**COMMISSION’S FINDINGS FROM THE VNXX COMPLAINT DOCKET UT-063038**

* In Washington, telephone calls are classified as local or interexchange based on geographic calling areas, not on the basis of assigned telephone numbers. VNXX traffic does not originate and terminate within the same local calling area and is thus intrastate interexchange traffic subject to Commission determined compensation and not subject to section 251(b)(5) of the Act. (Conclusions of Law 14).
* The Act preserved in section 251(g) the existing compensation scheme for interstate and intrastate interexchange and information access traffic, but under section 251(b)(5) required local exchange carriers to apply a new form of compensation, known as reciprocal compensation, to the transport and termination of telecommunications traffic. The FCC determined that reciprocal compensation obligations under section 251(b)(5) apply only to traffic that originates and terminates within a local calling area, such that the customer initiating the call pays the originating carrier and the originating carrier must pay the terminating carrier for completing the call. (¶ 18).
* Regulatory arbitrage is associated with VNXX ISP-bound traffic in Washington. (Conclusions of Law 18).
* VNXX traffic is lawful under applicable state law if appropriate compensation is paid for the exchange of such traffic between carriers. RCW 80.36.080, .140, .160, .170. (Conclusions of Law 9).
* Bill and keep for VNXX traffic is a workable compensation methodology and it is reasonably possible to distinguish between VNXX traffic and truly local traffic. (Findings of Fact 18).
* Bill and keep is a reasonable methodology to address intercarrier compensation for the exchange of VNXX traffic at fair, just and reasonable rates, provided that the CLEC bears the cost of transporting VNXX calls, except where it has built its own transport facilities, has procured alternative facilities from a third party, or uses special access services for transporting VNXX calls to and from a local calling area where it does not have switching services. (Conclusions of Law 19).

KEY FINDINGS FROM THE NOVEMBER 14TH, 2011 ORDER IN THIS DOCKET, ORDER 12.

* Neither the *ISP Remand Order* nor the *Mandamus Order* eliminated the distinction between local and interexchange calls. Rather those orders found that, even though ISP-bound calls within a local calling area fell under the reciprocal compensation provisions of section 251(b)(5), the calls were interstate calls under an end-to-end analysis. Because those ISP-bound calls were interstate in nature, the FCC had the authority to set the rates for such calls under section 201. We find nothing in the *ISP Remand Order* or the *Mandamus Order* that affects our authority to classify intrastate VNXX traffic. (¶ 74)
* Furthermore, the rules for classifying calls as local or interexchange in Washington have been clearly delineated and understood by the parties. When the CLEC’s adopted Qwest’s local calling areas by and through their interconnection agreements, we have to believe that they understood the financial implications of their actions. No matter what innovative network or numbering arrangements have been made to facilitate ISP-bound traffic, calls are either local as defined by our rules or they are not. If they terminate outside the callers local exchange, we treat them as interexchange in nature and require compensation as such. This is the import of our *Final VNXX Order* and we believe our analysis then and now to be correct. The CLECs should bear the cost of using Qwest’s network to serve their customers. This is a fundamental principle of intercarrier compensation that is reflected in interconnection agreements between these parties and those of all other companies within our jurisdiction. (¶ 77)
* We determined above that: (1) the *Mandamus Order* does not change the scope of the *ISP Remand Order* and the compensation scheme it created, which only applies to calls within a local calling area; (2) that the section 251(g) exclusion still applies to ISP-bound traffic outside of a local calling area, and (3) that VNXX traffic does not originate and terminate within a local calling area. Thus, we find that the parties’ interconnection agreements and amendments, which require compensation at the rates set by the FCC, are not determinative of the rate for the narrow scope of ISP-bound traffic at issue in this case. Similarly, because we have found that VNXX ISP-bound traffic is subject to the section 251(g) exclusion, the traffic is *not s*ubject to compensation under section 251(b)(5). (¶ 90).
* Under these terms, it appears that VNXX traffic does not meet the definitions of Exchange Service or Access Services, but does meet the definition of IntraLATA Toll. (¶ 92).
* In light of our finding that the VNXX traffic in question is IntraLATA Toll or Toll-like traffic under the agreements, and the parties’ disputes about the amount and type of traffic at issue, it is necessary to develop a full evidentiary record as to the exact location of the CLECs’ ISP modems, at the time of the traffic in question in this proceeding, in order to determine which traffic is subject to our jurisdiction and should be subject to such toll rates (¶ 96).

**FROM ORDER 13 IN THIS DOCKET – regarding the terms of the ICA**

* We do not read the definition of “telephone exchange service” to include the VNXX service the CLECs provide. Neither do we read the portion of the definition which allows a “comparable service” to apply to the CLECs’ VNXX service. A “comparable service” must still be provided “within an exchange or connected system of exchanges,” i.e., a local calling area. As we stated in Order 12, “[s]tate law distinguishes local and interexchange traffic based on the geographic endpoints of the call.” However, these proceedings ultimately concern enforcement of the CLECs’ interconnection agreements with Qwest, and the terms of those agreements determine the compensation for the VNXX traffic at issue. The CLECs ignore the actual terms of their agreements in their petition for reconsideration. As we noted in Order 12, those agreements define the following types of service: “Exchange Service,” “Access Service,” and “Exchange Access (IntraLATA Toll)”. While the Act may define “telephone exchange service,” the parties specifically defined the types of service allowed under the agreements, including “Exchange Service,” which determines the compensation due under the agreements. We continue to find that these contractual definitions and terms control the outcome of this proceeding. (¶ 15, internal footnotes omitted).

**FROM ORDER 18 IN THIS DOCKET – regarding jurisdiction**

* The Commission is not attempting to set new rates for interstate traffic in this case. The District Court, fully aware of the authority the CLECs cite, remanded this case to the Commission so that the agency would apply state law to classify VNXX calls as within or outside a local calling area. The Commission did so in Order 12, finding that VNXX ISP-bound calls that were outside a local calling area should be classified as either intrastate toll or interstate traffic depending on the geographic or physical aspects of the origination and termination of such traffic. We see no reason to revisit our earlier decision. (¶ 18).
* To be clear, the Commission is not asserting jurisdiction to set rates for ISP-bound calls that are interstate in nature. There is a clear distinction between our ratemaking authority and our powers of interpretation and enforcement under Section 252 of the Act. As the CLECs originally requested in 2005, the Commission is exercising its authority under Section 252 of the Act to interpret and enforce the parties’ ICAs, including applying the appropriate compensation under the ICA, depending on the nature of the traffic. Significantly, the CLECs expressly acknowledge that Section 252 of the Act authorizes the Commission to apply the rates set forth in the parties’ ICAs to the traffic in question, whether intrastate or interstate. In either case, the Commission has authority to interpret and enforce the compensation arrangements set out in the parties’ ICAs. (¶ 19).