

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**IN THE MATTER OF THE PETITION
FOR ARBITRATION OF AT&T
COMMUNICATIONS OF THE PACIFIC
NORTHWEST AND TCG SEATTLE WITH
QWEST CORPORATION PURSUANT TO
47 U.S.C. § 252(b)**

DOCKET NO. UT-033035

EXHIBIT TRF-4

TO

DIRECT TESTIMONY OF THOMAS R. FREEBERG

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 3, 5, 17, 18, 19, 21, 30, and 34)

September 25, 2003

Virtual NXX

T. Freeberg
6/27/03

Background

By way of example, if the retail customer of a Local Exchange Carrier (LEC) is located in a metropolitan area and that customer wishes for its callers from a rural area to reach it toll-free, there are various means to accomplish this. Foreign Exchange Service, Market Expansion Line Service, Custom Routed Private Line and 8XX service are a few such means. In each case, the charges that would otherwise have been faced by the calling party are recovered from the called party instead. This might be considered a "toll replacement charge" in contrast to the toll charge normally faced by the call originator.

Recovering the cost of delivering an interexchange call from the *called* party rather than the *calling* party is generally tariffed and it fulfills a market need. The cost causer retains responsibility for the special calling that it requests.

When two Local Exchange Carriers jointly provide 8XX service, their costs are recovered, in part, by the switched access charges that are paid by the terminating LEC (the 8XX provider) to the originating LEC.

Virtual NXX (VNXX) service is an arrangement that provides caller's with the functionality of 8XX service, but allows the terminating LEC to avoid the cost of switched access charges. This scheme requires the assignment of a virtual NXX. The NXX is virtual, because it is assigned a Vertical and Horizontal coordinate in the calling party's local calling area, rather than the called party's local calling area. In other words, the 'virtual' NXX does not actually provide local exchange service in the local calling area it is assigned. This scheme, if allowed, would convert interexchange calls to local calls, not only for the benefit of callers, but to the benefit of the VNXX provider – who receives the equivalent of switched access service, but at local exchange prices. Cavalier, a facilities-based CLEC, recently described to the FCC the current problems associated with the VNXX scheme.

NXX Assignment

NXX codes are generally assigned to a specific local calling area. Each NXX is also assigned a unique V and H (Vertical and Horizontal) coordinate, which is used by Local Exchange Carriers and Interexchange Carriers for the rating of interexchange calls. If a LEC provides local service from a single switch within a LATA or state, it is entitled to be assigned unique NXXs for each of the local calling areas to be served by the switch. How those NXXs are used is a critical matter. If a LEC is assigned an NXX and it has constructed loops to retail

subscribers located within the local calling area of the NXX, that assignment is consistent with the intended use of the NXX. If a LEC is assigned an NXX and it uses the NXX to provide some “foreign exchange” service, then that too is proper use of the assigned NXX.

But if a LEC is assigned an NXX from a distant local calling area and it creates a primary line of business that misrepresents, from a carrier-to-carrier perspective, toll free calling as conventional local calling, then that is an unintended use of the assigned NXX.

In a typical 'virtual' NXX arrangement, a CLEC's switch is located in a centralized, metropolitan area. The CLEC then offers end users located in the metropolitan area telephone numbers (from the Virtual NXX) that appear to be located in a distant local calling area. Callers from the distant local calling area can dial the called party's telephone number, and it will appear to the calling party to be a local call. Qwest must haul the call from the calling party's rural local calling area to the metropolitan area (where the Qwest tandem is located) and hand the call off to the CLEC who terminates the call to the called party (or, in the case of Internet-bound traffic, relays the call to an ISP), who is located in the metropolitan area. In this example, Qwest receives no toll revenue from the calling party, incurs the cost of transporting this interexchange call a potentially significant distance, sends the call to the CLEC, and, rather than receiving the appropriate switched access charges for the transport of this interexchange call, Qwest is billed by the CLEC on the basis that the call is a local call, subject to reciprocal compensation.

Qwest does not control number assignment. A regulator must control use of NXXs or face a predictable set of reactive filings from ILECs. A LEC who is assigned an NXX by the administrator should be legally bound to agree that its privilege will be revoked if, one year later, the LEC has not created loops from its source of dial tone to a base of customers located within the local calling area associated with the NXX it was granted.¹ This is a critical prerequisite to continued interconnection with other LECs. This is anticipated by 47 C.F.R. 51.711(a)(3) that anticipated a CLEC switch serving a wide area. A LEC's economic viability should not rely upon its provision of VNXX-based service.

Harm

Harm takes at least two forms:

- 1) VNXX undermines the structure of switched access charges – it allows a CLEC to offer toll-free interexchange service, and avoid switched access

¹ A wireless carrier should likewise be expected to demonstrate that it operates cell sites physically located with the local calling area associated with the NXX.

- charges. Avoidance of switched access charges should not be countenanced by the Commission.
- 2) VNXX requires the originating LEC (i.e. Qwest) to pay the terminating LEC reciprocal compensation because the interexchange call is falsely treated as a local call.

VNXX is really nothing more than a clever scheme by some CLECs to provide interexchange toll free service, avoid the cost of switched access, and receive payments for reciprocal compensation from Qwest by having an interexchange call improperly classified as a local call.

Because VNXX service is typically provided by a CLEC, the Washington Commission should not permit some CLECs to obtain NXXs under false pretenses to undermine the switched access rate structure that supports local rates of Qwest, other incumbent LECs, and most CLECs.

Workable Methods of Management

The Commission should not permit the misuse of NXXs for VNXX services.² One means of determining whether a particular NXX is being used improperly would involve the following steps:

1. CLEC has one switch in the LATA or state and has been assigned NXXs from local calling areas across the entire LATA or state.
2. Traffic on local interconnection trunk groups to a particular NXX is fully or nearly unidirectional, ILEC to CLEC (which signifies the possible use of the NXX for providing a toll-free service)
3. Analysis of interconnection call detail shows an abundance of what appear to be local calls in cities very distant from the interconnection trunk group.
4. The interconnected CLEC publicly advertises its presence in a local directory despite its having no presence there.

By these and other means, one LEC can identify a possible misuse of an NXX and ask a regulator to validate another LEC's intended use of the NXX. Any one of the four indicators is not enough to raise suspicion, but three or more is clear indication. If any LEC is unable to demonstrate the physical existence of loops

² See recent California PUC decision. There is no FCC precedent that validates this scheme and many Commissions have expressly rejected VNXX.

serving the local calling area where it has been assigned an NXX, either the NXX should be withdrawn or the offending LEC should pay other LECs a tariffed interexchange rate for all calls on a trunk group otherwise intended for the exchange of local calls.

Conclusion

While carriers can tolerate minor volumes of foreign exchange traffic on local interconnection trunking arrangements, no carrier should be allowed to operate as primarily a provider of foreign exchange service, without making arrangements to compensate the originating LECs and CLECs for their appropriate, tariffed, originating switched access charges, and to ensure reciprocal compensation charges are not inappropriately assessed for interexchange traffic.