DT 00-223
DT 00-054

Investigation as to Whether Certain Calls are Local

Order Approving Agreements

O R D E R N O. 24,419

December 30, 2004

I. PROCEDURAL HISTORY

On October 17, 2003, the New Hampshire Public Utilities Commission (Commission) issued Order No. 24,218, *Order Clarifying and Granting Limited Rehearing of Order No. 24,080,* 88 NH PUC 462 (2003) (*Order for Rehearing*). *The Order for Rehearing* addressed the various Motions for Rehearing filed in response to Order No. 24,080, *Final Order,* 88 NH PUC 749 (2002)[1] (*VNXX Order*) in this docket. The *Order for Rehearing* granted rehearing on the limited issues of technical feasibility, time frames and cost for implementing Information Access NXX[2] (IANXX), and on the appropriate treatment of existing Virtual NXX (VNXX) numbers that cannot be reassigned to the relevant point of interconnection (POI) when certain pooling circumstances exist.

The Commission opened this docket in 2000 to address customer complaints that they were receiving toll charges for calls to numbers assigned to exchanges within the customer's local calling area. Upon investigation, it became apparent that a number of Competitive Local Exchange Carriers (CLECs) were using telephone numbers assigned to an

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[1] For a complete procedural history, see Order No. 24,218, 88 NH PUC 462 (2003).
[2] NXX refers to the first three digits of a seven digit telephone number.

exchange for the purposes of billing and intercarrier compensation, when the customer using the assigned number was not physically located in the geographic area served by the exchange. This practice is known as VNXX. CLECs claimed that this practice resulted from the CLECs' development of a business plan based on local calling areas different from those offered by incumbent carriers; ILECs contended that CLECs used VNXX primarily to arbitrage intercarrier compensation. Intercarrier compensation, *i.e.*, access charges and reciprocal compensation, varies according to whether a call is considered "toll" or "local."

In the *VNXX Order*, the Commission determined that it will permit VNXX but only in limited circumstances. 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 CLEC could offer CLEC Foreign Exchange (FX), which it 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 p. 56).

In the course of defining these two uses, and prohibiting all other VNXX uses, the Commission laid the groundwork for how they would be implemented, while acknowledging that technical discussions were needed on the details of implementation. Accordingly, parties were directed to file testimony and proposals on the limited issues of technical feasibility, time frames and cost for implementing IANXX, and on the appropriate treatment of existing Virtual NXX (VNXX) numbers that cannot be reassigned to the relevant POI when certain pooling circumstances exist. The Commission denied all other motions concerning issues not specifically addressed in the *Order for Rehearing*, and which had not been addressed in 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)* .

Verizon New Hampshire (Verizon) filed a motion to extend the date for filing of testimony on November 25, 2003, which was granted by Secretarial Letter dated November 26, 2003. Testimony was timely filed by: Verizon; RNK, Inc. d/b/a RNK Telecom (RNK); independent telephone companies Granite State Telephone, Inc., Merrimack County Telephone, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company filing jointly (Joint ITCs); MCI; and Level 3 Communications, LLC, (Level 3) and Freedom Ring Communications, LLC, d/b/a BayRing Communications (BayRing) filing jointly (Level 3/BayRing). Reply testimony was filed by Verizon on February 19, 2004, and MCI on February 23, 2004.

The Parties participated in settlement discussions commencing on April 15, 2004. On July 6, 2004, two settlement agreements, signed by most, but not all, of the Parties, were filed with the Commission, and heard on July 15, 2004.

Global NAPs (GNAPs), Verizon and the Staff of the Commission (Staff) filed briefs on September 17, 2004. Reply briefs were filed on October 1, 2004, by Verizon, GNAPs, Level 3/BayRing and Staff.

In this order we approve the two agreements, and address three administrative issues that were raised in the course of our review of the settlement agreements. These issues are: 1) extending the moratorium that has been in effect throughout this docket; 2) fixing the date on which VNXX will end; and 3) filing of tariffs for third party transport. In the *VNXX Order* we authorized Verizon to charge for third party transport, which is the facilitating of calls between a CLEC and an ITC by Verizon, but Verizon has yet to file a tariff for that service.

II. AGREEMENT REGARDING CLEC FX AND REASSIGNMENT TO THE POI

A. OVERVIEW

In the *VNXX Order*, the Commission eliminated the general use of VNXX, but found that two uses of VNXX should be permitted to continue: CLEC FX and IANXX. The *VNXX Order* required that existing NXX numbers not used for CLEC FX or IANXX would be reassigned to the CLEC's POI or relinquished by the CLEC. The *Order on Rehearing* granted rehearing on the appropriate treatment of VNXX numbers that cannot be reassigned to the relevant POI as required by the *VNXX Order*, due to specific pooling circumstances spelled out in that order. The Agreement Regarding CLEC FX and Reassignment to the POI (POI Agreement), introduced as Exhibit R2, addresses those issues. The POI Agreement was signed by RNK, BayRing, Union Telephone Company, LLC (Union), the Joint ITCs, Level 3, GNAPs, MCI and Staff. Verizon, Choice One Communications, Inc. (Choice One), Sprint Communications, Inc. (Sprint), and the Office of the Consumer Advocate (OCA) did not sign the POI Agreement, though Sprint and the OCA have indicated that they do not object to it. Choice One submitted a letter indicating that the technical requirements set out were within its capabilities.

On July 15, 2004, the Commission took evidence on the POI Agreement. Staff presented the POI Agreement on behalf of the signatories; Verizon testified in opposition.

The POI Agreement begins by defining certain terms and clarifying for the Parties that reassigning codes to the POI is a transition mechanism rather than a recurring enforcement action. It then specifies the steps necessary to determine when and how numbers will either be reassigned to the POI or relinquished by the CLEC. Priority is given to carriers with indisputably local customers in order to avoid unnecessary telephone number changes.

The Commission requested that the parties address specific scenarios that would affect reassignment of complete NXX codes to the CLEC POI. In the first scenario, the POI Agreement states that an NXX code will not be reassigned to the POI if any telephone numbers in the NXX are being used by LECs to provide service to indisputably local customers. In that case, any non-qualifying CLEC[3] must discontinue service in that exchange and relinquish its telephone numbers.

The second scenario supposes an NXX with no indisputably local customers, but with NXX blocks assigned to two or more non-qualifying CLECs whose POIs are in different exchanges. In this instance, the POI Agreement states that the entire NXX code shall be reassigned to the POI of the non-qualifying CLEC with the largest number of billing entities with numbers assigned from the relevant NXX code. The remaining numbers in the NXX, according to the POI Agreement, must be relinquished by the other CLEC(s).

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[3] A non-qualifying CLEC is defined in the *Order for Rehearing* as a CLEC that does not meet the Local Nexus test in the relevant exchange. The Local Nexus test is used to determine whether a CLEC is providing service of a sufficiently local nature, indicating a commitment to the local market and holding itself out to customers as a local carrier.

The POI Agreement clarifies that the provision of DSL (a broadband Internet access service) without local service, is not sufficient to meet the Local Nexus test, even if the CLEC is collocated with Verizon. The POI Agreement also provides that all carriers with existing POIs may retain their NXX blocks assigned to the rate center of the existing POIs. The remainder of the POI Agreement sets out a timetable to establish a Local Nexus and to implement the reassignment of NXX codes. It acknowledges that the rate Verizon will charge for third party transport of traffic between CLECs and ITCs will be established in a future proceeding before the Commission after notice and opportunity for hearing.

B. POSITIONS OF THE PARTIES

1. Verizon

Verizon urges the Commission to reject the POI Agreement. In testimony, Verizon's witness stated that its major objection to the POI Agreement was the vagueness of the Local Nexus test. Verizon finds the Local Nexus test unenforceable, and predicts that it will be an incentive for CLECs to seek customers with high volumes of inbound calling, such as mail order call centers, in order to generate reciprocal compensation[4] payments.

Verizon also argues that CLEC FX is nothing more than VNXX in another form and, thus, is in conflict with the Commission's decision to eliminate VNXX. Further, according to Verizon, under the terms of the POI Agreement, CLECs would still be permitted to shift transport costs to Verizon.

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[4] Reciprocal compensation is payment from the telephone company of the caller to the telephone company of the called party, intended to compensate for the use of the called party's network.

Verizon contends that the POI Agreement is in direct conflict with the plenary and exclusive authority of the Federal Communications Commission (FCC) over numbering pursuant to the Telecommunications Act of 1996 (TAct), stating that the POI Agreement provides criteria for reassignment of telephone numbers, establishes terms and conditions for pooling and porting numbers, and directs CLECs to relinquish numbering resources. Verizon states that each clause unlawfully places limits on the administration of telephone numbers beyond the numbering authority of the Commission.

Verizon alleges that the provision of the POI Agreement regarding third party transport (which Verizon calls "tandem transit" in its brief) establishes new conditions that were not required by the Commission's orders in this docket. Verizon also claims that it will incur additional costs if it is required to develop a billing mechanism to split third party transport costs between the ITCs and the CLECs, as contemplated by the *VNXX Order*. Verizon argues that while the Commission found that Verizon could file a tariff for third party transport, the POI Agreement imposes a new requirement for notice and opportunity for hearing. Additionally, Verizon claims that the POI Agreement extends the moratorium on charges for tandem transit that has been in effect since April of 2000, unfairly limiting Verizon's ability to collect third party transport. Verizon asserts that there is no basis in prior Commission orders for establishing such conditions and recommends that they be rejected.

2. Staff

Staff argues that the POI Agreement provides a technically feasible implementation plan and recommends its adoption. According to Staff, reassignment of NXX codes to the CLEC POI is a transitional mechanism that will be undertaken only once for each CLEC as VNXX is eliminated in New Hampshire.

Staff contends that Verizon's primary complaint is that the Orders have not addressed compensation to Verizon for transporting traffic from its customers to the CLEC POI. Staff asserts that the Commission addressed such compensation in each of the orders in this docket. Further, according to Staff, Verizon presented no new evidence to warrant reconsideration on this topic, federal law supports the Commission's decision to deny recovery of transport costs, and allowing such compensation would be contrary to 47 CFR §51.703(b) which prohibits a LEC from assessing charges for traffic that originates on its own network. Further, Staff contends that Verizon did not meet its burden of proof on its claim for compensation of costs to develop a billing mechanism for third party transport, and recommends that the Commission defer consideration of compensation for the development of a billing mechanism until Verizon files its proposed tariff for rates for the service. Staff recommends that the Commission adopt the POI Agreement.

III. AGREEMENT REGARDING THE IMPLEMENTATION OF IANXX

A. OVERVIEW

In the *VNXX Order*, in addition to CLEC FX, the Commission preserved the use of VNXX for numbers provided only for dial-up access to the public Internet from end users to Internet Service Providers (ISPs). This access has come to be known as IANXX, which will be implemented through the creation of a new rate center[5] from which numbers will be assigned to

[5] A rate center is a specified location identified by vertical and horizontal coordinates.

carriers intending to offer IANXX to their ISP customers. The *Order on Rehearing* granted rehearing on the limited issues of technical feasibility, time frames, and cost to implement IANXX. The Agreement Regarding the Implementation of IANXX (IANXX Agreement), introduced as Exhibit R1, addresses those issues. The IANXX Agreement was signed by RNK, BayRing, Union, the Joint ITCs, Level 3, GNAPs, MCI and Staff. While Sprint and the OCA did not sign the IANXX Agreement, they have indicated that they do not object to it. Choice One submitted a letter indicating the technical requirements set out were within its capabilities. The New Hampshire Internet Service Providers Association signed the IANXX Agreement after it had been filed with the Commission.

On July 15, 2004, the Commission took evidence on the IANXX Agreement. Staff presented the IANXX Agreement on behalf of the signatories and Verizon testified in opposition to it.

The IANXX Agreement begins by defining certain terms and clarifying that IANXX codes will be full codes, assigned to a new rate center. It specifies how IANXX codes shall be identified in the Local Exchange Routing Guide, clarifies that local calling areas for IANXX shall not extend beyond the LATA, and confirms that the code holder shall be determined, both initially and if an existing code holder leaves the market, in accordance with existing central office code assignment guidelines. The IANXX Agreement then recounts the requirements for LECs who request IANXX blocks, denotes the utilization level for requesting additional blocks, and establishes a process for requesting IANXX blocks, consistent with the process for requesting other new NXX blocks. The Signatories agreed on certain restrictions and limitations to IANXX, and confirmed that CLEC FX was not to be used for ISP-bound calling, as required in the *VNXX Order*. The IANXX Agreement sets expectations for the carriers who use IANXX, provides for enforcement by the Commission, and sets out a timetable for implementation. The remainder of the IANXX Agreement is similar to the POI Agreement. It clarifies that Verizon may charge for third party transport through its tariff after notice and opportunity for hearing, and states that the agreement addresses all known technical feasibility, time frame and cost issues (other than third party transport) for implementation of IANXX.

B. POSITIONS OF THE PARTIES

1. Verizon

Verizon claims that the IANXX Agreement does not resolve the three principal issues of technical feasibility, implementation time frames, and costs to implement. Verizon asserts that the IANXX Agreement addresses these three issues only superficially, and does not address how to enforce the IANXX terms and conditions proposed by the Commission and expressed in the IANXX Agreement.

The IANXX Agreement fails to account for the costs Verizon will incur to implement IANXX, according to Verizon, specifically the cost of transporting IANXX calls statewide beyond the caller's local calling area to the terminating CLEC's POI. Verizon contends that if the IANXX Agreement is adopted, Verizon will be forced to bear its competitors' transport costs, creating an unfair competitive advantage for CLECs in the marketplace. Verizon asserts that the failure of the IANXX Agreement to address Verizon's recurring transport costs discriminates against Verizon and fails to foster efficient economic competition. In support, Verizon cites to the *VNXX Order* at 53-54 which defines IANXX, reading, in part, "LECs wishing to carry information access traffic outside of traditional local calling areas without incurring a toll charge for the end user shall do so by NXX blocks which will have a statewide extended area service (EAS)." Verizon maintains that the Commission's use of the word "carry", when defining IANXX, limits the use of IANXX to LECs that own or lease facilities for carrying such traffic, rather than to rely on Verizon facilities to transport these calls without compensation.

Verizon next argues that it is not technically feasible for carriers to implement or enforce the terms of the IANXX Agreement, claiming that there is no practical way to ensure that the service will not be used to provide Voice Over Internet Protocol (VoIP) telephony. The IANXX Agreement, according to Verizon, makes carriers responsible for the actions of Internet Service Providers (ISPs) and their customers. Verizon also claims that the time frame for implementing IANXX is in conflict with the competitive and technological changes in the marketplace, since it is promoting an Internet access service that is no longer predominant, and that will be outdated by the time IANXX is implemented.

In developing specifications for IANXX numbering procedures, Verizon claims that the Agreement inappropriately expands the Commission's numbering authority, is inconsistent with existing telephone numbering procedures, and places intrastate limits on the administration of telephone numbers. Verizon urges the Commission to reject the IANXX Agreement, and to close this proceeding without taking any further action.

In its reply brief, Verizon rejects Staff's claim that federal law prevents Verizon from assessing transport costs for carrying IANXX calls from Verizon customers to a CLEC POI. Staff's argument that a finding in *MCIMetro Access Transmission Servs. v. Bellsouth Telecomms, Inc.,* 353 F.3d 872 (4th Cir. 2003) prohibits such charges is flawed, according to Verizon, because that case only applies to local traffic, and the Commission has clearly stated that IANXX is neither local nor toll.

2. GNAPs

In its Brief, GNAPs responded to Verizon's assertion that it is entitled to compensation for the transport of calls from Verizon end users to the CLEC point of interconnection, arguing that the Commission cannot impose additional charges on calls to ISPs. GNAPs claims that there have been no changes in underlying law and no reason for the Commission to revisit its own orders in this docket.

GNAPs claims that the FCC retains sole and exclusive jurisdiction regarding intercarrier compensation for information access traffic, the traffic under consideration in the IANXX Agreement. Since all ISP-bound traffic is information access, according to GNAPs, the characterization of the traffic as local or non-local is irrelevant. For the Commission to determine otherwise would be discriminatory, as it would allow Verizon to use VNXX while denying CLECs the ability to do so.

In its Reply Brief, GNAPs argued further that Verizon's attempt to address transport costs in this rehearing is inappropriate. GNAPs requests that the Commission issue an order that rejects Verizon's attempt to recover transport and/or access charges.

3. <u>Level 3 and BayRing</u>

According to Level 3/BayRing, Verizon is not entitled under federal law to be compensated for transport costs, as the TAct and the FCC's rules for interconnection allow a CLEC to select a single POI, and require Verizon to deliver traffic originated by Verizon's customers to the POI at no charge to the CLEC. Level 3/BayRing urge the Commission not to allow Verizon to seek compensation for Verizon's costs to deliver traffic to the CLEC POI.

4. <u>Staff</u>

Staff contends that the IANXX Agreement provides a technically feasible implementation plan, that the timetable and costs for implementation are reasonable, and recommends that the Commission dismiss Verizon's claims to the contrary. Staff maintains that Verizon has failed to demonstrate costs that would make it not feasible to implement IANXX. Further, Staff opposes Verizon's jurisdictional arguments as being both improperly raised at this stage and unsupported by the facts of the *VNXX Order*.

IV. COMMISSION ANALYSIS

In its *VNXX Order* and *Order on Rehearing*, the Commission determined that while the general use of VNXX was not in the public interest, there was good reason to preserve both CLEC FX and IANXX. In response to the motions of the parties, the Commission determined that certain technical issues remained and directed parties to respond to those issues. Staff and several of the parties responded by filing the two Agreements that are before us now. Verizon opposed both. Having examined the testimony, the Agreements, briefs and reply briefs, the issues are ripe for decision.

Verizon raised two cost issues in its objection to these Agreements, stating that the Agreements fail to account for the costs Verizon will incur to implement IANXX service and for transport of traffic resulting from CLEC FX and IANXX. The Commission was concerned that possible costs to establish IANXX were not developed in the record and, for that reason, included implementation costs with the issues to be reheard in its *Order on Rehearing*. In the four years since this docket was opened, Verizon has had several opportunities to identify and quantify its costs, and has opted not to provide that information, even at this last juncture when specifically asked to do so. Verizon's unsubstantiated arguments regarding its costs to establish and implement IANXX, therefore, will not serve as a basis to reject the Agreements.

As to transport, we agree with Staff that we have adequately addressed in previous orders compensation to a carrier for the transport of calls from its customers to another carrier. As we read the TAct and the FCC's rules regarding intercarrier compensation, such as 47 CFR §51.703(b), Verizon is not entitled to compensation for the transport of calls originated by its customers that are delivered to a CLEC POI using CLEC FX, which we have determined is local traffic. For transport of IANXX, we stated in earlier orders that intercarrier compensation for Internet-bound calls was a matter for the FCC. The FCC is now considering intercarrier compensation in CC Docket No. 01-92*, Developing a Unified Intercarrier Compensation Regime*, and it will specifically address compensation for Internet traffic which, for current VNXX Internet-bound traffic, will use IANXX in the future. Having rendered our decision on this issue in earlier orders and seeing no basis to revisit it here, we decline to reconsider compensation for transport between CLECs and Verizon.

In its discussion of technical issues, Verizon raises concerns about enforcement of a ban on the use of IANXX for VoIP telephony. VoIP telephony is not an issue that came before us in this docket until the rehearing. As we said in the VNXX order, "inasmuch as the issue of Internet telephony has not been brought before us, we decline to rule on it at this time." *VNXX Order* page 55. In the *Order Staying IANXX*, we clarified that IANXX was not a VoIP service, stating that it was not our intent "to allow statewide local rate treatment of telephone calls that make use of the Internet." The jurisdictional and regulatory status of the various types of Internet telephony are uncertain; the FCC, in fact, determined after close of the record in this docket that VoIP requires a broadband connection and is an interstate service not subject to state regulation.[6] Even so, the extent, if any, of our jurisdiction in this area is still unclear, and by this order we do not intend to assert a role over VoIP. However, we can state that we do not expect IANXX to be used for VoIP service as, according to the FCC, VoIP service requires a broadband connection whereas IANXX, by definition, is solely a dial-up service. We have already stated in our orders that carriers may only provide IANXX directly to ISPs, and only for ISPs who use IANXX to facilitate dial-up access to the Internet. Carriers are explicitly prohibited from providing IANXX numbers to non-ISPs, including VoIP providers. As Staff testified at hearing, "It was not our intent or within our ability ... to try and define all the technical work-arounds that someone might use to try and use IANXX in a way that wasn't intended. Instead, we set the definition of 'IANXX' to be as narrow as possible, to be provided directly to and only to Internet Service Providers and used by the ISP solely for inbound, dial-up information access to

[6] WC Dkt No. 03-211 *Memo Opinion and Order* released November 12, 2004.

the public Internet provided directly to end-users." Transcript, July 15, 2004, pg 30. Verizon's examples point to the specific instance of an ISP's customer who uses VoIP to make a telephone call over the public Internet during a dial-up session to the Internet. This use of VoIP is not one that we intend to address or assert jurisdiction over in this proceeding.

The IANXX Agreement makes recommendations for implementation timeframes to which Verizon objects, claiming that IANXX will be outdated by the time it is implemented in the marketplace. At hearing, Verizon testified that the marketplace is moving towards broadband and that, in two years, retail customers would not need IANXX. While the marketplace suggests a trend towards broadband, we disagree with the conclusion that IANXX will not be needed. Many Internet users have moved and will continue to move to broadband. It is reasonable to expect that the consumers who choose dial-up access to the Internet, however, will be lower-income consumers and those without other options for Internet access. Technology will continue to evolve but IANXX, along with the continued availability of VNXX until IANXX is implemented, will ensure that those users with the fewest options for Internet access will maintain local dial-up access. We accept Verizon's prediction, however, that dial-up usage will decline, which should alleviate Verizon's concern that the implementation of IANXX will increase its transport costs. Consistent with our earlier orders, we find that IANXX imposes no new transport obligations on Verizon. We conclude as well that the timeline set out by the Signatories is reasonable.

Verizon also argues that requiring either CLEC FX or IANXX would exceed our numbering authority. Our numbering authority to create IANXX is derived from our authority to approve and establish rate centers in New Hampshire. Historically, carriers proposed rate centers through their tariffs, which were approved by the Commission. The authority of the Commission to establish and approve rate centers has not been reserved by the FCC. Verizon itself claimed, in a letter to the Commission on October 23, 2002, that it knew of no impediment to the Commission's creation of a specific NXX code that could be dialed as a local call.

We also have the authority to determine the requirements for a carrier's readiness to serve before the carrier is granted initial numbering resources. This readiness requirement is a refinement of the obligation of a carrier to meet the North American Numbering Plan Administrator (NANPA) CO Code Assignment Guidelines § 4.1.4 which states that "[w]ireline carriers seeking to provide service in a state must obtain a certificate from the state authorizing them to do so." The FCC's First Report and Order on Numbering Resource Optimization ¶94 recognizes that the Maine Public Utilities Commission advises NANPA when a carrier is not certified, thus barring a carrier that is ineligible to serve from receiving numbering resources. For both IANXX and CLEC FX, carriers must meet the conditions of use set out in our orders to be authorized to serve in a particular rate center. *See* 15 FCCR 7574, 15 FCC Rcd. 7574 (2000).

Having established our authority to determine whether a carrier is authorized to serve in an area, we turn to CLEC FX and Reassignment to the POI. As we established in our earlier orders, a carrier that does not establish a Local Nexus will no longer be authorized to provide service in an exchange. A carrier losing its certification no longer has the privilege of holding numbering resources. Such a carrier would have two options: 1) relinquish its numbering resources, terminating service to all affected customers; or, 2) transfer its numbering resources to a rate center in which it is certified to serve. The Commission anticipated that carriers would choose not to disrupt their affected customers and therefore established "Reassignment to the POI". The authority to do so is based on the facilities-based readiness requirement we established as a Local Nexus test.

Finally, the Commission allowed testimony on the reassignment of NXX codes to CLEC POIs. Verizon did not comment on the process of reassignment but objected to the implementation of CLEC FX on three grounds: the Local Nexus standard is vague; the Commission lacks numbering authority to reassign numbers to the CLEC POI; and the POI Agreement imposes new conditions on the setting of rates for third party transport, namely, the extension of the moratorium on Verizon’s ability to collect third party transport and allowing other interested parties an opportunity for hearing on a development of the third party transport rate. The Local Nexus test was introduced in the *VNXX Order* and clarified in the *Order on Rehearing*. The test is not vague; as CLEC FX is implemented the test will be used to determine CLEC FX eligibility. When the Local Nexus test is applied, we anticipate issues of interpretation may arise, but we will not reject the test on the basis of worst case scenarios that do not represent typical situations. Since our earlier orders have sufficiently developed the Local Nexus test, there is no reason to reconsider it here.

We look next to Verizon’s opposition to extension of the moratorium. The moratorium was introduced by letter from Staff on April 28, 2000, and approved by Order No. 23,501 (May 31, 2000). At that time, the moratorium was an agreement which had ten provisions to which the parties agreed, covering charges to customers, intercarrier compensation, and reporting for VNXX and other ITC to CLEC calls. The moratorium was revised by the Parties, including Verizon, and filed as a stipulation; it was extended an additional six months from the date of approval by the Commission by agreement of the Parties and Staff. This stipulated extension was approved by the Commission in Order No. 23,568 (October 16, 2000).

There were six provisions to which the parties agreed:

> a. ITCs and CLECs agreed not to charge toll, access, or reciprocal or intercarrier compensation for ITC to CLEC or CLEC to ITC traffic associated with a rate center within the local calling area or extended local calling area of the called party, whether or not the called party is physically located within the rate center to which the dialed NXX is assigned;
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> b. ITCs that are able will record traffic to the CLEC NXX by NXX, and report it monthly; those not able to will make best estimates of the traffic to NXXs.
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> c. CLECs will record originating locally dialed calls to ITC NXXs, by NXX, and report that date monthly to Staff, the relevant ITC and Verizon, for purposes of billing and enforcement of the Stipulation only.
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> d. Verizon will not charge ITCs or CLECs for tandem transit or tandem transport of ITC-CLEC traffic.
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> e. CLECs will not charge Verizon for calls originated by ITC customers and terminated by CLECs to their customers.
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> f. Upon resolution of this docket, there will be no true-up by any ITC, CLEC or Verizon for any such ITC-CLEC traffic for calls occurring during the moratorium, that is, from the May 31 Order of the Commission as extended by this Stipulation.

There are indications in the record that the Parties reached verbal agreements to extend the moratorium as this docket progressed. In the *Order Staying IANXX*, the Commission required the parties to continue certain provisions of the moratorium, effectively eliminating the reporting requirements. The parties have continuously acted within the confines of the agreement and we find that parts a, d, e and f of the moratorium have been in effect since the Commission approved the stipulation on October 16, 2000.

The moratorium provides a structure for handling calls when VNXX is being used. When VNXX is no longer used, our orders provide the framework for intercarrier compensation and responsibility. Item a, regarding the assessment of toll, access, or reciprocal or intercarrier compensation, has been addressed for each type of traffic in our previous orders in this docket. Items b and c deal with reporting of traffic and are no longer in effect. Item d, regarding tandem transit and tandem transport, has been addressed in our earlier orders as third party transport. Item e relates to charging a transporting carrier reciprocal or intercarrier compensation for calls that were not originated by the transporting carrier's customers. In its discussion of third party transport in the *VNXX Order*, the Commission noted that reciprocal compensation for local traffic is owed by the originating caller's local exchange carrier to the terminating caller's local exchange carrier, and that the transporting carrier is owed third party transport. No other intercarrier compensation is applicable for ITC to CLEC or CLEC to ITC calls within a local calling area. Item f declares that there will be no true up; that is, the compensation that the Commission has deemed appropriate for IANXX or CLEC FX does not apply to VNXX.

We find that the moratorium is an integral part of VNXX, giving companies a structure to work within and, therefore, order that the moratorium continue so long as VNXX continues. As each CLEC discontinues its use of VNXX, the terms of the moratorium for all parties shall be obviated regarding that CLEC. Once the timetables for implementation of IANXX and reassignment of NXXs to the POI have run their course, the moratorium shall perforce no longer be in effect.

Having confirmed that the moratorium remains in effect, we turn to Verizon's concern regarding the filing of its tariff for third party transport. In the past, Verizon has established wholesale rates for interconnection and services to CLECs through its Statement of Generally Available Terms and Conditions (SGAT). More recently, the SGAT has been replaced by a wholesale tariff. Tariff filings are governed by RSA 378:6, IV, but the statute does not specifically enumerate the rights of the billed party to be heard regarding the reasonableness of any rate set in the tariff.

We recognize that third party transport is a new service, and anticipate that parties will want to have an opportunity to review the filing and have an opportunity for hearing. This opportunity could be provided in one of two ways: 1) the Commission could issue a *nisi* order with an opportunity for affected parties to request a hearing; or 2) Verizon could file an illustrative tariff, to take effect on a date established by the Commission.

In this case, requiring an illustrative tariff, with a procedure identified by the Commission for evaluation and review, appears to be the better way to allow interested parties to have meaningful input. We therefore direct Verizon to file an illustrative tariff for third party transport no later than 60 days from the date of this order. As Staff recommended, we will allow Verizon to file a cost study and proposed recovery for its costs to establish a billing mechanism to split third party transport between ITCs and CLECs. Once a tariff is approved, we will consider whether it is appropriate to lift this provision of the moratorium.

We find that the Agreements represent a reasonable approach to implementation of IANXX, CLEC FX and reassignment of NXXs to the POI and we approve them. In order to ensure an effective transition, we find it in the public interest to extend the end date for certain types of VNXX to coincide with the implementation of the replacement services. The moratorium shall continue until the date on which VNXX use ends, which is set by the POI Agreement to be 20 weeks from the date this order becomes final and non-appealable.

Based upon the foregoing, it is hereby

ORDERED, that the Agreement Regarding CLEC FX and Reassignment to the POI is APPROVED; and it is

FURTHER ORDERED, that the Agreement Regarding Implementation of IANXX is APPROVED; and it is

FURTHER ORDERED, that the moratorium in this docket shall continue concurrently with any existing use of VNXX; and it is

FURTHER ORDERED, that VNXX use shall cease according to the timeframes established pursuant to the POI Agreement and the IANXX Agreement, as established herein; and it is

FURTHER ORDERED, that Verizon shall file an illustrative tariff for third party transport no later than sixty days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2004.

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Thomas B. Getz
Chairman

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Graham J. Morrison
Commissioner

Attested by:

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Kimberly Nolin Smith
Assistant Secretary