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November 5, 2001

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Communication CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996**

Dear Ms. Salas:

On November 2, 2001, Michael Pryor, representing AT&T Wireless Services, Inc., and Douglas Bonner and Carl Hansen, representing VoiceStream Wireless Corp. met with Michelle Carey, Julie Veach, and Jeremy Miller of the Common Carrier Bureau, and Thomas Navin, Gregory Vadas, and Stacey Jordan of the Wireless Telecommunications Bureau, to discuss CMRS carriers' right to convert to unbundled network elements facilities purchased from special access tariffs. The material in the attachment was discussed during the meeting.

In accordance with Section 1.1206(b) of the FCC's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record of the above-referenced docket.

Very truly yours,


Michael H. Pryor

MHP:crl
Enclosure

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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

Ms. Magalie Roman Salas

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CMRS CARRIER ACCESS TO UNES

AT&T WIRELESS SERVICES, INC.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

November 2, 2001

Prepared by: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

I. INTRODUCTION

As Chairman Powell recently noted, alternative, facilities-based platforms, such as wireless networks, offer “real competitive choices” and represent “the best hope for competition for residential consumers.”

Even alternative, facilities-based platforms such as wireless networks must rely on ILEC facilities. It is a simple fact that, without access to ILEC interoffice transport, CMRS carriers could not provide service. In the vast majority of instances, CMRS carriers obtain such transport from ILEC special access or private line tariffs.

In a very real sense, the expansion of wireless networks has become a huge revenue engine for ILECs because there are no alternatives to the ubiquitous transport networks that ILECs have constructed over the years.

In the absence of a competitive market for transport, wireless carriers are forced to obtain transport from ILEC special access tariffs. ILECs refuse to convert this transport to unbundled network elements. Thus, CMRS carriers do not obtain the benefit of cost-based prices, as the 1996 Act envisioned, nor do they obtain the benefit of performance standards, self-executing remedies, and operational support system enhancements that have been developed to help ensure nondiscriminatory access to unbundled network elements.

CMRS carriers are entitled to these benefits under the 1996 Act and the Commission’s existing regulations.

CMRS Carrier Use of Special Access Facilities

CMRS networks rely to a surprisingly large extent on wireline facilities, and especially on ILEC transport.

There are three main components to wireless networks: (1) cell sites or base stations; (2) centralized equipment locations (e.g., mobile switching centers (“MSCs”)) which house call control equipment, equipment to switch calls to other networks, and databases; and (3) transport that (i) connects cell sites to MSCs and (ii) carries traffic to other carriers’ networks. CMRS carriers have expended enormous resources to self-provision the first two of those components -- cell sites and MSCs -- they rely primarily on wireline facilities from ILECs for the third.

Typically, the only wireless part of CMRS networks is the radio frequency used to establish a channel between the end user’s mobile phone and the transmitter/receiver located on a tower at the base station. From the base station, the majority of CMRS traffic is transported over wireline facilities.

The mobility that CMRS customers enjoy derives as much from the sophisticated interplay between the equipment at the base station and centralized cell site control equipment as from the fact that wireless phones utilize radio spectrum. Working together, the base stations and centralized control equipment continually monitor the quality of the voice signals and, virtually instantaneously open and close trunks, switching the call as necessary from one cell site to the next as the mobile customer moves about or signals degrade.

CMRS carriers have built literally thousands upon thousands of cell sites. They are ubiquitous throughout a CMRS carrier's service area. Because they are ubiquitous, CMRS carriers have had to, and must continue to, rely on ILEC interoffice transport facilities to carry signals between these cell sites and the MSCs. In the vast majority of instances, CMRS providers cannot obtain this transport from alternative providers, nor can they practically self-provision the ubiquitous transport that they need.

II. CMRS PROVIDERS ARE REQUESTING CARRIERS

There is no dispute that CMRS carriers are “requesting telecommunications carriers” for purposes of Section 251(c)(3), or that they provide a “telecommunications service.” See e.g., Local Competition Order, paras. 993, 1012, 1041; See Verizon Ex Parte Letter, Aug. 22, 2001 (conceding that CMRS carriers are “requesting telecommunications carriers”).

The Commission has specifically held, even after the Supreme Court’s decision in Iowa Utilities and the Commission’s UNE Remand Order, that CMRS carriers are entitled to UNEs under the Commission’s existing rules. (E911 Order, 14 FCC Rcd. 20850, para. 100).

III. NO SEPARATE IMPAIRMENT ANALYSIS IS REQUIRED BEFORE CMRS CARRIERS MAY OBTAIN DEDICATED TRANSPORT UNES.

It has been the Commission's consistent policy that, once it has identified a network element as subject to the statute's unbundling obligation, ILECs must make that element available to any requesting carrier on a nationwide basis. For example, the Commission ruled that ILECs must make 911 and E911 databases equally available to CMRS carriers, without the need for a separate impairment analysis. E911 Order, 14 FCC Rcd. 20850, para. 100.

A. The Supplement Order Clarification ("SOC") Does Not Mandate a Separate Impairment Analysis

The SOC does not establish a service-by-service impairment analysis as a general rule. Instead, it asked a specific question: does a finding that carriers are impaired without access to loop/transport combinations in the provision of telephone exchange service automatically imply that carriers are impaired in the provision of special access service without loop/transport combinations? This question has no relevance to, the CMRS carriers' request for UNES:

1. CMRS carriers, unlike interexchange carriers, are not seeking UNEs to provide special access services, which the SOC defines as “dedicated, high-capacity facilities that run directly between the end user, usually a large business customer, and the IXC’s point of presence.”
 - This is a critical distinction because special access services have, at least according to ILECs, sufficiently unique attributes in terms of customer size and concentration to warrant a different conclusion about impairment than in the telephone exchange market. Those attributes are not present for the customers served by CMRS providers.
2. CMRS carriers are seeking stand-alone dedicated transport --not loop/transport combinations. The SOC analysis does not apply to stand-alone UNEs. See SOC, n. 31 (the constraint on IXC conversion of special access service “does not apply to stand-alone loops”) (citing UNE Remand Order, para. 177) (refusing to restrict services that may be provided over high capacity loops).

B. The Service CMRS Carriers Provide Has Already Been Subject to an Impairment Analysis.

Even if the SOC could be deemed to require a service-by-service impairment analysis, no separate impairment analysis is needed before CMRS carriers can obtain dedicated transport.

The Commission has determined that requesting carriers are impaired without access to dedicated transport in the provision of telephone exchange service. This is the same service that CMRS carriers provide.

The Commission found in the Local Competition Order that CMRS carriers provide service comparable to telephone exchange service because they “provide local, two-way switched voice service as a principal part of their business.” Local Competition Order, para. 1013. Indeed, the Commission has described cellular service as exchange telephone service and CMRS carriers as “generally engaged in the provision of local exchange telecommunications in conjunction with local telephone companies.” Id. (citations omitted).

Having already determined that requesting carriers are impaired in their ability to provide telephone exchange service, there is no grounds for separately determining whether CMRS carriers are impaired without UNEs when they provide this same service. Even the ILECs concede that any requesting carrier may obtain UNEs for use in the market in which the impairment analysis has been met. SOC, para. 10 (stating ILEC argument that the availability of UNEs “should be restricted to the carriers that intend to use them -- substantially, though not exclusively -- in the markets in which the ‘impair’ standard is met.”).

That CMRS carriers use a different technology to provide telephone exchange service does not warrant a separate impairment analysis. Under such logic, cable companies, or fixed wireless providers, would be required to undergo a separate impairment analysis before they could provide telephone exchange service utilizing UNEs.

C. CMRS Carriers Have No Better Alternatives Than Do Wireline Carriers for Interoffice Transport.

If there is no carrier beside the ILEC providing alternative transport, the CMRS carriers are as deprived of substitutes as CLECs. The Commission's conclusion that there are insufficient alternatives to the ILECs' ubiquitous networks applies to CMRS carriers, even more so because CMRS carriers must transport traffic between virtually every ILEC wire center in the CMRS service area. This is because CMRS carriers must establish cell sites throughout their service area, whether that area is the cities, the suburbs or rural parts of the country.

The Commission's conclusion that self-provisioning is "prohibitively expensive" is also equally applicable to CMRS carriers. UNE Remand Order, para. 355. Construction is no cheaper just because CMRS carriers undertake it. Indeed, the burden would be even greater for CMRS carriers because they would have to build transport to literally thousands and thousands of locations. Moreover, CMRS carriers would confront the same obstacles in terms of obtaining rights-of-way and processing local applications that have plagued other carriers.

CMRS carriers have already committed enormous capital resources in building the cell sites needed to provide service. This need to devote resources will grow as demand increases and as the industry moves toward the development of wireless broadband applications.

Evidence of the extent to which CMRS providers rely on ILEC transport is found in the fact that more than 90% of AWS's transport costs go to ILECs.

D. The Availability of Tariffed Special Access Services is Not a Cognizable Alternative to UNEs.

ILECs are recycling the same argument that the Commission has repeatedly rejected -- that a carrier is not impaired without access to UNEs as long as tariffed services are available. See UNE Remand Order, para. 354.

The Commission has rightly concluded that only those alternatives outside of the ILECs' network are relevant to the impairment analysis. UNE Remand Order, para. 70.

The ILECs want to frame the impairment question as "how could CMRS carriers be impaired if they have been able to enter the market through the use of special access." That is not the relevant question under the Commission's impairment analysis. The relevant question is "what alternatives exist to ILEC unbundled dedicated transport besides ILEC special access services."

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IV. THE FACILITIES THAT CMRS CARRIERS SEEK TO CONVERT TO UNES QUALIFY AS DEDICATED TRANSPORT.

- A. Much of the Interoffice Transport Unquestionably Falls Within the Existing Definition of Unbundled Dedicated Transport.

The diagrams attached as Exhibit A, B and C show typical interoffice facilities purchased from an ILEC tariff.¹ Exhibits A and B show two configurations for transport between base stations and MSCs -- point-to-point and SONET Ring transport. Exhibit C demonstrates the use of special access facilities to transport AWS originated traffic for termination on an ILEC network.

The salient point about those diagrams is that, quite apart from the channel terminations to the base stations, there are numerous transport links between ILEC wire centers and between ILEC wire centers and the MSC (which even the ILEC agree is a switch) that indisputably fall within the definition of dedicated transport under Section 51.319: “Dedicated transport [is] defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.”

¹ The Diagrams reflect private line rate elements from Qwest tariffs.

AWS also purchases interoffice transport from ILEC special access tariffs to deliver traffic to ILEC networks for termination. See Diagram C. This transport also qualifies as unbundled dedicated transport. See UNE Remand Order, 15 FCC Rcd. at 3851, para. 346 (carriers also require “dedicated transport to deliver traffic from their own traffic aggregation points to the incumbent LEC’s network for purposes of interconnection.”).

Thus, putting aside for the moment the link that constitutes the channel termination to base stations, there is a substantial amount of interoffice transport purchased from ILEC special access/private line tariffs that spans ILEC wire centers or ILEC wire centers and the MSC and that without question qualifies as dedicated transport under the Commission’s existing definitions.

B. The Channel Terminations to Base Stations Also Qualify As Dedicated Transport Because Base Stations are Switches and Are the Functional Equivalent to End Offices.

The only real definitional dispute involves the channel termination to the base station. The ILECs claim that CMRS carriers' requests should be rejected because the Commission's definition of dedicated transport requires transmission between switches or between wire centers. They contend that transporting traffic between a base station and the MSC does not fit within the Commission's definition because a base station is not a switch or wire center. ILECs downplay the importance of base stations and propose overly restrictive definitions of what constitutes a "switch."

1. Base Stations Are "Switches"

Base stations perform a number of functions. For example, base stations establish the communications path that transmits signaling information to the MSC that registers a cellular customer's location. Base station equipment also continually monitors the quality and signal strength to determine when a call should be handed off to another channel or another cell site.

In arguing that base stations are not switches, ILECs point to the Commission's definition of unbundled local switching. (See Verizon August 22, 2001 Ex parte Letter (claiming that the relevant switching functions are those described in 47 C.F.R. 51.319(c)(1)(iii)(A)). They fail to explain, however, why the Commission's prescription of the functionalities in ILEC circuit switches that ILECs must make available on an unbundled basis should control the definition of what constitutes a switch for purposes of dedicated transport.

a) Switch Is Broadly Defined

For purposes of dedicated transport, the definition of a switch should not be limited to the traditional circuit switching functions deployed by ILECs. Rather, the Commission should utilize a more technology neutral definition that recognizes that dedicated transport is to be provided not only to or among ILEC circuit switches, but also to or among requesting carrier switches.

Indeed, under current common usage, a switch is broadly defined as a “mechanical, electrical or electronic device which opens or closes circuits, completes or breaks an electrical path, or selects paths or circuits.” Newton’s Telecom Dictionary, 17th Ed., 2001. Base stations perform these switching functions. They complete an electrical path between the MSC and the end user by extending the radio frequency channels necessary for communication from the CMRS network to the end user. See 47 C.F.R. Part 36, Appendix-Glossary (defining channel as “an electrical path suitable for the transmission of communications between two or more points . . . [which] may be furnished by wire, fiberoptics, *radio* or a combination thereof.”) (emphasis added). Base stations also select a path between (i) the end user and the MSC by picking up an end user’s handset transmissions on an appropriate wireless channel for transport to the base station and (ii) between the base station and the MSC by placing the communications on an appropriate wireline channel for transport to the MSC.

Even under the ILECs' preferred definition of a switch as a device that connects lines to lines or lines to trunks, base stations qualify. Base stations connect the radio channel between the end user and the base station to a channel on the special access facility being leased from the ILEC. The definition of a line is not limited to landline wires and cables. It also includes channels. For example, for Section 214 purposes, the Act defines a line as "any channel of communication."

2. The FCC and States Have Concluded That Base Stations Perform Switching Functions

In other regulatory contexts, the Commission has acknowledged that switching may take forms other than traditional, wireline circuit switching. For example, in the TSR Order, the Commission concluded that a paging terminal performs a switching function when it "directs the page to the appropriate transmitter in the paging network, and then that transmitter delivers the page to the recipient's paging unit. The terminal and the network thus perform routing or switching and termination." The Commission found that this process was "equivalent to what an end office switch does when it transmits a call to the telephone of the called party." Indeed, the Commission found that simply the act of broadcasting the call over the paging network to its customers to receive messages constituted a "significant switching function." TSR Order, 15 FCC Rcd 11166, para. 22 & n. 86 (2000). A CMRS network performs significantly more functions than the simple, one-way termination performed by paging networks.

States that have reviewed the functionality of base stations have also agreed that they perform functions equivalent to an end office. See e.g., Petition for Wireless One Network, L.P., Fla. PSC, Docket No. 971194-TP, Final Order on Arbitration, (1998) at 9-10.

3. The Commission Should Bifurcate Its Analysis if Necessary.

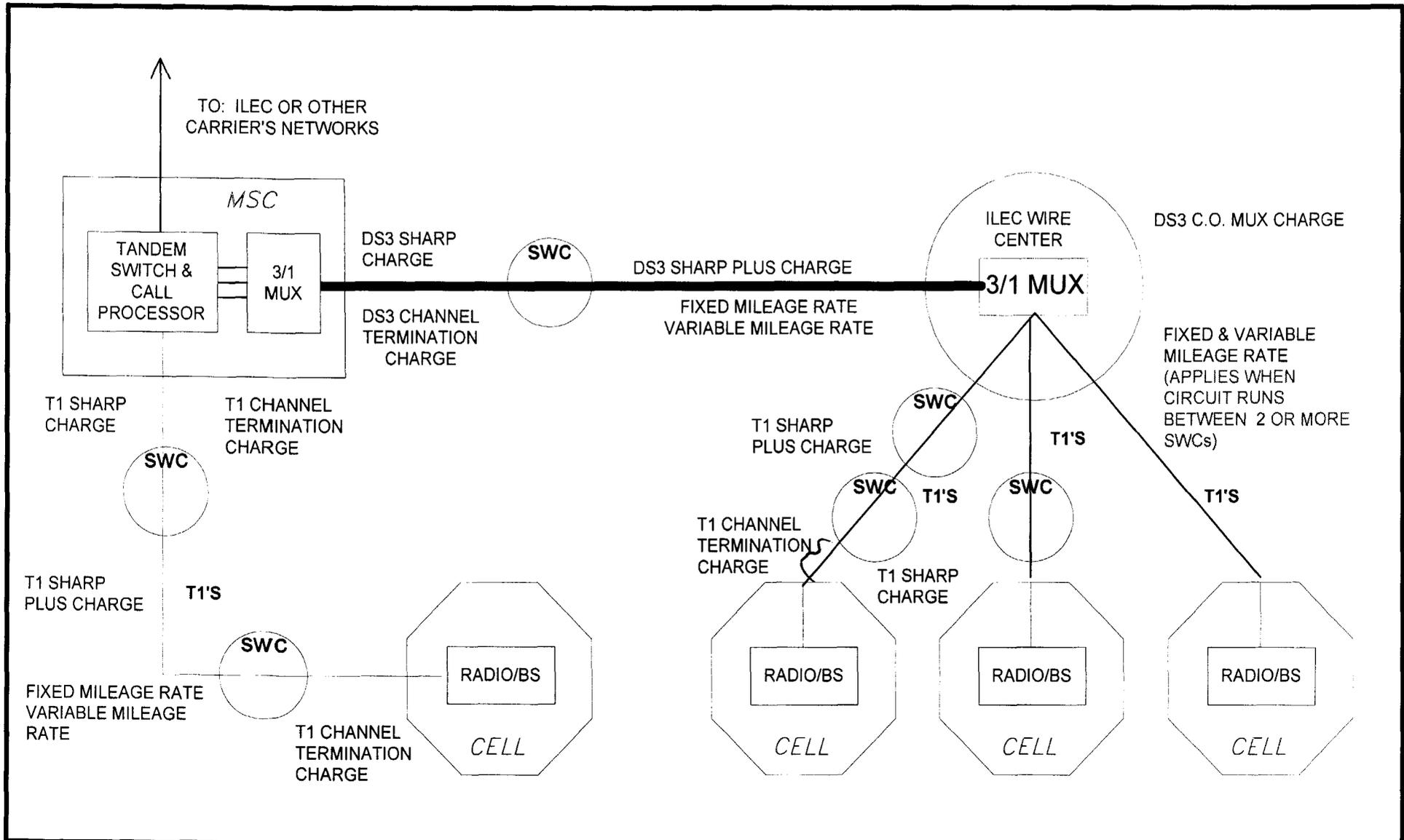
If the Commission believes a further record or proceeding is warranted on the issue of converting to UNEs the channel termination to base stations, the Commission should bifurcate its analysis and immediately direct ILECs to provide as UNE dedicated transport all transport links between ILEC wire centers or such wire centers and MSCs, while it compiles the record on base stations. In addition, the Commission should:

- a) Direct that conversion of existing facilities requires a simple billing change that can be accomplished through a straightforward process, such as providing a spreadsheet that identifies the facilities to be converted.
- b) Preclude ILECs from requiring a termination and a new order to convert existing facilities.
- c) Require ILECs to cooperate in a timely and robust manner to help CMRS carriers identify circuits suitable for conversion.

4. There Is No Co-Mingling Concern.

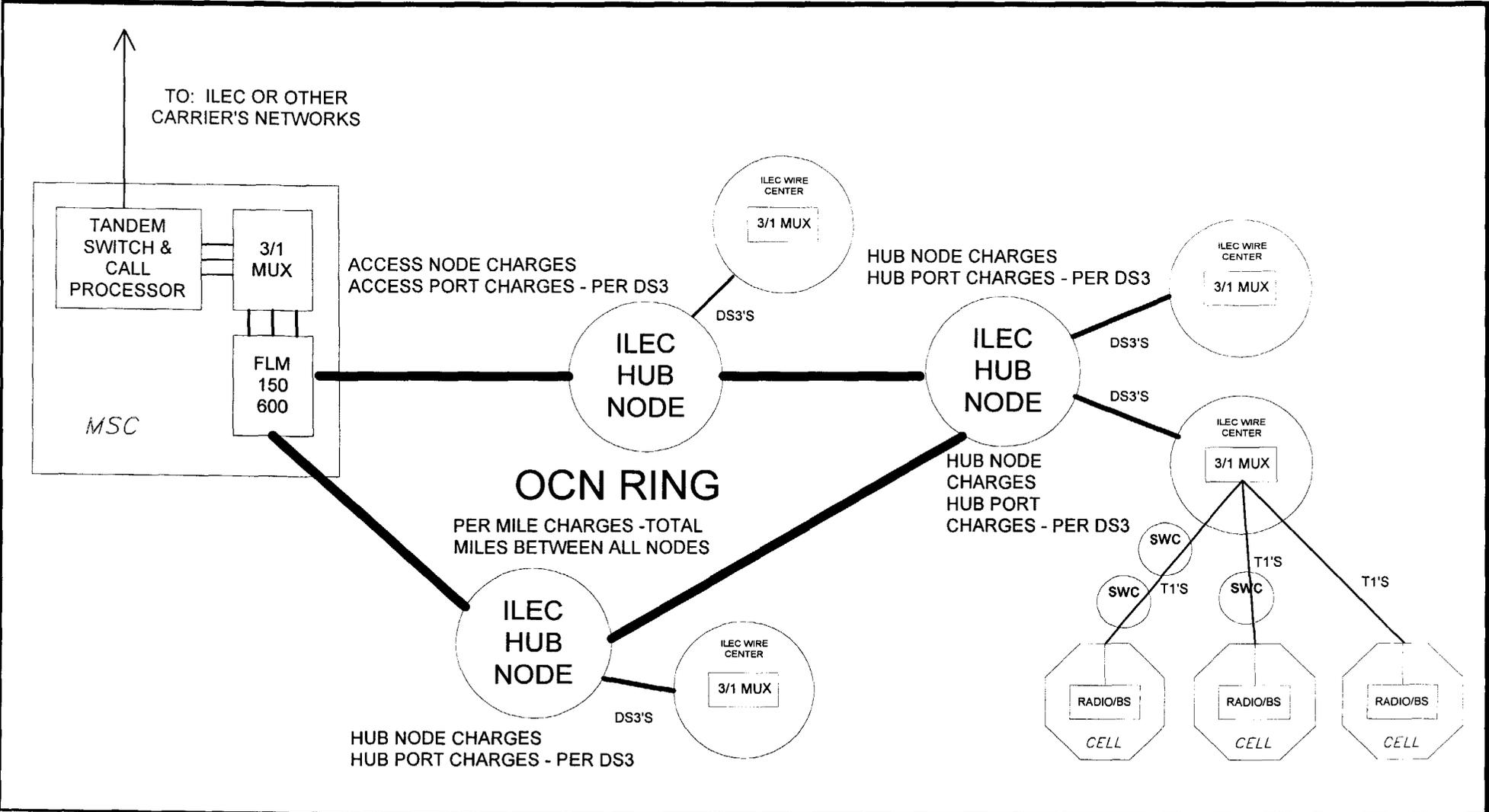
Finally, ILECs should be precluded from raising “co-mingling” objections. The “co-mingling ban” that exists today applies only to the conversion of special access facilities to EELs under the safe harbors established in the Supplemental Order Clarification. No further co-mingling restriction has been adopted by the Commission. Moreover, the policy objectives of that limited “co-mingling ban” -- to temporarily preclude IXC’s from bypassing special access services -- has no application to the CMRS carriers’ request. The CMRS carriers utilize these facilities to provide local service, not special access service.

PRIVATE LINE NETWORK (Point-to-Point)



OCN RING

(Primarily used in Metropolitan Areas)



PSTN NETWORK

