

**IMPLEMENTING THE TELECOMMUNICATIONS ACT OF 1996:  
ENCOURAGING LOCAL EXCHANGE COMPETITION**

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**Transport and Termination Terms [Sec. 252(d)(2)]**

**TCG Position:**

A carrier wishing to impose explicit charges for Transport and Termination (T&T) bears the burden of demonstrating the reasonable approximation of the additional forward-looking long-run incremental costs that it incurs by transporting and terminating the traffic originated on the network of a particular originating carrier (or class of carriers). Because it is likely that each originating carrier (or class) will impose different types and degrees of additional T&T costs on the terminating carrier, carrier-specific (or class-specific) rates will be required. The reasonable approximation of additional costs should be based on actual experience rather than hypothetical forecasts.

For start-up carriers providing a substitute for the ILEC's basic local exchange service (i.e., CLECs), there is insufficient historic data to determine additional T&T costs. Therefore, bill and keep will be the reasonable approximation of net additional costs for at least the first three years of operation, or until one year after Service Provider Number Portability has been operational, whichever is later. It is also the most administratively simple and pro-competitive arrangement.

**Rationale:**

For a start-up CLEC, the net additional costs incurred by an ILEC would approximate zero since, at least in the beginning, all traffic originating on the CLEC's network would, absent the CLEC, have originated on the ILEC network and been terminated by the ILEC. Since it makes little or no difference to the ILEC's terminating costs whether the traffic was originated by the CLEC or the ILEC, the additional T&T costs are approximately zero.

In contrast, the net additional costs for a CLEC to terminate an ILEC's traffic would be substantial because the immature CLEC network, unlike the ILEC's mature network, will not be capable of handling all of the calls that could be terminated on it. (If the ILEC ceased operation, could the CLEC network terminate all of the traffic previously terminated by the ILEC without incurring additional costs?) However, CLECs are willing to recover those additional T&T costs imposed by the ILEC from their own customers, rather than from the ILEC -- provided the ILEC does the same.

It is important to note that T&T rates should be carrier-specific (or at least class of carrier specific) to account for the difference in T&T costs imposed on ILECs. (This is

why it is appropriate to have different arrangements for terminating interexchange traffic: the ILEC's cost of transporting and terminating traffic from mature interexchange services may be substantially different from the cost of transporting and terminating a start-up CLEC's basic local exchange traffic.)

Bill and keep is intended by the Act to be a 'safe harbor' until the reasonable approximation of the net additional T&T costs relating to a CLEC's traffic can be demonstrated. This is clear because it is the only specific arrangement mentioned in the Act. While the Act explicitly does not authorize a State commission or the FCC to require record keeping for the estimation of such costs, an ILEC arguing that such costs are significant has the burden of proof. (By comparison, there is sufficient historic data available to determine the additional costs imposed by interexchange traffic.)

The FCC should set the pricing standard in its rule. There is ample evidence that with such a pricing standard -- as in California -- ILECs will enter into bill and keep arrangements with CLECs at least for an interim period without much difficulty. On the other hand, there is also evidence -- as in New York -- that, even with encouragement by a State commission but lacking a firm bill and keep standard, the ILEC will not voluntarily agree to a "reasonable approximation" of additional costs. In New York, NYNEX insists on charging TCG for interconnection services over \$750 per port even though NYNEX has on the record stated that the costs of that port are only about \$250. (See New York Public Service Commission Case No. 28425.)

If, after the initial bill and keep period, the ILEC can demonstrate with historic data that transporting and terminating a CLEC's traffic does incur measurable additional costs, costs related to increasing capacity should be recovered as capacity charges (i.e., flat rate ports) not by a minute-of-use charge.

Finally, if the ILEC can demonstrate net additional T&T costs, the CLEC will be saving the ILEC such costs for all traffic terminated on the CLEC network. Therefore, the CLEC should be credited with the costs saved by the ILEC and any payment to the ILEC should net the additional costs and the saved costs.

The Commission has the authority to reach this conclusion (Section 251 and 252) and the Commission's guideline will help states who are asked to arbitrate this issue in accordance with the pricing rules in 252(d).

## **IMPLEMENTING THE TELECOMMUNICATIONS ACT OF 1996:**

### **ENCOURAGING LOCAL EXCHANGE COMPETITION**

#### **Physical Interconnection: Collocation and Mid-Span Meets**

##### **TCG Position On Collocation:**

As an interim matter, the FCC should require all ILECs to refile their last FCC physical collocation tariffs, subject to investigation and an accounting order. As a long term objective, CLECs should be permitted to subcontract construction of physical collocation arrangements with contractors approved by the LEC.

There must also be a reasonable basis to transition from virtual collocation arrangements to physical collocation, and a minimization of non-recurring and reconfiguration charges which act as a barrier to entry.

CLECs must have the ability to order physical collocation from ILECs at tandems and end offices. ILECs, under the Telecommunications Act of 1996, have a duty to provide physical collocation effective February 8, 1996.

##### **Rationale:**

While TCG will seek to negotiate improvements in physical collocation tariff arrangements, TCG and other carriers will need to have physical collocation available as soon as possible. Otherwise, carriers will be forced to continue ordering inferior "virtual collocation" arrangements even after the time that the ILECs have a legal duty to provide physical collocation, which will undoubtedly complicate the problems of transitioning from the virtual collocation arrangements to physical collocation arrangements once the physical arrangements are put in place. While the rates under the prior FCC tariffs are still too high, being based on embedded costs, they are nonetheless a set of physical collocation rates that can be put into place quickly subject to an Accounting Order, thereby avoiding the need to continue to use virtual collocation.

### **TCG Position On Mid-span Meet Interconnection:**

CLECs must have the ability to interconnect with ILECs using mid-span arrangements, either microwave or fiber. (In a mid-span meet arrangement, each carrier builds its facilities so that they interconnect at a previously agreed point, and each carrier bears the costs of the construction to that point.) Mid-span meets are a particularly appropriate form of interconnection for "switch to switch" connections, as are needed for the transport and termination of local traffic. Indeed, the telephone industry has exchanged switched traffic between adjoining telephone carriers using mid-span meet type arrangements for many years, and under the Act CLECs will have a right to request similar interconnections. Mid-span meet arrangements should be expressly required for the exchange of local, toll and switched access traffic. Mid-span meets may also be feasible as an alternative to physical or virtual collocation for connections to unbundled elements, and should be permitted for such arrangements subject to negotiation between the parties.

Carriers should be required to meet another carrier where the requesting carrier seeks to interconnect at any point that is within three miles of the central office to which interconnection is sought. Carriers can mutually agree to a mid-span meet arrangement at a point greater than three miles.

Where mid-span meets are used for the exchange of switched traffic, rates for the connections should presume that each carrier absorbs the costs of the termination electronics and its own facilities to the meet point. Alternatively, the two carriers could split the costs of the end to end transmission facility between the networks, with the carrier providing less than 50% of the transport paying the carrier which provides more than 50%. Rates for the use of mid-span meets for other purposes (such as connection to unbundled loops) should be subject to negotiation between the parties.

Meet point technologies should be as agreed to by the parties, provided that an ILEC must agree to utilize any terminating electronics (manufacturer and model number) selected by the requesting carrier if that equipment is used by the ILEC anywhere in its network within the same state.

### **Rationale:**

Mid-span meet arrangements are a superior form of physical interconnection for the exchange of switched traffic. Such arrangements should minimize the costs associated with physical interconnection for the exchange of traffic, thereby leading to lower costs for the industry as a whole. The fact that such arrangements have been commonly used in the ILEC industry for decades for just such purposes is clear testimony to their value for such purposes.

By comparison, if collocation arrangements are required to be used for the transport and termination of traffic, then the carrier establishing the collocation will have to recover the "additional costs" associated with the collocation arrangements used for that purpose, which will have the effect of increasing the costs to the other carrier. Collocation arrangements, which involve cage construction and other specialized activities, are inherently a more expensive means to establish interconnection between parties. Mid-span meet arrangements, since they involve a mutual interconnection between carriers and a mutual incurred cost to each interconnecting carrier, also provide a natural incentive for carriers to employ such arrangements only where it makes economic and technical sense.

The mid-span arrangements should be usable for multiple purposes to reduce costs and lessen dependence on collocation. Carriers should not be compelled to construct mid-span facilities to a point more than three miles from the central office to which interconnection is being requested, so as not to over-burden the carrier from whom interconnection is sought. Costs of the interconnection facility should be equitably shared.

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#### **Technical Standards and Performance Incentives**

##### **TCG Position:**

To make local exchange competition feasible for the long-term and to minimize substantial regulatory intervention and litigation, ILECs must be required to meet specified performance standards associated with every aspect of "interconnection" and to pay liquidated damages for any failure to meet a standard.

For example, ILECs must agree to defined installation intervals, reasonable mean times to repair, acceptable service availability standards, and similar performance criteria. To create an incentive for the ILECs to meet these objectives there should be financial penalties for failure to meet a standard, similar to the installation guarantees that ILECs already offer to their retail customers where they fail to make an appointment or install a service in time. To ensure the reasonableness of the standards, TCG will stand ready to meet the same standards and pay the same penalties.

##### **Rationale:**

Once ILECs obtain an interconnection agreement and permission to enter into long distance markets, they will have little incentive to achieve reasonable service standards related to "interconnection" with competitors.

For example, NYNEX-New York "cooperated" with TCG on interconnection matters while the NYPSC was considering price cap regulation. But as soon as NYNEX had achieved its regulatory objectives, NYNEX's interconnection performance deteriorated rapidly, making it virtually impossible for TCG to utilize the interconnection services in its "competitive" offerings. Reliance on regulatory processes to solve these performance problems has not been generally successful. Accordingly, TCG needs a self policing, self-executing remedy for poor ILEC performance.

## **IMPLEMENTING THE TELECOMMUNICATIONS ACT OF 1996:**

### **BREAKING THE BOTTLENECK, ONCE AND FOR ALL**

#### **Section 271 standards: Definition of "Own" facilities**

##### **TCG Position:**

Before an RBOC can enter the in-region toll market Sec. 271(c)(1)(A) requires that there is at least one competitor with whom an interconnection agreement has been signed and which is operational, offering to residential and business customers service predominantly over its "own" telephone exchange service facilities. For this purpose, the term "own facility" must mean that the facility is either directly owned by the competitor, or that it is being acquired or used by lease or otherwise from a party other than the ILEC, since in either event there is a facilities based alternative to the ILEC's services.

##### **Rationale:**

The Act is intended to promote competition and replace the MFJ and lead to deregulation in a competitive marketplace. Unless the FCC interprets the word "own," in this manner, there is a clear danger and likelihood that the BOC monopoly will not be broken and the purposes of the Act-- to further competition such that regulation will no longer be required-- will not be achieved. The Commission clearly has the authority and the obligation to interpret the Act in this manner since it must apply a public interest test before allowing BOC entry. The public interest cannot be served until a significant number of customers in a BOC service territory are no longer dependent on any BOC facilities.