

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

<b>In the Matter of</b>	)	
	)	
<b>Petition for Declaratory Ruling That, Pursuant to the Carve-Out Provisions of 47 U.S.C. § 251(g), Interstate Originating Switched Access Charges, Not Reciprocal Compensation Charges, Apply to ISP-Bound Calls That Are Terminated via VNXX-type Foreign Exchange Arrangements</b>	) ) ) ) ) ) )	<b>WC Docket No. 09-8</b>

**REPLY COMMENTS OF THE MINNESOTA INDEPENDNET COALITION IN  
SUPPORT OF PETITION FOR DECLARATORY RULING**

The Minnesota Independent Coalition (“MIC”)<sup>1</sup> submits the following Reply Comments in response to the Federal Communications Commission’s (“Commission”) February 25, 2009, Public Notice.<sup>2</sup> The MIC supports the comments filed jointly by the National Exchange Carrier Association, Inc., the Independent Telephone and Telecommunications Alliance, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the United States Telecom Association, and the Western Telecommunications Association; (collectively the “Associations”); and the comments filed by the Washington Independent Telecommunications Association (“Washington ITA”), Embarq Corporation (“Embarq”), and Frontier Communications (“Frontier”).

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<sup>1</sup> The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for providing telecommunications service to customers throughout 50% of Minnesota’s land mass, including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per MIC member exchange is approximately 1,100 with half serving fewer than 600 access lines.

<sup>2</sup> *Pleading Cycle Established for Petition of Blue Casa Communications, Inc. for Declaratory Ruling Concerning Inter-carrier Compensation for ISP-Bound VNXX Traffic*, Public Notice, DA 09-467 (rel. Feb. 25, 2009).

## 1. Summary of Support.

The comments filed by the Associations, Washington ITA, Embarq and Frontier explain convincingly why “virtual” NXX (“VNXX”) calls should be treated as non-local calls (for purposes of intercarrier compensation) and are, therefore, subject to originating access charges, based on the actual location of the calling and called parties. As is explained in more detail below, VNXX-type arrangements are essentially a substitute for traditional foreign exchange (“FX”) service, and, more particularly, for 8XX toll-free service, but are being used without compensation for the additional origination and transportation costs incurred.<sup>3</sup> The MIC supports comments encouraging the Commission to confirm that when the ISP server (to which a call is terminated) is located in a different local exchange within the same state as the originating LEC’s end user, intrastate (not interstate) access charges should apply.<sup>4</sup>

The MIC agrees with the Associations’ comments<sup>5</sup> that carriers deploying VNXX or similar arrangement (which involves disparate rating and routing) should be responsible for the costs of transporting those calls to their networks when the Point of Interconnection (“POI”) is located outside the service territory of a rural incumbent local exchange carrier (“rural ILEC”).

Finally, the MIC supports comments urging the Commission to grant Blue Casa’s requested relief in order to provide clarity and certainty on the narrow issue presented, pending comprehensive intercarrier compensation reform.

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<sup>3</sup> Blue Casa Petition at 5-6; Association Comments at 4-; Embarq Comments at 7; Frontier Comments at 3-4.

<sup>4</sup> Embarq Comments at 6.

<sup>5</sup> Associations’ Comments at 2, 4, 6, 8; *see also* Washington ITA Comments at 8-9 and Frontier Comments at 5.

**2. VNXX Service is a Substitute for Traditional Foreign Exchange Service or 8XX Toll Free Service.**

The MIC agrees with comments recognizing VNXX service as a substitute for traditional FX service and, more particularly, for 8XX toll-free service.<sup>6</sup> Carriers with customers who are ISPs use VNXX services so that their ISP-customers will have local telephone numbers for end users to dial-up the ISP's internet access, even when the ISP servers are located in remote exchanges. These carriers assign to their ISP-customers telephone numbers that have NXX codes that are dedicated as functioning as prefixes in the foreign (remote) exchange.<sup>7</sup> As the Associations explain in their comments,<sup>8</sup> VNXX arrangements are, however, unlike traditional FX or 8XX toll-free services in that VNXX arrangements enable carriers to avoid paying both the cost of transport and access charges. Consequently, the terminating carrier and its ISP-customers get a "free ride" at the expense of customers in rural areas because these interexchange calls are treated as "local" when they are not.<sup>9</sup>

The Associations correctly describe that calls made via VNXX arrangements are routed in the same manner as interexchange calls, therefore, incurring essentially the same costs.<sup>10</sup> Embarq accurately observes that "the carrier serving the ISP combines components of the originating LEC's local switching and transport network with the carriers' own terminating switch and transport components"<sup>11</sup> to act as a provider of interexchange service.

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<sup>6</sup> Blue Casa Petition at 5-6; Associations' Comments at 4-; Embarq Comments at 7; Frontier Comments at 3-4.

<sup>7</sup> Embarq Comments at 7.

<sup>8</sup> Associations' Comments at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Embarq Comments at 8.

@Communications asserts that “the way two LECs jointly collaborate to provide PSTN connectivity to an ISP cannot be fit into any recognizable switched access service.”<sup>12</sup> The fallacy of @Communication’s assertion is that a carrier providing VNXX service to an ISP is not providing local service. The fact that a caller dials a local number rather than an 8XX number does not change the end points or the jurisdiction of the call because routing and switching of a call do not change the call’s jurisdiction.<sup>13</sup>

The MIC agrees with Frontier’s comments<sup>14</sup> that, except in certain jurisdictions cited in other comments,<sup>15</sup> there is nothing unlawful or improper about a VNXX arrangement which provides calling parties with a toll-free number to use to make an interexchange call. As Frontier also observes, that is the “entire point” of VNXX arrangements,<sup>16</sup> and 8XX numbers are used for exactly the same purpose. However, the use of such a VNXX arrangement does not turn an interexchange call into an intra-exchange, or local, call. The carrier serving the ISP is not acting as a local exchange carrier, but a provider of interexchange service. The MIC agrees with Frontier that just as access charges apply to 8XX calls, they must also apply to VNXX calls.<sup>17</sup> Further, the MIC agrees with Embarq that a carrier providing VNXX service to an ISP “is, consequently and appropriately, liable for access charges to the originating carrier.”<sup>18</sup>

The MIC also supports comments urging the Commission to clarify that intrastate access charges should apply when the calling and called parties in are located in the same state.<sup>19</sup> The MIC joins with Embarq to request that the Commission confirm that intrastate access charges

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<sup>12</sup> @Communications Comments at iii.

<sup>13</sup> Frontier Comments at 3.

<sup>14</sup> *Id.*

<sup>15</sup> Associations’ Comments at 7-8; Embarq Comments at 5; Washington ITA Comments at 8.

<sup>16</sup> Frontier Comments at 3.

<sup>17</sup> *Id.*

<sup>18</sup> Embarq Comments at 8.

<sup>19</sup> Associations’ Comments at 2, 8; Washington ITA Comments at 1, 3.

apply when the ISP server is located in the same state as the local exchange carrier's end user originating the call.<sup>20</sup>

**3. Carriers Deploying VNXX or Similar Arrangements Should Be Responsible for Transport Costs When the POI is Located Outside Rural ILECs' Service Territories.**

The MIC supports the Associations in their request that the Commission re-confirm that under 47 C.F.R. § 51.305(a)(2), ILECs have no obligation to provision extraordinary network, routing, or transport arrangements at the request of another carrier where such arrangements are outside their network, or are more than what the ILEC does for itself or for other carriers.<sup>21</sup> The comments of the Associations,<sup>22</sup> as well as Frontier,<sup>23</sup> highlight the problem for rural ILECs resulting from the use of VNXX arrangements with respect to transport.

Rural ILECs should not be required to provide what are essentially free interexchange transport services to Competitive LECs and wireless carriers in order for their customers to reach them at their chosen distant POIs. These arrangements potentially also expose rural ILECs to transitting charges of intermediate carriers.<sup>24</sup> Ultimately, the customers of rural ILECs bear the costs of these networking arrangements. In order to relieve rural end users of this cost burden, the MIC encourages the Commission to clarify that Competitive LECs and wireless carriers providing VNXX service must bear the costs of transporting calls to VNXX service recipients.<sup>25</sup>

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<sup>20</sup> Embarq Comments at 6, 10.

<sup>21</sup> Associations' Comments at 5, 8.

<sup>22</sup> *Id.* at 4, 6.

<sup>23</sup> Frontier Comments at 5.

<sup>24</sup> Associations' Comments at 6.

<sup>25</sup> *See* Washington ITA Comments at 9.

**4. Granting Blue Casa’s Requested Relief is Needed Now to Clarify Carrier Obligations With Respect to VNXX and Similar Arrangements, Pending Comprehensive Intercarrier Compensation Reform.**

As discussed in the Associations’ comments, the issues presented in Blue Casa’s Petition exemplify “the continuing disputes and opportunities for arbitrage inherent in the current intercarrier compensation system which requires comprehensive reform.”<sup>26</sup> The MIC supports those comments urging the Commission to act now on the Blue Casa Petition, in the absence of comprehensive intercarrier compensation reform.<sup>27</sup>

The MIC agrees with Embarq that, “until the Commission completes and implements comprehensive intercarrier compensation and universal service reform, access charges remain the foundation of universal service.”<sup>28</sup> Access revenues provide much of the universal service support on which the Public Switched Telecommunications Network (“PSTN”) depends, and for incumbent LECs serving rural areas with carrier-of-last-resort obligations, this revenue source is especially critical.<sup>29</sup>

The MIC further agrees with Embarq that the Commission should not assume dial-up traffic is of little consequence.<sup>30</sup> The MIC affirms the experiences of its members that dial-up Internet access traffic can account for a large amount of usage originating on ILEC networks.

The Associations accurately summarize that disputes over intercarrier compensation applicable to all types of VNXX, but especially to ISP-bound VNXX traffic, shortchange the PSTN and undermine universal service.<sup>31</sup> Accordingly, it is critical to rural ILECs that the

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<sup>26</sup> Associations’ Comments at 2, 8.

<sup>27</sup> *Id.*; Embarq Comments at 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Associations’ Comments at 8.

