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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	**CC Docket No. 01-92**
	)	
Developing a Unified Intercarrier Compensation Regime	)	
	)	

REPLY COMMENTS OF THE SMALL COMPANY GROUP OF NEW YORK

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SUMMARY

The Small Company Group of New York ("SCG-NY"), the members of which are identified on Attachment A, respectfully requests that the Federal Communications Commission ("Commission") clarify that the arbitrary and deceptive number assignment methods known as "Virtual NXXs"or "Phantom Rate Centers" are unlawful, and that the Commission address this disruptive practice immediately.

The arbitrary and deceptive numbering scheme known as "Virtual NXXs" is obviously designed by the offenders to make an interexchange call appear to be a local exchange or EAS call. The record supports the finding that the Virtual NXX numbering schemes raise substantial compliance and policy issues which must be addressed by the Commission. In light of these issues, Commission clarification is necessary to (1) preserve the longstanding precedent that the jurisdiction of a call is based on the end points to the call, (2) avoid chaotic disruptions in service arrangements and rate structures of local exchange carriers and (3) preserve intrastate and interstate equal access requirements. Accordingly, the SCG-NY respectfully requests that the Commission confirm that Virtual NXXs are unlawful and contrary to prudent public policy.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**CC Docket No. 01-92**
Developing a Unified Intercarrier	)	
Compensation Regime	)	

REPLY COMMENTS OF THE
SMALL COMPANY GROUP OF NEW YORK

The Small Company Group of New York ("SCG-NY"), the members of which are identified on Attachment A,[1] hereby files these Reply Comments pursuant to the *Notice of Proposed Rulemaking* in the above-captioned matter.[2] Consistent with the Comments filed by Verizon,[3] and for the reasons stated herein, the Commission should clarify that the arbitrary and deceptive number assignment methods known as "Virtual NXXs"or "Phantom Rate Centers" are unlawful.[4] The SCG-NY members are well aware of this scheme and support Verizon's request

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[1] Each member of the SCG-NY is a small, incumbent Local Exchange Carrier ("LEC") operating within the State of New York and is a "Rural Telephone Company" as that term is defined under the Communications Act of 1934, as amended.

[2] *See Notice of Proposed Rulemaking*, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, 16 FCC Rcd 9610 (2001) ("*NPRM*").

[3] Comments of Verizon filed August 21, 2001 at 4-11. Unless otherwise indicated, citations are to comments filed on August 21, 2001, in this proceeding.

[4] At paragraph 115 of the *NPRM*, the Commission refers to these practices as "virtual central office codes." As used herein, "Virtual NXX" refers to the arbitrary deployment and assignment of numbering resources without regard to the geographic location where the end user obtains service, and without regard to the proper determination of the jurisdiction of calls to the Virtual NXX numbers. Virtual NXX numbers are assigned to end users that are actually located and served outside of the rate center area associated with the telephone number, sometimes large distances away. The deceptive number assignment schemes are designed to make it difficult, if not impossible, for other LECs to determine the proper treatment of calls (*i.e.*, whether the call is within the local calling area or is an interexchange call). Moreover, some LECs that have deployed this deceptive practice have argued that other LECs, including SCG-NY members, should direct calls to the virtual code numbers as if they were "local" or "extended area service" ("EAS") service calls, regardless of the geographic originating and terminating points ("end-points") associated with a call.

that the Commission address this disruptive practice immediately. In support thereof, the following is shown:

I. INTRODUCTION

This arbitrary and deceptive numbering scheme known as "Virtual NXXs" is obviously designed by the offenders to make an interexchange call appear to be a local exchange or EAS call.[5] The fraudulent practice results in the theft of service from LECs and interexchange carriers and deprives LECs of access revenues that lawfully apply to intrastate and interstate interexchange calls. Virtual NXX deployment raises substantial policy and compliance issues:

1. The assignment of a Virtual NXX number to an end user is nothing more than an attempt to surreptitiously convert calls from interexchange to a form of local or EAS.[6]

2. The interexchange carrier that would have otherwise carried the call is denied business and revenue.[7] The practice undermines toll dialing parity, presubscription, and equal access requirements.[8]

3. Originating LECs, to the extent they are victimized by this deceptive practice, are forced to treat calls, and to incur new network costs, to provide interexchange services that now appear to be local services.

4. The terms and conditions under which competitive interconnection has been applied with respect to LECs such as Verizon causes Verizon to transport traffic throughout the LATA to accommodate the new entrants deceptive numbering scheme.[9]

5. These arbitrary practices allow carriers to establish incoming interexchange calling services for end users, equivalent to 800 service, for free.[10]

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[5] *See* Verizon Comments at 4.

[6] *See id.* at 4.

[7] *See id.*

[8] *See id.* at 5.

[9] *See id.* at 6, 11.

[10] *See id.* at 5.

6. The inconsistent, indifferent and ambiguous policies that have addressed this practice have improperly encouraged a number assignment competition among LECs to maximize the effect of this practice. If not addressed, all LECs will have no choice but to pursue the same deceptive practice, further adding to the chaotic effect and the exhaust of number resources.

In light of these issues, Commission clarification is necessary to (1) preserve the longstanding precedent that the jurisdiction of a call is based on the end points to the call, (2) avoid chaotic disruptions in service arrangements and rate structures of LECs, and (3) preserve intrastate and interstate equal access requirements.[11]

Moreover, the entities pursuing these numbering schemes are circumventing the Commission's numbering resources policies. These practices lead to perverse and unwarranted demand for codes (or thousand blocks) which accelerate the depletion of numbers. Even if this number assignment method were found to be lawful, there can be no obligation for other carriers to "honor" or accept the arbitrary and disruptive practice for their own purposes. The unilateral, unsupervised, and arbitrary rate center association by one carrier cannot determine the threshold question of whether, for all other carriers, an originating service is interexchange or exchange.[12]

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[11] The effect of this deceptive practice is to wreak havoc on existing rate structures and the resulting cost recovery under which LECs such as the SCG-NY members operate. Virtual NXXs lead to a chaotic blurring of interexchange and exchange traffic and are an attempt to undermine the distinctly different treatment afforded different types of traffic. *See, e.g.*, United States Telecom Association ("USTA) Comments at 32-33.

[12] The concept of "rate center" was developed for the purposes of calculating charges for services where the charges are based on mileage (*i.e.* interexchange services). Verizon has apparently voluntarily adopted a practice under which it depends on rate center information for the design of its service offerings. Except where LECs may have been required by state regulation to utilize arbitrary rate center information, most small LECs' local operations and local services simply do not depend on rate centers. These carriers provision local calling scope services by establishing individual case connecting carrier arrangements with other LECs (*e.g.*, the establishment of an EAS route). Even where LECs may have adopted some voluntary reliance on this information, there cannot be any sustainable policy justification to require carriers to

(continued...)

Accordingly, the Commission should outlaw the use of Virtual NXXs. In doing so, the Commission should reaffirm its longstanding precedent that the endpoint-to-endpoint nature of calls determines the jurisdiction, not the arbitrary and deceptive rate center assignment of LECs.[13]

II. THE VIRTUAL NXX PRACTICES ARE IN VIOLATION OF NUMBER RESOURCE ASSIGNMENT POLICIES.

The Commission has made clear that, prior to seeking number resources, an applicant must demonstrate the existence of facilities arrangements within the area (or "rate center") that the numbers will be used.[14] Contrary to the policy objective, LECs using Virtual NXXs create merely a "pseudo" presence in the geographic rate center where the numbers are assigned.[15]

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[12](...continued)
provision services based on other carriers' unsupervised and arbitrary numbering practices. The SCG-NY members are unaware of any Commission policy or rule which requires carriers to determine the jurisdiction of calls, or to provision LEC services, based on interexchange service rate center points.

[13] The long-standing precedent of the Commission is that the physical end points of a call establish the jurisdiction of a call. *See, e.g., Order on Remand and Report and Order,* In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, released April 27, 2001, at para. 14 and n. 27; *see also* Verizon Comments at 10-11.

[14] Specifically, the FCC has stated that: "Carriers requesting initial numbering resources must also provide the [North American Numbering Plan Administrator] appropriate evidence . . . *that its facilities are in place or will be in place to provide service* within 60 days of the numbering resources activation date." *Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Number Resource Optimization, CC Docket No. 99-200, 15 FCC 7574, 20 CR 1, 27 (para. 97) (2000)(emphasis added). *See also* Verizon Comments at 9.

[15] The experience of the SCG-NY members has shown that the entities deploying Virtual NXXs have not located exchange services' facilities within the referenced rate center. The typical arrangement is that the LEC deploying Virtual NXXs simply connects to the tandem and has no facilities in the exchange associated with the rate center for the Virtual NXX customers. These numbering schemes exacerbate number exhaustion currently confronting the industry by encouraging deployment of numbers where no service is being provided. *See, e.g., id.* at 8; USTA Comments at 33.

Accordingly, Virtual NXX arrangements violate the Commission's number resource requirements and should be outlawed.

III. VIRTUAL NXX PRACTICES ARE IN VIOLATION OF INTRALATA AND INTERLATA TOLL DIALING PARITY REQUIREMENTS.

Deployment of Virtual NXXs also raises substantial questions of lawfulness with respect to the intraLATA and interLATA presubscription process and the concomitant obligations of LECs.[16] Where a terminating LEC has deployed a virtual NXX, the originating LEC may be forced to treat, or inadvertently treats, originating exchange access traffic to the Virtual NXX as if the call is "local." Accordingly, the arbitrary actions of the terminating LEC has interfered with the interexchange carrier's relationship with the end user that would otherwise apply with respect to the call, as well as the originating LEC's obligation to hand off that traffic to the end user's carrier of choice.[17] Thus, Virtual NXXs should be outlawed.

IV. THE DECEPTIVE PRACTICES DISRUPT SMALL LECs RATE DESIGNS AND COST RECOVERY.

As a result of these numbering schemes, small LECs are sometimes forced, involuntarily or unknowingly, to convert interexchange/access traffic to "local" traffic. This, in turn, results in the small incumbent LEC provisioning an entirely new "local" service and applying an entirely different set of service terms, rate structures, and recovery of its network costs. The rate structures of small LECs, such as the SCG-NY members, do not contemplate the imposition of costs that would otherwise have been recovered through the exchange access rates, <u>but for the</u>

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[16] *See generally* 47 C.F.R. §§51.209-51.213.

[17] This issue is avoided if this traffic were treated for what it is -- properly defining the Virtual NXX service as 800 terminating service. Verizon Comments at 5-6. Of course, if the calls were treated as 800 service calls, the terminating end user chooses the interexchange carrier to which the originating exchange access traffic is routed.

unilateral decision of the terminating LEC to deploy a Virtual NXX. Accordingly, the confusion and indifference afforded Virtual NXXs, where small incumbent LECs have been victimized by the practice, has led to a disruption of the originating LEC's rate designs and cost recovery with the attendant uncertainty arising solely from the unilateral decisions of terminating LECs.[18] The SCG-NY respectfully submits that there is no sustainable public interest basis to justify this disruptive result, and Virtual NXXs should be outlawed.[19]

V. VIRTUAL NXXs ARE NOT EQUIVALENT TO FOREIGN EXCHANGE; VIRTUAL NXXs ARE DECEPTIVELY DESIGNED INTEREXCHANGE SERVICES.

Confronted with these serious issues, LECs using Virtual NXXs attempt to defend their actions with obfuscation and confusion, suggesting that Virtual NXXs are akin to "Foreign Exchange" ("FX") service.[20] More accurately, for interstate purposes, the SCG-NY members submit that Virtual NXXs are most akin to 800-like service provisioned through a Feature Group A-like switched access service. The SCG-NY members would welcome a full examination of the characteristics of the Virtual NXX carriers' number deployment, network arrangements, and

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[18] The New York Public Service Commission ("NYPSC") has partially addressed Virtual NXXs. *See* Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates, Cases 00-C-0789 and 01-C-0181, released September 7, 2001. However, the NYPSC recognized the preeminence of the Commission in this matter relating to the Commission jurisdiction over numbering issues and interstate calling. The NYPSC made clear that its decision was subject to the Commission's specific investigation of Virtual NXXs in this proceeding. *Id.* at 10.

[19] Moreover, this is not just an intrastate issue. The current indifference to Virtual NXXs means that LECs can utilize the deceptive number assignment method to disguise what are interstate, interexchange calls. In effect, the carrier deploying the Virtual NXX has obtained interstate Feature Group A switched access service for free. *See also* Verizon Comments at 7.

[20] *See, e.g.*, Comments of AT&T Corp. at 61; Comments of the Competitive Telecommunications Association at 26; Comments of Focal Communications Corporation, Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp. at 56-57.

services. The arrangements represent an unlimited opportunity for these carriers to undermine the access and interexchange services of all other carriers.[21]

There are a number of conditions, constraints, economic balancing, service characteristics, rate structures and other terms and conditions that distinguish FX service. For example, an FX customer actually obtains a local exchange service provisioned within the foreign exchange; a Virtual NXX customer does not. Similarly, an FX customer is actually served by local exchange facilities (facilities that provide a line-side service in the foreign exchange central office, and switching in the foreign exchange central office); the Virtual NXX customer does not utilize any local exchange service facilities in the foreign exchange. Likewise, an FX customer must obtain and pay for the service. The rate structure for FX service recognizes and incorporates the economic consequences associated with the interexchange component to the service; it is unknown whether a Virtual NXX customer is subjected to the same economic consequences. Further, the actual FX customer must also obtain and pay for transport facilities from its actual geographic home exchange to the foreign exchange; a carrier using Virtual NXXs provisions common switched transport at the expense of other LECs.[22] Finally, FX service is provided on an individual customer basis; carriers offering services through Virtual NXXs presumably do so through the common transport other LECs are forced to provide.

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[21] Taken to extremes, a single customer could be assigned phantom telephone numbers associated rate centers in every local calling area in an entire state or an entire region. Originating callers need only dial the correct number, and there would cease to be any interexchange calling to that end user.

[22] Verizon adds, unlike FX, the use of Virtual NXXs imposes significant transport costs on other carriers. *See* Verizon Comments at 8 and n. 15.

Regardless of the characteristics, if a service is provisioned that results in a carrier obtaining originating and/or terminating switched access services from a LEC for an interexchange service call, the LEC providing the access services is rightfully entitled to access charge payment.[23]

VI. CONCLUSION

The record supports the finding that the Virtual NXX numbering schemes raise not only serious compliance issues with existing Commission policies and rules, but also impose unwarranted, adverse affects on originating LECs' rate designs and cost recovery. Both results are contrary to the public interest. Accordingly, the SCG-NY respectfully requests that the Commission confirm that Virtual NXXs are unlawful and contrary to prudent public policy.

Respectfully submitted,

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[23] *See id.* at 10 ("Because these are, instead, interexchange calls, access payments would properly be due.")

Attachment A

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Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond
Crown Point Telephone Corporation
Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Edwards Telephone Company
Empire Telephone Corporation
Fishers Island Telephone Company
Germantown Telephone Company
Hancock Telephone Company
Margaretville Telephone Company
Middleburgh Telephone Company
Newport Telephone Company
Nicholville Telephone Company
Ontario Telephone Company
Oriskany Falls Telephone Corporation
Pattersonville Telephone Company
Port Byron Telephone Company
State Telephone Company
TDS Telecom of Deposit
Township Telephone Company
Trumansburg Telephone Company
Vernon Telephone Company

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Small Company Group of New York" was served on this 5th day of November 2001, via hand-delivery or first class, U.S. Mail, postage prepaid to the following parties:

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