

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

In the Matter of)
)
PAGING COALITION) CC Docket No 01-346
)
Request for Declaratory Ruling that)
Termination by Verizon of Type 3A)
Interconnection Would Violate § 201)
of the Communications Act)

To: The Commission

COMMENTS OF VIRGINIA CELLULAR LLC

Virginia Cellular LLC (“VCL”), by its attorneys, and pursuant to the Commission’s Public Notice, DA 01-2942 (Dec. 19, 2001), hereby submits its comments in support of the Petition for Declaratory Ruling filed by Central Vermont Communications, Inc., Datapage, Inc., NEP, LLC d/b/a Northeast Paging and Karl A. Rinker d/b/a Rinker’s Communications (collectively “Paging Coalition).

I

VCL is authorized as the “A-band” cellular carrier for the Virginia 6 Rural Service Areas (“RSA”) serving the counties of Rockingham, Augusta, Nelson, and Highland as well as the cities of Harrisonburg, Staunton and Waynesboro. The company has operated continuously for over 12 years and is locally owned and operated. VCL has constructed an analog cellular system and is in the process of implementing an upgrade to digital service. This will add features to its system and speed the implementation of several federal and state health and safety initiatives, including E-911 and CALEA.

II

VCL fully supports the declaratory ruling sought by the Paging Coalition. However, our comments will go beyond the specific issues raised by the Paging Coalition. It is clear that a declaratory ruling that goes to the obligations of ILECs to continue to provide so-called “Type 3A” service (also known as “Wide Area Calling Plan,” “Extended Local Calling Area,” “Reverse Billing” service, or, in VCL’s case “Honored/Distributed” service) will be critically significant to cellular and PCS operators. Thus, VCL will address its comments to the issues raised by its recent receipt of notification that a form of “Type 3A” service will no longer be available within its service area.

III

For the past ten years, VCL has, and wishes to continue to provide its customers, as well as landline subscribers calling VCL customers, local calling rates throughout its cellular geographic service area (“CGSA”). VCL has been able to partially accomplish this through an arrangement included in its existing interconnection agreement and known as “Honored/Distributed Service”. Honored/Distributed Service permits a landline caller within VCL’s CGSA to dial a VCL customer toll free.

To illustrate, VCL has obtained NXX codes (10,000 numbers each) which, geographically reside at VCL’s Mobile Telephone Switching Office (“MTSO”). VCL has designated these NXX codes to be “Honored/Distributed by a LEC serving in an adjacent LATA under the Honored/Distributed Service option in their interconnection agreement. When a landline subscriber in the ILEC’s service area calls one of the “distributed” NXX

numbers, the ILEC hands the call off to VCL at VCL's Point of Presence ("POP"), which is located at the ILEC's central office. From that point, VCL routes the call via dedicated internal microwave facilities across a LATA boundary to VCL's MTSO. From VCL's MTSO, the call is delivered to the mobile subscriber over VCL's network. The CMRS subscriber receiving the call may be geographically located anywhere within VCL's service area, which encompasses multiple LEC local calling areas. Under the existing interconnection arrangement, VCL pays the cost of transporting the call from the LEC switch to VCL's POP, both of which are located in the same central office.

VCL has received notification similar to that received by the Paging Coalition that the ILEC will no longer deliver land-to-mobile calls to VCL's POP under the existing arrangement, but rather it intends to deliver all such calls to the landline caller's pre-subscribed long distance carrier ("IXC"). As a result, the landline caller will incur long distance charges even if the calling party and VCL's subscriber are standing next to each other within the ILEC's service area. The ILEC has conditioned its willingness to enter into a new ILEC-CMRS interconnection agreement upon VCL's agreeing to forego Honored/Distributed Service.

IV

Over the years, VCL has been forced to pay the ILEC a rate for terminating CMRS-originated traffic at a rate which is nearly twenty times higher than the prevailing CMRS-ILEC interconnection rate paid by VCL's CMRS competitors. The ILEC has consistently maintained that the higher rate is proper to compensate it for providing Honored/Distributed

Service. At the same time, the ILEC refuses to acknowledge that Honored/Distributed Service is a form of interconnection or an unbundled network element (“UNE”) which must be made available to VCL.

The ILEC and its predecessor have provided several reasons why they are discontinuing Honored/Distributed Service. Among other reasons, they have claimed that the Telecommunications Act of 1996 Act (“1996 Act”) requires such traffic to be delivered to the caller’s IXC. They have also claimed that if this service is provided to VCL, they will suffer increased competition from CLECs, who would be able to offer expanded calling areas to their customers in an area larger than the ILEC. They have claimed that they are prevented by the terms of a consent decree from providing such services. Finally, they have also claimed that the service violates the Local Area Routing Guide (“LERG”).

V

If the current interconnection arrangement is discontinued, the following will occur:

- Most landline subscribers residing within VCL’s service area will only be able to reach VCL’s customers by dialing a toll call (1+). As a result, callers will greatly limit phone calls to wireless subscribers in order to avoid toll charges, making VCL’s wireless network less useful to its customers.
- VCL will be forced to manually reprogram over fifty percent of its existing customer base with a new phone number in order to maintain the existing land-to-mobile dialing patterns.

Reprogramming is very costly and results in substantial churn, as customers often mistakenly go to a competitor when notified that they need to change their mobile number. A competitor then “reprograms” the phone by switching the customer to the competitor’s service.

- Customers will be required to revise business cards and other promotional materials to reflect new dialing patterns. In addition, they will be required to educate their customers and other members of their calling circle regarding the imposition of toll charges for land to mobile calls.
- VCL will have to increase its customer service department to account for the substantial increase in calls questioning the change and complaining about the imposition of additional charges.

The technical work around to continue to provide its customers with wide area calling would be most inefficient. VCL would be forced to obtain as many as five additional NXX codes from Neustar and assign more than one number to each phone. Such a work around, although technically feasible, is inefficient and wastes valuable numbering resources. Moreover, the Commission disfavors such work-arounds since, "a cellular system operator

is...entitled to interconnection arrangements that 'minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.'"¹

VI

Honored/Distributed Service is a form of interconnection, and was specifically provided for in the original interconnection agreement between the parties. Accordingly, the parties to the agreement are bound to conform with the Communications Act and the FCC's interconnection rules. For example, an ILEC's general obligation to provide reasonable interconnection arrangements to CMRS carriers is well settled. Fifteen years ago, the Commission set forth in a Policy Statement on CMRS-ILEC interconnection:

¹ *Competition and Efficient Use, of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284 (1986).

We have not mandated a particular form of interconnection, but we have stated explicitly that a cellular carrier is entitled to a type of interconnection that is reasonable, given its system design. The system design is up to the cellular carrier....²

More recently, Section 251 of the 1996 Act specifically requires ILECs to permit a CMRS carrier to interconnect its network at any technically feasible point within the carrier's network. 47 U.S.C. §251. *See also* 47 C.F.R. §51.231. Section 51.305(c) of the Commission's rules creates the presumption that previous successful interconnection arrangements are technically feasible and places upon an ILEC the burden of demonstrating why such interconnection arrangements are no longer technically feasible. In VCL's case, there is no question but that the arrangement is technically feasible, because the interconnection point is at the ILEC's central office, and continues to work effectively today. The FCC should not adopt any policy which permits ILEC's to disconnect this interconnection arrangement on the grounds of technical infeasibility.

Any ILEC claim that it must deliver traffic which will cross a LATA boundary to the landline caller's presubscribed IXC is misplaced. VCL cannot find support for this claim

² *Id.* *See also Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Declaratory Ruling)*, 2 FCC Rcd 2910, 2913 (1987) ("a telephone company must provide the type of interconnection requested by a cellular carrier.").

in either the Communications Act or the Commission's rules. Once an ILEC hands a call off to a CMRS carrier at a local POP, it is not legally relevant to the ILEC whether the CMRS carrier delivers the call within the LATA or without.

The reasons given for discontinuing the Honored/Distributed Service appear to be competitive. VCL understands that the rules may require the ILEC to offer such an arrangement to a requesting CLEC, or to other wireless carriers, however such a requirement is not a valid reason to deny an efficient interconnection arrangement to VCL. Moreover, requirements for configuring ILEC networks contained in consent decrees were never intended to trump clear requirements in the Communications Act, and any claims to the contrary must be rejected.

VII

We submit that it is unlawful for a ILEC to refuse to route land-to-mobile calls through VCL's POP. To begin with, § 251(c)(2) of the 1996 Act obligates an ILEC to provide "interconnection . . . for the transmission and routing of telephone exchange service . . . at any technically feasible point . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ." 47 U.S.C. § 251(c)(2). For the purposes of § 251, the Commission defines "interconnection" as "the linking of two networks for the *mutual exchange of traffic*." 47 C.F.R. § 51.5 (emphasis added). The plain meaning of the words "mutual exchange of traffic" is that interconnection involves the reciprocal exchange of traffic. Clearly, an ILEC does not provide interconnection at a "technically feasible point" if it accepts VCL's traffic but also refuses to exchange its traffic at that point.

VIII

An ILEC's refusal to exchange its land-to-mobile traffic at VCL's POP deprives VCL of its right to select "economically efficient" interconnection points.³ VCL made the determination that it was cost effective to incur the substantial costs of constructing microwave facilities between its POP and its MTSO. The ILEC will render VCL's investment worthless if it is allowed to deliver land-to-mobile calls to the callers IXC. That circuitous routing serves only to engender unnecessary toll charges. As such, the practice is unjust, unreasonable and discriminatory.

IX

The ILEC has made the claim that its switch may not be capable of routing calls to designated NPA-NXXs to VCL's POP. However, if a switch technician can simply change the translation (i.e., changing an NPA in front of a designated NXX) in the switch to reroute the applicable NXXs from its existing destination to an IXC, there should be no technical impediment to translating (reprogramming) the switch to deliver land-to-mobile traffic to VCL's designated NXXs at its POP. VCL would, of course, pay the reasonable non-recurring charges associated with such reprogramming. We believe the ILEC has a duty to provide VCL with such technically feasible customized routing.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15608 (1996) ("Local Competition Order").

By providing VCL physical interconnection with its central office switch, the ILEC has afforded access on an unbundled basis to its local switching capability network element. *See* 47 C.F.R. § 51.319(c). However, VCL does not have to take this UNE as VCL finds it. *See Local Competition Order*, 11 FCC Rcd at 15692. The ILEC must provide VCL with all the features and functions of the elements in order that it may provide its telecommunications services in the manner it intends. *See id.* at 15632. Thus, the ILEC is obliged to make the minor changes (at VCL's expense) in the software in its end office switch necessary to route its land-to-mobile traffic through its interconnection with VCL, thereby facilitating the mutual exchange of traffic at VCL's POP.

Section 51.319(c) of the FCC's rules defines the local circuit switching capability UNE as:

* * *

(iii) All features, functions and capabilities of the switch, which include, but are not limited to:

(A) The basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. . . , and

(B) All other features that the switch is capable of providing, including but not limited to, customer calling, customer local area signaling service features, and Centrex, ***as well as any technically feasible customized routing functions provided by the switch*** (emphasis ours).

All that VCL is asking ILECs to do is program its switch translation to route a set of defined NXX's to VCL's POP. The function is currently being provided. VCL is not aware of any technical impediment to the LEC continuing to provide such customized routing function, and, as stated above, VCL is willing to pay the necessary and reasonable nonrecurring costs incurred by the ILEC

in programming its switch. This switch programming is squarely within the definition set forth above.

In sum, there is no doubt but that the functionality being requested by the Paging Coalition and VCL is a UNE which must be provided by ILECs. It is incumbent upon the FCC to use this proceeding to clarify these obligations before such arrangements are discontinued and irreparable harm is visited upon CMRS carriers who have received termination notices.

X

The ILEC cannot use the LERG as an excuse to refuse to deliver land-to-mobile traffic to VCL at its POP. It is well-settled that telephone numbers or codes are a public resource, not “owned” by carriers.⁴ Even before § 251(e)(1) of the 1996 Act gave it exclusive statutory jurisdiction over number administration, the Commission considered NXXs a “national resource” subject to its plenary jurisdiction.⁵ Therefore, an ILEC has no cognizable interest in, or authority over, NXXs assigned to VCL. Once NXXs are assigned to it, VCL becomes the carrier responsible to “administer their distribution for the efficient operation of the public switched telephone network.”⁶

⁴ See, e.g., *Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)*, 12 FCC Rcd 17876, 17908-09 (1997).

⁵ *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2912 (1987).

⁶ *Radio Common Carriers (BOC Inquiry)*, 59 RR 2d 1275, 1284 (1986) (FCC Policy Statement on Interconnection of Cellular Systems). See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-243, at 18 (released Oct. 21, 1999) (once NXX is assigned, entity receiving the NXX manages the numbers).

An NXX obviously becomes the first three digits in a subscriber's seven-digit cellular phone number. Under the 1996 Act, subscriber numbers are network elements. *See* 47 U.S.C. § 153(29). Therefore, the ILEC's restrictions on how VCL uses NXXs constitute restrictions on how VCL employs a network element used in the provision of its telecommunications service.

We are aware of no legal authority for the proposition that an ILEC may impose restrictions on how another carrier uses an element of its own telecommunications network. To the contrary, § 51.309(a) of the Commission's rules prohibits an ILEC from placing limitations on VCL's use of NXXs that would impair its ability to offer its telecommunications service in the manner it intends. *See* 47 C.F.R. § 51.309(a).

The ILEC's end office switch has the capability to route calls to all VCL's NXXs. Thus, the ILEC's insistence that each NXX be associated with a single rate center translates into a limitation on VCL's use of the ILEC's local switching capability. Because that limitation impairs VCL's ability to offer toll-free calling by the ILEC's wireline customers to VCL's subscribers, the ILEC is violating § 51.309(a) of the Commission's rules.

XI

Reverse billing or honored/distributed services further an important policy goal. The FCC has often stated that it seeks to encourage wider local calling areas as a means of lowering access charges, intra-LATA toll, and long distance charges.⁷ By seeking means of routing traffic so as to

⁷ *See, e.g.*, Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the

enable more callers to make toll free calls, the Paging Coalition and VCL will promote competition and encourage customers to seek the least cost method of routing their calls. The ILEC's stated fear that other CLECs may use the FCC's pick and choose rule to require this service to be provided to them is a concern of neither the Paging Coalition nor of VCL, nor is it a factor in the Commission's public interest analysis. It is simply a private concern of affected ILECs.

XII

Finally, VCL asks the Commission to revisit the unfortunate dicta that appears in *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166 (2000). There, the Commission suggested that "LECs are not obligated under our rules to offer wide area calling or similar services without charge. Indeed, LECs are not obligated under our rules to provide such services at all." *TSR Wireless*, 15 FCC Rcd at 11184. That may or not be true with respect to LECs, but ILECs are required to provide the interconnection and access to UNEs that will allow the provision of wide area services if such arrangements are sought by

State of Wyoming, 16 FCC Rcd 48 (Com. Car. Bur. 2000) ("We believe that rural consumers may benefit from expanded local calling areas by making intrastate toll calls more affordable to those consumers.") *See also*, Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 14 FCC Rcd 21177, 21227 at paras. 122-123 (1999).

a requesting telecommunications carrier. *See* 47 U.S.C. § 251(c)(2),(3); 47 C.F.R. § 51.319(c).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Steven Anderson McCord, a secretary in the law firm of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 18th day of January, 2002, sent by first class U.S. mail a copy of the foregoing "COMMENTS OF VIRGINIA CELLULAR LLC." to the following:

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