An analysis of the “terminating access monopoly” concept

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Disclaimer

- I’m here speaking only for myself

Elements of the “terminating access monopoly”

A consumer-facing communications provider is said to:

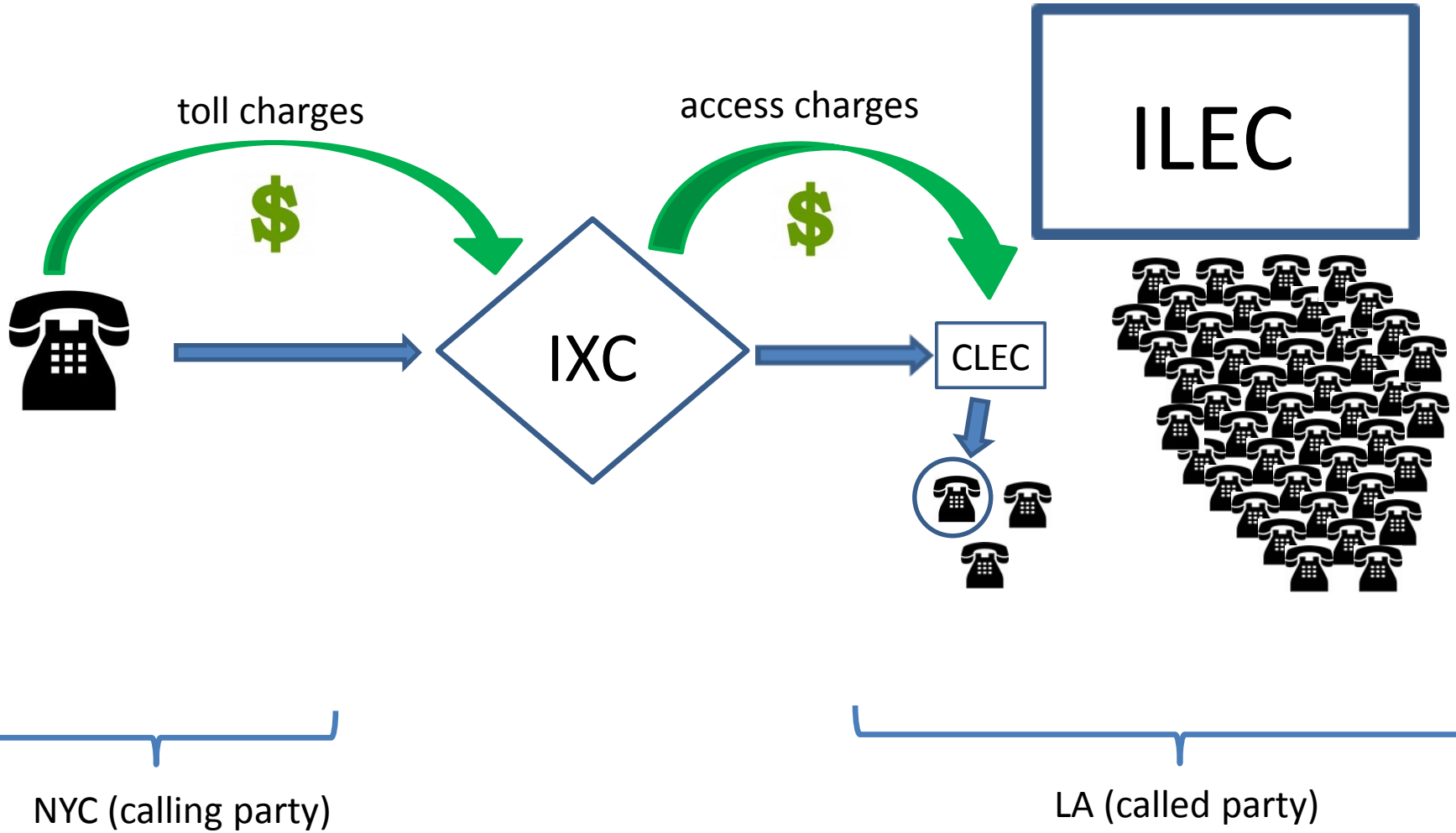
- enjoy *monopoly power* vis-à-vis interconnecting communications providers by virtue of the termination functions it provides for single-homed consumers,

  - even where the provider -

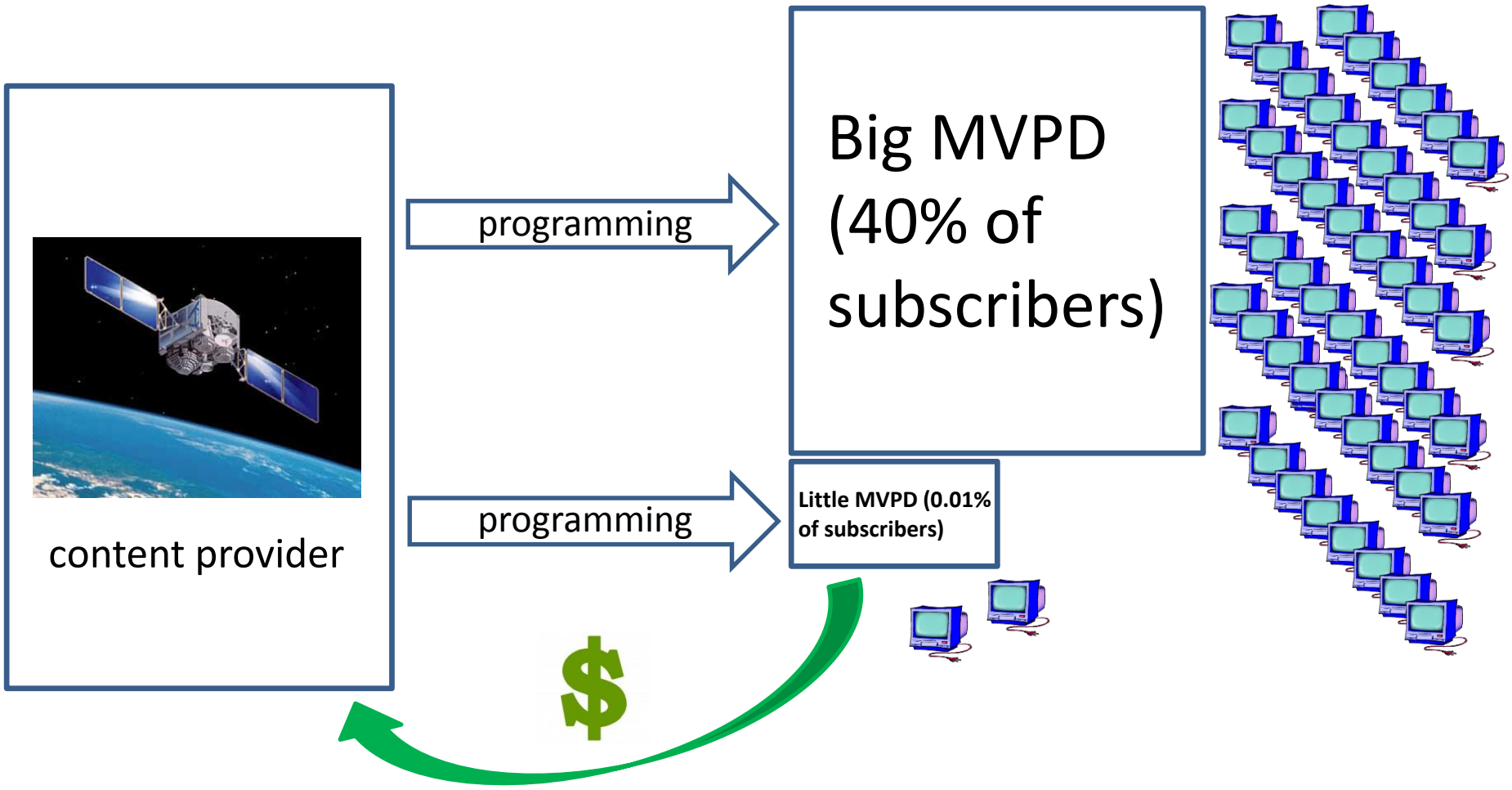
- faces strong *retail competition*, and
- does not serve a substantial share of *consumers overall* (including those outside its geographic footprint).

➢ This phenomenon is distinct from plain-vanilla monopoly concerns that can arise if a provider achieves a dominant market share.

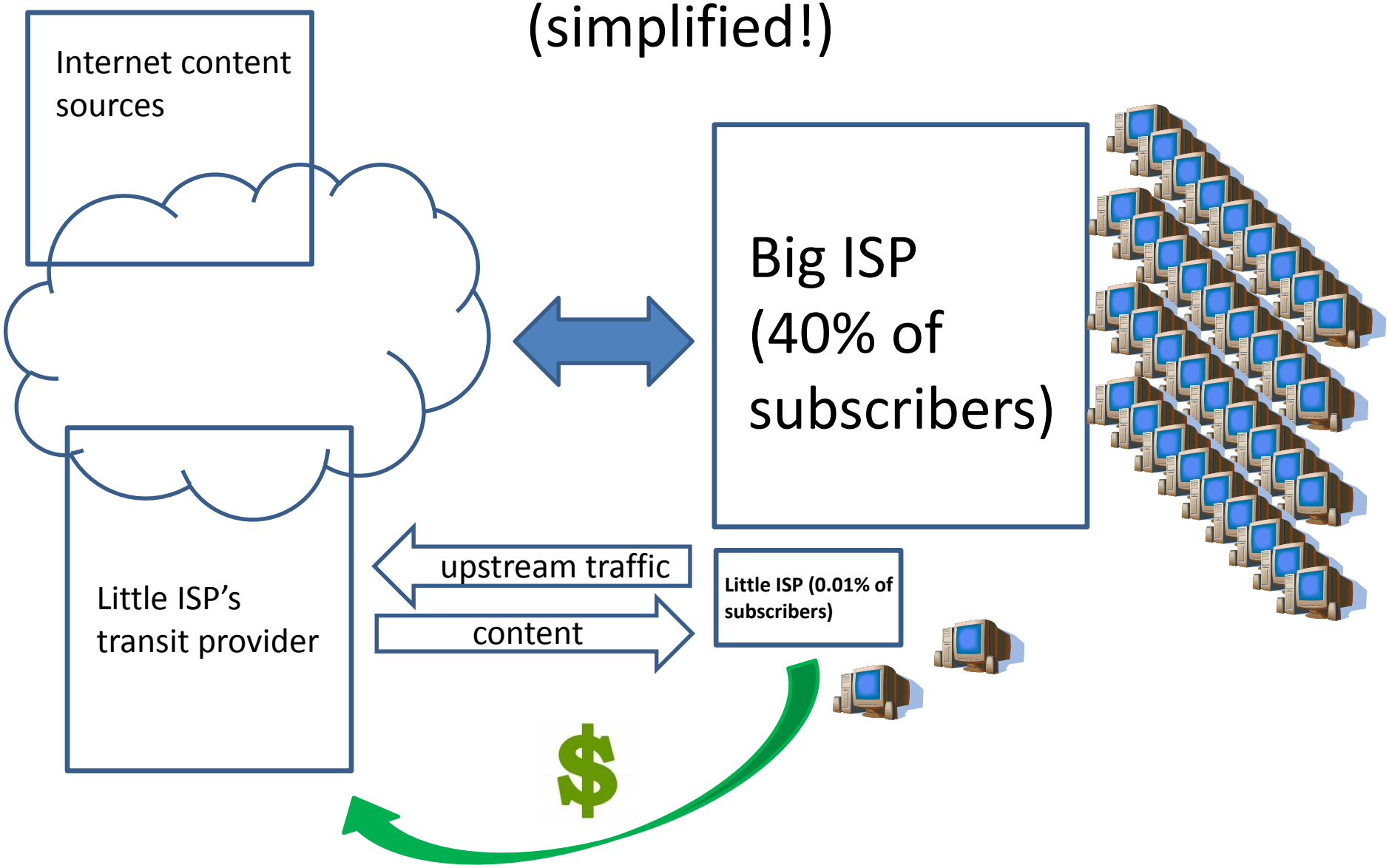
CLEC access charges (ca. 2000)



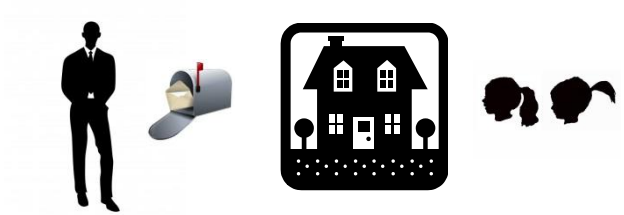
But: retransmission consent



But: transit arrangements for small ISPs (simplified!)



But: kids' magazine subscriptions



"gatekeeper"

Key factors that may influence commercial arrangements between consumer-facing communications providers and interconnecting providers

- The total number of customers a given consumer-facing provider serves (40 million vs. 40).
- The amount of retail competition each consumer-facing provider faces (plus switching costs).
- The value of the potentially foreclosed communications to the customers of the consumer-facing communications provider.
- Competitive dynamics between the interconnecting parties.

Implications

- The “gatekeeper” role of a consumer-facing provider is sometimes material to commercial outcomes – and sometimes not.
- It *is* material when the gatekeeper’s customer set is large enough to matter to the provider of the potentially foreclosed communication.
  - Scenario 1: the consumer-facing provider serves a dominant share of the consuming audience (*i.e.*, has monopsony power).
  - Scenario 2: the consumer-facing provider serves a large enough share of the consuming audience that it has hold-out power.
  - Scenario 3: the consumer-facing provider serves the only customer that the other party to the communication wishes to reach (point-to-point voice calls).

Implications (cont'd)

- One can have "monopoly" power only with respect to a relevant market.
- A consumer-facing provider has a termination-related "monopoly" only with respect to a particular market, defined as *access to its customer set*.
- *That* market may or may not be a relevant market in any given commercial negotiation.

Conclusions

- Use the “terminating access monopoly” concept with care.
- Don’t confuse that concept with more general market power concerns.
- There may be sound analytical bases independent of both the terminating access monopoly and market power concerns to justify oversight of interconnection arrangements (*e.g.*, avoiding balkanization or instability of platforms with large positive externalities).