

**DT 00-223
DT 00-054**

**Investigation as to Whether Certain Calls Are Local and
Independent Telephone Companies and Competitive
Local Exchange Carriers - Local Calling Areas
Order Scheduling a Hearing**

O R D E R N O. 24,514

September 16, 2005

I. BACKGROUND AND PROCEDURAL HISTORY

The New Hampshire Public Utilities Commission (Commission) has established certain criteria and procedures regarding the assignment of NXX numbers to Competitive Local Exchange Carriers (CLECs) that provide basic telephone service to customers not physically located in the exchange to which the numbers are assigned. Those criteria and procedures are set forth in Orders No. 24,080, *Final Order*, 88 NH PUC 749 (2002) (*VNXX Order*); No. 24,116, *Order Staying Effectiveness of Order 24,080 and Addressing Motions for Rehearing and Clarification*, 88 NH PUC 12 (2003) (*Order Staying IANXX*); Order No. 24,218, *Order Clarifying and Granting Limited Rehearing of Order No. 24,080*, 88 NH PUC 462 (2003) (*Order for Rehearing*); and No. 24,419, *Order Approving Agreements in DT 00-223 and DT 00-054 (Order Approving Agreements)*, collectively, the *VNXX Orders*.

In the *VNXX Order*, the Commission determined that it will permit VNXX only in limited circumstances. In that order, it concluded that two particular applications of VNXX are reasonable and in the public interest: 1) a statewide service for information access called IANXX, to be used for dial-up calls to ISPs for access to the Internet; and 2) once a CLEC is provisioning indisputably local service in an exchange, the offering of CLEC Foreign Exchange

(FX). CLEC FX is defined as “FX-like service for non-ISP bound traffic provided by a CLEC that is [also] providing local dial tone via its own facilities.” (*VNXX Order* at 56).

The Commission determined that to be eligible to provide CLEC FX service and retain NXX numbers, a CLEC must meet a “local nexus” test. The Commission established such a test in the *VNXX Order* (*VNXX Order* at 56) with clarifications in the *Order Staying IANXX*. The local nexus test as established in those orders has two prongs. First, service must be provided to at least one customer physically located in the exchange from which the FX service is requested. Second, that service must be provided through collocation with an ILEC, using the CLEC’s own facilities, Enhanced Extended Links (EELS), or other leased facilities.

In the course of defining the two permissible uses of VNXX, while prohibiting all other uses, the Commission laid the groundwork for implementation in the *Order for Rehearing*. The *Order for Rehearing* addressed the various Motions for Rehearing filed in response to the *VNXX Order*. The Commission denied all other motions concerning issues not specifically addressed in the *Order for Rehearing*, and which had not been addressed in the *Order Staying IANXX*.

In response to those orders, parties to the docket developed two Agreements, which, among other things, set out implementation schedules for IANXX and Reassignment to the Point of Interconnection (POI). On December 30, 2004, the Commission issued the *Order Approving Agreements*. Verizon requested reconsideration of the *Order Approving Agreements*, which the Commission denied on May 13, 2005. On July 18, 2005, the Commission issued a Secretarial Letter setting the effective date for implementation of the Agreements in this docket as July 18, 2005.

II. IMPLEMENTATION ISSUES

As required by the *Order Staying IANXX*, CLECs file CLEC FX eligibility information annually with the Commission. Using the information in these reports, as well as number assignment information from the North American Numbering Plan Administrator (NANPA), CLECs who are eligible to provide CLEC FX were identified. CLEC eligibility was determined by applying the local nexus test described in the *Order Staying IANXX*. In conformance with the schedules set out in the Agreements, this list is posted on the Commission's website.

In the *VNXX Order*, the Commission declined to rule on the issue of Internet telephony, *i.e.*, Voice over Internet Protocol (VoIP), with respect to IANXX inasmuch as the issue had not been brought before it. (*VNXX Order* at 55.) The Commission further clarified that it was not its intent to allow statewide local calling using IANXX. (*Order Staying IANXX* at 5, para. 4.) However, issues have arisen with respect to CLEC FX eligibility and VoIP customers by virtue of Staff's review of company filings.

In the course of implementing the *VNXX Orders*, the Commission determined that in certain circumstances carriers providing basic telephone service to local customers through VoIP meet the Commission's local nexus criteria for CLEC FX eligibility. The Commission determined that a carrier directly provisioning end-users' local service using VoIP, and providing basic telephone service in accordance with Commission rules, was eligible for CLEC FX. In making its determination, the Commission considered whether the service was basic service (*i.e.*, whether it included E911 capability), whether the telephone numbers assigned used ILEC

exchange boundaries to determine what number an end-user would have, and whether the carrier had made an investment that would encourage it to provide such service to multiple customers.

By contrast, another carrier that has requested CLEC FX eligibility provides service in a manner not contemplated by the VNXX orders or the Agreements. This carrier provides so-called “backhaul” service to a VoIP provider. This backhaul service includes provision of numbering resources and connectivity to the public switched telephone network (PSTN). Staff believes that the carrier is providing telecommunications services to a VoIP provider that is not a registered public utility in New Hampshire. Although not a registered utility, the VoIP provider may be providing telephone service that, if provided by a CLEC, would comply with N.H. Code Admin. Rules Puc 432.01 (provision of basic service). In each rate center within which the carrier in question holds numbering resources, the carrier asserts that at least one physically located end-user is purchasing this third-party VoIP service. The carrier contends that this meets the local nexus test and that, as a result, the carrier is eligible to provide CLEC FX from that rate center.

On September 7, 2005, Staff filed a memo concerning the CLEC FX eligibility of the “backhaul” carrier discussed above. In short, Staff raises the issue of CLEC FX eligibility for a carrier who provides certain switching and numbering services to a retail provider of telephone services, where the retail provider offers non-utility telephone service, which may or may not be basic service, to end-users.

In addition, Staff, working with the NANPA, has proceeded with implementation of the Commission’s orders in this docket such that CLECs without CLEC FX eligibility are now denied numbering resources. Staff raises a concern regarding numbering resources for carriers

who do not now and do not intend to provide CLEC FX but who require numbering resources for the provision of service.

III. PROCEDURAL NEXT STEPS

Staff has recommended that a hearing be held to determine CLEC FX eligibility for third-party VoIP customers. We find that a hearing is necessary to consider the issue of Internet telephony and the distribution of numbering pursuant to the *VNXX Orders*.

This proceeding will address, *inter alia*, the following questions:

- 1) In order to establish a local nexus, must a CLEC provide service directly to a physically-located customer or may it do so through a third party?
- 2) Is an end-user of VoIP services a physically located customer of a CLEC if the CLEC provides only the telephone number and access to the PSTN for that end-user?
- 3) Does the term “other leased facilities” include the broadband facility over which VoIP is provided?

To facilitate resolution of these questions, we instruct the Parties and Staff to meet for a technical session will be held on September 28, 2005 at 10:00 a.m. Any interested participant may submit written comments no later than October 14, 2005. The hearing shall be held on November 3, 2005 at 10:00 a.m.

Finally, we note that the implementation schedules for IANXX and Reassignment to the Point of Interconnection, as outlined in the *Order Approving Agreements*, is already underway. Certain deadlines included in the implementation schedule, including the mandatory return of unassigned NXX numbers, are dependent upon the resolution of a carrier’s CLEC FX eligibility. Since the determination of whether third-party VoIP is sufficient for a local nexus

affects the determination of such eligibility, Staff recommends that the Reassignment to the POI schedule be suspended for any carrier who demonstrates that its eligibility for CLEC FX is directly affected by the Commission's determination of the issues raised herein. We find Staff's recommendation to be reasonable; the POI schedule, therefore, is suspended with respect to those carriers. All other carriers remain subject to the schedule established previously in Order No. 24,419.

Based upon the foregoing, it is hereby

ORDERED, that a Hearing, pursuant to N.H. Admin. Rules Puc 203.01, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on November 3, 2005 at 10:00 a.m.; and it is

FURTHER ORDERED, that the procedural schedule regarding the return of unassigned NXX numbers be suspended until resolution of the issues raised in this Notice of Hearing for those carriers whose sole basis for CLEC FX eligibility is the provision of VoIP service via a third-party.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary