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Decision 99-09-029 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

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INTERIM OPINION

By this decision, we address the policy relating to the use of central office (NXX) codes to provide locally-rated calling to customers which physically reside beyond the local calling area of the designated NXX code. To the extent customers are assigned NXX prefixes which correspond to a rate center in a different exchange from where the customer physically resides, we resolve the dispute as to how such calls should be rated. In addition, we order further hearings to consider questions concerning the appropriate intercarrier compensation for the transport and delivery of these types of calls.

I. Background

Our consideration of this generic issue was initiated in response to a dispute over the propriety of certain rating and routing practices as brought before the Commission in a complaint (C.96-10-018) filed by Pac-West Telecom, Inc., (Pac-West) a competitive local carrier (CLC). Pac-West filed a second complaint (C.98-04-046) raising similar issues. The dispute in these complaints involved the manner in which NXX prefixes are assigned to end-use customers located in foreign exchanges, and the resulting effects on call rating and intercarrier compensation. The dispute raised questions about the traditional way in which the rating and routing of calls has been determined, and the issue of whether the methods of rating and routing advocated by Pac-West should be permitted, prohibited, or allowed with some modifications. We resolved C.96-10-018 in Decision (D.) 97-12-094, but also noted that the disputed issues raised in the Pac-West complaint had implications for the local exchange market as a whole, and directed that the issues be examined on a generic basis in this rulemaking proceeding. Although these generic issues have applicability to telephone number assignments generally, the dispute in the Pac-West complaint arose specifically in the context of number assignments made to Internet Service Providers (ISPs). An ISP offers Internet access to the public typically through a telephone line dial-up linking the customer and the ISP modem. By virtue of the type of service offered by an ISP, telephone calls are always originated from a caller seeking Internet access and terminated to the ISP. In addressing the disputes raised by the Pac-West complaint on a generic basis, we shall consider the effects as they relate to telephone customers generally, with particular attention to ISP customers.

As a framework to address these issues, a brief review of industry practices for the rating and routing of telephone traffic is in order. The rating of telephone calls by wireline carriers is based on a geographically determined system which classifies calls as local, intra local access and transport area (LATA) toll, or interLATA long distance. Telephone numbers are assigned by a neutral Code Administrator[1] to telephone carriers in blocks of 10,000 numbers based upon the North American Numbering Plan (NANP). Each 10,000-number block is identified by a three-digit area code (or Number Plan Area, NPA), followed by a three-digit (NXX) central office code. Every NPA-NXX code corresponds to a unique "rate center," which is a designated geographical point within an exchange from which calling distances are measured to determine any retail toll charges for calls between telephone numbers. Every rate center is identified by vertical and horizontal (V&H) coordinates analogous to longitude and latitude

[1] The NANP Administrator is an industry-neutral representative responsible for assigning NXX codes to telecommunications service providers upon their request. The service providers include in their request the designated rate center to be associated with the NXX prefix for call rating purposes.

lines used in navigation. These V&H coordinates are used to calculate mileage between rate centers for rating purposes.

Within the traditional local exchange monopoly setting, the practice of rating and routing of calls was generally not controversial. Calls were rated based upon geographically defined rate centers within local exchanges established by the Incumbent Local Exchange Carriers (ILECs). In the event a customer wanted callers in a distant location to be able to reach them by dialing a local number, the customer could pay an additional charge for foreign exchange service which was provided through separate dedicated facilities.

Since the opening of the local exchange market to competition, new questions have arisen concerning the proper rating, routing, and associated intercarrier compensation for telephone traffic. Issues relating to rating and routing practices and associated intercarrier compensation have become more controversial as multiple carriers become involved in the delivery of a telephone message from its origination to its termination, and with the proliferation of new technologies and specialized markets, particularly for Internet usage.

II. Review of the Pac-West Serving Arrangement

Since the generic consideration of the issues before us resulted from a dispute over the specific transactions at issue in the Pac-West complaints, we review the events which gave rise to the complaints, and the serving arrangement devised by Pac-West.

In early 1996, the Commission opened the local exchange market to competition within the service territories of Pacific Bell (Pacific) and GTEC California (GTEC). Pac-West was among the CLCs entering the local exchange market. In response to the growing demand for Internet access, Pac-West designed a service offering targeting the ISP market. Specifically, Pac-West offered ISPs in Stockton with locally-rated telephone access to prospective customers residing in outlying rural exchanges which would otherwise incur toll charges to call Stockton.

Pac-West designed the service so that a Stockton-based ISP could simply obtain telephone number prefixes which were rated as local numbers within the Crows Landing and Jackson exchanges which were located beyond the local calling radius of Stockton. In order to offer this service, Pac-West obtained a NXX code with the same rate center as an existing Pacific NXX code in Crows Landing, and another NXX code with the same rate center as an existing Pacific Bell rate center in Jackson.

The ISP located in Stockton, thereby gained a local presence in these exchanges without having to install facilities there. Pac-West likewise had neither customers nor facilities physically located in the Crows Landing or Jackson Exchanges at the time. Pac-West's switch was located in Stockton and connected to Pacific's Stockton access tandem. Pac-West entered instructions in the Local Exchange Routing Guide [2]that calls to these NXXs be routed to Pacific's tandem switch in Stockton.

In this manner, Pac-West intended that callers within the local calling radius of the Crows Landing and Jackson exchanges could avoid toll charges by dialing the Stockton-based ISP's access number locally rated from those exchanges.[3] This strategy particularly targeted customers located in the

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[2] Once an NXX code is assigned to a carrier, instructions are entered into the Local Exchange Routing Guide (LERG), a centralized industry database system prescribing the call's rating and physical routing to its ultimate destination. Carriers involved in the routing of calls refer to the LERG instructions to determine call routing pathways.

[3]. By D.90-11-058, the Commission established an extended local calling area (ELCA) of up to 12 miles between rate centers. Calls within 12 miles are treated as local calls and

Footnote continued on next page

Patterson and Volcano exchanges (which were adjacent to the the Crows Landing and Jackson exchanges, respectively).

Since the Jackson and Volcano rate centers are within a 12-mile radius, a call from a Volcano NXX to a Jackson NXX would be rated as a local call. Customers could thus place calls between these exchanges without a toll charge and without a charge for Extended Area Service (EAS). Similarly, a call from a telephone customer in Patterson to a Crows Landing NXX is rated as a local call. By contrast, calls from customers located in the Volcano or Patterson exchanges to Pacific's Stockton rate center would be rated as intraLATA toll calls since the calling distance extends beyond 12 miles.

Telephone customers in the Patterson and Volcano exchanges are served by two small independent local exchange carriers, Evans Telephone Company (Evans) and Volcano Telephone Company (Volcano), respectively. Evans and Volcano viewed Pac-West's rating and routing practices as an improper manipulation of the telecommunications network intended to cause calls to be carried on intraLATA toll facilities while denying Evans and Volcano the ability to collect toll charges from their end-use customers. Evans and Volcano initially declined to follow Pac-West's routing instructions to deliver the calls to ISPs in Stockton while billing their own customers as if the calls were local calls to Crows Landing and Jackson.[4] Evans and Volcano routed the traffic to the Jackson and Crows Landing exchanges. Since the called parties were ISPs

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do not entail toll charges. Calls beyond 12 miles do incur toll charges, based on the distance between the rate centers of the calling and called parties.

[4] Traffic between Volcano Telephone's Volcano exchange and Pacific Bell's Jackson exchange is carried on direct cross-boundary Volcano-Pacific Bell trunks between the Volcano and Jackson central offices. This traffic does not pass though Stockton.

actually located in Stockton, however, the calls failed to complete and never reached the ISPs. This dispute over call routing gave rise to C.96-10-018 filed by Pac-West, a complainant against Evans and Volcano.

We subsequently issued D.97-11-024 in the Local Competition Docket, prescribing that all carriers must complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangement or call rating designation is proper. While carriers are entitled to just and reasonable compensation for the completion of calls over their facilities, D.97-11-024 specified that the resolution of such disputes over compensation must necessarily be resolved after the physical routing of calls has been completed.

D.97-12-094 was subsequently issued in C.96-10-018, requiring Evans and Volcano to route the disputed calls to their Stockton destination even though the designated rate centers were located elsewhere. D.97-12-094 reached no final conclusions on intercarrier compensation, but permitted Evans and Volcano to file separate applications to seek recovery of any intercarrier compensation for calls from their customers to Pac-West's ISP customers.

While Evans and Volcano complied with D. 97-12-094 by routing calls to the Stockton ISPs, they began rating the calls as toll calls based upon the distance from the call origination point to its termination point in Stockton. Pac-West filed a subsequent complaint in response (C.98-04-046), arguing that the calls should be rated as local calls based upon the designated rate center of the assigned NXX prefix of the called number. A preliminary injunction was issued by D.98-07-095 enjoining Evans and Volcano from charging toll rates for calls in question. A subsequent decision closing the complaint, D.99-02-096, directed that the disputed calls should continue to be rated as local at least on an interim basis pending the outcome of the Commission's generic deliberations on this issue in the Local Competition rulemaking. D.99-02-096 reached no conclusions, however, as to the ultimate policy issue of whether calls of this nature should be rated as local calls as a generic industry practice, and if so, what intercarrier compensation or other relevant issues needed to be addressed.

An ALJ ruling was issued in this proceeding on July 22, 1998, soliciting parties' comments on the disputed rating and routing issues noted above in the generic context of how these rating and routing issues should be addressed in terms of industry-wide rules. Opening comments were filed on August 31, 1998, and reply comments were filed on September 18, 1998. Comments were filed by the several ILECs, including Pacific Bell, GTE California, Inc., and Citizens, as well as two groups of small independent ILECs. Comments were also filed by various CLCs, and by two Certificated Mobil Radio Sense (CMRS) carriers. The Commission's Office of Ratepayer Advocates (ORA) also filed comments.

III. Overview of Parties' Positions

Parties' representing the interests of ILECs generally claim that Pac-West, and potentially other CLCs, have misused the assignment of NXX prefixes so as to avoid payment of intercarrier compensation and to prevent originating carriers from charging toll rates to their customers for calls to those NXX prefixes. The ILECs generally believe evidentiary hearings are warranted before the Commission adopts any policy permitting the Pac-West arrangement on a general basis.

On the other side of the argument are the CLCs, CMRS providers, and ORA, all of which argue that carriers should be free to establish different rating and routing points for NXX prefix assignments in the interests of network efficiency and competition. The CLCs claim that any disputes over intercarrier compensation issues are best left to negotiations between parties to interconnection agreements, and should not be the subject of a generic Commission rule.

The parties' dispute raises the following questions: (1) how much flexibility should telecommunications carriers have in how they provide a local presence to customers which are physically located in a distant exchange? (2) does the Pac-West arrangement provide such service in a technologically and economically efficient manner? (3), if so, how should compensation for the provisioning of such service be determined, both in terms of retail rates and wholesale intercarrier compensation for routing, switching, and termination of the call to its destination?

The question of whether, or under what conditions, a carrier may designate different rating and routing points for the same NXX prefix could have multiple consequences both to carriers and to customers. Separate effects must be considered on the carrier and its associated customer originating a call, as well as the carrier and its associated customer receiving the call. The rating of the call as local or toll may potentially affect how intercarrier compensation is provided for under the terms of carriers' interconnection agreements

For business customers such as ISPs, which seek to provide a local presence to their own customers located in multiple exchanges, we shall consider how changes in the terms or cost of providing such service may affect business profits and, more broadly, the competitive choices for Internet service available to the public.

IV. Substantive Issues

A. Is The Use of Different Rating and Routing Points Appropriate?

1. Parties' Position

Parties dispute whether a carrier seeking to provide customers (such as ISPs) with a local presence in a foreign exchange may do so by simply assigning the customer a NXX prefix rated in a different exchange from where calls are routed. Such an arrangement avoids the need for the serving carrier to construct separate dedicated facilities between the home exchange of the ISP and the foreign exchange.

We have permitted this arrangement for calls between customers of Evans and Volcano and ISPs served by Pac-West at least on an interim basis as prescribed in D.97-12-094. We stated therein, however, that Pac-West's ability to assign NXXs out of Jackson and Crows Landing to Stockton-based ISPs was subject to change pending the outcome of our generic deliberations in this generic proceeding.

CLCs generally support carriers' rights to utilize the serving arrangement developed by Pac-West, characterizing it as a competitive innovation. CLCs oppose being required to conform to the same foreign exchange serving arrangements used by an incumbent provider as being economically inefficient and anticompetitive.

Parties representing CLCs argue that the Commission should allow CLCs to obtain NXX codes in a rate center where the CLCs do not have customers physically present and to assign numbers from those NXX codes to the CLCs' customers located in a different exchange so as to allow CLCs to compete with ILEC foreign exchange service.

As described in D.94-09-065:

> "Foreign Exchange Service (FEX) permits a customer in Exchange "A" (home exchange) to have a telephone number associated with Exchange "B" (foreign, or dial tone exchange). <u>This allows a customer to have a telephone number presence in a community other than the one where the terminating customer equipment is physically connected to the network.</u>

(D.94-09-065, 1993 Cal PUC LEXIS 649, 87, emphasis added.)

CLCs generally serve large geographic areas with a single switch, due to the use of both fiber optics and digital technologies, while the ILECs continue to use their legacy architecture. Accordingly, CLCs are able to directly route traffic to their switch rather than routing it through multiple switches as the ILECs do. The CLCs characterize this approach as a more efficient functional equivalent of foreign exchange service.

The CLCs argue that it would be grossly unfair and contradictory to the competitive environment the Commission has sought to foster, and illegal under the 1996 Telecommunications Act, were the Commission to enact rules preventing CLCs from actually offering foreign exchange service and competing in the marketplace. Thus, CLCs argue that they must be able to open NXX codes in exchanges where they do not have customers and then assign numbers from those NXX codes, and route calls made to them to customers physically located in a different area.

Incumbent providers generally object to a CLC's use of such arrangements to provide foreign exchange service, arguing that the arrangement is merely aimed at avoiding payment for the use of other carriers' facilities and services. Foreign exchange service has traditionally been provided through dedicated facilities linking the customer's home exchange with the foreign exchange. The carrier providing such service would thereby bear the cost of transporting calls over the dedicated private line connection and recover such costs from its end user (e.g., the ISP) subscribing to the service.

Unlike traditional foreign exchange service, no dedicated facilities are provided by Pac-West linking the ISP's home and foreign exchanges. As such, parties complain that Pac-West and the ISP subscribers get a "free ride" at the expense of other carriers who must use their own facilities to deliver the calls from the foreign exchange to the ISP.

Pacific and the smaller LECs characterize Pac-West's rating and routing arrangement as a substitute for traditional foreign exchange service and/or "800" wide area toll-free service in a manner which is intended to avoid paying additional costs as would normally be required for such services. Industry standard practices for providing inbound toll-free wide area calling service offerings, entail the use of an 800 or 888 NXX prefix by the customer. The calls would be transmitted to Pac-West over the network, and Pac-West would pay access charges for the origination and transmission of the traffic to the Pac-West point of interconnection. Pac-West could charge its customer based on hours of usage or whatever other rate structure Pac-West chose to use.

The small LECs contend, however, that Pac-West and other CLCs are attempting to provide "800-equivalent" inbound wide area toll-free calling service without paying the tariffed access charges (as would be paid for an "800" service) to the carriers originating the traffic or tariffed toll charges for long distance service.

If Pac-West desires to provision the calls as toll-free inward long distance traffic, then Pac-West is obliged to pay to the originating carriers the same tariffed access charges as are applicable to other "800" traffic, according to the small LECs. Pacific argues that such rating and routing practices are merely an attempt to portray toll-free calling as a local call so as to circumvent obligations to pay intercarrier compensation which would otherwise be required under an interconnection agreement. The CLC may thereby sell the service to ISPs at little or no additional charge. Typically, a customer pays more for foreign exchange or "800" service than for basic service.

Pacific recommends that the Commission prohibit disparate rating and routing of calls to NPA NXX codes as a way to ensure the efficient use of NPA NXX codes. Pacific argues that it is an inefficient use of numbering resources for a carrier to obtain a 10,000-number NXX code merely to provide a few numbers to ISPs on a foreign exchange basis while the remaining numbers go unused. Pacific is not suggesting, however, that Pac-West or any other carrier wanting to create incoming call networks are limited to building dedicated facilities to each office from which the ISP wants to receive incoming calls. Pacific does suggest a "wide-open consideration of solutions" through evidentiary hearings. Pacific suggests consideration of solutions involving call forwarding type features with reasonable pricing of the forwarded call, and any other solution to creatively resolve the issue.

GTEC believes CLCs and ILECs should both be permitted to designate rate centers for NXX codes in exchanges where there are no physical customers served provided two prerequisites are satisfied: (1) the carrier assumes responsibility for managing the transport of the traffic from the exchange area associated with the NPA/NXX back to the location of the switch; and (2) "appropriate" interconnection agreements are negotiated with all other potential interconnecting carriers specifying procedures for the exchange of traffic in the rate center area where the NPA/NXX is opened. In addition, GTEC believes the NXX code must have a rate center (V&H coordinates) consistent with the ILEC's listing of state approved rate centers.

GTEC argues that it is unfair to place the operational and financial burden for delivering the traffic to the requesting carrier on the originating carrier in a manner that permits the requesting carrier to avoid its responsibility to jointly manage the interconnection of its network with the networks of other carriers. GTEC believes that these issues should be resolved up-front in a negotiated interconnection agreement to ensure that all affected parties jointly participate in determining how best to accomplish the exchange of traffic and the appropriate level of compensation for doing so.

2. Discussion

In the interests of opening the local exchange market to competition, we have provided flexibility to CLCs in how they design their networks and service offerings. As long as a CLC does not violate requirements of the Telecommunications Act nor breach provisions of its interconnection agreement with other carriers, CLCs have been permitted to configure their network facilities as they choose.

In order to limit CLCs to offering foreign exchange service only through provision of their own dedicated facilities, the CLCs argue they would have to construct switching facilities in every local exchange where service was to be offered. It would be technologically and economically inefficient, however, to require the CLC to construct switching facilities in every local exchange in which it sought to provide a local presence to its customers. Such a requirement would be inconsistent with the way in which many CLCs have engineered their networks. Various CLCs have achieved efficiencies by locating a small number of concentrated switches near Pacific's tandems, as opposed to locating switches in a large number of wire centers. As a result, such

CLCs typically serve a much larger number of rate centers and their associated NXX codes from a single switch than do the ILECs.

In the present instance, we find no basis to require a CLC to establish separate switching facilities in each exchange where it seeks to offer foreign exchange service merely because that is how the ILEC configures its network. CLCs should have the discretion to negotiate interconnection agreements consistent with differences in the CLC's network configuration relative to that of the ILEC. Depending on the network configuration involved, it may make economic sense for carriers to negotiate interconnection agreements whereby the ILEC performs the transport of traffic to a centralized switch, rather than the CLC installing a separate switch in every exchange where it seeks to offer telephone service. In such a situation, the CLC could arrange for calls to be rated in a different exchange from where the calls are routed, and would not have to construct its own dedicated private line to link an ISP to a foreign exchange. Moreover, a number of interconnection agreements already executed between ILECs and CLCs explicitly provide that the rating and routing points for calls need not match, although they must be in the same LATA as the rate center of the called party's NXX prefix. AT&T provides examples of such agreements in its reply comments. Thus, a prohibition on the use of different rating and routing points would be in conflict with those existing interconnection agreements.

Citizens claims that the provision for 911 emergency services will be adversely impacted if PacWest's rating/routing system is extended to apply to all residential and traditional business services.[5] As Pac-West notes, however, the rating or routing criteria published in the LERG, which is the source typically used by interconnecting carriers to route and rate calls, is irrelevant to E-911 functionality. Instead, the routing of E-911 calls and the provision of address information to the appropriate Public Service Answering Point ("PSAP") is based on specific records entered into the E-911 Database Management System. These records identify the actual geographic location of the terminating point of any E-911 capable end-user lines, i.e., the actual physical location of customers' premises, not their assigned rate centers. Therefore, we conclude that the provision of foreign exchange services provided by Pac-West utilizing switch-based routing technology does not adversely affect E-911 service.

We disagree with Pacific's claim that the Pac-West service arrangement should be prohibited because it contributes to the inefficient use of NXX number resources. While we are acutely aware of the statewide numbering crisis and are actively taking steps to address it, we do not believe that imposing restrictions or prohibitions on CLC service options is a proper solution to promote more efficient number utilization. Under present industry rules, a carrier seeking to provide service in a given rate center must obtain NXX codes in blocks of numbers no smaller than 10,000. This requirement applies whether the customer being served is an ISP or any other customer. Moreover, there is no reason to conclude necessarily that a carrier will use any NXX code only to provide service to ISPs which are located outside of the assigned NXX rate

[5] In the case of ISP access service, as offered by Pac-West, the facilities are one way in the inbound direction. In such cases, since an ISP would not make an outgoing call the question of E-911 capability is not implicated at all.

center. For example, both Pac-West and WorldCom report they are actively pursuing numerous opportunities to provide profitable telecommunications services throughout their service areas. Their current subscribers include paging companies that have a significant demand for local DID numbers, which they, in turn, assign to local end users who typically are physically located in the assigned rate centers. Customers also include banks, retail stores, and other businesses, both located inside and outside the assigned rate centers.

Rather than imposing policies restricting carriers' service options, we believe the proper approach is to provide incentives for carriers to expand their service offerings so that NXX codes will become more fully utilized.

Accordingly, we find no basis to prohibit carriers from assigning NXX prefixes rated for one exchange to customers located in another exchange as a means of offering a local presence where such an arrangement is technologically and economically efficient, and where intercarrier compensation is fairly provided. We shall not prohibit CLCs from designating different rating and routing points just because such an approach may differ from traditional methods used by ILECs. Such a prohibition could undermine the incentives for carriers to develop innovative service alternatives in the most economically and technologically efficient manner.

While we recognize carriers' discretion to make such use of NXX prefix assignments from a foreign exchange where economic efficiencies warrant it, we expect carriers to negotiate reasonable intercarrier compensation arrangements for the routing, switching, and for the use of facilities to deliver such calls. The compensation provided to carriers involved in the transaction may be influenced by how compensation is provided by end use customers originating and receiving such calls. Accordingly, we address the question of end-user retail compensation and associated call rating issues below. We address the issue of intercarrier compensation in Section C below.

B. Does the Pac-West Approach Provide a Legitimate Basis For the Rating of Calls as Local?

The issue of how calls should be rated under the Pac-West arrangement previously arose in the context of the Pac-West v. Evans and Volcano complaint (C.98-04-046) In D.99-02-096, we required that such calls not be rated as toll, at least on an interim basis, but should be rated from the rate center of the assigned NXX prefix. We deferred to this rulemaking, however, the generic question of how such calls should be rated as a prospective industry policy.

1. Parties' Positions

Parties dispute how to rate calls which are terminated beyond the local calling area of the originating caller even though the assigned telephone numbers have a local NXX prefix. The ILECs generally argue that calls should be rated based on the physical location of the calling and called parties. They would rate a call as toll when the physical distance between the originating and terminating points of a call exceed the 12-mile local calling limit, even if the NXX prefix has been designated for a rate center within the 12-mile local calling area.

The small LECs characterize the practice of disparate rating and routing of calls as "false labeling" of the call destination. The small LECs argue that call rating should reflect the actual points of origination and termination of a call and not a "fictitious" NXX rating "destination." The small LECs claim a call is properly rated as either "local" or "long distance" based on the distances between the exchanges in which the calling and called party are located.

Volcano and the other small LECs generally concur in Pacific Bell's intraLATA toll tariff, which defines a toll call as a "telephonic communication between two exchange stations located in different local service areas." (Emphasis added.)[6] Based on this tariff description, the small LECs claim that the rating of calls is based on the physical proximity of the parties, such that calls between parties located in different local exchanges must be rated as toll calls. Under their premise, toll charges thus apply to calls made by Evans and Volcano customers to Stockton ISPs.

The small ILECs also express concern that the establishment of disparate rating and routing points threatens their system of cost recovery from pooled toll and access revenue as prescribed by the FCC in its Part 36 rules entitled "Jurisdictional Separation Procedures For Telecommunications Companies." (See 47 CFR §§ 36.1 et. seq.) The small LECs raise the concern that CLCs will increasingly use disparate rating and routing practices to reclassify what would otherwise be toll traffic as local. The small LECs warn that as more and more traffic is reclassified as local, the rate of return of the toll and access pool will correspondingly be reduced. The Commission would then be faced with the need to raise local service rates to make up for the cost of transporting this traffic, according to the small LECs.

The CLCs argue that the rate center designation of the called party's NXX prefix should determine the rating of the call as local or toll. Pac-West's use of different rating and routing points for the same call destination

[6] Pacific Bell Tariff Schedule A6 Message Telecommunications Service, Sec. 6.2.1 (A)(1).

is entirely premised on calls originating within 12 miles of the designated rate center for the NXX prefix of the called party being rated as local. If, in fact, such calls were rated as toll to end-users, it would defeat the underlying purpose of using different rating and routing points. Thus, resolving the dispute over call rating has a decisive impact on whether the basic Pac-West arrangement is feasible at all.

Comments were also filed by the Allied Personal Communications Industry Association of America (Allied) and by Los Angeles Cellular Telephone Company (LACTC), representing the views of commercial mobile radio service (CMRS) carriers. LACTC argues that any alleged problem (if one exists) with Pac-West's manner of rating and routing calls is carrier-specific, and does not warrant any industry-wide changes in call rating or routing methods.

LACTC takes issue with the claim of the small LECs that call rating "should reflect the actual points of origination and termination of a call" arguing that such a rigid call rating rule would be in conflict with call rating practices of CMRS carriers. Mobile technologies are designed to carry telephone messages to and from customers whose location is constantly changing. A mobile customer may travel from one exchange area to another during a single telephone call. Yet as long as carriers choose to file distance-sensitive tariffs, a <u>fixed</u> rating point must be assigned to the called number. For mobile technologies, such a rating point will always be "fictitious." Any attempt to substitute a rating system based on the actual physical location of the mobile customer is not possible under current technology. Whether the terminating carrier is a CLC or CMRS provider, the principles of network efficiency require routing to the nearest point of presence of the terminating carrier, and <u>not</u> to the physical location of the called party, or to the rate center assigned to the called number. This principle is especially important in a CMRS context because the mobile unit will seldom, if ever, be physically located within the designated rate center. LATC warns that any rule requiring physical links between terminating carriers and each rate center, and further requiring originating carriers to route calls to the rate center, rather than directly to the terminating carrier, would result in an unnecessary duplication of facilities, and additional transport obligations for both originating and terminating carriers.

In the case of LACTC's interconnection agreements, Pacific and GTEC may <u>route</u> calls to the LACTC mobile telephone switching office (MTSO) which is nearest to the originating tandem. At the same time, LACTC is permitted to designate separate <u>rating</u> points for each of its NXX codes. This allows LACTC cellular customers to obtain numbers which, for rating purposes, are located in the geographic area from which the mobile customer expects most of its calls. Under these agreements, there is no obligation for the originating carrier actually to transport calls to either the rating point, or the actual location of the mobile unit. Instead, Pacific and GTEC simply transport all of their calls in the least costly way to the nearest LACTC point of Interconnection. LACTC then assumes transport and termination responsibilities.

2. Discussion

As discussed below, we conclude that the rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers. Even if the called party may be physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix.

The basis for rating calls generally is set forth in carriers' retail tariffs. Typically, the smaller independent LECs have concurred in the toll tariff provisions applicable to Pacific Bell wherein a "toll message" is defined as:

"A completed call or telephonic communication between two exchange stations located in different local service areas, between toll stations, or between a toll station and an exchange station to which rates are applicable in accordance with the provisions of the toll rate tariff." (See footnote 7.)

This tariff language expresses the underlying principle that toll rates are based upon the geographic location of the exchanges of the calling and called parties. More specifically, toll rates are measured based on the distance between the rate centers of the calling and called parties. Yet, the tariff also prescribes that rates are applicable "in accordance with the provisions of the toll rate tariff." The applicable provisions of the toll rate tariff appear in Pacific's Tariff Section A6, "Message Telecommunications Service." Under Subsection 6.2.1.A.4(1), the tariff prescribes that: "Toll rates between points (cities, towns, or localities) are based on the airline distance between *rate centers.*"(emphasis added). Each rate center, in turn, is identified by tariff with a unique NPA NXX code. Thus, it is the applicable rate center as identified by telephone number prefix, not the physical location of the calling or called party that is used to rate calls.

Where the designated rate center of the called party's NXX prefix is in the same exchange as the called party resides, the rating of the call would be toll if the distance from the originating caller's rate center exceeded 12 miles. The toll tariff language, however, does not explicitly address the situation where the rate center of the assigned NXX prefix of the called party is in a different exchange from the physical location of the called party.

Yet, there are established types of calling arrangements where the rate center used for rating of calls is located in a different exchange from where the called party resides, as noted above. One notable example involves called parties who are customers of CMRS providers. As previously noted, in the case of interconnection agreements involving CMRS providers, there is no obligation for the originating carrier to route calls to either the rating point or the actual location of the mobile unit. No party has challenged the validity or fairness of such interconnection arrangements with CMRS providers. We find no reason to question the reasonableness of those arrangements.

Another generally recognized exception to the matching of rating and routing points is foreign exchange service. We conclude that under a foreign exchange service arrangement, it is consistent with the applicable tariffs to rate calls in reference to the rate center of the assigned NXX prefix even though it is in a different exchange from where the called party is located. The use of foreign exchange service does not contradict the principle of geographically-based rating of calls, but is a way to transfer the geographic rating point of the called party from one exchange to another. By designating the service as "foreign" exchange, the reference point for rating remains geographically based even though it has been relocated. Thus, foreign exchange service provides for a called party to reside in one exchange, but still to have a telephone number rated as local served from a foreign exchange.

An underlying dispute over Pac-West's use of different rating and routing points is whether the rating of calls as local can be justified as a form of foreign exchange service. Pac-West claims calls to its ISPs should be rated as local since its service is merely a form of foreign exchange service which has been offered by the ILECs for years. Pac-West, however, does not identify its ISP tariff by name as "foreign exchange service," but merely as "Type 6" service.

Opposing parties object to the characterization of Pac-West's service as foreign exchange since Pac-West has failed to pay for any dedicated facilities. One method of providing foreign exchange service involves dedicated facilities connecting the central office associated with the customer's assigned NXX prefix and the central office where the customer wishes to have the new "foreign exchange" NXX prefix, i.e., in a location where the customer is not physically located. [7] Under this method, the carrier typically has charged the customer for the costs of providing the dedicated facilities necessary to transport the call from the home exchange to the foreign exchange. The customer has paid these additional charges through a tariff designated as "foreign exchange service". The Pac-West service provides no such designation, nor separately stated charges for providing the foreign exchange prefix.

For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides. From the end-use customer's perspective, Pac-West's service is a competitive alternative to other form of foreign exchange service.

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[7] Another traditional method to provide toll-free calling is "800" service, which allows the called party to pay for incoming calls to that number. If Pac-West had provided "800" service to ISPs for calls made from Volcano or Patterson, Pac-West would have paid intercarrier switched access charges to be shared by use of their respective networks.

Typically, a customer pays more for foreign exchange service or 800 service than for basic service, to compensate the telephone company for the added costs, principally for transport incurred for the foreign exchange or 800 service. Pacific argues that while the added charges to the customer ordering foreign exchange or 800 service normally forces the customer to make rational decisions as to whether the benefits outweigh the costs, there is nothing in the pricing of the arrangement to the Pac-West ISP customer to cause the customer to make rational cost-benefit buying decisions. Pacific claims that the Pac-West ISP in Stockton wanting end-users to have free local calling from distant locations may pay almost nothing extra for the higher costs incurred by the carriers providing the service.

The fact that a CLC does not charge the end user for dedicated facilities does not necessarily negate the fact that foreign exchange service is being provided. We have previously determined that Commission regulation of tariff rates charged by CLCs is not necessary in view of CLCs' lack of market power. Therefore, we find no basis to require specific minimum rates which CLCs must charge end-users for the service to qualify as "foreign exchange." Likewise, we find no basis to require the specific title "Foreign Exchange Service"as long as the substantive intent to provide the customer with a local presence in a foreign exchange is disclosed in the CLC's tariff.

We conclude that the assigning of NXX prefixes to ISPs in the manner used by Pac-West constitutes a form of foreign exchange service from the perspective of the end user. As such, the Pac-West arrangement warrants rating of the calls from the rate center of the foreign exchange in similar fashion to more traditional forms of foreign exchange service. Accordingly, such calls would be rated as local calls if originated from a rate center within 12 miles of the rate center of the designated foreign exchange of the called party's NXX prefix.

This principle is consistent with the underlying intent of the tariffs governing the rating of calls as toll or local, applied in the context of foreign exchange service.

We agree that the pricing of services should be determined in an economically efficient manner to provide an incentive for economically rational decisions. We do not believe this result is properly achieved, however, by dictating what a CLC is to charge its end-users. Rather, we believe the CLC will set its prices to end-users in an economically rational manner if the CLC is held financially responsible to compensate other carriers for routing and delivering foreign exchange calls as provided for in the relevant interconnection agreements. We discuss the issue of intercarrier compensation separately in Section V.A. below.

The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (i.e., ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call. Consequently, the billing of toll charges for Internet access which is designed to be local could render an ISP's service prohibitively expensive, thus limiting the competitive choices for Internet access, particularly in rural areas.

The small LECs have objected to rating calls as local when terminated to an NXX prefix of a customer physically located in a separate exchange, claiming such NXX prefixes constitute a "false labeling" of the call destination. A "false labeling" implies an intent to deceive or mislead. If such labeling were used to maliciously misrepresent the actual location of the called party with an intent to defraud others, a deceptive intent could be inferred. Yet, we find nothing inherently misleading nor deceptive in the use of different rating and routing points as long as the arrangement is clearly identified to customers and in applicable interconnection agreements as a form of foreign exchange service and as long as a provision for fair intercarrier compensation is made. The designation of an NXX prefix rated from a foreign exchange is simply necessary to provide for a local presence in that exchange and still conform with the calling rating conventions as discussed above.

The independent LECs have also argued that rating of such calls as local causes the originating carrier to lose toll revenue from its customer originating the call. This argument raises two issues: (1) the loss of profit opportunities and (2) compensation for costs of providing service. To the extent that the LECs object to the local rating of calls on the basis that it results in a loss of profit opportunities through the collection of greater toll revenues, we find such objection unpersuasive. A customer is entitled to choose to make either a local call (through a foreign exchange arrangement) or a toll call based on the competitive choices available. If the customer's choice to make a local call results in lower toll revenues being collected by the serving carrier, that result is a consequence of the competitive market and is not a basis to restrict the competitive options available to the customer. The local service tariffs under which LEC customers are billed are designed to provide a reasonable compensation for the origination of calls to other local NXX prefixes.

Moreover, the loss of such toll revenue presupposes that the originating customer would still make the same call if it were rated as toll rather than local. In the case of ISPs, however, customers generally can find an ISP offering access on a toll-free basis. Thus, if a call to an ISP were rated as toll, the caller would likely not make the call in the first place, but would chose a competing ISP accessible through a local call. Internet users are unlikely to make toll calls in order to access the Internet for extended periods. Thus, given the availability of toll-free ISP alternatives, there would be no toll revenue to lose from the Pac-West service arrangement. Consequently, the Pac-West service arrangement for ISPs should not adversely impact the small LECs' toll pool revenue recovery.

If the competing ISP was also a customer of the same carrier as of the originating caller, that carrier could gain a competitive advantage by making its service more attractive for ISPs. An ISP would obviously prefer a carrier who could enable it to offer local-rated access. Conversely, the originating carrier could face competitive losses in terms of ISPs who might choose to subscribe to the competing carrier offering service to ISPs through a less costly foreign exchange arrangement. Particularly in rural regions, such a service offering enhances customer choice and affordability of Internet access, encouraging more flexible alternatives for ISPs seeking market expansion.

In summary, at least in the case of ISPs, we do not find the claims of lost toll revenue justify a deviation from accepted call rating protocols as outlined above.

The other objection raised by the small LECs involves claims that the rating of calls as local deprives them of compensation for actual costs incurred in the delivery of such calls beyond the local calling area using facilities which are designed to carry toll traffic. The proper remedy for this objection is for the LEC to seek any appropriate compensation from other carriers involved in the call delivery. Disputes over intercarrier compensation, however, do not justify exacting a toll charge from end-user customers for a call intended to be rated as local. We address intercarrier compensation below.

C. Intercarrier Compensation

1. Parties' Positions

Parties are in dispute regarding what intercarrier compensation obligations exist associated with Pac-West's serving arrangement, assuming the Commission does not prohibit the use of such arrangements as some parties propose.

Parties disagree over whether or how the actual costs incurred by carriers are impacted by changes in the routing distance of calls between the called party and the originating caller and what resulting intercarrier compensation is appropriate. CLCs filing comments generally believe the Commission should simply defer to the independent negotiation process, and not issue any policy pronouncement as to what compensation obligations may be appropriate for the sorts of foreign exchange arrangements Pac-West has offered. To the extent the Commission intends to consider rules in this regard, however, CLCs generally oppose paying any additional compensation to the ILECs. Pac-West claims, for example, that the facilities used and related costs are the same whether a call is routed over a local 12-mile distance or a longer distance within a LATA. Based on this claim, Pac-West then argues that it shouldn't have to compensate more for a call routed over the longer distance as long as the call is defined to be a local call.

Pac-West argues that its serving method has not caused other carriers to incur costs they would not otherwise have incurred, nor has it interfered with other carriers' facilities or impaired their own provision of services. Pac-West claims it has not unfairly deprived any carrier of revenues, nor, unreasonably impeded competition in any way. To the contrary, Pac-West argues, this serving method enables ISPs and others to expand their service offerings throughout California far more economically and quickly than otherwise would have been possible, thereby increasing consumers' choices for services, and enhancing the quality of services, particularly in sparsely populated rural areas where affordable high speed Internet access previously had not been available.

Pac-West argues that the facilities used by ILECs and other interconnecting carriers to originate and route traffic for completion by Pac-West, WorldCom, and other CLCs are exactly the same whether the ISP or other called party is physically located in the rate center area with which its telephone number is associated, or not. Pac-West claims that the originating carrier experiences no difference in cost, and that the appropriate rates, terms, and conditions for the exchange of traffic, in both cases, are already addressed in interconnection agreements currently on file with the Commission.

Parties representing CLCs generally argue that the Commission should not set intercarrier compensation rates for any form of foreign exchange service that ILECs or CLCs may offer, but rather that a CLC and other telecommunications carriers involved in handling the transport and/or termination of foreign exchange service calls should negotiate intercarrier compensation rates, including rates and terms for interconnection trunking, as part of interconnection agreements. Since Section 251 requires all telecommunications carriers to interconnect with each other, either directly or indirectly, all carriers are obligated to negotiate any and all requisite intercarrier rates as part of an interconnection agreement.

The CLCs argue that if the Commission sets intercarrier rates as requested by the ILECs, the ILECs will simply maintain their monopoly position, rather than negotiating fairly as called for in the Telecommunications Act. Pac-West thus draws a distinction between a carrier compensating for actual usage-sensitive incremental costs versus paying intercarrier rates which merely contribute to the fixed costs and to the additional profit margin of the ILEC.

The ILECs generally object to Pac-West's use of different rating and routing points, claiming that they are being used to avoid the payment of intercarrier compensation to the ILECs for the routing and switching of calls beyond local calling area boundaries. Pacific claims that by using the disparity between rating and routing, carriers avoid paying proper compensation to other connecting carriers in order to obtain LATA-wide local calling, causing serious financial harm to the industry because of the overuse of NPA NXX codes.

Pacific claims that the Pac-West service arrangement is actually a form of intraLATA toll-free calling, and, as such, should be subject to the same compensation provisions as all other intraLATA toll-free calls as prescribed in Pacific's various interconnection agreements. Under those agreements, compensation is to be charged by the party originating the call rather than terminating the call. Thus, under Pacific's interpretation, Pac-West—or any other CLC with a similar arrangement—would be required to pay compensation to Pacific for calls originated by Pacific's customers and terminated to the CLC's ISP customers, with the traffic being treated as intraLATA toll-free calling.

Pacific and other ILECs dispute Pac-West's claim that there are no additional costs incurred by the telephone companies that must transport the calls over longer distances beyond a local calling area, such as to Stockton from Crows Landing. Pacific argues that if the Commission continues to permit this disparity between rating and routing without proper compensation, all LECs will experience a revenue shortfall as costs increase without any compensating increase in revenue. In addition, more and more carriers will be encouraged to establish local calling areas for incoming calls to their customers that may be as large as the LATA. And each of these newly created local calling areas for incoming calls will require significant numbers of NPA NXX codes.

The Small Independent LECs claim that the present Commission policy regarding rating and routing is unjust since it requires carriers to complete calls even if they are not properly compensated. The Small Independent LECs recommend that the Commission require CLCs to arrange for interconnection and compensation arrangements with all other affected carriers before they establish exchanges with disparate routing and rating points to allow the Commission to resolve how the ILECs will replace potential lost revenues and cover the cost of completing calls to exchanges where the rating point may be local, but the routing point is distant.

2. Discussion

We conclude that, whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local.

The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper destination. A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. A carrier remains responsible to negotiate reasonable compensation with other carriers with whom it interconnects for the routing of calls from a foreign exchange.

On the other hand, we do not believe that existing tariffed switched access rates such as those which Pacific charges other carriers for the transport of intraLATA toll traffic necessarily provide a fair or economically efficient basis for intercarrier compensation under the foreign exchange arrangement used by Pac-West. A requirement for CLCs to pay intercarrier compensation for foreign exchange arrangements based on such rates could serve to undermine the efficiencies which CLCs have sought to achieve through the design of their own network architecture as described above. Perpetuating the payment of such tariff charges in such instances could drive up the rates which CLCs charge to ISPs which may, in turn, be passed on to Internet end-users.

The use of the ILEC's existing switched access rates would also base intercarrier compensation on the legacy architecture which has traditionally been deployed by the ILECs. It would not promote the most economically efficient outcome simply to require the CLCs to pay currently existing tariffed switched access rates to the ILEC on the same basis as would be required for a traditional intraLATA toll call.

In short, we find that neither the position of the CLCs nor that of the ILECs provides a completely satisfactory resolution of the intercarrier compensation issue. Incumbents are entitled to fair compensation for the use of their facilities in the transport and termination of foreign exchange traffic. At the same time, it would not be competitively neutral or economically efficient to impose a system of intercarrier compensation which is exclusively tied to any one particular carrier's network architecture. Rather, the appropriate compensation arrangement should aim to be technology neutral, and should be applicable both to CLCs and to ILECs whether traffic is originating or terminating. The compensation arrangement should take into account the costs that arise from the service offered.

The means by which intercarrier compensation is determined for the mutual exchange of traffic on each others' networks is through interconnection agreements negotiated in conformance with the 1996 Telecommunications Act. Interconnection agreements typically include provisions for each carrier to compensate the other based on the respective cost of facilities used to originate, transport, switch, and terminate traffic. Different compensation provisions may apply depending on whether the call is defined as local, intraLATA toll, foreign exchange, or long distance. All such compensation, however, is tied to costs incurred or avoided.

We believe the Pac-West arrangement is equivalent to foreign exchange service, not to intraLATA toll-free calling as claimed by Pacific. Just as with other forms of foreign exchange service, the Pac-West arrangement relocates the rate center from which incoming calls are rated as either local or toll. Unlike intraLATA toll-free calling, however, the Pac-West arrangement does not permit a caller from any location to dial the ISP toll-free. The calling party would still incur toll charges if the call was made from a location whereby the rate center of the calling party was more than 12 miles from the rate center for the ISP's NXX prefix. The Pac-West arrangement is not equivalent to intraLATA toll-free calling. Therefore, a carrier thus may not claim compensation for the origination of calls by its customers to the ISPs served by a CLC under the Pac-West type of arrangement under the provisions applicable to toll-free intraLATA calling. On the other hand, a carrier may be entitled to compensation for the transport of such traffic as a form of foreign exchange service.

Of course, the complaint which initiated this inquiry involved a dispute between Pac-West and Evans and Volcano, carriers that had not executed interconnection agreements with each other. Neither Evans nor Volcano had an interconnection agreement with Pac-West because their facilities did not physically interconnect with those of Pac-West. [8] They each handed off their customers' originating traffic to Pacific for further routing ultimately destined for Stockton. As a general matter, however, any carrier that is involved in the switching or routing of calls originated by its customers over toll facilities has recourse to negotiate compensation to recover those costs under interconnection agreements with other carriers with whom it interconnects.

In any event, we find that the maximum potential relieve impacts of rating and routing differences theorized by the small LECs are overstated. Hypothetical examples posited by the small LECs suggest that a telephone message with a local rating point could be transported to a routing point as far away as Los Angeles or New York City. In reality, interconnection agreements typically limit the distance that a call may be routed within the boundaries of a single LATA. Therefore, any routing of a call with a local rating point beyond the LATA boundaries would generally not be permissible under the agreement.

What we are concerned with in this rulemaking, however, is the question of what intercarrier compensation is appropriate based on whether a call is defined as local (via the use of a foreign NXX prefix) or as toll.

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[8] In D. 97-12-094 (C.96-10-018), we authorized Evans and Volcano Telephone Companies each to file a separate application to seek compensation from Pac-West for any alleged revenue losses associated with Pac-West's provisioning of ISP Type 6 service between the date such service commenced and the resolution of these generic issues. To date, no such applications have been filed.

This issue has already arisen in previous complaints and arbitration proceedings before the Commission. Parties to various complaint and arbitration proceedings have been unable to agree on whether disparate rating and routing of calls is proper, and if so, how compensation for such calls should be arranged. Rather than repeatedly litigate the same issue in each disputed interconnection agreement, a more efficient approach is to establish generic principles in this proceeding which can be applied in specific negotiations.

We have previously adopted rules in this proceeding to be applied as preferred outcomes, while leaving parties the discretion to negotiate their own unique interconnection agreements tailored to the circumstances facing individual carriers. The adoption of preferred outcomes, has provided carriers with broad guidance and has reduced the potential for disputes between carriers. The present dispute is likewise appropriate for generic policy guidance from the Commission in the interest of minimizing future disputes and facilitating negotiations between carriers.

We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement – not the rating point – of a call which properly forms a basis for considering what compensation between carriers may be due.

We conclude, however, that the record at this point does not provide a sufficient basis to adopt appropriate preferred outcomes for intercarrier compensation arrangements for the transport and delivery of traffic involving different rating and routing points. The record shall be augmented through evidentiary hearings to determine a fair resolution of the disputes concerning intercarrier compensation for the transport and delivery of calls using NXX codes to provide locally-rated calling to customers residing beyond the local calling area of the designated NXX code. Our ultimate aim is to arrive at an intercarrier compensation arrangement which is fair to all carriers involved in the transport, switching, and delivery of calls utilizing different rating and routing points. The resulting intercarrier compensation arrangements should not result in a windfall to either ILECs nor CLCs, but should provide economically efficient price signals to stimulate a competitive market among all carriers. We shall direct the ALJ to schedule a prehearing conference to initiate this hearing process.

V. Comments on Draft Decision

The draft decision of the assigned ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments on the draft decision were filed on July 22, 1999, and reply comments were filed on July 27, 1999. We have taken the comments into account, as appropriate, in finalizing today's order.

Findings of Fact

1. In D.97-12-094, the Commission found that the issues raised in C.96-10-018 involved industry-wide issues which should be examined on a generic basis in this rulemaking.

2. C.96-10-094 involved a dispute over the propriety of certain rating and routing of calls as brought before the Commission in a complaint (1) filed by Pac-West Telecom, Inc., a competitive local carrier (CLC).

3. Although the generic issues raised in the Pac-West complaints have applicability to telephone number assignments generally, the dispute in the

Pac-West complaints arose specifically in the context of number assignments made to Internet Service Providers (ISPs).

4. To limit CLCs to offering foreign exchange service only in the manner traditionally used by the ILECs, is unreasonable.

5. It could be technologically and economically inefficient to require a CLC to construct switching facilities in every local exchange in which it sought to provide a local presence to its customers.

6. Various interconnection agreements between the major ILECs and CLCs already provide for the use of separate rating and routing points.

7. The interconnection agreements between the major ILECs and cellular carriers Los Angeles Cellular Telephone Company have provisions enabling cellular customers to obtain numbers for rating purposes which are located in the geographic exchange in which the cellular customer expects most of its calls even though it differs from where the customer is physically located.

8. The use of different rating and routing points does not adversely impact the 911 emergency calling system since the routing of relevant information is not based on rating points, but on separate records entered into the E-911 Database Management System.

9. Toll rates between localities are based on the airline distance between the calling and called parties' rate centers. Each rate center, in turn, is identified, by tariff, with one or more specific NXX codes.

10. The provision of foreign exchange service is a generally recognized exception to the practice of rating calls from the rate center of the exchange in which the called party resides since it is designed to relocate a called party's designated rate center for rating purposes from a home exchange to a foreign exchange.

11. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the end-user expectation remains the same, namely to achieve a local presence within a foreign exchange.

12. From the end-user customer's perspective, Pac-West's service is a competitive alternative to traditional foreign exchange service.

13. Since Internet users are unlikely to make toll calls in order to access the Internet for extended periods given the availability of toll-free ISP alternatives, there would be no toll revenue to lose from the Pac-West type of service arrangement.

14. D.97-12-094 (C.96-10-018) authorized Evans and Volcano Telephone Companies each to file a separate application to seek compensation from Pac-West for any alleged revenue losses associated with Pac-West's provisioning of ISP Type 6 service.

15. The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper destination.

16. The means by which intercarrier compensation is determined is through mutually negotiated interconnection agreements in conformance with the Telecommunications Act, and different compensation provisions may apply depending on whether the call is defined as local, intraLATA toll, or long distance.

17. Disputes as to how actual costs are impacted by a particular serving arrangement and how such costs should be compensated is a factual question for resolution through negotiations and/or arbitration among parties to interconnection agreements.

18. As a general matter, any carrier that is involved in the switching or routing of calls originated by its customers over toll facilities has recourse to negotiate compensation to recover those costs through wholesale charges under interconnection agreements with other carriers with whom it interconnects.

19. Interconnection agreements typically limit their applicability to the routing of calls within the boundaries of a single LATA.

20. Parties to various complaint and arbitration proceedings before this Commission have been unable to agree on whether disparate rating and routing of calls is proper, and if so, how compensation for such calls should be arranged.

21. The record in this proceeding does not provide a sufficient basis to adopt appropriate preferred outcomes for intercarrier compensation arrangements for the transport and delivery of traffic involving different rating and routing points.

Conclusions of Law

1. Carriers should not be prohibited from designating different rating and routing points for call destinations since such a prohibition could undermine the incentives for carriers to develop innovative service alternatives in the most economically and technologically efficient manner.

2. The rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers, even if the called party may be physically located in a different exchange from where the call is rated.

3. It is up to carriers through their negotiations to determine specifically how much they will be mutually compensated for the exchange of various kinds of traffic.

4. This rulemaking is concerned with the broad principle of what are the obligations for revenue compensation based on whether a call is defined as local

(via the use of a foreign NXX prefix) even though the routing distance may be equivalent to that of a toll call.

5. Carriers are entitled to be fairly compensated for the use of their facilities and related processing functions for the actual delivery of a call, irrespective of how a call is rated based on its NXX prefix.

6. There is nothing inherently "false" in the labeling of NXX prefixes from foreign exchanges as long as the arrangement is not used to mislead or deceive, and a fair provision for intercarrier compensation is made for the delivery of calls in the applicable interconnection agreements.

7. If the customer's choice to make a local call results in lower toll revenues being collected by the serving carrier, that result is a consequence of a competitive market and is not a basis to restrict the competitive options available to the customer.

8. The Pac-West arrangement is equivalent to foreign exchange service, but not to intraLATA toll-free calling.

9. Since the Pac-West service type of arrangement is not equivalent to intraLATA toll-free calling, on a prospective basis, carriers may not claim compensation for the origination of calls by its customers to ISPs under that arrangement under the provisions for toll-free intraLATA calling.

10. The record should be augmented through evidentiary hearings as a basis to adopt preferred outcomes concerning the proper intercarrier compensation for the transport and delivery of calls utilizing NXX codes to provide locally rated incoming calling to customers residing beyond the local calling area of the designated NXX code.

11. The proper compensation arrangement should take into account the fact that the ILECs and CLCs may use different network architectures to transport

and deliver calls, and should strike a fair balance in considering the differing network architectures used.

12. D.98-10-057 ordered that reciprocal compensation provisions of interconnection agreements are to apply to the termination of ISP traffic which would otherwise qualify as a local call measured by the distance between the rate centers of the telephone number of the calling party and the telephone number used to access the ISP modem.

INTERIM ORDER

IT IS ORDERED that:

1. The following preferred outcomes shall be used by the Commission in resolving disputes over the provisions of interconnection agreements involving the use of different rating and routing points.

2. Carriers shall not be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of providing customers a local presence within a foreign exchange.

3. The compensation exchanged between carriers related to the origination, switching, and routing of calls shall consider the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement in situations where different rating and routing points are used.

4. Any currently effective interconnection agreements which are inconsistent with the principles set forth above shall be subject to renegotiation to conform to principles adopted in this rulemaking regarding rating and routing issues.

5. Calls shall be rated in reference to the rate center of the assigned NXX prefix of the called party pursuant to the conclusions of law above.

6. The assigned Administrative Law Judge is directed to convene a prehearing conference for the purpose of the defining the scope and procedural schedule for evidentiary hearings regarding intercarrier compensation among wireline carriers for the transport and delivery of calls utilizing NXX codes to provide locally-rated incoming calling to customers residing beyond the local calling area of the designated NXX code.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners