

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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

Reply Comments of AT&T Michigan, Verizon and Talk America

These reply comments are submitted by AT&T Michigan, Verizon North Systems and Talk America (the Joint Carriers) to the Staff of the Michigan Public Service Commission as required by the work group schedule established in this docket pursuant to MTA § 304(9). Joint Carriers raise two issues in this reply. First, the Commission should recognize in all of the submissions the common assumption that the FCC will act on intercarrier compensation and architecture reform in the very near future. The Joint Carriers believe that this assumption most realistically supports their proposal to the Commission that it recommend no legislative changes at this time. Second, the Joint Carriers recommend that the Commission not adopt the proposal of the ISP parties (and any other parties) who seek to enlarge the scope of the proposed submission to include non-VNXX issues.

I. The Common Assumption Among All Parties Is That the FCC Will Soon Act On Intercarrier Reform Issues

In their proposed report submitted on March 30, 2006, the Joint Carriers recommended that the Commission make the following findings:

- That the legislature enact no revisions to section 304(9) at this time. This recommendation is based on the assumption that the FCC will, in the relatively near future, issue orders that will address broad intercarrier reform issues, including the VNXX and intercarrier compensation issues discussed in the workgroup.

- That negotiations between carriers have, in many cases, produced solutions that obviate the need for regulatory intervention on the issue of VNXX. Therefore, no immediate action is needed because carriers can and will resolve their disputes through negotiations.
- That the Commission should provide to the legislature continued updates on the issue of VNXX (and related) issues on a regular schedule (*e.g.*, approximately every six months) to provide the legislature with more recent information regarding (a) actions by the FCC in its intercarrier compensation reform proceedings and (b) actions or decisions on the VNXX (and related) issues by the Michigan Public Service Commission in its various docketed proceedings and/or arbitrations between carriers.

The submissions by other parties in this docket have not persuaded the Joint Carriers to modify their proposal. The Joint Carriers stand by these recommended findings and do not believe that the submissions by other parties should be adopted.

The submissions by other parties¹ all flow from the following assumption, which is also shared by the Joint Carriers: the FCC is likely to act on intercarrier compensation and interconnection reform initiatives in the near term and this reform is expected to address the VNXX issues that have been discussed in the work group meetings. The TelNet submission states:

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.²

Similarly, the ISPs state in their proposed report:

¹ Submissions were also made by TelNet, Pac-West & Level 3, MECA, and the ISP Group (Mid-mich.net, M33 Access & The Iserv Company).

² Proposed VNXX Report, submitted by TelNet Worldwide, Inc., PAC-West Telecomm, Inc. and Level 3 Communications, Inc., at p. 2 (“TelNet Proposed Report”).

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.³

And, along the same lines, the Michigan Exchange Carrier Association takes this position:

As several parties have concluded, expending more time on this issue [of VNXX] on the state level would be redundant and could lead in a different direction than the more global talks taking place on the national level, which would not be productive.⁴

Thus, while other parties have arrived at different ultimate recommendations, we all proceed from a common point of departure – that the FCC’s expected decision would render any action in Michigan wasteful and potentially damaging to Michigan’s telecommunications markets. The parties all believe that the FCC will initiate reform initiatives in the near term, perhaps even before the end of calendar 2006, which will provide the nation and the state of Michigan with further guidance on this subject. From the Joint Carriers’ perspective, any recommendation for immediate action would be too soon in the overall process, and would generate more, rather than less, uncertainty regarding intercarrier compensation, architecture, and VNXX issues.⁵

³ Submission by ISPs (Mid-mich.net, M33 Access, and The Iserv Company) regarding VNXX Workgroup Final Draft Proposal, p. 8 (“ISP Proposed Report”). The Michigan Alliance for Competitive Telecommunications (“MiAct”) indicated that it joined the ISP Proposed Report.

⁴ Michigan Exchange Carrier Association, VNXX Workgroup proposed Comments, p. 10 (“MECA Comments”).

⁵ Joint Carriers would note that court decisions will undoubtedly provide some further clarity on the VNXX issue. For example, in an opinion issued on April 11, 2006, by the First Circuit Court of Appeals in an appeal of a decision by the Massachusetts Department of Energy and Telecommunications on the topic of VNXX calls, the court states: “[T]he [FCC’s] *ISP Remand Order* does not clearly preempt state authority to impose access charges for interexchange VNXX ISP-bound traffic; it is, at best, ambiguous on the question, and ambiguity is not enough to preempt state regulation.” *Global NAPs, Inc. v. Verizon New England, Inc.*, ___ F.3d ___, slip. op. at 11, 2006 WL 924035 (April 11, 2006). The court affirmed the DTE’s determination that Global NAPs must pay Verizon access charges for all “virtual NXX” traffic, including

II. The Commission Should Not Make Any Recommendations Concerning Non-VNXX Issues

In its section marked “Types of services affected by VNXX”, the ISP parties have included numerous “scenarios” that purport to describe services that will be affected by any change in the regulation of VNXX-based services. The Joint Carriers respectfully caution the Commission to not adopt any of the scenarios. The ISP Proposed Report lists several scenarios (for example, Landline to Cell Phone, Voice over IP, and ILEC Host/Remote) where there is likely to be serious disagreement among the workgroup parties as to whether they reflect a VNXX-derived service. Indeed, in the course of the workgroup discussions, there was substantial disagreement among parties as to whether § 304(9) of the MTA authorizes the Commission to regulate the types of scenarios listed in the ISP Proposed Report.⁶

The Joint Carriers believe that the Commission should not broaden the scope of its report to the governor and legislature beyond the specific boundaries of the requirements of § 304(9). The scope of the inquiry has been defined as follows: “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

non-local ISP-bound traffic, rejecting Global NAP’s argument that state commission’s were preempted by the *ISP Remand Order* from regulating intercarrier compensation for all ISP-bound traffic.” *Id.*, slip op. at 11.

⁶ Indeed, some of the scenarios in the ISP Proposed Report are factually incorrect or would be disputed. *See, e.g.*, ISP Proposed Report, p. 10 (incorrect to state that if another LEC’s customer located in the Muskegon rate center calls a florist’s Muskegon number the originating LEC would be responsible for transporting the call to AT&T. In fact, the other LEC would still be responsible to only transport the call to the open end of the FX line, which is in Muskegon), p. 14 (in the case of the VoIP originated call in the example, the regulated landline customer is not mobile/VFX because the issue does not exist in both directions.), p. 15 (it is unlikely that a CLEC would have a physical presence in each local calling area to deliver or receive voice traffic to or from the public switched telephone network.).

interexchange traffic and the associated inter-carrier compensation.” MCL § 484.2304(9). The ISP Proposed Report would carry the Commission’s recommendation far outside of this scope by requiring the Commission to consider concepts involving its authority to regulate certain retail services (e.g., cellular and/or IP-based services) that presently are not considered to be within the Commission’s jurisdiction. Similarly, the ISP Proposed Report would have the Commission comment on certain novel or relatively uncommon intercarrier interconnection arrangements.

The workgroup proceedings that were convened by the Commission in this docket have operated at a relatively informal, collaborative level. The process was not intended to replace more formal proceedings – such as arbitrations, intercarrier complaint actions, or rulemakings – which are more commonly associated with the resolution of disputed issues. Moreover, the parties have assumed that the position taken in the workgroup proceedings were for the purpose of collaborating and that they may take carrier-specific positions in other proceedings before the Commission. Therefore, to avoid any ambiguity regarding the subject matter actually considered by the workgroup, the Commission should not address issues that are beyond the scope of VNXX issues.