



What To Do When “Traffic Pumping” Claims Are Really *Access Charge Discrimination*

By: Leo A. Wrobel



A nationwide ILEC, which also owns an IXC, produced two identical sets of call detail records (CDR) for the same calls due to a processing error. One set was billed by a CLEC, the correct owner. The other set was billed by the ILEC, in error. The subsidiary IXC paid the ILEC parent for access charges associated with the calls. The IXC also billed its long distance customers. The IXC refused to pay the CLEC however, even after the error was found, based on allegations of “Traffic Pumping” *by the CLEC!*

This is not an isolated case. Deadbeat IXCs are getting a free ride on small CLEC and Independent Telephone networks by using “Traffic Pumping” as an excuse not to pay access bills. Is this happening to you? If so, you are not alone.

As Paul Harvey used to say however, you should know *“the rest of the story”* surrounding this disturbing trend.

Continued...



Continued from Previous Page:

By taking "Traffic Pumping" to illogical extremes, many IXCs believe they have found the fast track to a better financial quarter. Small CLECs are having their CABS bills "red listed" by IXCs due to normal changes in traffic type and volume. Sometimes simply changing from residential to businesses or call centers is enough to have bills kicked back, necessitating expensive legal action to collect.

LECs and CLECs who serve "free" telephone conference bridges were singled out first a few years ago by the IXCs. The IXCs later realized that by branding anything they didn't like as Traffic Pumping, they could cut access charge payments. Some refuse to pay on the most flimsy of premises, even though they still bill their 800 service or long distance customers. We have seen things like this happen before.

In the late 1990's CLECs were in favor of a "bill and keep" system of call exchange. Under bill and keep, everyone terminates each other's calls for free and nobody charges. The ILECs however (who are today *all* in long distance... not so back then) lobbied heavily for settlement compensation. In the end it backfired on them when CLECs "cherry picked" customers and signed up Internet Service Providers (ISPs). In a world then full of dial up modems, the balance of calls (and money) skewed dramatically in favor of the CLECs. In fact, the "ISP compensation" issue of the early 2000's was very similar to the "free" conference call" issue of today. Eventually the FCC dropped the ISP termination rate from the normal access rate to \$0.007. The same thing may happen with the "free conference call" disputes. Like ISP compensation, the emphasis in the future may center on price, not traffic legitimacy. Besides, the IXCs brought a lot of this on themselves.

Most major IXCs dropped the price of long distance to zero before they should have really done so, that is, before access charge reform. The underlying reason this occurred was... well... *greed*. Flat rate long distance cleared the landscape of potentially bothersome competitors. It's hard to compete with "free." At the same time though, flat rate pricing encouraged arbitrage. Now fast forward a few years.

For Some, Any Excuse Not to Pay is a Good Excuse

Today many IXCs have taken the issue as far as to refuse to pay local carriers because there are "too many 800 calls on the bill." They ignore some plain facts: (a) Local calls are "bill and keep" so they are not billed. (b) 1+ Long Distance and International are siphoned off via dedicated T1 access before ever reaching the small LEC or CLEC. The IXCs themselves in fact install the dedicated T1s, and sometimes GIVE them away to good long distance customers! (c) This leaves only outbound 800 calls left for the small ILEC or CLEC to bill the IXC. Even so, we have noted many IXCs who refuse pay on the grounds that there are too many 800 calls - a "problem" that IXCs themselves help create through bypass of the LEC.

And IXCs loath "free" conference services and chat lines. This is another kind of call routinely "red flagged" for non-payment, even though the jury is far from a verdict on the legitimacy of these calls.

Are "free" conference services really free? Of course not. The real issue is cross subsidy, something that has been part of the telephone landscape since the early 20th Century: *Access charges subsidize local phone service.*



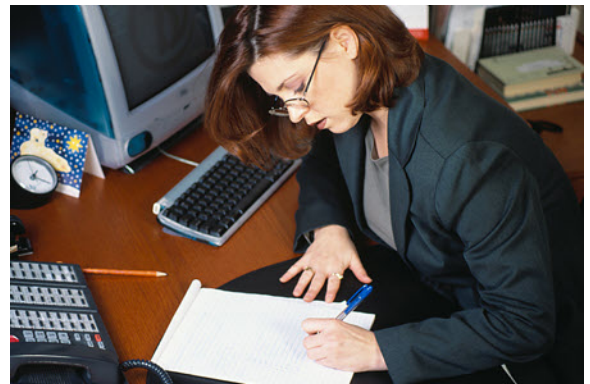


When Did Subsidizing Local Service Become Illegal?

Telecommunications is largely deregulated today. This means both ILECs and competitors can charge their customer pretty much whatever they want for a service. In this context, if a CLEC determines they can make most of their money on access charges, they are perfectly free to lower the price of their local service. After all, isn't that what Ma Bell did for years? And isn't it the same kind of thing IXCs have done for years, in reverse? Many IXCs provide their large end users with "free" T1s, expressly to direct access traffic AWAY from local carriers that they must pay for access. The practice is NOT illegal and the cost of the T1s is cross subsidized by another IXC service, *long distance*. Long distance isn't really free. It is bundled with other services, like wireless. Nothing is really free. In this context, "free" conference services are also not really free either, but certainly allowable, particularly in the cross-subsidy model which has existed since the 1930's.

So What is Access Charge Discrimination?

CLECs and Independent Telcos note a disturbing trend with regard to CABS payments by a few IXCs: (a) The IXCs generally pay their own "local" subsidiaries. (b) The IXCs generally pay large ILECs like AT&T and Verizon, who have large legal teams which can make things miserable for them if they do not. (c) The IXCs however, sometimes single out smaller carriers without the resources to fight them. *That's* what makes it discrimination. And it becomes next to impossible for smaller carriers to get paid when "red listed" by disreputable IXCs bent on curbing access spending by *any means*.



So What is the Answer?

Is "Traffic Pumping" a real problem or just an excuse to not pay? The jury is still out on that question, literally and figuratively, as the FCC considers the issue. In the meantime, the answer is not to punish the innocent with the guilty. There are still rules for IXCs to follow. Self-help by simply refusing to pay is not a legal option. Absent formal legal action, the IXC is bound to pay the tariff rate under the concept of **Filed Rate** (Also known as Filed Tariff) **Doctrine**.

Under Section 203 of the Communications Act of 1934 as amended, 47 U.S.C. 203, all common carriers are required to file tariffs showing "all charges" for the "interstate and foreign wire or radio communication services" that they provide as well as "the classifications, practices, and regulations affecting such charges." The IXCs, whether they like it or not, are bound by these tariffs.



To put this concept in simple terms, one does not go into a McDonalds, order a Happy Meal, eat it, and then commence negotiation on the price of the fries. McDonalds posts a price and if one eats there, one knows the price in advance. McDonalds also does not give a special price to someone simply because they work for a big company and deserve it. Both of these facts are also true with tariffs.

LEC or CLEC Access Service Tariffs set forth the charges imposed on carriers that make use of local access services. Tariffs carry the weight of law, and represent the only contract required under long accepted industry practice for the services described above. The only exceptions under the present regulatory rules are:

- (a) a “custom tariff” which may still have to be approved or filed, or,
- (b) a formal court injunction, secured by the IXC. Injunctive relief can only be granted only after presentation of the cogent facts of the claim by the IXC in a court of law.

Summary

So is “Traffic Pumping” really just a convenient excuse to not pay access bills? Yes, sometimes it is. The rest of the time, in those few cases however where someone is trying to defraud a phone company, ample avenues of recourse exist for the IXC being victimized. They can file for an injunction for example. Unless and until an IXC takes that step, (and prove up contentions of fraud with facts, not speculation) there are decades-old RULES that must be followed. Among these are Tariffs and Filed Rate Doctrine as well as Quantum Meruit and other legal theories and precedents. Your lawyer can tell you more about remedies available to you, and various [experts](#) can brief you on the technological aspects of supporting disputed CABS bills with hard facts. Good luck in collections, after all, it’s your money.

Questions and comments to the Author from either side of this issue can be emailed to leo@tlc-labs.com or by phone at (214) 888-1300.



Leo A. Wrobel’s talent for exploiting changes in technology, law, and regulation has earned him widespread acclaim. At age 30 he built the first Computer Disaster Recovery Center collocated inside a telephone central office. He was the first in Dallas Texas to carry telecommunications traffic over a cable television system. In 1994, he brokered a Master Services Agreement between a \$14 Billion manufacturing giant and two of the largest local telecom firms in the U.S. This effort created the largest network ever installed up to that time, including prompt regulatory approval. The following year he leveraged a 1995 Texas telecom law on behalf of a \$70 billion financial services company, that was the first end user to receive “unbundled” network pricing, the year *before* the 1996 Federal Telecom Act. In 1997 Mr. Wrobel built a telecom company from a standing start to a profitable 50-state presence in three years, with customers in the Airline, Financial Services, Telecommunications, Education, Insurance and Government markets. Leo is the author of 12 books and over 700 trade articles and has lectured worldwide over his 30 year career. Run a Google search on Leo A. Wrobel to see more.
