

A. The Rate Center Issue.

1. Wireless Carriers are from Venus; wireline carriers are from Mars

The CTIA's Petition arises out of the "Rate Center Issue," articulated by the NANC's WWITF in the May 8, 1998 NANC report.¹ In that report, both sides of the issue set out their respective views. From the wireline carriers' perspective, the issue is seen as one of disparity of treatment; *i.e.*, with respect to telephone number portability, wireless carriers will have a competitive advantage over wireline carriers.²

This advantage is a product of the differences between the two services. As the name implies, wireline service is fixed and static; wireline carriers are literally tethered to their customers by wire. For the wireline carrier, rating and routing for both local and toll calls are based on the use of rate centers. Rate centers may embrace a single wire center, a portion of a wire center, or multiple wire center areas.³ Typically, a wireline local calling area may encompass multiple rate centers. A wireline call within a rate center or between rate centers could be billed as a flat rate call or a measured rate call or a toll call. Differences in local billing will depend on state regulations and the carrier's state tariffs. Generally, for wireline carriers, central office codes (NXXs) are assigned to individual central office switches and used in the geographic wire center serving area within a rate center. A wireline carrier's customer will be

¹ North American Numbering Council, "Local Number Portability Administration Working Group Report on Wireless Wireline Integration," (May 8, 1998). (*NANC Working Group Report*). A copy of this report was attached as Attachment A to the Petition.

² *NANC Working Group Report Appendix D – Rate Center Issue § 1.3 Wireline Position* Paper p. 39 ("All parties recognize that a difference exists in the scope of number portability when porting from a wireless to a wireline service provider as compared to porting from a wireline to a wireless service provider. Porting from a wireline to a wireless service provider is virtually unlimited — the end user can be physically located anywhere, while porting from a wireless to a wireline service provider is narrowly limited to the situation where the wireless end user is physically located with the rate center associated with the NPA-NXX of the end user's telephone number.")

³ "A rate center is a geographical area [that] utilizes a common geographical point of reference, called a rating point and defined by vertical and horizontal (V/H) coordinates, for distance measurements associated with call rating." *NANC Working Group Report, Appendix D*, p. 32.

assigned a telephone number based on his or her physical location within the wire center serving area.⁴ This assignment allows for calls to be billed based on the rate-center method.

Wireless service, however, is mobile, not fixed. And, while not entirely deregulated, wireless carriers are not as regulated as incumbent LECs. For example, wireless carriers do not file state or federal tariffs setting out their prices. How a wireless carrier decides to structure its rates is solely a business decision. While it is true that NXX codes assigned to wireless carriers are associated with a specific wireline rate center, these assignments are made to facilitate wireline to wireless call rating.⁵ As noted in the *NANC Working Group Report*, wireless carriers have great latitude in assigning telephone numbers and are free to assign telephone numbers from these NXXs throughout the carrier's calling area:

[O]nce NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber. The WSP [wireless service provider] may select a particular NPA-NXX value based on customer desires of calling areas for land to mobile calls, land calls, or a combination of both. Alternatively, a wireless carrier may choose to select an NPA-NXX that is physically closest to the subscriber billing address. There are no state or federal requirements to associate an NPA-NXX for a new subscriber based on [the subscriber's] residence, billing, or other location.⁶

In brief, except for interacting with wireline carriers, rate centers are totally irrelevant to wireless carriers.

When the NANC adopted and recommended its "LNP Architecture and Administrative Plan," it proposed, and this Commission adopted, a rate center limitation on wireline-to-wireline porting.⁷ This limitation was not recommended for anti-competitive reasons, rather the

⁴ "ILEC customers will be assigned a telephone number from the NXX(s) assigned to the switch that serves the wire center and rate center area in which the customer is physically located. CLEC customers will be assigned a telephone number from the NXX(s) assigned to the CLEC for the rate center area in which the customer is physically located." *NANC Working Group Report* Appendix D p. 33.

⁵ *Id.*

⁶ *Id.* at p. 34. ("The customers [sic] physical, residential, business or billing location is not a necessary requirement in determining which numbers are assigned. . . . There is no requirement that a subscriber limit their [sic] service usage to certain rate centers, nor is their physical location necessarily a determining factor in which number they are assigned.").

⁷ "[L]ocation portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns." NANC, "Local Numbering Portability Administration Selection Working Group," Appendix D – Architecture & Administrative Plan

limitation is a practical one: incumbent LECs, who are highly regulated and who do not share the flexibility of their competitors, have legitimate rating/routing concerns tied to the rate center structure. To ignore this regulatory reality would not have been in the best interests of either the industry or consumers. Indeed, the Commission acknowledged this regulatory reality early on by refusing to require location portability and in assigning to the state commissions the task of evaluating whether location portability was technically feasible and desirable:

To avoid the consumer confusion and other disadvantages inherent in requiring location portability, however, we believe state regulatory bodies should determine, consistent with this Order, whether to require carriers to provide location portability. *We believe the states should address this issue because we recognize that "rate centers" and local calling areas have been created by individual state commissions, and may vary from state to state. To the extent rate centers and/or local calling areas vary from state to state, the degree of location portability possible without causing consumer confusion may also vary.* We therefore expect state regulatory bodies to consider the particular circumstances in their respective locales in determining whether to require carriers to implement location portability.⁸

Although entirely reasonable, the rate center limitation to porting means that, in order for a wireless customer to switch to a wireline competitor and have his or her number ported to the new carrier, “the wireless end user must be located within the rate center associated with the NPA-NXX of the end user’s telephone number.”⁹ For example, using the Figure 4D in Attachment A to these comments, wireless subscriber 972/234-3333, whose billing location is in rate center F (RC F) would not be able to change to a wireline service provider while remaining at his or her same location because the subscriber is located in RC F while the subscriber’s telephone number is assigned to rate center A (RC A).¹⁰

It is because of this disparity that the WWITF posed three questions to the Commission for resolution:

for Local Number Portability, § 7.3, p. 6 (April 25, 1997). (*Working Group Report*) See 47 C.F.R. § 52.26.

⁸ *Telephone Number Portability*, 11 FCC Rcd 8352, 8449 (1996) (emphasis supplied).

⁹ *NANC Working Group Report*, Appendix D, p. 39.

¹⁰ Attachment A to these Comments include Figures 4A – 4D used in the *NANC Working Group Report*, Appendix D, to set out demonstrative scenarios. See *NANC Working Group Report*, Appendix D, § 5.0 Example Porting Scenarios, pp. 34-35.

- Does the difference in the scope of porting capabilities between wireless and wireline service providers create a competitive disadvantage which [sic] would be inconsistent with the FCC's objectives for numbering?
- If so, is this competitive disadvantage overridden by the FCC's order to implement wireless-wireline portability to encourage CMRS-wireline competition?
- Would the inability in certain situations for a wireless end user, staying at the same location, to keep their [sic] telephone number when changing to a wireline service provider be acceptable from a statutory or regulatory perspective?¹¹

SBC contends that the difference in the scope of porting capabilities between wireless and wireline service providers does create a competitive disadvantage for wireline carriers that is inconsistent with the Commission's objectives for numbering. Nevertheless, the Commission can assist the industry in arriving at a solution that, while not perfect, more faithfully adheres to the principles underlying number portability. That solution, however, would not include running roughshod over the rate center model for rating and routing. For its part, CTIA would have the Commission ignore the regulatory reality of rate centers and formalize the competitive advantage the wireless carriers presently enjoy with respect to number porting.

2. The Commission should assist the WWITF in addressing the rate center issue without giving wireless carriers a competitive advantage.

In 1998, when the *NANC Working Group Report* was sent to the Commission, some members of the WWITF did not see mobile wireless service as in direct competition with wireline telephony.¹² If this was ever true in 1998, it certainly is not true today. Wireline carriers are reporting the loss of access lines to wireless carriers at an increasing rate.¹³ Indeed, as reported in the *UNE Fact Report 2002*:

¹¹ Letter from Woody Kerkeslager and Terry Appenzeller to Alan C. Hasselwander, Chairman, NANC, dated January 7, 1998. See *NANC Working Group Report*, Appendix D, p. 31.

¹² "Because no service competition exists and is not expected in the foreseeable future, the recommended course of action is to defer the introduction of portability between wireless and wireline service providers until a clear and real competitive need exists." *NANC Working Group Report*, Appendix D, pp. 42-43.

¹³ "While firm data is difficult to come by, analysts estimate that 3 to 5 percent of wireless customers use their wireless phones as their only phone. Though these estimates indicate that relatively few wireless customers have "cut the cord" in the sense of canceling their subscription to wireline telephone service, there is growing evidence that consumers are substituting wireless service for traditional wireline communications. One analyst claimed that 20 percent of residential customers had replaced "some" wireline phone usage with wireless, and that 11

Independent experts now almost uniformly conclude that wireless is a significant competitive substitute for second-line service today. For example, IDC found that, as of year-end 2001, “10 million wireline access lines will have been displaced by wireless, primarily by consumers choosing wireless service over installing an additional access line at home. IDC estimates that, by 2005, wireless phones will replace 30 to 35 percent of second and additional wireline access lines. Many other independent analysts have reached similar conclusions.¹⁴

This change in the competitive landscape makes it even more important that the rate center issue be resolved in a manner creating more, not less, competitive parity.

Whatever other agenda CTIA may have, it seeks nothing less than an FCC seal of approval on a competitive advantage favoring CRMS providers. CTIA wants the Commission to approve a wireline/wireless number porting integration plan that would allow the porting of numbers from wireline carriers to wireless carriers anywhere within the wireless carriers’ serving area but restrict, either *de jure* or *de facto*, the porting of numbers from wireless carriers to wireline carriers to those occasion where the subscriber lives in the rate center designated for the wireless switch.

There are alternatives to this disparity scenario, some of which are discussed in the *NANC Working Group Report*.¹⁵ These alternatives include:

- Location portability, which has been referred to the state commissions for the same reasons that created the disparity in the first instance, the rate center model for rating and routing calls.

percent had replaced a “significant percentage.” According to a USA Today/CNN/Gallop poll, almost one in five mobile telephony users regard their wireless phone as their primary phone. . . . Several local carriers have attributed declining access line growth rates in part to substitution by wireless. The number of residential access lines served by BellSouth, SBC, and Verizon dropped by almost 3 percent during 2001, more than 2.5 million lines. A top executive at Verizon attributed the decline in the number of access lines served by his company, the first in the company’s history, in part to the shift to wireless phones. One study estimated that, by the end of 2001, wireless had displaced 10 million access lines, primarily by consumers choosing wireless over installing additional access lines.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market conditions With Respect to Commercial Mobile Services*, 17 FCC Rcd 12985, 13017 (2002).

¹⁴ *UNE Fact Report 2002*, Prepared for and submitted by BellSouth, SBC, Qwest, and Verizon in *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; etc.*, CC Dockets Nos. 01-338, 96-98, and 98-147 (April 2002). See Attachment B.

¹⁵ *NANC Working Group Report*, Appendix D, pp. 41-44 and 46-47.

- Rate center consolidation/modification, which suffers from many of the same issues as location portability and therefore requires individual state commission action.
- Numbering assignment, which would require wireless carriers to be assigned an NXX for each rate center in which they offered service and the assignment of telephone numbers based on the physical location of the wireless customer.

Regardless of whether any of these alternatives are acceptable to the Commission, it is clear that, as requested in 1998, the NANC needs direction from the Commission with respect to the rate center issue. CTIA, however, has not made the case that the question ought to be resolved by codifying a gross competitive advantage to wireless carriers.

B. CTIA’s Proposed Service-Level Agreement Is Inconsistent With the Incumbent LEC’s Obligations Under Sections 251 and 252.

CTIA asserts, but does not factually or legally support, a contention that interconnection agreements are not necessary to telephone number porting.¹⁶ CTIA contends that “a standard service-level porting agreement” is all that is needed.¹⁷ One problem with this contention is that there is no such thing as a “standard service-level porting agreement.”

By standard service-level porting agreement, CTIA is really talking about a proposed agreement created by the CTIA for its members. There is no industry-wide consensus on the terms and conditions of a service-level porting agreement. Other than the obvious legal issues arising from the CTIA’s assertion, there is a notable problem with the CTIA’s plan: if the parties cannot agree on the terms of a service-level porting agreement, there is no one to whom the parties can turn to resolve the impasse.

All LECs are required by section 251(b)(2) to provide “number portability in accordance with requirements prescribed by the Commission.”¹⁸ When requested, incumbent LECs are also required to negotiate in good faith the particular terms and conditions of agreements to fulfill duties described in sections 251(b) and (c), including the duty to provide number portability.¹⁹

¹⁶ Petition, p. 1.

¹⁷ *Id.*

¹⁸ 47 U.S.C. § 251(b)(2).

¹⁹ 47 U.S.C. § 251(c)(1). *See Law offices of Curtis V. Trinko v. Bell Atlantic Corp.*, 305 F.3d 89 (D.C. Cir. 2002) (*Trinko*) (“[S]ection 251 defines duties between telecommunications carriers. It is clear that the duties enumerated in section 251 regulate the relationships between

In last year's *Qwest Order*, this Commission ruled that, "[b]ased on these statutory provisions [sections 251 and 252], . . . an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)."²⁰ Consequently, an agreed upon document that sets out the terms and conditions by which incumbent LECs provide number portability is an interconnection agreement and must be filed with the appropriate state commission.²¹ Among other things, this mechanism guarantees the parties their right to negotiate and enter into a binding agreement "without regard to the standards set forth in subsections (b) and (c) of section 251."²² What's more, it provides a means of resolving disputes concerning those terms and conditions²³ and allows public scrutiny of any such agreements.²⁴ By means of its Petition, CTIA seeks nothing less than an abrogation of Congressional will as codified in sections 251 and 252.²⁵

telecommunications carriers, especially those that are seeking to enter the market for local phone service, rather than the relationships between telecommunications carriers and consumers. In fact, the Committee Report notes that section 251 'imposes a general duty to interconnect directly or indirectly *between all telecommunications carriers. ...*' *H.R. Conf. Rep. 104-458, 1996 WL 46795, at 121 (1996) (emphasis added).*)

²⁰ *Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, 17 FCC Rcd 19337, 19341 (2002) (*Qwest Order*).

²¹ 47 U.S.C. § 252(h).

²² 47 U.S.C. § 252(a)(1). *See Tinko*, 305 F.3d at 103 ("Such interconnection agreements do not necessarily reiterate the duties enumerated in section 251. Instead, the ILEC and requesting carrier have the option of contracting around the obligations set forth in subsections (b) and (c) of section 251. Section 252(a)(1) of the Telecommunications Act provides: 'upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers *without regard to the standards set forth in subsections (b) and (c) of section 251....*' 47 U.S.C. § 252 (a)(1) (emphasis added).").

²³ 47 U.S.C. § 252(b).

²⁴ 47 U.S.C. § 252(h).

²⁵ It is also true that incumbent LECs may file Statements of Generally Available Terms, pursuant to 47 U.S.C. § 252(f).

Conclusion

CTIA has not met its burden of proof with respect to the remedy it seeks. There is no basis on which the Commission can rule that the CTIA's plan to enshrine competitive inequality in inter-modal telephone number porting is or ought to be the law. Moreover, CTIA's position on interconnection agreements is contrary to the express provisions of sections 251 and 252, as well as the opinions stated in the recently released *Qwest Order*. For these reasons, CTIA's Petition should be denied.

Respectfully submitted,

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ATTACHMENT A

LATA X

LATA Y

Wireless Service Area

FIGURE 2

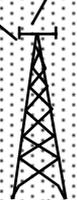
MSA B

W11 Mobile

RC X2

RC X3

W5 Mobile



MSC

N P A
3

RC X1

RC X2

RC X3

RC C

RC D

RC E

RC F

RC G

RC H

RC I

RC J

RC K

RC B

RC 8

RC 7

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

RC 0

W-11
972-234

W-5
214-543

TIER 1

TIER 2

RC A

RC 7

RC 6

RC 5

RC 4

RC 3

W-5
214-543

RC 1

RC 7

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

RC 0

W-5
214-543

RC 1

RC 7

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

RC 0

W-5
214-543

RC 1

RC 7

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

RC 0

N P A
1

RC 5

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

RC 0

N P A
2

RC 5

RC 6

RC 5

RC 4

RC 3

RC 2

RC 1

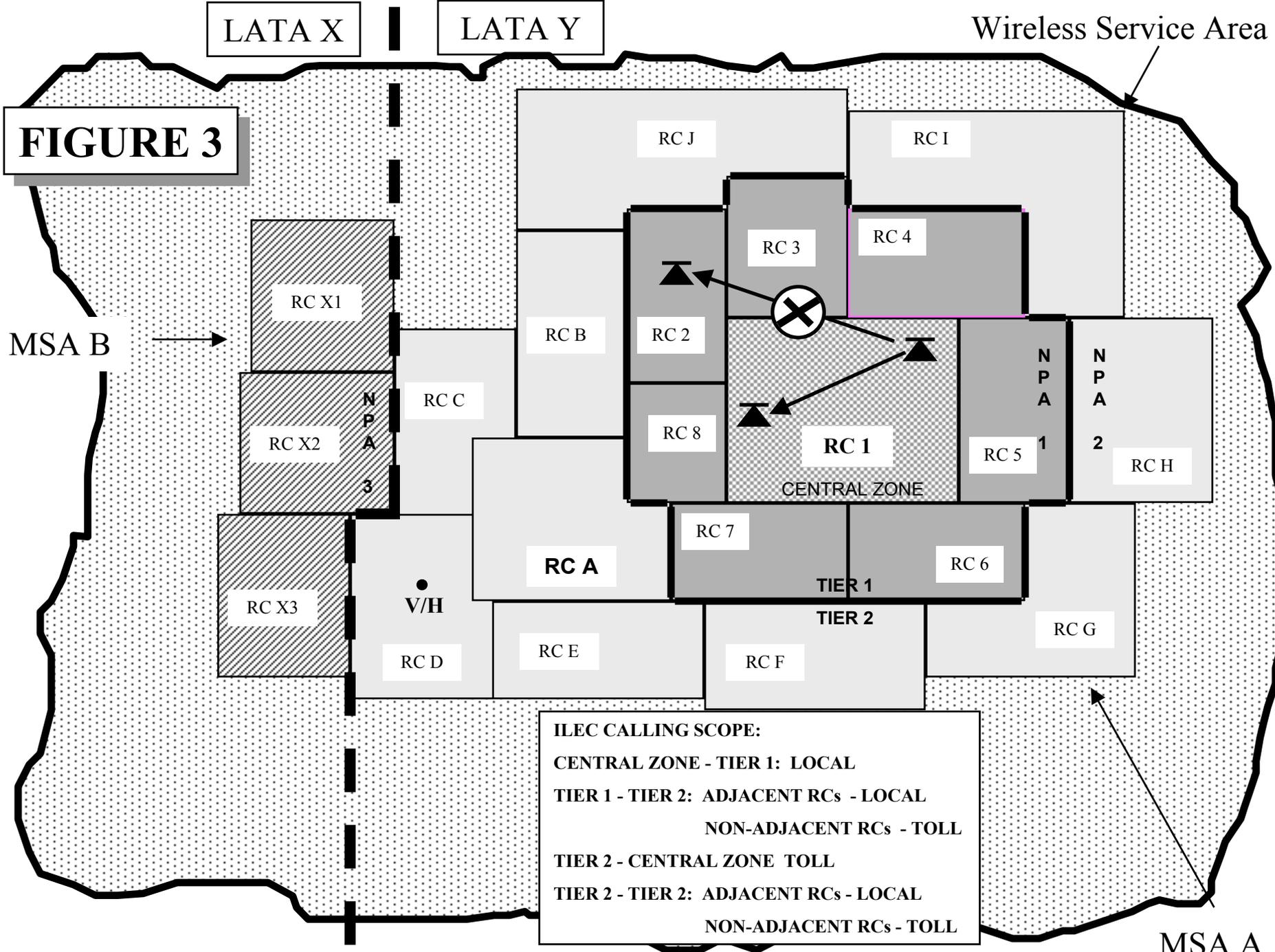
RC 0

RC H

ILEC CALLING SCOPE:
CENTRAL ZONE - TIER 1: LOCAL
TIER 1 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL
TIER 2 - CENTRAL ZONE TOLL
TIER 2 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL

MSA A

FIGURE 3



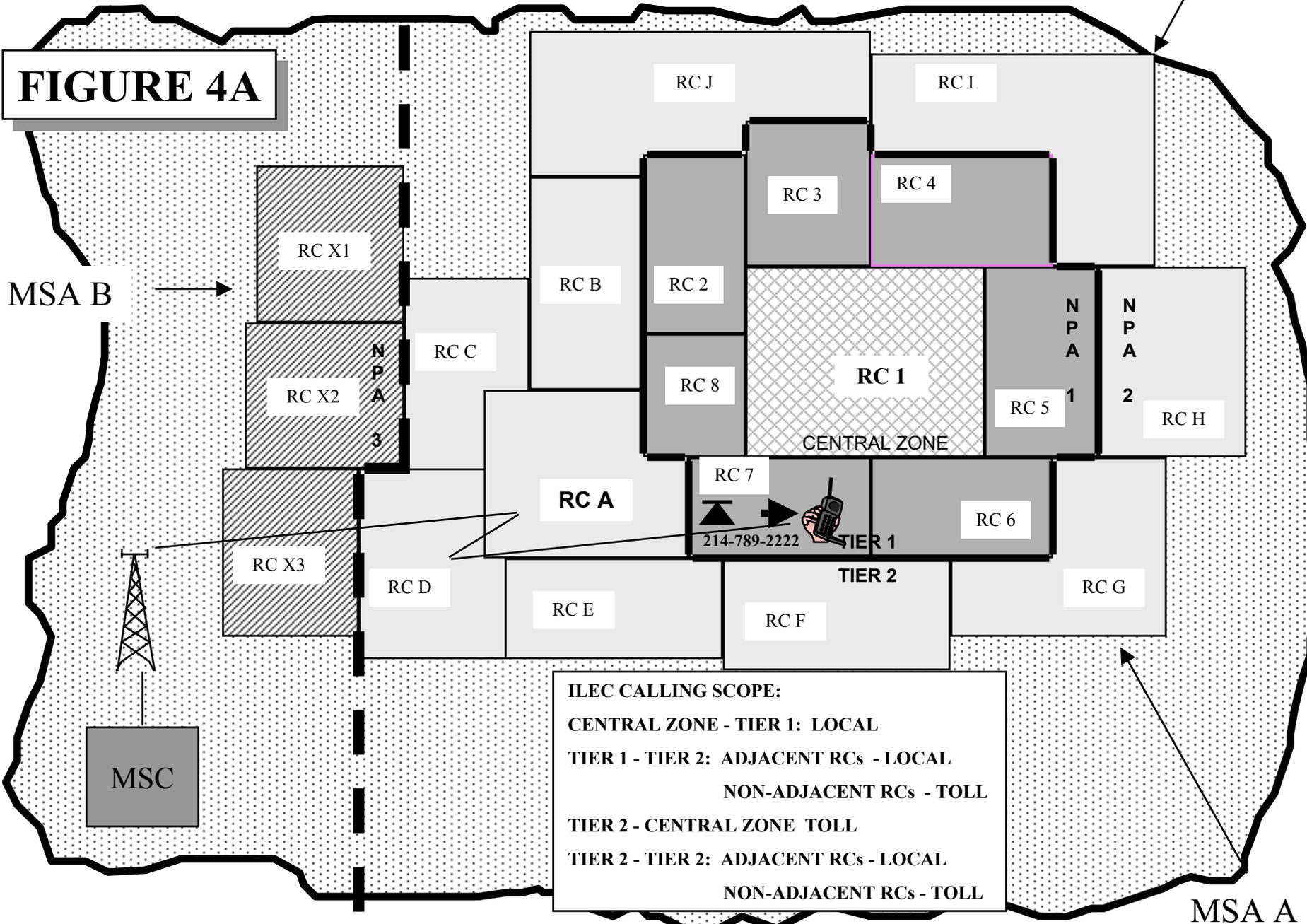
LATA X

LATA Y

Wireless Service Area

FIGURE 4A

MSA B



ILEC CALLING SCOPE:

CENTRAL ZONE - TIER 1: LOCAL

TIER 1 - TIER 2: ADJACENT RCs - LOCAL

NON-ADJACENT RCs - TOLL

TIER 2 - CENTRAL ZONE TOLL

TIER 2 - TIER 2: ADJACENT RCs - LOCAL

NON-ADJACENT RCs - TOLL

MSA A

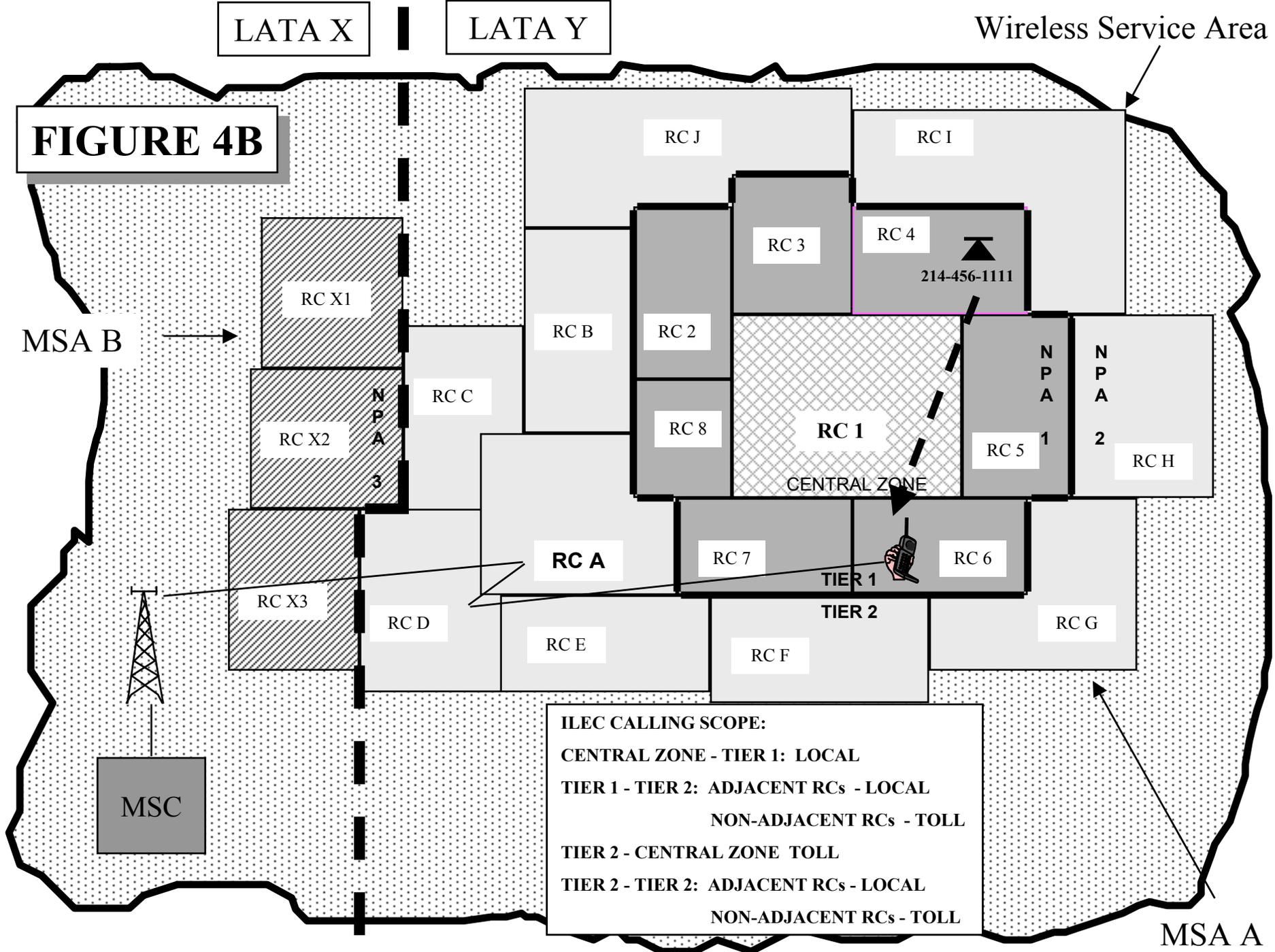
LATA X

LATA Y

Wireless Service Area

FIGURE 4B

MSA B



N
P
A
3

N
P
A
1

N
P
A
2

ILEC CALLING SCOPE:
CENTRAL ZONE - TIER 1: LOCAL
TIER 1 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL
TIER 2 - CENTRAL ZONE TOLL
TIER 2 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL

MSA A

LATA X

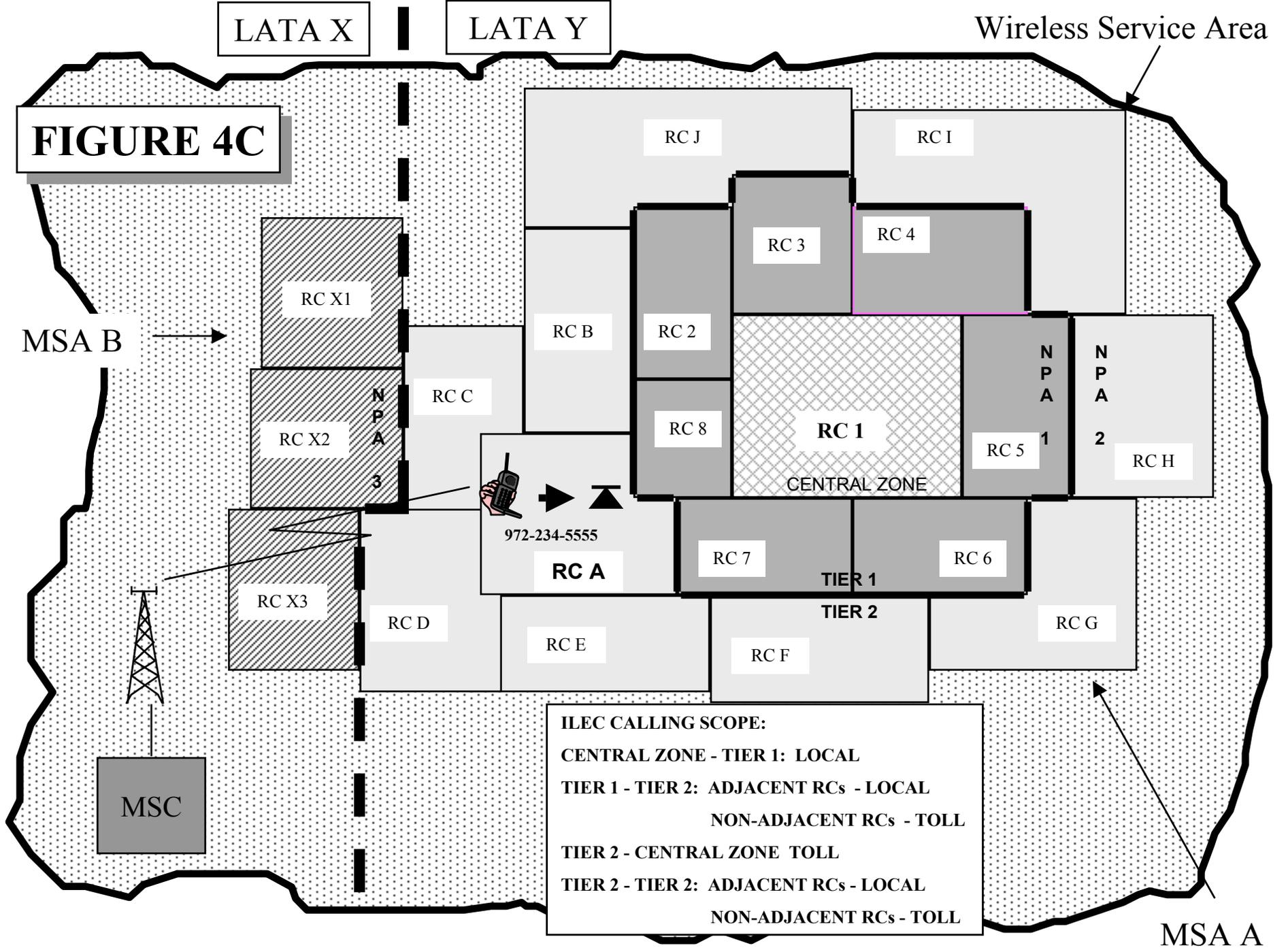
LATA Y

Wireless Service Area

FIGURE 4C

MSA B

MSA A



ILEC CALLING SCOPE:
CENTRAL ZONE - TIER 1: LOCAL
TIER 1 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL
TIER 2 - CENTRAL ZONE TOLL
TIER 2 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL

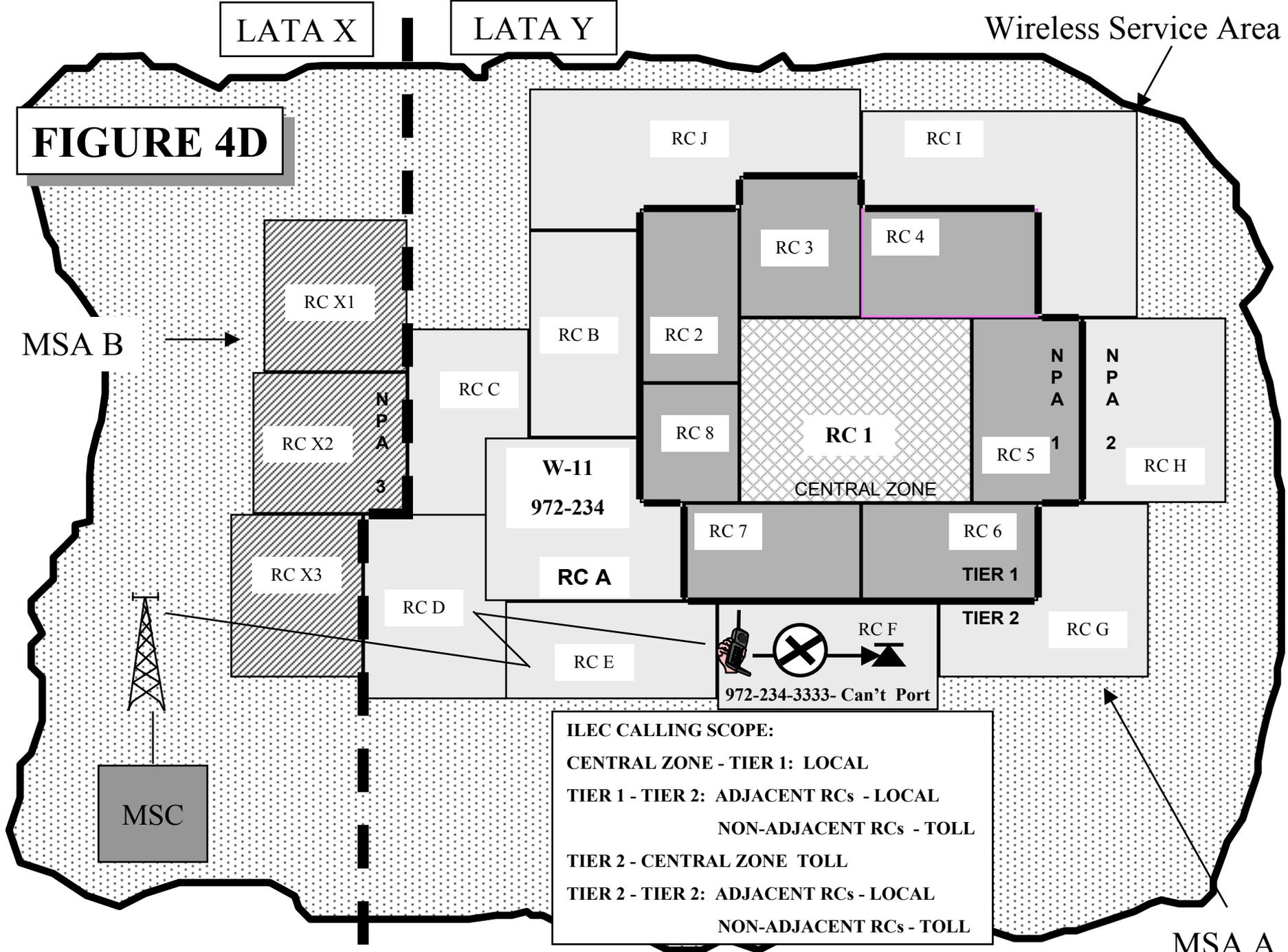
LATA X

LATA Y

Wireless Service Area

FIGURE 4D

MSA B



RC X1

RC J

RC I

RC X2

RC B

RC 2

RC 3

RC 4

RC X3

RC C

RC 8

RC 1

NPA 1

NPA 2

RC H

W-11
972-234

CENTRAL ZONE

RC 5 1

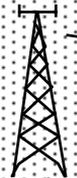
RC 5 2

RC A

RC 7

RC 6

TIER 1



MSC

RC D

RC E



972-234-3333- Can't Port



RC F

TIER 2

RC G

ILEC CALLING SCOPE:
CENTRAL ZONE - TIER 1: LOCAL
TIER 1 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL
TIER 2 - CENTRAL ZONE TOLL
TIER 2 - TIER 2: ADJACENT RCs - LOCAL
NON-ADJACENT RCs - TOLL

MSA A