

TAB D

An Analysis of the Missoula Plan Rules for Interconnection for Non-Access Traffic

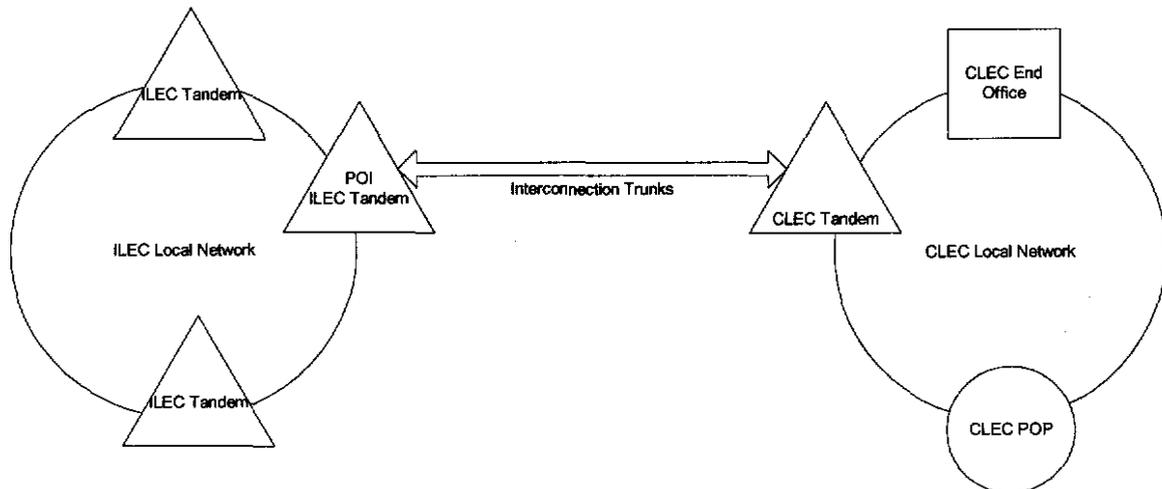
Interconnection Architecture

The Missoula Plan fundamentally recreates the ways in which ILECs and their competitors interconnect for the exchange of “non-access” traffic (i.e., all traffic for which there is no long distance toll charge). The current rules governing interconnection between an ILEC and a competitor (CLEC, wireless carrier, or cableco) are clear and well-established. The FCC’s Wireline Competition Bureau reviewed and summarized these rules in its landmark *Virginia Arbitration Order* (“VAO”).¹ The bureau stated:

Under the Commission’s rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA. The Commission’s rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC’s network. Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic. VAO, ¶52

The “point of interconnection” in this architecture is generally referred to as the “POI.”

Diagram 1: Basic POI Interconnection Architecture



The Missoula Plan eliminates the concept of POI and all of its related architecture, replacing it with the concept of “Edges” and a wholly new architecture. An “Edge” is a point that the carrier terminating traffic on behalf of another carrier designates to receive originating traffic from the other carrier. Plan, III.B.1. A carrier

¹ Memorandum Opinion and Order, *In the Matter of Petition of WorldCom Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218 *et al.* (rel. July 17, 2002).

must designate at least one Edge in each LATA in which it receives traffic from another carrier, and may designate more than one. Plan, III.B.2.a. Track 1 carriers (i.e. RBOCs and competitive carriers) may designate any access tandem as an Edge, but may not designate any end office that subtends its access tandem as an Edge. However, Track 2 and 3 carriers (i.e., rural LECs) may designate both access tandems and end offices, as well as newly-defined “POPs” and “trunking media gateways” as Edges.

In essence, the Plan reverses the interconnection architecture envisioned in the 1996 Act, and results in a scheme that overwhelmingly favors ILECs—and rural ILECs in particular—at the expense of competitors. ILECs may now designate their own Edge or Edges, without regard to a competitor’s designation of a single POI per LATA. Since ILECs generally operate many more switches in any one LATA than do their competitors, the Plan permits ILECs to expand the number of interconnection arrangements in each LATA, thereby multiplying the competitor’s network costs per LATA. A Track 1 RBOC may require a competitor to interconnect at each of its access tandems in a LATA, instead of a single access tandem POI per LATA, which is the norm today. A Track 2 or 3 rural ILEC can demand a competitor to interconnect at every single location that qualifies as an Edge: access tandem, end office, POP, and trunking media gateway.

Diagram 2: RBOC-CLEC Edge Architecture

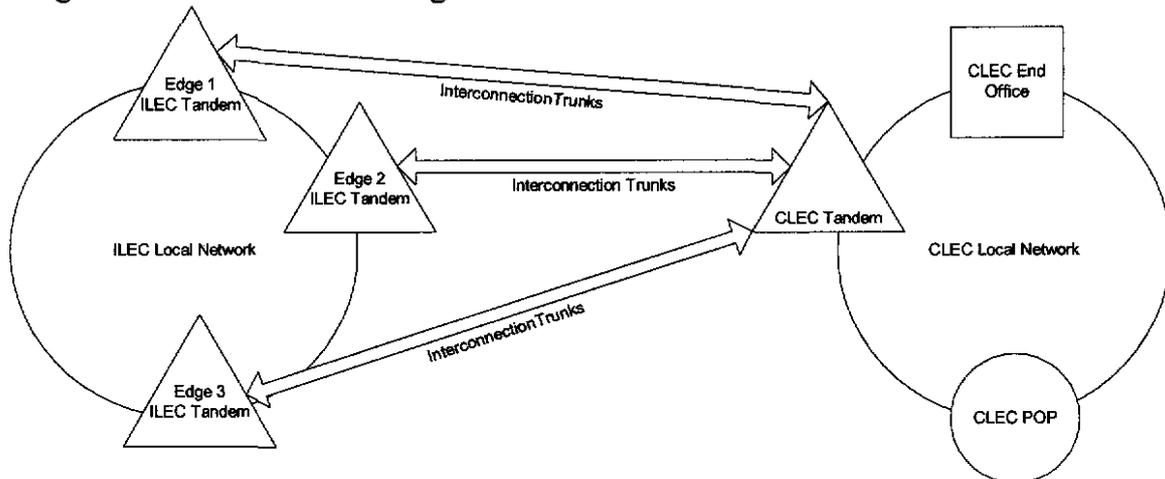
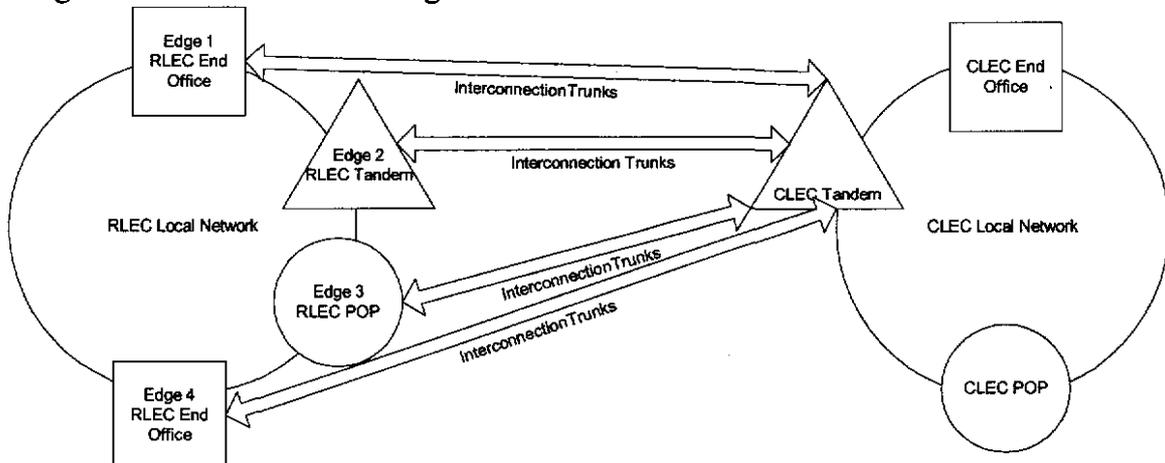


Diagram 3: RLEC-CLEC Edge Architecture



If adopted, the Missoula Plan's Edge architecture will have serious detrimental effects on facilities-based competitors. These companies have relied for as long as a decade on the existing interconnection rules, and have built their networks accordingly. The Plan's new Edge Architecture will enable RBOCs to double and triple competitors' interconnection costs in each LATA. It will enable rural ILECs to exponentially multiply competitors' interconnect costs. The practical effects of the Plan will be benefit RBOCs at the expense of competitors; to practically prohibit competitor interconnection with rural ILECs; and to eliminate any chance of competition in rural ILEC-controlled territories.

Transport Charges

Just as it remakes interconnection architecture, the Missoula Plan imposes a novel set of rules for the closely related issue of interconnection transport charges. In the interconnection context, "transport" is defined as a service that is used to transport one carrier's originating traffic from its network to the terminating carrier's network. Also referred to as an "entrance facility", transport may be self-provided by the originating carrier, purchased by the originating carrier from the terminating carrier, or purchased by the originating carrier from a third party carrier. In any event, each carrier is financially responsible for the transport required to take its originating traffic to a point (usually, a switch) on the terminating carrier's network.

The Wireline Competition Bureau has defined this originating transport duty as follows:

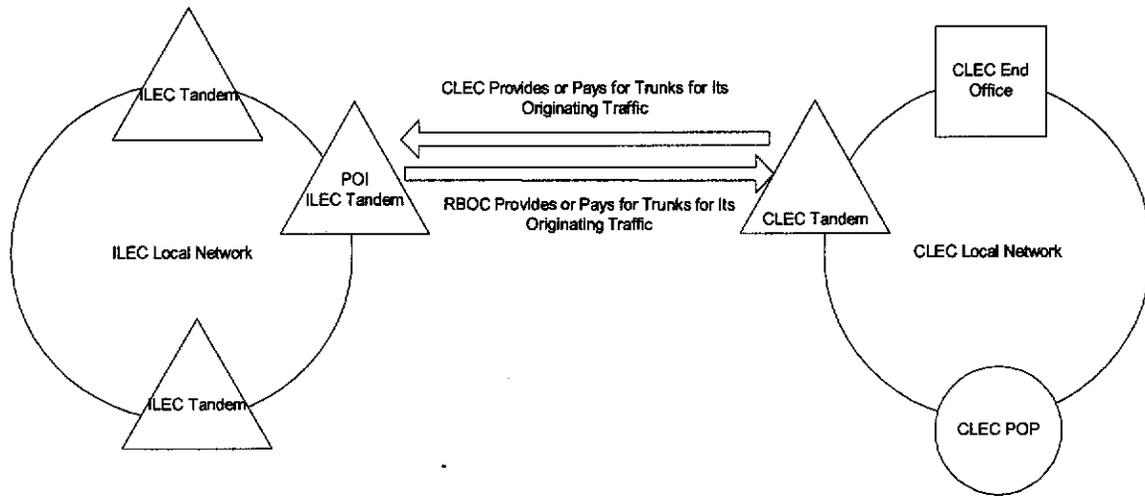
[A]ll LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination. VAO, ¶67.

* * *

This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will terminate on the providing carrier's network. VAO, ¶67 and note 187.

In essence, each party is financially responsible for the interconnection trunks (i.e., the raw units of transport) that carry its originating traffic to the other party's switch.

Diagram 4: Duty to Transport Originating Traffic Between Networks



Interconnection transport has traditionally been priced at the state commission-determined TELRIC rate applicable to the UNE product called “Entrance Facility.” VAO, ¶215-217. In the wake of the elimination of the Entrance Facility UNE, the FCC specifically preserved cost-based pricing under section 251(c)(2)(D) of the Act for interconnection transport.² Whether “cost-based” means TELRIC or not, the Pennsylvania Commission has specifically rejected special access pricing for this transport.³

The Missoula Plan replaces the existing transport rules with a complicated, multi-tiered system of rules and exceptions. The Plan defines “transport” as “the transmission facilities a carrier requires to physically interconnect its network with the terminating carrier’s Edge.” II.E.3.b. The Plan enables carriers that provide transport (usually, RBOCs) to assess “interstate dedicated switched transport rates”, which means special access rates. II.E.3.c.iii. *See also*, II.B.1.a.vi. The Plan has a special rule for “out of balance” traffic, by which a carrier that terminates more than three times as much traffic as it originates with another carrier assumes the financial responsibility for transport of all traffic originated or terminated by both carriers. II.E.3.d.

² Order on Remand, *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, at ¶140 (rel. Feb. 4, 2005).

³ Opinion and Order, *Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Arbitration*, Pa. P.U.C. Docket No. P-00042092, at 10 (July 21, 2006). (“[W]e find that all transport previously provided under the rubric of entrance facilities should not be presumed to be priced as special access.”)

Diagram 5: Duty to Transport “In-Balance Traffic” Under the Missoula Plan
 (Assume CLEC needs 100 trunks to carry its originating traffic; and ILEC needs 300 trunks to carry its originating traffic)

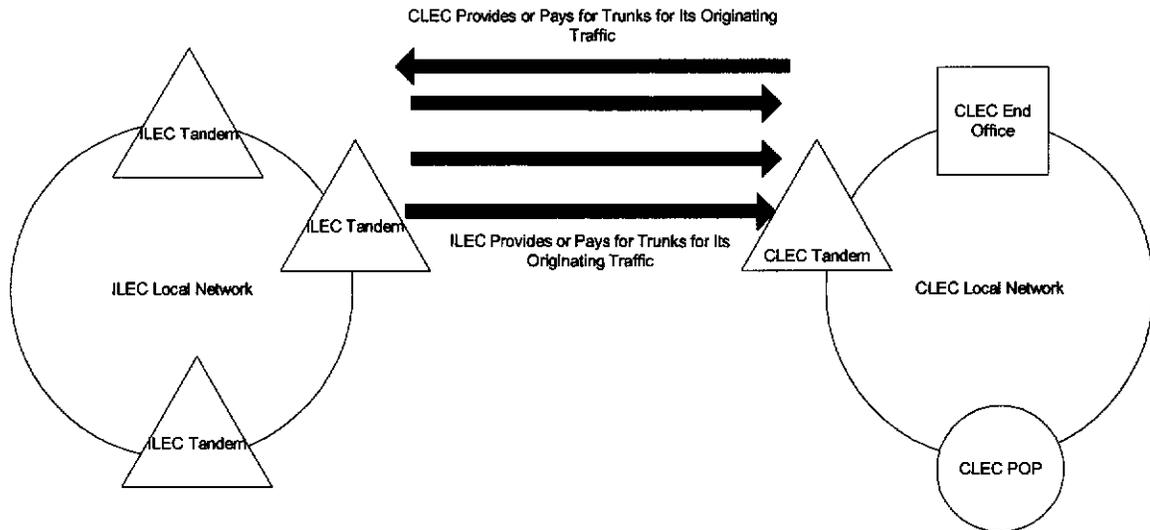
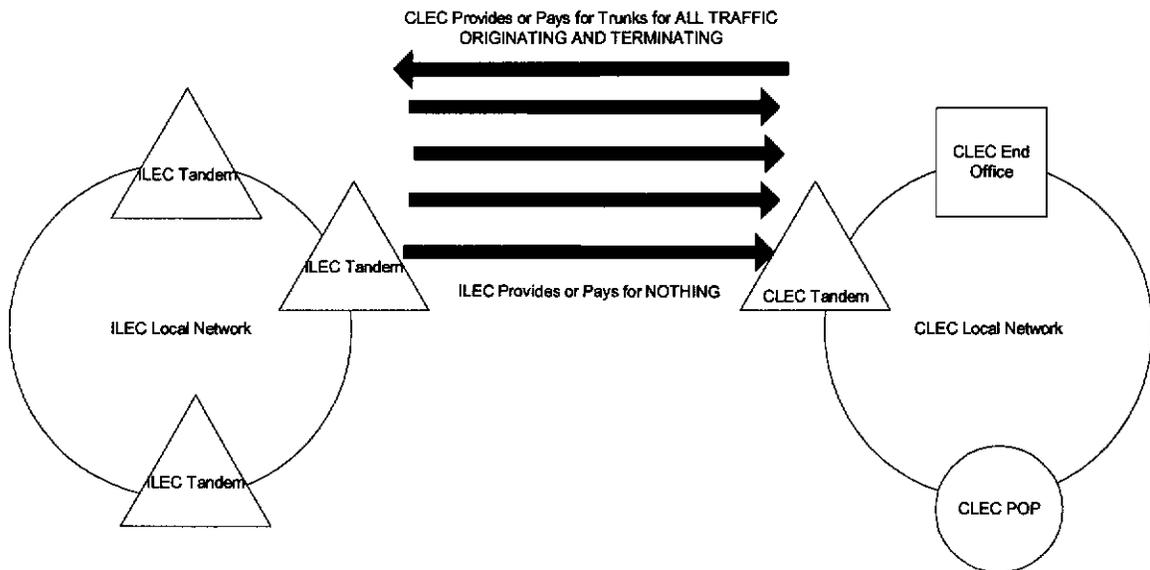
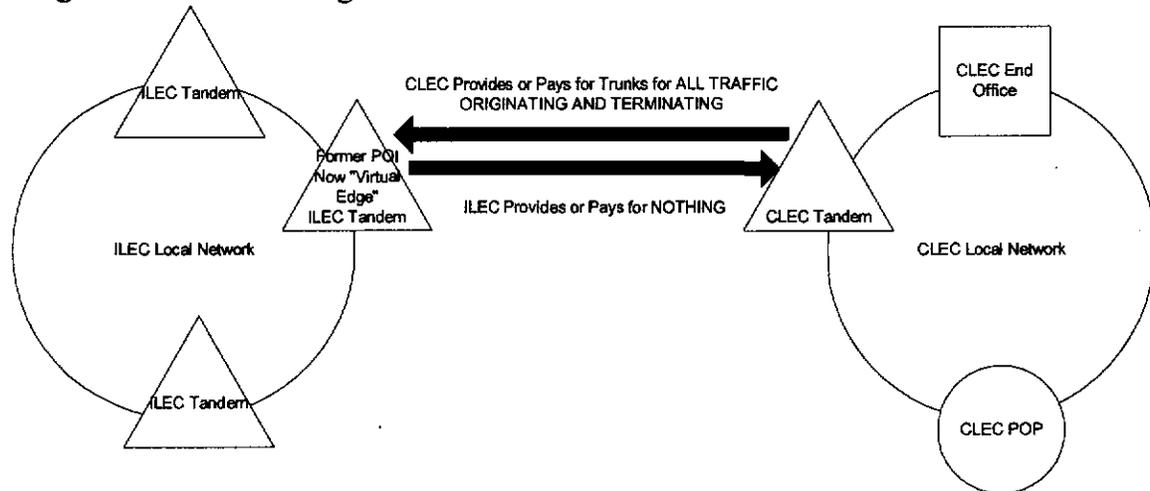


Diagram 6: Duty to Transport “Out of Balance Traffic” Under the Missoula Plan
 (Assume CLEC needs 100 trunks to carry its originating traffic; and ILEC needs 400 trunks to carry its originating traffic)



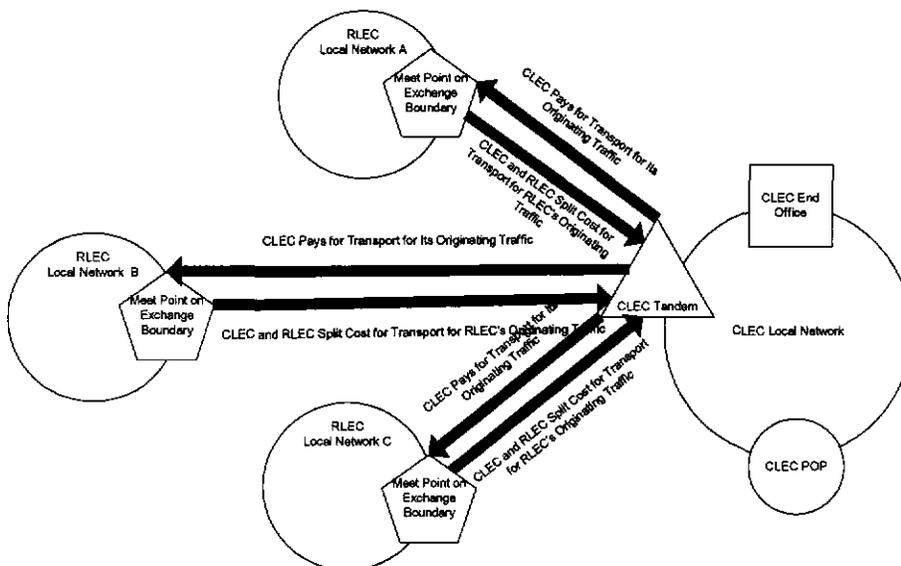
The plan permits parties to existing POI interconnection arrangements to continue those arrangements. However, either such party may elect to require a shift to a new Edge-based arrangement. I.I.E.3.d.ii.1. The plan establishes default rules to apply when ILEC and competitor agree to use existing POIs. I.I.E.3.d.ii.2. Under these rules, the existing POI is renamed a “Virtual Edge.” The ILEC has no duty to transport its originating traffic past this Virtual Edge and on to an interconnecting competitor’s network. The competitor in this scenario must now pay to transport the ILEC’s originating traffic, as well as the competitor’s own terminating traffic. I.I.E.3.d.ii.2.

Diagram: Virtual Edge Architecture



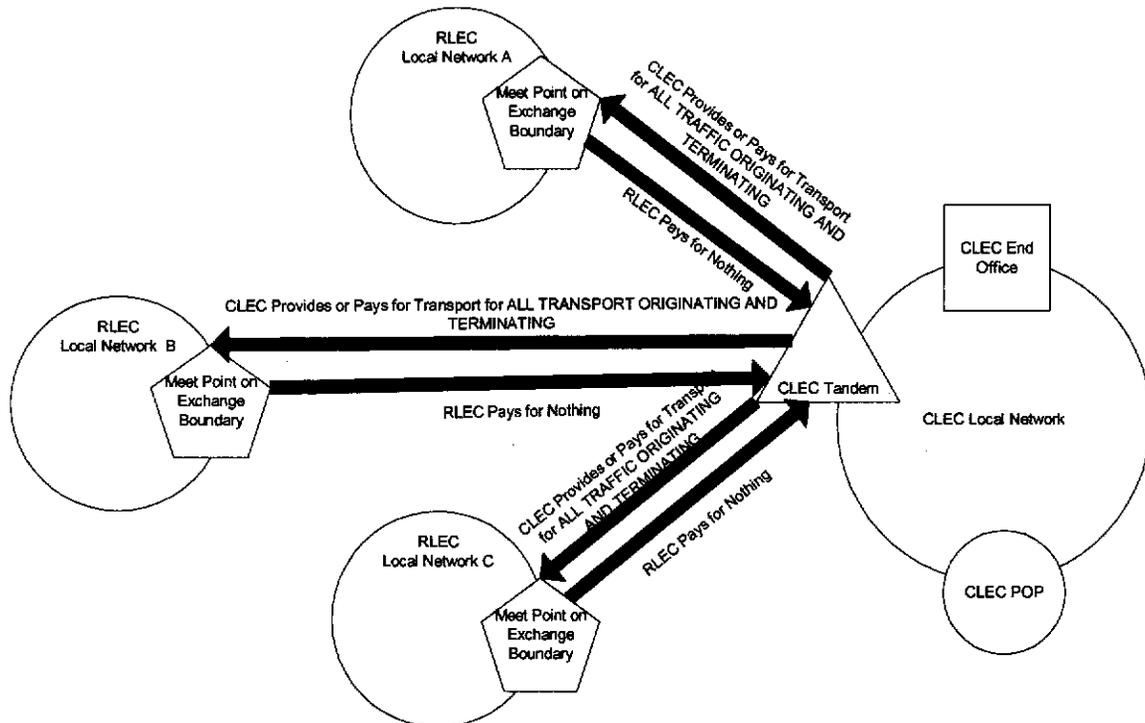
The Plan also contains two sets of special transport rules designed specifically to benefit rural carriers: the “Modified Rural Transport Rule” and the “Full Rural Transport Rule.” Under the Modified Rural Transport Rule, any competitor that interconnects with a Track 2 or Track 3 rural ILEC must pay (1) to transport its originating traffic to the rural ILEC’s Edge; and (2) to transport the rural ILEC’s terminating and originating traffic to and from a “meet point” in each rural ILEC exchange. II.E.3.e. “Meet Point” is described as “an existing meet point interconnection arrangement located on [a rural ILEC’s] interoffice facilities at or near the boundary of each exchange.” III.C.4. Where the competitor provides dedicated transport to and from the meet point (in lieu of tandem transit, or indirect interconnection), the rural ILEC must pay for 50 percent of the capacity required to transport its originating traffic from the meet point to the Track 1 carrier’s Edge—but only for the first 10 miles of such transport capacity. II.E.3.e.i.4.

Diagram: Modified Rural Transport Rule
(Assume RLEC operates three exchange areas in a LATA)



The Full Rural Transport Rules applies only to those Track 2 carriers that elect “incentive regulation” under sections II.B.2.a.iii and II.B.2.d. of the plan. The Full Rural Transport Rule is identical to the Modified Rural Transport Rule with one important exception. Under the Full Rural Transport Rule, the Track 2 rural LEC is not responsible for any portion of the transport between its meet point and a Track 1 carrier’s edge. II.E.3.e.ii.1.d.

Diagram: Full Rural Transport Rule
(Assume RLEC operates three exchange areas in a LATA)



The Missoula Plan’s numerous special rules and exceptions on transport charges make a mockery of the supposed goal of the FCC’s *Unified Inter-carrier Compensation Proceeding*, which is to *unify* disparate intercarrier compensation regimes. The Plan would instead greatly expand and diversify the number of regimes applicable to transport charges. These new regimes include, the repricing of transport at special access instead of cost, the “Out of Balance” Transport Rule, and the Modified and Full Rural Transport rules. There is no apparent justification to reprice interconnection transport at special access rates, especially when sections 251(c)(2)(D) and 252(d)(1) require “cost-based” charges for interconnection. Equally, there is no justification for special rules that require competitors to pay for most or all of the transport charges for originating and terminating traffic, just because the competitor terminates more traffic than the interconnecting ILEC terminates; or because the competitor seeks interconnection with a rural ILEC as opposed to an RBOC. Yet these are precisely the discriminatory results of the Out of Balance and Modified and Full Rural Transport Rules.

In its Further Notice of Proposed Rulemaking, the FCC articulated its goal as follows:

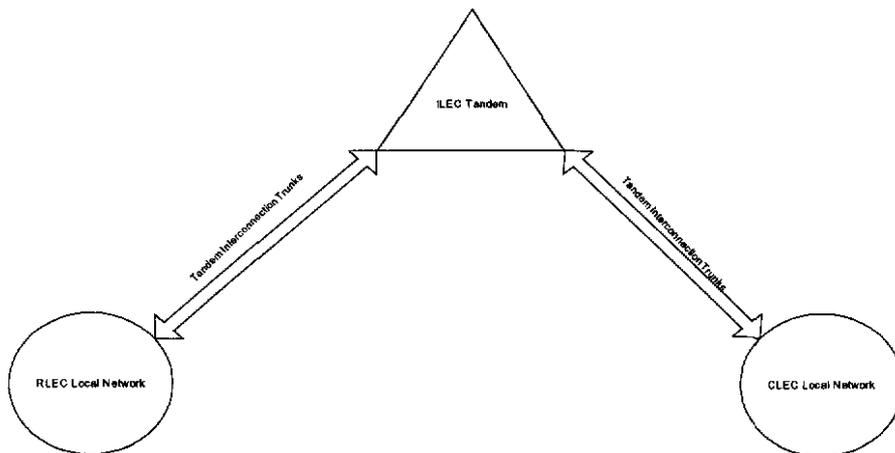
[W]e favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic.⁴

The Missoula Plan's interconnection transport regimes clearly fail to meet these goals. The evident goal of the Plan is simply to game the FCC's proceeding in order to benefit RBOCs and rural ILECs at the expense of competitors.

Tandem Transit Service

Tandem Transit consists of tandem switching and common transport that enables a LEC to interconnect on an indirect basis with another LEC through the tandem and transport facilities of a third LEC, generally an RBOC's tandem network. Tandem transit serves a useful role in connecting CLECs, wireless carriers, rural ILECs, and other carriers whose switch locations may be many miles apart, and whose interconnection traffic volumes may be relatively low. Although there is no requirement that an RBOC provide tandem transit, VAO at ¶117, many do so pursuant to interconnection agreements or state tariffs, often at state commission-determined TELRIC rates. These agreements and tariffs also often provide capacity limitations that restrict a competitor's use of tandem transit service above a certain level. These limitations are thought to encourage a competitor to pursue direct interconnection with another LEC rather than rely solely on indirect interconnection through the RBOC's tandem network. VAO, ¶¶107-121.

Diagram: Basic Transit Function



⁴ Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, at ¶33 (rel. March 3, 2005).

The Missoula Plan enables RBOCs to charge \$0.0025 per MOU for tandem transit function. Plan, §III.D.4.c. If a given carrier uses 400,000 or more MOUs in a month, the RBOC may charge up to \$0.0050 per MOU. At Step 4 of the Plan, even these caps are removed, and tandem transit pricing is completely unregulated.

Just like the Missoula Plan's interconnection architecture and transport charges provisions, the Plan's so-called "caps" on tandem transit service will benefit RBOCs at the expense of competitors. The Plan's styling of \$0.0025 as a "cap" is misleading and disingenuous. This rate is both (1) many times greater than the current TELRIC rates that are generally applicable to tandem transit; and (2) five times greater than ultimate unified rate for termination of all Track 1 traffic under the Plan (i.e., \$0.0005). These discrepancies are all the more marked because tandem transit provides only tandem switching and common transport functionality, whereas the Plan's unified \$0.0005 rate covers tandem switching, common transport, and end office switching functionality. Although competitors and rural LECs commonly purchase tandem transit from RBOCs today, the Plan would eliminate any duty of a rural LEC to purchase tandem transit for indirect interconnection in the future. Instead, the competitor is required to pay all such charges for its originating traffic, as well traffic it terminates on behalf of a rural LEC. II.E.3.e.i.3. Accordingly rural LECs are insulated from the new rates for tandem transit under the Plan. For these reasons, the Plan's tandem transit rules can only be viewed as a regulatory windfall for the RBOCs which largely control the tandems that connect other carriers indirectly. Of course, permitting RBOCs to charge much higher rates for a more limited functions than other carriers may charge for more expansive functions under the Plan is the very definition of regulatory arbitrage, and flies in the face of the FCC's stated goals.