

**Michigan Exchange Carriers Association’s Reply to Comments Submitted to the  
VNXX Workgroup (Case No. U-14683)**

Some participants erroneously claim that the Legislature erred when it passed section 304(9) of the Michigan Telecommunications Act (“MTA”). Their conclusions are based on the assertion that since “duplicative” work is being done at the Federal Communications Commission (“FCC”), the Legislature unwittingly acted unnecessarily and against the best interests of the State. If we were to accept these assertions, we would have to believe that Michigan’s legislators were unaware of the work being done at the FCC. However, it is not plausible that the legislators were unaware of the intercarrier compensation debate at the FCC. Rather, it is more plausible that despite their knowledge of the work being done at the FCC, the Legislature found it necessary to address the promotion of investment and competition in Michigan’s telecommunications industry. The Legislature chose not to wait for the FCC to act.

The 2005 amendments to the MTA are comprehensive and promote both competition and future investment in Michigan’s infrastructure. When the Legislature created PBLES and eliminated local rate regulation of non-PBLES local services, it allowed LECs to restructure their local calling offerings. Taken together with section 305(a)(5), in which the Legislature gave carriers authority to request contract discussion from other carriers, the Legislature added a very pro-competitive amendment to the MTA. With the enactment of section 304(9), the Legislature closed a serious arbitrage loophole and shifted the burden of cost recovery of transport to the cost causers.

In light of these facts, MECA does not support any proposal that would recommend the repeal of section 304(9) or delay its implementation. Relying on hopeful

arguments that the FCC will resolve all issues by the end of the year is poor policymaking. Even should the FCC issue a comprehensive intercarrier compensation scheme, it most likely will include a transition period. It is very likely that section 304(9) will still be useful and needed during that transition. Section 304(9) might even complement these “possible future” FCC rules. Finally, the FCC may very well leave the definition of local calling to the states.

In addition to objecting to TelNet’s<sup>1</sup> proposal that the implementation of 304(9) be postponed indefinitely, MECA also makes the following rebuttal to other comments made by other parties in this work group.

The submission by “ISPs”<sup>2</sup> raises concerns that wireline customers calling certain NPA NXXs will be unaware that such calls are interexchange and are subject to additional charges. In alarmist rhetoric, the ISPs assert that implementation of the law as currently written by the Legislature will “cause confusion for consumers, and call rating problems for carriers operating in Michigan.” (ISP Submission, p 2.) Contrary to these assertions, implementation of the current law will benefit consumers and eliminate call rating problems.

Most VNXXs are used by ISPs. These ISPs usually have contracts and continuing relationships with their customers, and they communicate regularly with their customers. The ISPs can inform their customers that calls to the particular numbers involved are long distance calls. Indeed, the ISPs have an obligation to do so. We expect that the ISPs would comply with the Michigan Consumer Protection Act and reveal this fact to their customers so that there is no probability of confusion or misunderstanding.

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<sup>1</sup> Submitted by TelNet Worldwide, Inc., Pac-West Telecomm, Inc., and Level 3 Communications, Inc.

<sup>2</sup> Submitted by Mid-mich.net, M33 Access, and The Iserv Company.

See MCL 445.903(n), (s), and (bb). Alternatively, the ISPs can get new numbers with NXXs that appear to be located out of the local calling area if they choose not to locate there, or their serving LEC can add a point of presence in the customers' local calling area. There are many ways to avoid customer confusion and misunderstanding.

The ISPs also make several misstatements of fact regarding local calling. For example, with regard to 11-digit dialing and the adjacent exchange calling plans implemented by the Rural LECs, the ISPs erroneously state that once the monthly calling allowance is exceeded, calls dialed as a seven-digit local call are treated as "non-local" and billed per minute. (ISP Submission, p 1.) This is incorrect. While end users are charged per minute of use for calls over the monthly allowance those calls remain local calls. The ISPs fail to understand that local service, like toll service, can be billed at a flat rate, at a usage-based rate, or at a combined rate. The service remains local service because the call terminates within the specified geographic area for local calling. Customers have demanded and accepted these local calling plans without any confusion.

The bottom line is that customers can and will adapt if properly informed. The remaining question is whether the ISPs and their serving LECs are willing to adapt. Elimination of differences between rating and routing will benefit the consumer more in the long run than fostering more gamesmanship and arbitrage that unfairly produces artificial monetary gains for the ISPs and their stockholders.

The ISPs include several scenarios with their respective schematic network diagrams along with alleged impacts on customers caused by section 304(9). These need not be included in the recommendations to the Commission because the conclusions are slanted and alarmist. Without that commentary, the network diagrams add nothing.

Finally, the ISPs include a section on even-handed application of section 304(9). (ISP Submission p 19.) Their argument is somewhat confusing since it seems to suggest that the Commission should continue to apply its rulings on VNXX calls. However, this is contrary to the statutory language and legislative intent to allow LECs to classify these calls as they choose in their tariffs. To the extent that the ISPs are asserting that every call under section 304(9) must be treated the same, they have cited no authority for this proposition. There are many aspects of basic local exchange service where either the LEC has discretion to set its own terms and conditions of service or the Commission has no direct authority. The ILECs can file their tariffs in the manner that they determine is appropriate and the Commission can review the tariffs for regulated matters. Any claims of improper discrimination are premature, speculative, and unsupported in the law.

### **CONCLUSION**

Section 304(9), as enacted by the Legislature and the Governor, is good law. It is well-conceived and coordinates with the actions being taken on the federal level, where the FCC may be addressing concerns similar to those faced by our Legislature. The Legislature did not ask this Commission to move backwards and second-guess their decision regarding VNXXs. Rather, the Legislature asked this Commission for a policy statement and any recommendations for further legislation that might be needed to eliminate the problems caused by the use of VNXXs. The proper approach is to recommend no changes at this time to allow the industry to continue the transition toward elimination of the problems at the end of 2007.