

DT 00-054

**INDEPENDENT TELEPHONE COMPANIES
AND COMPETITIVE LOCAL EXCHANGE CARRIERS**

Local Calling Areas

Prehearing Conference Order

O R D E R N O. 23,501

May 31, 2000

APPEARANCES: Victor D. Del Vecchio, Esq., for Bell Atlantic; Devine, Millimet & Branch by Frederick J. Coolbroth, Esq., for Granite State Telephone, Merrimack County Telephone Co., Hollis Telephone Co., Dunbarton Telephone Co., Wilton Telephone Co., Northland Telephone Co. of Maine, Bretton Woods Telephone Co. & Dixville Telephone Co.; Diane Thayer and Karon Doughty for Union Telephone Company; Michael Reed for TDS Telecom; Thomas Lyle for Vitts Networks; Douglas Denny-Brown, Esq., for RNK Telecom; John Postl, Esq., for Global NAPs; Scott Sawyer, Esq., for Conversant Communications of New Hampshire; Swidler, Berlin, Shereff, Friedman, by Michael Shor, Esq., on behalf of BayRing Communications, Level3 Communications and Lightship Telecom; Stephanie Ayers for PAETEC; Kenneth Traum and William Homeyer representing the Office of Consumer Advocate; and E. Barclay Jackson on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND

On March 16, 2000, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice (OON) opening an investigation into local calling areas. The investigation was spurred by numerous complaints from customers of Independent Telephone Companies (ICOs). The customers complained they were billed toll charges for calls to internet service providers (ISP) served by Competitive Local Exchange Carriers (CLECs) located in

a telephone exchange that would ordinarily be local to the customer. The OON indicated that the investigation would delve into issues related to the appropriate routing, billing and compensation of these calls. The OON also indicated that ICOs, CLECs who provide service to ISPs, and Bell Atlantic are mandatory parties to the docket.

II. PROCEDURAL HISTORY

A prehearing conference was held on April 18, 2000, at which the various parties and Staff presented their initial substantive positions and recommendations regarding the procedural schedule for this docket. At the close of the conference the parties and Staff held a Technical Session to discuss certain procedural matters. The Hearing Examiner requested that the parties and Staff submit a statement regarding the results of their meeting for the Commission.

On April 28, 2000, Staff submitted a document (the April 28th Agreement) to the Commission outlining the procedural agreement reached among the parties, with the exception of TDS Telecom. The majority of parties and Staff agreed that for 120 days from the date of this order the parties would attempt to resolve the issue between carriers in order to eliminate the effect of the dispute upon customers. On May 8, 2000, the Commission received a letter from TDS Telecom delineating various

concerns regarding the proposed procedural schedule. On May 12, 2000, the Commission received a letter from Conversent Communications of New Hampshire (Conversent) which strenuously opposed any modification to the April 28th Agreement.

III. INTERVENTIONS

The OON made ICOs, Bell Atlantic (BA-NH), and CLECs providing service to ISP's mandatory parties. Timely requests for intervention were filed by Conversent, the New Hampshire ISP Association (NHISPA), and MediaOne Telecommunications of New Hampshire (MediaOne).

Conversent, a CLEC, notes that it is not currently providing service to ISPs but intends to do so in the future and therefore believes its substantial interests may be affected by the proceeding. See RSA 541-A:32. Similarly, MediaOne, a CLEC not currently serving any ISPs, requests intervention pursuant to Puc Rule 203.02 and RSA 541-A:32, alleging that an investigation into local calling areas might substantially affect its rights, duties and interests. NHISPA also seeks intervention, indicating the matters at issue in the proceeding have a direct bearing on many of the NHISPA members' financial and business matters.

At the prehearing conference Vitts Networks requested relief from status as a mandatory party and requested instead that it be considered a limited participant in the proceeding.

Vitts argued that it was a data CLEC providing backbone services to ISPs, but that it has no NXX codes in New Hampshire. Vitts alleged that the situation as outlined by the OON did not apply to its operations as it does not provide dial-up service.

Lastly, RNK Telecom, a CLEC with an ISP customer but no facilities currently in the state, appeared at the prehearing conference and requested clarification of its status as a mandatory party. RNK asked that if it were not considered a party that the Commission accept its oral request for intervention.

IV. PROCEDURAL AGREEMENT AND PROPOSED PROCEDURAL SCHEDULE

The April 28th Agreement attempts to limit the effect of this controversy upon customers during the pendency of the Commission's investigation. It proposes to do so by having ICOs who charge toll for calls to NXXs assigned to rate centers in the ICO local calling area not billing toll or access charges for those calls. The parties will, however, record and report originating minutes and messages delivered. For example, ICOs will keep track of originating minutes delivered to CLEC NXXs, by NXX and report the information to BA-NH, Staff and the CLEC to which the traffic was delivered. Similarly, CLECs will record originating minutes and messages delivered to ICO NXXs, by NXX, and report the information to BA-NH, Staff and the ICO to which

the traffic was delivered. All of the information will be treated as confidential. This treatment will continue for 120 days from the date of this order.

BA-NH also agreed that it would not bill ICOs or CLECs for tandem transit and transport of traffic between New Hampshire ICOs and CLECs. The CLECs agreed not to bill BA-NH for reciprocal compensation for calls originated by ICO customers. The parties agreed not to "true-up" for payment purposes any of the traffic for the 120 day interim period.

During the first sixty days of the interim period the carriers will attempt to negotiate a resolution for pricing and compensation of the calls. Between days 60 and 67 the parties and Staff will reconvene to discuss status of the negotiations and to develop and submit a further procedural schedule for all remaining unresolved issues. If litigation of any of the issues becomes necessary, it would take place in the second half of the initial 120-day period.

The April 28th Agreement also provides that:

Upon final resolution of these issues, a proceeding will commence to determine what to do, if anything, about toll charges paid or billed to [ICO] customers who have placed calls to NXXs located in rate centers within the [ICO] local calling area.

Finally, the agreement adds that if requested after 60 days the Commission act as quickly as possible to resolve remaining issues.

V. RESPONSES TO THE APRIL 28TH PROPOSAL

TDS Telecom (or the Company) responded to the April 28th Agreement by way of letter dated May 5, 2000. The letter states that the Company does not agree with the interim plan and asks the Commission to exempt it from the requirements of the proposal regarding the measurement and reporting of traffic to the various CLECs and to BA-NH.

In support of the request TDS Telecom argues that it already allows calls between its customers and CLEC NXXs within the local calling area of the Company, including VNXX traffic¹, to flow as local calls. The Company alleged that if it were required to measure and report the traffic while the Commission reaches a decision on the proper treatment of compensation for VNXX traffic, it would need to reconfigure all its traffic from local to toll and then make changes to the toll billing system.

TDS Telecom argued that it would be unfair to require it to make the changes merely to allow the CLECs the continued

¹ At the technical session it became apparent that the various parties treated calls to CLECs differently. Calls originating from an ICO and delivered to a CLEC not physically located in the ICO local calling area are considered virtual calls (here designated as VNXX traffic). Calls originating from an ICO customer and delivered to a CLEC customer physically located in the ICO calling area are considered physical local calls.

use of VNXX calling patterns. Moreover, the Company pointed out that the interim proposal includes no language placing a moratorium on the continued growth of the VNXX traffic during the pendency of the negotiations. TDS Telecom suggested that if the Commission adopts the proposed plan then it should order a moratorium on future expansion of VNXX traffic.

The Company also expressed concern over the suggestion at the technical session that the issue of VNXX traffic and its appropriate compensation be moved from this docket to the reciprocal compensation docket, DT 99-081. The Company alleged that the VNXX issue is not simply an issue of compensation between carriers, but rather an issue of local calling areas and the proper use of NXX codes. TDS Telecom, therefore requested that the issue of VNXX remain in DT 00-054, Local Calling Areas, as VNXX traffic "is of critical importance to all the parties in the docket and must be resolved to enable the proper exchange of traffic among all parties."

In a letter dated May 10, 2000 Conversent objected to TDS Telecom's proposed modification to the April 28th proposal. Conversent argues that TDS Telecom's position that calls to ISPs served by CLECs not physically located in the local calling area are toll calls is untenable, and that any moratorium would

unfairly delay Conversent from rolling out its service to ISPs and competing for ISP customers.

VI. COMMISSION ANALYSIS

In the OON, the Commission reiterated its position regarding Extended Area Service (EAS). We stated that "customers will benefit from clear, easily understood, reasonably equitable EAS." *Order No. 22,861* (March 9, 1998). The OON noted,

customers of some ICOs are not receiving contiguous EAS for calls placed to an ISP served by a CLEC in a contiguous exchange. Calls routed by an ICO through a Bell Atlantic central office to a CLEC serving an ISP are routed and billed as toll calls, perhaps due to the lack of an interconnection agreement between the CLEC and ICO. At the same time, calls routed to the same Bell Atlantic central office to an ISP served by Bell Atlantic, are routed as local and not billed. Customers are expected to understand not only where the telephone number is located, but whether or not calls to an exchange, that until the advent of CLEC competition have been local, will incur toll charges.

We believe that the current situation is undesirable from a customer perspective. Customer confusion resulting from misunderstood, unfair and unequal local calling areas is precisely what the Commission's EAS policy sought to avoid. The goal of this docket is to alleviate the unfair and inequitable treatment of ISP bound calls originated by customers of ICOs. In order to correct this situation, we believe that a solution to the routing, billing and compensation of these calls is appropriate for this docket. We understand that similar issues

are at play in other dockets before this Commission. We recognize that calls made to VNXXs is an issue that may overlap with the issues to be addressed in Phase II of dockets DT 99-081 and DT 99-085. The parties in those dockets are to file preliminary position papers by June 14th, indicating a proposed procedural schedule and identifying the specific issues to be addressed. To the extent the issue of whether calls to VNXXs should be considered local is identified as an issue in DT 99-081 and DT 99-085, and the parties in this case cannot reach agreement on this issue during the next 60 days, we will consolidate by allowing the parties of both cases to address the issue concurrently. If the parties in this docket reach an agreement on the issue, our rules permit us to take administrative notice of such agreement for use in the reciprocal compensation docket.

We will accept the procedural framework as outlined in the April 28th Agreement. We believe it is preferable to allow the parties to attempt to reach a negotiated resolution, subject to Commission review and final approval. In order for us to keep abreast of these matters, we will require that the parties and Staff submit their status report to us after the planned meeting between days 60 to 67. The report is to highlight the progress

made, outstanding issues and procedural schedule needed to remedy the issues.

We note, however, TDS Telecom's request for exemption regarding the tracking of originating minutes and messages and its position relating to the moratorium on the future expansion of VNXX traffic until a final decision is made. We also have considered Conversent's argument that it will not be able to compete should the Commission order a moratorium.

We will grant TDS Telecom's request for relief regarding the measuring and reporting of originating minutes and messages. The Company has asserted that it "allows calls between its customers and CLEC NXXs that are within the local calling area of the Company exchanges, including VNXX traffic, to flow as local calls." The Company has also contended that it would need to reconfigure all its traffic from local to toll and then to make changes in its billing system to credit the traffic as local. The framework proposed in an attempt to remedy a specific problem should not create unwarranted burdens that have the potential to create further confusion to a group of customers. We, therefore, will grant TDS Telecom exemption from the April 28th agreement that calls for the ICOs to record and report originating minutes and messages delivered to CLEC NXXs. As a result, we do not believe a moratorium on future expansion of

VNXX traffic is warranted at this time because the proposed moratorium was requested in the event the Commission ordered TDS to comply with the agreement made by the other parties. We will continue to monitor the progress of this docket closely.

Lastly, we will grant the interventions by Conversent, MediaOne and NHISPA pursuant to RSA 541-A:32 and Puc Rule 203.02, and note that there were no objections to those requests. We also grant RNK's request for intervention and Vitts Network's request to be treated as a limited party. Since Vitts is providing only a data service and does not necessarily meet the parameters outlined in the OON for participation as a "mandatory party" we see no reason to deny the request.

Based upon the foregoing, it is hereby

ORDERED, that the April 28th Agreement for procedural framework is adopted; and it is

FURTHER ORDERED, that the requests for intervention and limited party status are granted; and it is

FURTHER ORDERED, that TDS Telecom's request for relief, as described herein is granted.

By order of the Public Utilities Commission of New
Hampshire this thirty-first day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary