

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In re the Petition of the ) DOCKET NO. \_\_\_\_\_  
WASHINGTON INDEPENDENT )  
TELEPHONE ASSOCIATION ) PETITION FOR DECLARATORY  
for Declaratory Order on the ) ORDER  
Use of Virtual NPA/NXX Calling )  
Patterns )  
\_\_\_\_\_ )

Pursuant to RCW 34.05.240, the Washington Independent Telephone Association ("WITA"), by and through Richard A. Finnigan, attorney at law, hereby petitions the Washington Utilities and Transportation Commission ("Commission") for a declaratory order. This Petition for Declaratory Order is filed on behalf of WITA's members and is filed in accordance with WAC 480-09-230.

ISSUES TO BE ADDRESSED

Several of WITA's members have received an initial inquiry concerning the establishment of relationships on what is described as a local interconnection basis between those

PETITION FOR  
DECLARATORY ORDER

members and ICG Telecom Group, Inc. ("ICG"). A copy of one such request is attached as Exhibit 1.

From Exhibit 1, it appears that ICG is requesting to enter into a relationship under which a virtual NPA/NXX ("VNXX") would be established within the WITA members' individual rate centers (i.e., one NPA/NXX per rate center). An alternative method for establishing a VNXX is to use one NPA/NXX over multiple rate centers. The apparent purpose of establishing this VNXX is to allow customers of the WITA member to call a customer of ICG on a local dialing pattern basis. However, the location of ICG's customer would not be within the local rate center (nor an EAS calling area), but in a remote rate center. A call from the WITA member's rate center to the rate center where the ICG customer is located would, but for the VNXX, be classified as an interexchange call. Upon information and belief, WITA asserts that VNXX services are currently being offered by some competitive local exchange carriers ("CLECs"). This calling arrangement raises at least three issues:

1. Is this calling arrangement properly classified as local exchange telecommunications service or is such a calling pattern more properly classified as either intrastate

or interstate interexchange service (depending upon whether the called party is located within or outside the state)?

2. Is use of VNXX services an appropriate use of numbering resources?

3. Is the use of the alternative method for VNXX service (one NPA/NXX over multiple rate centers) consistent with the Commission's standards for number portability?

#### BACKGROUND

The use of a VNXX allows a CLEC to market services to a customer as if the customer has a local calling area which includes rate centers where the customer has no physical presence.<sup>1</sup> For example, under a VNXX arrangement, a CLEC could obtain an NPA/NXX for the Yelm rate center. The CLEC may have a customer located in Seattle to whom the CLEC would assign a number out of the Yelm rate center NPA/NXX assigned to that CLEC. In theory, this would then allow a customer of YCOM Networks, Inc. ("YCOM") to reach the CLEC's Seattle customer which has been assigned a number out of the Yelm VNXX on a local dial basis. The call would come from the YCOM customer to YCOM's switch which would route the call as

directed. That call would be hauled back to the CLEC's switch and then be terminated to the CLEC's end-use customer in Seattle.

But for the presence of the VNXX, this call looks in all other respects like an interexchange call for which a toll charge would apply, and for which access charges would be assessed on the originating and terminating ends of the call. Thus, for example, if a YCOM customer desired to call an AT&T local customer in Seattle, that call might be handed off by YCOM to AT&T (if the YCOM customer was presubscribed to AT&T's long distance service) to be carried over AT&T's feature group D toll facilities, delivered to AT&T's switch in Seattle, and then terminated to the customer in Seattle. Under this scenario, the YCOM customer would pay a toll charge for the call, YCOM would receive originating access charges and, presumably, AT&T would charge, or impute to its long distance affiliate, terminating access charges on the terminating end of the call. Of course, under a similar scenario, where the call was carried by AT&T Long Distance

---

<sup>1</sup> To the CLEC's customer this is a substitute for 800-type services -- a substitute that does not have the associated charges for an 800-type service.

from YCOM and terminated to a Qwest customer in Seattle, then Qwest's terminating access charges would apply.

Using an "end-to-end" analysis of the calling pattern, the call described above would not be a local call, but rather, an interexchange call. The "end-to-end" analysis has its origin in Federal Communications Commission (FCC) orders discussing the nature of calling patterns. This analysis looks at where the call actually originates and terminates. See, for example, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 96-88, No. 99-68, FCC 01-131 (Released April 27, 2001).<sup>2</sup>

A DECLARATORY ORDER IS APPROPRIATE PURSUANT  
TO THE STANDARDS OF RCW 34.05.240

In addition to the request received from ICG, described above, WITA's members, based on information and belief, allege that VNXX type services are in use today. Based on the way Local Dial describes its service, it is probable that

---

<sup>2</sup> Please note this case was recently remanded to the FCC by the Court of Appeals.

Local Dial and its underlying CLEC service provider are making use of a VNXX-type service to allow customers in remote rate centers to reach Local Dial on a local calling pattern basis.

Further, some of WITA's members have received requests to discuss working arrangements with Level 3 Communications, LLC ("Level 3"). Based on the information which Level 3 presented to WITA members, it is apparent that what Level 3 is requesting is a VNXX service arrangement.

Under the VNXX scenario described in the preceding section, the CLEC desires to have the call classified as a local call. In fact, WITA's members may be routing these calls as local calls, to the extent they may exist today.<sup>3</sup> Under this theory, no toll charges or access charges apply. Under the other scenario, where the call between the same physical locations is carried by an IXC without a VNXX in that originating rate center, the call is routed and rated as an interexchange call. Toll charges and access charges apply

---

<sup>3</sup> The calls into EAS areas where a CLEC may have a VNXX are routed as EAS/local calls over EAS trunks. Unknown to the WITA member, the called party may not have a presence in the EAS calling area, but instead is physically present in some remote rate center.

to that call. The possibility of different classifications for the same physical call raises concerns by WITA's members that they could be found to be in violation of RCW 80.36.170 as providing an unreasonable preference between the CLEC using a VNXX and an IXC which does not; RCW 80.36.180 as engaging in rate discrimination; and RCW 80.36.186 as providing undue preference or advantage to the carrier in the first scenario over the carrier (IXC) in the second scenario.

RCW 34.05.240(1)(a) states that a petition for a declaratory order must set forth the facts and reasons to show that uncertainty necessitating resolution exists. Certainly, where a CLEC requests that a WITA member treat a call as part of the local calling area even though the physical end-to-end nature of the call is between remote rate centers and, as described above, such a call made between the same originating and terminating destinations when carried by an IXC would be a toll call, then uncertainty exists as to the proper rating and routing of the call.

Further, under RCW 34.05.240(1)(b), there must be a demonstration that an actual controversy arising from that uncertainty exists. Certainly that is the case here. WITA's members have received requests from ICG and Level 3 that such

PETITION FOR  
DECLARATORY ORDER

VNXX arrangements be implemented. It appears that some VNXX arrangements are already being used by CLECs, which place WITA members in jeopardy of finding themselves in violation of RCW 80.36.170, RCW 80.36.180 and RCW 80.36.186.

Under RCW 34.05.240(1)(c), the petition must demonstrate the uncertainty adversely affects WITA's members. To the extent that calls are routed and rated as local calls that should be routed and rated as interexchange calls, WITA's members are denied appropriate compensation for those calls. Further, to the extent that there is a difference in treatment for the same physical call (it originates in one rate center and terminates in a different rate center), whereby one carrier is given preferential treatment and charged less than a carrier transmitting an identical call, WITA's members are adversely affected by being placed at risk of violation of the statutes cited above.

RCW 34.05.240(1)(d) asks that the petitioner show that the adverse affect of uncertainty on the petitioner outweighs any adverse affects on others or on the general public that may likely arise from the order requested. In this case, there would be no adverse affect on others or the general public, other than that members of the public currently using

PETITION FOR  
DECLARATORY ORDER



VNXX services would be placed in the same position as all other members of the public who do not use VNXX services. That is, if the call is an interexchange call and should be routed and rated as an interexchange call, with the carriers providing the "800" type interexchange service being charged access in the same manner that access is assessed to interexchange carriers carrying a call to the same destination rate center from the same originating rate center in the provision of their "800" type service. In each instance the member of the general public placing the call would not be charged toll. However, also in each instance the underlying carrier providing the "800" type service to a customer in a distant wire center would be assessed access charges for the calls. Certainly, the fact that the WITA members face potential damages, fines and penalties for violation of RCW 80.36.170, RCW 80.36.180 and RCW 80.36.186 outweighs any other adverse affect that may be found to exist.

Thus, WITA's members are in a position where they must petition that the Commission clarify their responsibilities in these circumstances. The issuance of such a declaratory

PETITION FOR  
DECLARATORY ORDER

order would be consistent with RCW 34.05.240 and is needed to resolve the situation described in this Petition.

#### OTHER PUBLIC INTEREST ISSUES

Depending on the method of deployment of the VNXX, it can raise significant issues related to either number resources or number portability. If a new NPA/NXX is obtained for each rate center within the state, then this is a significant waste of numbering resources. This Commission has undertaken significant efforts to conserve number resources in order to delay NPA overlays and, to the extent possible, preserve seven-digit dialing.

On the other hand, if a single NPA/NXX is desired to be spread across multiple rate centers, then this raises a concern about the mechanics of number portability and may be in violation of the industry standards established and approved by this Commission.

#### ACTIONS BY OTHER STATES

This issue has been addressed by several other state commissions in recent months. In some cases these issues have arisen in arbitration disputes questioning whether the assessment of reciprocal compensation is appropriate. In other words, the issue is whether the placing of calls

PETITION FOR  
DECLARATORY ORDER

through the use of a VNXX is "local" calling for purposes of applying reciprocal compensation.

For example, the Public Utilities Commission of Ohio very recently issued a decision in which they concluded that such calling is interexchange traffic subject to access charges. In the Matter of the Petition of Global NAPs, Inc. for Arbitration, Case No. 01-2811-TP-ARB and Case No. 01-3096-TP-ARB, Arbitration Award, (May 9, 2002) at pages 8-11. The decision is attached as Exhibit 2.

In South Carolina, that state's Commission recently ruled that calling through the use of a VNXX arrangement is an interexchange call under an "end-to-end" analysis and that access charges apply. In Re: Petition of Adelpia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc., Docket No. 2000-516-C, Order No. 2001-045 (January 16, 2001). A copy of this decision is attached as Exhibit 3. The South Carolina Commission relied on FCC analysis that telecommunications traffic is local only if it originates and terminates within the same local calling area. See, the South Carolina Order at p. 7. The South Carolina Commission went on to hold that under this analysis reciprocal

PETITION FOR  
DECLARATORY ORDER

compensation is not due on calls placed to VNXX numbers as the calls do not terminate within the same local calling area in which the call originates. The South Carolina Commission held that access charges should apply to such calls. See, the South Carolina Order at p. 13.

The Maine Commission analogized VNXX service to that of an 800 service and held that access charges should apply. See, In Re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-758, Order (June 30, 2000) at p. 12. A copy is attached as Exhibit 4.

In Georgia, a similar decision was reached when the Georgia Commission held that while a CLEC could create a VNXX, traffic had to be separated between local and toll traffic for proper routing and billing of calls. See, In Re: Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc., Docket No. 11644-U (July 5, 2000) at p. 13. A copy is attached as Exhibit 5.

Similar results were reached in Tennessee and Missouri. See, In Re: Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and

PETITION FOR  
DECLARATORY ORDER

Intermedia Communications, Inc., Docket No. 99-00948, Interim Order of Arbitration Award (January 25, 2001) at p. 44. A copy is attached as Exhibit 6. See, also, In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company, Case No. TO-2001-455, Arbitration Order (June 7, 2001) at p. 31. A copy is attached as Exhibit 7.

It should be noted that some states discuss this concept under the title of "Virtual FX" or "foreign exchange" service. The argument that this service is similar to an ILEC's offering of foreign exchange service has been raised in other states. It also has been rejected. See, for example, the decision in Ohio at p. 9-11.

#### RELIEF REQUESTED

Based on the foregoing, WITA respectfully petitions the Commission to issue an order declaring that use of VNXX-like services are not in the public interest and prohibiting their use. In the alternative, WITA respectfully petitions the Commission to issue an order declaring use of VNXX-like services are appropriately classified as interexchange

PETITION FOR  
DECLARATORY ORDER

services subject to the assessment and payment of access charges where the call originates and terminates in two separate rate centers without a Commission approved extended area service arrangement between those rate centers.

WITA also requests that the Commission issue an order declaring that such service arrangements are an inappropriate use of numbering resources where that service uses a new NPA/NXX for each rate center, and prohibit such practice. WITA further requests that the Commission issue an order declaring that where a single NPA/NXX is desired to be spread over several rate centers, such practice would violate standards needed to implement number portability, and is prohibited.

Respectfully submitted this 29th day of May, 2002.

---

RICHARD A. FINNIGAN, WSB #6443  
Attorney for Washington  
Independent Telephone  
Association

PETITION FOR  
DECLARATORY ORDER