

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6209

Investigation into the Acquisition and Use of )  
Central Office Codes by Local Exchange Carriers )  
in Vermont )  
Hearings at  
Montpelier, Vermont  
October 7 and 14, 2003

Order entered:

**PROPOSAL FOR DECISION**

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## **I. INTRODUCTION**

In this Proposal for Decision, we recommend that the Vermont Public Service Board ("Board") prohibit the use of Virtual NXX ("VNXX")<sup>1</sup> by all telecommunications carriers numbers to avoid what otherwise would be toll charges—with the exception of only foreign-exchange ("FX") service and similar services – pursuant to the policy established by the Board in *Petition of GlobalNAPs, Inc., for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Order of 12/26/2002 at 20, 42-43 [herein referenced and cited as "*GlobalNAPs*" or "*Arbitration Order*"].<sup>2</sup> We also set forth a definition of allowable FX- like services similar to traditional FX service that allow a call recipient to deploy a number in a remote exchange to allow a caller to access the remote number by making a local call. In addition, we define a mechanism for the migration of existing customers of VNXX to FX and FX-like services.

## **II. PROCEDURAL HISTORY**

The Board opened this investigation by Order entered on March 25, 1999, in response to a request made by nine independent telephone companies operating in Vermont (the "ITCs").<sup>3</sup> The ITCs' letter and statements made subsequently at a workshop held on November 2, 1998, expressed several concerns about the use of VNXXs, including the possibility that: (1) to offer VNXX services, competitive LECs ("CLECs") would obtain ten-thousand-number blocks for

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1. An "NXX" is an exchange identifier assigned by the North American Numbering Council for a local exchange, it is the first three digits of a seven-digit telephone number. A "virtual NXX" or "VNXX" is an arrangement whereby a call terminates outside of the local-calling area of the calling customer, even though the NXX is associated with the caller's local exchange and the caller therefore pays for a local, rather than a more expensive toll call. *See* Order of 3/25/99 at 1.

2. As explained in more detail below, we create an exception for these internet calls that occur within certain types of host-remote switch cluster arrangements provided the carrier is interconnected at the Local Exchange Carrier's ("LEC") host office.

3. Ltr. of P. Phillips, counsel to the ITCs, at 11 (Nov. 13, 1998). The ITCs are: Northfield Telephone Company; STE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Perkinsville Telephone Company; Shoreham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom; Topsham Telephone Company; Franklin Telephone Company; and Ludlow Telephone Company.

unused NXXs that would exhaust Area Code 802; (2) VNXX use could undermine toll revenues and access charges paid to incumbent LECs (or "ILECs") because callers would make long-distance calls through Internet telephony by placing a local call to an ISP not physically located within the local-calling area (or "LCA"); (3) Verizon New England Inc., d/b/a "Verizon Vermont" ("Verizon"), might begin to charge the ITCs the transit-tandem fee it charges to Competitive Local Exchange Carriers ("CLECs") for calls within the expanded LCAs established by the Board in Docket No. 5670 (when those calls are transported to Verizon's tandem switch rather than exchanged at meet points with the ITCs); and (4) CLECs might insist in traffic-exchange agreements that the parties pay reciprocal compensation for terminating local traffic, which would result in substantial net payments from ITCs to CLECs for terminating ISP-bound calls to VNXXs. *See* ltr. of P. Phillips, counsel to ITCs (Nov. 13, 1998); ltr. of J. Marshall, counsel to TelCove, at 3-6 (Nov. 12, 1998).

Some of these issues have been or could be addressed outside this docket.<sup>4</sup> But the fundamental issue of using VNXX numbers to avoid toll charges for calls outside the LCAs established in Docket No. 5670 (and the Board's related decision in Docket No. 5713 to base intercarrier compensation on the LCAs so established) remains and needs to be decided here, particularly in light of the Board's recent *GlobalNAPs* decision. *See In Re Dept. of Public Service's Pet. for a Generic Investigation into Expanded Telephone Local Calling Areas*, Docket No. 5670, Order of 9/6/95 at 89 [herein referenced and cited as "*Docket 5670*"]; *Investigation into NET's Tariff Filing re: Open Network Architecture*, Docket No. 5713, Order of 2/4/99 at 113.

The Board's initial order in this docket designated each of us as Hearing Officers, and we convened a prehearing conference on April 6, 1999. *See* Order of 3/25/99 at 5; Order of 4/16/99

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4. The Board has since ordered implementation of thousand-number-block pooling, *see Investigation into Area Code Relief for the State of Vermont*, Docket No. 6505, Order of 5/21/01 at 1, 6; to date Verizon has not charged a transit-tandem fee to the ITCs, *see* tr. 10/7/03 I at 44 (Reed); and the Federal Communications Commission has taken jurisdiction over and issued an order providing for the phase-out prospectively of reciprocal-compensation arrangements for ISP-bound traffic, *see generally Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001).

at 1. We asked the parties to respond to sixteen requests for information, and the parties agreed to respond as well to requests for information made by other parties including a questionnaire submitted by the Vermont Department of Public Service ("Department"). *See id.* at 2-5. We also scheduled a subsequent status conference for the parties to determine how this docket should proceed. *Id.* at 2. Following this conference, held on May 11, 1999, we established a schedule for a technical workshop, further discovery and the prefilings of testimony. Order of 5/13/99 at 2.

We convened the technical workshop on June 14, 1999. At the workshop, all parties expressed a general interest in negotiating a settlement of the VNXX issue, and all believed that Vermont might benefit from the efforts of ILECs and CLECs in Maine to reach a settlement of similar concerns. As a result, no further proceedings in this docket occurred for approximately one year while the parties awaited developments.

Following a further Department questionnaire and our direction that the parties respond to the Department's questions, we convened a workshop on May 31, 2000, to consider a proposal made by the ITCs to establish a special internet data traffic rate as well as draft stipulations of facts prepared by both the Department and Verizon, in the belief that an agreed statement of facts could allow the Board to resolve this docket's issues without having to establish an evidentiary record through litigation. *See* Memo. of 5/23/00; Order of 6/13/00 at 1-2. In our report following the May 31 workshop, we stated our intent to keep the docket focused on the issues originally outlined by the Board, even though we recognized that access to the Internet raises fundamental issues regarding the current structure of intrastate calling in Vermont that may need to be addressed in the future. *Id.* at 2.

On July 12, 2000, the Department filed a conceptual proposal to resolve this docket's issues. On August 18, 2000, we convened a further workshop to address the Department's proposal. During the workshop, Hearing Officer Meyer inquired as to whether the issues in the docket could be resolved if the LCAs established in *Docket 5670* (and also in Docket No. 5670-A), as slightly modified by Docket No. 5713, are retained *but* LECs "are allowed to use 'foreign exchange-like' arrangements to allow some calls, that appear to be interexchange because of the origination and termination points, to be designated as 'local' for the calling customer." Order of 9/19/00 at 2. Although the parties were not able to reach a consensus at the workshop, "given the

similarities of these issues to other proceedings in Maine and New Hampshire that involve some of the parties, the parties asked for time to try to negotiate a resolution of the issues that would be consistent in all three states." *Id.* They agreed to file a settlement agreement or status report with the Board by November 1, 2000. *Id.*

Following negotiations, extensions of the settlement-filing deadline, and Hearing Officer inquiries, we convened a status conference on May 31, 2002, at which it became clear to us that the parties had differing opinions on how to resolve this docket's issues although we observed a general consensus among the parties that few, if any, factual issues remained. Order of 7/12/02 at 1. The ITCs suggested, moreover, that the issues might be ripe for summary judgment. *Id.* We accordingly gave the ITCs an opportunity to submit a summary-judgment motion in September, 2002, with other parties having three weeks to respond. *Id.* at 1-2.

On September 30, 2002, the ITCs filed their motion for summary judgment to which the parties responded in late October. Order of 12/30/02 at 1. On December 30, 2002, we denied the ITCs' motion as deficient in form and because it was clear from the other parties' filings that disputed issues of material fact remain. *Id.* at 3.

We then convened a further status conference to determine how to proceed, including whether to close this docket. *See* Order of 2/26/03. By that time, the Board had issued its *GlobalNAPs* decision. *See generally GlobalNAPs*. In *GlobalNAPs* the Board: (1) banned Global's use of VNXX; (2) rejected Global's proposal to pay transport charges to Verizon rather than deploying its own facilities or buying UNEs to transport its long distance traffic; and (3) allowed carriers to use FX or FX-like services to complete local calls despite remote termination.

Following a status conference held on February 11, 2003, and an opportunity for parties to submit comments, on May 6, 2003, we issued a Scoping Order and Hearing Schedule at which we decided that this docket would litigate three remaining issues only: (1) the applicability of the Board's decision in *GlobalNAPs* to the parties in this docket; (2) identification of allowable alternatives to VNXX services; and (3) migration of existing VNXX customers to alternative services. Order of 5/6/03 at 3. We issued a procedural order that with some subsequent extensions provided for the pre-filing of testimony and rebuttal testimony by the parties, discovery

thereon, and technical hearings, which we ultimately held on October 7 and 14, 2003. *See id.* at 4-5.

Following the hearings, the parties submitted their Proposals for Decision, briefs, and reply briefs. This docket is now ready for us to propose a decision to the Board.

### **III. FINDINGS OF FACT & DISCUSSION**

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, we present the following findings of fact and conclusions of law to the Board.

#### **A. Applicability of GlobalNAPs to all carriers in Vermont**

1. In *GlobalNAPS*, the Board prohibited Global from using VNXX or assigning its customers central office codes homed to a central office switch outside the local calling area in which the calling customer resides for purposes of avoiding what would otherwise be toll calls. *GlobalNAPS* at 20, 41.

2. The Board also recognizes an exception to this rule by permitting LECs to provide services that are "substantially similar" to traditional FX services including a one-way FX line from a host office to an ISP's location. *Id.* at 43, fn. 80.

3. In a Scoping Order and Hearing Schedule issued on May 6, 2003 ("Scoping Order"), the Hearing Officers stated their intention to recommend application of the Board's decision in *GlobalNAPS* to all carriers should no party present evidence in opposition to this recommendation. Scoping Order at 3-4.

#### **Discussion**

The Board's decision in *GlobalNAPs* significantly narrowed the scope of the issues presented in this docket. In *GlobalNAPs*, the Board reaffirmed its policy that allows carriers to define their own local calling areas for retail purposes, but requires that wholesale compensation among carriers be based on the local calling areas previously established by the Board in Docket 5670. In addition, the Board stated that "calls must be rated for both wholesale and retail purposes based upon their physical origination and termination points (absent the use of FX or similar service)." *GlobalNAPs* at 44. The Order also "applies to ISP-Bound traffic and bars the use of VNXXs for the purpose of completing calls to ISPs." *Id.* at 38. However, the Board's

decision does allow for alternatives to VNXX, "so long as the intercarrier-compensation is based upon the actual origination and termination points." *Id.* at 44.

In the Scoping Order issued on May 6, 2003, we also made it clear throughout the instant docket that, absent convincing factual evidence to the contrary, there appeared to be no reason to relitigate issues previously decided in *GlobalNAPs*. We stated our tentative conclusion that the Board's decision in *GlobalNAPs* should be applicable to all telecom providers in Vermont. Scoping Order at 3-4. We noted that "the logic of the Board's decision in *GlobalNAPs* would apply to all carriers in Vermont offering VNXX services similar to those described in that Order." *Id.* Finally, we stated our intention to recommend that the Board apply *GlobalNAPS* to all carriers "[i]f no party submits testimony opposing the application of the Docket 6742 ruling to all carriers." *Id.*

Verizon, the ITCs and Telcove argue that the Board's decision in *GlobalNAPs* should apply to all carriers in Vermont. Initial Brief of Verizon at 4-5; Initial Brief of ITCs at 6; Comments of the ITCs at 2-3; Initial Brief of Telcove at 5. Verizon points out that *GlobalNAPs* "did not establish any new regulatory policies for carriers in Vermont." Initial Brief of Verizon at 4. Therefore, applying *GlobalNAPs* to all carriers in Vermont will merely result in the continued application of existing Board policy. The ITCs argue that, although some parties have conditionally endorsed the application of *GlobalNAPs* to all carriers, no "party in the present proceeding opposes the application, to all carriers who are parties in this generic investigation", of *GlobalNAPs*. Initial Brief of the ITCs at 6. Telcove argues that because *GlobalNAPs* allows for services similar to FX service to be deployed by LECs, it is consistent with existing Board orders and, therefore, can be applied "to all LECs prospectively without jeopardizing dial-up access to the Internet." Telcove Initial Brief at 5.

The Department has stated conditional support for the application of the Board's decision in *GlobalNAPs* to all carriers in Vermont. Campbell pf. at 3-4; Initial Brief of the Department at 4-5. While recommending the Board extend its application of *GlobalNAPs* to all carriers, the Department requests that the Board further define what constitutes prohibited VNXX services, in order to prevent the prohibition of permissible similar services. Initial Brief of the Department at 6. We believe the Department's concerns in this area are misplaced. In *GlobalNAPS*, the Board

described VNXX as a mechanism "whereby a call termination is defined not by its physical location but simply by where the call recipient (through the selection of NXX's ) chooses" and also "a means by which competitors seek to use NXX number assignments to convert what would otherwise be a toll call into a local call." *GlobalNAPs* at 18-19 and 42. The Board adopted a policy that ensures that calls are rated based upon their actual termination point, rather than artificial designations used to avoid toll charges. However, the Board recognized "that an outright ban on VNXX may be unnecessary" and that "LECs may deploy FX service (and similar services) that permit customers to purchase what is essentially a private line between two central offices so that calls to the remote location are treated as local calls." *Id.* at 43-44. We believe that the Board's decision in *GlobalNAPs* allows the Board to approve services that are functionally similar to FX services, and thus, avoid prohibiting otherwise useful services. Consequently, we do not believe further clarification of the Board's decision in *GlobalNAPS* is necessary. The Board's decision in that Order does not affect its ability to consider and approve alternative arrangements that are functionally similar to FX services.

SoverNet and Global also have no objection to the application of *GlobalNAPS* to all carriers, provided that the decision does not apply to calls made to the internet. SoVerNet pf. rebuttal testimony of Andrew H. Hinckley at 2-3; Initial Brief of Global at 5; Affidavit of Robert J. Fox on behalf of Global at 2. SoVerNet and Global assert that ISP-bound traffic is interstate in nature and, therefore, not subject to Board jurisdiction. SoVerNet pf. reb. at 2-3; Global Initial Brief at 5. This same argument was made unsuccessfully by Global in *GlobalNAPS*. In *GlobalNAPS*, the Board affirmatively chose to include internet traffic within its decision prohibiting VNXX arrangements. The Board stated that "this decision on the use of VNXXs also applies to internet-bound traffic." *GlobalNAPs* at 24. We noted, in the Scoping Order at 2, that "absent any factual evidence to the contrary, there appears to be no reason to relitigate issues previously decided in the Board's Order in Docket 6742."<sup>5</sup> No party has presented factual

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5. The issue of relitigation was also discussed during the technical hearing:

Mr. Young: I will make an observation that the issue you are raising was directly raised as a legal issue in Docket 6742, was fully resolved there, is not available for relitigation here as to the issue, the fundamental issue if you choose to route a call

(continued...)

evidence concerning internet-bound VNXX traffic that differs from that presented in *GlobalNAPS*.<sup>6</sup> Therefore, the Hearing Officers reject the parties' arguments on this issue here, for the same reasons that the Board rejected them in *GlobalNAPS*.

We agree with the arguments expressed by Verizon and Telcove. The application of *GlobalNAPS* to all carriers is simply an affirmation of existing Board policy. The Board's prohibition of VNXX is based on requirements established in Dockets 5670 and 5713. The Board's decision in *GlobalNAPS* also represents sound public policy regarding use of the public switched network by competitors. Therefore, we recommend that the Board's decision in *GlobalNAPS* be applied to all carriers in Vermont.

#### B. FX and Similar Services

4. In the Scoping Order, the Hearing Officers requested the parties to identify allowable alternatives to VNXX services pursuant to the Board's decision in *GlobalNAPS*. Scoping Order at 3.

5. In *GlobalNAPS*, the Board described Foreign Exchange ("FX") service as permitting "customers to purchase essentially a private line between two central offices so that calls to their remote location are treated as local calls." *GlobalNAPS* at 42-43.

6. The Board also noted that "Verizon and other telecommunications carriers have traditionally allowed retail customers to purchase Foreign Exchange ("FX") services between two physical locations." *GlobalNAPS* at 43.

7. Verizon currently provides Internet Protocol Routing Service ("IPRS" or "500 number service") to Internet Service Providers ("ISPs"), a hubbing service that requires the ISP to

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5. (...continued)

as a local call, that that defines the intercarrier compensation. That issue is settled. And to the extent you want to ask the witness, fine, but that issue is not before . . . us in this proceeding because that was specifically resolved. There is no point . . . we are not relitigating it here.

6. It should also be noted that an appeal of the Board's decision in *GlobalNAPS* filed by Global which, among other things, challenged the Board's jurisdiction over ISP-bound VNXX traffic, was recently denied by the U.S. District Court for the District of Vermont. *Global Naps v. Verizon New England*, Civil Action No. 2:03-CV-97, (January 13, 2004).

purchase transport facilities to each of five Verizon host switches, "toll traffic in bulk" and some type of "usually" dedicated facility that connects to the ISP. Campbell pf. at 20-21; tr. 10/14/03 at 86-87, 108-109 (Nestor).

8. The Board found that Verizon's IPRS service was "substantially similar" to FX service because it is "essentially a one-way FX line from a host office to an ISP's location." *GlobalNAPS* at 43, n.80.

9. Verizon's remote end offices are not designed or equipped to allow LEC's to collocate and interconnect trunks. Collocation at the Verizon remote switches is not technically feasible. Tr. 10/7/03 II at 36-37 (Campbell); tr. 10/14/03 at 34-35 (Frost), 67, 97 (Nestor).

### Discussion

In *GlobalNAPS*, the Board prohibited the use VNXX. However, it recognized that Verizon and other LECs have traditionally allowed retail customers to purchase services which allowed customers to purchase dedicated facilities to a remote office that would permit calls to that office to be rated as local even though they physically terminated outside the caller's local exchange. *GlobalNAPS* at 42-43. CLECs are free to offer such services today, either by reselling Verizon's services, or by using owned or leased facilities. The Board also ruled that services substantially similar to traditional FX services would be consistent with the Board's policies on intercarrier compensation. Based upon the limited evidence presented in that case, the Board found that services, such as Verizon's 500 number service, appeared to be consistent with these policies. *Id.* at 43, fn. 80. The Board also made it clear that LECs may deploy FX and FX-like services that allow "customers to purchase what is essentially a private line between two central offices so that calls to the remote location are treated as local calls." *Id.* at 42-43. In the Scoping Order, we asked the parties to submit allowable alternatives to VNXX which would satisfy the requirements set forth by the Board in *GlobalNAPS*. Finding 4.

The Department submitted a conceptual proposal which it believes meets the *GlobalNAPS* requirements and is permissible under existing Board Rules and Orders. The conceptual proposal would allow LECs to offer services to remote exchanges in a manner the Department believes is similar to traditional FX service. Campbell pf. at 9-25. The Department's

proposal is supported, with some qualifications, by TelCove and SoverNet. TelCove initial brief at 11; SoverNet reply brief at 3-6; tr. 10/7/03 II at 87 (Elliot); tr. 10/14/03 at 7 (Frost). Essentially, the Department's proposal would divide the state into several "FX-regions" that loosely approximate existing service territories of the ITCs and the geographic regions served by each of Verizon's host-remote clusters. Campbell pf. at 9; exh. DPS-CJC-1. Incumbent LECs would be responsible for hauling any FX-like traffic within an FX region without compensation from the LEC offering what the Department calls FX-like service. Campbell pf. 8-9; tr. 10/7/03 I at 85, 102 (Campbell). CLECs would be required to procure, lease or build facilities to transport this FX-like traffic between FX regions. Verizon is currently the only intrastate carrier interconnected with all the other LECs providing local telephone service in Vermont. Campbell pf. at 14-16. Under the Department's proposal, Verizon would be obligated to offer transport of FX and FX-like traffic between the FX regions, including transport to and from the boundaries of regions served by ITCs, as a wholesale service available to CLECs. *Id.* at 8, 15-16. Carrier's would, however, be allowed to negotiate alternate FX-like traffic exchange agreements as part of interconnection agreements. In addition, LECs would be permitted to obtain numbering resources for only those exchanges in which they have customers or facilities physically located, or in which they are actively marketing customers located in those exchanges. *Id.* at 24-25.

TelCove supports the Department's conceptual proposal, but proposes that LECs be compensated based on the incremental cost for transporting calls originating outside the local calling area to the host switch within a host-remote cluster. TelCove initial brief at 11. Telcove argues that requiring a LEC to compensate Verizon may be reasonable in circumstances when it transports a call originating outside a host switch's LCA to the host switch before handing it off to a CLEC, provided that the compensation paid is no more than the incremental cost to Verizon (assuming that incremental cost can be determined). *See* Frost pf. at 10-12; tr. 10/14/03 at 49-50 (Frost). TelCove also requests that we find that its ISDN-PRI service is similar to FX service and therefore allowable under *GlobalNAPs*. Frost pf. at 10-11.

SoverNet also has no objection to the majority of the Department's proposal. SoverNet reply brief at 3-6. However, SoverNet does object to the provision which allows Verizon to charge carriers the cost of common transport for internet calls. SoverNet argues that this rate

structure should not apply to ISP-bound traffic and will upset its existing transport arrangement between itself and Verizon. *Id.* at 4. SoverNet also seeks clarification of transport costs and the process of negotiating alternate traffic exchange arrangements. *Id.* at 6.

Verizon does not believe it is necessary for the Board to alter its existing policies in order to protect continued consumer access to the internet. Therefore, the company argues that alternatives to traditional FX service are not needed. Verizon argues that "the market is addressing the issue of Internet access, and, therefore, Board action is unnecessary and would be inappropriate." Verizon initial brief at 12. Verizon notes that many consumers are able to access the internet through calling plans offering unlimited calls at flat rates that do not distinguish between toll and local calling minutes. In addition, "carriers are free to resell Verizon VT's federally-tariffed IPRS service." *Id.* at 13. Verizon argues that proposals for FX-like services that continue to shift transport costs to the provisioning carrier are anti-competitive and should not be adopted by the Board. *Id.* at 12-13. Verizon also distinguishes its own IPRS or 500-number service, from other FX-like services, by pointing out that it does not involve "the provision of transport service by one carrier for another on an uncompensated basis." *Id.* at 15.

Similarly the ITCs argue that changes to the Board's existing policies on intercarrier compensation are not needed. Further, the ITCs believe contemplation of such changes are beyond the scope of this docket and that "if the Board desires to undertake such changes, the Board should do so in a separate investigation." ITCs initial brief at 12-16. The ITCs also request that the Hearing Officers "make clear that a service is substantially similar to FX only when that service uses a dedicated private line or its equivalent, such that the provisioning carrier is able to fully recover its transport costs, in accordance with the requirement of docket 6742." *Id.* at 19.

Global proposes that carriers be allowed to offer either VNXX service under a federal tariff or an FX-like service where the provisioning carrier provides transport from Verizon host offices to its end-user customer. Global comments at 8. Global points out the Hearing Officer in *GlobalNAPs* acknowledged that Verizon's 1-500 or IPRS service is "provided through FCC tariffs and thus outside the Board's jurisdiction." *GlobalNAPS* at 24, fn 53. Global asserts that its VNXX service, which was prohibited by the Board in Docket 6742, is identical to Verizon's

1-500 service. Therefore, Global argues, the Board is preempted from prohibiting VNXX services if they are offered under a federal tariff. Global also suggests that CLECs be allowed to offer an FX-like service whereby the "CLEC would pick up calls from Verizon customers and then provide all of the transport from that point to the actual point where it hands off the call to its customer." Global Comments at 12. This service would exclude areas served by remote switches because "Verizon does not allow CLECs to establish a POI at a remote" switch. *Id.*

In Dockets 5670, 5670-A and 5713, the Board established local calling areas and the requirements governing intercarrier compensation with respect to those local calling areas. The distinction between toll and local calls (and the corresponding intercarrier compensation requirements) are based on the physical origination and termination of a call. Put simply, for purposes of intercarrier compensation local calls are those originated and terminated in local calling areas as defined in Dockets 5670 and 5670A. CLECs may alter the local calling areas, but intercarrier compensation is based upon the LCAs adopted in these cases. However, the Board has always allowed FX service as an exception to these requirements. Essentially, FX service allows customers in one exchange to call a local number to reach a party physically located in another exchange and, thus, avoid toll charges. The rationale underlying this policy of exempting FX service from the intercarrier compensation that would normally apply, is that FX service usually consists of a private line purchased by a retail customer from a carrier that establishes a direct link and a customer point of presence in a different local calling area from that of the retail customer. The customer, by purchasing the private FX-line, essentially pays in bulk to transport the traffic that would otherwise be toll. Significantly, by purchasing a dedicated facility, the customer covers the costs that would otherwise be recovered through toll charges.

Although there are many complicated technical and policy issues involved in this docket, the fundamental issue for us to decide is defining what services are substantially similar to FX service to the extent that we permit services other than those discussed in the *GlobalNAPs* decision and the appropriate intercarrier compensation for hauling those calls. While the parties have differing opinions as to what types of services are sufficiently FX-like to be allowed under the definition set forth in *GlobalNAPs*, all parties appear to agree that the level of intercarrier

compensation for transport is a critical element in determining what is an allowable FX-like service.

Verizon and the ITCs argue that the Board should continue to apply a strict interpretation of long-established Board policies and prohibit any FX-like services that are not, in fact, similar to FX services. Conversely, the Department, TelCove, SoverNet and Global argue that the Board should apply a broad interpretation of its policies and intercarrier compensation, and allow for services that are more expansive than traditional FX services and do not rely upon the primary distinguishing element of FX service – the purchase of a special access circuit to transport toll traffic in bulk. We recommend the adoption of a policy which preserves existing policies regarding local calling areas and intercarrier compensation. This policy will allow consumers continued local access to the internet through the provision of equitable intercarrier compensation for FX-like services.

The Department's conceptual proposal is a thoughtful and comprehensive attempt to address the ability of consumers to access ISPs through a local call. However, we believe that elements of the Department's proposal, especially the creation of the proposed FX regions, would represent a significant departure from the local calling areas established in Docket 5670 and the intercarrier compensation policies set forth in Docket 5713. In fact, the Department's proposal, although described as an FX-like service, bears little resemblance to FX service. Adoption of the Department's proposal would require the Board to make fundamental revisions to the policies established by the Board in those Dockets. We agree with the ITCs and Verizon that such revisions to existing Board policy should not be adopted in this narrowly focused docket. In addition we believe a satisfactory resolution can be achieved without significantly impacting existing Board policy.

Global asserts that because its VNXX is a federally tariffed service, the Board is preempted from regulation of the service. However, as the Board in Docket 6742 pointed out the Board is *not* regulating the federal service. The Board is merely defining the circumstances under which intrastate calls dialed with local seven-digit numbers may be used to access locations outside the local calling area. Unlike Verizon's 1-500 number service, Global offers VNXX through the dialing of local numbers. In addition, at the time of the Board's Order in

*GlobalNaps*, Global did not have facilities that enabled it to offer an equivalent service. Thus, it appears that Global is merely seeking to avoid state jurisdiction by claiming it is offering an interstate service, while simultaneously avoiding any access charges or other appropriate intercarrier compensation that might apply to these services by asserting that the call are local because they use using local numbers to provision the service. Therefore, it is appropriate for the Board to treat these calls, to the extent they utilize local exchange numbers, as subject to its jurisdiction. Further, Board jurisdiction over Global's VNXX service was an issue thoroughly litigated in *GlobalNAPS* and, as we have stated above, we do not intend to relitigate those issues here.<sup>7</sup>

Global also proposes that carriers be allowed to offer FX-like services where the carrier provides all of the transport for the call, with the exception of transport within Verizon's host-remote clusters where collocation is not possible. We agree that arrangements whereby the carrier provides all of the transportation for the FX-like call and the ISP pays for the use of those facilities in bulk would be acceptable.

In *GlobalNAPS*, the Board defined FX services as a private line service where a retail customer purchases a link from a carrier between two central offices. The customer purchases what is essentially a private line between two central offices so that the calls to the remote location are treated as local calls. *GlobalNAPS* at 43. In purchasing this circuit, the customer is paying the bulk rate costs of the toll traffic in advance. The Board specifically noted that its ruling rejecting VNXX does not prevent carriers from offering retail customers services that are substantially similar to FX services. *Id.* We conclude a carrier may offer its customers FX services by using its own facilities, unbundled network elements or resold FX lines. The Board also found Verizon's 1-500 service is "substantially similar" to FX service.<sup>8</sup> Verizon's 1-500 number service is similar to FX service in that it requires the customer, usually an ISP, to

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7. The issue of filed rate doctrine protection for VNXX was also raised by Global in its appeal to the U.S. District Court. The Court in denying Global's appeal stated that the "filed rate doctrine does not prevent the Public Service Board from prohibiting the use of VNXX within Vermont." *Global Naps v. Verizon New England*, Civil Action No. 2:03-CV-97, (January 13, 2004), at 25.

8. This conclusion was based upon the evidence presented in the record of that proceeding that suggested that the 500 number service covered all of the costs of transporting calls beyond the local calling area.

purchase transport facilities to each of five Verizon host switches, pay bulk rates for toll traffic in advance and facilities to connect to the customer. Customers of the ISPs using this service would dial a ten-digit "500" number to access their respective ISP and pay local rates for the call. As in traditional FX service, the call to the ISP is considered to terminate at the host switch, and is rated as a local call, even though the call may be transported to an ISP in a remote exchange.

In *GlobalNAPs*, the Board sought to "ensure fair competition among all carriers" by rejecting alternatives to FX service that sought to avoid the Board's policies on intercarrier compensation. In this Docket we recommend that the Board continue to base its decisions regarding allowable alternatives to FX services upon the principle of "fair competition." *GlobalNAPs* at 43. Therefore, we recommend the following:

1. FX-like services shall consist of at least a one-way private line between the calling party's local calling area and the called party, so that calls between these locations are treated as local calls for retail purposes. The LEC may offer these services over its own lines, UNE's or through resale.
2. No LEC may implement or maintain an FX-like service unless it establishes a means of transporting FX-like traffic between the switch serving the calling customer's local calling area and the called party, including within a host-remote cluster. A LEC may provide such transport over its own facilities, through the purchase of unbundled network elements, or through resale.<sup>9</sup>
3. Calls to FX-like services within a host-remote switch cluster shall be treated as local calls by the originating carrier.
4. LECs may only obtain numbers for the sole purpose of offering FX-like services in exchanges where they have established a means of transporting FX-like traffic from that exchange to the called party's exchange. LECs seeking additional numbering resources for the sole purpose of offering FX-like services within an exchange may obtain numbers in increments of thousand-blocks only. Carriers offering FX-

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9. As we explain below, we recommend that the Board grant an exception to this requirement. Specifically, we recommend that , until Verizon can demonstrate that its 500 number service meets an imputation standard (as defined in Dockets 5700, 5713 and 6077), all calls to ISPs within a host-remote cluster shall be rated local calls provided that the CLEC interconnects at that host office.

like services shall implement such reporting of numbers whereby other carriers may identify calls to these numbers.

These requirements will prohibit carriers from unfairly utilizing another carrier to provide transportation for calls to its customers without compensation. At the same time, they will allow consumers, such as ISPs, to purchase FX-like services that would have the effect of allowing calls to be rated as if they terminated at the FX-line. Pursuant to *GlobalNAPs*, our proposal would require carriers to "purchase what is essentially a private line between two central offices so that calls to the remote location are treated as local calls." *GlobalNAPs* at 43. Permitting FX-like services consistent with the standards we set out here, will not alter existing Board policies or local calling areas, and fully compensate the provisioning carrier for transportation of the call are substantially similar to FX service.

At the present time, it appears the most granular and efficient point to aggregate and exchange traffic is at Verizon's host switches, we do not believe it is necessary to prescribe specific exchange points or regions. Under our proposal, LECs offering FX-like service would be required to purchase or build facilities to transport traffic from the remote exchanges in which they seek to offer FX-like service to a customer. Once the carrier has secured the facilities to transport its own FX-like traffic from a remote local calling area to its customer, the carrier is free to create a private line between these two locations. By creating this private line, the carrier offering the FX-like services relieves the originating carrier of the call to the FX-like number of the burden of transporting traffic outside the customer's local calling area without compensation. Once the FX-like carrier has created this "private line," the calls from the FX-like numbers, like FX service, shall be treated as local calls that terminate within the caller's local calling area. Carriers of the originating callers will be compensated by their customers for completing this call to a local number.

The only exception to this collocation requirement is within Verizon's host-remote clusters. Collocation with Verizon is not currently technically possible at remote switches and the remote switches are not designed to allow interconnection of trunks. Verizon's FX service and 500 number service route calls from customers originating outside of the host switch's local

calling area from the remote switch to the host switch. However, although Verizon asserted that its 500 number service covered its costs, the evidence presented in this case does not show that Verizon's 500 number service meets the Board's imputation standards. Specifically, Verizon presented no evidence that it included the costs associated with transporting what would otherwise be toll calls to the host office (*i.e.* access charges). If Verizon's 500 number service does not meet an imputation test, then continuing to require that CLEC's pay access charges (and customers to incur toll charges) for calls from a remote switch to a host office at which the CLEC interconnects would provide Verizon a competitive advantage. As this would unfairly discriminate against competitors, we find this unacceptable. Therefore, we recommend Verizon be required to transport FX-like traffic within the host-remote clusters in the same manner as local traffic.<sup>10</sup>

We also recommend that carriers requiring additional numbering resources to provide FX-like services in a particular exchange be limited to requesting 1000 number blocks of numbers at a time from the number pooling administrator. The Department's proposal recommends carriers be allowed to obtain numbering resources, either full central office codes or blocks, only in exchanges in which they have customers or are actively marketing. The Industry Numbering Committee central office code assignment guidelines require that codes or blocks allocated to wireline providers "be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned." Central Office Code (NXX) Assignment Guidelines, November 22, 2002, INC 95-0407-008, at §2.14. The guidelines further note that there are exceptions "for example tariffed services such as foreign exchange services." *Id.* The limited expansion of FX-like services that we recommend fall under this exception. However, we also wish to avoid the inefficient use of numbers and the needless hastening of number exhaust presented when carriers acquire full central office codes for the sole purpose of providing FX-like services. This method of allocation can be especially inefficient in remote exchanges with populations too small to justify the allocation of a full 10,000 number

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10. Since Verizon's 500 number service applies only to ISPs, our recommendation is similarly limited. If Verizon can present evidence that its 500 number service meets the Board's imputation standards, we would consider changing this recommendation.

central office code. By limiting the carriers' acquisition of numbers to 1000 number blocks at a time, the threat of number exhaust presented by the proliferation of FX-like services can be significantly reduced. Limiting numbering resource allocation should not prove burdensome to carriers in that many of the remote areas they will seek to serve with this service are sparsely populated and will, presumably, require minimal numbering resources to serve. Therefore, we recommend the Board limit the allocation of FX-like numbers to 1000 number blocks.

In addition, we recommend that carriers obtain Board approval prior to offering FX-like services to ensure consistency with these guidelines. Telcove requests that the Board find that its existing ISDN-PRI service is sufficiently similar to FX service and therefore allowable. While TelCove's service aggregates traffic at Verizon's host switches, it appears that the service still utilizes VNXX to function within Verizon's host-remote clusters. TelCove initial brief at 7, 11-12. To the extent that this use of VNXX applies only to calls to ISPs, it may be consistent with our recommendation. However, pursuant to *GlobalNAPs*, all VNXX services must be either transformed into FX-like services or discontinued. Therefore, we cannot recommend approval of TelCove's ISDN-PRI service until more information regarding the service is received. It is necessary to review each proposed FX-like service for consistency with the guidelines established in this Order. TelCove and other carriers proposing to offer FX-like services must submit these offerings for review pursuant to existing Board procedures within the time established in this Order.

### C. Migration of Customers to FX-Like Service

10. In the Scoping Order, the Hearing Officers requested the parties to recommend implementation procedures for migration of customers to allowable alternatives to VNXX services. Scoping Order at 3-4.

11. Many of the elements carriers require to provide allowable alternatives to VNXX must be obtained from third parties and are outside the carrier's control. Nestor pf. at 28; Global comments at 12.

12. Customers of ISPs that are currently using VNXX codes require a reasonable amount of time to modify their telecommunications systems and to notify their customers of a telephone number change. Nestor pf. at 27

13. A four to six-month time period to transition from VNXX to allowable alternatives strikes an appropriate balance between the elimination of VNXX and the ISP and retail customer's need to migrate to alternative service offerings. Nestor pf. at 28; Global comments at 12.

14. Carriers should also be allowed the opportunity to request additional transition time based upon good faith efforts. Nestor pf. at 28; Global comments at 12.

15. Appropriate inter-carrier compensation charges for transportation of FX-like or VNXX services should apply during any transition period. Campbell pf. At 27; Nestor pf. at 28.

#### Migration of existing VNXX customers

Adoption of the our proposal will eliminate the most harmful effects of VNXX, and at the same time, it will allow carriers to offer local internet dial-up access without duplicating the incumbent carrier's network. The guidelines will require carriers to own or lease facilities over which it offers FX or FX-like services to retail customers, including ISPs, thereby eliminating the cost-shifting and price arbitrage engaged in by Global and other carriers. The allowance of services that are substantially similar to FX services doesn't represent a change in Board policy. However, because the clarifications offered here may require an alteration to a carrier's existing arrangements, it is necessary to provide sufficient transition time to allow carriers and their customers to adjust to the new requirements.

The Department's conceptual proposal, which is supported by TelCove and SoverNet, includes a four-step process for migration away from VNXX services. The Department proposes four types of transition steps for migration away from VNXX services: (1) regulatory approvals; (2) number changes; (3) traffic exchange and routing; and (4) reporting and payment of compensation. Campbell pf. at 25. Carriers would be required to submit any proposed FX-like services to the Board for approval within sixty days of a Board order in this Docket. Department Initial Brief at 30-31. Carriers currently providing VNXX services would convert these services to FX-like services by beginning to pay for transport and associated costs, or discontinue service within a relatively short time period. *Id.* at 31. The Department also recommends that carriers utilizing FX-like services begin compensating other carriers for transportation of this traffic

immediately. Carriers providing FX-like services would also be required to provide the information necessary to allow other carriers to determine the amount of compensation due for FX-like traffic on their network. *Id.* at 32.

The ITCs recommend the Board allow carriers a maximum of one year to migrate customers away from prohibited VNXX services. The ITCs' transition proposal would require LECs to deploy a single central office code exclusively for internet bound traffic and implement a special internet data traffic rate for that traffic beginning six months after a final order in this docket. Carriers would be required to completely migrate customers away from prohibited VNXX services within one-year of a final order in this docket. Reed pf. at 4-8; Comments of ITCs at 7. During the first six months a moratorium on further deployment of VNXX services would be imposed. Carriers would also be required to submit information on numbering resources utilized for VNXX and plans for migration of customers away from VNXX. After six months, carriers still providing VNXX services would be required to rate calls at a Special Internet Data Traffic or SIDT rate. After one year, all VNXX calls would be rated as toll calls for purposes of intercarrier compensation.

Verizon recommends a 90 to 120-day period for carriers and customers to migrate from using existing VNXX codes. Nestor pf. at 28; Verizon initial brief at 18. Carriers that needed more time would be required to file a request with the Board following "good faith efforts" to comply with the deadline. *Id.* Verizon also recommends that, in the interim period, VNXX calls be rated as toll calls for purposes of intercarrier compensation.

Global recommends that carriers be given a minimum of six months to stop using VNXX. Global comments at 12. Global also recommends that carriers be permitted the opportunity to extend the deadline upon a showing of good faith efforts to comply. *Id.*

The transition plans offered by Verizon and Global represent a reasonable means by which carriers can transition to FX-like services without further shifting of transportation costs. Global recommends a six-month minimum, while Verizon recommends a three to four-month transition period. Since the Board prohibited Global's VNXX service in *GlobalNAPs*, parties have been put on notice that the prohibition might be extended to all carriers. Therefore, a transition of time period of four months should allow ample time for carriers to transition from

VNXX to allowable alternatives. We recognize that carriers may need to obtain services and facilities from other carriers in order to complete this transition. We also recognize that the time it takes to obtain the required facilities is not within the control of the carrier seeking to obtain these facilities. Therefore, we recommend that carriers be allowed to request an extension of the compliance deadline, if necessary, upon a showing of good faith efforts to comply. Carriers seeking to offer new FX-like retail services, as a result of our recommendations, should submit these tariff revisions for review under the existing tariff review procedures prior to offering the services.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

Dated at Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Peter Meyer  
Hearing Officer

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Gregg Faber  
Hearing Officer

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officers' findings of fact and recommendations are adopted.
2. Local-exchange carriers shall implement the Hearing Officer's proposal for providing FX service and services similar to FX service.
3. Carriers seeking to provide new retail FX-like offerings shall submit the tariff revisions for review prior to offering the new services.
4. No later than four months from the date of this Order, local-exchange carriers providing telecommunications service in Vermont shall cease using a virtual NXX to avoid what otherwise would be toll charges, unless they are using an NXX assigned to a remote exchange as a feature of providing FX service or similar services under a tariff or special contract that has been approved by the Board. Carriers unable to comply within this time period may request an extension of the deadline upon a showing of good faith efforts to comply.
5. No later than six months from the date of this Order, carriers shall return all numbering resources used solely for the provision of VNXX service to the North American Numbering Plan Administrator or the Number Pooling Administrator.

Dated at Montpelier, Vermont, this \_\_\_\_day of \_\_\_\_\_, 2004.

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	)	OF VERMONT
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OFFICE OF THE CLERK

FILED:

ATTEST: \_\_\_\_\_  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*