

August 28, 2009

Via ECFS

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 telephone conference:

- Julie Veach, Marcus Maher & Jennifer Prime, Wireline Competition Bureau, 27 August
- Priya Aiyar, Legal Advisor to Chairman Genachowski, 28 August

The discussion focused on the attached materials. Mr. Frankel stressed that the abuse of rural access charges has been allowed to linger for far too long. Access charge arbitrage is now extending to other areas. This undermines fragile funding mechanisms and will impede broadband enhancements. Rule clarifications proposed by ZipDX are 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

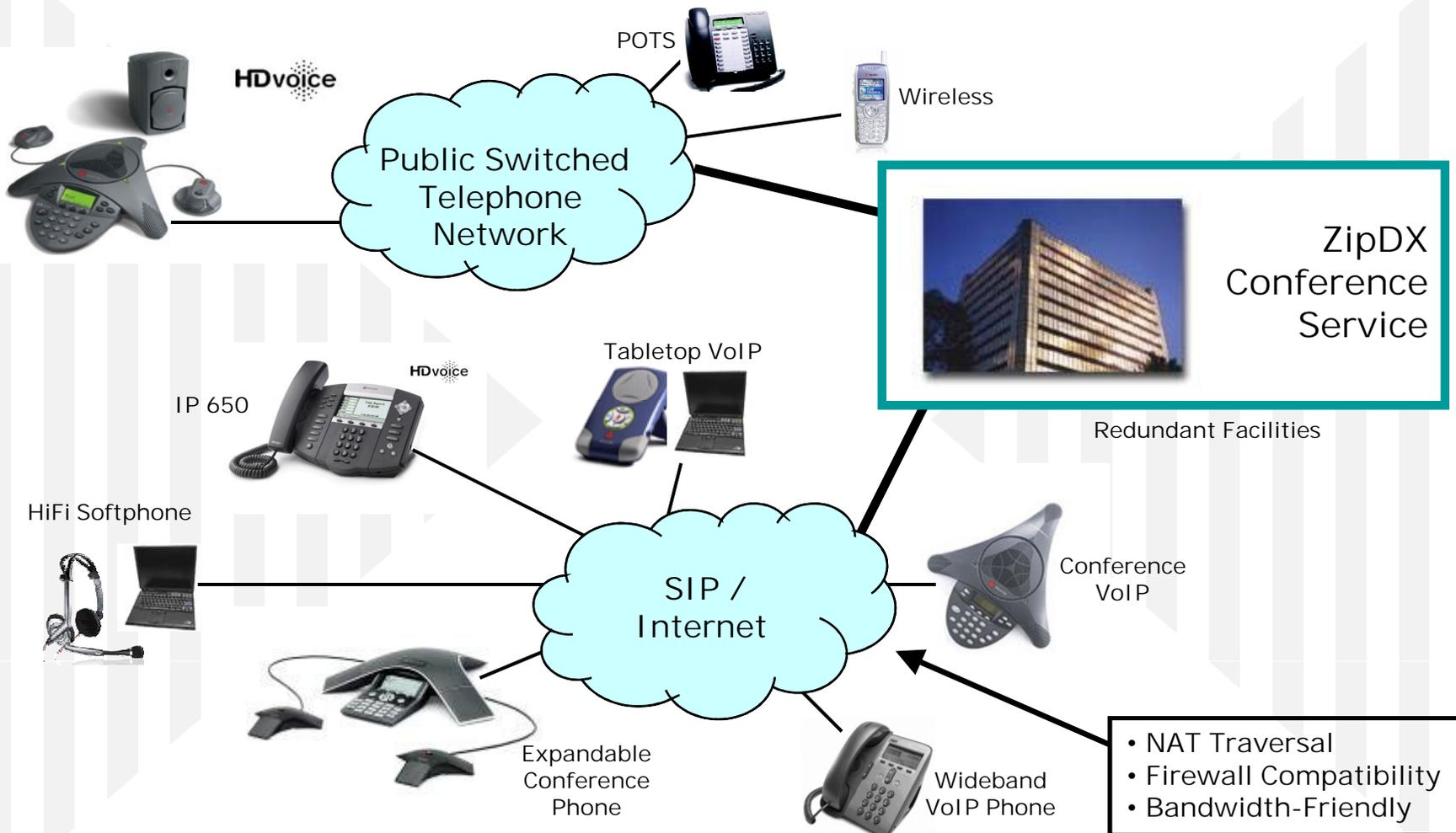
cc: Call Participants, via E-mail



## 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

# Access ZipDX from Any "Client" on Any Network





## 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
- ZipDX tries to “play by the rules”
  - We file 499A and pay USF thanks to your InterCall order
  - Are you really treating everybody fairly and equally?



# The Problem

- ZipDX is a conferencing service provider; we charge our end-users for the services that they use.
- We operate in, and understand, the technologies and economics of both the PSTN and VoIP worlds
- 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 they are not free. This “cost-shifting” model is not sustainable or scalable.
- ZipDX complained to the FCC 18 months 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.
- The FCC has been reconstituted. It is time to get back to work. With almost 2,000 employees and a \$300 million budget, the organization needs to multi-task.



## 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.
- ZipDX proposed a solution months ago. 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?



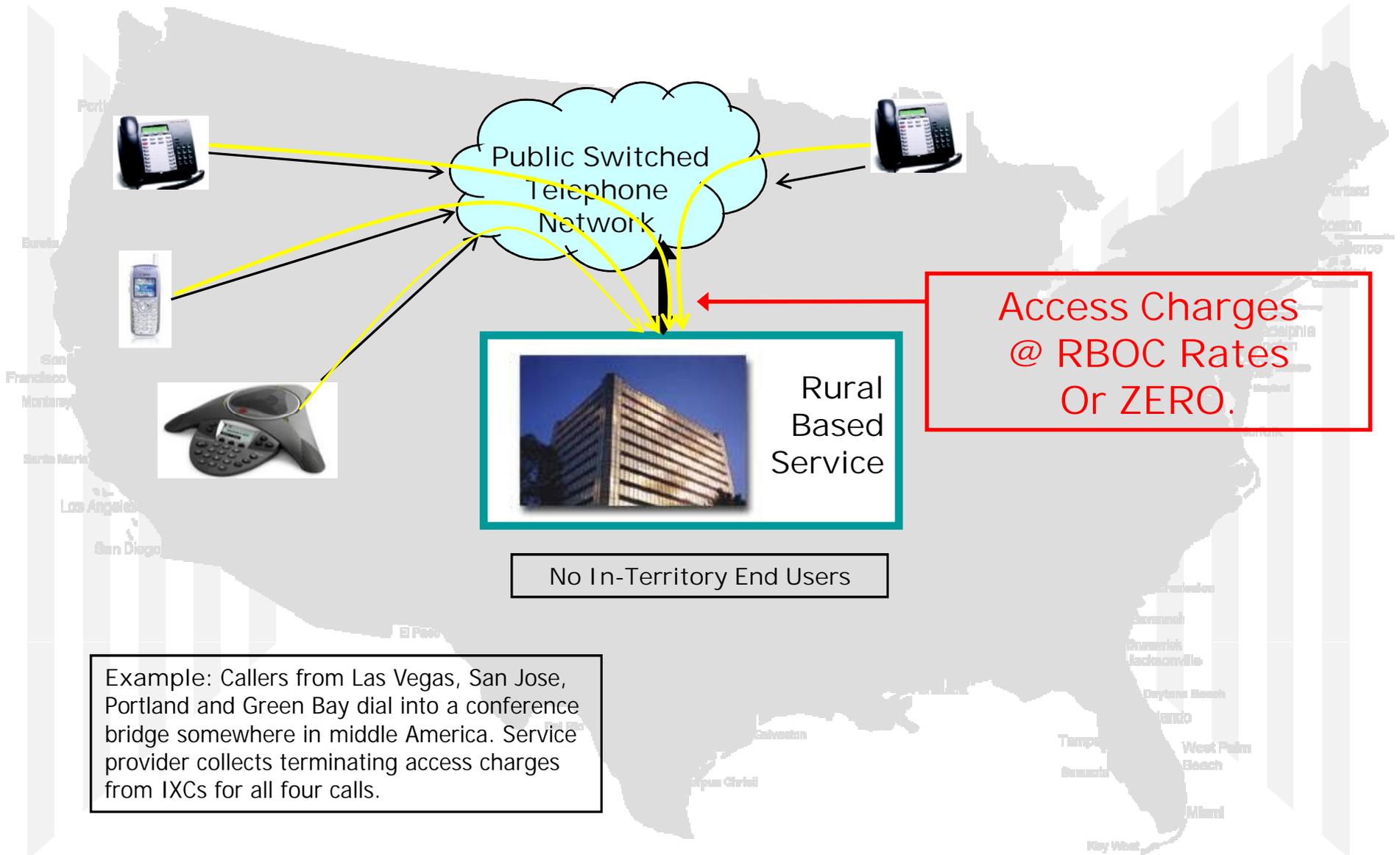
# Summary of our Proposal

## **Rural Access Charges are for Access to Rural End-Users.**

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

***If there is no access, there should be no access charge.  
“Grandfather” legacy access charges and eliminate them for new services.***

# Use Case – Conference Calling / Chat



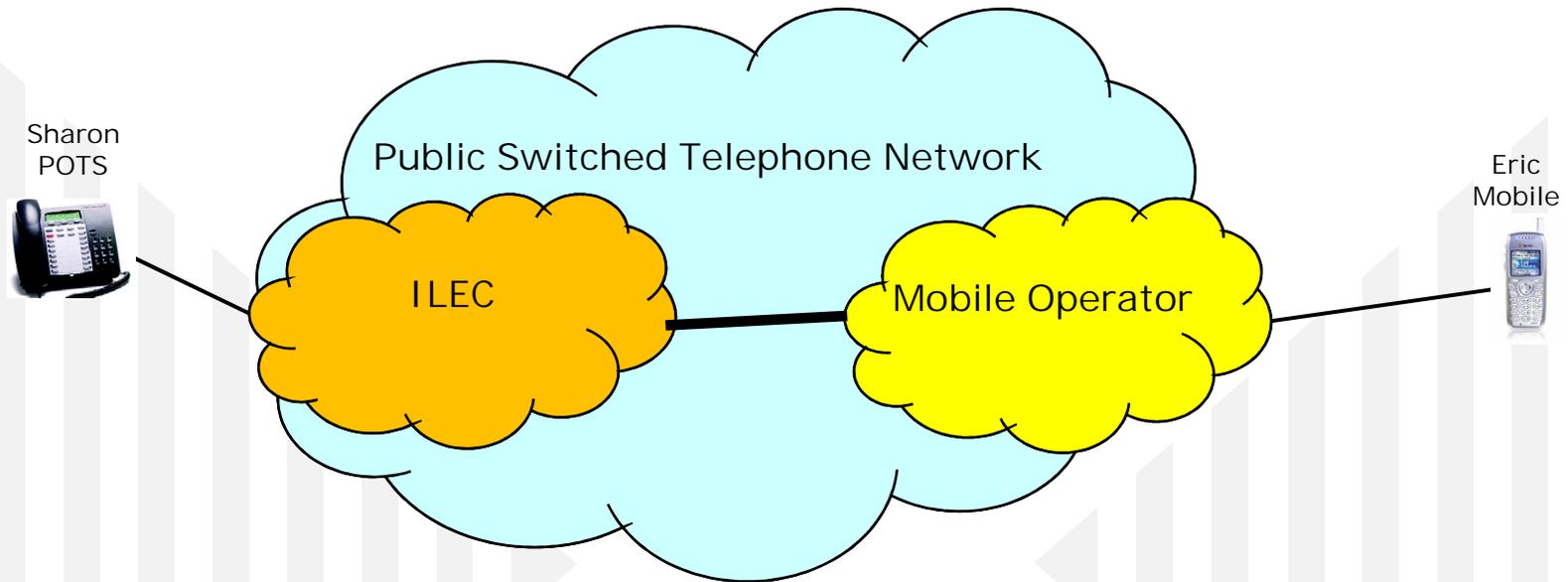


## Spreading beyond Chat/Conferencing

- Free Conferencing Corp. brags that the Obama Presidential Campaign used 5 million minutes of free conferencing.  
(<http://www.reuters.com/article/pressRelease/idUS128967+11-Mar-2009+BW20090311>)  
(<http://www.foxbusiness.com/search-results/m/22081869/free-conference-calls.htm>)
- This is the tip of the iceberg
  - As technology shifts, providers are finding new ways to arbitrage access charges
  - Like the “obvious” examples, these schemes shift costs to “3<sup>rd</sup>-party payers,” distorting the marketplace and undermining the legitimate purpose of access charges
  - Not specific to RURAL access charges; it’s possible to game access charges in metro areas too!
- Two examples
  - One-number “find-me” service
  - PBX SIP trunks



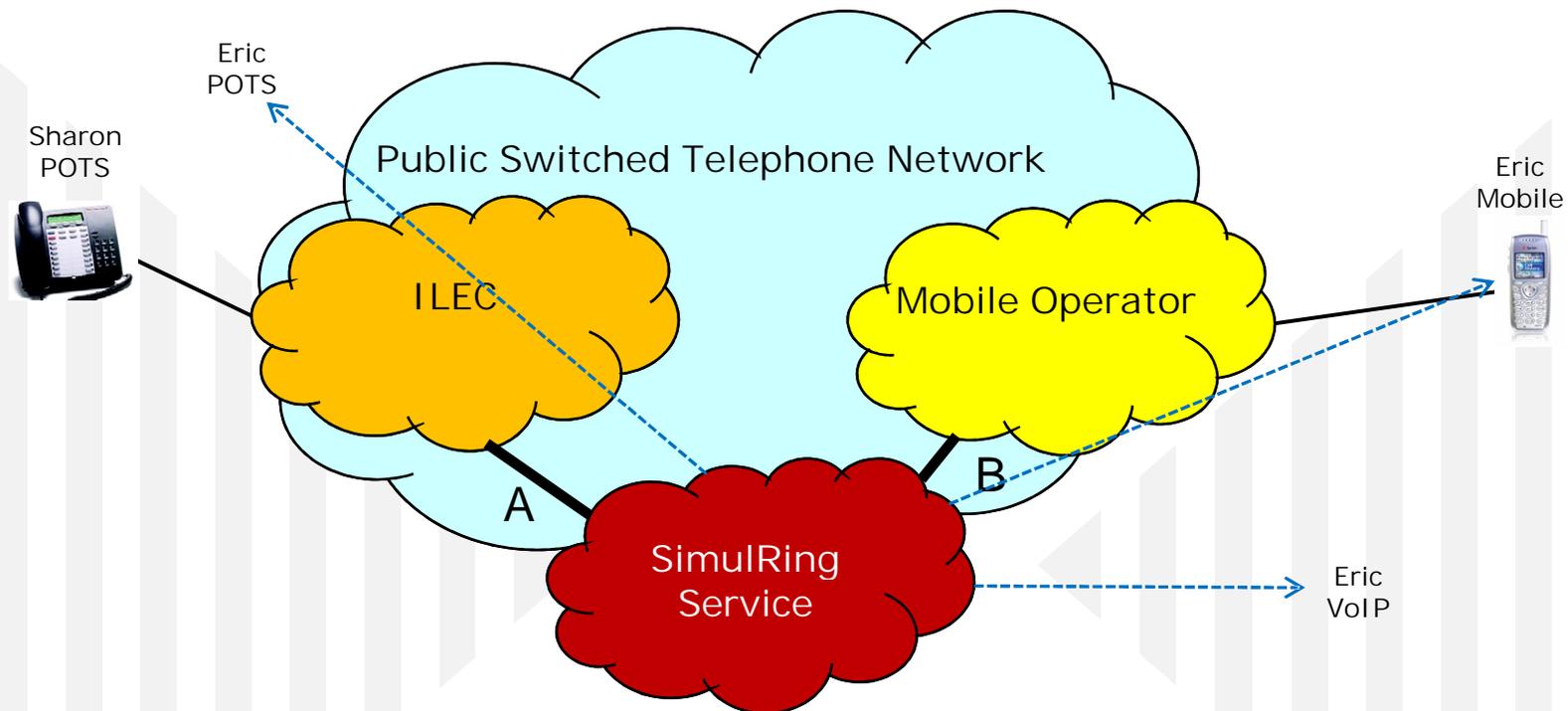
# Landline-to-Mobile Call Example



Simple call from landline subscriber to mobile subscriber.

ILEC pays nominal terminating access charge to Mobile Operator.

## Landline-to-Mobile Call Example w/ SimulRing



Mobile user has subscribed to SimulRing Service; it rings his three phones and he answers his mobile.

Now there are TWO terminating access charges and a less-efficient connection.

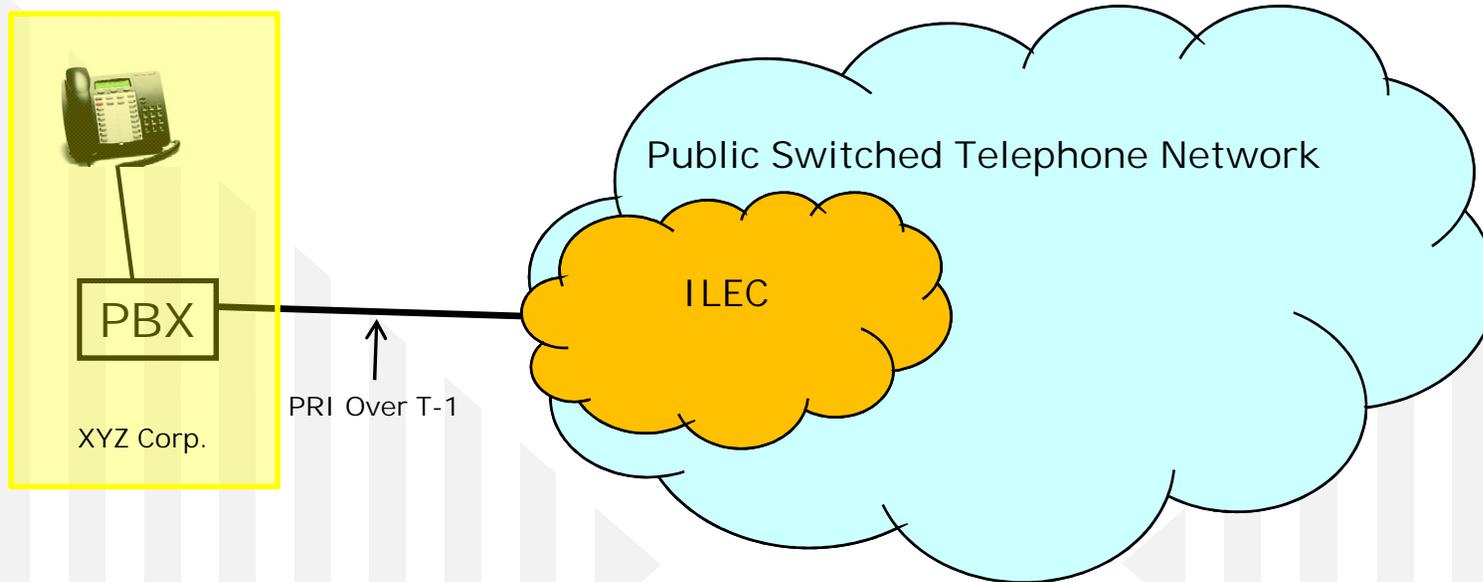
ILEC pays SimulRing (A); SimulRing pays Mobile Operator (B).

The fees paid by the end-users are unchanged here.

If Access Charge A is even slightly greater than B, SimulRing can potentially offer this service for "free" to Eric on the backs of the carriers and/or their entire universe of subscribers.



## Legacy Business PBX Connection



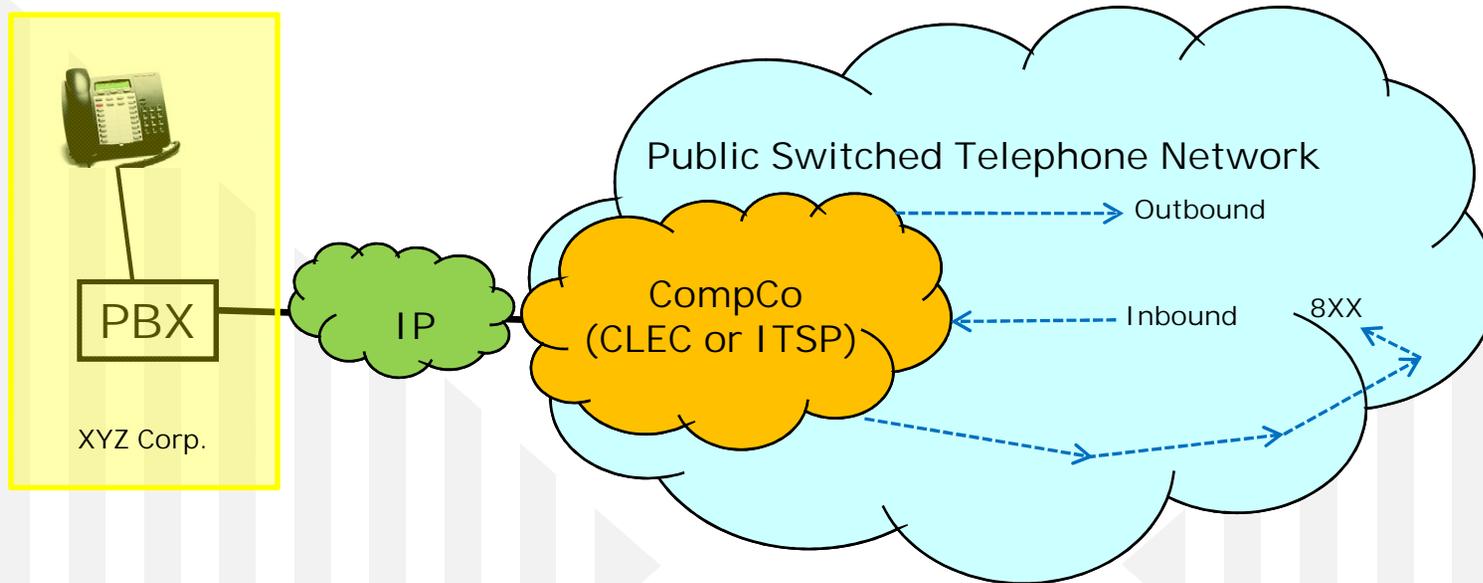
Typically, XYZ Corp. gets PSTN access for their PBX via one or more ISDN PRI's from their local incumbent telephone company.

They pay a tariffed monthly rate for the PRI, plus outbound usage.

The ILEC pays access charges to terminate XYZ's outbound calls, and collects access charges for inbound & originated 8XX calls.



## Business PBX Connection using SIP Trunk



XYZ Corp. has switch to a competitive provider for PSTN connectivity using a "SIP Trunk" routed over the Internet or dedicated broadband.

XYZ pays a discounted monthly rate for the SIP Trunk. They may get "free" inbound and outbound calls.

CompCo augments what XYZ Corp pays with access fees. What CompCo charges other carriers to *terminate* calls to XYZ is higher than what CompCo pays to terminate calls *originated* by XYZ. So if traffic grows symmetrically, CompCo makes more in access charges and may lower its monthly price to XYZ.

Plus, CompCo routes 8XX calls made by XYZ to network hand-off points that generate outside access charges.

All this benefits CompCo and XYZ, at the expense of other PSTN users and carriers.



## Call To Action!

- Traffic Pumping must cease
  - Prohibited by 254(k) – Unfair to those playing by the rules
  - Distorts the marketplace & drives inefficient behavior
  - Undermines the real purpose of the access charge system
- 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 access charges
  - Gives time for restructuring of legacy access charge regime
- The FCC should:
  - Delegate this matter to Staff for prompt action
  - If our proposal isn't suitable, reference others in this docket
  - ACT NOW to educate the industry re: access charge abuse
  - Feel really, really bad that you have taken so long to do nothing



# Relevance to Broadband Stimulus

- Existing Inter-Carrier Compensation Regime
    - Is integral to funding legacy infrastructure
    - Will necessarily take a long time to restructure
  - Universal Service Fund
    - Also integral to support of legacy policies and new broadband initiatives
  - Mechanisms are Under Stress due to:
    - Decline in wireline subscribership
    - Shifts to new forms of communications
    - Demands for broadband services
  - **DO NOT PERMIT UNDERMINING**
    - Arbitraging these mechanisms impairs their ability to do their jobs
    - Accelerates decline and convolutes new policy-making
1. Immediately prohibit arbitrage (no access charge when there's no access)
  2. Put operators on notice to discourage new schemes that provide no net economic benefit
  3. Separately, phase in a strategy to restructure legacy inter-carrier comp