

As agreed to in the last workshop, Pac-West and TelNet are distributing a narrative setting forth their position as to the intercarrier compensation and financial responsibility associated with each leg of the call flows identified in Diagram 3. The narrative is based on the rules and regulations as they stand today. Furthermore, the information provided below is intended to represent a typical/generic arrangement. Pac-West and Tel-Net realize that certain aspects of intercarrier compensation and financial responsibility may vary based on the interconnection agreements between the carriers involved in transporting the call.

Traffic Originated by Carrier 3

1) Leg One, A to B, Carrier 3's End user to Carrier 3's End Office Switch.

Carrier 3 has both the financial responsibility and the facility responsibility to carry the call between these points. Typically, Carrier 3 would not pay an explicit rate because typically Carrier 3 carries the traffic on facilities it owns.

2) Leg Two, C to D, from Carrier 3's switch to Carrier 1's Tandem.

Carrier 3 has financial responsibility to forward the traffic that Carrier 3 originates to the Called party. Presumably, Carrier 3 has a trunk to the tandem. Carrier 3 probably owns the facilities to its boundaries and leases the remainder of the trunk from Carrier 1. Carrier 3 would pay a fixed monthly amount to Carrier 1 to lease the trunk.

3) Leg Three, E to F, from Carrier's 1 tandem switch to Carrier 2's End Office and Tandem Switch

Carrier 3 has financial responsibility to forward the traffic that Carrier 3 originates to the Called party. In this example, Carrier 3 is using a third party (Carrier 1) to transit its traffic to Carrier 2. Carrier 3 compensates Carrier 1 for the use of Carrier 1's facilities. Carrier 3 pays Carrier 1's transiting rate, which would be a per-minute-of-use charge, for use of Leg 3 - assuming direct trunks are not used, in which case the tandem transiting charge would be avoided .

4) Leg Four, G to H, from Carrier's End Office and Tandem Switch to the called party.

Carrier 2 has the responsibility to provide the facilities on Leg 4. Carrier 3 compensates Carrier 2 for the use of Carrier 2's facilities to complete the call by paying Carrier 2 recip comp (which could be at the rate level for ISP-bound traffic).

Traffic Originated by Carrier 2

5) Leg One, H to G, Carrier 2's End user to Carrier 2's End Office Switch

Carrier 2 has both the financial responsibility and the facility responsibility to carry the call between these points.

6) Leg Two, F to E, from Carrier 2's switch to Tandem.

Carrier 2 has financial responsibility to forward the traffic that Carrier 2 originates to the Called party. Presumably, Carrier 2 has a trunk from its switch to the tandem. Carrier 2 probably leases the trunk from Carrier 1. Carrier 2 would pay a fixed monthly amount to Carrier 1 to lease the trunk.

7) Leg Three, D to C, from Carrier 1's tandem switch to Carrier 3's End Office Switch

Carrier 2 has financial responsibility to forward the traffic that Carrier 2 originates to the Called party. In this example, Carrier 2 is using a third party (Carrier 1) to transit its traffic to Carrier 3. Carrier 2 compensates Carrier 1 for the use of Carrier 1's facilities. Carrier 2 pays Carrier 1's transiting rate, which would be a per-minute-of-use charge, for use of Leg 3. - assuming direct trunks are not used, in which case the tandem transiting charge would be avoided .

8) Leg Four, B to A, from Carrier 3's End Office Switch to the called party.

Carrier 3 has the responsibility to provide the facilities on Leg 4. Carrier 2 compensates Carrier 3 for the use of Carrier 3's facilities to complete the call by paying Carrier 3 recip comp (which could be at the rate level for ISP-bound traffic).

MEMORANDUM
Of Pac-West and TelNet

Matter: Michigan VNXX Work Group

Subject: Obligation of originating carrier to deliver traffic to other carrier's network

Federal law clearly obligates a carrier to deliver its traffic to all other carriers, even to points outside of the originating carrier's local service territory. The Federal Telecommunications Act requires carriers to interconnect with one another, and permits competitive LECs to interconnect at a single point of interconnection ("POI") per LATA. 47 USC § 251(a)(1) states that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." And 47 USC § 251(c)(2)(B) places a duty upon each incumbent LEC to permit requesting telecommunications carriers to interconnect "at any technically feasible point within the [incumbent] carrier's network."¹ In its Further Notice of Proposed Rulemaking in *In re Developing a Unified Intercarrier Compensation Regime*, FCC 05-33, CC Docket No. 01-92, ¶ 87 (rel'd Mar. 3, 2005), the FCC indicated that it has interpreted § 251(c)(2)(B) "to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA."²

¹ See also 47 CFR § 51.321(a), which states: "Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."

² Also, this option for a competitive LEC to interconnect at a single POI per LATA conceivably means that a competitive LEC need only establish such *single* POI with a *single* incumbent LEC per LATA. For example, in seeking comment on its legal authority to impose transiting obligations upon incumbent LECs to facilitate indirect interconnections, the FCC stated AT&T's and Sprint's argument that the "at any technically feasible point" language of § 251(c)(2)(B) supports transiting obligations because "that interconnection at the tandem switch provides access to the full tandem switching functionality, including access to subtending end offices owned by carriers other than the tandem provider." FCC 05-33, ¶ 127 (rel'd Mar. 3, 2005). In other words, the single POI is all that is needed for indirect interconnection with other carriers within the LATA where the amount of traffic exchanged with such other carriers supports indirect interconnection rather than direct interconnection.

Once interconnected, 47 CFR § 51.703(b) states that a “LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.” The FCC recognized that “[a]t least two courts have held that this rule applies even in cases where an incumbent LEC delivers calls to a POI located outside its customer’s local calling area.” FCC 05-33, ¶ 87 (citing *MCIMetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir 2003) and *Southwestern Bell Telephone Co. v. Public Utilities Commission of Texas*, 348 F.3d 482 (5th Cir 2003)).

In *MCIMetro Access*, the 4th Circuit considered “whether BellSouth can charge MCI for the cost of transporting local calls originating on BellSouth’s network to MCI’s chosen POI, when that POI happens to be outside of the local calling area where the call originated.” *MCIMetro Access*, 352 F.3d at 876. The court explained that “MCI decided to interconnect with BellSouth’s network at only one point in the North Carolina [LATA] through its single North Carolina switch. Therefore, all traffic between MCI and BellSouth customers must pass through that one POI, regardless of the locations of the two customers.” *Id.* at 877. Although BellSouth wanted MCI to pay the “the incremental cost of transporting traffic destined for MCI’s network from the relevant local calling area to the POI,” the court held that 47 CFR § 51.703(b) “is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions.” *Id.* at 877, 881.

Similarly, in *Southwestern Bell*, AT&T was challenging the charges that Southwestern Bell had imposed on AT&T “for hauling its originating traffic to the POI selected by AT&T simply because the POI is outside Southwestern Bell’s local calling area.” *Southwestern Bell*, 348 F.3d at 486. The 5th Circuit affirmed the district court’s decision.

“The district court determined that the transport costs imposed on AT&T by the PUC were charges related to reciprocal compensation under § 51.703(b), rather

than interconnection terms under § 251(c)(2), and therefore, in violation of FCC regulations. The district court noted that the FCC reciprocal compensation regulations are quite specific in prohibiting Southwestern Bell from charging AT&T for ‘local’ traffic originating on Southwestern Bell’s network, despite the fact that the PUC had previously authorized Southwestern Bell to do so. . . . The district court concluded that the PUC order did not comply with the current FCC rules and remanded the PUC’s order back to the PUC.”

Id. at 487.

In the FCC’s *Virginia Arbitration* decision, DA 02-1731, CC Docket Nos. 00-218, 00-249, 00-251 (rel’d July 17, 2002), the Wireline Competition Bureau, acting through authority delegated by the FCC, also discussed a carrier’s requirement to deliver its traffic to all other carriers.

“Under the Commission’s rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA. The Commission’s rules implementing the reciprocal compensation provision in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC’s network. Furthermore, under these rules, *to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.*”

Virginia Arbitration, ¶ 52 (emphasis added) (footnotes omitted). The Wireline Bureau found “that the petitioners’ proposed [ICA] language more closely conforms to [the FCC’s] existing rules and precedent” because it required that “each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC.” *Id.* at ¶ 53.

The Wireline Bureau succinctly summarized “the rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier” as four-fold:

“(1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC’s network; (2) competitive LECs may, at their option,

interconnect with the incumbent's network at only one place in a LATA;³ (3) *all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination;*⁴ and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities.”

Id. at ¶ 67 (emphasis added) (footnotes omitted).⁵

The Michigan Public Service Commission (“MPSC”) has recognized this federal requirement that all carriers are obligated to bear the cost of delivering their originating traffic to interconnecting LECs’ networks for termination. *See In re the application of TelNet Worldwide, Inc., for arbitration of interconnection rates, terms, and conditions and related arrangements with Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems*, Case No. U-13931, p. 23 (Feb. 24, 2005 Order). The MPSC stated:

“The [MPSC] finds that 47 CFR 51.709(b) requires that interconnecting parties compensate each other for dedicated transmission facilities between networks, in addition to reciprocal compensation for transport and termination of the traffic once it is delivered to the other party’s network. . . . *The cost to deliver the traffic to the network of the other party is to be paid by the originating carrier*, in addition to the transport and termination charges known as reciprocal compensation. Once the traffic is delivered to the other party’s network, the only appropriate charge is the reciprocal compensation charge.”

Id. (emphasis added).

³ The FCC also made clear that “[t]he ‘single point of interconnection’ rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. It does not preclude the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it.” *Virginia Arbitration*, ¶ 71 (footnotes omitted).

⁴ For example, see 47 CFR § 51.709(b), which states: “The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers’ networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier’s network. Such proportions may be measured during peak periods.”

⁵ The Wireline Bureau recognized that “[o]ne result of these rules . . . is that sometimes [the incumbent] must pay [competitive LECs] for transporting [incumbent]-originated traffic from the place where [competitive LECs] interconnect with [the incumbent LEC’s] network to the [competitive LECs’] networks.” *Id.* at ¶ 68.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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

**Summary of Positions of TelNet and Pac-West
on first four issues on 12/20/05 issues list of VNXX workgroup
(January 3, 2006)**

- Issue 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?*

Response:

The issue of what factors should determine whether or not a call is local was litigated in 1999. At that time, the Commission's Staff recognized that "calls are traditionally rated on the basis of the NXX." See Bierman v CenturyTel, Case No. U-11821, Order dated April 12, 1999, page 4. The Commission rejected the concept that the geographic location of the parties determined the nature of the call. Since 1999, the Commission has consistently upheld the proposition that local calls are determined on the basis of NXX codes.

From a practical perspective, the NXX is the only code presently available to identify the nature of the call. There is no comparable means of identifying calls by their physical location. Thus, determining whether a call is a local call by the physical location of the calling parties, besides being unwise, is not feasible. As discussed in Issue 3, the geographic location of NXX codes cannot be tracked.

- a) The term "physically located" only needs to be defined if local calls are to be determined on the basis of physical location. Federal law permits CLECs to have only one point of interconnection in a LATA. To require a CLEC to have switching equipment in every exchange to which it wishes terminate a call, would make meaningless the rights granted to CLECs by the Federal government and limit a CLEC's ability to bring implement new and innovative technologies.. If, however, Michigan wishes to require customers to be "physically located" in an exchange in order to have an NXX phone number

associated with that exchange, physical location should be minimally defined. For example, an address should suffice.

- b) “Called party” should be defined as the entity who is assigned the phone number that is being called.

Issue 2) How widespread is the use of VNXX in Michigan?

Response:

Section 304(9) defines as “the assignment of a telephone number to customers that are not physically located in the exchange to which the NXX is assigned.” This definition would encompass VOIP calls, traditional FX service and a variety of other types of calls. Pay-at-the-pump gas stations that read credit cards at the pump, ATMs, alarm systems, and fax-to-email are examples of services that use VNXX. Most dial-up ISPs rely upon VNXX services. VNXX services are offered to ISPs by both CLECs and ILECs. VNXX is very widespread.

Issue 3) Can VNXX calls be tracked?

- a) notification;
- b) administrative burdens;
- c) LNP issues/complications, and
- d) accounting method for tracking VNXX calls

Response:

The originating carrier cannot determine the geographic location of the called party. The originating carrier only knows the location of the terminating carrier’s switch in which the NXX code resides. Once originating carrier delivers the call to the switch of the terminating carrier, the originating carrier does not know where the terminating carrier ultimately delivers the call.

- a) In the Bierman case, the Commission discussed the issue of how customers could be notified when calls to a local NXX would be carried outside the exchange and thereby would be rated as toll calls. The Commission rejected an argument by CenturyTel that customers could be advised , stating:

“[CenturyTel’s] argument means that [CenturyTel] would have to determine on a number-by-number basis which of the telephone numbers in the Monroe Exchange would be treated as local, its directory (and directory assistance) would have to be kept current with that information, customers would have to periodically consult that list or risk paying toll charges, and CenturyTel would be able to change the status of a number only as often as it published a new directory. The proposal is entirely unworkable . . .” Bierman, pp 7 to 8.

- b) The administration burden of notifying customers that certain phone numbers associated with the local exchange were VNXX phone numbers would be overwhelming, and as indicated in the above Commission's finding, "unworkable."
- c) The Federal Rules permitting landline phone numbers to be LNP'ed to wireless phones and vice versa would further complicate the establishment of any system to track calls based on the geographic location of the called party. There is no consistency between the local exchange areas of wireless carriers and the local exchange areas of wireline carriers.
- d) No current accounting system for VNXX calls exists. It is doubtful that an accounting system could be devised for VOIP calls.

Issue 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.*

Response:

Elimination of VNXX would be an arbitrary restriction. The essence of restrictions are to restrict. By definition, emerging technologies would be restricted and required to operate within the parameters of a limiting system. One of the primary goals of the Federal Act is promote new and innovative technology. This goal would be significantly impeded if phone numbers in Michigan for wireline providers were required to be restricted to geographic areas. Arbitrary and artificial limits should not be placed on technology.

- a) An essential and extraordinary feature of VOIP is that phone numbers are not restricted to geographic exchanges. The elimination of VNXX would significantly impact VOIP providers.
- b) If cellular providers are subject to Section 304(9), the elimination of VNXX would significantly impact cellular providers.
- c) The prohibition of VNXX would prevent the development of a service that would allow subscribers to take their phone number with them anywhere.
- d) Broadband technology does not utilize phone numbers so any effect that the elimination of VNXX might have on broadband technology would be indirect.