April 27, 2009

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

RE: Notice of Ex parte, WC Docket 07-135

Dear Ms. Dortch,

David Frankel, CEO of ZipDX LLC met with the following individuals via two separate telephone conversations on April 27, 2009:

- Nicholas Alexander, Legal Advisor to Commissioner McDowell
- Jennifer Schneider, Legal Advisor to Acting Chairman Copps

The discussions focused on the attached materials. Mr. Frankel stressed that the abuse of rural access charges has been allowed to linger for far too long. The proposed rule clarifications should be non-controversial for any legitimate player not attempting to game the system. The Commission is obligated to address this promptly.

Regards,

/s/
David Frankel
CEO, ZipDX LLC
Los Gatos, California
1-800-372-6535 / dfrankel@zipdx.com

cc: Participants, via E-mail

# ZipDX Introduction

- ZipDX is an innovative provider of real-time electronic collaboration services
- Audio bridging via PSTN and VoIP
- New levels of audio quality
- Patented ease-of-use features
- Serving:
  - Small, medium and large businesses
  - Entrepreneurs & non-profits
- “Next generation” conferencing


© 2008 ZipDX®

# 07-135 Matters to this Small Business

- ZipDX wants to compete based on:
  - Customer preference for our user interface
  - Quality and security of our conferences
  - Intrinsic productivity & administrative benefits
  - Attractive pricing due to network & system efficiency
  - Our ability to out-conference the largest players!
- Thanks to regulatory anomalies, others are:
  - Offering products specifically to leverage arbitrage opportunities
  - Designing solutions not for technical or economic efficiency, but rather the opposite!
  - Confusing customers with unsustainable operating models


© 2008 ZipDX®

# The Problem

- ZipDX is a conferencing service provider; we charge our end-users for the services that they use.
- A small group is “gaming the system” – using access charges to subsidize other services. They offer conference calling (and/or international calling, chat, etc.) for “free.”
- The presence of these “free” services distorts the market.
- End-users are being “taught” that these services can be “free.” But in fact they are not free, and this model is not sustainable.
- ZipDX complained to the FCC a year ago, asking that you either validate this arbitrage scheme, so that we can all use it, or you cut it off.
- The FCC has indicated that the arbitrage isn’t “right” but it hasn’t acted to stop it.
- Marketplace damage continues thanks to your inaction.

# Regulatory History

- "Traffic Pumping" has been a significant issue for several years and continues to grow.
- Qwest has highlighted that this is a violation of Section 254(k) – traffic pumpers are using their monopoly access position to subsidize what should be competitive services (such as conference calling).
- Legitimate providers (including small entities such as ZipDX) are being harmed; our only alternative at present to level the playing field is to become (or collude with) a Rural (C)LEC in similar violation.
- A few perpetrators are being permitted to distort the entire system.
- FCC Commissioners, busy with higher priorities, need to delegate this matter to Bureau staff for prompt, definitive resolution.
- We are proposing a fair and reasonable approach that allows Rural (C)LECs to continue to collect appropriate access charges while halting the regulatory arbitrage undertaken by the traffic pumpers.

# Why Am I So Upset?

- This matter has been before the FCC for some time.
- There is general agreement that the traffic pumping schemes are improper. From an Iowa Utilities Board investigation into the LECs ("Respondents") & Free Conference Service Companies ("FCSCs"):
  - "The record evidence, including some of the testimony of the Respondents' witnesses, demonstrates that respondents and their FCSC partners were deliberately engaged in fraud to generate phenomenal increases in switched access revenue for Respondents, revenue which Respondents then shared with the FCSCs. Respondents and their FCSC partners deceived the IXCs, and concealed their scheme from the legitimate customers of both the Respondents and the IXCs, and the public generally. Respondents have attempted to deceive the Board."
- Arguments from the perpetrators are specious:
  - Suggesting that this is OK because some of the end-users of the free conferencing services are charities or small businesses is akin to saying that it is okay for me to shoplift from the A&P as long as I share some of the food with the homeless.
  - Claiming that traffic pumping should be addressed as part of Access Charge Reform is a delaying tactic. Of course the FCSCs don't want this party to end. Rural Access abuse is a specific issue that can and must be dealt with swiftly and surgically while grander matters proceed at a nominal pace.
- At present, the FCC seems to be on paid hiatus while we wait for the Commission to be reconstituted. As an entrepreneur and taxpayer, I am not okay with this. Now is a perfect time to address these "niche" issues.

# Background on Rural Access Charges

- Access charges allow carriers to recover some of their costs to connect their subscribers to the Public Switched Telephone Network.
- Rural carriers need to charge higher rates because of their low-density networks and small volume.
- A few enterprising “rural” carriers (including “competitive” carriers) have deployed applications that drive traffic onto their network, allowing them to collect large sums in access charges.
- FCC has made clear that this “traffic pumping” is not an appropriate use of access charges, but has not promulgated rules to address it.
- Our proposed solution follows. Since carriers were long ago put on notice that arbitrage via traffic pumping is not appropriate, these rules can be put in place immediately.
- ZipDX is trying to be constructive by putting forward a fair, non-controversial proposal. What else can I do to be helpful?

# Summary of our Proposal

**Rural Access Charges**

**are for**

**<u>Access</u> to <u>Rural</u> <u>End-Users</u>.**

**RBOC access charges apply in other cases (where access charges are applicable).**

# Allowable use of Rural Access Charges

- Rural Access Charges shall apply when serving end-users in the rural LEC's geographical footprint
- The "geographical footprint" (or "territory") of a LEC is the set of physical locations where the LEC has deployed facilities to connect the end-user's premises to the LEC's captive network equipment
- Normally the end-users are the LEC's consumer and business (human) customers in its operating territory
- When these customers make and receive long-distance calls, the LEC is entitled to collect filed rural access charges from the Inter-Exchange Carrier (IXC)
- If the Rural LEC's customer is itself a communications service provider, the "end user" is that provider's customer.

# Rural Access Charges NOT Applicable:

- When a calling service is offered such that none of the parties in the call are end-users in the geographical footprint of the rural LEC, the LEC is NOT entitled to Rural Access Charges for that service
- This includes applications and services that terminate or originate one PSTN phone call, and then use additional means to relay the contents of that call elsewhere
- This restriction applies to “relaying”:
  - Via one or more other PSTN phone calls, and/or
  - Via the Internet or some other network or point-to-point link, and
  - In real time or in a store-and-forward mode, and
  - Regardless of transmission format (TDM voice, packet voice, packet data, fax, modem, Morse code, etc.)
- Access charges (if any) for calls of this nature must be at RBOC benchmark rates

# RBOC Access Rates Apply to:

- Chat Lines
- Conference calling
- Call Forwarding, including
  - International forwarding
  - “Find me” services
- Call Recording
- Voice-mail
- Fax mailbox
- Any other service offered without regard to the physical location of any of the end-user(s) involved.

- The “end user” in these situations is the actual end-user enjoying the service, NOT intermediate entities involved in providing and marketing the service.

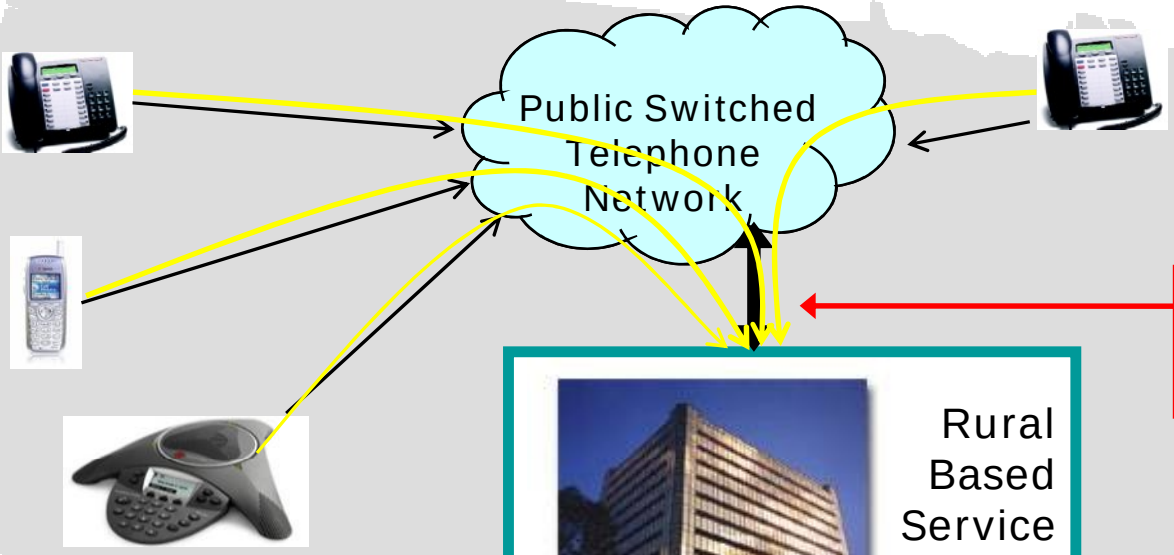
# Rural Access Charge Examples

- Rural Access Charges <u>are</u> applicable when use is incidental to a permissible service, such as:
  - Single-line call-forwarding service offered to a consumer residing in the LEC's territory
  - In-territory business customer supplying fax mailboxes for remote employees or operating a conference bridge for their own use
  - Wireless roaming for a mobile subscriber normally resident in-territory
- Rural access charges apply to traffic to and from a call center with a majority of (human) agents located in-territory

# Identifying & Preventing Violations

- Fully-mechanized relay services are not likely to qualify for Rural Access Charges (except when incidental to other services).
- Calling services marketed to end-users outside of the Rural LEC's territory are not likely to qualify for Rural Access Charges.
- A LEC that shares its Rural Access Charge revenue with an affiliate or a third-party must take measures to insure that its partner is in compliance with these rules (or simply levy RBOC access rates).
- A LEC offering free or heavily-discounted access (e.g., PRI or VoIP), expecting to recover costs via Rural Access Charges, must tariff that service to prohibit use counter to these rules (e.g., out of territory) and enforce accordingly. Alternatively, levy RBOC access charges.
- Calls must be presented to the network with ANI, CPN and related fields properly coded to reflect the actual usage. Carriers and their partners may not manipulate signaling fields to promote mis-application of access charges.
- If need be, consider a grievance mechanism at the FCC where one party can challenge the application of Rural Access Charges by another. The "loser" would pay an administrative fee to cover the FCC's costs.

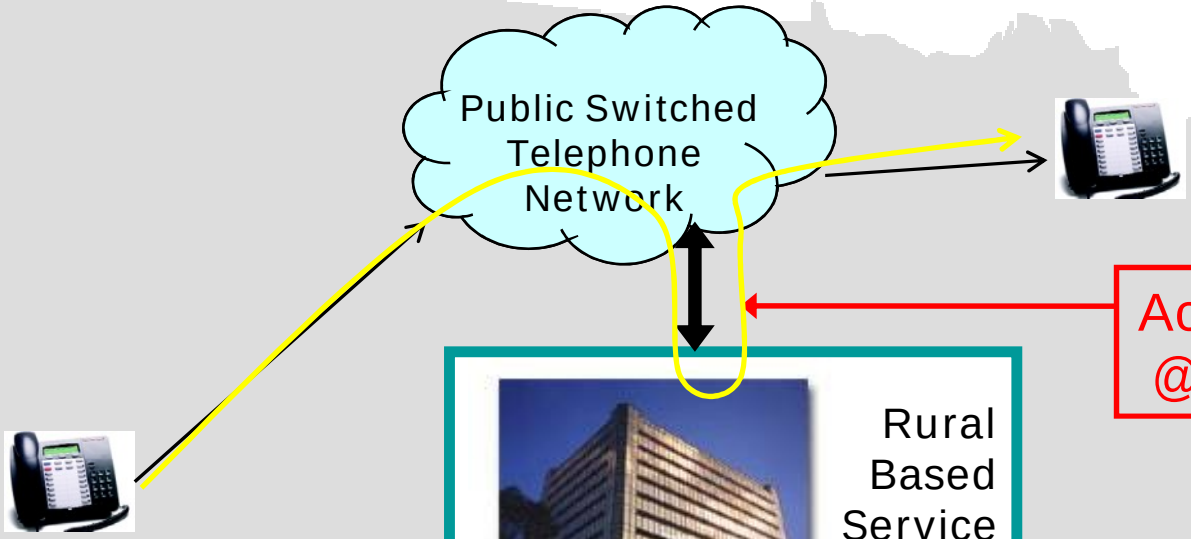
# Use Case – Conference Calling / Chat




No In-Territory End Users

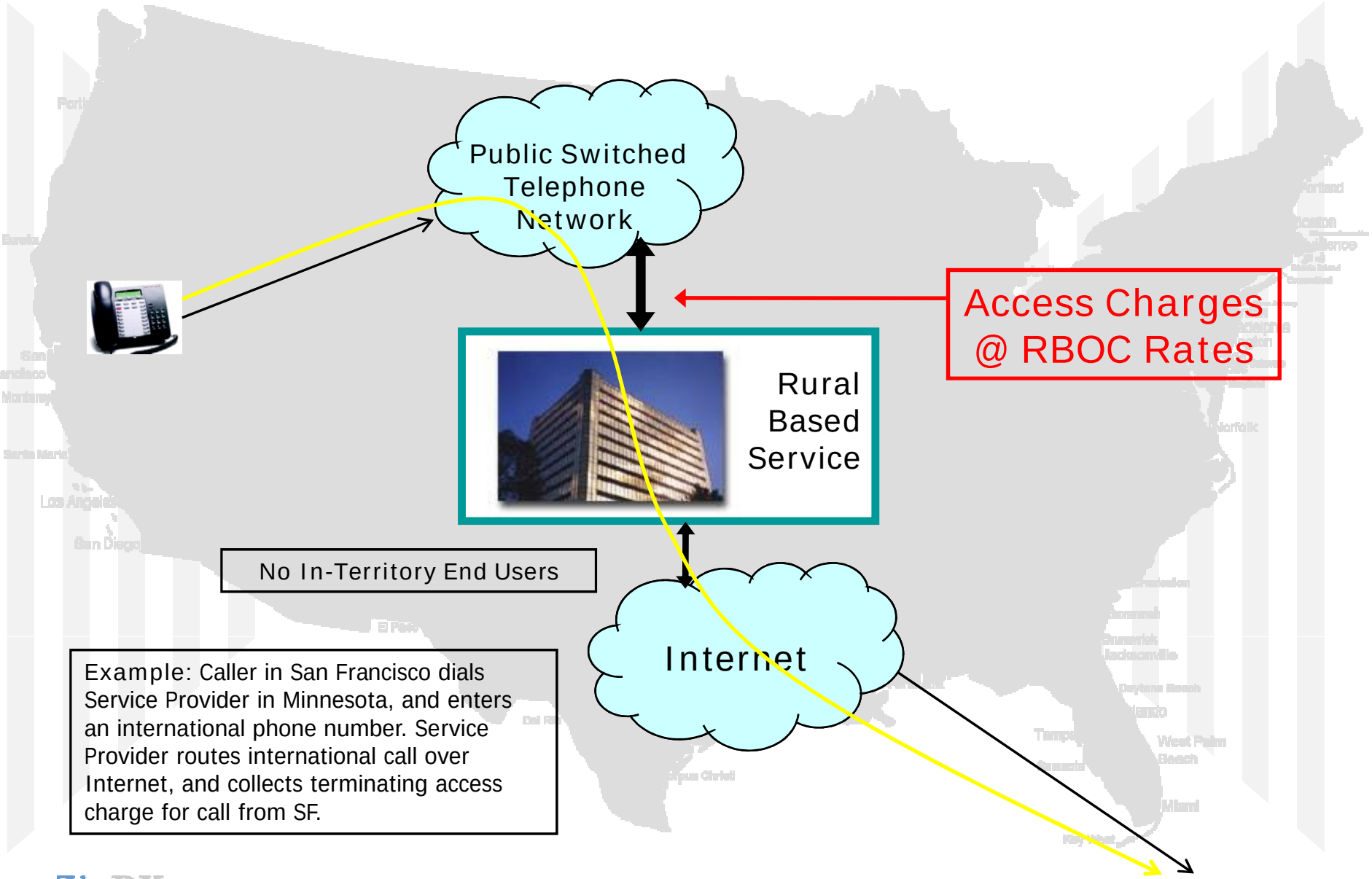
Example: Callers from Las Vegas, San Jose, Portland and Green Bay dial into a conference bridge somewhere in middle America. Service provider collects terminating access charges from IXCs for all four calls.

# Use Case – Call Recording



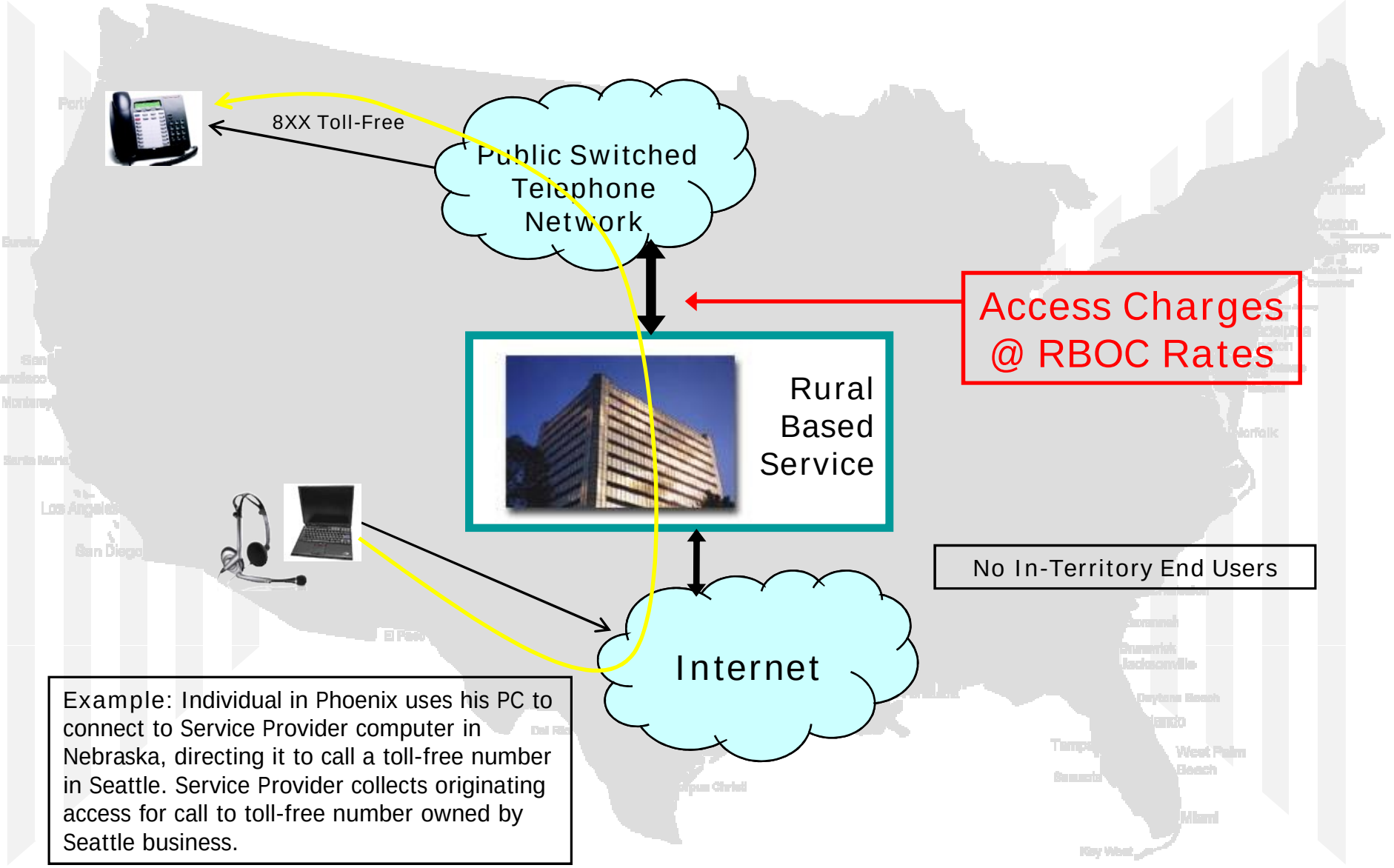

Example: Caller in LA dials to Service Provider in Iowa, which then places call to a toll-free number in Detroit. Service Provider collects terminating access for call from LA, and originating access for call to Detroit. Call is digitally recorded and audio file is transported over Internet when call ends.

# Use Case – International Calling



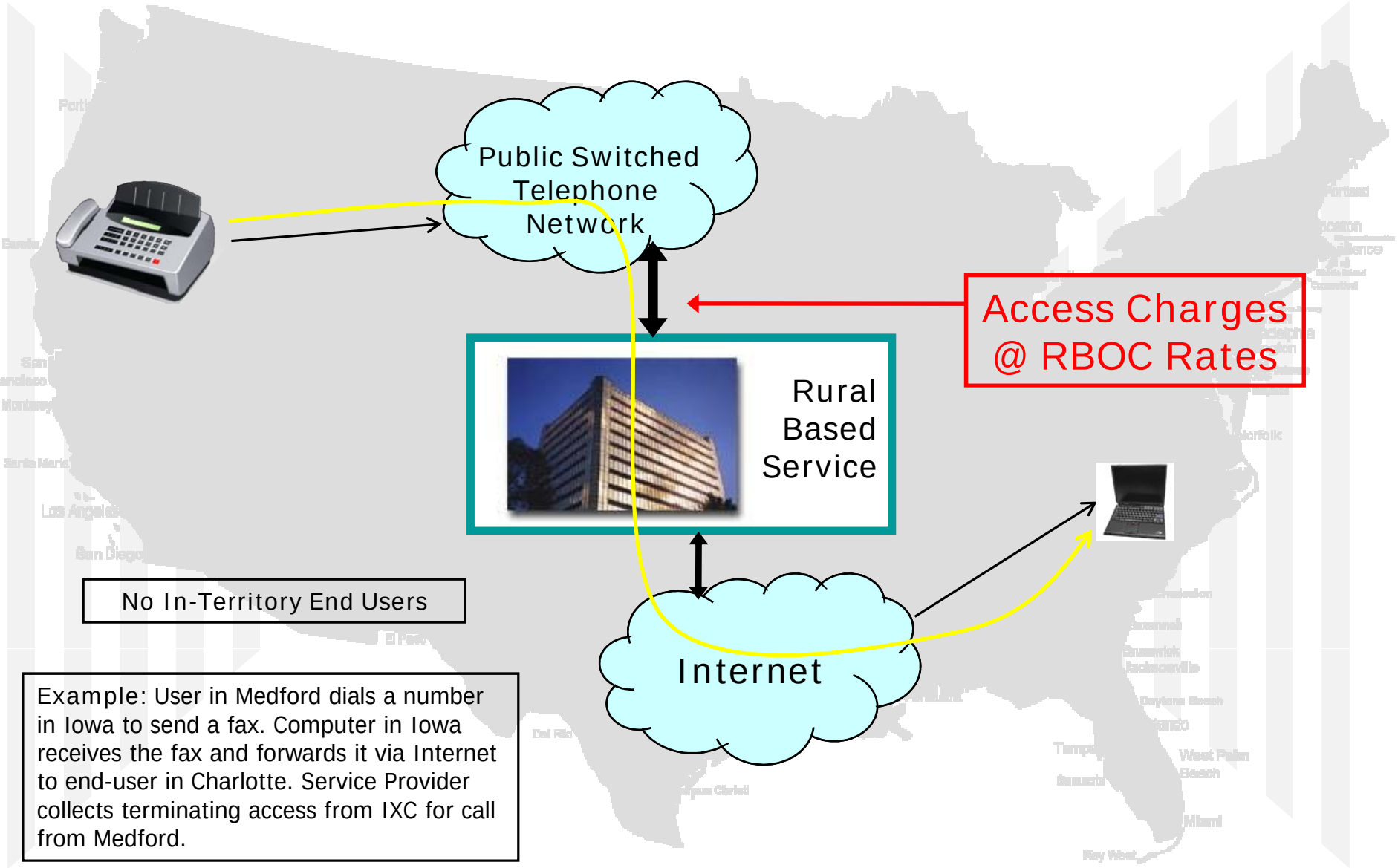

Example: Caller in San Francisco dials Service Provider in Minnesota, and enters an international phone number. Service Provider routes international call over Internet, and collects terminating access charge for call from SF.

# Use Case – PC-to-Toll-Free




Example: Individual in Phoenix uses his PC to connect to Service Provider computer in Nebraska, directing it to call a toll-free number in Seattle. Service Provider collects originating access for call to toll-free number owned by Seattle business.

# Use Case – Fax-to-Email




Example: User in Medford dials a number in Iowa to send a fax. Computer in Iowa receives the fax and forwards it via Internet to end-user in Charlotte. Service Provider collects terminating access from IXC for call from Medford.

# Use Case – Local Access

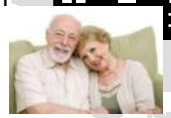
Public Switched Telephone Network

Access Charges @ RURAL Rates

Examples: Caller in Sacramento dials Grandma in Iowa; rural LEC collects terminating access for that call. Or, business in Iowa dials toll-free number in Milwaukee; rural LEC collects originating access charge.

Rural Based Service

In-Territory Residential Customer

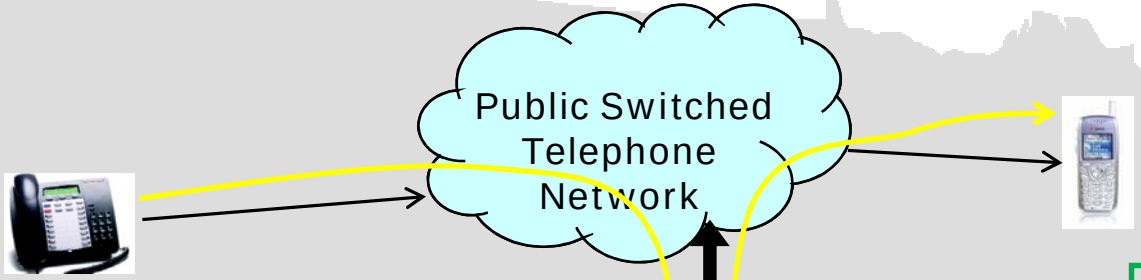


Access Facilities

In-Territory Business Customer

Forwarding & bridging allowed on behalf of these customers when incidental to their primary usage.

# Use Case – Call Center




Examples: Caller in Reno dials Call Center in Kansas and speaks to agent located there. Or, Call Center agent calls supplier in Chicago. Rural LEC collects terminating/originating access charges, respectively.

Access Charges @ RURAL Rates

# Call To Action!

- Traffic Pumping must cease
  - Prohibited by 254(k) – Unfair to those playing by the rules
  - Distorts the marketplace & drives inefficient behavior
- Our proposal:
  - Does not encumber legitimate collectors of rural access charges
  - Gives R-(C)LEC's freedom to structure creative business deals
  - Imposes no burden on those not abusing the system
  - Provides clear criteria for permitted use of rural access charges
  - Allows use of RBOC access rates for non-qualified services
  - Would resolve the non-payment stalemate that currently prevails
- The FCC should:
  - Delegate this matter to Staff for prompt action
  - At a minimum, draft orders NOW and solicit feedback if necessary
  - If our proposal isn't suitable, reference others in this docket
  - When Commissioners are ready/available to resume fulfilling your mandate for the citizens, you can act swiftly

# Our Approach: Non-Controversial

- For IXC's:
  - √ An end to forced subsidization of what should be competitive services
- For Legitimate Rural LECs and Competitive Carriers:
  - √ No restrictions on their business models (e.g., revenue sharing)
  - √ No arbitrary limits on ratios of access minutes to access lines
- For Traffic Pumpers:
  - √ An end to "self help" withholding of access charge payments by IXC's
- For ZipDX:
  - √ A level playing field for our innovative services
- For the Marketplace:
  - √ Clarity that Rural Access Charges are for Rural Access ONLY