

ORIGINAL

Dean J. Miller (*ISB No. 1968*)
MCDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2565-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

Case No. GNR-T-02-16

JOINT COMMENTS OF WORLDCOM, INC.,
TIME WARNER TELECOM OF IDAHO, LLC,
LEVEL 3 COMMUNICATIONS, LLC, AND
AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC.

INTRODUCTION

COME NOW WorldCom, Inc., Time Warner Telecom of Idaho, LLC, Level 3 Communications, LLC, and AT&T Communications of the Mountain States, Inc. (the Joint CLECs) and in response to the Commission's Notice of Petition for Declaratory Order submit the following Comments.

WorldCom, Inc., and its wholly-owned operating subsidiaries, provides competitive interLATA and intraLATA telecommunications services in Idaho and serves both residential and business customers.

Time Warner Telecom Inc., headquartered in Littleton, Colorado, delivers "last-mile" broadband data, dedicated Internet access and voice services for businesses. It is one of the country's premier competitive telecom carriers and delivers fast, powerful and flexible facilities-based metro and regional optical networks to large and medium customers.

Level 3 Communications, LLC is a telecommunications provider that offers, amongst other products, end-to-end, dial-up solutions that support the top ten dial-up ISPs in the United States.

AT&T is a telecommunications carrier authorized to provide various telecommunications services in Idaho including interexchange services.

SUMMARY OF ARGUMENT

1. **The Petition for Declaratory Order Regarding the Use of Virtual NPA/NXX Calling Patterns (the Petition) improperly requests an advisory ruling on a hypothetical set of facts and should be dismissed.**
2. **If the Commission reaches the merits of Petitioners' claim, the Commission should deny Petitioners' request for a declaration that VNXX service is not in the public interest because:**
 - A. **VNXX service provides a legitimate competitive alternative to ILEC Foreign Exchange, or similar, services.**
 - B. **Petitioners' fears of being subject to claims of discrimination are without merit.**
 - C. **Petitioners' claim that VNXX impairs number resources is unsubstantiated.**
 - D. **Petitioners' characterization of VNXX as "bridging" or "arbitrage" is wrong.**
3. **If the Commission reaches the merits of Petitioners' claims, the Commission should deny Petitioners' request for a declaration that VNXX are subject to toll and access charges, and should instead declare that VNXX traffic is "local" for rating purposes. Alternatively, the Commission should defer the issue of carrier compensation to a more appropriate proceeding.**

ARGUMENT

1. **The Petition for Declaratory Order Regarding the Use of Virtual NPA/NXX Calling Patterns improperly requests an advisory ruling on a hypothetical set of facts and should be dismissed.**

The Idaho Supreme Court has ruled that Declaratory Judgment Actions are inappropriate vehicles for rendering advisory opinions on hypothetical facts. In *Harris v. Cassia County*, 106 Idaho 513 (1984) the Court stated the rule this way:

A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot.... The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests.... It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. 106 Idaho at 516

The purpose of the rule against advisory opinions is that it insures that the dispute presented is sufficiently definite or concrete as to permit reasoned understanding and analysis of the matter in controversy. This rationale applies with equal force to declaratory judgments by administrative agencies.

Here, the Petition alleges only “Petitioners and/or their members are aware of situations *in other* states where competitive local exchange carriers (“CLECs”) are requesting to enter into relationships under which a virtual NPA/NXX(“VNXX”) would be established....” (emphasis added)¹. The Petition does not allege that any of the Petitioners have received such requests in Idaho, much less the precise nature of the proposed service to be offered or the requested carrier compensation. There is not, therefore, before the Commission, a specific factual dispute that would permit meaningful evaluation of Petitioners’ various claims. Instead, there are only vague assertions of potential claims of discrimination,² unfair avoidance of access charges,³ and impairment of numbering resources.⁴ These assertions are so formless, so completely unsupported by specific facts, as to be incapable of meaningful evaluation.

In the absence of credible and specific factual allegations, one can only conclude that Petitioners are not, in fact, worried about their litany of potential horrors. Rather, Petitioners’ goal is to prohibit other carriers from using number resources in a manner of which Petitioners disapproves (even as Petitioners themselves and other incumbent carriers may use number resources in a similar manner). Petitioners, however, cite no statute or Commission rule that addresses how carriers are required to use number resources or that otherwise governs the circumstances Petitioners describe. The Petition thus seeks relief that is not available in the form

¹ Petition, Para 9, pg 5.

² Petition, Para 17, pg 8.

³ Petition, Para 18, pg 8.

⁴ Petition, Para 19, pg 8.

of a declaratory order but that would be more properly requested through a complaint or other proceeding that enables interested parties to develop an appropriate factual record. Indeed, all but one of the orders from other state commissions that Petitioners cite (and attach) as support for their Petition were entered in arbitration proceedings⁵ in which the parties developed a full factual and legal record prior to a commission decision.⁶

For these reasons the Petition should be dismissed and the Commission should await the existence of a specific dispute in which parties' assertions can be evaluated in the light of real evidence, not hyperbole.

2. If the Commission reaches the merits of Petitioners' claim, the Commission should deny Petitioners' request for a declaration that VNXX service is not in the public interest.

The Petition defines a "virtual NPA/NXX" ("VNXX") as calling that occurs when telephone numbers containing an exchange, or "NXX" codes associated with a particular exchange are assigned to customers with no physical presence in that exchange. The result of such assignments is that calls dialed between locations that are not within the same local calling area are rated as local rather than toll. Consequently, the end users do not pay toll charges (either the originating party for normal toll-dialed calls or the receiving party for 800-type calls).⁷ Petitioners characterize this service as a "scam"⁸, "bridging"⁹ and "arbitrage."¹⁰ Petitioners request that the Commission prohibit VNXXs (or authorize ILECs to impose access charges on traffic to and from VNXX numbers). However, the Petition's implicit allegation that such services represent an attempt to bypass switched access charges is vastly overstated, overly

⁵ Arbitrations by definition seek to resolve disputes between two particular carriers based on a factual record compiled by those parties and should not be used to establish industry wide policy decisions.

⁶ The only exception is the order from the Maine Public Utilities Commission (attached to the Petition as Exhibit 4), but that order was the result of a lengthy commission investigation, not a declaratory order proceeding (<http://www.state.me.us/mpuc/orders/98/98758orr.htm>).

⁷ Petition, Para 10, pg 6.

⁸ Petition, Para 18, pg 8.

⁹ Petition, Para 22, pg 9.

¹⁰ Petition, Para 22, pg 9.

simplistic and inconsistent with the types of service that use VNXXs, including comparable services provided by Petitioners and other ILECs. For the reasons discussed below this requested relief should be denied.

A. VNXX service provides a legitimate competitive alternative to ILEC Foreign Exchange, or similar, services.

Foreign exchange (“FX”) service involves providing service to a customer physically located outside the rate center for which his or her NPA/NXX is located. Thus, FX service enables a customer to establish a local presence where it did not have one before – the very functionality that the Petitioners seek to have banished here as contrary to the public interest when offered by competitive carriers. Both CLECs and ILECs have made FX service offerings available and actively compete for customers for FX service. Of course ILECs, as the monopoly local providers, were “first” to offer FX service. Just as with the CLECs’ FX and FX-like offerings, when the ILEC provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the jurisdiction (i.e., local vs. toll) of traffic delivered from the foreign exchange to the end user is determined as if the end user were physically located in the foreign exchange.

LECs offer a variety of services that use VNXXs as Petitioners define that term. Qwest Corporation (“Qwest”), for example, offers Market Expansion Line (“MEL”) service, which permits a customer to receive calls at a telephone number in one local calling area that are automatically forwarded to a different number outside that local calling area. Attached as Exhibit A is Qwest’s service description of Market Expansion Line. MEL is described as a service that provides a “local identity in another area by providing a local phone number...in a new area without requiring a physical location there.” Such calls would be toll calls if dialed directly to the forwarded number, but the subscriber placing the call does not incur a toll charge. If a carrier other than Qwest serves that calling subscriber, moreover, that carrier does not receive

originating access charges from Qwest for delivering the call but actually is responsible for paying Qwest any reciprocal compensation charges applicable to local calls. Other LECs—undoubtedly including Petitioners—offer a similar service, usually called Foreign Exchange service, which permits a customer to make and receive local calls to/from subscribers in an exchange in which the customer is not physically located. Qwest also offers a “Wholesale Dial” service targeted specifically at ISPs that appears to allow assignment of numbers in multiple rate centers to its ISP customers. Attached as Exhibit B is Qwest’s service description of Wholesale Dial which includes “local access telephone numbers.” Both of these services are remarkably like a VNXX service. Wireless service providers also make significant use of VNXXs. Wireless customers often make or receive wireless calls outside the local calling area to which the telephone number is assigned for rating and routing purposes. Calls originated by wireless customers are local calls when placed to anyone within the metropolitan statistical area (“MSA”), but calls from “landline” subscribers to wireless customers are local to the calling party only within the ILEC local calling area. Wireless customers thus may not physically be located within the local calling area to which their telephone number is assigned, but calls they receive from landline subscribers who are located in that area are local calls. For that reason, wireless customers may choose telephone numbers for their cellular, paging, or other wireless services from a local calling area that is different than the physical location of their residences or businesses to enable their family, friends, or customers to call them without incurring toll charges.

Other state commissions have concluded that CLECs are entitled to offer such services. The New York Public Service Commission rejected the argument that ILECs’ provisioning of Foreign Exchange service is distinguishable from CLECs’ provisioning of a comparable service and refused to impose any requirements beyond those included in the LERG:

The Small Companies defined foreign exchange based on technology used to complete the call. This definition requires that the terminating carrier have a physical presence in the exchange, and provide “dial tone” from a switch physically located in the exchange. Small Companies detailed technical and rate structure differences between what the incumbent telephone industry has called foreign exchange service and the service now offered by CLECs. However, the [Commission’s prior] Order does not so narrowly define foreign exchange service based on call completion technology. Instead, it defines foreign exchange service operationally, i.e. making local service possible in an exchange where the customer has no physical presence.

We have previously recognized that the architecture of new entrant networks will differ from that of incumbents and stated that CLECs need not replicate the incumbent’s service offerings, rate centers, or customer mix. The Small Companies’ foreign exchange definition does not take into account that CLEC networks do not and are not expected to mirror networks of incumbent carriers. *The only standard that must be met is that established in the LERG which requires calls to be rated based on the NPA-NXX of the called number, not the customer’s physical location.* Petitioners have not presented any error of law or fact to challenge the underlying principle adopted by the Commission; i.e., non-discriminatory treatment of calls from Independent customers to incumbent foreign exchange numbers vis-a-vis calls to CLEC numbers with virtual NXXs.

Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, NYPSC Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates at 4-5 (Sept. 7, 2001) (emphasis added and footnotes omitted)(<http://www.dps.state.ny.us/fileroom/doc10430.pdf>).

Other commissions have reached similar conclusions.¹¹ To our knowledge, not a single state commission has ruled that the service could be banned.¹²

It can thus be seen that Petitioners’ effort to characterize VNXX as a “scam” “arbitrage” or “bridge” is little more than an attempt to preserve monopoly control of the FX and related markets.

¹¹ See *In the Matter of the Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation*, Michigan PSC Case No. U-12696, Opinion and Order at 10-11 (January 23, 2001) (<http://www.cis.state.mi.us/cgi-bin/mpsc/vieworder.cgi?filename=/mpsc/orders/comm/2001/u-12696.htm>); *Re: Petition of Focal Communications Corporation of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Bell Atlantic – Pennsylvania, Inc.*, Pennsylvania PUC Docket No. A-310630F0002 (January 24, 2001) (<http://puc.paonline.com/PcDocs/265577.doc>); *In the Matter of Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, North Carolina Utils. Comm’n Docket No. P-474 Sub 10, Recommended Arbitration Order at 66-74 (April 3, 2001)(<http://www.ncuc.commerce.state.nc.us/selorder/bp040202.pdf>);

¹² A possible exception is Maine which has adopted a unique regime for ISP-bound traffic.

B. Petitioners' fears of being subject to claims of discrimination are without merit.

At paragraphs 14—17 Petitioners argue that VNXX service is more in the nature of interexchange service and that Petitioners may thus face claims of “discrimination in rates as between the CLEC using a VNXX and an IXC which does not.”¹³

As noted above, this claim is hypothetical and premature. Petitioners do not allege that any person or carrier has in fact made such a claim or that such a claim is likely. Moreover, it is based on an incorrect analysis of the nature of VNXX service.

The numbering administrator assigns telephone numbers, generally in blocks of 10,000 numbers (NXX blocks), for use by local exchange and wireless carriers to assign to their end user customers when providing telephone service. Each NXX block is “homed,” *i.e.*, assigned for rating purposes to a particular geographic area and for routing purposes to the switch location where carriers are required to route traffic directed to these numbers pursuant to the local exchange routing guide (“LERG”). When the NXX block is assigned to a competing local exchange carrier (“CLEC”), all carriers are required to route traffic destined to those telephone numbers to the CLEC. In general CLECs serve similar geographic areas as ILECs albeit with fewer switches. Consequently for the majority of exchanges the CLEC routing point will necessarily be outside the exchange boundary. The actual routing of calls has nothing to do with the rating of a call. A call is rated as local when the originating NPA-NXX (“calling party”) is assigned to the same local calling area as the terminating NPA-NXX (“called party”)¹⁴.

¹³ Petition, Para 17, pg 8.

¹⁴ Petitioners' reliance, in paragraph 15, on the FCC decision *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-bound Traffic*, CC 96-88, 99-68, F.C.C 01-131 to support Petitioners' “end-to-end” analysis is misplaced. More recently, the FCC specifically addressed the issue of VNXX traffic, concluding that under the “current system, [...] carriers rate calls by comparing the originating and terminating NPA-NXX codes.” The FCC went on to explain in that same paragraph that “Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The Parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.” *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, FCC Order DA 02-1731, released 2002, at Para 30. A copy of relevant portions of this decision is attached as Exhibit C.

The Petitioners fail even to attempt to explain how any of its members would be violating anti-discrimination or undue/unreasonable preference statutes if its members route and rate traffic pursuant to the LERG. Even assuming for the sake of argument that another carrier is somehow acting improperly by assigning telephone numbers homed to one rate center to customers located in another rate center, nothing in those statutes or Commission rules requires—or even authorizes—ILECs to police other carriers' use of number resources. The Petition thus has failed to demonstrate any uncertainty with respect to the interpretation or application of Idaho Code 61-315, much less the existence of an actual controversy arising out of any such uncertainty.

Petitioners do not legitimately fear that its members are in any danger of violating the statutory provisions cited in the Petition. Rather, Petitioners' goal is to prohibit other carriers from configuring services in a manner of which Petitioners disapprove.

C. Petitioners' claim that VNXX impairs number resources is unsubstantiated.

At paragraphs 20 and 21 Petitioners vaguely assert that VNXX raises concerns about conservation of numbering resources and preserving the 208 area code for the entire state of Idaho. The Petitioners do not even attempt to quantify the magnitude of this concern or to provide any facts showing a linkage between VNXX and the stated concerns.

Other Commissions have rejected similar arguments. The California Commission rejected this claim, saying:

We disagree with Pacific's claim that the Pac-West service arrangement should be prohibited because it contributes to the inefficient use of NXX number resources. While we are acutely aware of the statewide numbering crisis and are actively taking steps to address it, we do not believe that imposing restrictions or prohibitions on [CLEC] service options is a proper solution to promote more efficient number utilization. Under present industry rules, a carrier seeking to provide service in a given rate center must obtain NXX codes in blocks of numbers no smaller than 10,000. This requirement applies whether the customer being served is an ISP or any other customer. Moreover, there is no reason to conclude necessarily that a carrier will use any NXX code only to provide service to ISPs which are located outside of the assigned NXX rate center. For example, both Pac-

West and WorldCom report they are actively pursuing numerous opportunities to provide profitable telecommunications services throughout their service areas. Their current subscribers include paging companies that have a significant demand for local DID numbers, which they, in turn, assign to local end users who typically are physically located in the assigned rate centers. Customers also include banks, retail stores, and other businesses, both located inside and outside the assigned rate centers. Rather than imposing policies restricting carriers' service options, we believe the proper approach is to provide incentives for carriers to expand their service offerings so that NXX codes will become more fully utilized. Accordingly, we find no basis to prohibit carriers from assigning NXX prefixes rated for one exchange to customers located in another exchange as a means of offering a local presence where such an arrangement is technologically and economically efficient, and where intercarrier compensation is fairly provided. We shall not prohibit [CLECs] from designating different rating and routing points just because such an approach may differ from traditional methods used by ILECs. Such a prohibition could undermine the incentives for carriers to develop innovative service alternatives in the most economically and technologically efficient manner.¹⁵

Further, in Idaho, the Commission should consider the facts before accepting the Petitioners' unsubstantiated claims about how the "sky is falling" with respect to number resources. For example, like many other states, the Idaho Commission has addressed numbering issues by instituting a responsible program of number pooling and reclamation, postponing the problem of number exhaust for at least eight years.¹⁶ There is no evidence to suggest that the offering of VNXX services would have any impact on number resource availability in Idaho as compared to any other services offered by competitive carriers. Despite the Petitioners' claims, VNXX is not a threat to number conservation.

D. Petitioners' characterization of VNXX as "bridging" or "arbitrage" is wrong.

At Paragraph 22 the Petitioners rely on the Commission's prior decision in *Local Exch. Cos. v. Upper Valley Communications Inc.*, IPUC Case No. GNR-T-94-1. This reliance is

¹⁵ *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, et al.*, Rulemaking No. 95-04-043, Investigation No. 95-04-044, Decision No. 99-09-029 at 8 & 14 (Sept. 2, 1999) (link not available).

¹⁶ See http://www.puc.state.id.us/internet/press/050302_areacode.htm

misplaced for at least two reasons. First, as was the case in *Upper Valley*, provisioning of MTS service through Centron links is completely different from provisioning VNXX service. The two are not comparable in any respect, as a factual matter.

Second, and more significantly, *Upper Valley* was decided at a time when the mission of the Commission was to shield ILECs from anything that could be construed as local competition. As the Commission said in its Final Order:

...the Telecommunications Act does not authorize Upper Valley to provide telecommunication service in competition with U S WEST's Title 61 EAS services. *Idaho Code* § 62-615(1) provides that U S WEST retains "an exclusive service area franchise for telecommunication services which remain subject to Title 61." No telephone corporation shall provide telecommunication services to customers or end-users located within another telephone corporation's certificated service area, except through interconnection arrangements consented to by the certificate holder. *Id.* In this particular case, it is evident that U S WEST has not consented to interconnection arrangements that permit Upper Valley to use U S WEST's EAS trunks.¹⁷

This mission changed, of course, with the passage of the federal Telecommunications Act of 1996 which has its core provision:

In General.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.¹⁸

In the post-1996 environment, if error is to be made, it should be on the side of promoting competition, not propping up ILEC monopolies.

Similarly, in paragraph 18, the Petitioners seek a determination of whether VNXX violates Idaho Code section 62-622(4)(c) and does not present even a colorable claim as section 622(4)(c)

¹⁷ Order No. 25885, February 1995

(<http://www.puc.state.id.us/Scripts/dtSearch/dtisapi6.dll?cmd=getdoc&DocId=3373&Index=C%3a%5cProgram%20Files%5cdtSearch%5cUserData%5corders&HitCount=2&hits=19+1de9+&SearchForm=c%3a%5cnetpub%5cwwwroot%5csearch%5corders%5cdtSearch%5fform%2ehtml>). It is also worth noting that the *Upper Valley* case was decided after extensive discovery, pre-hearing investigation and a two-day evidentiary hearing and, in contrast to this case, an evidentiary record from which reasoned decisions could be made.

¹⁸ Telecommunications Act of 1996, Section 253(a).

is applicable, by its own terms, only to re-sold services. The section provides: “Telephone Corporations shall not *resell* ... a category of service to circumvent switched or special access charges.” (emphasis added).

Finally, the Petitioners’ position again ignores that the functionality provided by VNXX-based services is the same as would be offered through a traditional FX service. In both cases, a customer obtains a telephone number in a location where the customer has no physical presence. Thus, the Petitioners’ condemnation of VNXX services as unlawful would apply with equal force to the FX services that the ILECs themselves have offered for years. In the end, just as traditional FX services are permissible and in fact serve the public interest, so too should VNXX-based services be seen as a legitimate competitive response to customer demand for such services.

- 3. If the Commission reaches the merits of Petitioners’ claims, the Commission should deny Petitioners’ request for a declaration that VNXX are subject to toll and access charges, and should instead declare that VNXX traffic is “local” for rating purposes. Alternatively, the Commission should defer the issue of carrier compensation to a more appropriate proceeding.**

At Paragraph 23 Petitioners cite a series of decisions from other commissions, claiming those decisions support Petitioners’ claim that access charges should apply. A review of those cases shows they are either distinguishable or do not stand for the cited proposition.

The New York case of *US DataNet* did not involve VNXX at all, but the provision of long distance and other enhanced services through an alleged Internet protocol (IP) telephony platform. Moreover, even if one were to move beyond the fact that the New York commission was addressing an entirely different issue from VNXX in that case, the New York commission made clear that it was undertaking a fact-specific analysis “focused on an individual service offering” rather than making any larger-scale policy pronouncements along the lines of that sought here by

the Petitioners.¹⁹ And, as noted above, the New York Commission has, in other cases, squarely addressed the question of VNXX traffic, and has held that VNXX service may be offered without payment of access charges.²⁰

The other cited cases, with the exception of the Maine Commission case²¹ were all arbitration disputes regarding specific facts and specific service configurations. In consequence, they do not provide meaningful guidance regarding a generalized question of carrier compensation. The Idaho Commission, like the commissions in Georgia, Tennessee, Missouri and South Carolina should wisely wait until the question of carrier compensation is squarely presented.

Moreover, the Petition does not direct the Commission's attention to decisions that have reached a different result. For example, the Connecticut Department of Public Utility Control approached the issue somewhat differently but reached a similar result. The Department concluded that Foreign Exchange ("FX") service was interexchange service but that traffic routed to subscribers of this service is not entitled either to mutual compensation or to switched access charges:

The CLECs points in this matter are well taken. While the Department believes that it is inappropriate that calls of this nature be subject to mutual compensation, the imposition of access charges on these calls is similarly improper. In the opinion of the Department, imposition of access charges on these calls would clearly not be in the public interest due to the level of customer confusion that would most likely be generated as well as the costs incurred by the CLECs in resolving those complaints. In addition, if the ILECs are permitted to imposing originating access charges for these calls, fairness would dictate that the CLECs also be permitted to

¹⁹ *Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges*, Case 01-C-1119, Order Requiring Payment of Intrastate Carrier Access Charges (N.Y.P.S.C. May 31, 2002), at 8 (<http://www.dps.state.ny.us/fileroom/doc11729.pdf>).

²⁰ *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*, NYPSC Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates at 4-7 (Sept. 7, 2001) (<http://www.dps.state.ny.us/fileroom/doc10430.pdf>).

²¹ *In re Investigation into Use of Central Office Codes*, Docket No. 98-758 (<http://www.state.me.us/mpuc/orders/98/98758orr.htm>).

apply terminating access charges as well. The public interest clearly would not be served. Accordingly, the Department will deny the Telco's request to impose FGA access charges on the carriers for these calls. *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, Decision at 45 (Jan. 30, 2002)

([http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/312eaafcc8e3008785256b520059a885/\\$FILE/010129-013002.doc](http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/312eaafcc8e3008785256b520059a885/$FILE/010129-013002.doc)).

CONCLUSION

Based on the reasons and authorities cited herein, it is respectfully requested that:

1. The Commission enter its order dismissing the Petition.
2. Alternatively, the Commission enter its order declaring and determining that VNXX service is neither illegal nor contrary to public policy in Idaho.
3. The Commission enter its order determining that the provision of VNXX service is not subject to payment of access charges, or alternatively, reserve the question of carrier compensation to a future appropriate proceeding.

Respectfully submitted this 1st day of November, 2002.

MCDEVITT & MILLER LLP

By: _____

Dean J. Miller

Attorneys for WorldCom, Inc, Time Warner Telecom of Idaho, LLC, Level 3 Communications, LLC, and AT&T Communications of the Mountain States, Inc.

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Qwest cannot provide interLATA long distance service originating, interLATA BXX service terminating, or interLATA private line or data services with either end in the states of AZ, CO, ID, IA, MN, MT, NE, NM, ND, OR, SD, UT, WA, and WY. Qwest provides Internet services in these states in conjunction with a separately billed, required Global Service Provider (GSP).

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- Easily scalable network service to meet increases in user demand
- Cost efficiency associated with network build-out, operations, maintenance, and monitoring
- Concentrating your efforts on core competencies, and expanding your end-user base
- Retaining control of end-user authentication, sales, marketing, customer service and billing
- Cost-effective, competitive pricing, as well as your choice of pricing options that best fits your strategic plans

Additionally, Qwest network technicians closely monitor your service and ensure a premium level of performance, security and reliability, as your end-user traffic is transmitted over the Qwest state-of-the-art networks.

Meeting Your Needs Now and in the Future

Qwest Wholesale Dial is fully scalable to meet the needs of your expanding business. We can help you quickly and easily implement modifications to your Internet dial-up access network, as they become necessary.

Features

As an ISP, you are well positioned to market and deliver your services strategically. By providing Internet connectivity, you are building a loyal customer community base, generating recurring revenue, and increasing the value of your company as your user base grows. To protect and expand that base quickly and seamlessly, you need an ISP dial-up network infrastructure provider with the necessary resources and expertise. We can make it happen for you. Qwest Wholesale Dial provides you with:

- Dial-up network infrastructure (Network-based modems, V.90 and ISDN protocol support)
- Local access telephone numbers
- Dial access to the public Internet
- IP transit for Internet access with best-in-class reliability and security
- Proxy remote authentication dial-in service (RADIUS) server for Authentication, Authorization, and Accounting (AAA standard)
- 24x7 network management and customer support from our Network Management Center
- Outstanding Service Level Agreements (SLAs) for connection success rate, packet loss, and latency
- Competitive pricing, with multiple pricing options

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Qwest cannot provide InterLATA long distance service originating, InterLATA SXX service terminating, or InterLATA private line or data circuit with either end in the states of AZ, CO, ID, IA, MN, MT, NE, NM, ND, OR, SD, UT, WA, and WY. Qwest provides Internet services in these states in conjunction with a separately billed, required Global Service Provider (GSP).

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
In the Matter of Petition of WorldCom, Inc.)	
Pursuant to Section 252(e)(5) of the)	
Communications Act for Preemption of the)	CC Docket No. 00-218
Jurisdiction of the Virginia State Corporation)	
Commission Regarding Interconnection)	
Disputes with Verizon Virginia Inc., and for)	
Expedited Arbitration)	
)	
In the Matter of Petition of Cox Virginia)	
Telcom, Inc. Pursuant to Section 252(e)(5) of)	
the Communications Act for Preemption of the)	CC Docket No. 00-249
Jurisdiction of the Virginia State Corporation)	
Commission Regarding Interconnection)	
Disputes with Verizon-Virginia, Inc. and for)	
Arbitration)	
)	
In the Matter of Petition of AT&T)	
Communications of Virginia Inc., Pursuant to)	
Section 252(e)(5) of the Communications Act)	CC Docket No. 00-251
for Preemption of the Jurisdiction of the)	
Virginia Corporation Commission Regarding)	
Interconnection Disputes With Verizon)	
Virginia Inc.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002

Released: July 17, 2002

By the Chief, Wireline Competition Bureau:

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entitled to compensation, and removing Cox's language establishing the numbers for the actual baseline, and subsequent growth cap, amounts.⁹⁴⁴

285. We disagree with Verizon's criticism of Cox's language implementing the growth cap for 2002.⁹⁴⁵ Verizon asserts that "the number of ISP-bound minutes for which [Cox] is entitled to compensation in 2001 may be *less* than the 2001 cap itself."⁹⁴⁶ While that may be true, the calculation of minutes to which Cox was entitled to compensation in 2002 is the product of the cap in 2001 and the 10 percent growth factor. The *ISP Inter-carrier Compensation Order* established a baseline – the first quarter of 2001 – as a starting point for all subsequent calculations. The growth cap for 2002 does not reflect a calculation independent of the first quarter of 2001, based on actual traffic for the whole of 2001.

2. Issue I-6 (Toll Rating and Virtual Foreign Exchanges)

a. Introduction

286. The parties disagree over how to determine whether a call passing between their networks is subject to reciprocal compensation (traditionally referred to as "local") or access charges (traditionally referred to as "toll"). The petitioners advocate a continuation of the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call. Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own

⁹⁴⁴ Thus, we adopt AT&T's proposed section 5.7.5.2.3, but replace the second sentence with the following: "The parties shall first determine the total number of minutes of use of ISP-bound Traffic, for which they were entitled to compensation, terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001." We adopt WorldCom's proposed section 8.5 of Attachment I, but replace the first sentence with the following: "For ISP-bound Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, the information access rates set out in Section 8.3.2 shall be billed by MCI to Verizon on ISP-bound Traffic for MOU only up to a ceiling equal to, on an annualized basis, the number of ISP-bound Traffic minutes, for which MCI was entitled to compensation, that originated on Verizon's network and was delivered by MCI during the first quarter of 2001, plus a ten percent growth factor." Finally, we adopt Cox's proposed section 5.7.7.4(a), but replace the last two sentences with the following: "The cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is calculated by multiplying the first quarter total by four and increasing the result by ten percent."

⁹⁴⁵ Accordingly, we also adopt Cox's proposed section 5.7.7.4(b), but revise it by replacing the last sentence with the following: "The cap for total Internet Traffic minutes for 2002 is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent." Finally, we adopt Cox's proposed sections 5.7.7.4(c)-(e) without revision.

⁹⁴⁶ See Verizon IC Brief at 10 n.4.

network as intraLATA toll traffic. Verizon argues simply that “toll” rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.

287. Of particular importance to this issue is a comparison of the two sides’ FX services. When Verizon provides FX service (“traditional FX”), it connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring toll charges. Verizon then assigns the FX subscriber a number associated with the distant switch. By contrast, when the petitioners provide their virtual FX service, they rely on the larger serving areas of their switches to allow callers from a distant Verizon legacy rate center to reach the virtual FX subscriber without incurring toll charges. Thus, the petitioners simply assign the subscriber an NPA-NXX associated with the rate center the subscriber designates and rely on their switches’ broad coverage, rather than a dedicated private line, to transport the calls between legacy rate centers.

288. We adopt the petitioners’ proposed language for this issue. Verizon has failed to propose a workable method for rating calls based on their geographical end points, and it has alleged no abuse in Virginia of the process for assigning NPA-NXX codes.

b. Positions of the Parties

289. AT&T notes that Verizon itself compares originating and terminating NPA-NXXs when it decides whether to charge reciprocal compensation for completing calls from another carrier’s customer to Verizon’s FX subscribers.⁹⁴⁷ If the two relevant NPA-NXXs are within the same rate center, Verizon charges reciprocal compensation for its completion of the call, regardless of where a caller is actually located.⁹⁴⁸ AT&T argues that section 251(b)(5) similarly obligates Verizon to pay reciprocal compensation for calls to AT&T’s virtual FX customers when the Verizon customer’s NPA-NXX falls within the same rate center as the virtual FX subscriber’s number does.⁹⁴⁹

290. AT&T disagrees with Verizon’s argument that section 251(g) exempts virtual FX traffic from section 251(b)(5)’s reciprocal compensation obligation.⁹⁵⁰ According to AT&T, section 251(g) merely grandfathered pre-existing rules governing exchange access and information access, and there were no such rules relating to the category of traffic at issue here.⁹⁵¹ AT&T further asserts that virtual FX traffic is not exchange access traffic, which

⁹⁴⁷ AT&T Brief at 88-89.

⁹⁴⁸ *Id.* at 89.

⁹⁴⁹ *Id.* at 92, citing 47 U.S.C. § 251(b)(5).

⁹⁵⁰ *Id.* at 90-93.

⁹⁵¹ *Id.* at 92-93.

involves, by definition, the origination and termination of telephone toll calls.⁹⁵² AT&T notes that telephone toll service is defined as “telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.”⁹⁵³ Because AT&T does not impose a separate charge for its virtual FX service, AT&T argues that it is not a toll service. Accordingly, AT&T argues, it falls within the section 251(b)(5) reciprocal compensation regime rather than being subject to Verizon’s access tariffs.⁹⁵⁴

291. AT&T also argues that its proposal does not impose any additional costs upon Verizon, whether or not virtual FX is involved, because AT&T designates a single POI for an NPA-NXX and Verizon’s responsibility for transporting a call ends there, regardless of the physical location of the AT&T customer.⁹⁵⁵ AT&T argues that it would be redundant and inefficient for it to mimic Verizon’s traditional FX service by purchasing a dedicated private line, as Verizon proposes. AT&T asserts that such an arrangement would leave it at a serious competitive disadvantage.⁹⁵⁶

292. AT&T defends the structure of its virtual FX service, noting that Verizon does not claim that the petitioners are receiving NPA-NXX code assignments in exchanges where they do not actually serve customers of their own.⁹⁵⁷ AT&T distinguishes the Maine Commission decision upon which Verizon relies, noting that such numbering abuse is not at issue between AT&T and Verizon in Virginia.⁹⁵⁸ AT&T further asserts that, under Verizon’s proposal, AT&T would have to obtain NPA-NXX code assignments in every rate center where it has a customer, even though customers in some rate centers may be satisfied with numbers from another Verizon rate center.⁹⁵⁹ AT&T argues that this itself would unnecessarily waste numbering resources.⁹⁶⁰

⁹⁵² *Id.* at 93, citing 47 U.S.C. § 153(16).

⁹⁵³ *Id.*, citing 47 U.S.C. § 153(48).

⁹⁵⁴ *Id.*

⁹⁵⁵ *Id.* at 89-90.

⁹⁵⁶ *Id.* at 96. AT&T notes that this interoffice transport is unnecessary according to AT&T’s network architecture of a single switch with a single POI. *Id.* at 96 n.323, citing Tr. at 1908.

⁹⁵⁷ *Id.* at 93-94; *id.* at 94 n.317, citing Tr. at 1909.

⁹⁵⁸ AT&T Reply at 49, citing AT&T Ex. 8 at 56-57. The Maine Commission revoked NPA-NXX assignments when it found that a competitive LEC was receiving numbering assignments for exchanges where the competitive LEC served no customers. *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC*, Dkt No. 98-78, Maine PUC (rel. June 30, 2000). AT&T notes that, in any case, this Maine decision was concerned with abuses related to ISP-bound traffic during the era before adoption of the Commission’s *ISP Inter-carrier Compensation Order*. AT&T Reply at 49.

⁹⁵⁹ AT&T Brief at 94.

293. AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic.⁹⁶¹ AT&T asserts that there is currently no way to accomplish this by, as Verizon suggests, comparing the physical end points of a call.⁹⁶² Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.⁹⁶³

294. WorldCom asserts that every carrier in the country, including Verizon, rates calls by comparing originating and terminating NPA-NXX codes and that no state has devised a different method to distinguish between "local" and toll traffic.⁹⁶⁴ WorldCom asserts that the Commission has never held that the physical locations of the calling and called parties determine whether a call is "local"; it has left the determination of "local" calling areas to the states.⁹⁶⁵ WorldCom also notes that Verizon's billing system cannot identify the physical location of a calling or called party, even though Verizon proposes to base its intercarrier compensation regime on that foundation.⁹⁶⁶ WorldCom notes that Verizon's network is not the only one providing transport to and from virtual NPA-NXXs.⁹⁶⁷ According to WorldCom, it often hauls traffic for much longer distances than does Verizon.⁹⁶⁸ In any case, WorldCom notes, its virtual FX service does not change the average transport distance for Verizon because the incumbent LEC still must transport the traffic to WorldCom's POI.⁹⁶⁹

295. WorldCom takes issue with Verizon's assertion that it loses toll revenues because of virtual FX service. WorldCom notes that the basic enticement of a virtual FX is that it enables a calling party to call a business in a distant location without incurring a toll charge. Absent a virtual local number, WorldCom argues, the caller would typically find a similar

(Continued from previous page) _____

⁹⁶⁰ *Id.*

⁹⁶¹ *Id.*

⁹⁶² *Id.* at 95, citing Tr. at 1813, 1815, 1905.

⁹⁶³ AT&T Reply at 47, citing Verizon IC Brief at 19.

⁹⁶⁴ WorldCom Brief at 82.

⁹⁶⁵ WorldCom Reply at 76, citing *Local Competition Order*, 11 FCC Rcd. at 16013-14, para. 1035.

⁹⁶⁶ WorldCom Brief at 84.

⁹⁶⁷ *Id.* at 87.

⁹⁶⁸ *Id.* at 88.

⁹⁶⁹ *Id.*

vendor that has a local number.⁹⁷⁰ Thus, according to WorldCom, without its virtual FX offering, the call to the distant location likely would not take place at all.⁹⁷¹

296. WorldCom argues that it should not be required to purchase a dedicated private line from Verizon and provide traditional FX service. According to WorldCom, this would eliminate competitive pressure and freeze rates at their current levels because the competitive LEC would essentially replace all the private-line revenue that Verizon would otherwise have lost when it lost the FX customer.⁹⁷² WorldCom argues that Verizon's proposed requirement also would prevent WorldCom from exploiting the advantages of its unique network architecture: Verizon's traditional FX service transports calls between two switches, while WorldCom typically serves an equivalent area with one switch.⁹⁷³

297. Cox argues that Verizon is trying to force it to match Verizon's network architecture.⁹⁷⁴ Cox further asserts that Verizon's end-to-end compensation regime is infeasible and that Verizon makes no workable proposal for determining the originating and terminating points of a call.⁹⁷⁵ Cox argues that Verizon compares apples to oranges when it complains that it receives compensation for transporting calls to Verizon's FX customers, but not for transporting virtual FX calls to Cox's switch.⁹⁷⁶ Cox asserts that Verizon's costs for delivering traffic to Cox have nothing to do with the nature of the underlying service, but rather with the distance to Cox's switch.⁹⁷⁷ The difference in compensation, Cox notes, arises from the dedicated private line charge that Verizon imposes on its traditional FX customers—a charge that Verizon obviously cannot impose on Cox's customers.⁹⁷⁸

298. Finally, Cox notes that Verizon need not be concerned about NPA-NXX code assignment abuses, because state commissions have acted quickly to correct such abuses, and

⁹⁷⁰ *Id.* at 89.

⁹⁷¹ *Id.*

⁹⁷² *Id.*

⁹⁷³ *Id.*

⁹⁷⁴ Cox Brief at 35. Verizon admits, Cox notes, that requiring a competitive LEC to duplicate Verizon's network architecture is inefficient and unnecessarily costly. *Id.* at 36-37, citing Tr. at 1822-23.

⁹⁷⁵ Cox Brief at 39, citing Tr. at 1811-12; Cox Reply at 27-28, citing Tr. at 1812-14.

⁹⁷⁶ Cox Brief at 37.

⁹⁷⁷ *Id.* at 37. Notably, Cox asserts that Verizon does not split access revenues for traditional FX calls with Cox or other competitive LECs. Cox Reply at 26.

⁹⁷⁸ Cox Brief at 37-38.

Verizon has not shown evidence of any abuse here.⁹⁷⁹ According to Cox, this arbitration is not the appropriate forum to evaluate compliance with such regulatory requirements.⁹⁸⁰

299. Verizon argues that the petitioners are effectively trying to thwart Verizon's access regime by treating toll traffic as "local" traffic.⁹⁸¹ Verizon asserts that the *ISP Inter-carrier Compensation Order* supports its position that a call's jurisdiction is based on its end points.⁹⁸² Accordingly, Verizon argues, there is no difference between a virtual FX call and a toll call.⁹⁸³ In contrast to virtual FX, Verizon asserts that its traditional FX service is an alternative pricing structure for toll service, rather than a "local" service as claimed by the petitioners.⁹⁸⁴ Verizon argues that the petitioners should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the petitioner's POI.⁹⁸⁵

300. Verizon acknowledges that virtual FX traffic cannot be distinguished from "local" traffic at Verizon's end office switches.⁹⁸⁶ Verizon proposes, however, that the petitioners conduct a traffic study or develop a factor to identify the percentage of virtual FX traffic.⁹⁸⁷ Verizon would then exchange the identified proportion of traffic either pursuant to the governing access tariff or on a bill and keep basis under its VGRIP proposal.⁹⁸⁸ Finally, Verizon notes that several state commissions, including Maine, Connecticut, Missouri, Texas and Georgia, have found that virtual FX traffic is not subject to reciprocal compensation.⁹⁸⁹

c. Discussion

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's

⁹⁷⁹ *Id.* at 40.

⁹⁸⁰ *Id.*

⁹⁸¹ Verizon IC Brief at 16.

⁹⁸² *Id.*, citing *ISP Inter-carrier Compensation Order*, 16 FCC Rcd at 9159-60, 9163, paras. 14, 25.

⁹⁸³ *Id.* at 17.

⁹⁸⁴ *Id.* at 18.

⁹⁸⁵ Verizon IC Reply at 11.

⁹⁸⁶ Verizon IC Brief at 19.

⁹⁸⁷ *Id.* at 19.

⁹⁸⁸ *Id.*

⁹⁸⁹ *Id.* at 19-21.

language that would rate calls according to their geographical end points.⁹⁹⁰ Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.⁹⁹¹ The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.⁹⁹²

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be “local” traffic. However, Verizon’s contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.⁹⁹³

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers.⁹⁹⁴ To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC’s NPA-NXX allocations.

3. Issue III-5 (Tandem Switching Rate)

a. Introduction

304. In the *Local Competition First Report and Order*, the Commission found that the costs of transport and termination are likely to vary depending on whether traffic is routed through a tandem switch or routed directly to an end-office switch.⁹⁹⁵ It concluded, therefore,

⁹⁹⁰ Thus, we adopt WorldCom’s November Proposed Agreement to Verizon, Attachment I, § 4.2.1.2 (subject to modifications accomplished below in connection with Issue IV-35); Cox’s November Proposed Agreement to Verizon, §§ 5.7.1 and 5.7.4; and AT&T’s November Proposed Agreement to Verizon, § 1.51. We have previously rejected the proposals that Verizon offers to AT&T with respect to this issue. See *supra* Issues I-1 and VII-4 (rejecting, Verizon’s November Proposed Agreement to AT&T, § 5.7.3); Issue I-5, subsection (d) (rejecting Verizon’s November Proposed Agreement to AT&T, § 1.68a). We reject Verizon’s November Proposed Agreement to WorldCom, Part B, § 2.81; we have previously rejected Verizon’s Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. See *supra* Issue I-2. We reject the last sentence of Verizon’s November Proposed Agreement to Cox, § 5.7.1; we have previously rejected Verizon’s November Proposed Agreement to Cox, § 1.60a. See *supra* Issue I-5.

⁹⁹¹ See Tr. at 1889-1900.

⁹⁹² See AT&T Brief at 95; WorldCom Brief at 84; Cox Brief at 39; Tr. at 1812-13.

⁹⁹³ See Tr. at 1812-13.

⁹⁹⁴ See *Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC d/b/a/ Brooks Fiber*, Docket No. 98-78, Maine PUC (rel. June 30, 2000).

⁹⁹⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 2002, true and correct copies of the foregoing Joint Comments, were forwarded, via email, to the following:

Morgan W. Richards
MOFFATT THOMAS BARTLETT ROCK & FIELDS
P.O. Box 829
Boise, Idaho 83701
mwr@moffatt.com

Gail Long
TDS TELECOM
P.O. Box 1566
Oregon City, Oregon 97045-1566
gail.long@tdstelecom.com

Ted Hankins
CENTURY TEL
P.O. Box 4065
Monroe, Louisiana 71211-4065
Ted.Hankins@centurytel.com

Clay Sturgis
MOSS ADAMS
601 Riverside, Suite 1800
Spokane, Washington 99201-0063
clays@mossadams.com

Conley Ward
GIVENS PURSLEY
P.O. Box 2720
Boise, Idaho 83702
cew@givenspursley.com

Peter Blisard
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Peter.Blisard@Level3.com

Dean Randall
VERIZON NORTHWEST, INC.
P.O. Box 1100
Beaverton, Oregon 97075-1100
dean.randall@verizon.com

Kenneth C. Howell
HAWLEY TROXELL ENNIS & HAWLEY
877 West Main Street, Suite 1000
Boise, Idaho 83702
kch@hteh.com

Gene DeJordy
WESTERN WIRELESS CORPORATION
3650 131st Avenue, Southeast, Suite 400
Bellevue, Washington 98006
gene.dejordy@wwireless.com

Donald L. Howell, II
IDAHO PUBLIC UTILITIES COMMISSION
472 West Washington Street
Boise, Idaho 83702
dhowell@puc.state.id.us

Doug Cooley
IDAHO PUBLIC UTILITIES COMMISSION
472 West Washington Street
Boise, Idaho 83702
dcooley@puc.state.id.us

Susan Travis
WORLD COM, INC.
707 17th Street, 36th Floor
Denver, Colorado 80202
Susan.a.Travis@wcom.com

Eric S. Heath
SPRINT LEGAL & EXTERNAL AFFAIRS
100 Spear Street, Suite 930
San Francisco, California 94105
eric.s.heath@mail.sprint.com

Mary S. Hobson
Stoel Rives llp
101 So. Capitol Blvd., Suite 1900
Boise, Idaho 83702
mshobson@stoel.com

Brian Thomas
TIME WARNER TELECOM
223 Taylor Avenue North
Seattle, Washington 98109
Brian.Thomas@twtelecom.com

Terry Haynes
VERIZON NORTHWEST, INC.
P.O. Box 152092
Irving, Texas 75015
terry.haynes@verizon.com

Rebecca B. DeCook
AT&T COMM. OF THE MOUNTAIN STATES
1875 Lawrence Street, Suite 1401
Denver, Colorado 80202
decook@att.com

Cathly L. Brightwell
AT&T COMM. OF THE MOUNTAIN STATES
2120 Caton Way, Suite B
Olympia, Washington 98502
brightwell@att.com

