

**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."<sup>1</sup> 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."<sup>2</sup>

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<sup>1</sup> 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."

<sup>2</sup> 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 (4<sup>th</sup> Cir 2003) and *Southwestern Bell Telephone Co. v. Public Utilities Commission of Texas*, 348 F.3d 482 (5<sup>th</sup> Cir 2003)).

In *MCIMetro Access*, the 4<sup>th</sup> 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 5<sup>th</sup> 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;<sup>3</sup> (3) *all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination;*<sup>4</sup> and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities.”

*Id.* at ¶ 67 (emphasis added) (footnotes omitted).<sup>5</sup>

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).

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<sup>3</sup> 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).

<sup>4</sup> 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.”

<sup>5</sup> 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.