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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FCC Mail Room

In the Matter of)
)
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)

WC Docket No. 09-8

Reply Comments of Public Service Telephone Company

Public Service Telephone Company ("Public Service") is a small incumbent local exchange carrier ("ILEC") serving a rural study area in central Georgia. Public Service serves approximately 11,000 access lines and is headquartered in Reynolds, Georgia. It submits these Reply Comments in accordance with the Commission's Public Notice DA 09-467 (Feb. 25, 2009) seeking comment on a Petition for Declaratory Ruling filed by Blue Casa Communications, Inc. ("Blue Casa").

The Blue Casa Petition for Declaratory Ruling ("Petition") seeks a determination that originating access charges, and not reciprocal compensation, apply to calls bound for ISPs, and that are delivered by Virtual NXX ("VNXX") type foreign exchange ("FX") arrangements. Petition (filed Dec. 19, 2008), at 7. Blue Casa bases its legal argument upon an examination of the nature of VNXX service, the fact that it constitutes an FX-like service, and FCC rules and policies treating the associated traffic as interexchange traffic.

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Public Service agrees with Blue Casa's legal analysis, and with the analyses of other commenters who support Blue Casa's Petition. For instance, the comments of five telephone trade associations, which collectively represent the majority of the U.S. ILECs, point out that VNXX is, in essence, a substitute for traditional FX service and that, unlike FX or 800 toll free services, VNXX arrangements improperly enable carriers to avoid the payment of access charges. See Comments of the National Exchange Carrier Association, Inc. et al. ("the Association Comments") at 4-8. Moreover, the Association's comments point out that VNXX arrangements contemplate that ILECs pay the cost of transporting VNXX calls to exchanges outside their local services area, and pay reciprocal compensation to the wireless carrier or CLEC. The comments further point out that these arrangements violate both the Communications Act of 1934, as amended (47 U.S.C. § 251(C) (2)(c)) and the Commission's rules (47 C.F.R. § 51.305(a)(2)). Both of these statutory and rule sections make clear, respectively, that ILECs are not required to provide services beyond those provided to themselves, nor to provide interconnection outside of their networks. Association Comments at 5, n. 7.

Likewise, the comments of Frontier Communications, a mid-size ILEC, discuss the fact that access charges should apply to VNXX calls. It also recounts that CLECs refuse to pay Frontier's access charges, while demanding that Frontier pay reciprocal compensation for the same traffic. One carrier even claims that it is entitled to unilaterally open Frontier's NXX codes, and to require Frontier to transport intraLATA traffic significant distances. Comments of Frontier, at 5. Frontier concludes that the abusive nature of VNXX arrangements, which seek to treat 100 mile calls as "local", is easily resolved by the Commission's policy governing the nature and jurisdiction of a call. In this respect, Frontier notes that it is the location of the calling

and called parties, and not “the numbering, switching or routing arrangements” that carriers may use, which determines the nature and jurisdiction of a call. Id.

The Comments of Embarq and the Washington Independent Telecommunications Association (“WITA”) echo these points. Embarq cites long standing Commission policy that FX service is subject to access charges, and that VNXX is a type of FX service. See, Embarq Comments, at 3, 7. Embarq further notes that the Commission has already held that the reciprocal compensation mechanism does not apply to either interstate or intrastate interexchange traffic. Id., at 3, citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 at ¶ 1034 (1996). The WITA Comments similarly provide a legal analysis, mainly based upon VNXX use in ISP dial-up arrangement, conclude that federal cases require treating VNXX traffic as interexchange, and suggest the issuance of a Commission ruling to provide clarity, given a welter of different state decisions on the subject. WITA Comments, passim.

As previously discussed, Public Service concurs with these comments. In Public Service’s case, both Verizon Wireless and Alltel, Inc. (“Alltel”) unilaterally caused data entries to the Local Exchange Routing Guide to implement VNXX arrangements through a split rating and routing scheme. Both carriers associated NXX codes with Public Service rate centers, but assigned, and planned to assign wireless telephone numbers to customers outside the local calling areas contemplated by the parties’ interconnection agreements (“ICA”). The result of these VNXX arrangements is that toll routes for wireline to wireless calls were erased, and that reciprocal compensation to these two companies has increased.

When Public Service refused to depart from the terms of both ICAs, refusing to treat the calls in question as local, both carriers filed complaints against Public Service with the Georgia

Public Service Commission, Georgia PSC Dockets 23803 and 24752. On April 4, 2008, the Georgia Commission entered its Order on Review of Hearing Officer's Initial Decision, and ruled against Public Service in both complaint cases. Among other things, despite the language of the ICA which delineated that certain intra-MTA calls would be treated as interexchange, and despite the wireless carriers' use of VNXX in violation of PSC precedent, the Georgia Commission found that the FCC's adoption of MTA-wide land-to-mobile calling was of decisional significance.

These two orders are now before the United States District Court for the Northern District of Georgia (See Public Service Telephone Company v. Verizon, et. al., 1:08-cv-1438 (N.D. Ga., filed April 16, 2008); Public Service Telephone Company v. Alltel, et.al, 1:08-cv-1437 (N.D. Ga., filed April 16, 2008)); and while Public Service believes that the current law and record in these cases support the view that VNXX arrangements constitute interexchange service, it submits that an FCC confirmation of this fact could be beneficial on a prospective basis.

Public Service specifically disagrees with the comments of Verizon on this score. Verizon asks the Commission, if it is to rule at all, to do so other than by acting on Blue Casa's Petition. While noting that the Commission could address this issue in a comprehensive rulemaking (though it says that "there are far more pressing issues than Virtual NXX ISP-bound traffic before the Commission"), its preference appears to be piecemeal litigation through the state commissions and federal courts. See Verizon Comments, at 6-8.

Public Service observes that while such a view is not surprising from a carrier that is nationwide, and whose interests bridge the ILEC, CLEC and wireless telecommunications markets, this piecemeal approach is hardly consistent with a uniform policy or rule of law. Indeed, Verizon and its affiliates are well represented on the various industry standards

committees -- a fact that was used against Public Service at the Georgia Public Service Commission. And, since such standard-making activities normally occur under the aegis of the FCC, see In the Matter of Administration of the North American Numbering Plan, 11 FCC Rcd 2588 (1995), such industry representation can be seen as an unfair advantage for Verizon and companies like it. Moreover, in Public Service's case, the two ICAs were the result of a voluntary negotiation. As such, they are treated differently, for statutory purposes, than arbitrated agreements. This difference is not always well apprehended by state regulators, another reason Public Service suggests which supports issuance of an FCC ruling. See 47 U.S.C. § 252(a)(1); BellSouth Telecommunications, Inc. v. Nuvox Communications, Inc., 1:04-CV-2790-WSD, 2006 WL 2617123 (N.D.G.A. Sep. 12, 2006). The Commission should reject Verizon's suggested approach.

Conclusion

Public Service agrees with the cited commenters that VNXX arrangements should be treated as interexchange service, subject to interstate and intrastate access charges as the case may be. Existing law compels this result. An FCC ruling declaring this to be the case may be useful, particularly in the case of state regulatory commissions struggling with this issue. The Commission specifically should reject Verizon's suggestion that the VNXX issue be decided on a patchwork basis, depending on the interpretation of individual agreements (affected by VNXX arrangements) by state regulatory commissions and the federal courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of March, 2009, a copy of the **Reply Comments of Public Service Telephone Company** was served via electronic mail or by U.S. Mail, postage prepaid, to the following:

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