

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

**REPLY COMMENTS OF ISPS (MIDMICH.NET, M33 ACCESS,
ACD.NET AND THE ISERV COMPANY) AND MIACT
REGARDING
VNXX WORKGROUP FINAL DRAFT PROPOSAL
(April 14, 2006)**

The Internet System Providers (ISPs) made up of Midmich.net;M33 Access, ACD.net and the Iserv Company and the Michigan Alliance for Competitive Telecommunications (MIACT) (collectively ISP &M) hereby file their reply comments, responding to the earlier submissions of AT&T, Talk America and Verizon (AT&V); the Michigan Exchange Carriers Association (MECA) and Telnet, Pac-West and Level 3 (TP&L), which proposed recommendations for a Commission report to the Legislature pursuant to Section 304(9) of the Michigan Telecommunications Act [Section 304(9)]. In general, the recommendations proposed for the Commission by each of the parties acknowledge the importance of federal law on the Commission's deliberations. Indeed, all but one of the submissions would be consistent with the recommendation of TP&L that Section 304(9) be amended to require the Commission to report to the Governor and the House and Senate standing committees with oversight of telecommunications issues regarding the provision of virtual NXX (VNXX) services within six months of a decision by the Federal Communications Commission (FCC) on intercarrier

compensation. The amendment would also remove confusing and controversial language from the legislation that provides that 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 calling area is not a local call if the tariff of the provider so provides.

Reply to AT&V

AT&V suggests that the Commission recommend that the Legislature enact no further revisions to section 304(9) at this time. However, AT&V notes that this recommendation is predicated on the assumption that the FCC will address broad inter-carrier compensation reform proposals "in the relatively near future." Since AT&V's recommendation is so closely tied to FCC action, it would be appropriate, and in keeping with this recommendation to conclude that TP&L's proposal to amend Section 304(9) would be consistent with AT&V's position. Similarly, the third proposed recommendation of AT&V, to have the Commission provide periodic updates to the Legislature on VNXX, including actions by the FCC in the intercarrier compensation reform case, could be accommodated by the TP&L proposal. Finally, the second proposed recommendation of AT&V, to allow for interim, arms-length negotiations between carriers, could be accepted by ISP &M, assuming that the Commission continued to monitor the availability of the terms of any such arms-length negotiations to similarly-situated carriers.

Reply to TP&L

As noted above, the TP&L proposed recommendation to amend Section 304(9) is consistent with the positions of three parties, including ISP &M. Although ISP&M proposed that the Commission recommend that Section 304(9) be repealed, it would

agree with TP&L that action by the FCC on inter-carrier compensation reform will moot any action taken by the Commission or the Legislature with regard to VNXX.

However, even the current language in Section 304(9) is not in conformance with the current FCC regulations that require carriers to deliver their originating traffic to the network of the called party. Without revision of Section 304(9), the State of Michigan will be required to defend a state law that is in clear conflict with federal law.

Accordingly, ISP&M accedes to TP&L's proposal to amend Section 304(9) in the manner suggested, so it would read as follows:

“(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 submit a report to the governor and the house and senate standing committees with oversight of telecommunication issues on the Federal Communications Commission decision. 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.”

Reply to MECA

MECA's "proposed comments" included the following statement:

“...The Legislature ...included language in section 304(9) that allows local telephone companies to declare in their tariffs whether VNXX calls should be considered local or non-local

MECA is incorrect in suggesting that local telephone companies can “declare” in their tariffs that VNXX calls are non-local. The Commission, even under 2005 PA 235, has the authority to reject or modify a tariff filing, especially if it relates to the provision of local telephony. As the Emergency Telephone Service Enabling Act makes clear a

“tariff” must be “approved by the public service commission” for “ a particular service supplier.” See Section 102(dd) of Act 32 of 1986, MCL 484.1102(dd). If the Commission determines that a particular tariff filing does not comport with the purposes of the law, it may reject or modify it. A carrier is not free to unilaterally create its own tariff and Section 304(9) does not sanction such a practice.

MECA has asserted that the “MTA as amended in 2005, has resolved all major issues surrounding VNXX”. Nothing could be further from the truth. As the deliberations of the workgroup make clear, the FCC will soon be issuing a ruling in its Unified Intercarrier Compensation Docket (CC Docket No. 01-92), which will, among other things, establish new rules addressing the issues of architecture, compensation and operation of FX and VNXX services. No party to the workgroup has questioned the fact that the FCC action will preempt any attempt on behalf of the State to resolve VNXX issues and until the FCC acts, those issues will be unresolved.

It would be foolhardy to allow providers to unilaterally reverse long-standing Commission precedent regarding VNXX services and then, within a matter of months, find out that the FCC has rendered such unilateral action unenforceable. The only reasonable course of action for the State of Michigan is to wait for the FCC action on the inter-carrier compensation docket, study the implications of the FCC action and propose a new policy for dealing with VNXX in keeping with the dictates of the FCC.

For all of the foregoing reasons, the Internet Service Providers M33 Access, Midmich.net, ACD.net and the Iserv Company, as well as the Michigan Alliance for Competitive Telecommunications endorse the proposal of Pac-West Telecom, Telnet Worldwide and Level 3 Communications to recommend that the Commission urge the

Legislature to delay the filing of the Commission's final policy recommendations on VNXX until 6 months after the issuance of an FCC decision in CC Docket No. 01-92.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Counsel for M33 Access, Midmich.net and IServ



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By: _____

Robert B. Nelson (P23644)

Business Address:

124 W. Allegan, Ste 1000

Lansing, MI 48933

Telephone: (517) 377-0854

E-mail: nelson@fraserlawfirm.com