S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to commence a proceeding for the purpose of resolving issues surrounding virtual NXX.	**)**	**Case No. U-14683**

Submission by ISPs (Mid-mich.net, M33 Access, and The Iserv Company)
regarding
<u>VNXX Workgroup Final Draft Proposal</u>
(March 31, 2006)

I. <u>History of proceedings</u>

A. Time line of PA 235, Sec 304(9), work group participants

The ISPs will defer to the Staff in the compilation of a time line, recitation of the statutory charge and a list of work group participants.

II. <u>What VNXX is</u>

A. Explanations, diagrams

Section 304(9) of 2005 PA 235 defines VNXX in the following way: "*Virtual NXX is the assignment of a telephone number to customers who are not physically located in the exchange to which the NXX is assigned.*"

Considering the inter-carrier compensation focus of this work group, the location of the actual called party is not as important as what costs are incurred by the originating carrier to transport the call to the terminating carrier which then is responsible for completing the call to the retail called party. This definition also specifies that numbers are assigned to customers, when actually larger blocks of a thousand or more numbers are assigned to the requesting Local Exchange Carrier (LEC), which provides the use of those numbers to their customers.

A revised Virtual NXX definition that should be applied for the purposes of this work group is "*Virtual NXX is the assignment of numbers to a Local Exchange Carrier (LEC) that is not directly connected to the telephone Central Office (CO) serving the exchange, where the numbers have been assigned, and therefore relies on the originating carrier of the call to provide transport, beyond the exchange where the call originated, in order to complete the call.*" This definition specifically addresses the underlying inter-carrier compensation issues that are indirectly addressed by Section 304(9). That is not to say that the terminating provider is suddenly responsible for costs associated with direct-connecting to the originating CO, the law currently states that it is the originating providers responsibility to deliver, at its expense, the calls to the terminating provider. However it is this precise point that is in dispute today and cause of consternation particularly to the RLECs (Rural Local Exchange Providers).

Instead of addressing the presumed unfairness of the inter-carrier compensation issues directly, Section 304(9) attempts to redefine what a “local call” is for retail customers based on physical location rather than the standing Michigan model of rating calls based on Area Code and Exchange (NPA-NXX). Up until now, the MPSC has ruled in 9 known cases that VNXX calls are “local calls”[1].

Section 304(9) makes the following change to the definition of local calling:

> “Effective December 31, 2007, a call made to a called party who is not located within the geographic area of the caller’s local calling area or an adjacent local calling area as defined by the commission order is case number U-12515 and U-12528, dated February 5, 2001, is not a local call if the tariff of the provider originating the call does not classify the call as a local call.”

The definition of “Called Party” is critical to interpreting Section 304(9). The term “Called Party” is not defined in the original MTA, and is only mentioned in Section 304(9) without any definition. For the purposes of this work group the “called party” is assumed to be the retail customer to whom the call is connected.

If 304(9) is implemented in carrier tariffs, NPA-NXX no longer becomes the definition of a local call. This is a move in the opposite direction of the Inter-carrier Compensation Forum (ICF) which was organized to provide the FCC with a comprehensive inter-carrier compensation reform proposal and is moving toward a minute is a minute billing regime whether the call is local or non-local. Also since the ICF proposal does not currently address local retail call rating, the local call definition set by Michigan in Section 304(9) will likely stand after the actual underlying VNXX inter-carrier compensation issue is addressed by the FCC (See Section II C & D for detail on these issues). This new definition of retail consumer local calling based on physical location of the called party, will cause confusion for consumers, and call rating problems for carriers operating in Michigan.

Retail Customers have relied on “1” as an indicator of toll as the traditional method of determining if a call is long-distance or not. If a call is not within the local calling area the customer receives a notification that they must dial 1 or 1+NPA to complete the call. 304(9) could undermine this simple tried-and-true method that consumers rely on where 7-digit (or sometime 10-digit) dialing is local and 11-digit dialing (1+NPA+7-digit number) is toll.

The ISPs acknowledge that recent MPSC policies have already blurred this distinction, by allowing monthly minute caps on calling from some Rural Local Exchange Carriers (RLEC) exchanges to adjacent calling areas. Once the caps are exceeded, calls dialed as a seven-digit local call are treated as non-local and billed per minute. Once customers were aware of this policy they were still able to make dialing decisions based on the adjacent exchange being called. Iserv points out that it has filed comments in several filings before the Commission about the risky practice of not requiring “1” as the indicator of toll, and the ISPs ask that the MPSC protect this simple toll indication.

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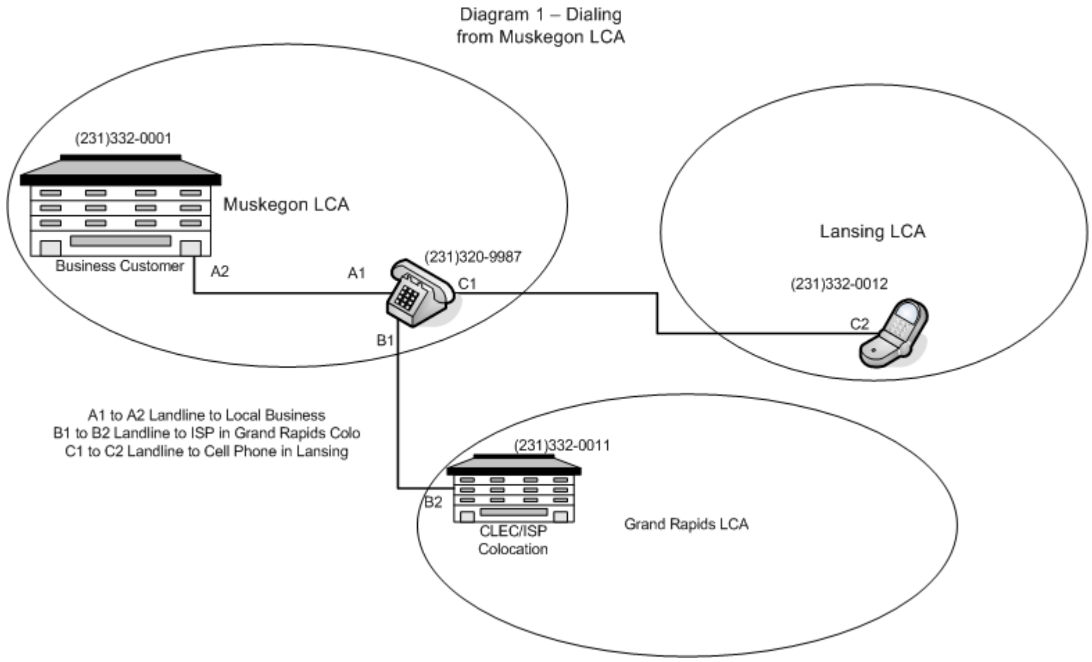
[1] See Commission cases Case No. U-11821, pp. 2-9 (04-12-99); Case No. U-12090, p. 7 (02-22-00); Case No. U-12382, pp. 9-11 (08-17-00); Case No. U-12460, pp. 8-9 (10-24-00); Case No. U-12465, p. 22 (11-20-00); Case No. U-12696, pp. 8-11 (01-23-01); Case No. U-12952, pp. 22-25 (09-07-01); Case No. U-13931, p. 16 (10-14-04); and finally Case No. U-13931, pp. 10-11 (02-24-05).



VNXXs assigned to LECs are not continuous blocks of numbers that will be able to be defined as local or non-local as a complete block. A block of ten numbers could be assigned to a business customer physically located in the Muskegon calling area (231)332-0001 through 0010, the next number could be assigned to an ISP customer in a Competitive Local Exchange Carrier's (CLEC) Grand Rapids Collocation (231)332-0011, while the next is a cellular phone customer physically located in Lansing (231)332-0012. A residential wireline customer calling from the Muskegon Local Calling Area (LCA) would be able to call all number from (231)332-0001 through 0012 as standard seven digit numbers, but the calls to (231)332-0011 and (231)332-0012 could be considered non-local by the originating carrier's tariff based on the physical presence of the called party, therefore they may be subject to toll charges. How should the customer be notified of these charges before they are incurred? Written pre-notification would be insufficient due to sheer volumes, and potential changes of status from local to non-local and back depending on the physical location of the called party and services being provided by each number.

Numbers that have been ported from traditional ILEC native exchanges that are defined as non-local calls will add extra confusion for consumers. Porting is the process by which a number is transferred from one LEC to another. Instead of only affecting Competitive Local Exchange Carrier (CLEC) Virtual NXXs, traditional local NXX calls may be classified non-local depending on the physical location of the called party.

There are no current accounting methods that work based on physical location. There is no existing mechanism to rate calls based on the physical location of called parties, much to less track the physical location of calls terminating to Voice Over IP (VOIP i.e. Broadband Phone Service), Cellular, remote call forwarding, or other mobile services who's geographic location could change regularly, perhaps even hour by hour. This was acknowledged by the FCC in its decision in Starpower v. Verizon South, FCC 03-278, p. 9. During the time frame of this work group no LEC has proposed a system to provide inter-carrier notification of the physical location of a called party so calls could be rated in real-time under 304(9) after 12/31/2007.

B. Current compensation model, architecture

The core issue facing the workgroup is how Rural Local Exchange Carriers (RLEC) design their networks for, transport, and ultimately handoff "local" traffic to Competitive Local Exchange Carriers (CLEC). Within the workgroup, it has become clear that no two networks are designed the same, but the following are summaries of the issues confronted by RLECs and CLECs within the group.

1. Rural Local Exchange Carrier Position Summary

RLEC's "local" traffic has traditionally either been local within the exchange, or transited over direct trunking to adjacent local exchanges.

Due to the distances the RLEC networks are located away from the central tandem switch(es) within the LATA, tandem transport facilities have increased mileage costs associated with them. RLEC tandem trunks have been used primarily to transport of long distance voice traffic which the RLEC is compensated for per minute. Voice traffic over the tandem trunks usually has shorter call durations then ISP bound traffic.

CLECs are permitted to interconnect at a single Point Of Interface (POI) per LATA. CLECs are not limited to the single POI, but are not required to have additional POIs. For most CLECs providing Virtual NXX service the POI is at the primary tandem within the LATA.

Virtual NXX traffic is primarily inbound traffic to the terminating LEC which is often, but not always, a CLEC network. The RLEC can be subject to Virtual NXX traffic in two ways.

First, if the Virtual NXX number is in a local adjacent exchange, the RLEC is required to interconnect with the terminating LEC that may not physically located within the adjacent exchange, so the RLEC must transport the call to the terminating LEC via an ILEC tandem switch. Under the current originator pays regime the RLEC often transports the traffic to the tandem, they are responsible for the ILEC tandem switching fees, and additionally they may be charged reciprocal compensation by the CLEC Virtual NXX (.0007/minute as specified by the FCC ISP Remand Order) for switching and terminating the traffic. (We address reciprocal compensation concerns in Section II -D.) This is the main form of Virtual NXX that has affected RLEC providers until recently. The majority of RLECs that support local adjacent exchange calling in Michigan have implemented 2000 minute monthly calling caps to limit their exposure to these costs. After a RLEC customer has gone over their monthly minute cap they are billed per minute for calls to adjacent exchanges.

The second form of Virtual NXX is when a Virtual NXX block is assigned within a RLEC exchange. In Michigan the only RLEC where this has occurred is within CenturyTel operating areas. Since the numbers are assigned to the same exchange as the RLEC's customers, and calls are rated based on NPA-NXX, the calls are local and not limited by monthly calling caps. The same transport and termination issues, as described above, apply with this form of Virtual NXX.

It is an accepted practice among the work group members that once traffic from one LEC to another LEC reaches 200,000 minutes per month that direct DS1 trunks should be implemented to reduce transport and switching costs associated with transporting and switching via ILEC tandem. However, when a RLEC needs to terminate "local" traffic to a CLEC, the RLEC typically chooses to transit the call via the RBOC tandem rather then arrange for DEOT (Direct End Office Trunking) directly to the CLEC. As expected, the tandem owner charges the RLEC a per-minute transiting fee. It was pointed out in the workgroup, that contrary to fiscal logic, most RLECs never use a DEOT even when doing so could save upwards of $1,800 a month rather then relying solely on tandem transiting.

2. Competitive Local Exchange Carrier Position Summary

The CLEC position is based upon the interpretation of Federal Telecommunications Act that CLECs are allowed to interconnect at a single Point Of Interface (POI) and that the originating carrier should not charge for transport of traffic that was originated on their network.

The Federal Telecommunications Act requires carriers to interconnect with one another, and permits competitive LECs to interconnect at a single point of interconnection (POI) per LATA. 47 USC § 251(a)(1) states that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 USC § 251(c)(2)(B) places a duty upon each incumbent LECs to permit requesting telecommunications carriers to interconnect "at any technically feasible point within the [incumbent] carrier's network."

Once interconnected, 47 CFR § 51.703(b) states that a "LEC may not access charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." The Michigan Public Service Commission (MPSC) has recognized this federal requirement in Case No U-13931, p. 23 (Feb 24, 2005 Order). The MPSC stated:

> "The [MPSC] finds that 47 CFR § 51.709(b) requires that interconnecting parties compensate each other for dedicated transmission facilities between networks, in addition to reciprocal compensation for transport and termination of the traffic once it is delivered to the other party's network .... The cost to deliver the traffic to the network of the other party is to be paid by the originating carrier, in addition to the transport and termination charges known as reciprocal compensation."

Under the current system, RLECs are responsible for all costs for transport and termination of traffic originated on their network to CLEC Virtual NXX providers. While not Virtual NXX traffic, the same cost structures apply to CLECs operating in exchanges adjacent to RLEC exchanges. CLECs with customers calling the RLEC's associated Internet service would be responsible for all transport, switching and termination costs through the ILEC tandem switch to the RLEC network, where the call is terminated.

The diverse interconnection points designed, or inherited by RLECs versus the single point of interface implemented by the CLECs are the main source of Virtual NXX based compensation issues. The FCC through the Inter-carrier Compensation Forum (ICF) and the National Association of Regulatory Utility Commissioners (NARUC) is creating a comprehensive Inter-carrier compensation policy that addresses this, and other Inter-carrier issues.

C. Proposed model, architecture

The FCC is studying Inter-carrier Compensation issues and will create new policies that will cover Virtual NXX and all other inter-carrier compensation issues. Once implemented the FCC policy will, from indications in orders they have previously issued, preempt any state law, or policy addressing the same issues. The current ICF plan does not currently address the definition of local call rating. If the final FCC policy does not address the definition of local call rating, then individual state policies, including Section 304(9) will remain.

The ISPs contend that any changes Michigan makes to telecommunications policy should parallel published proposals that have been created as a basis for these policies. Specifically 304(9) is a move in a direction opposite of the Inter-carrier Compensation Forum plan and what is known of the proposal of the National Association of Regulatory Commissioners (NARUC), which is still being refined.

The Inter-carrier Compensation Forum was formed to study Inter-carrier compensation and with the following Core Objectives:

- Establish uniform interconnection rules to govern the exchange of all traffic that originates or terminates on the PSTN.
- Establish a new unified inter-carrier compensation regime that will facilitate a seamless transition to an all IP world and minimize arbitrage opportunities during the transition.
- Accommodate the unique circumstances of rural carriers.
- Preserve universal service.
- Provide a reasonable transition period.

The ICF plan requires each LEC to designate a network edge, which is the point at which it will receive traffic from other carriers. The number of edges in the ICF plan is limited to the number of access tandem switches in a LATA.

This is directly in conflict with the requirements of 304(9) that would require LECs to be physically located within an exchange in order for traffic destined for their network to be considered local. If 304(9) is implemented before the FCC policy changes, CLECs would need to build-out “network edges” to each Local Calling Area, then when the ICF, if implemented as proposed, would require that the number of network edges to be reduced to the number of access tandems in the LATA.

The ICF also provides a rural carve out that addresses the concerns that RLECs have brought forth within the Virtual NXX workgroup. Specifically under the ICF plan, the RLEC is responsible for transport of calls originating within their exchange to a meet point at the exchange boundary and the terminating carrier is responsible for all other transport between the two networks.

The FCC is currently looking to NARUC to revise its proposal for Inter-carrier policy. NARUC had been expected to develop a consensus proposal, but it was not developed in time to meet the timeframe requirements of this workgroup.

D. FCC jurisdiction

The primary established FCC policy that relates to the inter-carrier compensation issues discussed in the Virtual NXX workgroup is in the area of reciprocal compensation payment to LECs for terminating ISP-bound traffic. (All citations are to the ISP Remand Order in this section, unless specified otherwise.)

In the ISP Remand Order (FCC-01-031), the FCC found that Section 251(i) of the Federal Telecommunications Act provided it with the statutory authority under Section 201 to regulate ISP-bound traffic. Under its 201 authority, the FCC imposed a compensation mechanism which established a relatively low per minute rate which has been transitioned down to the current inter-carrier compensation rate of .0007/minute for ISP-Bound traffic.

The FCC stated that “[b]ecause we now exercise our authority under section 201 to determine the appropriate inter-carrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.” (¶ 82) The FCC further clarified that the rates it set are a cap and “have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic” at a lower rate, or bill and keep.” (¶ 80)

Within the workgroup multiple LECs indicated that they have been billed reciprocal compensation for ISP-bound traffic in excess of the current FCC established cap of .0007/minute. No member of the workgroup would state whether they are actually paying reciprocal compensation in excess of the FCC mandated cap, nor discuss the details of the parties involved. No party within the workgroup defended rates in excess of the current FCC mandated cap. Based on our understanding of the FCC reciprocal compensation policies above, we see no reason why any LEC should be charged or pay any rate greater then .0007/minute to terminate ISP-bound traffic.

An area of reciprocal compensation of ISP-Bound traffic that the FCC has left open to individual states to interpret is whether Virtual NXX traffic qualifies to be compensated under the ISP-bound traffic policy. The RLEC/ILEC position is that the FCC ISP remand order was only intended to apply to the exchange of ISP-bound traffic within the same local calling area.

The CLEC position is that in the ISP Remand Order the FCC specifically moved away from the designation of a call as local or non-local, instead the CLECs contend that "the FCC found that inter-carrier compensation regimes are governed by either section 251(b)(5) or section 251(g) of the Federal Act." (¶ 30) Also the FCC further explained that the use of the term "local call" is ambiguous because it is not defined in statute. (¶ 45 and 26) The FCC ultimately determined that ISP-bound traffic is "information access" under the 251(g) carved out from 251(b). (¶42 and 44)

While the FCC has ruled on cases that have addressed reciprocal compensation for Virtual NXX ISP-bound traffic such as Starpower v Verizon South, (FCC 03-278), they have specifically avoided setting policy on this, instead waiting for comprehensive inter-carrier compensation reform to address the issue.

The other area where FCC jurisdiction has affected the workgroup is the area of the pending policy on inter-carrier compensation reform. As was discussed in Section II C pending FCC inter-carrier compensation reform addresses the reciprocal compensation issues discussed here in Section II D, along with the other core issues of this workgroup.

The ISPs contend that Section 304(9) of Michigan PA235 is a move in the opposite direction of proposals that have been generated by the Inter-carrier Compensation Forum and NARUC, which the FCC has looked towards to provide a comprehensive industry wide plan to address inter-carrier compensation issues. Section 304(9) deviates from these proposals in the following ways:

- Section 304(9) requires that LECs have a physical presence in each local calling area they wish to provide service to, in order to guarantee calls to their network will still be considered local. The ICF proposal would actually restrict the number of LEC network edges to the number access tandem switches in a LATA. (With the exception of interconnection to RLEC networks, where the terminating LEC would bare all transport costs beyond the RLEC's exchange boundary.)

- Section 304(9) moves away from one of main tenants of the ICF plan that a minute is billed as a minute no matter if the call is within the local calling area, intralata, intrastate, or interstate.

- The ICF plan provides an inter-carrier compensation solution that addresses the concerns of the RLECs by placing the burden of transport of any traffic outside their exchange boundaries upon the LEC that terminates the traffic.

- Instead of addressing the true inter-carrier compensation nature of Virtual NXX traffic, Section 304(9) redefines the definition of Local Calling for retail consumers in Michigan moving away from the NPA-NXX standard and encompasses services beyond Virtual NXX traffic.

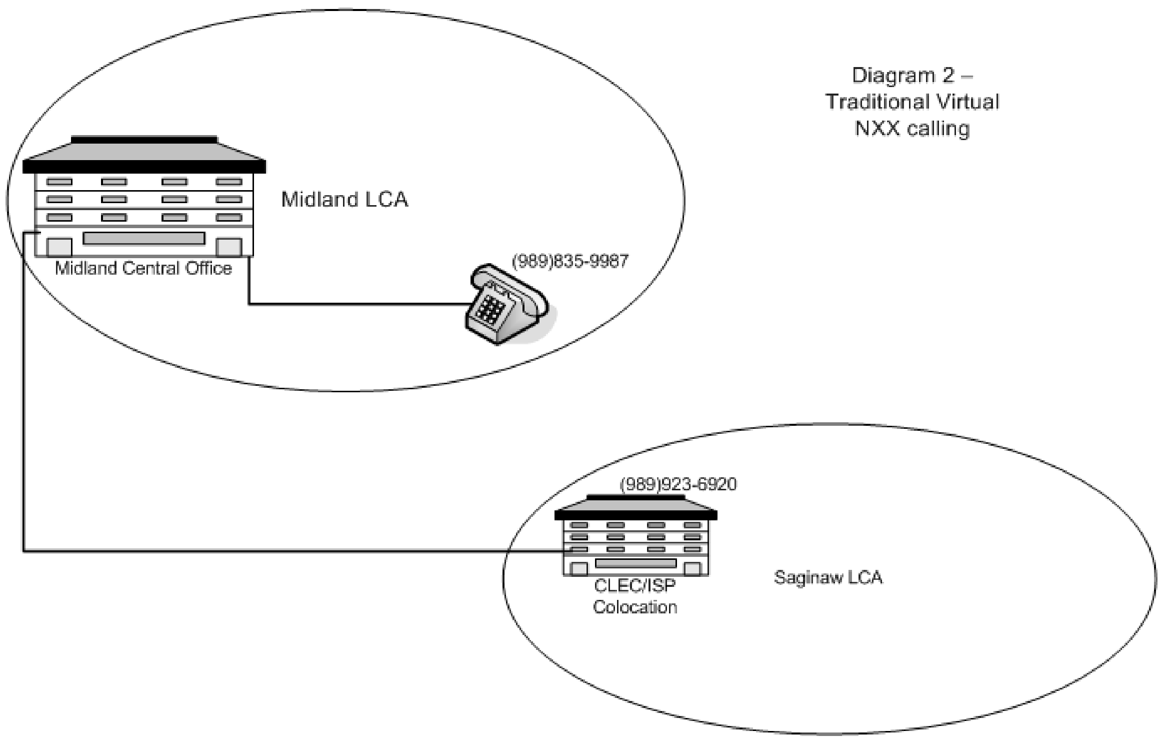
? Unless the final FCC inter-carrier compensation plan addresses Local Call rating, then Section 304(9) will still remain as the standard for local call rating for retail consumers in Michigan. Although the ultimate FCC inter-carrier compensation policy will provide a solution for the underlying compensation issues that 304(9) was designed to resolve.

The ISPs contend that if Michigan is to implement inter-carrier compensation reform that it should be addressed as such, and parallel current inter-carrier compensation proposals from the ICF and NARUC to minimize wasteful investment, that will need to be modified to implement the ultimate FCC policy.

E. Types of services affected by VNXX

All calling parties are regulated PSTN retail customers. Many of these VNXX applications go toward discussing definitions of called party and geographical presence. It is assumed that all calls that meet the standard for local or non-local would receive the same application under the carrier tariff as addressed in 304(9).

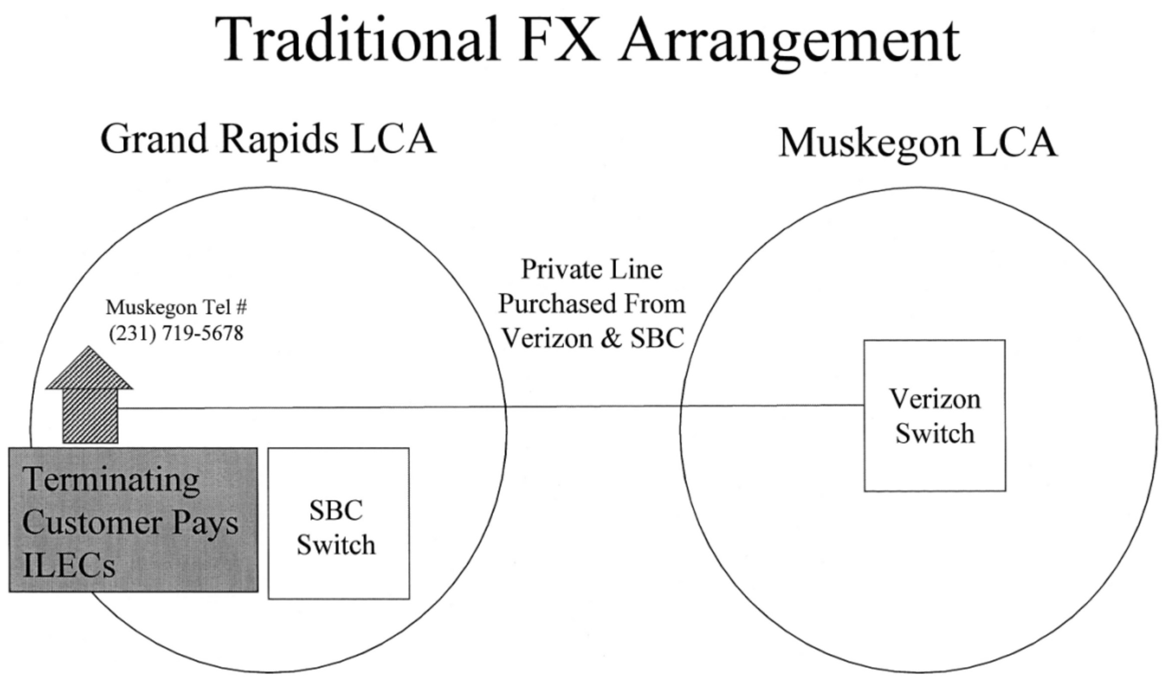
1. Traditional VNXX ISP



Current Application: Midmich.net purchases local access numbers throughout the Saginaw LATA 344 from a CLEC. Midmich.net's physical presence in the Saginaw LATA is solely in the Saginaw local calling area. Under the current originator pays model, the originating LEC is responsible for transporting the call either via tandem switch, or direct trunking to the CLEC serving Midmich.net. The CLEC arranges transport for the inbound calls to be terminated in a centralized collocation where they are delivered to Midmich.net the called party.

Post 12/31/2007 -- MTA 304(9): A PSTN customer (calling party) in Midland calls the Midmich.net VNXX access number in the same Midland local calling area. Since the call terminates in the Saginaw LCA and Midmich.net does not have physical presence in the Midland calling area, then the call could be considered non-local per 304(9) and subject to toll charges to the calling party, dependent on MPSC policy and the originating LEC’s tariff.

2. Traditional FX



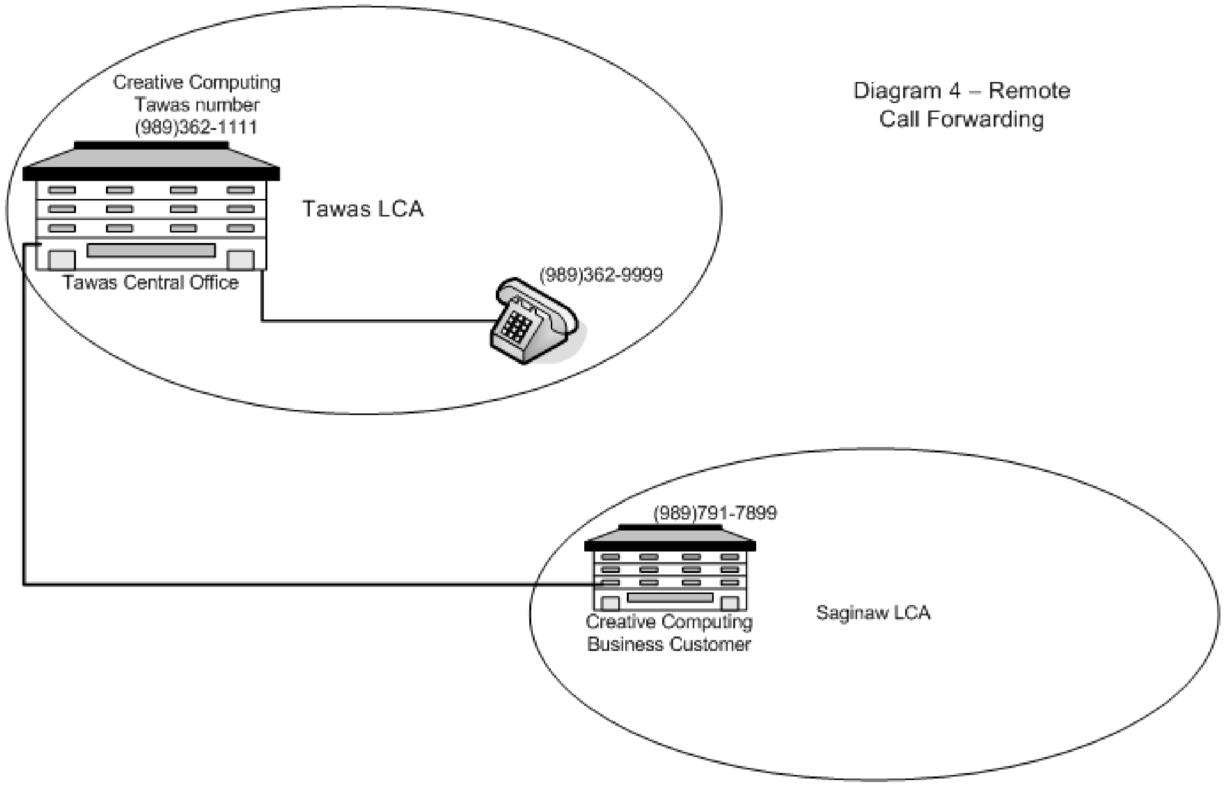
Current Application: Traditional FX service was clearly spelled out in diagrams provided by Verizon (Jan 4, 2006 Figure 1) shown above. A florist shop in the Grand Rapids Local Calling Area (LCA) purchases a dedicated transport from AT&T and Verizon that terminates in the Muskegon LCA. The florist shop has no physical presence in the Muskegon area. A Muskegon phone number is assigned to the circuit and allows calls made from regulated PSTN customers (calling party) in the Muskegon LCA to be transported to and terminated in Grand Rapids. The florist contracts and compensates AT&T for the service on a monthly basis.

Post 12/31/2007 -- MTA 304(9): A regulated PSTN customer (calling party) in the Muskegon LCA is calling a local number that is transported to, and terminated in Grand Rapids, which is not in the Muskegon LCA. As written 304(9) defines the call as non-local and subject to toll charges to the calling party, dependant on MPSC policy and the originating LEC's tariff.

We would contend that any customer should be allowed to purchase service, and therefore inherit the presence of their provider in order to meet the requirements of 304(9).

In this scenario the florist contracted and compensated AT&T for this service. If another LEC's customer located in the Muskegon rate center, calls the florist's Muskegon number the originating LEC would be responsible for transporting the call to AT&T and would not be aware of the inter-exchange nature of the call beyond the originating LEC's point of interface with AT&T. The calling party would have no indication that the call they are making to a number is not a local call.

3. Remote Call Forwarding



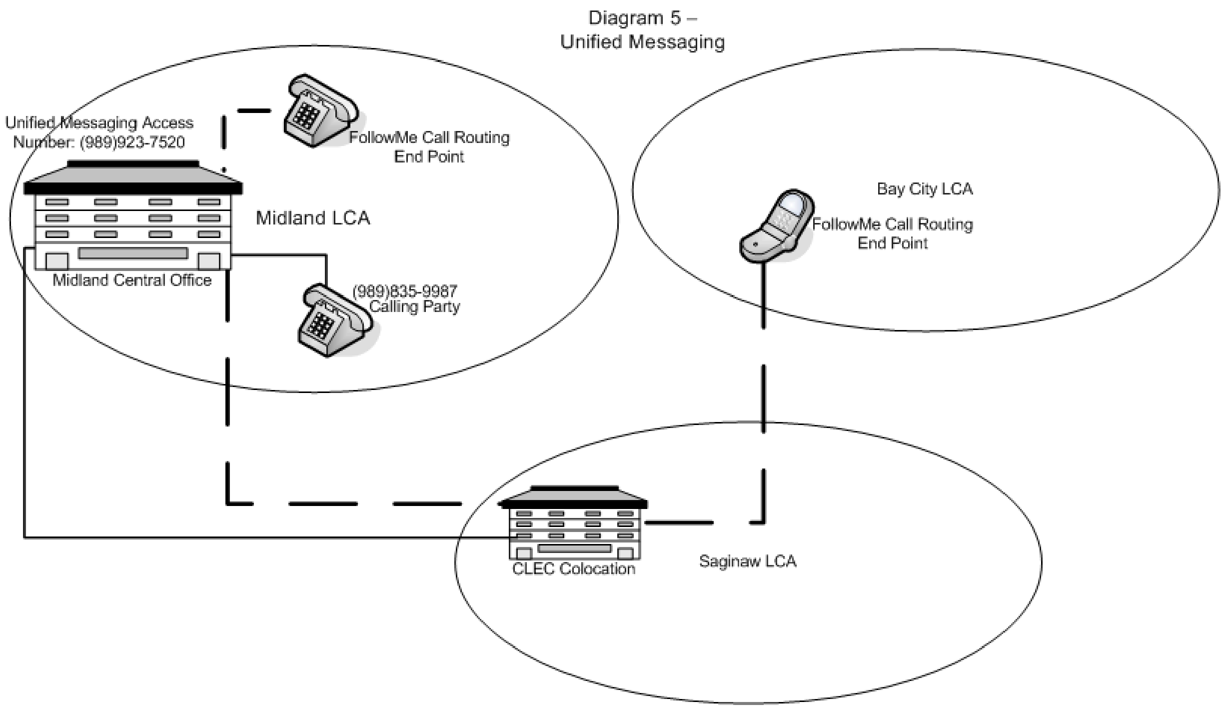
Current Application: Creative Computing (called party), a network integrator physically located in Saginaw, purchases a telephone number from the former SBC in the Tawas rate center 989-362 for use by their Tawas clients (calling party). Creative Computing has no facilities or presence in the Tawas area. Calls placed to the Virtual number are forwarded to Creative Computing's PSTN connections in Saginaw. There is no dedicated facility for the transport of these calls. Creative Computing pays per minute "long-distance" charges for the completion of calls in addition to the monthly charge for the phone number.

Post 12/31/2007 -- MTA 304(9): A regulated PSTN customer (calling party) in the Tawas LCA is calling a local number that is transported to, and terminated in Saginaw, which is not in the Tawas LCA. As written 304(9) defines the call as non-local and subject to toll charges to the calling party, dependant on MPSC policy and the originating LEC's tariff.

We would contend that any customer should be allowed to purchase service, and therefore inherit the presence of their provider in order to meet the requirements of 304(9).

In this scenario Creative Computing contracted and compensated SBC for this service. If another LEC's customer located in the Tawas rate center, calls Creative Computing's Tawas number the originating LEC would be responsible for transporting the call to SBC and would not be aware of the inter-exchange nature of the call beyond the originating LEC's point of interface with SBC. The calling party would have no indication that the call they are making to a number is not a local call.

4. Unified Messaging -- Virtual Fax Service



Current Application: Unified Messaging provides a single telephone number as a single point of contact for a user. A single phone number handles voicemail, virtual FAX, and provides follow-me call routing services. Voicemail and virtual fax are forwarded to the customer via e-mail providing a single inbox that can be monitor from any Internet connected location. Follow-me call routing allows the customer to define call-handling rules that will ring multiple phone numbers in sequence or simultaneously to allow the customer to stay available no matter where they are physically located.

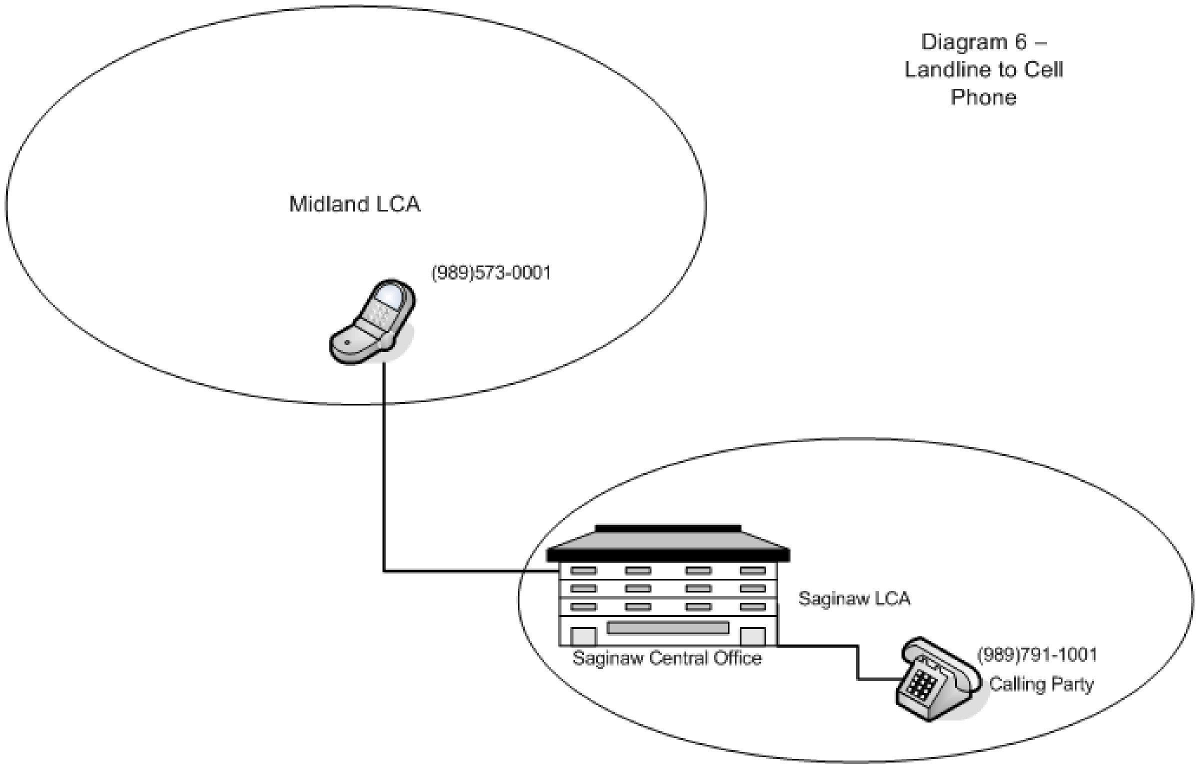
Virtual NXX numbers are assigned to customers (called party) for their use in receiving incoming calls, Faxes, and voicemail from regulated PSTN customers (calling party). The calls are transported back to the centralized server farm, which handles the different applications. The called party receives the incoming messages via e-mail or web access in the case of FAX or voicemail. If follow-me routing is used the called party may receive the call via cellular, or regulated PSTN inside, or outside the LCA.

Post 12/31/2007 -- MTA 304(9): If the Unified Messaging Provider is considered the called party, and does not have a physical presence in the calling party's LCA, then the call could be considered non-local per 304(9) and subject to toll charges to the calling party, dependent on MPSC policy and the originating LEC's tariff. If the Messaging Provider were geographically located within the LCA of the calling party then the call would be considered local.

If the end user that has been assigned the virtual number is considered the called party, it will be extremely difficult to confirm physical location for the purposes of rating the call.

We should point out that most LECs offer voice-mail services to their customers, and often times the voice mail server is centrally located outside the local calling area. 304(9) could cause calls terminated to the voice mail system to be deemed as non-local.

5. Landline to Cell Phone



Current Application: Customer contracts for a cellular phone with a local Saginaw calling number 989-573-0001. Customers within the Saginaw LCA 989-791-1001 may dial the number as a traditional seven digit local number and the call will be connected to the cell phone called party no matter where they are physically located at no charge to the calling landline customer.

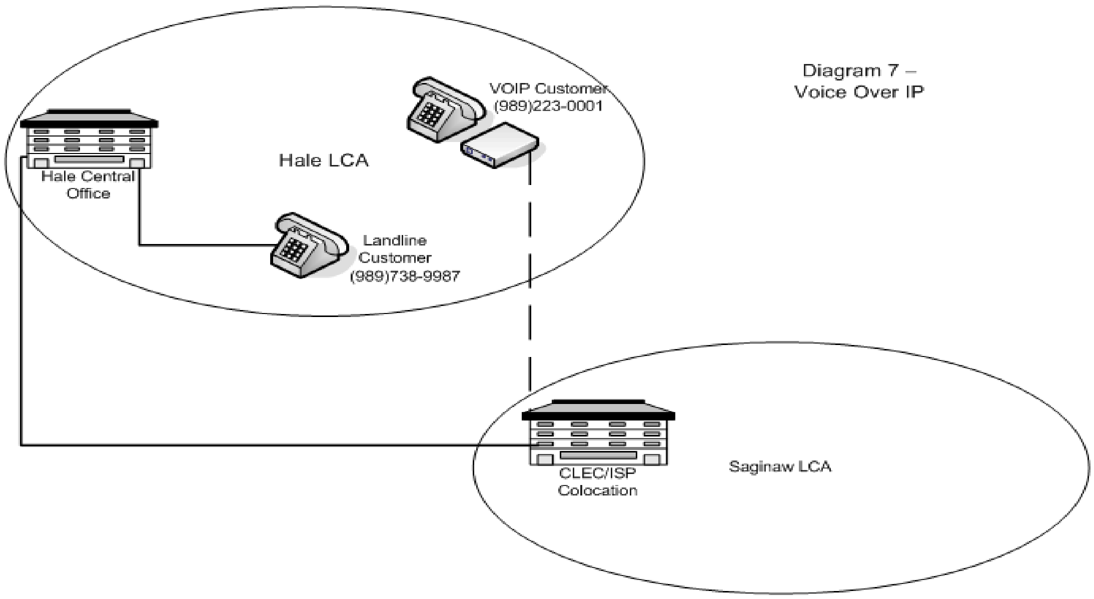
As part the work group discussion it has been confirmed that there is a working compensation regime between LECs and CMRS carrier which works for both parties.

Post 12/31/2007 -- MTA 304(9): Section 401 of the MTA seems to suggest that cellular calls do not fall within the jurisdiction of the Commission (Sec. 401) however, Section 401 only precludes Commission jurisdiction over cellular calls "except as otherwise provided by law." Since Section 304(9) is a more recent enactment than Section 401, and it only seeks to regulate calls for the purposes of identifying what is a local call, it provides an exception to Section 401 so that landline to cell phone calls would be encompassed by Sec. 304(9). Moreover, a landline customer who calls a cellular customer will still see that call counted in the number of outgoing calls considered as "primary basic local exchange service" under Section 102(y) of the Act. Therefore, traffic originating from regulated landline customers to cellular customers outside of the calling parties LCA would be classified as non-local calls under 304(9).

Since the standard defined in 304(9) should apply to calls from regulated landline to cellular customers, then calls to the cellular customer when they are outside of the Saginaw LCA would be considered non-local. While there is an adequate compensation regime in place to compensate LECs for carrying CMRS traffic 304(9) only addresses the physical location of the called party in determining the local or non-local status of the call.

As 304(9) is written, if the called party is not within the same geographic area as the calling party, the call may be considered as non-local and subject to toll charges to the calling party, dependent on MPSC policy and the originating LEC's tariff.

6. Voice Over IP



Current Application: A residential customer, physically located in the Hale local calling area (CenturyTel of Michigan, Inc. 989-738), purchases Voice Over IP (VOIP) phone service through M33Access. M33access purchases the right to use Virtual NXX numbers that Telnet Worldwide has been assigned in the Hale exchange (989-223).

Regulated landline phone customers in the Hale exchange may call the M33access customer's VOIP number by dialing it as a traditional seven digit local number. CenturyTel as the originating carrier, transports the call to Telnet via either tandem switch, or direct trunking to Telnet's point of interface in the Saginaw LATA. Telnet receives the call, and switches it to M33Access' VOIP gateway. M33Access is responsible to transports the IP call to the customer's VOIP adapter in Hale completing the call.

By taking the same path, in reverse, the VOIP customer may dial regulated landline customers in the Hale local calling area as traditional seven digit local number. M33access transports the call from the customer's VOIP adapter to their VOIP gateway at Telnet's Saginaw Colocation facility where they hand the call off to Telnet for termination. As the originating carrier in this case Telnet must transport the call at their cost via either tandem switch, or direct trunking to CenturyTel in Hale. While this VOIP to landline call is not Virtual NXX, the same costs and transport responsibilities are incurred by Telnet as were incurred by CenturyTel when the call originated on the RLEC network.

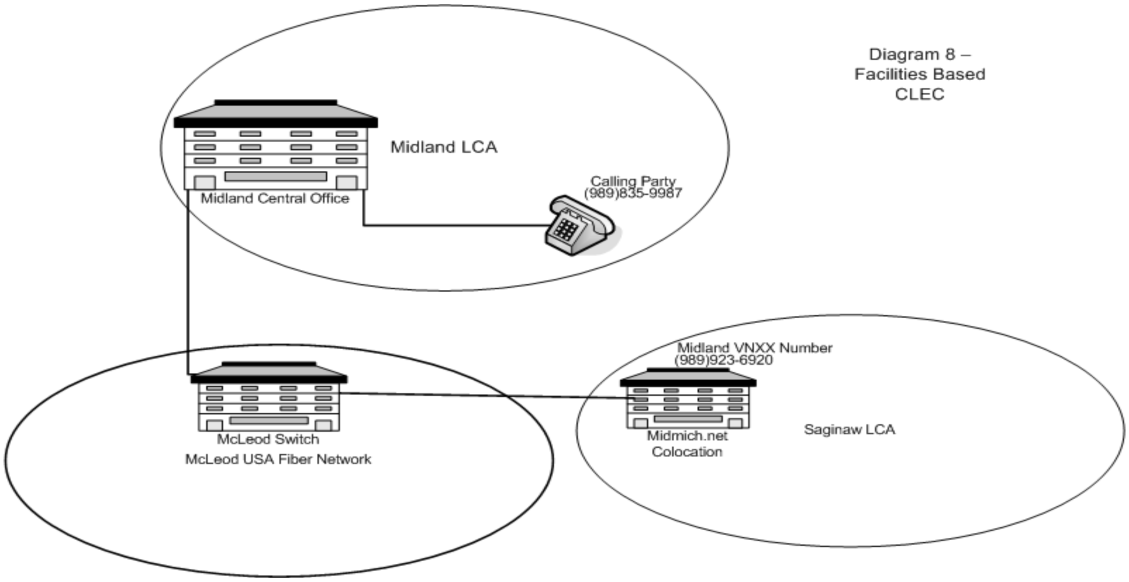
Post 12/31/2007 -- MTA 304(9): As Section 304(9) is written the VOIP customer is clearly “located within the geographic area of the caller's local calling area”, calls from the landline customer to the VOIP customer should be considered local. While the call should be considered local by the statutory language of 304(9) multiple problems are exposed.

> The underlying inter-carrier compensation issue, caused by transport costs between the geographically distant RLEC and CLEC interconnection points, is left unresolved.
>
> How will the originating carrier in either case (landline or VOIP originating) be notified of the physical location of the called party so the call maybe rated properly? In this example there is a minimum of three carriers or providers including the VOIP provider, the VOIP

provider's CLEC, and the RLEC. In most cases the ILEC would also be involved to provide tandem switching services between the RLEC and CLEC networks.

If the call was to be considered non-local, how would the calling party be notified of potential toll-charges?

7. *Facilities Based CLEC*



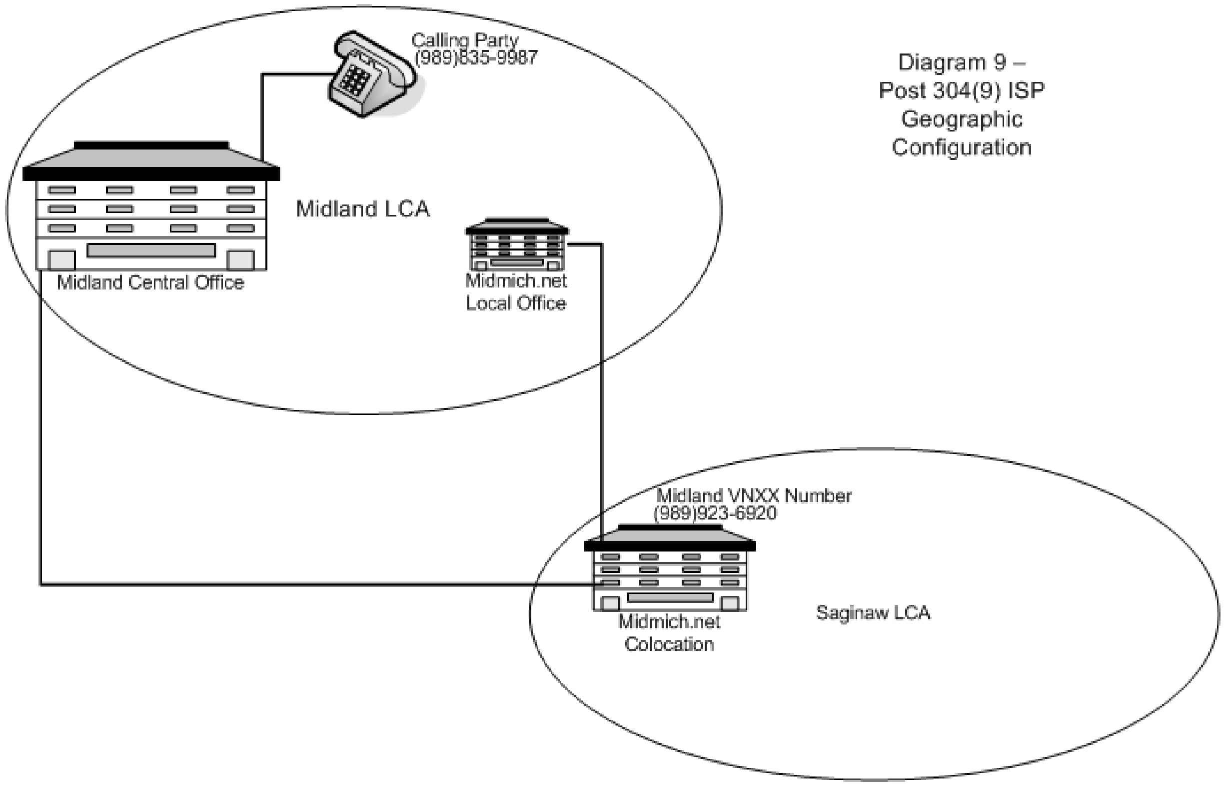
Current Application: Midmich.net purchases local access numbers from McLeod USA in Saginaw 989-921, Bay City 989-922, and Midland 989-923. McLeod is physically located in each CO within the local calling areas and transports all Midmich.net calls over their own fiber facilities to their switching center in Flint and back to Midmich.net in Saginaw over the same fiber facilities collocated with Midmich.net.

Post 12/31/2007 -- MTA 304(9): A PSTN customer (calling party) in Midland 989-835 calls the Midmich.net access number 989-923 in the same Midland local calling area. McLeod has total responsibility for transporting the call from the originating CO to the called party in Saginaw. Since the call terminates in the Saginaw LCA 989-921 and Midmich.net does not have physical presence in the Midland calling area, then the call could be considered non-local per 304(9) and subject to toll charges to the calling party, dependent on MPSC policy and the originating LEC's tariff.

We would contend that any customer should be allowed to purchase service, and therefore inherit the presence of their provider in order to meet the requirements of 304(9).

In this scenario Midmich.net contracted and compensated McLeod for this service. McLeod provides all transport from the originating LCA and termination to Midmich.net. If another LEC's customer located in the Midland rate center, calls Midmich.net's Midland number the originating LEC would be responsible for transporting the call to McLeod and would not be aware of the inter-exchange nature of the call beyond the originating LEC's point of interface with McLeod. The calling party would have no indication that the call they are making to a number is not a local call.

9. Post 304(9) ISP Geographic Configuration



Current Application: Midmich.net purchases a Midland local access numbers from a CLEC. Under the current originator pays model, the originating LEC is responsible for transporting the call either via tandem switch, or direct trunking to the CLEC serving Midmich.net. The CLEC arranges transport for the inbound calls to be transported and terminated in a centralized collocation where they are delivered to the called party ISP.

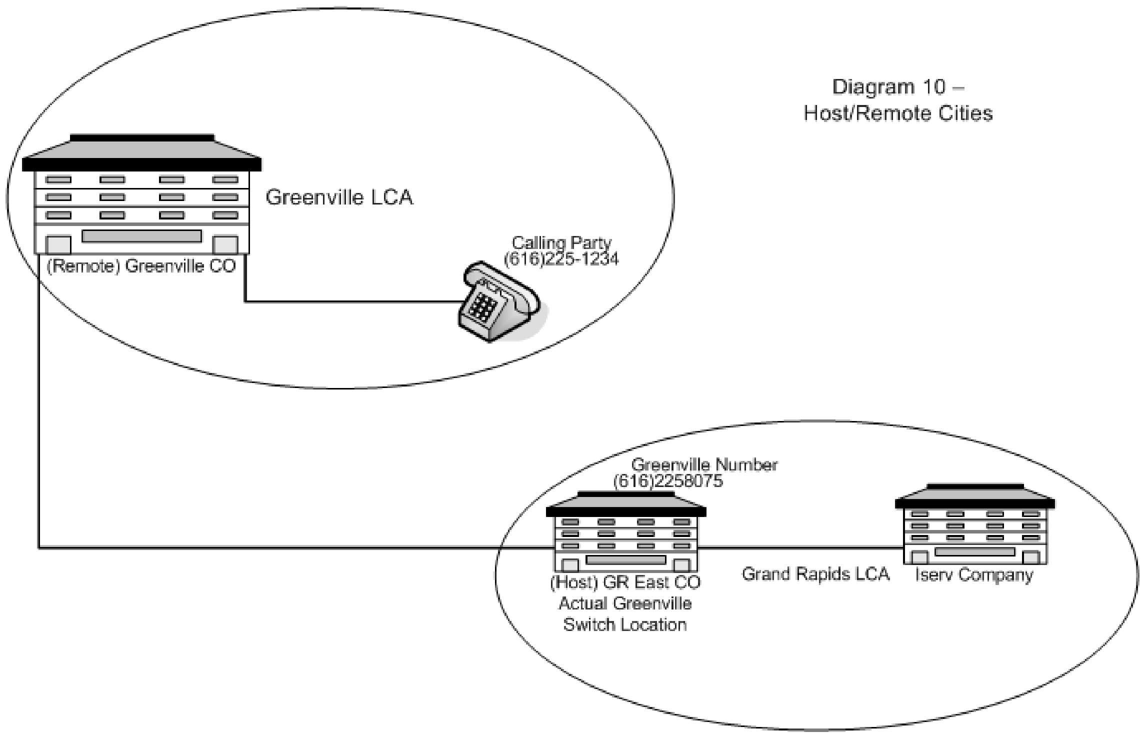
Post 12/31/2007 -- MTA 304(9): In order to comply with 304(9)'s requirement Midmich.net purchases DS1 service from the CLEC that transports the calls and terminates the calls within the Midland geographic area.

A PSTN customer (calling party) in Midland calls the Midmich.net NXX access number in the same Midland local calling area. Although the call is transported through Midmich.net's CLEC, the physical transport to terminate calls within the Midland LCA, meet the requirements of 304(9) and the call must be rated local.

This configuration does not resolve inter-carrier compensation issues brought up in this workgroup. The originating LEC's transport costs are exactly the same as traditional VNXX model.

How will physical presence be verified, to protect called parties that have met the requirements of 304(9)?

10. ILEC Host/Remote Cities



Current Application: The Iserv Company (Iserv) purchases local access numbers from AT&T (formerly SBC) in Greenville 616-225. Because Greenville is a Host/Remote city, the actual phone switch is located 24 miles away the Grand Rapids East CO, well outside the local calling area. In order to buy high capacity lines (PRIs or ADTSEs) Iserv is required by AT&T to connect to the Greenville Switch located in the Grand Rapids East CO. Iserv's Modem gear is also located in the Grand Rapids East wire center, within the Grand Rapids local calling area.

Post 12/31/2007 -- MTA 304(9): A PSTN customer (calling party) in Greenville 616-225 calls the Iserv access number 616-225 in the same Greenville local calling area. AT&T has total responsibility for transporting the call from the originating CO to the Grand Rapids switch and eventually to the called party in Grand Rapids. Since the call terminates in the Grand Rapids LCA 616-974 and Iserv does not have physical presence in the Greenville calling area, then the call could be considered non-local per 304(9) and subject to toll charges to the calling party, dependent on MPSC policy and the originating LEC's tariff.

We would contend that any customer should be allowed to purchase service, and therefore inherit the presence of their provider in order to meet the requirements of 304(9).

In this scenario Iserv contracted and compensated AT&T for this service. AT&T provides all transport from the originating LCA and termination to Iserv. If another LEC's customer located in the Greenville rate center, calls Iserv's Greenville number the originating LEC would be responsible for transporting the call to AT&T and would not be aware of the inter-exchange nature of the call beyond the originating LEC's point of interface with AT&T. The calling party would have no indication that the call they are making to a number is not a local call.

III. Conclusions and recommendations

A. Current

1. Section 304(9) should be repealed.
   - It encompasses services beyond the targeted Virtual NXX traffic (See Section IIE).
   - It is a move in the opposite direction of pending FCC inter-carrier compensation reform proposals, both those of ICF and NARUC (see Section IID).
   - Instead of addressing the inter-carrier compensation issues, it redefines the definition of local calling to adversely affect Michigan consumers, possibly even after the FCC addresses the true inter-carrier issues.
   - There has been no clear plan set forth in the legislation regarding how consumers will be notified of potential toll charges.
   - There has been no inter-carrier plan developed to handle rating calls based on geographical location of the called party.
   - The Legislature clearly wanted to hear from the workgroup before finally deciding whether to change existing MPSC policy. The deliberations of the workgroup have confirmed that the policy in existing tariffs should be maintained and that Section 304(9) should be repealed.

2. If the FCC implements inter-carrier compensation reform before 12/31/2007, Section 304(9) becomes moot since the current proposals address Virtual NXX traffic and provide concessions for RLECs that address their specific concerns.

3. If the FCC does not implement inter-carrier compensation reform before 12/31/07, Section 304(9) relies on the Commission's current definition of "local calling area" and the tariff "of the provider", which currently considers VNXX calls as local.

4. If, despite the strong public policy grounds for repealing Section 304(9) (see IIIA1), it is to be implemented 12/31/2007, then the MPSC should commission a workgroup to understand how carriers will implement and comply with the statutory language of 304(9).

   Specifically how will the geographic location of the called party be determined by carriers and how will that information be communicated between carriers in order to rate calls? Also how will Michigan consumers be notified of potential toll charges incurred due to the changed definition of local calling?

5. The creation of Primary Basic Local Exchange Service by the Legislature does not indicate that the Commission has ceded responsibility for determining which calls are local to the local exchange carriers. In fact, the Legislature, by attempting to preserve fundamental local service for all residential customers, placed an increased emphasis on the Commission's ability to preserve affordable and comparable service for all residential customers, regardless of their geographic location.

B. Post December 31, 2007

1. Customer's right to purchase or inherit the presence of their provider

   We would contend that any customer should be allow to purchase service from a carrier, and therefore inherit the presence of their carrier in order to meet the physical location requirements of 304(9). Retail customers are not in the business of exchanging traffic at a COs, if their provider has a local presence in a exchange it would seem reasonable that the retail customer by contract should inherit the rights of their provider. (See Section II E – 6 Facilities Based CLEC.)

2. Even-Handed Application of Section 304(9) to all calls that meet the statutory language

Section 304(9) states that based on the local calling area of the call, a call "is not a local call if the tariff of the provider originating the call does not classify the call as a local call." We would expectthat law would be applied evenly to all entities by the MPSC and that the MPSC maintains its well-reasoned precedent to classify virtual NXX calls as local calls in carrier tariffs.(See January 23, 2001 order in Case No. U-12696, p. 11).

Since the Commission approves all tariffs; the originating LECs tariff should define all calls classified in 304(9) as local, without consideration of the effected LEC, application or compensation. This would be consistent with the new law's deference to Commission-approved tariffs, as evidenced by Section 304(9)'s reliance on the Commission's definition of local calling area in Cases U-12515 and U-12528 and the provision which refers to the provider's tariff controlling what is a local call.
Unless the Commission continues to apply its long-standing precedent, a LEC could favor and allow their affiliated ISP or VOIP service to continue use of Virtual NXX, while another provider's customers (call originators) would incur toll charges if Virtual NXX use is continued past 12/31/2007.

Section 304(9), if allowed to go into effect on December 31, 2007, must at the very least preserve the ability of rural customers of ISPs to obtain service which is affordable, reliable and comparable to the service provided to customers who, by the good fortune of geographic location, are unaffected by the operation of Section 304(9).

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