PROPOSED VNXX REPORT

Submitted by:

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March 31, 2006

I. Summary of Proposed Recommendation

Michigan should maintain its current framework governing intercarrier compensation and network interconnection architecture for Virtual NXX ("VNXX") and foreign exchange ("FX") arrangements and refrain from any further review or consideration of restructuring those regimes until after the Federal Communications Commission ("FCC") has issued a ruling in its ongoing Unified Intercarrier Compensation Docket. In that docket (CC Docket No. 01-92) the FCC has, for some time now, been developing a record on the exact issues that are now before this Work Group. It is anticipated that the FCC is nearing the end of its review and will soon act, setting forth new rules governing network architecture and intercarrier compensation, including rules for VNXX and FX architectures. If Michigan were to move forward independently and require fundamental changes in compensation, architecture, interconnection agreements, billing systems, and other established operations prior to the FCC taking action, great disruption in the Michigan competitive telecommunications market would occur, to the detriment of competition and the public. It would also be wasteful and against the public interest for Michigan to engage in wide-reaching overhauls of competitive systems, followed a short time later by a second overhaul at the direction of the FCC. Furthermore, the FCC is able to allocate a great amount of resources to this issue in comparison to the Michigan Public Service Commission's ("MPSC") limited time and resources.

Moreover, even if Michigan wanted to act in the interim, states generally have little opportunity to modify the current network and compensation regimes because the FCC has largely taken jurisdiction of the issues surrounding VNXX traffic. In the *ISP Remand Order*, the FCC took exclusive jurisdiction over all traffic bound for Internet Service Providers ("ISP-bound traffic"), including VNXX ISP-bound traffic, and in so doing established an intercarrier

compensation regime governing all such traffic. In the same order, the FCC clarified that reciprocal compensation applies to other types of telecommunications traffic unless specifically exempted. This leaves all non-ISP VNXX traffic (or, FX traffic) under the reciprocal compensation umbrella for intercarrier compensation. With respect to network architecture, the FCC also has long standing rules governing network points of interconnection and carrier obligations to carry the traffic to the points of interconnection. Clearly, compensation and network issues have largely been addressed by the FCC, leaving the states with little opportunity to make fundamental changes to these intercarrier relationships.

Based on the foregoing, the prudent course of action for Michigan is to maintain the status quo until after the FCC has acted.

II. History of Proceedings

A. Timeline of PA 235, Section 304(9), Workgroup Participants

On November 21, 2005, Governor Jennifer M. Granholm signed into law 2005 PA 235 ("Act 235"), which amends 1991 PA 179 entitled "Michigan Telecommunications Act," MCL 484.2102 *et seq*. Section 304(9) of Act 235 provides, in part:

> "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's order in case numbers 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 commission shall convene a workgroup of interested parties for the purpose of resolving issues surrounding virtual NXX. 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. The workgroup shall consider the utilization of virtual NXX services to transport interexchange traffic and the associated inter-carrier compensation. Prior to July 1, 2006, the commission shall submit a report to the governor and the house and senate standing committees with oversight of telecommunication issues on the progress of workgroup discussions. The report shall include a commission policy statement relating to the provision of virtual NXX services, and recommendations for legislation, if any."

On November 22, 2005, in Case No. U-14683, the MPSC issued an order commencing a collaborative process wherein a work group of interested parties would study VNXX issues and potential recommendations for legislation. A wide range of industry members participated in the Work Group, including ACD.net, AT&T Michigan, CenturyTel, Climax Telephone, Comcast, ISERV, Level 3 Communications, M33 Access, MCI, MECA, MiACT, Midmich.net, Pac-West Telecomm, Sage Telecom, Talk America, TDS Telecom, TelNet Worldwide, and Verizon.

III. Definition of VNXX.

A. Explanations and Diagrams

As the term is used in Act 235, VNXX is any telecommunications arrangement in which a call does not terminate to a person or device in the geographic rate center associated with the NPA.NXX as listed in the Local Exchange Routing Guide ("LERG") - the industry resource for rating and routing of calls. However, the term "VNXX" is often used by ILECs in the telecommunication industry to describe a CLEC architecture that accomplishes the same goal as an ILEC Foreign Exchange (FX) arrangement, or a CLEC architecture that allows consumers to call an Internet Service Provider, and connect to the Internet, using a local number. ILECs have for decades used FX architecture to create the appearance of a local presence in an exchange while physically being located outside the exchange.

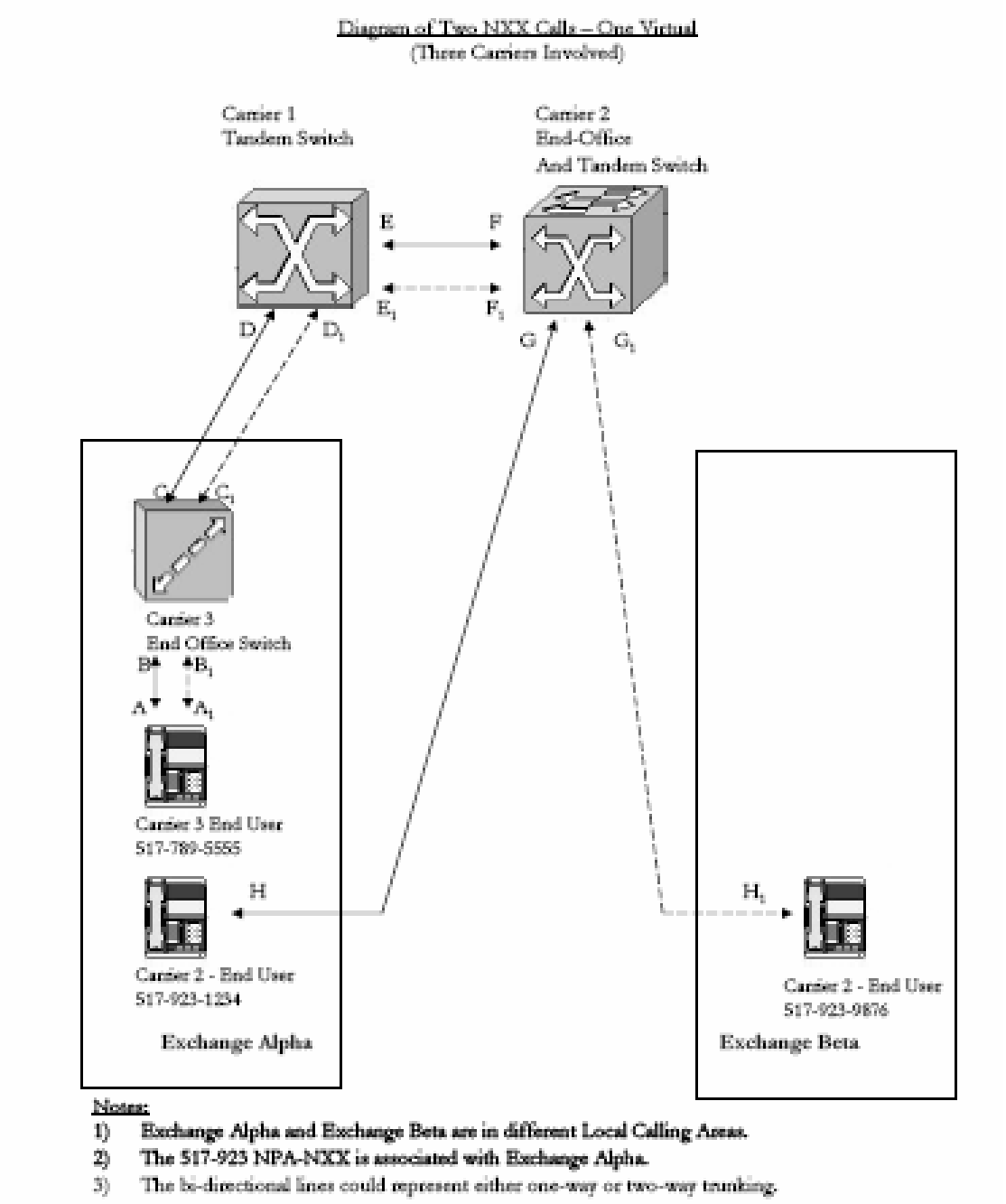
In more basic terms, phone numbers have historically been thought to be associated with a physical presence in a pre-established local area referred to as an exchange. Under this older way of thinking, anyone who obtains a phone number in the 517 area code ("NPA") with a 482 exchange ("NXX"), for example, would be physically located in Lansing, Michigan With an FX, FX-like, or VNXX architecture, a customer is able to locate terminating equipment associated with the telephone number from the 482 exchange in an area outside the exchange.

For illustrative purposes, three examples are diagramed below. The diagrams are by no means inclusive of all possible VNXX architectures. The different possible configurations of VNXX architecture are virtually [pun] unlimited.[1] The first diagram depicts a typical configuration when a CLEC does not have equipment or facilities in the service territories of the ILEC, a situation which most frequently occurs when the ILEC is small or rural and does not have a ubiquitous network in the LATA. In other words, the first diagram portrays a situation where the respective networks of the CLEC and ILEC do not overlap.

The first diagram shows Carrier 3's end user placing two calls to two different end users of Carrier 2. One call terminates to an end user located in the same exchange as the calling party. The second call terminates to an end user located in an exchange other than the exchange with which the called party's NPA-NXX is associated. Both the traditional NXX call and the VNXX are routed along the exact same path to Carrier 2. At the point that both calls reach Carrier 2, it becomes Carrier 2's responsibility to route and terminate the call to the called party,

[1] The unlimited character of possible architectures demonstrates the robustness of VNXX. The MPSC should not support any recommendations that would arbitrarily limit innovation.

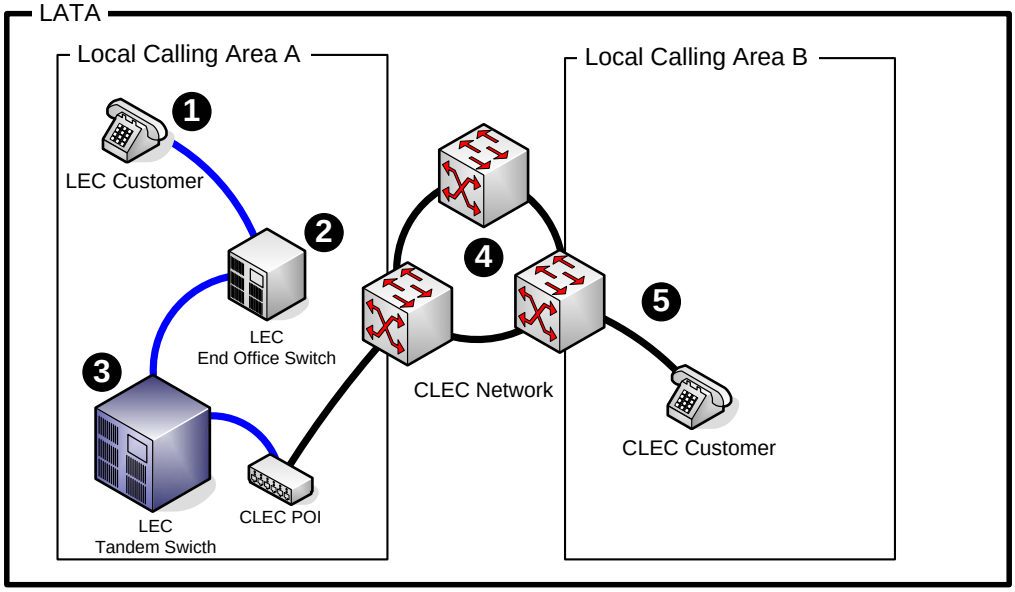
wherever the called party is physically located.



The second diagram represents a more common situation than the first diagram. It depicts a situation where the CLEC network overlaps the network of the ILEC. The second diagram displays a Foreign Exchange (FX) calling architecture whereby the terminating carrier enables its customer to have a presence in the local calling of the originating party. This type of

architecture has been used by the ILECs for many years to allow businesses to have a telephone number or "presence" in multiple local calling areas. When this type of architecture is used by a CLEC, it is often referred to as an FX-like or VNXX architecture.

Foreign Exchange Call Routing



CLEC sells user in LCA B Foreign Exchange Service and gives customer a Phone Number in LCA A

LEC Customer in LCA A calls CLEC Customer's LCA A Phone number

LEC End Office Switch checks for route of Number

Route is returned with LRN of CLEC homed behind LEC Tandem

LEC End Office Switch Routes call to it's Tandem

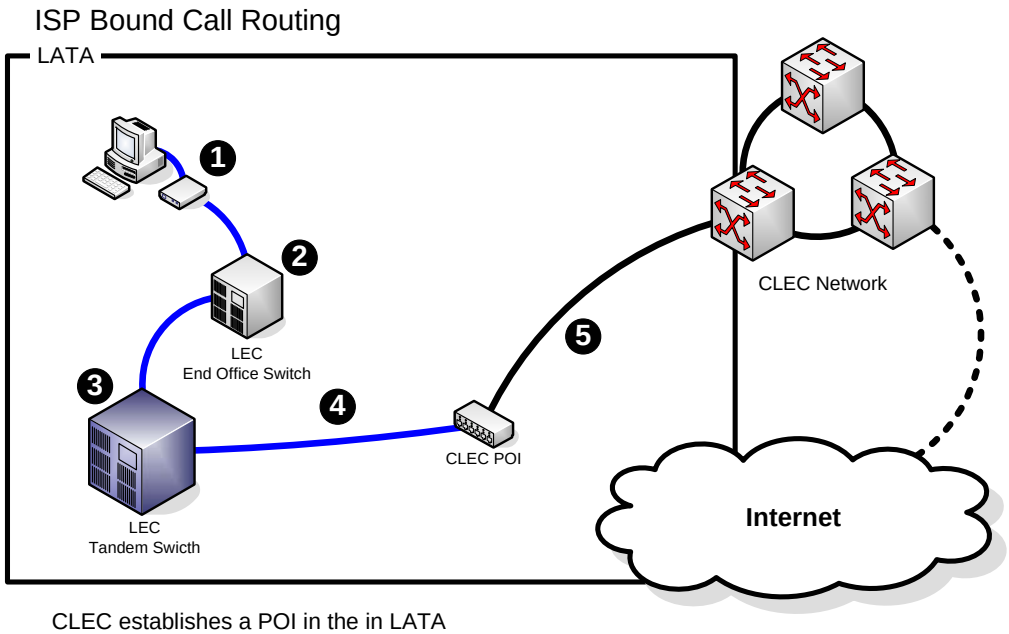
LEC Tandem in LCA A routes to CLEC POI

CLEC Transports Call Across LCA Boundaries

CLEC terminates call to it user

The third diagram, like the second diagram, displays the more common situation than the first diagram, namely the situation where the CLEC's network overlaps the network of the ILEC. The second diagram shows a typical ISP-bound calling architecture where a carrier enables the originating caller to connect to the Internet using a local calling number. As discussed in more

detail below, the FCC has created a separate and unique compensation mechanism for ISP-bound traffic.



CLEC establishes a POI in the in LATA

CLEC follows NANPA rules and established NPA NXX codes in LATA

CLEC follows Telcordia Rules and sets is NPA NXX codes in the LERG to route to it through LEC Tandem in LATA

End Users Computer Dials ISP

LEC End Office Switch checks for route of Number

Route is returned with LRN of CLEC homed behind LEC Tandem in LATA

LEC End Office Switch Routes call to it's Tandem

LEC Tandem in LATA routes to CLEC Trunk Groups to CLEC

LEC Transports Call to CLEC POI

CLEC routes call across its network and terminates call to the Internet

Even though the second and third diagrams portray the common scenario where the CLEC's network overlaps the ILECs network, most of the discussion in the Work Group has focused on the less common scenario portrayed in the first diagram where the networks of the ILEC and the CLEC do NOT overlap.

These diagrams demonstrate three important fundamental points about the type of architectures labeled FX-like or VNXX. First, CLEC networks are often designed differently

than ILEC networks and do not necessarily mirror the same local calling architecture. This is because advances in technology allow CLECs to build more efficient and ubiquitous networks than the legacy network that was designed by the ILECs decades ago. Second, federal law allows CLECs to interconnect with the ILEC at one point per LATA and dictates that the originating carrier is responsible for carrying traffic to that the network of the terminating carrier. Finally, once the call is handed off to the CLEC, it is the CLEC's responsibility to carry the call to the called party.

Consequently, a VNXX architecture does not impose any additional costs on the originating carrier compared to a traditional call which terminates to equipment physically located in the same exchange. In both scenarios, the originating carrier has the obligation to carry its traffic to the same network point. **Therefore, the originating carrier's cost of carrying the traffic is identical whether the terminating carrier uses VNXX architecture or not.**

B. Current Intercarrier Compensation and Architectural Models

For purposes of inter-carrier compensation, current industry billings systems differentiate and classify traffic based on NPA-NXX codes. Current databases do not contain inputs that differentiate and classify traffic based on geographic locations. Rather, the comparison of the originating NPA-NXX code with the terminating NPA-NXX code determines whether carriers receive reciprocal compensation or payments for access. Accordingly, in Michigan, ISP-bound VNXX and voice FX traffic are considered to be "local" traffic and subject to reciprocal compensation. However, the FCC has established a special compensation mechanism for ISP-bound VNXX traffic.

Regarding current architectures requirements, a CLEC is required to establish only one POI per LATA.

As described below, these current intercarrier compensation and architectural models are in line with applicable federal and state rulings.

1. Current Intercarrier Compensation Model

Intercarrier compensation is the mechanism by which interconnected carriers reimburse each other for use of the other's network. With respect to intercarrier compensation for VNXX calls, the FCC has taken exclusive jurisdiction over a large portion of the traffic and outlined very specific requirements for the remaining traffic. Consistent with these Federal rules, the MPSC has consistently ruled and created firmly established precedent that VNXX architecture *is* subject to reciprocal compensation under Section 251(b)(5) of the Federal Telecommunications Act ("FTA"), and *is not* subject to higher access charges which are associated with long distance calling. That is to say, VNXX traffic exchanged between carriers is treated the same as all other locally dialed traffic. Under this regime, the originating, or cost causing party, pays the terminating carrier a per minute of use based rate for transport and termination of the call.

i. Federal Rules on Intercarrier Compensation.

The primary Federal ruling governing intercarrier compensation of VNXX traffic is the FCC's *ISP Remand Order*. In that order, the FCC did several things. First, the FCC clarified that reciprocal compensation applies to *all* telecommunications traffic unless specifically exempted by other provisions of the Act. Second, the FCC took exclusive jurisdiction of traffic bound for ISPs. And finally, it created a compensation scheme for ISP-bound traffic. This

order, combined with subsequent clarifying decisions and court rulings, clearly establishes the compensation mechanism for the exchange of VNXX traffic.

One of the most fundamental changes to the previous compensation regime the FCC made in the *ISP Remand Order* was to abandon its previous position that the reciprocal compensation provision of Section 251(b)(5) applied only to "local" traffic. Instead, the FCC reversed course and found that Section 251(b)(5) of the Act imposes reciprocal compensation obligations on the exchange of *all* telecommunications traffic. FCC 01-131, ¶¶ 31-34. The FCC further found that the only traffic exempted from Section 251(b)(5) reciprocal compensation obligations is that which is carved out by Section 251(g) of the Act - "exchange access, information access, and exchange service for such access to interexchange carriers and information service providers." *Id*. at ¶¶ 34-37.

Under this interpretation of the Act, the FCC then turned its attention to determining the appropriate compensation scheme for traffic going to ISPs. The FCC concluded that, based on an end-to-end analysis of ISP calls, it had exclusive jurisdiction over ISP-bound traffic. *Id*. at ¶¶ 52-54. The FCC then determined that ISP-bound traffic is Information Traffic subject to the Section 251(g) carve out. *Id*. at ¶ 44. The FCC also adopted a hybrid compensation mechanism that established relatively low per minute rates and a cap on the total volume of traffic entitled to such compensation. *Id*. at ¶ 77. The D.C. Circuit subsequently reversed the FCC's finding that Section 251(g) exempted ISP-bound traffic from Section 251(b)(5), but the D.C. Circuit did not vacate or reverse the FCC's hybrid compensation scheme. *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Therefore, the FCC's hybrid compensation mechanism provides the

appropriate intercarrier compensation for the exchange of ISP-bound traffic, including ISP-bound VNXX traffic.[2]

With the FCC's *ISP Remand Order* in its proper context, the compensation regime for VNXX traffic is clear. If the VNXX traffic is ISP-bound, the FCC's special compensation mechanism applies, which provides for a rate of $.0007 per MOU. If the VNXX traffic is not ISP-bound (or, if it is FX traffic), then it falls under Section 251(b)(5) of the Act and is subject to reciprocal compensation.

ii. Michigan and related State Rulings on Compensation

The MPSC has a long and firmly established case history supporting the use of reciprocal compensation as the compensation mechanism for VNXX traffic which is consistent with the FCC's ruling on the matter in the *ISP Remand Order*. In addition to the MPSC's own precedent, the Michigan Court of Appeals upheld a decision by the MPSC that found just because a call is routed outside of a local calling area does not mean that the call can be billed as a toll call. *CenturyTel v. MPSC*, 245 Mich. App. 351 (2001). In *CenturyTel*, a CenturyTel customer in the Newport exchange purchased dial-up Internet service from an ISP that offered a modem access telephone number of 349 NXX, which was assigned to the Monroe exchange. *Id*. at 354-55. According to CenturyTel's tariff, its local calling area included both the Newport and the Monroe exchanges. *Id*. at 354. The facts in this case were such that calls to the ISP's 349 NXX

[2] The exclusive nature of the FCC's jurisdiction over intercarrier compensation for ISP-bound VNXX traffic has been recently recognized by the Washington Utilities and Transportation Commission, which stated:

> "We interpret the *ISP Remand Order* to apply to all ISP-bound traffic, regardless of the point of origination and termination of the traffic. Under the *ISP Remand Order*, the FCC created a separate compensation category for all ISP-bound traffic. According to the FCC's compensation scheme for ISP-bound traffic, it is irrelevant for purposes of determining compensation whether the traffic is local, toll, or via VNXX arrangements."

Pac-West Telecomm, Inc. v. Qwest Corp., Docket No. UT-053036, Order No. 5, 2006 Wash. UTC LEXIS 58, ¶ 30 (Feb. 10, 2006) and *Level 3 Communications, LLC v. Qwest Corp.*, Docket No. UT-053039, Order No. 5, 2006 Wash. UTC LEXIS 59 (Feb. 10, 2006). *See also The Southern New England Telephone Co. v. MCI Worldcom Communications, Inc.*, 359 F. Supp. 2d 229, 230-31 (D. Conn. 2005) (holding that the *ISP Remand Order* applies to *all* ISP-bound traffic).

number, which was provided to the ISP by the CLEC Phone Michigan, were routed to the ISP's equipment in Flint rather than a Monroe location. *Id*. at 355. Instead of treating these locally dialed calls as local calls, CenturyTel treated the ISP-bound calls as toll calls to Flint, resulting in toll charges to its customer of approximately $2,500. *Id*.

In the complaint proceeding filed against CenturyTel before the MPSC, CenturyTel "argued that Phone Michigan's 349 NXX was not legitimate and could not be treated as part of the Newport/Monroe local calling area," and "the fact that the 349 NXX is not physically located in the Monroe exchange requires it to treat those calls as toll calls." *Id*. at 357. The MPSC disagreed with CenturyTel, and the Court of Appeals affirmed the decision.

> "Review of the record supports the Public Service Commission's conclusion that the fact that the call was ultimately routed or forwarded outside the local calling area did not mean that it could be billed as a toll call. The 349 NXX was assigned to the Monroe exchange by the North American Number Plan. The evidence before the commission showed that the exchange of a number or NXX did not depend on the geographic location where a call was ultimately received. The commission relied on testimony indicating that a local call is considered completed when it reaches the particular switch for that local number, and that local calls to Monroe numbers served by Ameritech were billed as local calls regardless of whether those calls were routed outside the Monroe geographic area. This testimony was competent, material, and substantial evidence on the whole record and supported the Public Service Commission's findings."

Id. at 363-64.

In an August 17, 2000 Order, the MPSC found that there was established precedent in Michigan on the treatment of VNXX and FX traffic:

> "Commission precedent on the issue of the appropriate rating of a call to a customer located outside the geographic area associated with the NXX assigned to that customer has consistently found that intra NXX calls are to be considered local for rating purposes, despite their actual routing." *In re the petition of Coast to Coast Telecommunications, Inc., for arbitration of interconnection rates, terms, conditions, and related arrangements*

> *with Michigan Bell Telephone Company, d/b/a Ameritech Michigan*, Case No. U-12382, p. 9 (Aug. 17, 2000 Order).[3]

Thus, the *Coast* decision re-affirmed the MPSC's precedent that traffic is classified as either "local" or "toll" based upon the NXX codes of the parties regardless of their physical location.

In the *Coast* decision, the MPSC considered and rejected the same argument that is being again raised in this Work Group, namely that the originating carrier has additional costs to deliver VNXX traffic. In *Coast*, Ameritech argued that unless it was permitted to impose additional charges on Coast for VNXX traffic to cover its alleged additional costs, Ameritech would be forced to provide a "free ride" to Coast. The MPSC observed that the arbitration panel's recommendation was consistent with and supported by a decision of the Illinois Commerce Commission ("ICC"). The arbitration panel discussed the Illinois decision as follows:

> "In that case, Ameritech Illinois requested language that would have required Focal to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal used to provide FX service. The ICC determined that nothing in state or federal law required adoption of the proposal and it rejected Ameritech Illinois' arguments concerning the alleged 'free ride' that Focal would obtain without the requirement. That free ride argument appears to be the same as one of the arguments that Ameritech Michigan poses in this case. In the ICC's view, the manner in which the parties currently handle traffic belied Ameritech Illinois' argument, because *Ameritech Illinois would not be required to carry traffic any further or incur any extra expense based on the nature of the call being FX service. Rather, Ameritech Illinois delivers the call to the point of interconnection associated with the NXX, after which, Focal delivers the call to the FX customer, wherever that customer might be located*." *Id*.

Id. (emphasis added). The above emphasized language demonstrates that the ICC clearly understood VNXX traffic impose no additional costs on the originating carrier. As the ICC found, Ameritech "delivers the call to the point of interconnection associated with the NXX,

[3] Citing *Bierman v. CenturyTel of Michigan, Inc.*, Case No. U-11821 (Apr. 12, 1999 Order) (affirmed in relevant part in *CenturyTel of Michigan, Inc. v. MPSC*, 245 Mich. App. 351 (2001)); and *Coast to Coast v. GTE North Inc., et al.*, Case No. U-12090 (Feb. 22, 2000 Order).

after which *[the CLEC] [not the originating carrier]* delivers the call to the FX customer, *wherever* the customer might be located."

Similarly, the MPSC, in rejecting Ameritech Michigan's argument that FX service is actually a form of IXC service, reasoned:

> "Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call. As a matter of historical convention, the routing of that call, i.e., whether or not it crosses exchange boundaries, has not been equated with its rating, i.e., whether local or toll. Moreover, the discretion that CLECs exercise in designing their local calling areas is a competitive innovation that enables them to provide valuable alternatives to an ILEC's traditional service. The Commission finds no reason to change these standards, particularly if the end result would be an unnecessary restriction on the services that customers want and need." *In re the application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation*, Case No. U-12696, pp. 10-11 (Jan. 23, 2001 Order).

The MPSC has since affirmed the appropriateness of reciprocal compensation for VNXX traffic in the face of arguments that the FCC's *ISP Remand Order* creates an exemption from Section 251(b)(5) for VNXX traffic. *See In re the petition for arbitration to establish an interconnection agreement between TDS Metrocom, Inc. and Ameritech Michigan*, Case No. U-12952, pp. 22-25 (Sept. 7, 2001 Order) (finding that FX service "is not intrastate exchange access service as argued by Ameritech Michigan" and that "FX service is not a toll service and is not included within the exemption from reciprocal compensation"); and *In re the application of TelNet Worldwide, Inc., for arbitration of interconnection rates, terms, and conditions and related arrangements with Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems*, Case No. U-13931, pp. 13-16 (Oct. 14, 2004 Order) (finding that Verizon's arguments that VNXX traffic should be exempt from the requirements for reciprocal compensation because

those calls constitute exchange services for access and exchange access "are not persuasive to change long-standing MPSC precedent on this issue").

2. Current Architecture

The MPSC findings discussed above reveal an important two-fold principle at the very heart of the federally mandated architecture that encourages telecommunications competition: (1) all carriers are responsible for delivering traffic that originates on their network to all other carriers, and (2) CLECs are permitted to interconnect with ILECs at a single point of interconnection per LATA. These important principles dictate that no different network architecture should be required for VNXX traffic than is required for other types of local traffic. In either case, the originating LEC must bring the traffic to the terminating LEC's network (whether arrangements have been made to deliver the traffic at the CLEC's single point of interconnection or at some other interconnection point), after which it is the CLEC's responsibility to deliver such traffic to the called party, whether the subscriber is located geographically within the local calling area where the call originated or a great distance away.

Federal law clearly obligates a carrier to deliver its traffic to all other carriers, even to points outside of the originating carrier's local service territory. The FTA requires carriers to interconnect with one another, and permits CLECs to interconnect at a single 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." And 47 USC § 251(c)(2)(B) places a duty upon each ILEC to permit requesting telecommunications carriers to interconnect "at any technically feasible point within the [incumbent] carrier's network."[4] In its Further Notice of Proposed Rulemaking in *In re*

[4] *See also* 47 CFR § 51.321(a), which states: "Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the

Developing a Unified Intercarrier Compensation Regime, FCC 05-33, CC Docket No. 01-92, ¶ 87 (rel'd Mar. 3, 2005), the FCC indicated that it has interpreted § 251(c)(2)(B) "to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA."[5]

Once interconnected, 47 CFR § 51.703(b) states that a "LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." The FCC recognized that "[a]t least two courts have held that this rule applies even in cases where an incumbent LEC delivers calls to a POI located outside its customer's local calling area." FCC 05-33, ¶ 87 (citing *MCIMetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir 2003) and *Southwestern Bell Telephone Co. v. Public Utilities Commission of Texas*, 348 F.3d 482 (5th Cir 2003)).

In *MCIMetro Access*, the 4th Circuit considered "whether BellSouth can charge MCI for the cost of transporting local calls originating on BellSouth's network to MCI's chosen POI, when that POI happens to be outside of the local calling area where the call originated." *MCIMetro Access*, 352 F.3d at 876. The court explained that "MCI decided to interconnect with BellSouth's network at only one point in the North Carolina [LATA] through its single North Carolina switch. Therefore, all traffic between MCI and BellSouth customers must pass through that one POI, regardless of the locations of the two customers." *Id*. at 877. Although BellSouth

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requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."

[5] Also, this option for a CLEC to interconnect at a single POI per LATA conceivably means that a CLEC need only establish such *single* POI with a *single* ILEC per LATA. For example, in seeking comment on its legal authority to impose transiting obligations upon ILECs to facilitate indirect interconnections, the FCC stated AT&T's and Sprint's argument that the "at any technically feasible point" language of § 251(c)(2)(B) supports transiting obligations because "that interconnection at the tandem switch provides access to the full tandem switching functionality, including access to subtending end offices owned by carriers other than the tandem provider." FCC 05-33, ¶ 127 (rel'd Mar. 3, 2005). In other words, the single POI is all that is needed for indirect interconnection with other carriers within the LATA where the amount of traffic exchanged with such other carriers supports indirect interconnection rather than direct interconnection.

wanted MCI to pay the "the incremental cost of transporting traffic destined for MCI's network from the relevant local calling area to the POI," the court held that 47 CFR § 51.703(b) "is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions." *Id*. at 877, 881.

Similarly, in *Southwestern Bell*, AT&T was challenging the charges that Southwestern Bell had imposed on AT&T "for hauling its originating traffic to the POI selected by AT&T simply because the POI is outside Southwestern Bell's local calling area." *Southwestern Bell*, 348 F.3d at 486. The 5th Circuit affirmed the district court's decision.

> "The district court determined that the transport costs imposed on AT&T by the PUC were charges related to reciprocal compensation under § 51.703(b), rather than interconnection terms under § 251(c)(2), and therefore, in violation of FCC regulations. The district court noted that the FCC reciprocal compensation regulations are quite specific in prohibiting Southwestern Bell from charging AT&T for 'local' traffic originating on Southwestern Bell's network, despite the fact that the PUC had previously authorized Southwestern Bell to do so. . . . The district court concluded that the PUC order did not comply with the current FCC rules and remanded the PUC's order back to the PUC."

Id. at 487.

In the FCC's *Virginia Arbitration* decision, DA 02-1731, CC Docket Nos. 00-218, 00-249, 00-251 (rel'd July 17, 2002), the Wireline Competition Bureau, acting through authority delegated by the FCC, also discussed a carrier's requirement to deliver its traffic to all other carriers.

> "Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA. The Commission's rules implementing the reciprocal compensation provision in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network. Furthermore, under these rules, *to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic*."

Virginia Arbitration, ¶ 52 (emphasis added) (footnotes omitted). The Wireline Bureau found "that the petitioners' proposed [ICA] language more closely conforms to [the FCC's] existing rules and precedent" because it required that "each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC." *Id*. at ¶ 53.

The Wireline Bureau succinctly summarized "the rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier" as four-fold:

> "(1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network; (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;[6] *(3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination*;[7] and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities."

Id. at ¶ 67 (emphasis added) (footnotes omitted).[8]

The MPSC has recognized this federal requirement that all carriers are obligated to bear the cost of delivering their originating traffic to interconnecting LECs' networks for termination.

> "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

[6] The FCC also made clear that "[t]he 'single point of interconnection' rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. It does not preclude the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it." *Virginia Arbitration*, ¶ 71 (footnotes omitted).

[7] For example, see 47 CFR § 51.709(b), which states: "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods."

[8] The Wireline Bureau recognized that "[o]ne result of these rules . . . is that sometimes [the incumbent] must pay [competitive LECs] for transporting [incumbent]-originated traffic from the place where [competitive LECs] interconnect with [the incumbent LEC's] network to the [competitive LECs'] networks." *Id*. at ¶ 68.

> compensation. Once the traffic is delivered to the other party's network, the only appropriate charge is the reciprocal compensation charge."

In re the application of TelNet Worldwide, Inc., for arbitration of interconnection rates, terms, and conditions and related arrangements with Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, Case No. U-13931, p. 23 (Feb. 24, 2005 Order) (emphasis added).

Making carriers responsible for delivering traffic that originates on their networks to all other carriers and permitting CLECs to interconnect at a single POI per LATA support the policy goal of encouraging a competitive telecommunications market. After indicating that a CLEC's right to request interconnection at any technically feasible point "means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA," the FCC quoted its *Local Competition First Report and Order*, CC Docket Nos. 96-98 and 95-185, 11 FCCR 15499 (rel'd Aug. 8, 1996), in discussing the benefits of permitting a single POI per LATA. *In re Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, 15 FCCR 18354 ¶ 78 (rel'd June 30, 2000).

An example of such benefits is that the "interconnection obligation of section 251(c)(2) . . . allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic." *Local Competition First Report and Order*, 11 FCCR 15499, at ¶ 172. The FCC also stated:

> "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic."

Id. at ¶ 209.

C. Proposed Compensation and Architecture Model

1. Proposed Compensation Model

The MPSC and State of Michigan should not consider any changes in the intercarrier compensation structure for VNXX traffic until after the FCC makes effective its ruling on this topic.

For ISP-bound VNXX traffic, the appropriate compensation model has been established by the FCC, which has asserted exclusive jurisdiction over intercarrier compensation for all ISP-bound traffic. *See* Sections III.B.1 and III.D of this Report. And for all other "VNXX" traffic (or, FX traffic), FCC policies that (1) require all carriers to deliver their traffic to other carriers and (2) permit CLECs to interconnect at a single POI per LATA support retaining the current compensation model for non ISP-bound VNXX and FX traffic. *See* Section III.B of this Report. There are also several unintended, negative consequences, effecting current and emerging telecommunication technologies, that will take place as a result of a change in the compensation model for VNXX and FX traffic in Michigan. *See* Section III.E of this Report.

Most importantly, however, the current compensation model for VNXX and FX traffic should not be altered at this time because the FCC is preparing to establish broad intercarrier compensation rules and policies that will undoubtedly impact compensation for VNXX and FX traffic. In *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33 (rel'd Mar. 3, 2005), the FCC began "the process of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies." FCC 05-

33, ¶ 1. In that proceeding, the FCC is considering many issues that, once resolved, will have an effect on the future compensation model for VNXX and FX traffic.

> "Since the [FCC] adopted the *Intercarrier Compensation NPRM* acknowledging the need for reform, several industry groups have developed proposals for comprehensive reform of existing intercarrier compensation regimes and submitted those proposals to the [FCC]. In this *Further Notice*, we solicit comment on these proposals, including the legal and economic bases for these proposals, as well as the end-user effects and universal service issues implicated by them. We also ask parties to comment on whether and how these reform proposals would affect network interconnection and seek comment on the implementation issues associated with any reform measures. In addition to the comprehensive reform proposals submitted in the record, we seek comment on alternative reform measures, including changes to the existing intercarrier compensation regimes and cost standards. Finally, we seek comment on issues relating to the regulation of transit services and additional CMRS compensation issues."

Id., ¶ 4.

Because the FCC's current holistic undertaking to overhaul the intercarrier compensation regime is sure to control the ultimate compensation model for VNXX and FX traffic nationwide, Michigan should not attempt its own piecemeal effort to address this discrete intercarrier compensation question. Insisting on changing the well-established and reasoned compensation model at this time will only result in putting policies and procedures in place that in a short time will need to be completely altered again. The State should avoid such a wasteful and disruptive effort.

2. Proposed Architecture

For the same reasons as discussed above in Section III.C.1 of this Report, there should be no change in the current network architecture and interconnection for VNXX and FX until the FCC issues an order in CC Docket No. 01-92 establishing broad intercarrier compensation and interconnection rules and policies. The FCC is also considering its single POI per LATA rule, in its pending NPRM, and any resulting change will have an effect on the interconnection

architecture already deployed in Michigan. In the Further Notice of Proposed Rulemaking, the FCC stated:

> "In the *Intercarrier Compensation NPRM*, the Commission solicited comment on whether an incumbent LEC should be obligated to bear its own costs of delivering traffic to a single POI when that POI is located outside the calling party's local calling area. Alternatively, the Commission asked whether a carrier should be required to interconnect in every local calling area or pay the incumbent transport and/or access charges if the location of the single POI requires transport beyond the local calling area. The Commission also sought comment on whether current rules result in inefficient network design by forcing the originating LEC to bear the cost of transport outside the local calling area, or whether requiring competitors to establish multiple POIs or pay for transport beyond the local calling area forces competitive carriers to replicate the incumbent LEC network. . . . In this Further Notice, we solicit additional comment on changes to our network interconnection rules to accompany proposed changes to the intercarrier compensation regimes." FCC 05-33, ¶¶ 87, 92 (footnotes omitted).

D. FCC Jurisdiction

The FCC has made clear that it has *exclusive* jurisdiction over the intercarrier compensation for all ISP-bound traffic. In the *ISP Remand Order*, the FCC stated that because "intercarrier compensation for ISP-bound traffic is within the jurisdiction of [the FCC] under section 201 of the Act, it is incumbent upon [the FCC] to establish an appropriate cost recovery mechanism for delivery of this traffic." FCC 01-131, ¶ 4. The FCC emphasized that its authority in this regard overrides any state commission authority. "Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, *state commissions will no longer have authority to address this issue*." *Id*. at ¶ 82 (emphasis added). Also, the FCC did not exclude any specific ISP-bound traffic from the compensation scheme established in the *ISP Remand Order*, including VNXX ISP-bound traffic, and stated that it was considering in the *ISP Remand Order* "the proper treatment for purposes of intercarrier compensation of telecommunications delivered to Internet service providers (ISPs)." *Id*. at ¶ 1. See also the discussion at Section III.B.1 of this Report.

E. Types of Services Affected by VNXX

VNXX and FX architectures are simply arrangements where the individual or terminating equipment being called is not physically located in the same rate center associated NPA/NXX as set forth in the industry's routing guides. There architectures are nothing new to the telecommunications industry. ILECs have for decades offered FX arrangements. This has allowed businesses such as banks to establish local phone numbers and route the calls to distant exchanges where a single answering point can accept calls from the various locations. CLECs have implemented new technologies to offer essentially the same FX arrangements using different network architecture. Wireless carriers provide the functional equivalent of FX arrangements any time one of their customers leaves the rate center of the telephone number associated with the cell phone.[9] Furthermore, burgeoning technologies such as Voice over Internet Protocol ("VoIP") allow customers to take their equipment anywhere in the word and plug it into the Internet and receive calls. In essence, VNXX and FX arrangements come in many forms and are a fundamental aspect of the evolving communications industry.

Accordingly, any change in the current intercarrier compensation mechanism for VNXX and FX traffic will result in far-reaching consequences that the Michigan Legislature likely never intended when it drafted Section 304(9) of Act 235. For example, most ISPs have always used a VNXX arrangement to provide local dial-up Internet access to their customers. Restricting the use of VNXX will result in a reduction in the number of ISPs offering dial-up Internet access and an increase in the cost of Internet access to Michigan subscribers, thereby increasing the digital divide in Michigan. Those most effected by such a result will be residents and businesses in

[9] Consider an individual with a Lansing cell phone number who travels to New York. End users in Lansing can still call the cell phone number as if it were a local number, but they are reaching an individual who is now physically located in New York.

those areas of Michigan where there is very little, if any, broadband availability and where dial-up is the primary means by which these residents and businesses access the Internet. With the myriad of vital opportunities that Internet access affords in today's society, diminished Internet availability will result in fewer educational opportunities, decreased jobs, decreased business effectiveness and efficiency, and an overall harmful impact in the areas of this State that are the most economically vulnerable and least able to withstand the devastation.

Another negative consequence will be to the ILECs' own traditional FX service, which is also a service that assigns "a telephone number to customers who are not physically located in the exchange to which the NXX is assigned." Section 304(9) of Act 235. Treating ISP-bound VNXX or CLECs' voice FX arrangements as IXC services will necessarily require the same treatment for traditional FX arrangements that ILECs offer. Section 304(9) does not distinguish between the various types of VNXX and FX calls.

Also, from a practical perspective, the NXX is the only code presently available to identify the nature of a call when it comes to billing. Carriers have always rated and routed calls based upon NPA-NXX codes and they are not equipped to bill according to the geographic location of an end users' equipment. Thus, determining whether a call is a local call by the physical location of the calling parties, besides being unwise, is not presently feasible. *See* Case No. U-12696, pp. 10-11 (Jan. 23, 2001 Order). Because the geographic location of NXX codes cannot currently be tracked for billing purposes, requiring carriers to track the physical terminating location of VNXX and FX traffic would create an administrative nightmare for carriers to implement and maintain.

In addition, there are many present and emerging technologies that will be impacted if VNXX and FX are effectively eliminated. These include cellular technology, VoIP services,

remote call forwarding, follow-me call routing, and other technologies not yet fully developed, or perhaps even imagined, that permit subscribers to take their phone number with them anywhere. Instead of stifling such technology by eliminating the use of VNXX and FX architecture, the State of Michigan should be doing all that it can to encourage the availability of new and innovative telecommunications services to all Michigan residents.

IV. Conclusions and Recommendations

A. Current

Any change in the current intercarrier compensation model and architecture for VNXX and FX traffic in Michigan should not occur until after the FCC acts. The FCC is in the process of establishing broad intercarrier compensation rules and policies that will likely moot any present changes made to VNXX and FX in Michigan. Also, federal law and MPSC precedent support the current VNXX and FX compensation models and architecture in Michigan. Furthermore, any change to VNXX in Michigan will not effect ISP-bound VNXX traffic, over which the FCC has established its exclusive jurisdiction. Finally, there should be no change in the current VNXX, FX, or FX-like compensation models and architecture in Michigan because of the unintended, negative consequences that will result, including diminished Internet availability, elimination of ILECs' traditional FX arrangements, overwhelming administrative burdens, and stifling of many present and emerging telecommunications technologies in Michigan.

B. Post December 31, 2007

At the point when the FCC does reach its decision regarding intercarrier compensation, whether before or after December 31, 2007, the MPSC should issue a report to the governor and legislators providing a MPSC policy statement regarding "VNXX" architectures and potential

recommendations for legislation that arise out of the FCC's decision. To this effect, Section 304(9) of Act 235 should be amended as follows (suggested new language in bold and italics):

> "(9) A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call. ***Within six(6) months of the effective date of an order of a final Federal Communications Commission decision in*** **Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, regarding intercarrier compensation, the commission shall*** ~~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's order in case numbers 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 commission shall convene a workgroup of interested parties for the purpose of resolving issues surrounding virtual NXX. 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. The workgroup shall consider the utilization of virtual NXX services to transport interexchange traffic and the associated inter-carrier compensation. Prior to July 1, 2006, the commission shall~~ submit a report to the governor and the house and senate standing committees with oversight of telecommunication issues ***on the Federal Communications Commission decision.*** ~~on the progress of workgroup discussions.~~ The report shall include a commission policy statement relating to the provision of virtual NXX services, and recommendations for legislation, if any. ***For purposes of this section, 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.***"

Respectfully submitted,
TELNET WORLDWIDE, INC.;
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Dated: March 31, 2006