and would like to see a stipulation of facts, as discussed at the Prehearing Conference, no later than December 15, 2000.

Based upon the foregoing, it is hereby

ORDERED, that the Procedural Schedule herein is adopted; and it is

FURTHER ORDERED, that the parties may communicate electronically, however, all filings with the Commission must be made in accordance with PUC rules; and it is

FURTHER ORDERED, that the Participants in this docket must address at least the five specific issues outlined in the Commission Analysis; and it is

FURTHER ORDERED, that a stipulation of facts be submitted to the Commission by December 15, 2000.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary