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WILLKIE FARR & GALLAGHER

November 21, 2000

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

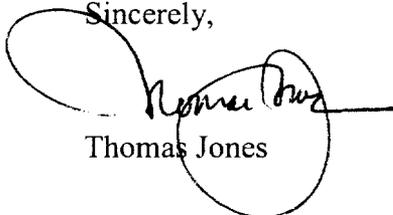
Re: CC Docket Nos. 96-98; 99-68

Dear Ms. Salas:

On November 20, 2000, Don Shephard and Kelsi Reeves of Time Warner Telecom (TWTC), Don Wood, an outside consultant on behalf of TWTC, and I, also on behalf of TWTC, discussed the application of reciprocal compensation to the exchange of ISP-bound traffic with Tamara Preiss, Rodney McDonald, and Adam Candeub of the Common Carrier Bureau. During the meeting, we discussed the attached talking points and network diagrams.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter are being provided for inclusion in the public record of the above-referenced proceedings.

Sincerely,



Thomas Jones

Attachments

cc: Tamara Preiss
Rodney McDonald
Adam Candeub

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Time Warner Telecom

Presentation Regarding The Application of Reciprocal Compensation to ISP-Bound Traffic

November 20, 2000

Cost Causation

CLECs: The call originator, as local exchange subscriber, is the cost causer. Therefore, the end user should pay.

ILECs: The call originator, as ISP subscriber, is the cost causer. The ISP has a unique contractual relationship with the call originator, which shifts cost-causation to the ISP. This creates a carrier-like relationship, and ISPs should pay (just like IXCs pay).

Bottom Line: The ILEC argument is unsustainable in light of the end user status of ISPs.

Local Service Charges — Sent Paid

- CLECs:** Transport and termination costs for ISP-bound traffic are allocated to the intrastate rate base and states require that subscribers pay for calls on a sent paid basis.
- ILECs:** States do not actually require local subscribers to pay for calls on a sent paid basis. Local rates are set on a residual basis, causing revenue shortfalls for ISP subscribers.
- Bottom Line:** There are cross-subsidies built into local rates, and some customers' flat local charges do not cover all of the costs of the incremental traffic they originate. But this changes nothing: (1) the rate structure of local rates is unquestionably sent paid; (2) if it were not, no reciprocal compensation would apply ever; (3) local rates make the ILECs more than whole; (4) even if they did not, CLECs would not be the cause and states could handle it; and (5) the ILECs cannot now back out of incentive-based local rate regulation.

Special Access Surcharges

- CLECs:** These surcharges do not show that ISPs should pay for transport and termination of ISP-based traffic because they do not recover the intrastate costs of transport and termination.
- ILECs:** The surcharge always covers intrastate costs.
- Bottom Line:** The jurisdictional disconnect makes the surcharge irrelevant. The ILECs' argument also proves too much: it would eliminate reciprocal compensation for calls to almost all large businesses.

Cost of Voice Traffic vs. ISP-Bound Traffic

- CLECs:** All LECs use the same facilities to transport and terminate voice and ISP-bound traffic. Inefficiencies result from inefficient rates for reciprocal compensation, not underlying cost differences. The use of PRIs to serve ISPs does not change the analysis.
- ILECs:** The important point is that CLECs transport and terminate ISP-bound traffic more cheaply than ILECs.
- Bottom Line:** The ILEC argument, even if true, concerns only outlier CLECs that target ISPs exclusively or primarily. At most, the FCC need only devise rules to eliminate arbitrage opportunities for those companies.

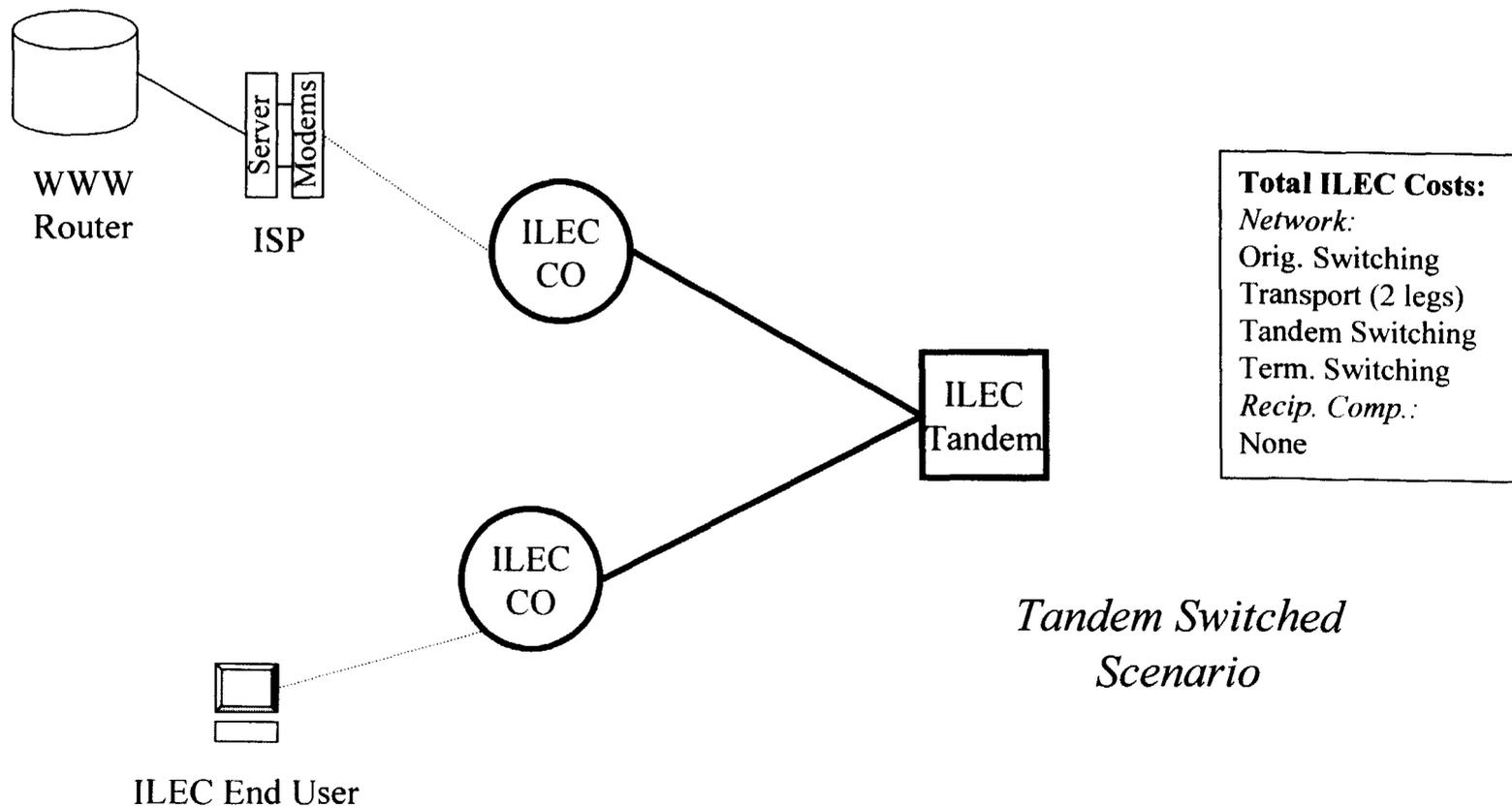
The Size of the Arbitrage

CLECs: The size of the arbitrage will get smaller and will eventually disappear as efficient rates for reciprocal compensation are implemented.

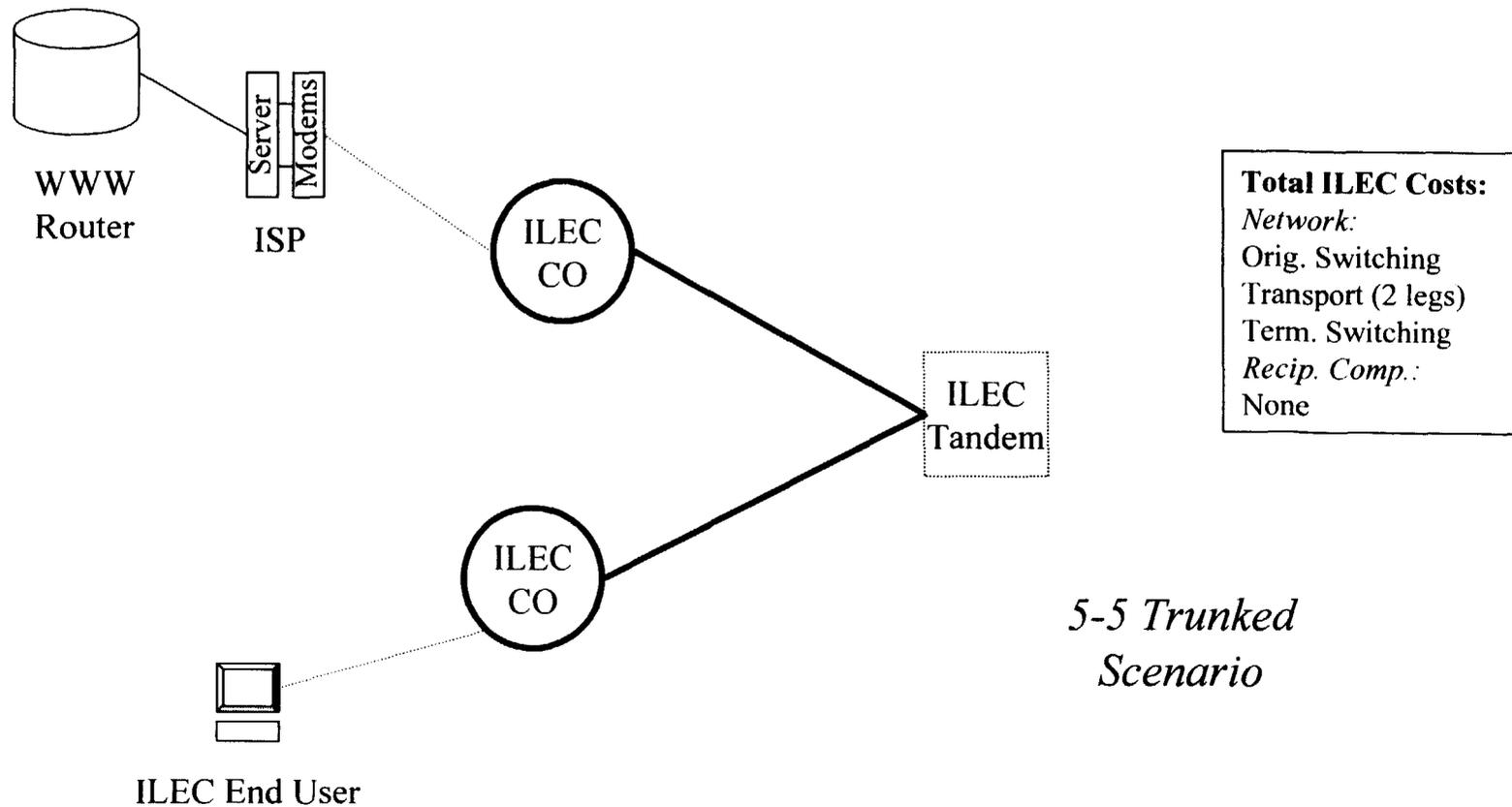
ILECs: Even though the reciprocal compensation rates are lower now, the projected ILEC reciprocal compensation payments will be huge – as much as \$3.7 billion for 2002.

Bottom Line: Efficient rates have not had a chance to take effect in the marketplace. Increasingly, reciprocal compensation payments will be the result of efficient entry, not arbitrage. Efficient entry by CLECs could well continue to result in disproportionate numbers of ISPs subscribing to CLECs.

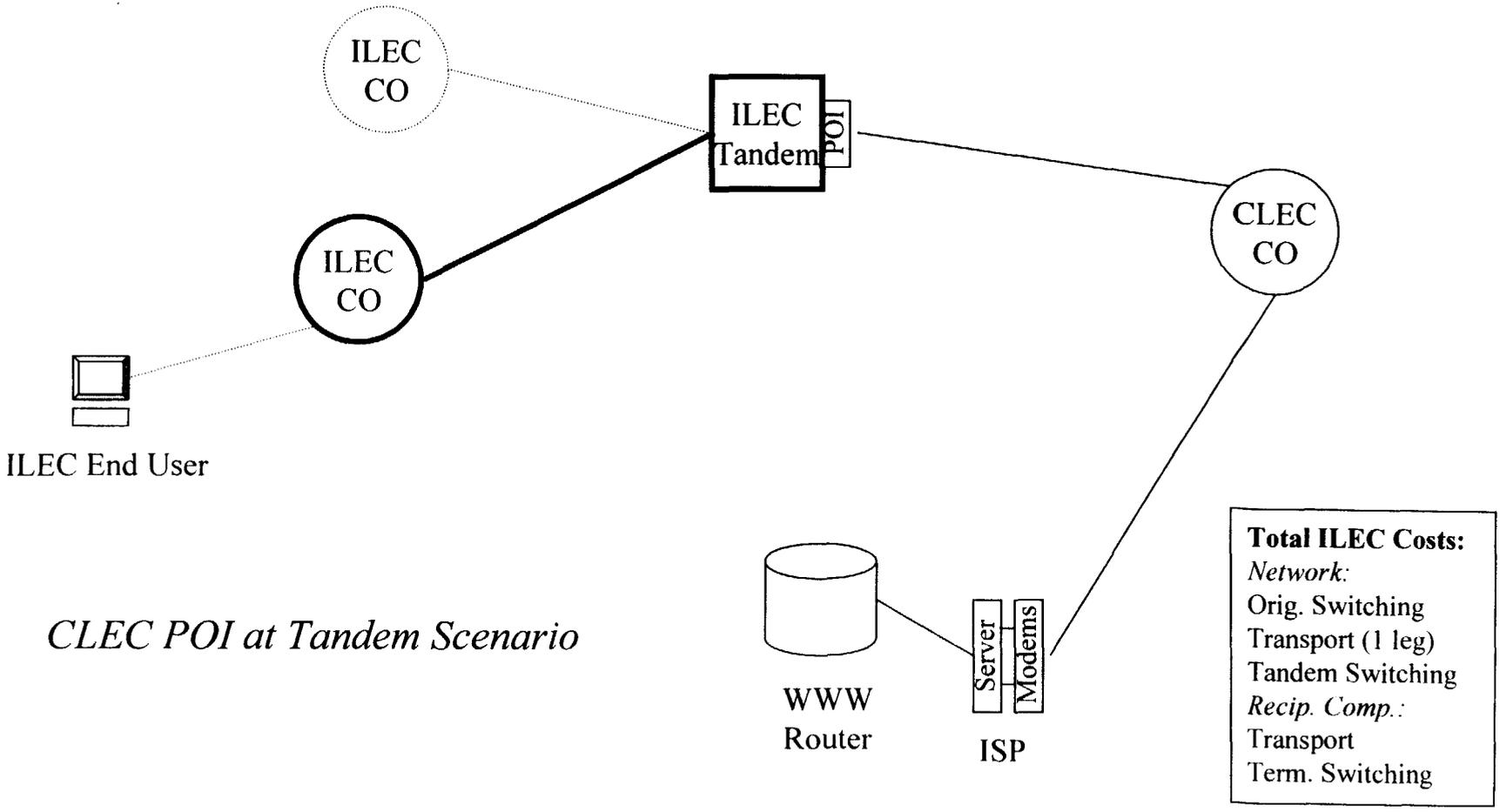
Usage-Sensitive Network Costs Incurred by ILEC, When ISP Is Served by ILEC Network



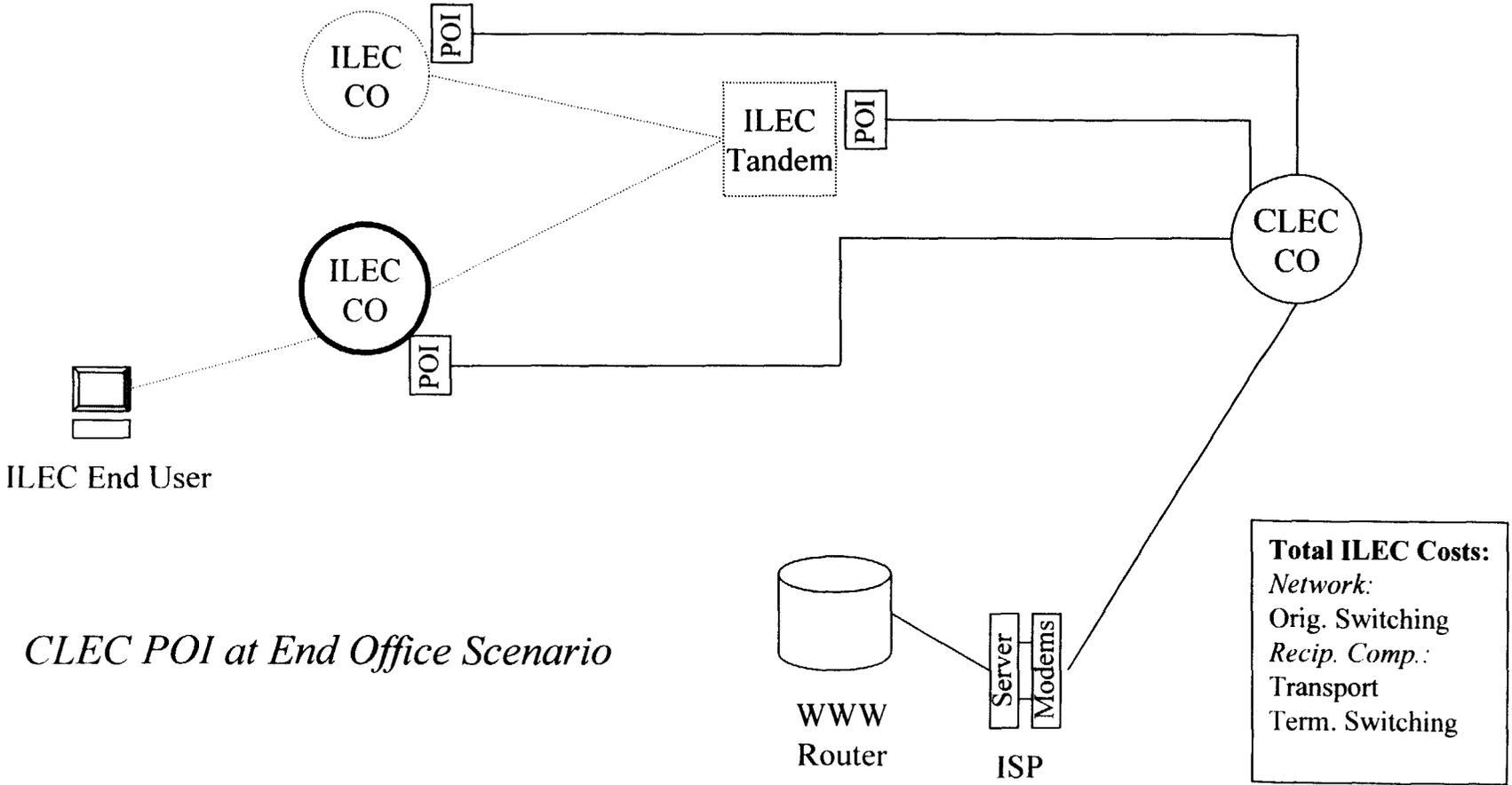
Usage-Sensitive Network Costs Incurred by ILEC, When ISP Is Served by ILEC Network



Usage-Sensitive Network Costs Incurred by ILEC, When ISP Is Served by CLEC Network



Usage-Sensitive Network Costs Incurred by ILEC, When ISP Is Served by CLEC Network



The following diagram illustrates the trunking required to transport calls to a CLEC

