

# **LEVEL 3 FORBEARANCE PETITION**

WC DOCKET 03-266

March 2005



# >> Why Should the FCC Deny the Level 3 Petition

## I. Petition Vague as to Relief Requested

✍ Recent ex partes claim to clarify some issues but appear inconsistent with Petition.

## II. No Immediate Problem

✍ Any questions about current rules clearly have not slowed VoIP roll-out.

## III. Proposed Relief Inconsistent with Goals of Inter-Carrier Compensation Reform

✍ Adds complexity to current regime

✍ Encourages greater arbitrage

✍ Not cost-based

✍ Eliminates incentives to “stay at the table.”

## >> Exponential VoIP Growth

As opposed to the minimal VoIP growth rate suggested by Level 3 in its petition, analysts expect residential VoIP subscriptions to triple in 2005 with accelerated growth through 2010.

- ✍ Year-end 2004 residential VoIP customers totaled **1.13M**
- ✍ Year-end 2005 residential VoIP customers projected at **3.4M**
- ✍ VoIP expected to reach **29.2M** residential customers by 2010

**The speed at which VoIP is penetrating U.S. households, and thus the volume of IP-enabled traffic that would be subject to Level 3's forbearance petition, is expected to grow exponentially in the coming years.**

Source: Pike & Fischer, VoIP Monitor, January 05, 2005, Article ID: 12185119. Note: Projected VoIP subscriptions include U.S. households only.

## >> VOIP Subscribership Continues to Grow

- ✍ Vonage is adding 10,000 to 15,000 VoIP customers per week, while cable operators such as Time Warner and Cablevision are adding 10,000 and 8,000 new VoIP customers each week, respectively.
- ✍ Vonage forecasts that its residential subscribers in the U.S. will nearly triple this year from approximately 1 million customers in 2004 to 2.8 million by the end of 2005.
- ✍ Business use of VoIP is expected to nearly triple this year, with the percentage of businesses with VoIP growing from 12% to 34% by the end of 2005.

## >> VOIP Prices are Low and Getting Lower

- ✍ VoIP prices are currently 30-40% below comparable circuit-switched offerings.
- ✍ Vonage offers service for \$25, while AT&T charges \$30 for its unlimited local and long distance VoIP service.
- ✍ Dialpad just announced an unlimited calling plan for only \$11.99 per month.

## >> VOIP Providers are Enjoying Sizeable Profit Margins

- ✍ Vonage reports profit margins of 70% headed to 80%.
- ✍ Cable operators report profit margins for VoIP between 40% and 60%.

## >> Additional Industry Disputes

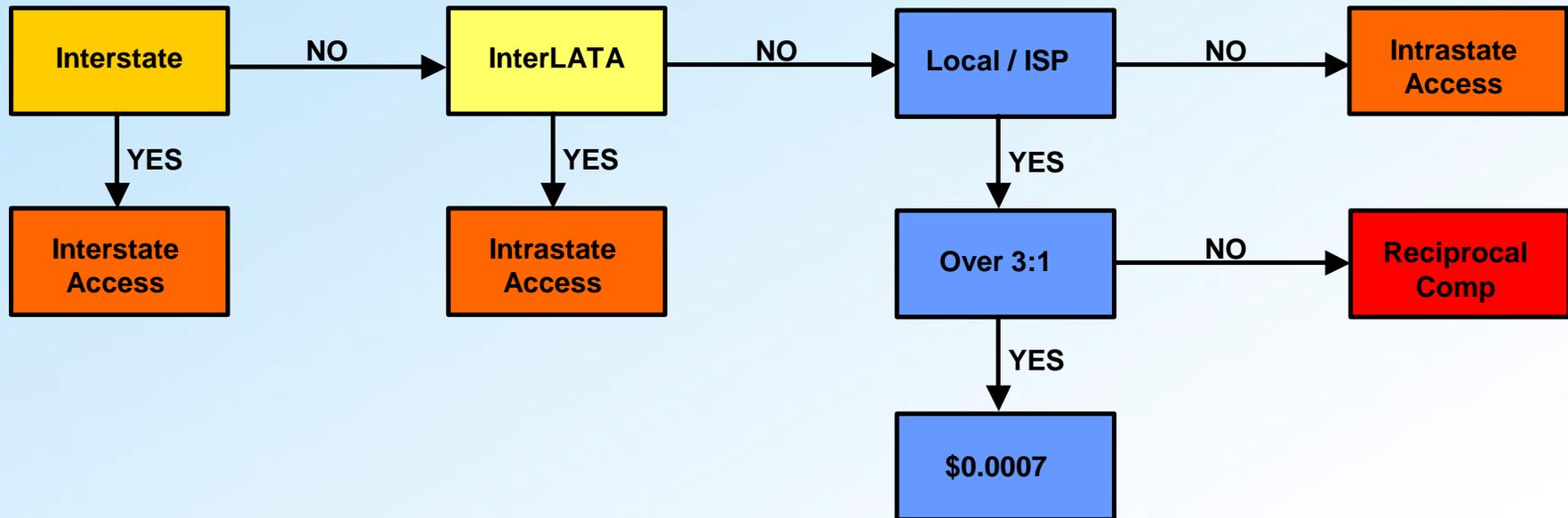
- ✍ If Level 3's forbearance petition is granted, the FCC will have necessarily decided that IP-PSTN traffic was subject to access charges.
- ✍ Carriers will seek to collect unpaid access charges for IP-PSTN and "incidental" PSTN-PSTN traffic exchanged prior to any forbearance being granted.
- ✍ Because of the difficulties in identifying IP traffic and with opportunities for arbitrage, there will likely be numerous disputes about what charges should apply.

## >> No Realistic Plan to Implement

- ✍ Today, usage is divided into several different call rating categories based on the jurisdiction of the physical end points of the call (e.g., interstate, intrastate, and local).
- ✍ Currently, there is no method in place for carriers to differentiate between IP traffic and non-IP traffic for compensation purposes.
- ✍ It is not even clear what type of traffic would be subject to Level 3's petition (e.g., "incidental" PSTN-PSTN) and how such traffic would be captured for call rating purposes.
- ✍ Allowing carriers to pay a lesser rate for IP-PSTN calls that were formerly access calls would provide carriers with an incentive to misrepresent traffic as IP, which is difficult, if not impossible, to even identify.

# >> No Realistic Plan to Implement

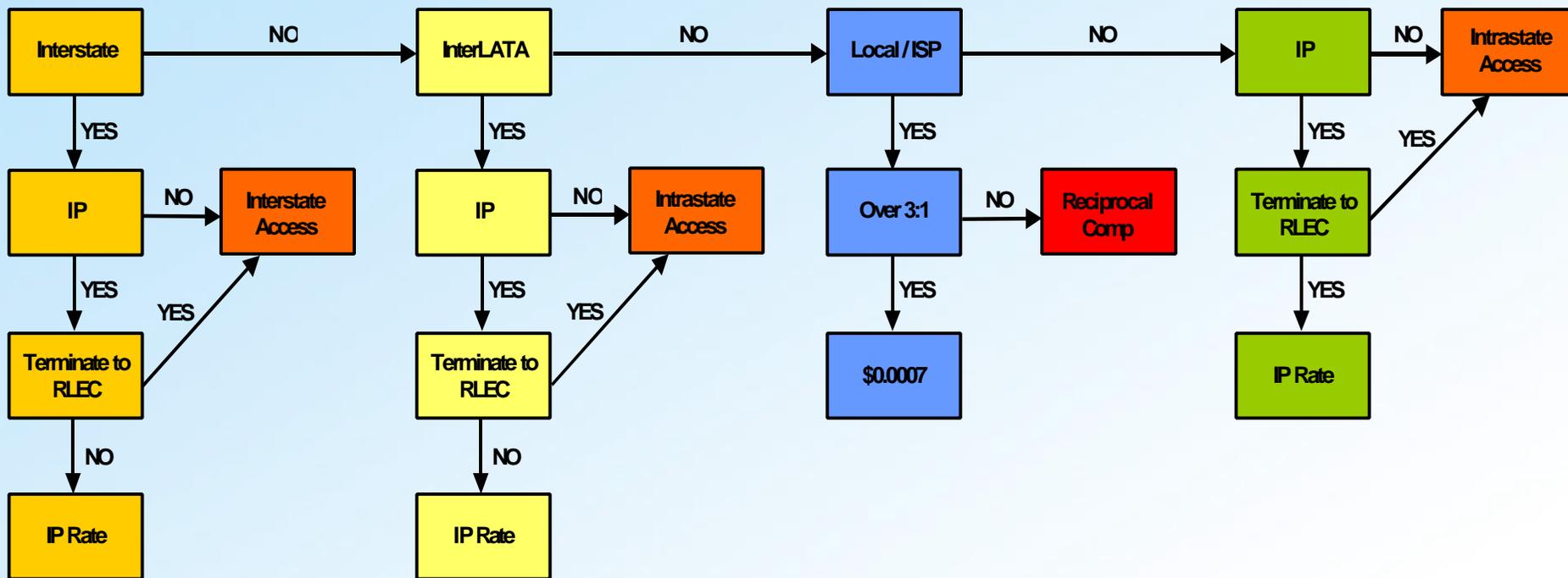
Today's Rules if the Traffic is...



To simplify diagram interstate intraLATA traffic, CMRS traffic, and transit interconnection regime not included. Additionally, this diagram is based on the current compensation regime established by the FCC. Virtual NXX is not addressed.

# >> No Realistic Plan to Implement

Rules resulting from Level 3's request if the traffic is...



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## >> FCC Lacks Legal Authority to Grant Relief

- ✍ Level 3's petition fails to satisfy the requirements for regulatory forbearance under Section 160(a).
- ✍ The FCC cannot forbear from applying or enforcing only a portion of Section 251(g) as Level 3 requests.
  - ✍ Equal access and nondiscriminatory requirements under the pre-1996 Act regime and the right to receive access charges are intertwined
  - ✍ FCC's forbearance authority is limited to "regulation" or "provision"
  - ✍ Section 251(g) pre-1996 Act regime must remain in place until changed by "regulations prescribed by the Commission..."
- ✍ FCC cannot lawfully subject IP traffic to reciprocal compensation under Section 251(b)(5).
  - ✍ Section 251(b)(5) is limited to local traffic and cannot lawfully be extended to interstate traffic
  - ✍ Extending Section 251(b)(5) to interstate traffic is an issue in dispute in the WorldCom remand proceeding
  - ✍ Subjecting IP traffic to Section 251(b)(5) would allow states to establish rates for traffic determined to be within the Commission's exclusive authority