BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.	))))	Docket No. 000075-TP

DIRECT TESTIMONY OF

TERRY HAYNES

ON BEHALF OF

VERIZON FLORIDA INC.

MARCH 12, 2001

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH VERIZON.

A. My name is Terry Haynes. My current business address is 600 Hidden Ridge, Irving, Texas 75015. I am a manager in the State Regulatory Policy and Planning group supporting the 20 Verizon states formerly associated with GTE. I am testifying here on behalf of Verizon Florida Inc.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a Bachelor of Arts Degree in Philosophy from the University of South Carolina in 1973. Since 1979, I have been employed by Verizon and its predecessor companies. I have held positions in Operations, Technology Planning, Service Fulfillment and State and Federal Regulatory Matters.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. I will address the Commission-designated Issue 15. Subpart (a) of that Issue asks: "Under what conditions, if any, may carriers assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed?" Subpart (b) of Issue 15 asks: "Should the intercarrier compensation mechanism for calls to these telephone numbers be based upon the physical location of the customer, the rate center to which the telephone number is homed, or some other criterion?"

The short response to these questions is: (1) carriers should not be permitted to assign telephone numbers to end users located outside of the rate center to which the telephone number is homed (unless foreign exchange service is ordered or the parties agree to an appropriate compensation arrangement) and (2) compensation for calls terminated to telephone numbers outside of the rate center should be based on the customer's location. To aid in understanding the issues associated with these questions, I will provide a detailed description of the nature of so-called "virtual NXX" traffic. I will explain why virtual NXX traffic is not local in nature, how such traffic is compensated today, and the ramifications to Verizon and its customers if the Commission designated virtual NXX calling as local.

Q. BEFORE DISCUSSING VIRTUAL NXX TRAFFIC, PLEASE DEFINE THE TERMS RELEVANT TO THAT DISCUSSION.

A. Several terms and concepts discussed in my testimony, though commonly used, are often misapplied or misunderstood. As a foundation for understanding the virtual NXX discussion, I use the following definitions:

An "**exchange**" is a geographical unit established for the administration of telephone communications in a specified area, consisting of one or more central offices together with the

associated plant used in furnishing communications within that area.

An "**exchange area**" is the territory served by an exchange.

A "**rate center**" is a specified location (identified by a vertical and horizontal coordinate) within an exchange area, from which mileage measurements are determined for the application of toll rates and private line interexchange mileage rates.

An "**NPA,**" commonly known as an "area code," is a three-digit code that occupies the first three (also called "A, B, and C") positions in the 10-digit number format that applies throughout the North American Numbering Plan ("NANP") Area, which includes all of the United States, Canada, and the Caribbean islands. There are two kinds of NPAs: those that correspond to discrete geographic areas within the NANP Area, such as the "813" NPA that serves many of our customers in and around Tampa, and those used for services with attributes, functionalities, or requirements that transcend specific geographic boundaries (such as NPAs in the N00 format, *e.g.*, 800, 500, etc.). *See "NPA" in the Glossary of the "Central Office Code (NXX) Assignment Guidelines," INC 95-0407-008, April 11, 2000.*

An "**exchange code**" is a three-digit code – also known as an "NXX," an "NXX code," a "central office code" or a "CO code" – that occupies the second three ("D, E and F") positions in the 10-digit number format that applies throughout the NANP Area. *See Glossary of the "Central Office Code (NXX) Assignment Guidelines," INC 95-0407-008, April 11, 2000.* Exchange codes are generally assigned to specific geographic areas, such as "483," which is assigned to customers operating in the central part of Tampa. However, some exchange codes are non-geographic, such as "N11" codes (411, 911, etc.) and "special codes" such as "555." An exchange code that is geographic is assigned to an exchange located, as previously mentioned, within an area code (*e.g.*, "813-483" refers to the "Tampa central exchange").

When a four-digit line number ("XXXX") is added to the NPA and exchange code, it completes the 10-digit number format used in the NANP Area and identifies a specific customer located in a specific exchange and specific state (or portion of a state, for those states with multiple NPAs). This 10-digit number is also known as a customer's unique telephone "address." *See "NANP" in the Glossary of the "Central Office Code (NXX) Assignment Guidelines," INC 95-0407-008, April 11, 2000.*

Q. WHY IS A CUSTOMER'S 10-DIGIT "ADDRESS" SIGNIFICANT?

A. A customer's telephone number or "address" serves two separate

but related functions: proper call routing and rating. In fact, each exchange code or NXX within an NPA is assigned to *both a switch*, identified by the Common Language Location Identifier ("CLLI"), *and a rate center*. As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly from the callers to their intended destinations. At the same time, telephone numbers also identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls. It is this latter function of assigned NXX codes – the proper rating of calls – that is at the heart of the virtual NXX issue.

Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THE "PROPER RATING" OF TELEPHONE CALLS?

A. A major public policy goal that has guided regulators and the telecommunications industry for many decades has been the widespread availability of affordable telephone service. To achieve and sustain this "universal service" objective, certain telephone pricing principles or conventions were adopted, and are still in use today. The primary principle is that the basic exchange access rate typically includes the ability to make an unlimited number of calls within a confined geographic area at modest or no additional charge. This "confined geographic area" consists of the customer's "home" exchange area and additional surrounding exchanges, together designated as the customer's "local calling

area." Calls outside the local calling area, with limited exceptions noted in the paragraph below, are subject to an additional charge, referred to as a "toll" or Message Telecommunications Service ("MTS") charge. "Toll" service is generally priced higher, on a usage-sensitive basis, than local calling. In order to ensure that basic local phone service is universally available and affordable, regulators permit local exchange companies to use revenues gained from toll service to hold down the monthly cost for basic local service.

A second industry pricing convention is the principle that, generally, the calling party pays to complete a call – with no charge levied on the called party. There are a few exceptions, such as where a called party agrees to pay toll charges in lieu of applying those rates on the calling party (e.g., 800/877/888-type "toll-free" service, or "collect" and third party billing) or where both the calling and called parties share the cost of the call, as with Foreign Exchange Service. I will discuss Foreign Exchange Service separately later in the testimony.

Q. HOW DOES THE TELEPHONE NUMBER OR "ADDRESS" PLAY A ROLE IN PROPERLY RATING AN INDIVIDUAL CALL?

A. Incumbent Local Exchange Carriers' (ILECs') tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating rate centers/exchange

areas of the call. This information, in turn, is used to properly rate the call. If the rate center/exchange area of the called party, as determined by the called number's NXX code, is included in the originating subscriber's "local calling area," then the call is established as a "local" call. If the rate center/exchange area of the called party – again determined by the NXX code of the called number – is outside the local calling area of the caller, then the call is determined to be "toll." Thus, the rate centers of calling and called parties, as expressed in the unique NXX codes assigned to each rate center/exchange area, are absolutely essential for the ILECs to properly rate calls as either local or toll.

Q. HOW DOES THE EXISTENCE OF SO-CALLED VIRTUAL NXX CODES AFFECT EITHER THE ROUTING OR RATING OF TELEPHONE CALLS?

A. A "virtual NXX" is an entire exchange code obtained by a carrier and designated by that carrier for a rate center/exchange area in which the carrier has no customers of its own, nor facilities to serve customers of its own. Instead, the exchange code is used by the carrier to provide telephone numbers to its end users physically located in exchanges other than the one to which the code was assigned. A CLEC's assignment of numbers in a virtual NXX to end users not physically located in the exchange area associated with that NXX does *not* affect the routing of the call from the caller to the called party. The network recognizes the carrier-assigned

NXX code and routes the call to that carrier's switch for delivery by that carrier to its end user, the called party.

However, the CLEC's "virtual NXX" code scheme completely undermines the rating of a call as local or toll, thereby denying Verizon compensation for the transport costs it incurs to deliver calls to the CLECs.

Q. HOW DOES THE VIRTUAL NXX SCHEME DENY VERIZON COMPENSATION FOR TRANSPORT?

A. Unlike ILECs, CLECs generally have, at most, only one switch per LATA. This means that all calls originated by Verizon's customers to a CLEC's customers, whether local or toll, are routed to the same CLEC switch. Further, it is the current practice of many CLECs to designate a single point (an interconnection point) within the state – usually located at the CLEC's switch – from which the CLECs receive both local and toll traffic from Verizon callers to the CLEC's customers. This means that Verizon incurs the costs to transport all calls, local and toll, from distant points throughout the state to the CLEC's switch.

The use of virtual NXXs by CLECs makes calls that are inward toll service appear local, thereby denying Verizon the opportunity to collect just compensation for the transport it provides to the CLECs on the call. When an ILEC's customer initiates a call to a CLEC

virtual NXX, the ILEC's switch sees the NXX code as being assigned to the exchange area/rate center of the originating caller or to an exchange area within the originating caller's local calling area and, thereby, incorrectly assumes the call to be local. In fact, the call is delivered by the CLEC to its end user located *outside* the local calling area of the originating customer, in which case toll charges should properly apply. Worse still, the CLEC also presents Verizon with a bill for reciprocal compensation on such traffic by claiming that it is local. However, the CLEC does not terminate the call within the local calling area of the originating caller. Rather, the CLEC simply takes the traffic delivered to its switch and delivers the calls to its virtual NXX subscriber, often located in the same exchange as its switch – if not physically collocated with the CLEC at its switch.

In short, the CLEC has gamed the regulatory pricing policy established to support affordable and universally available telephone service. The CLEC gets a free ride for its toll traffic on the incumbent's interoffice network *and* gets reimbursed by Verizon through reciprocal compensation for local termination costs it does not incur. Verizon incurs essentially all of the transport costs yet is denied, by misapplication of proper NXX codes, an opportunity to recover its costs either from its originating subscriber or from the CLEC. There can be little doubt why some CLECs have embraced "virtual NXX" service to the exclusion of other legitimate service

arrangements.

Q. PLEASE EXPLAIN HOW VERIZON IS COMPENSATED FOR LOCAL CALLS ORIGINATED BY ITS CUSTOMERS TO OTHER VERIZON CUSTOMERS AND TO CLEC CUSTOMERS.

A. When a Verizon customer makes a local call to another Verizon customer (i.e., both the caller and the called party are located within the same local calling area), the call is transported entirely over Verizon's network. Verizon theoretically is compensated for this call by the caller, either through the flat-rate exchange charge paid to Verizon, or through local usage charges.

When a Verizon customer makes a true local call to a CLEC customer (i.e., where the CLEC customer being called is physically located within the local calling area of the caller), the call is routed with the CLEC transporting the call back to the caller's local calling area where the called party is located. In this case, as with the Verizon-to-Verizon call above, Verizon theoretically is compensated for its costs solely by its customer who originated the call. However, Verizon pays the CLEC reciprocal compensation for terminating the local call. If the above situation is reversed and a CLEC customer places a local call to a Verizon customer, then the CLEC would charge its customer for the service and pay Verizon reciprocal compensation. The concept of reciprocal compensation assumes reciprocity--that carriers will be exchanging local traffic for

termination between them.

Q. ARE CALLS FROM VERIZON CUSTOMERS TO CLECS' VIRTUAL NXXS LOCAL?

A. No. A virtual NXX, as defined earlier, is an exchange code assigned to a carrier and designated by that carrier for a rate center/exchange area in which the carrier has no customers of its own and no facilities to serve customers of its own. Instead, the CLEC uses the virtual NXX to provide telephone numbers to customers physically located in rate centers/exchanges other than the one to which the code was assigned. The reason CLECs use virtual NXXs is to make calls appear "local" both to the caller *and the caller's carrier* and thereby claim reciprocal compensation. However, if the CLEC customer is located outside the local calling area of the Verizon caller, the call is not local – regardless of whether the CLEC has assigned its customer a number that appears to be within the Verizon customer's local calling area.

Q. BUT CAN'T CLECS ESTABLISH DIFFERENT LOCAL CALLING AREAS THAN THE ILECS?

A. While a CLEC is free to determine local calling areas *for its own customers*, it does not have the right to define/modify local calling areas for Verizon's customers. However, by using exchange codes in the manner described as virtual NXXs, CLECs are doing just that. The incumbent LECs' rates and practices governing "toll" and

"local" historically have been set by the regulator, in part, to ensure that basic local service is both affordable and universally available. If calls to CLECs' "virtual NXXs" were made only by CLECs' own customers, that would be one thing. But CLECs did not establish virtual NXXs for their own customers – they did so to make interexchange/toll calls appear local to ILECs and their customers. By using "virtual NXXs," CLECs lead Verizon's customers to believe that the number they are dialing is a local call inside their own exchange area. Therefore, the customer believes he/she is placing a local call, when in fact he/she is reaching a party outside the exchange area and this termination would normally be processed as a toll call. In addition, as described previously, since ILECs rate calls using the NXX code (which historically identifies the called party's location for rating purposes), and because a "virtual NXX" has no relationship to the physical location of the called party, the ILEC's network will identify the call as local for rating purposes even though the call was actually transported outside of the local exchange area. Unknowingly, the ILEC rates calls placed to "virtual NXXs" as "local," the CLEC is perceived to be entitled to reciprocal compensation payments from the ILEC and the ILEC is unable to collect toll service charges from the calling party. In essence, "virtual NXXs" sever the connection between exchange areas and their corresponding exchange codes or NXXs, which prevents ILECs from collecting for toll calls and simultaneously inhibits ILECs' ability to maintain low and affordable

basic local phone service. The entire "virtual NXX" scheme undermines the long-standing and successful public policy goal to ensure that basic local service is affordable and universally available.

Q. PLEASE EXPLAIN THE GENESIS OF THE TERM VIRTUAL NXX.

A. It is my understanding that virtual NXX is a term that was coined a few years ago by some CLECs to describe the arrangement they devised ostensibly to provide their customers – generally ISPs – with a one-way/inward 800-type service. Had the CLECs legitimately provided their ISP customers with a one-way/inward toll-free number service, the customer with the toll-free 800, 877 or 888 number (*i.e.*, the ISP) would pay to receive all incoming calls, the terminating carrier (the CLEC) would pay the originating carriers (*e.g.*, Verizon, independent telephone companies) carrier access charges, and the callers would reach the ISP free of charge. However, under the virtual NXX scheme employed by some, CLECs receive an 800-like arrangement, with Verizon bearing the costs to transport their traffic without compensation.

Q. HOW DID THE CLECS' ESTABLISHMENT OF VIRTUAL NXXS AFFECT THE EXCHANGE OF TRAFFIC BETWEEN ILECS AND CLECS?

A. Since the virtual NXX calls ended up being rated improperly as local to the caller, the CLEC declared the call local and billed the

originating carrier reciprocal compensation (rather than paying access charges to the originating carrier for an inward toll call), arguing that such compensation was due in accordance with interconnection agreements for allegedly terminating a local call. However, reciprocal compensation – as expressly defined in those same interconnection agreements – applies only to calls originating and terminating *within the same local calling area*. Of course, Verizon disputes the notion that CLECs serving ISPs "terminate" ISP-bound traffic, such that this traffic is local. But even if one accepts that notion for the sake of argument, then virtual NXX calls are still not local. Again, the determining factor for rating a call as local in all instances is the location of the calling and called parties within the same local calling area. As mentioned earlier, the concept of reciprocal compensation was predicated on reciprocity – the assumption that carriers would be exchanging local traffic. However, by obtaining ISPs as customers and declaring their NXXs as virtual NXX or non-traditional FX codes, the CLECs created a situation that is anything but reciprocal. Rather, these CLECs have set up a one-way calling arrangement designed to secure reciprocal compensation monies from the ILECs while using the ILECs' networks free of charge to transport toll calls.

Q. ARE THERE ADDITIONAL IMPACTS THAT RESULT FROM THE USE OF VIRTUAL NXXS?

A. Yes, the use of virtual NXXs has a significant impact on numbering

resources in Florida. A virtual NXX obtained solely to provide an interstate service to ISPs or an interexchange FX service is more appropriately called a "mis-assigned NXX" since it does not appear to comply with FCC rules and the Industry Numbering Committee guidelines developed at the FCC's direction and administered by NeuStar, the entity designated by the FCC to administer numbering resources nationwide.

Section 4.0 of the most recent version of the "Central Office Code (NXX) Assignment Guidelines," INC 95-0407-008, issued April 11, 2000 addresses the "Criteria for the Assignment of Central Office Codes," stating that: "Assignment of the initial code(s) will be to the extent required to ***terminate*** PSTN [public switched telephone network] traffic as authorized by the appropriate regulatory or governmental authorities...." (emphasis added).

If a carrier is not terminating traffic to an exchange because it has no customers in that exchange, and if it fails to have customers in that exchange within six months of activating the code, then it is required to return the code to NeuStar.

In 1999, the FCC delegated authority to the Florida PSC to investigate whether a company has activated NXXs assigned to it and to direct the NANPA to reclaim NXXs that have not been activated in a timely manner. (*Fla. Pub. Serv. Comm'n Petition to*

FCC for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, Order, 14 FCC Rcd 17506, at para. 22 (1999).)

Today, virtual NXXs are being used by CLECs to transform the rating of toll calls into local calls. In other words, a CLEC using virtual NXXs claims it is mirroring Verizon's rate center structure for purposes of inter-carrier compensation when, in fact, some CLEC customers are located in exchanges other than the ones to which their codes are assigned.

Q. DO ALL CLECS USE THE NXX CODES ASSIGNED TO THEM AS VIRTUAL NXXS?

A. On a national basis, Verizon has observed that some CLECs use the NXX codes assigned to them as virtual NXXs. It is Verizon's understanding that other CLECs may initially obtain NXX codes specifically to serve customers physically located within the exchange areas to which the codes are assigned, just as ILECs do. However, in some instances, it has been observed that CLECs also tend to provide some of their customers with a "virtual FX" type of arrangement. (See the discussion of the Brooks Fiber situation below.) While such CLECs' codes are not virtual NXXs in their entirety, a *portion* of the numbers within their codes are being used in a similar manner to the virtual NXX arrangement described above.

Q. WHY ISN'T VERIZON'S TRADITIONAL FOREIGN EXCHANGE SERVICE (FX) A VIRTUAL NXX/FX ARRANGEMENT?

A. Verizon's FX service is a toll substitute service. It is a private line service designed so that a calling party in the "foreign" exchange may place to the FX customer, located outside the caller's local calling area, what *appears* to be a local call. As discussed earlier, if FX service were truly a local call, the called party would not be subject to additional charges. The called party (the FX subscriber), however, agrees to pay (on a flat-rate basis) the additional charges which the calling party would otherwise have to pay to transport the call beyond the caller's local calling area to the exchange where the FX customer's premises are located. Foreign Exchange service has been in existence for decades as a way for a customer to give the appearance of a presence in another local calling area – for example, in the local calling area of its potential customers for an FX business customer. The FX customer does so by subscribing to basic exchange service from the "foreign" switch and having its calls from that local calling area transported over a private line, *which it also pays for*, from the distant local calling area to its own premises. En route, the call is transported through the FX customer's own end office where it is connected, without being switched, to the customer's local loop.

It's important to note that Verizon's Foreign Exchange service was

not devised as a mechanism to make calls appear local to the callers' carriers as a way to avoid transport costs and to collect reciprocal compensation. But some CLECs do use virtual NXX/FX numbers to make calls appear local both to the Verizon customer placing the call and to Verizon, the carrier originating the call for its customer. And because the call appears local to Verizon, based on the CLEC customer's NXX code, the CLEC declares the call local and bills Verizon reciprocal compensation. However, it is Verizon, not the CLEC, that is transporting the call from the caller's local calling area (the "foreign" exchange) to the CLEC's switch – transport for which Verizon is not compensated. From there, the CLEC simply hands off the call to the virtual FX customer usually collocated with the CLEC and proceeds to bill Verizon for reciprocal compensation, as if the call was local.

Q. IF THE COMMISSION FINDS THAT CALLS TO VIRTUAL NXX NUMBERS ARE "LOCAL" FOR ILECS' CUSTOMERS, WHAT EFFECT WILL THIS HAVE ON ILECS AND THEIR CUSTOMERS?

A. If the Commission were to declare virtual NXX traffic local, it effectively would extend the local calling areas for ILEC customers and provide an incentive for CLECs to expand this practice. Eventually, such a practice would further erode the ILECs' toll and access revenues in the state, which have traditionally been used by the Commission to hold down basic exchange rates. Such a ruling

would place tremendous upward pressure on Verizon's existing rates for basic local exchange service and undermine the maintenance of affordable and available basic local phone service.

As I've explained, some CLECs are using virtual arrangements to make calls from ILECs' customers to the CLECs' ISP/FX customers appear local to both the caller and the ILEC. As shown on pp. 16-17 of the June 30, 2000 Order in Maine PUC Docket No. 98-758 and 99-593, a CLEC has attempted to utilize a virtual NXX arrangement (referred to as "Regional Exchange (RX) service") to provide state-wide toll-free calling to an Internet Service Provider (ISP). Further, Verizon transports this one-way internet-bound traffic to the CLECs' points of interconnection. These virtual arrangements result in Verizon incurring transport costs to haul calls from across the state to the CLECs' interconnection points (usually at their single switches) and paying reciprocal compensation, with no revenues to offset these costs. If this situation is allowed to continue, given Verizon's limited ability to increase basic local rates, Verizon may have to reduce current network investment levels in Florida to make-up for the inappropriate revenue loss.

Q. ARE YOU AWARE OF ANY STATE COMMISSIONS THAT HAVE ADDRESSED THE ISSUE OF ASSIGNMENT OF TELEPHONE NUMBERS TO END USERS LOCATED OUTSIDE OF THE RATE

CENTER TO WHICH THEY ARE HOMED?

A. Yes, on June 30, 2000, the Maine Public Utility Commission ordered a CLEC, Brooks Fiber, to return 54 NXX codes which it was using in a virtual NXX capacity and rejected Brooks' proposed virtual NXX service. The Commission found that Brooks had no facilities deployed in any of the locations to which the 54 NXX codes were nominally assigned. As such, it rejected Brooks' arguments that it was using the codes to provide local service, and concluded that Brooks' activities had "nothing to do with local competition." (*Investigation into Use of Central Office Codes (NXXs) by New England Fiber Comm., LLC d/b/a/ Brooks Fiber, etc., Order Requiring Reclamation of NXX Codes and Disapproving Proposed Service*, Docket Nos. 98-758 and 99-593, at 13 (June 30, 2000) (attached as Ex. TAH-1.) It found that Brooks' "extravagant" use of the 54 codes "solely for the rating of interexchange traffic" was patently unreasonable from the standpoint of number conservation. (*Id.* at 16.) The Commission further observed that Brooks' likely reason for attempting to implement an "FX-like" service, instead of a permissible 800 or equivalent service, was Brooks' "hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic." (*Id.* at 12.)

Q. HOW DOES VERIZON RECOMMEND THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should affirm that virtual NXX calls are not local calls and that Verizon is not required to pay reciprocal compensation – or any inter-carrier compensation – for these calls. The Commission should direct CLECs to recover their costs from their own FX customers, rather than from Verizon. This would be consistent with the way Verizon recovers its costs for its own FX service – from its FX customer, the *called* party.

To the extent that a CLEC chooses to offer an FX-like, interexchange toll replacement service to its customers through the use of virtual NXX numbers, then that CLEC should be responsible for providing the transport associated with the FX-like service. A CLEC should not market a toll substitute service to its customers and then provision the service by forcing Verizon to provide the underlying associated transport with no compensation. When Verizon provides FX service to its end user customers, the service includes a charge for the transport. The FX customer must purchase from Verizon basic exchange service in the foreign exchange(s) as private line transport between the foreign, distant exchange(s) and its premises.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 30, 2000

PUBLIC UTILITIES COMMISSION
Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber
Docket No. 98-758

ORDER REQUIRING RECLAMATION OF NXX CODES AND SPECIAL ISP RATES BY ILEC'S
(ORDER NO. 4)

NEW ENGLAND FIBER COMMUNICATIONS D/B/A BROOKS FIBER
Proposed Tariff Revision To Introduce Regional Exchange (RX) Service
Docket No. 99-593

ORDER DISAPPROVING PROPOSED SERVICE
(PART 2)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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I. SUMMARY OF DECISION

We address two cases in this Order. In the Investigation Case (Docket No. 98-758), we direct the North American Numbering Plan Administrator (NANPA) to reclaim the central office (NXX) codes acquired by New England Fiber Communications d/b/a Brooks Fiber (Brooks) that it is using for an unauthorized interexchange service and not for facilities-based local exchange service. Brooks shall discontinue the unauthorized service in six months. In a related matter, we find that Brooks's tariff filing in Docket No. 99-593 for a proposed "regional exchange" (RX) service is unjust and unreasonable, and we disapprove the filing.

In the Investigation Case, we also require Bell Atlantic-Maine (BA) (with the participation of all other incumbent local exchange carriers (ILECs) as access providers) to offer the special retail service to Internet Service Providers (ISPs) that Bell Atlantic proposed in response to our last order in the Investigation Case. In addition, we require Bell Atlantic to provide the same service with a wholesale discount.

II. BACKGROUND

In our Order issued on June 22, 1999 in the Investigation Case, we made factual findings and factual and legal conclusions, all of which we had proposed in prior orders. Those included findings that the service provided by Brooks was interexchange rather than local and that the 54 NXX codes Brooks had acquired outside its Portland area exchange were not being used to provide local service. We also requested comments about a proposal set forth in the Order for a special retail service to be offered by ILECs to ISPs. The proposed service would be an interexchange service, but would provide a substantial discount from existing retail toll rates. Because it would be an interexchange service, it also would provide a more appropriate level of revenue to the ILECs than Bell Atlantic was receiving for the "local" traffic under the interconnection agreement between BA and Brooks.

Following comments that we received on that proposal, the Staff Advisors for the Commission issued an Examiner's Report and Supplemental Examiner's Report. The Examiner's Reports not only addressed the issue of the discounted rate mentioned above, but also recommended that we should order the NANPA to reclaim the 54 NXX codes that have been assigned to Brooks, and that we should disapprove Brooks's tariff filing in Docket No. 99-593 for "RX service."

Several parties filed exceptions and other comments to the Examiner's Reports. We will discuss those within the headings below.

III. RECLAIMING NXX CODES

In the Notice of the Investigation Case, we raised questions about the resolution of this case with respect to Brooks's use of the 54 NXX codes assigned to areas outside its Portland area exchange that Brooks has claimed are being used for local service.

We have made findings and factual legal conclusions about Brooks's service and the use of those codes, but we have not addressed the issue of the disposition of those codes in any detail since the initial Notice.

In the June 22, 1999 Order, we found that Brooks was not providing local exchange service in those locations of the state that are outside of its Portland area exchange, and that it was not using the central office (NXX) codes it had acquired from the North American Numbering Plan Administrator (NANPA) for the purpose of providing local exchange service. We found that Brooks has no local switching facilities or loops deployed in any of the locations outside its Portland area exchange to which the 54 non-Portland codes are nominally assigned. Brooks was instead using the NXX codes for the purpose of providing an interexchange service that it characterized as like foreign exchange ("FX-like").

Brooks's "FX-like" service uses the interoffice trunking of another carrier rather than dedicated facilities provided by Brooks. Brooks created the FX-like service by the expedient of acquiring a group of NXXs from the NANPA and assigning various geographic locations to them that are outside of its Portland area exchange, even though it had no local exchange customers in those locations and all of its local exchange service customers were located in the Portland area exchange. As a result, calls to the numbers assigned to locations outside the Portland area exchange, which in reality were calls to Brooks customers located in the Portland area exchange, were rated (at least by Bell Atlantic) as if they were calls to the assigned locations, e.g., Augusta. If a call originated within the Augusta basic service calling area (BSCA) and was directed to a Brooks number that was assigned to Augusta, Bell Atlantic rated it as a "local" call. Nevertheless, the call would be routed from a Bell Atlantic customer over a local loop owned by Bell Atlantic, through a local switch owned by Bell Atlantic, over trunking owned by Bell Atlantic to Bell Atlantic's access tandem in Portland, then to Brooks's switch in Portland, and finally to a Brooks ISP customer, also located in Portland.

Because Brooks was not using the 54 NXX codes for the provision of local exchange service, we found that it had no need for them, that their use by Brooks could lead to the exhaustion of NXX codes in the 207 area code, and that Brooks's use of those codes was an unreasonable act or practice by Brooks under 35-A M.R.S.A. § 1306.

The Federal Communications Commission (FCC) has delegated "significant additional authority" to this Commission to "take steps to make number utilization more efficient" and authorized the Commission to utilize "tools that may prolong the life of the existing area code." *In the Matter of Maine Public Utilities Commission, Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order (Sept. 28, 1999) (FCC *Delegation Order*), ¶¶ 5, 8. The FCC stated:

> The CO Code Assignment Guidelines provide that carriers shall activate NXXs within six months of the "initially published effective date." We are, however, concerned that enforcement of the Guidelines has been lax. Reclaiming NXX codes that are not in use may serve to prolong the life of an area code, because these codes are added to the total inventory of assignable NXX codes in the area code. Therefore, we grant authority to the Maine Commission to investigate whether codeholders have activated NXXs assigned to them within the time frames specified in the CO Code Assignment Guidelines, and to direct the NANPA to reclaim NXXs that the Maine Commission determines have not been activated in a timely manner. We also extend this reclamation authority to instances where, contrary to the CO Code Assignment Guidelines and Maine's rules, a carrier obtaining NXX codes has not been certified as a provider of local exchange service or has not established facilities within the certified time frame. This authority necessarily implies that the Maine Commission may request proof from all carriers that NXX codes have been "placed in service" according to the CO Code Assignment Guidelines as well as proof of certification in the specified service area and proof that facilities have been established within the specified time frame. We further direct the NANPA to abide by the Maine Commission's determination to reclaim an NXX code if the Maine Commission is satisfied that the codeholder has not activated the code within the time specified by the CO Code Assignment Guidelines or has obtained numbering resources without being certified to provide local exchange service.

FCC *Delegation Order* at ¶ 19 (footnotes omitted). According to the quoted portions of the *Delegation Order*, this Commission may require the NANPA to reclaim codes when a carrier either is not certified as a provider of local exchange service or fails to establish facilities within the required time period. *Delegation Order* at ¶ 19. The NANPA *CO Code Assignment Guidelines* (*Guidelines*) require carriers to "activate" codes within six months of the "initially published effective date." *Guidelines* at § 6.3.3. The failure to establish facilities is by itself a ground for reclaiming NXX codes. *Delegation Order* at ¶19.

A. Requirements that a Carrier Using NXX Codes Have Local Exchange Authority and Facilities

In its exceptions, Brooks argued that, as long as it had either obtained authority to provide service, or has met the test of establishing facilities, we cannot require the NANPA to reclaim codes assigned to Brooks. According to this argument, Brooks would be permitted to keep all the codes if it were acting contrary to Maine law with respect to authority but had established facilities in a timely way; or it could keep all the codes if it had lawful authority but had built no facilities. Brooks has misread the *Delegation Order*. Under that Order, there are two independent conditions that allow the Maine PUC to require the return of the codes: first, if Brooks has no authority for the

service it provides; and second, regardless of whether or not Brooks has authority, if Brooks has not established facilities within the allowed time.

In fact, Brooks has failed both tests. Brooks has not established facilities for local exchange (or any other kind of) service within the 6-month period required by the NANPA *Guidelines* in the areas outside its Portland area exchange to which the 54 NXX codes are assigned. Brooks has built absolutely no facilities (e.g., loops or switching) for local exchange (or any other kind of service) in those exchanges and has no customers in those exchanges.

Brooks has obtained general statewide authority under 35-A M.R.S.A. § 2102 to provide both local exchange and interexchange service.[1] That does not end the inquiry into whether Brooks has authority to provide service to a specific area, however. The FCC *Delegation Order* states that a carrier must be "certified" to provide local exchange service. We construe that statement, consistent with language in the *Guidelines*, to require that a LEC must obtain all necessary authority to provide the service that requires the use of NXXs. The *Guidelines* § 4.1.4 states that an applicant for an NXX code:

> must be licensed or certified to operate in the area, if required, and must demonstrate that all applicable regulatory authority required to provide the service for which the central office code is required has been obtained.

We have previously found that Brooks does not have the authority under its approved terms and conditions to provide local exchange service in any location in Maine outside its Portland area exchange. Notwithstanding general authority under section 2102, a utility does not have the authority to provide service to an area, unless its approved terms and conditions define those areas as part of its facilities-based local exchange service territory. A utility cannot offer a service without approved terms and conditions "that in any manner affect the rates charged . . . for any service." 35-A M.R.S.A. § 304. Brooks's approved terms and conditions limit the service area in which it will provide local exchange service to its Portland area exchange. Under current policies, consistent with the *Central Office Code Guidelines* and the FCC *Delegation Order*, we will grant authority to provide facilities-based local exchange service only for areas where a LEC can demonstrate that it will be able to provide facilities-based service within six months. Absent that showing, we would not approve a term or

[1]As pointed out by Brooks's exceptions, Brooks does have authority under section 2102 to provide interexchange service. It obtained that authority on September 9, 1997 in Docket No. 97-559.

condition for Brooks to provide facilities-based local exchange service outside its Portland area exchange.[2]

B. Requirement that NXX Codes Be Used For Local Exchange Service

In addition to the two requirements that are specifically stated in the FCC *Delegation Order*, we believe the *Delegation Order* and the *Guidelines* also require that NXX codes must be used for local exchange service rather than interexchange service. In our prior order we found that the "FX-like" service presently provided unlawfully[3] by Brooks is interexchange. In reaching the conclusion in our prior orders that the Brooks "FX-like" service is an interexchange service, and that Brooks is not using the 54 non-Portland NXX codes for local exchange service, we relied primarily on the definitions of local exchange and interexchange services contained in Chapter 280 of the Commission's rules, and on the substantively identical definitions contained in the interconnection agreement between Brooks and Bell Atlantic.

In its exceptions, Brooks suggested that the NANPA *Central Office Assignment Guidelines* do not necessarily require that NXX codes be used only for local exchange service. We disagree. The *Guidelines* state that NXX codes "are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control." *Guidelines* § 3.1 and 4.1. They "are to be assigned only to identify initial *destination addresses* in the public switched network." Guidelines § 3.1 (emphasis added). "Assignment of the initial code(s) will be to the extent required to *terminate* PSTN [public switched telephone network] traffic *as authorized or permitted by the appropriate regulatory or governmental authorities* ... ." Guidelines § 4.1 (emphases added).

The quoted *Guidelines* leave little doubt that NXX codes are to be used only for the purpose of providing facilities-based local exchange service. IXCs generally do not terminate traffic at end-user locations. Except where they use special access (which, because it is dedicated, does not require switching or NXX codes), IXCs hand over their interexchange traffic to a facilities-based local exchange carrier, most often at a tandem switch. The LEC carries the call to a local switch and local loop, and then

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[2]In our recent orders granting authority to provide facilities-based local exchange service, we have restricted the authority to provide service granted at the certification level pursuant to 35-A M.R.S.A. § 2101, rather than at the term and condition level. If Brooks should pursue an argument in any forum that it has the authority to provide facilities-based service throughout Maine solely because of the order granting it authority to provide local exchange service, issued pursuant to Section 2102 in Docket No. 97-331, we will not hesitate to reopen that Order and review whether we should amend it in a manner consistent with other recent orders.

[3]The "unlawfulness" of offering the present service is due to the fact that Brooks is offering the service without approved rate schedules and terms and conditions. As noted above, Brooks does have authority under 35-A M.R.S.A. § 2102 to provide interexchange service.

terminates the call at the called customer, i.e., the destination address. As we found in our prior orders, Brooks is not terminating traffic on "destination addresses" in any of the 54 non-Portland locations.

The conclusion that the *Guidelines* require that NXX codes be used only for local exchange service is supported by the requirement in the FCC *Delegation Order* that an applicant for an NXX code be certified as a provider of "local exchange service."

C. Further Discussion of Prior Finding that the Brooks Service is Interexchange

In finding that Brooks's "FX-like" service was interexchange, not local, we relied in part on Brooks's characterization of the service as being "like" foreign exchange service. Although foreign exchange service has a local component (the "local" service of one exchange is brought to a customer in another exchange, hence the name "foreign"), it is the routing of calls from one exchange to another, between which toll charges otherwise would apply, that makes the service interexchange.[4] Brooks is correct that FX service has attributes of local service, because it brings local service to a remote location, but the primary purpose of FX is as a toll substitute, and we reaffirm our prior finding that FX is an interexchange service.

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[4]The interconnection agreement between Brooks and Bell Atlantic does provide definitions of local and interexchange traffic; these definitions apply to the traffic of both Brooks and Bell Atlantic. They are identical to the Commission's definitions in Chapter 280. Under those definitions, we concluded that the traffic that originated from areas outside the Bell Atlantic Portland BSCA, and that terminated in Portland, is interexchange. Bell Atlantic and the other ILECs gather that traffic using their loops and local switches in the various locations outside Brooks's Portland area exchange, and they carry it over interoffice transport facilities to Brooks's only switch, located in Portland. Because the traffic is interexchange, it is subject to the access charge provisions of the Brooks-BA interconnection agreement (for interexchange traffic) rather than the reciprocal compensation provisions (for local traffic).

As explained in our prior orders, the definitions of interexchange traffic in Chapter 280, § 2(G) and the BA-Brooks interconnection agreement expressly depend on toll charges applying; traffic between exchanges that have "local" (EAS or BSCA) calling is not considered interexchange. The BA-Brooks interconnection agreement refers to BA's retail tariff to determine whether a call is local or interexchange.

If any doubt should arise about our interpretation of the Brooks-BA interconnection agreement, we would not hesitate to reconsider our approval of that agreement to ensure that its definitions of local and interexchange traffic would not lead to an exhaustion of scarce public numbering resources.

FX (foreign exchange) service in effect brings the local exchange service of a distant ("foreign") exchange to another exchange. Thus, for example, a customer located in Portland who subscribes to FX service for Augusta will be provided with an Augusta telephone number and may make calls as if the customer were located in Augusta. Calls to locations within the basic service calling area (BSCA) for Augusta will be toll-free. If the customer's Augusta telephone number is provided to callers located in the Augusta BSCA, they may dial that number and be connected, toll-free, to the customer in Portland. For customers (e.g., ISPs) seeking to gather traffic from distant exchanges without the caller incurring a toll charge, this is a particularly valuable feature of FX service. However, for "traditional" FX service, the customer must pay for the cost of the transport facilities (ordinarily dedicated) between Portland and Augusta. Those costs are often substantial. Customers subscribe to FX to avoid paying toll charges, and to allow others to call them without toll charges,[5] but typically they must have substantial toll-calling volume between the two locations to justify the cost of the dedicated transport facilities.

Brooks's exceptions do not profess to relitigate our prior finding that its "FX-like" service is interexchange.[6] Nevertheless, Brooks does cite to us a decision of the California Public Utilities Commission, *Order Instituting Rulemaking on the*

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[5]Customers occasionally subscribe to FX service for an exchange that is within the BSCA of the home exchange. Nevertheless, even that FX service normally is for the purpose of avoiding toll charges. For example, a Portland customer might subscribe to FX service for Freeport, which is within the Portland BSCA. Freeport's BSCA includes Brunswick, but Portland's does not. Accordingly, the Portland customer, using the Freeport number, may call toll-free to locations, including Brunswick, that are within the Freeport BSCA; and persons in Brunswick may call toll-free to the customer in Portland by dialing the Freeport number.

[6]On May 1, 2000, AT&T filed a Petition to Intervene, accompanied by comments that purport to address our Order issued on June 22, 1999. When we grant a late petition to intervene, the intervenor is entitled to participate only in issues that are not yet settled and cannot seek to relitigate decided issues. AT&T's comments, however, do primarily argue that Brooks's "FX-like" service is local, notwithstanding the fact that this issue has been fully litigated. Nevertheless, we grant AT&T's petition so that we can address other arguments in its comments.

We cannot let pass, however, AT&T's statement that "ILECs themselves treat calls from their end-user customers to their own foreign exchange customers as local under their retail tariffs." AT&T's statement is nothing more than a description of the "local" component of FX service; it ignores the interexchange component. In any event, the placement of a service in a carrier's tariff is not necessarily determinative of its substantive character. As we found in our prior orders, the very purpose of FX service is as a substitute for toll (interexchange) calling, and FX customers pay substantial amounts in lieu of toll charges. AT&T and Brooks would have us redefine the interexchange component as "local."

Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043; *Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Investigation 95-04-044, Decision No. 99-09-029, California Public Utilities Commission, (Sept. 2, 1999) (California PUC *Rulemaking/Investigation Order*) apparently to support its argument that its existing "FX-like" service, and its essentially identical proposed RX service, are "economically efficient" and will avoid "unnecessary duplication" of the incumbent's network. We address those arguments in Part IV below. Brooks also claims, however, that the California PUC designated "foreign exchange service as a local exchange service."

The California Commission addressed a service configuration established by a "competitive local carrier" (CLC) that is identical to the configuration that Brooks established in Maine, with the distinction (probably insignificant in the long run) that the California CLC was using only two NXX codes.

We see nothing in the California PUC decision (particularly in the portion of the order quoted by Brooks) that suggests that FX service as a whole is local rather than interexchange. The California Commission did rule that charges to the *caller* should be rated by virtue of the "location" of the rate center (i.e., the location to which the rate center is assigned) rather than by the rate center of the ultimate destination. Thus, as under the present Brooks configuration in Maine, if the NXX were assigned to an area within the local calling area of the caller, no toll charge would be assessed on the caller. To that extent, the California decision is not necessarily remarkable.[7] If, indeed, a carrier is offering a reasonable and legitimate FX service, the normal expectation is that end users who dial a "local" number will not be charged toll charges for those calls, even though those calls are routed to a place to which toll charges normally apply. Another normal expectation, however, is that the FX subscriber (the customer that causes the call to go to the remote exchange) pays rates for that transport service that take into account the lost toll revenue.

The California PUC did not ignore the interexchange component of the service. It addressed this component as a compensation issue, stating:

> We conclude that, whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable interexchange intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local.

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[7]What is remarkable about the California decision, however, is the fact that such a substantial portion of the order addressed the issue of how calls made by end-users should be rated. The California approach would be paralleled here if our investigation concentrated primarily on the fact that some of the independent ILECs in Maine have rated the calls to the 54 non-Portland codes as toll calls to Portland.

> The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper destination. A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities.

Cal. Order at 32.

And:

> We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement – not the rating point – of a call which properly forms a basis for considering what compensation between carriers may be due.

Cal. Order at 36.

The California PUC never labeled the California CLC's "FX-like" service as wholly local or interexchange.[8] Brooks's claim that the California PUC found the service to be local exchange service is incorrect.

While the comparison of Brooks's "FX-like" service to traditional FX service has some parallels, we find that an even better comparison is to 800 service. Unlike "traditional" FX service, the Brooks service does not use any dedicated lines. Instead, as in the case of 800 service, Brooks's "FX-like" calls are placed to a "toll-free" number and routed over trunking facilities to a distant location that normally incurs a toll charge. It is beyond argument that 800 service is interexchange and that the charges paid for 800 service are charges for an interexchange service, paid instead of regular toll charges.[9] As discussed in more detail below, in connection with our rejection of

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[8]Based on its discussion about the considerations to be addressed in determining proper compensation, it is arguable that the California PUC considers FX service to be neither local nor interexchange, but *sui generis*.

[9]The California *Rulemaking/Investigation Order* recognized that, in addition to FX service, "another traditional method to provide toll-free calling is '800' service," and that if the California CLC had provided 800 service, it would have to pay "intercarrier switched access charges."

Brooks's proposed RX service, there is nothing preventing Brooks from providing a true 800 service, aside from its apparent unwillingness to pay for it.

We also doubt that Brooks has any real interest in retaining the 54 non-Portland NXX codes for any technical or engineering reason, or for any reason beyond the economic advantage that the codes provided, since 800 or some equivalent service would provide the same or better toll-free access to ISP customers. A toll-free service that uses trunking facilities rather than dedicated facilities can be provided efficiently (from an engineering perspective) using either the Brooks "FX-like" configuration or an "800-like" configuration. The significant difference between the two methods is the vastly greater number of NXX codes used in the Brooks configuration. We suspect that the real difference to Brooks between those two alternatives is that, by continuing to argue that it should be permitted to use 54 NXX codes to provide its service, on the ground that the "FX-like" service is "local exchange service," it may hold onto its hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic. By contrast, under an 800-like service, it would be clear without any doubt that Brooks would have to pay the legitimate interexchange costs of long-distance transport, either by using (and paying access charges for) the facilities of another carrier or by paying for the costs of providing its own facilities.

The record makes clear that Brooks's "FX-like" service is being used by Brooks's ISP customers for the purpose of allowing the ISPs' customers who are outside Portland (and who are customers of Bell Atlantic or other ILECs rather than of Brooks) to call the ISPs from locations throughout the state without paying toll charges. It has exactly the same purpose as "traditional" FX service: it is a substitute for interexchange toll service. Alternatively, it is a variant on "800" service, which is a recognized interexchange service. We therefore reaffirm our finding that Brooks's "FX-like" service is an interexchange service, not a local exchange service.

D. Conclusion to Part III: Reclaiming NXX Codes

In this Order, pursuant to our authority under the FCC Delegation Order, we order the NANPA to reclaim the 54 non-Portland NXX codes assigned to Brooks, pursuant to the schedule described in Part V below. Brooks is not using those codes for purposes that are consistent with the NANPA *Guidelines* or the requirements of the FCC *Delegation Order*. It does not have the authority from this Commission to provide local exchange service to anywhere in Maine outside its Portland area exchange (the municipalities of Portland, South Portland and Westbrook); it has no loop, switching or other facilities in, or local exchange service to, those areas; and the "FX-like" service that it is providing with the use of the 54 non-Portland NXX codes is an interexchange service.

With regard to the procedure that we must use to order NANPA to reclaim NXX codes, the FCC stated:

> We note that the CO Code Assignment Guidelines dictate substantial procedural hurdles prior to reclamation of an unused NXX, in part to afford the codeholder an opportunity to explain circumstances that may have led to a delay in code activation... . We clarify that the Maine Commission need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines relating to referring the issue to the Industry Numbering Committee (INC) as long as the Maine Commission accords the codeholders an opportunity to explain extenuating circumstances, if any, behind the unactivated NXX codes.

FCC *Delegation Order* at ¶ 20 (footnote omitted).

Brooks has had an ample opportunity in this proceeding to contest the findings and rulings we have made previously, and in this Order. Our findings fully support an order to the NANPA to reclaim the unused Brooks codes.

In Part VI below we address a service, to be furnished by the ILECs (and other carriers who wish to provide it), that will provide a reasonable substitute for the Brooks service, so that ISPs and their customers may continue to have affordable access to the Internet. We expect that it will take some time to implement that service, and we do not want to disrupt service to either ISPs that subscribe to the Brooks service or their customers. We therefore will delay the effective date of reclamation for a period of six months after the date of this Order so that Bell Atlantic and other ILECs will have sufficient time to establish the services and rates described in Part VI, and so that ISPs (and IXCs on a wholesale basis) will have a reasonable opportunity to subscribe to those services.

IV. CLAIMS BY BROOKS AND OTHER PARTIES THAT THE COMMISSION'S RULINGS IMPEDE COMPETITION AND EFFICIENCY

Brooks and others make an argument suggesting that the Commission's findings and rulings, and the rulings proposed in the Examiner's Report (that we now adopt), will impede local competition in Maine. In our view, the activities of Brooks that we have investigated in this case have nothing to do with local competition. Brooks's service does not create any local exchange service or competition whatsoever outside the Portland area exchange, which is the only exchange in which Brooks has any local exchange customers. The amount of local exchange competition created by Brooks's "FX-like" service is precisely the same as the amount of local exchange competition created by WorldCom's 800 service offerings in Maine's remote regions, i.e., none. Brooks has not built any local exchange facilities in the exchanges outside of Portland, and Brooks has no customers in those exchanges. Brooks has no contact with the callers in those exchanges who use Brooks's service to call the ISPs and has no idea who is "using" the service. The callers are in fact customers of Bell Atlantic, of the independent ILECs, and possibly of other CLECs. There is nothing that Brooks is providing in any of those non-Portland exchanges that resembles local competition in

any meaningful sense of the word, a fact borne out eloquently by all of the activities Brooks is not doing.

Contrary to what Brooks, AT&T and some others have implied, this Commission has been extremely receptive to, and supportive of competition for all facets of telephone service. On the interexchange side, the Commission has acted vigorously to reduce access rates everywhere in Maine, all to the advantage of vigorous interexchange competition. With respect to local competition, we have recently allowed, over the ILECs' objection, a trial of facilities-based local competition using Internet Protocol (IP) to go forward with virtually no regulatory intervention.[10]

The comments and exceptions filed by Brooks, as well as those by AT&T, also suggest that the Commission is constraining competition by placing restrictions on Brooks and other competitors in the way they define their local calling areas. Specifically, Brooks suggests the Commission is requiring it to be bound by the definitions used by incumbent local exchanged carriers (ILECs), and that such restrictions on competitive LECs are not appropriate in a competitive marketplace. On the contrary, we have not restricted Brooks or any other CLECs from how they define their own retail local calling areas or from the retail rates they want to charge. Brooks is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). Wireless carriers already offer calling areas vastly different from those offered by wireline carriers, but have built (or leased) facilities that enable them to provide such calling areas.

With its "FX-like" service, however, Brooks is not attempting to define its own calling area. In the areas to which the 54 non-Portland Brooks NXX codes are assigned, Brooks is not offering a different calling area from those offered by the LECs. Its "FX-like" service is not a "local calling area" for Brooks's customers (who are all in Portland) or for anyone else. What Brooks is doing in the non-Portland locations is offering free interexchange calling to customers of *other* LECs that allows them to call a selected number of Brooks customers (ISPs) located in Portland. Brooks is in effect attempting to redefine the local calling areas of *other* LECs. If Brooks had any of its *own* customers served by its own facilities (either by building them itself or by purchasing UNEs), in one of the locations outside of Portland, e.g., Augusta, and offered those customers the ability to call *all* customers in Portland without toll charges, then it could be said that Brooks offered a local calling area in Augusta and, in particular, that its local calling area differed from the ILEC's local calling area. With its own customers in any area, Brooks would be free to delineate whatever "calling area" it wants for those customers, subject to the condition that if such a call is carried over the facilities of another carrier, it must compensate that carrier for the use of its facilities. However, Brooks has no authority to provide local exchange service and no facilities or

[10] *See Time Warner Cable of Maine, Request for Advisory Ruling Regarding Pilot Program,* Docket No. 2000-285, Advisory Ruling (Apr. 7, 2000).

customers in locations outside of Portland, and therefore cannot and does not have "local calling areas" in those places.

As discussed above, what Brooks is attempting to do is offer free incoming long distance *interexchange* service to customers of ILECs who are outside Portland and who want to call Brooks's customers in Portland. Although that goal should not be confused with the offering of a local calling area, we have no objection to the goal itself. Our objections are to the use of 54 NXX codes to accomplish that end, when reasonable alternatives exist; and to the notion that Brooks is somehow entitled to use the facilities of someone else, for free, to accomplish that goal. When a carrier uses facilities of others, it cannot unilaterally redefine wholesale arrangements between itself and the carriers that actually carry its traffic simply by declaring that its calls are "local" if that recharacterization is to its financial advantage. A carrier's retail definitions of local and interexchange do not govern whether it pays local or interexchange wholesale rates to other carriers that carry its traffic.

Brooks also suggests that we are deterring it from deploying a more efficient means of providing foreign exchange service, stating that its service is "an efficient functional equivalent to the *local service* provided by the incumbent BA-ME" (emphasis added). The claim is extravagant: Brooks is not offering an equivalent to local service, i.e., an ability to call all customers within a local calling area. At best, it is offering an "efficient functional equivalent" to Bell Atlantic's foreign exchange service. If the need to conserve NXX codes were not a concern, Brooks's claim that a trunking-based FX system is more economical than a system that uses private lines might have merit.[11] However, 800 service also uses trunking rather than dedicated lines between exchanges and provides the same level of efficiency as the Brooks "FX-like" configuration, but does not require any NXX codes.[12] Brooks's approach may be "innovative," but its claim that our orders "discourage the use of new technologies," and

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[11]The use of trunking facilities, which are shared by all users, is typically more cost-efficient than the use of facilities that are dedicated solely to the use of a single customer. On the other hand, at least for some customers, foreign exchange service that uses private lines that are dedicated solely to the use of that customer are likely to be more reliable because blocking either of trunking circuits or switching, caused by high traffic volumes, is less likely to occur. Emergency 911 and alarm services typically use dedicated circuits to reach remote exchanges.

[12]The California *Rulemaking-Investigation Order* suggests that in the absence of allowing California CLCs the option of using NXX codes for the purpose of providing an "innovative" FX service, CLCs would be required to place switching in every location in which they wished to have a local presence. It does not appear that the California PUC considered 800 service as a reasonable alternative to the NXX-code-based FX service. If one of Brooks's customers in Portland subscribed to an 800 service (provided by Brooks or any other carrier), it would not be necessary for Brooks (or one of the California CLCs in a parallel situation) to place switching in remote exchanges. With 800 service, a local customer in Augusta who was served by a LEC other than Brooks

its suggestion that it should not be saddled with the configuration of the ILECs' network, is disingenuous. Brooks is quite willing to use that network to reach the Brooks switch in Portland, but does not want to pay for its use.

V. REJECTION OF BROOKS'S PROPOSED RX SERVICE

In Docket No. 99-593, Brooks filed proposed terms, conditions and rates schedules for it to provide "Regional Exchange (RX) service." We disapprove the filing because we find the proposed service is not just and reasonable and because Brooks cannot provide the service without the 54 non-Portland NXX codes, which are not available to it for this service.

Pursuant to the provisions of Chapter 110, § 1003(b) of the Commission's rules, we issued a summary Part I Order on May 26, 2000 for this docket stating our conclusions. Part V of this Order constitutes Part 2 of the Order for Docket No. 99-593.[13]

The proposed service would use 54 (or more) NXX codes solely for the purpose of rating calls, so that calls from various locations throughout the State that terminate in Portland would be rated as local (non-toll). While it is a legitimate goal for a carrier to provide toll-free interexchange calling, there are reasonable alternatives to the service proposed by Brooks that do not needlessly use scarce NXX codes. One of those is traditional 800 service; another is the 800-like service we have ordered the ILECs to provide. Neither of these uses any NXX codes within the 207 area code. Nothing prevents Brooks, as an interexchange carrier, from providing an 800-like service itself. Nothing prevents it from buying such a service from another carrier, for example, its parent WorldCom. Under the present circumstances, where we are attempting to avoid the need for an additional area code in Maine, and where other services are available that are technologically equivalent, Brooks's use of 54 codes solely for the rating of interexchange traffic is unreasonable.

No service (even if there were appropriate compensation to the carrier actually providing the interexchange transport) justifies the extravagant use of NXX codes and 7-digit numbers within those NXXs proposed by Brooks. It would take only two or three

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(e.g., Bell Atlantic) would dial an 800 number. That number would be switched by a switch owned by the LEC providing service in Augusta and then routed to Brooks's customer in Portland. Brooks would need switching only in Portland.

[13]On June 2, 2000, the Examiner, pursuant to Chapter 110, §§ 103 and 1302, issued a Procedural Order that stated good cause for suspending the 5-day deadline for the issuance of the Part 2 Order.

The Part I Order in Docket No. 99-593, as well as the Procedural Order, incorrectly identify the date of deliberations as May 16, 2000. The correct date was May 9, 2000.

more Brooks-like arrangements, each with one ISP customer, to completely exhaust Maine's numbering resources. Brooks proposes to use numbers at the rate of 550,000 for ten customers (equivalent to a "fill" rate of under two one thousandths of one percent). Brooks also suggests that "in a pooling environment, Brooks's . . . use of limited NXXs cannot be said to encourage exhaustion." "Pooling" is the allocation of 1000 numbers within an NXX, which contains 10,000 numbers. Although pooling, which will occur soon, provides sufficient flexibility to allow us to delay the return of the particular codes that Brooks is not using for local exchange service for six months, its suggestion is not persuasive. A use rate of ten in 55,000 is not that much better than ten in 550,000. It is also likely that in a majority of the locations to which the Brooks codes have been assigned, there will not be any competitive LEC service in the near future. If there are no other CLECs to use some or all of the other 9000 numbers, assigning Brooks 1000 numbers out of 10,000 effectively ties up all of the 10,000 numbers in an NXX and would prevent the NXX from being used more effectively in a different location. Moreover, if in exchange where only Brooks was assigned a 1000 block of numbers, it were to use only 10 numbers, the use rate is still only ten in 550,000.

Brooks's proposed service (like the identical "FX-like" service it is presently offering without authority) also *depends* on the use of the 54 non-Portland NXX codes; it cannot offer the service without them. Those codes are not available to Brooks for the proposed service any more than they are for its present "FX-like" service. The reasons given in Part III, in support of our ruling that Brooks could not use the codes for the present service, apply with equal force here. Brooks does not meet any of the requirements of the FCC *Delegation Order* and the NANPA *Guidelines*. It does not have authority to provide local exchange service in any of the 54 non-Portland areas, and it has no facilities in those locations for the provision of local exchange service. In addition, the proposed service is an interexchange service rather than a local exchange service, and NXX codes may be used only for local exchange service.

Brooks argues that we should follow the reasoning of the California PUC *Rulemaking-Investigation Order* in order to allow it to use the codes for the purpose of providing the FX-like/RX service. We decline to do so for three reasons. First, the California PUC did not even consider the important questions of whether a carrier using an NXX must provide local exchange service to the place where the code is assigned, whether it must have local exchange facilities, or whether NXX codes may be used for interexchange services. It did not discuss the NANPA Guidelines or the contents of the delegation order that the FCC has issued to the California PUC granting it certain authority over the use and assignment of NXX codes.[14]

[14]As discussed above in Part III, the California PUC did not even clearly rule that the service being offered by its CLCs – virtually identical to the service offered by Brooks in Maine – was a local exchange service.

Second, even if the California PUC could lawfully allow CLCs in California to use NXX codes for a service like Brooks's service in Maine, it is apparent, as a policy choice, that the California PUC has placed a higher value on the ability of its CLCs to offer the FX-like service based on the use of NXX codes than on the conservation of those codes. It stated:

> We disagree with Pacific's claim that the Pac-West service arrangement should be prohibited because it contributes to the inefficient use of NXX number resources. While we are acutely aware of the statewide numbering crisis and are actively taking steps to address it, we do not believe that imposing restrictions or prohibitions on CLC service options is a proper solution to promote more efficient number utilization.

We disagree. While the California PUC sees no reason to "impos[e] restrictions or prohibitions on CLC service offerings," we see no reason why a carrier should be permitted to use scarce NXX codes for gathering interexchange traffic when there are technologically efficient methods (e.g., 800 service) to accomplish the same end, without using NXX codes.[15] The California PUC did not address whether an 800 service configuration would be a reasonable alternative for using codes for a non-dedicated FX-like arrangement.[16]

Third, and perhaps most significant, it appears that the California CLCs may actually have been offering true local exchange service (in addition to the NXX-code-based "FX-like" service) in the locations to which the NXX codes had been assigned. The California Commission stated:

> Moreover, there is no reason to conclude necessarily that a carrier will use any NXX code only to provide service to ISPs which are located outside of the assigned NXX rate center. For example, both Pac-West and WorldCom report they are actively pursuing numerous opportunities to provide profitable telecommunications services throughout their service areas. Their current subscribers include paging companies that have a significant demand for local DID

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[15]The NANPA reports that California presently has 25 area codes. 12 of which codes are in "jeopardy" and 11 of those 12 are subject to "extraordinary measures," i.e., rationing. Number Assignments; NPAs in Jeopardy (visited June 20, 2000) http://www.nanpa.com

[16]Given the California PUC's statements that the CLCs should pay ILECs that transport the call more than nothing for that transport, but should also not pay switched access rates, it should make little difference to the California CLCs whether they offer an NXX-code-based FX service based on the use of NXX codes or an 800 service.

> numbers, which they, in turn, assign to local end users who typically *are* physically located in the assigned rate centers. (emphasis in original) Customers also include banks, retail stores, and other businesses, both located *inside* and outside the assigned rate centers. (emphasis added)

California PUC *Rulemaking/Investigation Order* at 16-17.

While that reason appears to be little more than "make-weight" to the California PUC, we would consider such service to be highly significant. If Brooks actually offered local exchange service to customers located in any of the areas to which the 54 non-Portland codes have been assigned (on other than a sham basis), it would have a legitimate claim to retain the codes.

For the foregoing reasons, we disapprove the proposed terms, conditions and rates proposed by Brooks in Docket No. 99-593. Brooks is, of course, presently providing the very service it has proposed in the tariff filing, but without authority. We will require Brooks to terminate the present unauthorized service on the date that the NANPA reclaims the NXX codes assigned to Brooks that are located outside the Brooks Portland area exchange. We will, however, delay the effective date of our orders to the NANPA for a period of six months and will permit Brooks temporarily to continue to offer the present service to its currently existing customers during that period. As stated in the Part I Order in Docket No. 99-593, Brooks must file a tariff for this grandfathered service, or special contracts with the existing customers.

VI. ILEC SNS/PRI ("500") SERVICE FOR ISPs AND IXCs THAT SERVE ISPs

A. Service Description and Requirement; Rates

In the June 22 Order, we proposed that Bell Atlantic and all other ILECs (the independent telephone companies or ITCs), in their roles as providers of interexchange service in Maine, offer a special service and retail rate for ISPs that would represent a substantial discount from existing retail toll rates. The service would also provide Bell Atlantic and the other ILECs with a more appropriate level of revenue than the amounts BA-ME has "received" as "local" reciprocal compensation (which actually are payments by BA to Brooks) under Brooks's interpretation of the interconnection agreement between Brooks and Bell Atlantic. We also proposed that the service be available on a wholesale basis to other IXCs.

There are two purposes to this service: to provide affordable statewide access to the Internet and to provide an appropriate level of compensation to interexchange carriers that actually carry the traffic and to LECs that originate and terminate the traffic. Those carriers include Bell Atlantic, other ILECs that provide interexchange service or interexchange access service, and any other IXCs that might offer similar special ISP service on their own. At present, Brooks is providing affordable access, but it is needlessly wasting 54 NXX codes to provide the service and is not

properly compensating Bell Atlantic and other ILECs for the use of their interexchange facilities. We have found Brooks's service to be unreasonable and unlawful. Brooks's service also has not been available statewide on a toll-free basis. Most ITCs have rated the traffic to the Brooks NXXs that are nominally assigned to areas outside Portland as toll, because the traffic actually terminates in Portland rather than in the nominally assigned locations, and at least two have blocked the traffic.

We note that some of the discussion below refers only to Bell Atlantic. Some refers to ILECs generally or to Bell Atlantic and other ILECs. For example, where we discuss present impacts of Brooks's service, we usually refer only to Bell Atlantic. Bell Atlantic has been the primary carrier of the traffic generated by the Brooks service. Bell Atlantic also has an interconnection agreement with Brooks, and, at least until we found that the traffic was interexchange, Bell Atlantic paid Brooks reciprocal compensation for the "local" traffic that Bell Atlantic carried over its toll network. By contrast, the other ILECs (ITCs) do not have interconnection agreements with Brooks. Most ITCs have rated the traffic to the Brooks 54 NXXs assigned to areas outside Portland as toll, with the result that there is relatively little traffic originating in ITC exchanges that terminates at Brooks's ISP customers in Portland. In addition, as explained below, Bell Atlantic will be providing the retail service and the other ILECs will be providing access service. We fully intend, however, that all ILECs will participate in providing the service, that the service will be available statewide on a toll-free basis to end-users who are customers of ISPs, and that there be reasonable compensation arrangements among Bell Atlantic, other ILECs and any other participants.

We proposed a special rate for two reasons. Both of these are related to our findings that the ISP traffic carried by Brooks (only from its switch to its ISP customers) is interexchange rather than local in nature; and that Bell Atlantic and other ILECs actually carried the traffic over their transport facilities from locations outside the Portland calling area to Brooks's Portland switch. First, we want to ensure that Internet subscribers are able to continue to subscribe to the Internet at reasonable rates, consistent with the Legislature's mandate of "affordable" Internet access in 35-A M.R.S.A. § 7101(4), even though the traffic at issue in this case is interexchange rather than local. Second, we intend that the rate will fairly compensate Bell Atlantic and other ILECs that will be carrying or providing access for this interexchange traffic. We proposed that the service would be toll-free to end-users, much like an 800 service, and that it would avoid the need to use NXX codes within the 207 area code, again much like an 800 service, which uses no 207 NXX codes.

In its comments of July 14, 1999, Bell Atlantic proposed a service (labeled Single Number Service/Hubbed Primary Rate ISDN, or SNS/PRI) essentially identical to that proposed by the Commission, except for price.[17] As under the Commission's proposal, the SNS/PRI service would use numbers that would be toll-free to end-user

[17]The SNS/PRI service configuration uses advanced intelligent network (AIN) database capability and is therefore technically superior to circuit-switched 800 service.

customers. Each ISP could be assigned one (or more) 7-digit number within the "500" prefix.[18] There would be no need to use any NXX codes within the 207 area code.[19]

The SNS/PRI service is an interexchange service, and the rate is an interexchange rate, for traffic that the Commission has found is interexchange. It is also a *retail* service offered to ISPs. The rate to ISPs will be flat. There will be no usage component (per-minute or otherwise). The subscribers to the rate will be ISPs, not individual customers of ISPs. The service is an *inward* (called party pays) service; ISP customers would be able to call the "500" numbers without paying toll charges.

Under recent changes to the interexchange relationship between Bell Atlantic and the other ILECs (ITC), Bell Atlantic provides retail interexchange toll services to ITC customers in the local service territories of all of the ITCs, except one.[20] The ITCs provide access service to Bell Atlantic and other IXCs. The IXCs pay access charges according to rate schedules on file with the Commission. Pursuant to contract, the ITCs also bill their local exchange customers for Bell Atlantic's retail toll service, and turn over that retail revenue to Bell Atlantic. Unlike the other ITCs, Saco River Telegraph and Telephone Company provides its own interexchange service to its local exchange customers and pays Bell Atlantic and other ITCs to terminate its traffic.

Some questions have been raised about the participation of the independent ILECs, specifically about "concurrence" by those companies in Bell Atlantic's interexchange rate schedules. Historically, the independent telephone companies (ITCs) have concurred in those schedules. Under that concurrence (and the now abandoned settlements process), Bell Atlantic and the ITCs provided interexchange services jointly. Although some ITCs may still "concur," we view concurrence, or the lack thereof, as irrelevant under the present arrangement between Bell Atlantic and the ITCs, where Bell Atlantic provides interexchange service to retail customers located in ITC local service territories and the ITCs provide interexchange access services to Bell Atlantic.

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[18]Brooks's exceptions claim that Bell Atlantic cannot use "500" numbers for the proposed service. If Brooks is correct, we expect Bell Atlantic to obtain another prefix that it may use for the service.

[19]Great Works Internet (GWI), a customer of Brooks, states, somewhat misleadingly, that the proposed SNS/PRI service would require "20,000 internet users to change their numbers." The service would not require any of these users to change their home or business telephone numbers. They would only have to change the number that they dial to access internet service. The vast majority of these users would have to make a one-time change to the number in their computer software that provides access to the Internet. That software automatically dials the number.

[20]Other IXCs, such as AT&T, Spring and WorldCom, also provide interexchange service to local service customers of ITCs.

In response to a set of questions filed by the ITCs, Bell Atlantic stated that the ITCs will offer the SNS/PRI services only if they specifically concur or independently establish their own rate schedules for these services and agree upon compensation with Bell Atlantic. Bell Atlantic also stated that the tariff it is preparing will not include provisions "for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) direction."

Consistent with the description above concerning toll services generally, we will require Bell Atlantic to offer the retail SNS/PRI service to ISP customers located in ITC local exchange service areas, and to allow customers of ITCs to call ISPs located in Bell Atlantic local exchange territory.[21] We also will require the ITCs to provide access service to Bell Atlantic and other IXCs. Rate schedule concurrence is not necessary. ITCs will also provide (sometimes jointly with Bell Atlantic) any necessary dedicated facilities (local distribution channels) to ISPs located in their territory. In response to the question asked by the Telephone Association of Maine (TAM) in its exceptions, concerning whether we are requiring BA to offer "toll plans statewide," including areas served by ITCs, the answer for the SNS/PRI service is yes.

B. Retail Pricing

BA proposed rates that would be "non-usage sensitive and non-distance sensitive and will probably fall in the range of $500-$600 per month, per SNS/PRI facility." In its March 24, 2000 filing, it stated that the rate for such a facility would be "approximately $500." A retail ISP subscriber must obtain a minimum of two SNS/PRI facilities, one in each of the two "sector hubs" for the service, located in Portland and one in Bangor. In addition, an ISP would need "appropriately sized Local Distribution Channels to connect the ISP's location to a single interconnection point on BA-ME's network," at flat-rated prices equal to special access prices, which are distance sensitive.

Bell Atlantic characterized these rates as "affordable" (the statutory standard) rather than based on a possible pricing standard mentioned in the Commission's Order, long run marginal cost.

No party objected to BA's proposed pricing for the retail service, either in earlier comments or in exceptions. The earlier comments filed by Brooks claimed that the proposed Bell Atlantic retail rate would not allow Brooks to "compete." Brooks did not state the reason for this claim, beyond the further conclusory statement that the proposed rate includes a "discriminatory rate structure that will make this service

[21] In the case of 800 service, 800 service customers located in BA-ME territory are able to receive calls from *all* locations in Maine including calls originated by ITC end-users. A BA-ME 800 service customer does not have to subscribe to an ITC service to receive those calls from end-users whose exchange service is provided by an ITC. We expect the same to be true with this SNS/PRI (500) service.

uneconomical for CLECs [sic] to provide."[22] Nothing precludes Brooks from offering a similar retail service using its own facilities and ILEC access services or through resale of the Bell Atlantic service. As proposed in the Commission's June 22, 1999 Order and in Bell Atlantic's proposal, the retail rate would be available at a wholesale discount so that other IXCs would be able to resell it. Bell Atlantic states that the discount in Maine is presently 18-20%.

The rate proposed for this service by Bell Atlantic is acceptable. It represents a substantial discount from the toll rates for the calling volumes directed to ISPs. It satisfies the criterion of 35-A M.R.S.A. § 7101(4), which requires "affordable access" to computer-based information services. Although not required to do so, competitive IXCs may also offer a similar service. In order to facilitate such offerings by IXCs, Bell Atlantic shall also offer a discounted wholesale rate as required by 47 U.S.C. § 251(c)(4). That requirement applies to "any telecommunications service that the carrier [any ILEC] provides at retail to subscribers who are not telecommunications carriers." The requirement does not make any distinction between local exchange and interexchange service. The amount of the discount represents billing and other costs that the ILECs avoid by providing the service on a wholesale basis to IXCs rather than on a retail basis to ISPs.

The Examiner's Report proposed to require Bell Atlantic to provide an additional rate for wholesale customers (IXCs) that would equal the wholesale rate described above, but that would be broken down into separate components of switching, transport and a remaining "common line" amount, similar to the current structure for access rates. The Examiner and advisors apparently believed that a carrier providing service to an ISP could use its own switching, for example, and purchase only transport and the common line component from Bell Atlantic or other ILECs, thereby avoiding the ILEC switching charge. According to Bell Atlantic's exceptions, that assumption is not correct:

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[22]Because the service is interexchange, Brooks's statement quoted above should be read as applying to the ability of *IXCs* to provide the service.

Brooks's exceptions provide a little more specificity to its objection. We discuss that objection below.

> SNS/PRI uses select network facilities to extend a wide-area calling area to an ISP's end users from the PRI hub locations. This investment includes hub switching, direct interoffice transport (where available), Advanced Intelligent Network (AIN) database capability and dedicated terminating facilities to the ISP end user. All of these network components must be in place to efficiently route calls under the SNS/PRI service.
>
> As a consequence, a competing carrier wishing to provide a service comparable to SNS/PRI on a facilities basis cannot own only a terminating switch, as the Examiner apparently envisions. Instead, a competing facilities-based provider must obtain all of the foregoing network facilities which enable BA-ME to provide SNS/PRI. There is no way for BA-ME to "break down" its retail service architecture into a wholesale access rate structure, as the switched access rate categories of common line, switching, and transport do not correspond to the investment in SNS/PRI-related facilities.

Brooks made a similar argument, claiming in effect that the "bundled" service "excludes" competition for what it refers to as the "local service component," i.e., the local distribution channel. Brooks apparently views the "local distribution channel" as a "local component" in part because of its name and its location in Bell Atlantic's tariff. A "local distribution channel" is a facility that runs between a switching facility and a customer. Such a facility is dedicated to that customer's exclusive use and, depending on purpose, may also be called a "local loop" or "special access." The facility, whatever it is called, is capable of carrying both interexchange and local traffic. The service that Bell Atlantic's and the ITCs will offer is an integrated interexchange service that carries interexchange traffic. Brooks apparently agrees with Bell Atlantic's claim that the service is an integrated one and cannot feasibly be broken down into components. Accordingly, we will not require Bell Atlantic and the ILECs to offer services consisting of the three components individually as suggested by the Examiner's Report.

Brooks, in its earlier comments, also complained that if the Commission ordered the proposed service, it would not be permitted to collect anything for traffic that originates on another carrier's network and that terminates at Brooks's facilities. The problem for Brooks is not whether it may collect compensation for terminating traffic, but whether there will be any terminating traffic, once its present unauthorized "FX-like" service ceases. The Bell Atlantic-ILEC SNS-PRI service will be provided directly to ISPs that subscribe to the service. That traffic will be carried directly to a subscribing ISP by Bell Atlantic (and, if the ISP is located in ITC territory, locally by the ITC). Unless Brooks (as an IXC) establishes a competing similar interexchange service, which it is

obviously free to do, none of the present "FX-like" traffic will terminate on Brooks's facilities. The question of compensation for nonexistent traffic is therefore academic.[23]

C. Compensation Among ILECs

Many, and perhaps most, ISPs are located in Bell Atlantic territory.[24] Under the SNS/PRI service, if an end user who is located in independent telephone company (ITC) territory places a 500-NXX-XXXX call to one of the ISPs located in BA territory, the ITC is entitled a "terminating" access payment from Bell Atlantic.[25] Conversely, when an ISP is located in ITC territory, and a Bell Atlantic customer dials a 500 number assigned to that ISP, the ITC is entitled to an "originating" access payments. In its Response, Bell Atlantic stated that because the SNS/PRI service was heavily discounted, it would not pay the ITCs their standard access rates. Bell Atlantic stated:

> [T]he proposed tariff does not cover the terms and conditions for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) direction. The specific terms and conditions for the exchange of this traffic would have to be negotiated in arrangements between BA-ME and the ITCs because existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic created by the Commission in this docket and served by this new SNS/PRI offering.

It also stated:

> An ITC would need to determine for itself whether it desired to offer this service to its subscribers by concurring

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[23]Even if Brooks were somehow able to retain the ISP customers (other than in a resale capacity), so that it still had terminating traffic, the traffic would be interexchange, not local. The BA-Brooks interconnection agreement requires that regular access charges apply to interexchange traffic. BA would not pay reciprocal compensation to Brooks.

[24]At the time the Commission made its factual findings in the Order issued on June 22, 1999, all of the ISPs that are customers of Brooks were located in Portland. Bell Atlantic is the ILEC that serves Portland.

[25]As in the case of 800 service, because it is an inward service (the called party pays), "originating" and "terminating" access designations are reversed.

in BA-ME's filed tariff terms and conditions.[26] The terms and conditions (including cost recovery) for the exchange of traffic originating or terminating on an ITC's network would need to be negotiated between BA-ME and the ITCs, most likely on the basis of an equitable division of the retail rate permitted by the Commission to be charged to the ISP subscriber.

The origination of a call by an ITC subscriber to a BA-ME "500" or "555" ISP subscriber is not traditional access service by the ITC because the Commission has determined that BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service. The Commission, in this docket, has created an entirely separate class of service for Internet-bound traffic only.

The Telephone Association of Maine (TAM) strongly urges us in its exceptions to address the matter of inter-company compensation. The Examiner's Report had suggested that under 35-A M.R.S.A. § 7901 jurisdiction over inter-company compensation issues may be limited to occasions where the companies cannot agree. Subsection 2 of section 7901 does indeed address dispute resolution. Subsection 1, however, makes clear that the Commission has direct jurisdiction over "rates, tolls or charges" for the "transfer of messages or conversations" over lines that are connected between carriers without regard to the existence of a dispute. In addition, we have ample authority under 35-A M.R.S.A. § 1303 to investigate a matter such as inter-company compensation, and that issue surely is reasonably now within the scope of this case, which is an investigation under section 1303.

At least initially, BA, the ITCs and the Commission staff shall address the question of inter-company compensation in a collaborative manner pursuant to a schedule to be established by the Examiner. For that reason, as noted in Part V, we will allow BA and the ITCs a period of up to six months to address compensation issues, as well as any administrative matters that may arise.[27]

In addressing the compensation issues, BA, the ITCs and the Advisory Staff should be aware of the following considerations:

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[26]We have addressed the "need" for ITCs to "concur" at Part VI.A above.

[27]As noted in Part V, Brooks may continue to offer the unauthorized NXX-based "FX-like" service to existing customers only for the full 6 months.

1. It is not entirely clear (contrary to Bell Atlantic's assertions) that "existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic . . . ." It is not clear that existing access tariffs or contractual arrangements between the Bell Atlantic and the ITCs exclude any specific class or type of interexchange traffic from existing access tariffs or compensation arrangements.

2. As claimed by Bell Atlantic, the Commission has established a special category of interexchange toll service for Internet traffic, to be priced substantially below existing toll rates. Bell Atlantic asserts that "BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service." The Commission, however, has not made any finding at this time concerning whether special compensation arrangements are necessary for the SNS/PRI service.

3. If the ITCs charged their existing access rates for the origination of this traffic, Bell Atlantic most likely would be paying more to the ITCs than it would be collecting from its retail customers, the ISPs. We also note, however, that in the recent past, there has been no direct relationship between access revenue billed as a result of calling by a particular customer and the amount of retail revenue obtained from that same customer. Access rates are the same for all minutes and no longer vary according to calling volumes (as they did under versions of Chapter 280 of the Commission's rules prior to the enactment of 35-A M.R.S.A. § 7101-B) Retail rates vary considerably, however.

4. A substantial amount of the Internet traffic originating in ITC territory that will terminate in Bell Atlantic territory will be incremental. At least two ILECs block the traffic that would otherwise be directed to ISP customers of Brooks. Most ITCs charge regular toll rates for that traffic. Accordingly, the ITCs presently are not receiving a significant amount of access revenue for that traffic because blocking prevents, and per-minute toll rates deter, end users from subscribing to ISPs that are located in Bell Atlantic territory.

D. Other Issues

The exceptions of the Telephone Association of Maine (TAM)[28] state that some ITCs have switches that are not currently capable of providing PRIs. We will request the ILECs to address this matter in the collaborative process that we require in Part VI.C above.

[28]The ITCs and Bell Atlantic are all members of TAM, but at least on the issues addressed in this Part VI, it is clear that TAM represents the interests of the ITCs.

TAM's exceptions also note that the June 22, 1999 Order stated that "the rate would not be available to ISPs that offer voice services over the Internet." TAM states that it:

> believes this to mean that no customer subscribing to the service may do so for the purpose of carrying voice traffic. TAM is not aware of anything in the proposal that would prevent a company other than an ISP from subscribing to this service.

TAM then asks whether the Commission intends that the service should only be used by ISPs.

We do intend that the service be available only to ISPs. That limitation should appear in Bell Atlantic's terms and conditions. 35-A M.R.S.A. § 7101(4) justifies a special rate for connecting to the Internet. It does not justify a similar special rate for ordinary toll traffic.

TAM then raises questions about the enforceability of the limitation. We agree that enforceability may be a difficult problem, and we expect the parties to address this in the collaborative process that also will address compensation. We believe that a reasonable policy as a starting point is that ISPs that offer Voice over Internet Protocol (VoIP) should not be permitted to subscribe to the SNS/PRI service and rate. By "offering," we mean marketing and/or providing software for VoIP. If it is feasible to segregate VoIP traffic, we could alter that policy. We doubt if it is possible to enforce such a policy against end users who, on their own, obtain and use VoIP software.

VII. CONCLUSION

We reaffirm our findings in prior orders that Brooks's use of the 54 NXX Codes outside its Portland area exchange is for interexchange purposes, not local, and that Brooks is not providing facilities-based local exchange service or any other facilities-based service in those exchanges. The "FX-like" service that Brooks is currently offering without authority is unreasonable and will not be approved. Accordingly, Brooks has no legitimate need for the 54 codes, and, as authorized by the FCC Delegation Order, we order the NANPA to reclaim them six months after the date of this Order.

Within 30 days following this Order, Bell Atlantic shall file rates, terms and conditions for the retail, wholesale combined, and wholesale components services described in Part IV above.

Ordering Paragraphs

Accordingly, we

1. FIND, in Docket No. 99-593, pursuant to 35-A M.R.S.A. § 310, that the proposed changes to the rate schedules and terms and conditions of the New England Fiber Communications L.L.C. contained in Maine PUC Tariff No. 1:

5th Revised Page 1.1 (cancels 4th Revised Page 1.1)
2nd Revised Page 12.1 (cancels 1st Revised Page 12.1)
1st Revised Page 12.4 (cancels Original 12.4)
1st Revised Page 12.5 (cancels Original 12.5)
1st Revised Page 12.6 (cancels Original Page 12.6)
Original Page 12.7

are UNJUST AND UNREASONABLE and we ORDER that they will not become effective;

2. ORDER New England Fiber Communications L.L.C. to file special contracts, for approval under 35-A M.R.S.A. § 703(3-A), or rate schedules and terms and conditions, for a limited continuation of its existing service that is similar to the disapproved service, as described in the body of this Order;

3. ORDER New England Fiber Communications L.L.C. to make the filing or filings described in paragraph 2 on or before July 18, 2000;

4. ORDER the North American Numbering Plan Administrator (NANPA), effective six months from the date of this Order, to reclaim the 45 central office (NXX) codes in the State of Maine that are assigned to New England Fiber Communications d/b/a Brooks Fiber, and that are outside New England Fiber Communications' Portland area exchange (consisting of the municipalities of Portland, South Portland and Westbrook, Maine);

5. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine to file a schedule of rates, and terms and conditions for the Single Number Service/Hubbed Primary Rate ISDN (SNS/PRI) service described in Part VI of this Order. Bell Atlantic shall make that filing within 30 days of the date of this Order; and

6. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, the independent incumbent local exchange carriers of Maine IXCs that are parties to the case that intend to offer SNS/PRI or similar service, and the Commission Advisory Staff assigned to this case to engage in a collaborative process for resolution of questions having to do with compensation between Bell Atlantic and the independent ILECs, the question of whether there are technical problems in offering the service at some independent ILEC switches, and the question of restricting such service

to uses other than Voice over Internet Protocol. For the latter purpose, the Advisors may request information from other parties in this case and from outside persons. The Hearing Examiner shall establish a schedule for the collaborative process, which shall not exceed six months.

Dated at Augusta, Maine, this 30th day of June, 2000.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.