ORDER NO. 02-542

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 31

In the Matter of	)	
	)	ORDER
OREGON TELECOMMUNICATIONS ASSOCIATION	)	
	)	
Petition for Declaratory Ruling on the Use of Virtual NPA/NXX Calling Patterns.	)	

DISPOSITION: PETITION DENIED.

On May 20, 2002, Oregon Telecommunications Association (OTA) filed a petition for Declaratory Ruling pursuant to ORS 765.450, relating to the use of virtual NPA/NXX calling patterns. A description of the petition terms, as well as the procedural history of this filing, is contained in the Staff Report attached as Appendix A and incorporated by reference.

At its Public Meeting on August 6, 2002, the Commission adopted Staff's recommendation to deny OTA's petition in favor of a generic investigation of virtual NPA/NXX calling patterns.

ORDER

IT IS ORDERED THAT Oregon Telecommunications Association (OTA) request for a declaratory ruling is denied.

Made, entered and effective _____.

BY THE COMMISSION:

_____

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 6, 2002

REGULAR X CONSENT ____ EFFECTIVE DATE NA

DATE: July 29, 2002

TO: John Savage through Phil Nyegaard

FROM: Dave Booth

SUBJECT: DR 31: Oregon Telecommunications Association, petition for declaratory ruling on the use of virtual NPA/NXX Calling Patterns.

STAFF RECOMMENDATION:

The Commission should deny the Oregon Telecommunications Association's petition for declaratory ruling. Instead the Commission should open an investigation of Virtual NPA/NXX calling patterns.S

DISCUSSION:

On May 20, 2002, the Oregon Telecommunications Association (OTA) filed a petition for a declaratory ruling under ORS 756.450. The statute states in relevant part:

> **ORS 756.450. Declaratory rulings.** On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission. A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, vacated or set aside by a court.

OTA's petition has been assigned docket DR 31. According to Commission procedure, staff recommends at a public meeting whether a petition is appropriate for a declaratory ruling. The Commission may grant or deny a petition for declaratory ruling.

OTA's petition deals with use of "virtual NPA/NXX ("VNXX")". According to OTA, some competitive local exchange carriers (CLECs) operating in Oregon are obtaining blocks of telephone numbers, in some cases whole NPA/NXX codes[1], as part of a scheme to provide long distance-like service without long distance charges and without payment of access charges to local exchange carriers. The term "virtual", as in "virtual NXX" or "VNXX", refers to a situation where the CLEC has obtained an assigned block of local telephone numbers for a local exchange, but the CLEC does not actually have local customers or a local physical presence in the exchange. Rather, the CLEC uses its block of local numbers to allow a calling party to make what appears to be a local call. The CLEC relays the "local" call over leased private line circuits to a CLEC customer who is located in a distant exchange outside the calling party's local calling area. Absent the VNXX arrangement, the calling party would have had to pay long distance charges.

According to OTA, "The use of a VNXX allows a CLEC to market to customers that the customer may have a local dialing presence in a remote exchange." (OTA Petition, p. 3.) Staff gathers from OTA's discussion that CLECs frequently market VNXX calling arrangements to internet service providers (ISPs). VNXX would be particularly attractive to an ISP, since the ISP can use the CLEC's VNXX offering to extend the geographic scope of its local dial-up internet service. For example, an ISP with facilities in Portland could use VNXX to provide dial-up internet to end users in a distant exchange such as Nehalem. The ISP's customer in Nehalem could access the ISP in Portland with a local call to the VNXX associated with Nehalem, thereby avoiding long distance charges. The ISP could also avoid the expense of providing a toll-free "800" number.

OTA relies on an "end-to-end" analysis to assert that VNXX calls, such as the Nehalem to Portland example above, should be classified as long distance rather than local. According to OTA, one should consider only the originating and terminating ends of the overall transmission. According to OTA, the originating end is in Nehalem and the terminating end is in Portland, even though the end use customer in Nehalem dialed a local telephone number assigned to the Nehalem exchange. In support, OTA provided orders from state commissions in Georgia, Maine, Missouri, Ohio, South Carolina, and Tennessee. These orders from other states are generally consistent with OTA's position favoring an end-to-end analysis.

If VNXX calls were classified as long distance, a long distance carrier would carry the call and would pay originating access charges to the local exchange carrier at the

[1] NPA refers to numbering plan area, also known as area code. NXX is a code of three digits that designates a particular central office within an NPA, or a given 10,000 line unit of subscriber lines, where "N" is any number from 2 to 9, and "X" is any number from 0 to 9. An NXX code is often referred to as a local telephone number prefix.

originating end (e.g., Nehalem Telephone and Telegraph in Nehalem). The long distance carrier would also pay terminating access charges to the local exchange carrier at the terminating end (e.g., the CLEC in Portland). OTA's concern is with the originating end, since in most instances OTA member companies provide connection at the originating end of VNXX calls. OTA contends that VNXX calling significantly infringes on the access revenues of its members.

The OTA petition seeks the following relief:

> OTA respectfully petitions the Commission to issue an order declaring that use of VNXX-like services do not meet the definition of local exchange telecommunications services and are appropriately classified as interexchange or exchange access services subject to the assessment and payment of intrastate access charges where the call originates and terminates in two separate rate centers without extended area service between those rate centers.
>
> OTA also requests that the Commission issue a ruling declaring that such service arrangements are an inappropriate use of numbering resources where that service's provision using [*sic*] a new NPA/NXX for each rate center and prohibit such practice. OTA further requests that the Commission issue an order declaring that where a single NPA/NXX is desired to be spread over several rate centers, such practice would violate standards needed to implement number portability and is prohibited. (*See* OTA Petition, pp. 10-11.)

OTA first raised its concern over VNXX by protesting an application for certificate of authority by ICG Telecom Group, Inc. (ICG) in docket CP 1045. OTA protested the application because members of OTA believed that ICG intended to use VNXX to provide telecommunications service in Oregon. OTA filed its petition for a declaratory ruling regarding VNXX while ICG's application was still under review, offering to withdraw its protest of ICG's application if the Commission would grant the petition for a declaratory ruling.

On July 8, 2002, the Commission granted ICG’s application, in Order No. 02-438, without deciding OTA's petition for declaratory ruling. In granting the application, the Commission stated that it "agrees that the issue of using VNXX arrangements is an important issue and should be investigated." The Commission further decided that the VNXX issue is generic, not specific to the applicant ICG, and therefore should not be decided in docket CP 1045.

A subject is appropriate for declaratory ruling where the facts of the matter are clear, and where the petitioner has established an unambiguous connection between the facts and a statute, rule, or prior Commission decision. Staff concludes that a declaratory ruling is not appropriate in this instance. The facts outlined in OTA's petition are not sufficiently clear. Neither is it readily apparent how various statues, rules and prior decisions of this Commission and the Federal Communications Commission (FCC) apply to the facts as presented by OTA. The Commission should deny OTA's petition for declaratory ruling, in docket DR 31.

However, staff believes that OTA has identified an issue that merits investigation, and that the Commission should open a general investigation (i.e., a UM docket) to look into the matter. As mentioned above, the Commission has already determined that use of VNXX arrangements should be investigated. See docket CP 1045, Order No. 02-438. A general investigation docket will provide parties an opportunity to identify issues, develop facts, and make legal and policy arguments.

A general investigation docket would consider issues such as, is it in the public interest to allow VNXX arrangements? If so, should calls to VNXX numbers be considered interexchange calls on which access charges should be paid, or should these calls be considered local exchange calls on which reciprocal compensation should be paid? Alternatively, should the Commission allow VNXX arrangements to bypass both access charges and reciprocal compensation, since the CLECs are paying for the private line circuits? What is the financial impact of allowing VNXX arrangements to continue unchanged? If access charges were imposed on what is now interexchange traffic using VNXX arrangments, would those traffic volumes disappear or never materialize because customers are unwilling to pay toll charges to access the internet? What is the effect of VNXX on number resources and number portability?

PROPOSED COMMISSION MOTION:

The Oregon Telecommunications Association's petition for a declaratory ruling in docket DR 31 be denied, and an investigation of Virtual NPA/NXX calling patterns be opened.

ota petiton dr31