

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

COMMENTS OF ISERV, MIDMICH.NET and M33 ACCESS

The following is the response to the questions raised by Mr. Isiogu at the preliminary meeting of interested parties in the above case on December 5, 2005.

Definition of Virtual NXX:

Section 304(9) defines "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"

What Calls are Local:

Section 304(9) is quite clear what calls it considers should be considered local:

"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. 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."

Applications of Virtual NXX, which may be, disallowed 1/1/2008:

1. Internet Dialup. A dialup Internet customer in Bad Axe Michigan 989-269 calls a local Internet access number 989-269-XXXX as a local call. The PSTN call is transported to and terminated at the Internet Service Provider (ISP) access server in Saginaw, MI.
2. PSTN to Voice over IP (VOIP) Termination. A residential POTS customer in Vassar, MI 989-823 calls a VOIP local phone number assigned to a customer in Mayville, MI 989-548-XXXX. Mayville is within the Vassar adjacent calling area. The PSTN call is transported to and is terminated at a provider's VOIP gateway in Southfield, MI, where it is converted to IP, transported to and terminated at the customer's VOIP adapter in Mayville.
3. Foreign Exchange Local Calling. A business purchases a virtual number in Tawas, MI 989-362 to allow customers in the Tawas local calling area local access for customer service. The call is transported and terminated on a standard business POTS service in Rose City.

Definition of Called Party:

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) of HB-5237 without any definition. Our assumption is that the "Called Party" is the person, or entity that receives a terminated PSTN call. This is not likely an acceptable definition from the standpoint of VOIP providers, but the accounting of the call through the PSTN to IP conversion process would be difficult to account without rating based on originating and terminating NPA-NXX.

Examples of Called Party in Applications of Virtual NXX:

1. Internet Dialup. Since the ISP terminates the PSTN call in their access server, the ISP would be the called party.
2. PSTN to VOIP Termination. Since the VOIP gateway terminates the PSTN call the VOIP provider would be the called party located outside of the local calling area. However the actual customer receives the incoming call via IP transport inside the geographical local calling area where the call originated.
3. Foreign Exchange Local Calling. The business receiving the incoming call from the foreign exchange would be the called party.

Concerns with treating VNXX as toll calls

1. Accounting and Number Portability Issues

Current accounting models are not be capable of tracking which NXX calls are Virtual and which calls are not.

Furthermore, because Number Portability allows single telephone numbers within an exchange to be ported from the native NANPA assigned carrier's number block, accounting decisions may no longer be able to made based on NPA-NXX blocks. No other tracking mechanism is in place to substitute for.

2. Regulated PSTN customer knowledge of incurred charges

In current use of Virtual NXX Service the calling party has no knowledge of how the call is transported and terminated. If VNXX were treated as toll, a customer would receive toll charges unexpectedly.

Considering the issues in "Accounting and Number Portability Issues" above, how would regulated call originators be made aware of the new charges before they are incurred? This is not similar to a cap where the caller expects charges at some point, if VNXX were treated as toll the call originator incurs their cost immediately and without warning.

3. Understand Underlying Compensation Issues

- What economic changes have occurred since prior MPSC decisions on this issue?
- Is there a free ride, in the case of transport via tandem switching?
- Is there a free ride, in the case of facility based trunking to individual COs?
- Should the compensation scheme for foreign exchange service be modified?

4. Carrier's option to discriminate at their choice

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 hope that 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.

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 12/1/2008.

Why Change Virtual NXX Now

As one of the primary consumers of Virtual NXX services in Michigan, dialup Internet services probably result in the largest volume of annual call minutes, however, dialup internet service is a declining technology. There is aggressive conversion of Internet customers to cable, DSL and wireless broadband connections, which should have significantly reduced total call volumes.

In order to maintain existing statewide service footprints post Jan 1 2008, each dialup ISP provider, Michigan or National based, would need to make massive investments in physical local POPs, and backhaul into each unique local calling area. Under-served, rural areas where dialup may be the only option would be left behind due to lack of population density. At a time when resources should be used to expand broadband, Voice over IP and other high-technology services in Michigan, economics probably would not justify re-investment to maintain existing lower speed technology which is in decline.

Implementation of Section 304(9) does not change the Commission's ability to decide that it will not require originating callers to be charged to access services, which have been formerly free local services. Dialing an ISP access number, calling a neighbor's VOIP number, calling a business' remote FX customer service line should not have inbound toll charges. If necessary, the Commission could recommend that the Legislature confirm its long-standing precedent that virtual NXX calls are local calls.