The Commission's Role in the Implementation of the FCC Order's Intercarrier Compensation Rules

Core Communications, Inc. Presentation to the Pennsylvania P.U.C. Collaborative Workshop
April 20, 2012
Hearing Room No. 1

Areas of State Commission Authority

- Overseeing the transition of tariffed intrastate and local interconnection charges to a bill-and-keep regime
- Defining originating and terminating carrier interconnection obligations using the network “edge” concept to support the new bill-and-keep regime
- Arbitrating issues arising out of the FCC’s new VOIP-PSTN traffic rubric and accompanying rules

Sources of State Commission Authority

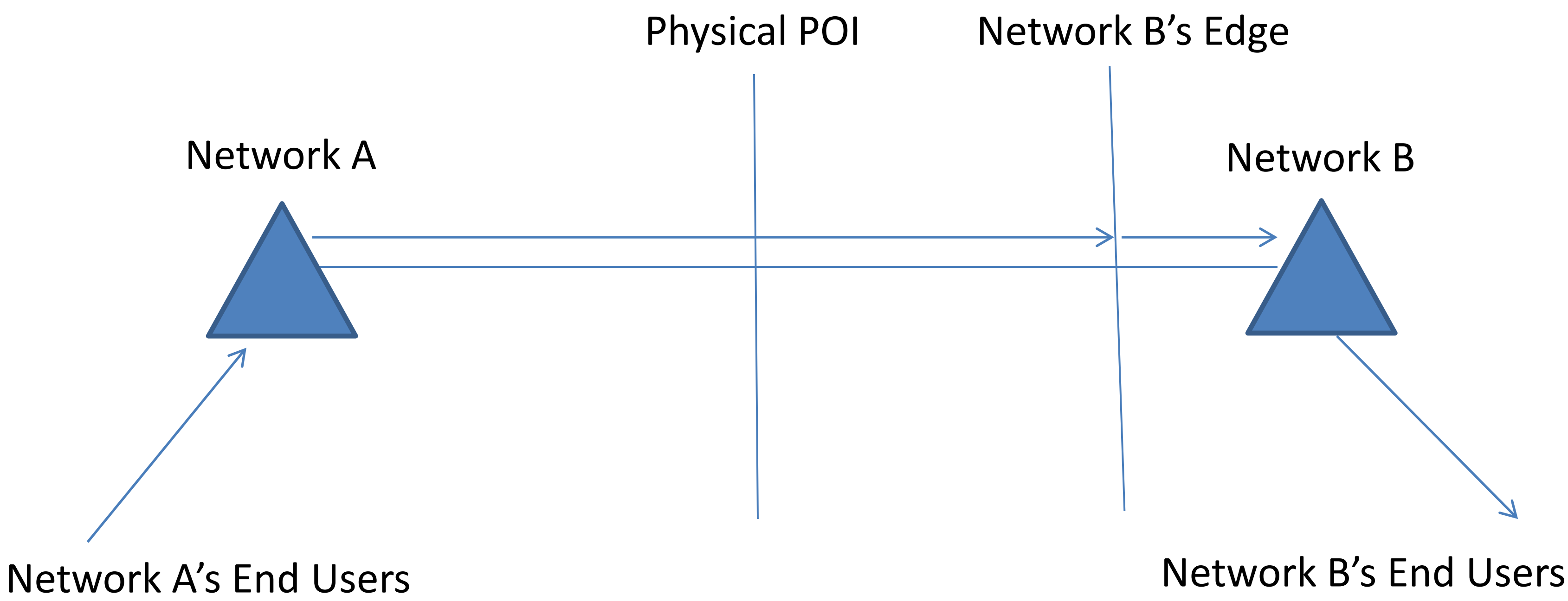
- Existing state law jurisdiction over carriers and intrastate traffic
- TA ‘96 Section 251(b)(5) authority over transitional intrastate rates, 47 U.S.C. § 251
- TA ‘96 Section 252 authority over ICA formation and modifications, 47 U.S.C. § 252

Specific Issues: Setting the Edge

- “An inherent part of any rate setting process is not only the establishment of the rate level and rate structure, but the definition of the service or functionality to which the rate will apply.” *FCC Order*, ¶ 776.
- “Under a bill-and-keep framework, the determination of points on a network at which a carrier must deliver terminating traffic to avail itself of bill-and-keep (sometimes known as the “edge”) serves this function, and will be addressed by states through the arbitration process where parties cannot agree on a negotiated outcome.” *FCC Order*, ¶ 776.
- Depending upon how the “edge” is defined in particular circumstances, in conjunction with how the carriers physically interconnect their networks, payments still could change hands as reciprocal compensation even under a bill-and-keep regime where, for instance, an IXC pays a terminating LEC to transport traffic from the IXC to the edge of the LEC’s network. *FCC Order*, ¶ 776.

Diagram of the Edge Concept

The Edge defines the logical point on a carrier's terminating network at which the originating carrier is obligated to deliver its traffic for termination and at which the terminating carrier is obligated to complete the call for free ("bill-and-keep")



Specific Issues: Section 251(c)(2) Interconnection for VOIP-PSTN Traffic

- "[A] carrier that otherwise has a section 251(c)(2) interconnection arrangement with an incumbent LEC is free to deliver toll VoIP-PSTN traffic through that arrangement, as well, consistent with the provisions of its interconnection agreement…" *FCC Order*, ¶ 972.
- "The Commission previously held that section 251(c)(2) interconnection arrangements may not be used solely for the transmission of interexchange traffic because such arrangements are for the exchange of "telephone exchange service" or "exchange access" traffic – and interexchange traffic is neither." *FCC Order*, ¶ 972.
- "However, as long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well." *FCC Order*, ¶ 972.
- "With respect to the broader use of section 251(c)(2) interconnection arrangements, however, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation." *FCC Order*, ¶ 972.

Specific Issues: The *ISP Remand Order's* "Mirroring Rule"

- "It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed." *ISP Remand Order*, ¶ 89.
- "Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier." *ISP Remand Order*, ¶ 89.
- "The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate... This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic." *ISP Remand Order*, ¶ 89.

Expansion of Section 251(b)(5)

- Ultimately, the *FCC Order* classifies all traffic as “section 251(b)(5) traffic,” including intrastate and interstate toll traffic, after conclusion of the transition period. *FCC Order*, ¶ 943.
- However, as of its effective date, the *FCC Order* classifies all “VOIP-PSTN traffic” as “section 251(b)(5)” traffic.
- The cumulative effect of the *FCC Order* and the *ISP Remand Order* is that an ILEC must elect to charge $0.0007/MOU for its termination of section 251(b)(5) VOIP-PSTN traffic in order to maintain mirroring status.
- Of course, many ILECs have already filed interstate and intrastate switched access tariffs charging switched access rates for such traffic.
- If an ILEC is no longer mirroring, that ILEC may no longer cap the rates it pays competitors for the termination of ISP-bound traffic.
- Conversely, an ILEC could retain the benefits of the *ISP Remand Order* by electing to charge $0.0007/MOU for its own termination of all section 251(b)(5) traffic, including VOIP-PSTN traffic.

Recommendations

- The Commission has an historic opportunity to use the FCC Order's explicit and implicit delegation of authority to resolve a host of intercarrier compensation issues, some of which arise out of the order, and some of which existed beforehand.
- Although section 252 contemplates a petition for arbitration of an ICA between a requesting carrier and an incumbent, the Commission can use and has used omnibus proceedings to update multiple ICAs in the wake of a significant change of law.
- Alternatively, the Commission could issue a declaratory order setting forth conclusions on various issues after notice and comment, thereby establishing a foundation for carrier-to-carrier negotiations or arbitrations.
- The Commission should consider initiating such a proceeding to resolve the issues discussed herein, including compensation for VOIP-PSTN traffic, use of section 251(c)(2) arrangements for VOIP-PSTN and the interaction between the mirroring rule and the FCC's expanded definition of section 251(b)(5) traffic.