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November 1, 2002

VIA HAND DELIVERY

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83720-0074

Re: Case No. *GNR* ~~QWE-T-02-11~~ 16

Dear Ms. Jewell:

Enclosed for filing are an original and eight (8) copies of the **Comments of Qwest Corporation.**

If you have any questions or comments, please let me know.

Very truly yours,

Mary S. Hobson

:blg
Enclosures
cc: Service List

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Attorneys for Qwest Corporation

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PETITION OF
POTLATCH TELEPHONE COMPANY;
CENTURYTEL OF IDAHO; CENTURYTEL OF
THE GEM STATE; AND THE IDAHO
TELEPHONE ASSOCIATION FOR A
DECLARATORY ORDER PROHIBITING THE
USE OF "VIRTUAL" NXX CALLING**

**GNR-T-02-16
COMMENTS OF QWEST
CORPORATION**

Qwest Corporation (Qwest), pursuant to Commission Order No. 29125, provides the following comments on the Petition for Declaratory Order Regarding the Use of Virtual NPA/NXX Calling Patterns (Petition) filed August 27, 2002.

COMMENTS

Qwest generally supports the Petition. Companies should not be entitled to "free" transport between exchanges for non-local calls. Decisions of the Federal Communications

Commission (the "FCC") and this Commission, and the interconnection agreements approved in Idaho make that clear.

1. The Nature of Virtual NXX Calls

In a recent decision, the Public Service Commission of South Carolina succinctly articulated the virtual NXX concept, or scheme, as follows:

Virtual NXX allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located. As far as the person calling the number is concerned, the call is a local call, but the party answering the call is actually located somewhere else within the LATA. This type of arrangements is referred to as "virtual NXX" because the customer assigned to the telephone number has a "virtual" presence in the associated local calling area. This presence, however, "is just a virtual presence, not a physical one". "Virtual NXX is similar to foreign exchange ("FX") service provided by an ILEC. However, unlike FX service, "virtual NXX" does not use lines dedicated to particular customers for transporting the call between rate centers. "Virtual NXX" also closely parallels 800 service.¹

Virtual NXX (VNXX) enables carriers to assign a telephone number in a local calling area in which they do not maintain a physical presence. The use of VNXX affects the rating of the call because the rate charged to the originating party is based on an examination of the originating and terminating NXX codes.

One use of the VNXX concept arises when CLEC customers are providing access to the internet. Using VNXX, a CLEC can assign telephone numbers to internet service providers (ISPs) so that regardless of the location of the caller (end user), the numbers are perceived and billed as local calls. With VNXX the CLEC need not establish a physical presence in the geographic area within which it seeks to establish a local presence.

¹ In re: Petition of Adelpia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Docket No. 2000-516 Order on Arbitration No. 2001-045 (So. Car. P.S.C., Jan. 16, 2001), pp. 4-5 (Attachment A).

2. Issues Raised by VNXX

The Petition raises several direct and indirect issues of telecommunication policy including questions of numbering allocation and resources, traffic routing, and inter-carrier compensation. Nationally these issues have been addressed by numerous state commissions in the context of the VNXX discussion.

a. Intercarrier Compensation

Qwest is concerned that, with the prospect of VNXX on the horizon, incumbent local exchange carriers, including Qwest, will be responsible for hauling non-local traffic (whether ISP-bound or otherwise) between a distant rate center and CLECs' respective points of interconnection without compensation. Qwest questions how CLECs intend to use local interconnection facilities and how interstate traffic, specifically interstate Internet traffic, figures into these questions of local facilities.²

Implementation of VNXX raises at least two major inter-carrier compensation issues. First, how will the transporting carrier be compensated for the use of its network? Second, how will the ISP-bound traffic be treated?

Traditionally, calls terminating in a non-local exchange have been subject to switched access charges, while Qwest's interconnection agreements properly limit the traffic exchanged under their terms to local traffic between Qwest and CLECs. In both scenarios, the carriers whose facilities are being used to complete the call receive compensation.

² In the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-98 & 99-68, FCC 01-131, 2001 FCC LEXIS 2340, ¶¶ 52, 57, 65, (rel. Apr. 27, 2001), *remanded*, *WorldCom, Inc. v FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*ISP Remand Order*") the FCC ruled that Internet traffic is interstate, not local. Accordingly, Internet traffic is outside the scope of the FCC's reciprocal compensation rules.

By placing a VNXX in a particular exchange and demanding that Qwest deliver the call to another exchange outside the local calling area, CLECs would be attempting to change established local calling boundaries for Qwest's customers. Only the Commission has the right to set the local calling boundaries for Qwest's local customers. This Commission has always treated calls between two local calling areas as interexchange, or toll traffic, which is subject to switched access charges.

However, under a VNXX arrangement, the additional costs of carrying the calls from a distant exchange to the CLEC's point of presence are borne by the local exchange providers, not the new entrants providing the VNXX. And, while VNXX calls are interexchange calls, or toll calls, CLECs deploying VNXX arrangements avoid paying access charges and end users avoid paying toll charges.

Under the interconnection agreements, each party will bear a portion of the cost of the entrance facilities and direct trunk transport facilities based strictly upon the party's relative use of the facilities for the transmission of local traffic. In this way, the party that causes the cost pays for the portion of the facilities that it uses in the conduct of its business as a local service provider. However, with a VNXX arrangement, the interexchange transport would not be compensated for if deemed local traffic. If the Commission allows for VNXX traffic to be included in the definition of local traffic, every other local exchange provider in Idaho, would bear virtually all of the costs of the interconnection facilities. CLECs utilizing VNXX would be able to improperly shift the costs of interconnection trunks entirely onto Qwest and other local exchange providers in Idaho.

It is also important to note that because interconnection agreements are limited to the delivery of local traffic, they do not apply to traffic bound for Internet service providers,

which has been defined by the FCC as interstate in nature.³ Use of the VNXX concept should not be permitted to undermine this FCC determination and re-open debate about reciprocal compensation for such traffic.

b. Numbering Allocation Issues.

VNXX arrangements potentially entail excessive demand for telephone numbers. CLECs may only require a few telephone numbers in any particular exchange in order to provide VNXX service to their customers. However, the assignment of an NXX to a CLEC with only minimal “virtual” needs uses a large amount of numbering resources. Where pooling is available, CLECs would receive 1,000 telephone numbers, and where pooling is not deployed, an entire NXX code (consisting of 10,000 numbers) would be used, although the vast majority of the telephone numbers will go unused and unusable by other carriers.

Although Qwest does not object to CLECs obtaining NXXs, they must comply with the requirements of the independent numbering association and applicable FCC rules. The FCC requires that numbers are provided only to local exchange carriers and not to other types of telecommunications carriers, such as interexchange carriers. This underscores that careful analysis of the VNXX concept is required before it is allowed to go into effect. Scarce numbering resources, for example, should not be misused by companies attempting to avoid legitimate charges for what is truly interexchange traffic.

c. Impact on the Idaho Universal Service and Telecommunications Relay Services Funds

Petitioners point out a legitimate concern about the impact of VNXX implementation on Idaho’s Universal Service (USF) and Telecommunications Relay Services (TRS) funds. Most obviously, improper conversion of interexchange calls to “local” status

³

Id.

adversely impacts the revenues of USF recipients, thereby potentially increasing the demand on this funding source. Increased USF draws are funded by telecommunications consumers in Idaho, many of whom will experience no benefit from the deployment of VNXX.

In addition, the mechanisms for these funds depend, in part, on the number of toll minutes generated in the state. To the extent that VNXX subverts the rating of interexchange calls, it eliminates toll minutes from the assessment and increases the surcharges that must be levied on other services to maintain funding levels. Again Idaho consumers are left paying the bill.

d. Number portability

Petitioners raise the concern of a single NPA/NXX being assigned to multiple rate centers. Qwest agrees that this is an important issue that should be addressed in this proceeding. Local Number Portability (LNP) is limited to the ILEC rate center. Assigning a single NXX to multiple rate centers would impact LNP and could be in violation of FCC rules designed to ensure that carriers will be able to port numbers and receive ported numbers⁴

CONCLUSION

The Commission should prohibit the use of VNXX as a means to avoid access charges on interexchange and interstate calling. In addition, the Commission should ensure that all numbering resources are utilized in a manner consistent with established rules and guidelines.

⁴ See e.g., 477 CFR § 52.26.

RESPECTFULLY SUBMITTED This 1st day of November, 2002.



Mary S. Hobson
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Adam L. Sherr
Qwest

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of November, 2002, I caused a true and correct copy of the foregoing **COMMENTS OF QWEST CORPORATION** to be served by the method indicated below, and addressed to the following:

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