

STATE OF MICHIGAN

MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Commission's own motion,)
to commence a proceeding for the purpose of)
resolving issues surrounding virtual NXX.)
_____)

Case No. U-14683

**VNXX WORKGROUP REPORT
AND RECOMMENDATIONS**

May 31, 2006

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Introduction

On November 21, 2005, Governor Jennifer M. Granholm signed into law 2005 P.A. 235 which amended 1991 P.A. 179, commonly called The Michigan Telecommunications Act (MTA). In addition to other changes, Public Act 235 added Sec. 304(9), which provides:

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'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.

This document provides the Michigan Public Service Commission (MPSC) with a report of the progress made by the workgroup created by the Commission in response to Section 304(9) of the Michigan Telecommunications Act (MTA).

History of Proceedings

The Michigan Public Service Commission issued an Order in Case No. U-14683 on November 22, 2005. The Order assigned Orjiakor Isiogu, Director of the MPSC Telecommunications Division, to convene a collaborative process to address virtual NXX issues.

By December 13, 2005, Mr. Isiogu shall have determined the membership of the workgroup of interested persons and shall have established a schedule for the members of the workgroup to present a preliminary report and recommendations to the Commission in time for the Commission to prepare a final report and recommendations to be submitted to the Governor and legislative leaders prior to July 1, 2006. (p 2)

The workgroup included the following parties:

- Michigan Exchange Carriers Association (MECA); representing Rural Incumbent Local Exchange Carriers (RLECs)
- Talk America, Inc. (Talk); Competitive Local Exchange Carrier (CLEC)
- Climax Telephone Company; RLEC/CLEC
- Michigan Association for Competitive Telecommunications (MiACT)
- MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; CLEC
- TDS Metrocom LLC; CLEC
- AT&T Michigan f/k/a SBC Michigan (AT&T); ILEC
- Verizon North/Verizon North Systems (Verizon); ILEC
- NeuStar; Clearinghouse for national telecommunications numbering
- Michigan State Attorney General
- ACD Telecom, Inc. (ACD); CLEC/Internet Service Provider (ISP)
- TelNet Worldwide, Inc. (TelNet); CLEC
- Pac-West Telecomm, Inc. (Pac-West); CLEC
- Level 3 Communications, LLC (Level 3); CLEC
- Michigan Consumer Federation (MCF)/American Association of Retired People (AARP)/Consumer Groups
- Comcast Phone of Michigan, LLC; CLEC and Cable Provider
- Telecommunications Association of Michigan (TAM); representing ILECS
- Mid-mich.Net, M33Access, Iserv; ISPs
- CenturyTel, Inc.; RLEC
- MPSC staff
- MERIT Network, Inc. (MERIT), non-profit educational networking organization
- Sage Telecom, Inc., CLEC

The charge of the workgroup was to bring together various stakeholders in the telecommunications industry to investigate and discuss VNXX issues. The workgroup would discuss member interpretations of existing laws and rulings which might lead to consensus between the parties on federal and state rules regarding current and future

treatment of VNXX traffic, and to accumulate the information needed for a workgroup report to the Commission and recommendations for legislative changes, if any.

As indicated above, the workgroup was inclusive of a wide cross section of industry, consumer groups and other interested persons, representing a broad range of viewpoints and concerns, *i.e.*, large and small ILECs, CLECs, ISPs, TAM, MECA, consumer groups, and representatives of the MPSC Staff. An email list was established for the group to use to distribute any materials developed for the consideration of the group members.

Mr. Isiogu also established a website on the Telecommunications Division webpage to provide easy access to materials produced by the group and to specific Federal Communications Commission (FCC) or state orders the group was addressing. Those materials are on the Commission website for future reference, and are incorporated herein.¹

An initial organizational meeting was held on December 5, 2005. Shortly following the December 5th meeting, the membership of the workgroup of interested persons was determined by Mr. Isiogu, as directed by the Commission's November 22, 2005, Order. To begin, all parties were asked to provide a description of VNXX and to identify the issues associated with VNXX the Commission should address in its report to the Governor and Legislature. Eleven of the workgroup members submitted preliminary statements by December 7, 2005. At meetings held in December, 2005, the group members discussed and developed a common list of issues of concern to direct future

¹ <http://www.michigan.gov/mpsc/0,1607,7-159-16372-131795--,00.html>

meetings. A complete listing of the issues the workgroup developed is attached to this report as Attachment A.

Once the issues list was developed, the workgroup held weekly meetings from December 20, 2005 through February 7, 2006, and met subsequently on February 21, 2006, April 4, 2006, April 18, 2006 and May 31, 2006, to discuss these issues.

Throughout that time various participants made presentations and/or submitted information to assist in the workgroup's collaboration. That information is on the website grouped according to meeting date for which it was provided.

Among other items discussed was the current handling of traffic and intercarrier compensation model, including how to correctly identify and define a caller and a called party, what calls are VNXX calls, the various ways VNXX calls are carried on networks today, and how various carriers compensate each other for the costs of transporting VNXX calls when such calls are exchanged between two carriers' networks. Discussions between members of the workgroup revealed differing opinions regarding how state and federal decisions have impacted states' responsibility for determining intercarrier compensation in the present model. At the January 24, 2006, workgroup meeting, industry representatives working on intercarrier compensation reform at the federal level made presentations. Those persons were Philip Bowie from AT&T, Andy Margeson from the Oregon Public Utility Commission acting in his capacity as a representative from the National Association of Regulatory Utility Commissioners (NARUC) intercarrier compensation task force, and Mary Albert from Comptel.

The workgroup also reviewed and discussed issues surrounding VNXX post December 31, 2007, when certain changes are scheduled to occur per Section 304(9) of

the MTA. Those included, among other things, the impact on VNXX if local calls become toll calls on December 31, 2007, who will notify calling parties that previous local calls have become toll calls, how the change will affect network architecture design, intercarrier compensation, and states' regulatory authority for intercarrier compensation, given FCC upcoming rulings.

At the February 21, 2006 workgroup session, a schedule was established for participants to submit draft proposed reports, including conclusions and recommendations of participants. Proposals were due March 31, 2006² and responses April 14, 2006³.

At the April 18, 2006 meeting when some consensus was reached, a schedule was set for drafting and finalizing the workgroup report to the Commission. On behalf of the workgroup, Staff prepared a draft report that was circulated to the workgroup on May 9, 2006. Workgroup participants submitted comments and edits on May 16, 2006. Some comments were significant, reverting to earlier disagreements among the workgroup participants. A final draft was circulated May 25, 2006. At the May 31, 2006 workgroup session, the report was finalized.

The following are descriptions of VNXX, the current compensation regimes, and positions taken by the parties in the workgroup on these and related issues. The report closes with the conclusions and recommendations of the workgroup members.

² Proposed written reports were submitted by: 1) AT&T Michigan, Verizon, and Talk America; 2) TelNet, Pac-West, and Level 3; 3) ISPs (Mid-mich.net, M33 Access, and Iserv Company) and MiACT; and 4) MECA .

³ 1) AT&T Michigan, Verizon, and Talk America; 2) TelNet, Pac-West, and Level 3; 3) ISPs (Mid-mich.net, M33 Access, and Iserv Company) and MiACT; 4) MECA; 5) TAM; and 6) MERIT submitted replies to proposed reports.

Description of VNXX and Current Compensation

As defined in Section 304(9), “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.”⁴

Telephone numbers consist of 10 digits (NPA-NXX-XXXX). The first three digits identify the NPA (Numbering Plan Area), otherwise known as the area code. The second set of digits is the NXX. The NXX generally corresponds to a specific rate center or exchange to which the number or group of numbers is assigned. The last 4 digits, the XXXX, are assigned to a specific line. In a typical Michigan VNXX arrangement for example, a telephone number with a 482 NXX, which is associated with a Lansing rate center, is actually assigned to a user physically located in Jackson. Jackson is outside of the Lansing local calling area. Even though it would appear to be a local call to the Lansing area retail customer who is dialing the number, the call actually terminates in Jackson and most typically travels over facilities between exchanges to reach the called party.

Issues arise in the compensation mechanism for transporting and terminating these calls. The parties to the workgroup generally agree that the vast majority of VNXX calls with which there are compensation issues are terminated to a dial-up ISP. Most commonly, a customer of a LEC (RLEC or ILEC) dials an ISP’s number associated with the exchange where the customer is located so the caller avoids toll charges. This occurs because the NXX the customer is calling is assigned to the same rate center of the

⁴ Michigan Telecommunications Act, MCL 484.2102 *et seq.*

calling party, but the ISP server is physically located outside of the local calling area of the calling party.

The parties have discussed a number of orders the Commission has issued over the past several years involving VNXX traffic. *See*, http://www.dleg.state.mi.us/mpsc/comm/vnxx/12_13_2005/telnet12_13_05.pdf for a list of orders for example.

At the February 7, 2006 workgroup meeting, the parties examined several diagrams which display the routing of typical ISP VNXX calls. Attachment B to this report shows the routing of a VNXX call from a customer of a rural LEC (a RLEC) to an ISP served by a CLEC, where the ISP is located in the local calling area of an ILEC, such as AT&T Michigan (which is also a Regional Bell Operating Company or RBOC). In the diagram, the RLEC could also be an independent LEC and/or the RBOC could be another ILEC (such as Verizon). These diagrams were used to discuss the intercarrier charges associated with each segment of the call from origination at the retail consumer end to termination at the ISP server. In the circumstances shown in Attachment B under current rules, it is usually the technical responsibility of the LEC to transport the traffic to the AT&T or Verizon tandem switch.⁵ The LEC is also typically financially responsible for the transiting fees charged by AT&T and Verizon. The LEC may also be charged for reciprocal compensation by the CLEC to whom the call is handed off to before the CLEC terminates the call to its end user, the ISP.

⁵ A tandem switch is an intermediate switch or connection between an originating telephone call location and the final destination of the call. The tandem point passes the call along. Newton's Telecom Dictionary, Harry Newton, 21st Ed., 2005, p 821.

Telnet, *et al*, and the ISPs assert that federal rules permit a CLEC to have a single point of interconnection (POI) per LATA,⁶ which eliminates the need for a CLEC to physically locate in each individual exchange. Michigan has 5 LATAs: Detroit, Grand Rapids, Lansing, Saginaw and the Upper Peninsula. Typically, a CLEC will interconnect at or near an AT&T or Verizon tandem switching facility, where traffic is routed through as a concentration and/or distribution point. As a result of a CLEC's location and interconnection to the tandem, a LEC is usually required to deliver VNXX traffic outside its original service territory via the tandem.

There was general agreement by the workgroup that the focus of Section 304(9) was on dial-up ISP-bound traffic from RLEC exchanges to ISP servers located outside RLEC local calling areas. The ISPs and CLECs however, have expressed concerns in their proposals that as currently written, when effective December 31, 2007, Section 304(9) will encompass many more services and create consequences that were not intended by the legislation. Such services might include Foreign Exchange or "FX" service, Voice Over Internet Protocol (VOIP) and wireless services. These concerns, as well as toll call notice issues are addressed more fully in the "*Positions of the Parties*" section of the report.

Positions of Parties

The following section provides brief summaries of the parties' positions as written in comments submitted to the workgroup March 31 and April 14, 2006.

⁶ Local Access and Transport Area, geographic areas set out in the US originally as part of the AT&T divestiture most commonly associated with geographic area codes at that time.

❖ *AT&T, Verizon and Talk America*

In its proposed report dated March 31, 2006, AT&T, Verizon and Talk America (AT&T *et al*) state that, “Virtual NXX arrangements have given rise to issues associated with appropriate intercarrier compensation and network architecture.” (AT&T, Verizon, and TalkAmerica Proposed Report, March 31, 2006, pp 11-12.) As a result of unclear policy at the federal level, intercarrier compensation arrangements with regard to VNXX traffic vary from state to state. Some various state scenarios identified by AT&T, *et al* include:

- Classification of VNXX traffic as non-local and subject to access charges to be paid by the terminating carrier to the originating carrier.
- A bill and keep arrangement in which no intercarrier compensation payments are made among the carriers who transport and terminate the call. Responsibility for payment is then typically shifted to end users.
- VNXX traffic is classified as local and is subject to reciprocal compensation charges by the originating carrier to the terminating carrier. This is the compensation scheme that VNXX traffic in Michigan currently falls under.
- Determination that VNXX is local traffic subject to reciprocal compensation charges to be paid by the originating carrier to the terminating carrier with a transport charge to be paid by the terminating carrier to the originating carrier for transport of traffic beyond the originating local exchange. (*Id*, p 10)

AT&T, *et al*, also states that in addition to the state commissions’ responses, some ILECs and CLECs have resolved compensation issues through negotiation of agreements. These agreements typically entitle a CLEC to compensation for transporting ISP-bound VNXX traffic in exchange for a commitment from the CLEC to connect further into the ILEC’s network, reducing the ILEC’s cost of transporting traffic. (*Id*, p 11) AT&T, *et al*, takes the position that current Commission orders remain in full effect, that Sec.

304(9) does not require the Commission to modify any of its orders and that disputes involving interconnection arbitrations will be decided by the Commission when those issues are presented. Participation and the positions taken by the workgroup do not bind a carrier in other proceedings before the Commission. (*Id*, p 12) AT&T, *et al*, also suggests that successful negotiation of intercarrier compensation arrangements with regard to VNXX traffic between carriers allows the companies to avoid a win-lose outcome and allows the parties to achieve an outcome that reflects a balanced solution to a longstanding problem. (*Id*, p 13)

AT&T, *et al*, contends that there is likelihood that the FCC will act soon and release a nationwide intercarrier compensation policy which will be phased in and become at least partially effective before December 31, 2007. AT&T, *et al*, recommends that the legislature enact no revisions to Sec. 304(9). This assumption is based on the likelihood that the FCC will issue orders in the near future that will address intercarrier compensation issues, including VNXX and other services discussed in the workgroup. (*Id*, p 13) Finally, AT&T, *et al*, recommends that the Commission should provide the legislature continued updates on VNXX on a regular basis (possibly every six months) with regard to action by the FCC in its progress on intercarrier compensation reform proceedings as well VNXX actions or decision made by the Commission in proceedings before it. (*Id*, p 13)

In its reply comments submitted on April 14, 2006, AT&T, *et al*, also addresses the concerns raised by the ISPs in their March 31, 2006 filing regarding the potential effect Section 304(9) could have on other VNXX types of services. AT&T, *et al*, contends that the Commission should not broaden the scope of Section 304(9) to consider

concepts involving retail services such as cellular and VOIP type services that are currently not within the Commission's jurisdiction. 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." (Reply Comments of AT&T Michigan, Verizon and Talk America, April 14, 2006, p 5.)

❖ **MECA**

MECA asserts that VNXX calls do not normally generate reciprocal compensation. VNXX calls primarily produce one-way traffic flow that terminates outside an RLEC's local calling area, usually to an ISP, which requires use of interexchange facilities to reach the called party. Due to the more lengthy duration of the calls associated with dial-up Internet usage, RLEC interoffice trunks to the AT&T or Verizon tandem switch become overburdened, which in turn forces the RLEC to add more trunks. Those additional trunks today are added at the expense of the ILEC, while the CLEC or CLEC's ISP customer contribute nothing to the recovery of those costs. (MECA "VNXX Workgroup Proposed Comments," March 31, 2006, pp 1-2.) MECA asserts that the VNXX compensation issue became an even greater problem when the RLECS implemented expanded local calling plans that gave their customers the ability to call VNXX codes in the expanded areas that were previously toll calls. (*Id.*, p 3)

In its comments, MECA also addresses both Commission and FCC decisions regarding VNXX. MECA states that the Commission first addressed compensation for

VNXX calls in *Bierman v CenturyTel of Michigan, Inc*, Case No. U-11821, issued April 12, 1999.⁷ In the *Bierman* case, the Commission resolved the issue of whether calls are considered local or non-local based on the language in the CenturyTel tariff. The Case only addressed the rates to be paid by the end user; intercarrier compensation was not addressed. The Commission has only addressed reciprocal compensation for VNXX calls in a few arbitration proceedings reached prior to the amendment of the MTA in 2005. MECA also questions whether, in light of the FCC's ISP orders, the state has authority to address intercarrier compensation for ISP-bound traffic.

MECA argues that although VNXX allows a customer to access the ISP of their choice and avoid toll charges, it creates a financial strain for the RLECs. The RLECs also assert that they are not being properly compensated in their local rates for these calls because local rates could not include the transport of interexchange traffic. When the RLEC customer generates the call the RLEC receives no compensation from a terminating CLEC for originating and transporting, and the RLEC is billed by the interexchange carrier to transport the call. Meanwhile, the CLEC, based on FTA Section 251(b)(5) seeks compensation. (*Id*, p 3) MECA also states that, “the true affect of treating VNXX calls as interexchange calls will be the shift of the cost recovery of using VNXX calls to those end users that make VNXX calls and the businesses that benefit from VNXX calls, *i.e.*, the cost causers.” (*Id*, pp 8-9)

MECA contends that when Sec. 304(9) takes effect on December 31, 2007, it will allow the LECs to include language in their tariffs that will determine if VNXX calls are

⁷ *In the matter of the complaint of Glenda Bierman against CenturyTel Communications of Michigan, Inc, d/b/a CenturyTel*, Michigan Public Service Commission Case No. U-11821, April 12, 1999.

treated as local or toll calls, thus still complying with the *Bierman* decision. Section 301(a) of the amended 2005 MTA requires all local exchange carriers to offer Primary Basic Local Exchange Service (PBLES) to their residential customers. The PBLES offering is the only rate regulated service and is intended for voice communications only. This allows LECs to exclude data calls from the PBLES package and offer optional calling plans to customers for data calls to the ISP of their customer's choice. (*Id.*, pp 5-6) MECA asserts that when Sections 304(a) and 301(a) are considered along with Section 305(a)(5), it is clear that the 2005 amendments to the MTA are comprehensive and promote both competition and investment in the telecommunications industry, leaving no need for future legislation.

MECA further discusses the position of the FCC in the debate over intercarrier compensation and asserts the FCC has not fully addressed compensation involving VNXX traffic. MECA asserts that the FCC's ISP Remand Order introduced a compensation scheme for those ISP-bound calls that originate and terminate in the same local calling area and took exclusive jurisdiction over compensation for those ISP-bound calls. However, the FCC has not yet determined that VNXX ISP-bound calls are subject to the ISP Remand Order.

MECA also claims that compensation for the termination of ISP calls that originate and terminate in the same local calling area is not based on Section 251(b)(5) of the Federal Telecommunications Act of 1996 (FTA)⁸ as other parties have asserted. Section 251(b)(5) imposes upon all local exchange carriers the duty to establish reciprocal compensation arrangements for the transport and termination of

⁸ Federal Telecommunications Act of 1996 (FTA), 47 USC 251 *et seq.*

telecommunications. According to MECA, the ISP Remand Order of April 27, 2001 created an interim compensation regime for ISP-bound traffic. The order was later appealed and the DC Circuit Court of Appeals remanded the issue back to the FCC, but it did not vacate the order and the rules remain in effect. (*Id*, p 6-7).

MECA also addressed the contention by some other members of the workgroup who suggest that the ILECs should compensate the CLECs using the \$.0007 rate for ISP-bound traffic contained in the ISP Remand Order. MECA explains that if it were to use this rate for ISP-bound traffic it would be required to use it as the rate for all reciprocal compensation. This rate is significantly lower than the MECA members' Commission approved TSLRIC cost study rates for reciprocal compensation." (*Id*, p 8)

MECA concludes that the MTA as amended in 2005 has resolved all major issues surrounding VNXX and there is no need for future legislation. MECA also notes that intercarrier compensation is receiving attention at the federal level. MECA states, "...expending more time on this issue at the state level would be redundant and could lead in a different direction than the more global discussion taking place on the national level, which would not be productive." (*Id*, pp 9-10)

In further comments submitted April 14, 2006, MECA responds to the ISPs' concerns about Section 304(9)'s impact on other types of VNXX related services and the question posed in Attachment A of who will notify customers of when a local call becomes a toll call after December 31, 2007. MECA states that other VNXX type scenarios should, "not be included in the recommendations to the Commission because the conclusions are slanted and alarmist." (MECA's Reply to Comments Submitted to the VNXX Workgroup (Case No. U-14683), April 14, 2006, p 3.) In reference to the

question posed in Attachment A of who will notify end users which calls will become toll calls effective December 31, 2007, and in response to concerns of the ISPs, MECA contends that because the ISPs usually have contracts and continuing relationships with their customers and they communicate regularly with them, that they, the ISPs can inform their customers that calls to certain numbers are long distance calls. MECA also contends that the ISPs are under obligation to do so to comply with the Michigan Consumer Protection Act so there is no confusion or misunderstanding to ISP customers.

❖ *TAM*

TAM submitted a filing to the workgroup on April 14, 2006 indicating it supports the report and comments submitted by MECA on March 31, 2006 and April 14, 2006 respectively.

❖ *ISPs*

The ISPs (Mid-mich.net, M33 Access, and The Iserv Company) and MIACT⁹ discuss the existing definition of VNXX and contend that a revised definition of VNXX should be applied to address the underlying intercarrier compensation issues indirectly addressed in Sec. 304(9). (ISPs submission, March 31, 2006.) Their suggested definition reads:

Virtual NXX is the assignment of numbers to a Local Exchange Carrier (LEC) that is not directly connected to the telephone Central Office (CO) serving the exchange, where the numbers have been assigned, and therefore relies on the originating carrier of the call to provide transport, beyond the exchange where the call originated in order to complete the call. (*Id.*, p 1)

⁹ The initial proposal was submitted by Mid-mich.net, M33 Access, and The Iserv Company. In an April 3, 2006 email, MIACT indicated it wished to join the submission of the ISPs. In its replies submitted April 14, 2006, the ISPs and MIACT were also joined by ACD.

The ISPs also state:

Section 304(9) attempts to redefine what a “local call” is for retail customers based on physical location rather than the standing Michigan model of rating calls based on Area Code and Exchange (NPA-NXX).
(*Id.*, p 2)

Currently, in the ISPs’ view, the Commission has issued nine rulings that have determined that VNXX calls are local calls. *See*, http://www.dleg.state.mi.us/mpsc/comm/vnxx/12_13_2005/telnet12_13_05.pdf for a list of orders for example.

A concern addressed by the ISPs involves the term “called party.” They assert that “called party” is not defined in Sec. 304(9) or any other section of the MTA. During the workgroup discussions the called party was “assumed to be the retail customer to whom the call is connected.” (*Id.*, p 2)

After December 31, 2007, the effective date of changes delineated in Section 304(9), the ISPs contend that NPA-NXX no longer determines what is a local call, instead it will be based on geographic location. Initiatives ongoing at the federal level are moving towards a unified intercarrier compensation regime that does not distinguish between rates for local and toll minutes of use or geographic location. The ISPs contend that if a local call is not defined by the FCC in its anticipated intercarrier compensation overhaul, unless amended, Section 304(9) will stand as is and this new definition based on geographic location of the called party will lead to call rating issues and confusion for consumers.

Adding to further confusion for customers, the ISPs explain that VNXX numbers are not assigned to LECs as a continuous block of numbers that will be able to be defined as local or non-local. An example offered by the ISPs:

A block of ten numbers could be assigned to a business customer physically located in the Muskegon calling area (231)332-0001 through 0010, the next number could be assigned to an ISP customer in a Competitive Local Exchange Carrier's (CLEC) Grand Rapids Collocation (231)332-0011, while the next is a cellular phone customer physically located in Lansing (231)332-0012. A residential wireline customer calling from the Muskegon Local Calling Area (LCA) would be able to call all number[s] from (231)332-0001 through 0012 as standard seven digit numbers, but the calls to (231)332-0011 and (231)332-0012 could be considered non-local by the originating carrier's tariff based on the physical presence of the called party, therefore they may be subject to toll charges. (Id p 3)

The ISPs also question how a customer will be notified of possible toll charges before they are incurred. They contend that "written pre-notification would be insufficient due to sheer volumes, and potential changes of status from local to non-local and back depending on the physical location of the called party and services being provided by each number." (*Id*, p 3)

The ISPs also contend that Section 304(9) moves in the opposite direction of current proposals in several ways:

- Section 304(9) requires that LECs have a physical presence in each local calling area they wish to provide service to, in order to guarantee calls to their network will still be considered local. The ICF proposal would actually restrict the number of LEC network edges to the number [of] access tandem switches in a LATA. (with the exception of interconnection to RLEC networks, where the terminating LEC would bare all transport costs beyond the RLEC's exchange boundary.)
- Section 304(9) moves away from one of [the] main tenants of the ICF plan that a minute is billed as a minute no matter if the call is within the local calling area, intraLATA, intrastate, or interstate.
- The ICF plan provides an inter-carrier compensation solution that addresses the concerns of RLECs by placing the burden of transport of any traffic outside their exchange boundaries upon the LEC that terminates the traffic.
- Instead of addressing the true inter-carrier compensation nature of Virtual NXX traffic, Section 304(9) redefines the definition of Local

Calling for retail consumers in Michigan moving away from the NPA-NXX standard and encompasses services beyond Virtual NXX traffic.

- Unless the final FCC inter-carrier compensation plan addresses Local Call rating, then Section 304(9) will still remain as the standard for local call rating for retail consumers in Michigan. Although the ultimate FCC inter-carrier compensation policy will provide a solution for the underlying compensation issues that 304(9) was designed to resolve. (*Id*, pp 7-8)

The ISPs further contend that currently there is no technological way to determine how to rate a call based on the physical location of the called party and that during the workgroup discussions, “no LEC has proposed a system to provide intercarrier notification of the physical location of a called party so calls could be rated in real-time under 304(9) after 12/31/2007.” (*Id*, p 3) The ISPs go on to explain various scenarios that might occur in calling patterns, and numbering assignments by CLECs to various geographic areas. (*Id*, pp 9-17) All of which could add to customer confusion and/or varying toll or local charges.

The ISPs also discuss the FCC’s role in intercarrier compensation and explain that, “Once implemented the FCC policy will, from indications in orders they have previously issued, preempt any state law, or policy addressing the same issues” and further state that, “any changes Michigan makes to telecommunications policy should parallel published proposals that have been created as a basis for these policies.” (*Id*, p 5) Currently, the industry led Intercarrier Compensation Forum (ICF) and the NARUC Intercarrier Compensation Task Force are forming proposals that will help guide the FCC in its policies on intercarrier compensation.

The ISPs assert that the ISP Remand Order provides the FCC with the authority under Section 251(i) of the FTA to regulate ISP-bound traffic under Section 201.

Pointing to that order the ISPs reference paragraph 82 of the ISP Remand Order, where the FCC stated, “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.” In paragraph 80 the FCC indicated that the rates it set for ISP-bound traffic are a cap and “have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis.” (*See*, FN 6) The ISPs contend that the FCC did not determine whether VNXX traffic should be compensated under the ISP-bound traffic policy and left that determination up to the individual states.

Initially in their proposal the ISPs concluded that Section 304(9) should be repealed, but after reviewing the March 31, 2006 proposal of the CLEC group, the ISPs on reply, endorsed the CLEC group’s suggested proposal, joined with MIACT and ACD. The ISPs recommend that the Commission should encourage the legislature to “delay the filing of the Commission’s final policy recommendations on VNXX until six months after the issuance of an FCC decision in CC Docket No. 01-92.” (ISPs Reply, pp 4-5)

In reaching this conclusion the ISPs reasoned that:

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. (ISPs Reply, p 4)

Finally, the ISPs recommend that “if the Commission declines . . . to urge the Legislature to immediately amend the MTA . . . that the Commission at the very least,

require in the report that there be further review of the issue and another report to the Legislature no later than October 15, 2006.” (ISP Comments, May 15, 2006, p 2.)

❖ ***Telnet, Pac-West, and Level 3, CLEC group***

It is the position of the CLEC group that the ISP Remand Order (CC Docket Nos. 96-98 and 99-68) has given the FCC “exclusive jurisdiction over all traffic bound for ISPs including VNXX ISP-bound traffic, and in so doing established an intercarrier compensation regime governing all such traffic.” (Proposed VNXX Report submitted by Telnet, Pac-West, and Level 3, March 31, 2006, p 2.) States have “little opportunity to make fundamental changes to these intercarrier relationships.” (*Id*, p 3) The CLEC group contends that in its ISP Remand Order, the FCC clarified that reciprocal compensation applies to all telecommunications traffic unless specifically exempted by other provisions of the Act (FCC 01-131). The excluded services are those carved out by Section 251(g), *i.e.*, “exchange access, information access and exchange service for such access to interexchange carriers and information service providers.” (FCC 01-131) The CLEC group contends that ISP-bound VNXX calls are subject to the compensation mechanism found in the ISP Remand Order.

Concerning the delivery of traffic, the CLEC group argues that the originating carrier is obligated to deliver traffic to a CLEC’s POI. Under FCC rules, a CLEC needs only one POI in any LATA. Once a CLEC receives a call, the CLEC is required to deliver the call to the called party. The CLECs conclude, and cite several federal and state rulings that support the position, that costs to the calling party’s carrier are the same as the costs to the carrier of a call to a party located in the calling party’s local exchange or as a call using VNXX architecture. If traffic overloads an originating company’s

equipment, then additional trunking should be obtained at the expense of the originating carrier. The originating carrier's customer is the "cost causer."

Michigan has considered VNXX calls as local calls in several cases beginning with Case No. U-11821. Other cases the CLEC group cited include several arbitrations and customer complaint cases. In these cases, Michigan has consistently considered VNXX calls to be local calls. Some were appealed and the Court of Appeals has upheld the Commission's position. A list of the cases cited in the proposed report and reply comments are:

- U-12382 - Interconnection arbitration between Coast to Coast Communications and AT&T.
- U-11821 - *Bierman v CenturyTel* (customer complaint)
- U-12090 - *Coast to Coast v Verizon North Inc and Verizon North Systems* (reciprocal compensation complaint)
- U-12696 - In the matter of 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.
- U-12952 - Interconnection connection agreement between TDS Metrocom and Ameritech
- U-13931 - Verizon argued VNXX is exempt from reciprocal compensation.

FCC and other state cases cited and a brief description of the CLEC group's summary point of each case are as follows:

- *WorldCom v FCC* (DC Cir 2002) – Left hybrid compensation scheme in place.
- Illinois Commerce Commission - *Focal Communications v Ameritech Illinois* arbitration. The ICC determined that a VNXX call causes no extra cost for Ameritech Illinois. The company was required to take traffic and deliver it to Focal's POI.

- North Carolina, 4th Circuit Court - *MCIMetro Access v BellSouth*. A company cannot charge an incremental cost for transporting traffic from a customer's local exchange and a POI on another company's network.
- Public Utilities of Texas, 5th Circuit Court - *Southwestern Bell Telephone Co v Public Utilities of Texas*. A company cannot charge an incremental cost for transporting traffic from a customer's local exchange to a POI on another company's network.
- *Southwestern Bell v AT&T*, Virginia Arbitration decision. Traffic is financial and delivery responsibility of an ILEC to the POI of CLEC (pp 11, 13-18)

These cases were submitted in support of the position of the CLEC group. In summary, this group asserts that all traffic, including VNXX traffic is to be delivered to a CLEC POI, CLECs are only required to have one POI per LATA, VNXX traffic is the financial responsibility of the originating carrier, and the originating carrier's customer is the ultimate cost causer. The ISP Remand Order set the rate for intercarrier compensation. Until the FCC rules differently, this model is the appropriate one for VNXX traffic.

The CLEC group states that a change in the current model in Michigan will cause disruption among various parties if VNXX is no longer classified as local service after December 31, 2007. They contend some communication networks have been built relying on the MPSC stand that VNXX are to be rated as local calls. A change will cause citizens to have reduced access to the Internet, causing fewer educational opportunities, decreases in jobs and less efficiency in business. According to the CLEC group, this will harm some of Michigan's most vulnerable citizens and areas. Traditional FX service will be harmed also, as will enhanced services and Voice over Internet Protocol calling. The CLEC group proposes:

Michigan should maintain its current framework governing intercarrier compensation and network interconnection architecture for VNXX and FX arrangements and refrain from any further review or consideration of restructuring those regimes until after the FCC has issued a ruling in its ongoing Unified Intercarrier Compensation Docket (FCC 01-132 and FCC 05-9). (*Id*, p 1)

The CLEC group asserts that although the current compensation regime should remain intact, it is important that the language in Section 304(9) be changed. In order to avoid major disruption to some service providers, changes in the language should be made 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 callers 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 intercarrier 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.~~ (*Id*, p 27)

The CLEC group contends that Section 304(9) will adversely affect many VNXX services in addition to those associated with traditional VNXX. The language in the

statute can be broadly interpreted and if left unchanged may cause unintended consequences for a variety of VNXX services. After the FCC rules on intercarrier compensation, the CLEC group further recommends that the workgroup should reconvene and resume discussions light of the FCC decision.

❖ *MERIT*

MERIT included a bullet point presentation of its main concerns with the language in Section 304(9) of the MTA.

- As presently implemented in Michigan, Virtual NXX is wholly consistent with national and State telecommunication policy and case law.
- While the legislation fundamentally is meant to address an issue of reciprocal compensation between phone carriers for ISP-directed calls, it addresses that issue indirectly and in a way that threatens other services with wide adoption and usefulness.
- Customers in rural areas, most likely to be served by VNXX-based products, would experience a reduction in available services and an increase in price.
- Implementation of the changes implied by Section 304(9) of Act 235 would put Michigan out of step with other states, making it a less desirable service area for national and regional providers.
- The Federal Communications Commission is in the best position to review the reciprocal compensation issues and set a reasonable policy that accommodates the needs of telcos and consumers and provides a consistent set of rules nationwide. It is evident that the FCC intends to address this issue.

MERIT further explained that using traditional telephony, the organization had facilities in nearly 100 locations. Using VNXX architecture, the organization was able to reduce duplication and now has facilities in only ten locations. This reduced duplication has allowed the organization to provide internet at a much reduced rate than it could previously. MERIT supports the revision of Section 304(9) proposed by the CLEC group in order to avoid degradation of economic activity in Michigan and reduction of internet services to rural communities.

Conclusions and Recommendations

Throughout the workgroup sessions, there was spirited and open discussion of the many and varied complex issues of concern to the parties. The workgroup studied and

discussed issues on network architecture and intercarrier compensation for VNXX as well as the legal effect of Section 304(9) of the MTA. There was an attempt to find common ground during those deliberations. Ultimately, there remain differences in the direction participants recommend for the Commission and this report. Also, despite efforts made, many of the issues identified in Attachment A remain unresolved; debate has continued throughout the workgroup sessions. The previous section of this report, which summarizes the written positions and proposals of participants, reflect those differences.

Participants differ in their opinions of the extent and effect of current FCC orders and FCC jurisdiction regarding VNXX and virtual FX traffic in Michigan.¹⁰ They also disagree whether Michigan should at this time take any action to amend the MTA. Some workgroup participants contend that the better course would be to wait for the FCC to issue a decision in the pending intercarrier compensation Further NOPR proceeding.¹¹ The workgroup participants generally agree there will be some impact on VNXX as a result of the FCC proceeding.

The Further NOPR is a notice requesting additional information and comment as a further inquiry to an earlier notice initiated by the FCC in 2001.¹² The FCC noted in

¹⁰ In fact, as recently at April 17, 2006, the participants submitted information and opposing views on the impact of a First Circuit Court of Appeals ruling issued on April 11, 2006, in an appeal of a decision by the Massachusetts Department of Energy and Telecommunications, dealing with the topic of VNXX calls, *Global NAPS, Inc v Verizon New England, Inc*, ___ F3d ___, slip Op at 11, 2006, WL 924035 (April 11, 2006). Those submissions are available on the Telecommunications Division VNXX website link, identified and incorporated by reference, earlier in this report.

¹¹ Further Notice of Proposed Rulemaking, *re Developing a Unified Intercarrier Compensation Regime*, FCC 05-33, CC Docket No. 01-92, (released March 3, 2005).

¹² Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132 (released April 27, 2001).

the initial notice: “We are particularly interested in identifying a unified approach to intercarrier compensation – one that would apply to interconnection arrangements between all types of traffic passing over the local telephone network.” (§ 2) The FCC also stated: “We seek comment on the use of virtual central office codes (NXXs), and their effect on the reciprocal compensation and transport obligations of interconnected LECs.” (§ 115)

The pending Further NOPR is addressing a broad range of matters. In the opening statement the FCC indicates: “...we begin 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.” (§ 1)

The Further NOPR is addressing all aspects of intercarrier compensation, such as specific industry proposals put forth for intercarrier compensation reform, network interconnection issues, cost recovery issues, implementation, and legal issues, including jurisdictional and rate averaging and integration requirements. The FCC proceeding is a comprehensive analysis of the current intercarrier compensation and network architecture schemes. That analysis encompasses the issues being researched and discussed by the VNXX workgroup here in Michigan.

For the most part, the assumption among the workgroup participants is that the FCC is nearing completion of its review and will act on nationwide network architecture reform and an intercarrier compensation regime in the very near future. Most participants agree a decision is expected by the end of this year.

AT&T, *et al*, recommends that Michigan should wait for the FCC to issue its decision in the intercarrier compensation proceeding. AT&T, *et al*, assumes that the FCC

will act relatively soon to address broad intercarrier compensation reform, and that those orders will include VNXX and intercarrier compensation issues discussed by this VNXX workgroup. No legislative changes to the MTA are recommended at this time, with respect to Section 304(9). AT&T, *et al*, notes that providers continue to be free to negotiate individual agreements between providers. Workgroup participants have informally indicated they are indeed attempting to reach negotiated agreements, in addition to attempting resolution of issues in the collaborative workgroup environment.

Finally, AT&T, *et al*, recommends that the Commission be permitted to provide periodic updates to the Governor and Legislature, perhaps every six months. Those updates would serve to provide more recent information on any actions taken by the FCC on VNXX issues, and any MPSC orders on VNXX issues.

TAM similarly notes that the Commission is only required at this time to provide a “report on the progress of the workgroup.” The Commission is not precluded from gathering additional information and providing further updates to the Legislature and Governor. Providers are also free to continue to attempt to negotiate resolutions on their own.

Comcast also supports a recommendation for Michigan to wait until the FCC acts. Subsequent to FCC action, the Commission could report back to the Legislature and Governor on any necessary changes to the MTA.

Turning to the next grouping of recommendations, MECA and TAM contend that the 2005 amendments to the MTA have resolved all major issues surrounding VNXX. They recommend no future legislation in this area is needed.

MECA indicates that the statute includes provisions for LECs to adjust their tariffs post December 31, 2007, the effective date of certain changes in Section 304(9). Tariffs can identify whether VNXX calls are to be treated as local or toll calls. The MTA also contains language permitting optional calling plans that could accommodate access to various data communications services, such as VNXX ISP type services.

MECA and TAM acknowledge that the FCC is studying intercarrier compensation. MECA proposes that expending more time on this issue at the state level would be redundant, and could head in a different direction than the national talks, which would be counterproductive. In the event the FCC does not act in the coming months, Section 304(9) of the MTA provides almost two years for providers to negotiate arrangements impacted by Section 304(9).

A third group of participants, the CLEC group, the ISPs, MiACT, and MERIT recommend that legislative changes to Section 304(9) of the MTA are absolutely needed at this time. These participants urge the December 31, 2007, deadline be deleted, the definition of a local call tied to tariffs be deleted, and language added to require a report from the Commission “within 6 months of the effective date of a final” FCC decision in the intercarrier compensation reform docket. (CLEC group comments, March 31, 2006, p 27) The CLEC group submitted proposed amendatory language for Section 304(9) to effectuate these changes. The CLEC group also suggests that the workgroup be reconvened following an FCC decision.

The CLEC group contends that the MPSC should not take any action prior to the time the FCC acts. Michigan should wait until the FCC completes its examination of

network architecture and intercarrier compensation issues before making any changes to the status quo. The CLEC group states:

. . . 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' FX arrangements, overwhelming administrative burdens, and stifling of many present and emerging telecommunications technologies in Michigan. (CLEC group comments, March 31, 2006, p 26)

In order to avoid any anomalies should the FCC decision not be forthcoming shortly, or should the FCC decision include a phased implementation schedule that does not coincide with the schedule in Section 304(9), the CLEC group contends that a statutory amendment to the MTA is necessary at this time.

While supporting the overall recommendations of the CLEC group, the ISPs also offer, that should the Commission not recommend immediate legislative action, then at the very least there should be further review of the issues and the Commission should issue another report to the Legislature no later than October 15, 2006.

In closing, the VNXX workgroup has made considerable efforts since its establishment shortly after the enactment of PA 235. At this time however, no consensus has been reached for a recommendation to the Commission. Parties acknowledge the FCC is likely to act in the near term future on network architecture and intercarrier compensation issues that will impact the VNXX issues being discussed in the workgroup. The workgroup participants were unable to reach a consensus on whether any legislative changes to Section 304(9) of the MTA are needed, and in particular, needed at this time. The workgroup submits this report to the Commission in preparation for the Commission's upcoming report to the Legislature and Governor.

Attachment A

12/20/05 VNXX workgroup issues list

- 1) What factors determine whether a call is a local or non-local call?
 - a) How should the term “physically located” be defined?
 - b) How should the term “called party” be defined?
- 2) How widespread is the use of VNXX in Michigan?
- 3) Can VNXX calls be tracked?
 - a) notification;
 - b) administrative burdens;
 - c) LNP issues/complications, and
 - d) accounting method for tracking VNXX calls
- 4) Would there be an effect on emerging technologies if VNXX is eliminated? For example such as on:
 - a) VOIP;
 - b) Cellular;
 - c) Ability of a customer to take a phone number with them everywhere, and
 - d) Broadband.
- 5) Is any carrier legally or technically foreclosed from offering a service that utilizes VNXX?
- 6) Is any VNXX traffic subject to preemption by the FCC?
- 7) Should one carrier’s tariffs limit, or expand, the service offerings of another carrier? Is there a role for the MPSC?
- 8) How does VNXX affect network investment?
- 9) Is there evidence of benefit or harm from VNXX service?
- 10) How, by whom, and when, will end users be notified which calls will become toll calls effective 12/31/07?
- 11) What is the appropriate compensation method for VNXX?
 - a) Is it:
 - i) 251(b)(5) reciprocal compensation;
 - ii) ISP bound compensation;
 - iii) bill and keep, or
 - iv) originating switched access charges.
 - b) Will and how will the following FCC dockets impact compensation for VNXX?
 - i) Reform of Intercarrier Compensation System, cc docket No. 01-92; and
 - ii) Intercarrier Compensation on Internet Protocol Traffic, wc docket No. 04-36.
 - c) Has anything changed since previous MPSC decisions on VNXX?
 - d) Can the MPSC continue to apply its previous decisions after 12/31/07?
 - e) Who is the cost causer/retail service provider of VNXX service?
 - f) Are there costs incurred by the originating provider, or network providers for VNXX that would not be incurred in handling a non-VNXX local call?

