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January 6, 1997

BY HAND DELIVERY

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 950737-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCI) in the above referenced docket are the original and 15 copies of MCI's posthearing brief, together with a 5.1 WordPerfect disk.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,

Richard D. Melson

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into)	
temporary local telephone number)	Docket No. 950737-TP
portability solution to)	
implement competition in local)	Filed: January 6, 1997
exchange markets)	
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MCI'S POSTHEARING BRIEF

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, "MCI") hereby file their posthearing brief.

EXECUTIVE SUMMARY

By Order No. PSC-95-1604-FOF-TP, issued on December 28, 1995 ("LNP Order"), the Commission established Remote Call Forwarding ("RCF") as the temporary number portability mechanism to be provided by January 1, 1996. The Order established the price to be charged and the cost recovery mechanism to be used for RCF. The costs identified were: service implementation costs, central office equipment and software costs, and interoffice networking costs. (LNP Order at 15) The rates approved consisted of a monthly per-line charge, a monthly additional path charge, and a non-recurring charge. (LNP Order at 16-17) These rates were to be charged to ALECs by BellSouth, GTE Florida ("GTEFL") and Sprint, for each ALEC number ported from the incumbent LEC via RCF.

On July 2, 1996, the Federal Communications Commission ("FCC") released its First Report and Order and Further Notice of Proposed Rulemaking in The Matter of Telephone Number

Portability, CC Docket No. 95-116. ("FCC Order") The FCC Order addresses the appropriate cost recovery mechanism for number portability under the Telecommunications Act of 1996 ("the Act"). This proceeding was initiated to review the impact of the FCC's Order on the cost recovery mechanism set forth in this Commission's LNP Order, which had been issued before passage of the Act.

Based on that review, this Commission should determine that its previous LNP Order is inconsistent with the Act, which was signed into law by President Clinton on February 2, 1996, and with the FCC Order, in that it established rates for RCF that are not competitively neutral according to the Act and the FCC's cost recovery criteria. The Commission should determine that the costs of interim local number portability ("ILNP") should be borne by each carrier, not just ALECs, providing portability consistent with the competitively neutral requirements of the Act and the FCC Order. Further, the Commission should require retroactive application of its order in this proceeding back to the date of the FCC Order and require refunds to ALECs as appropriate. All LECs and ALECs should be directed to adopt appropriate meet-point billing arrangements for access charges paid by interexchange carriers terminating calls via ILNP measures.

Issue 1: Is Order No. PSC-95-1604-FOF-TP inconsistent with the Federal Communications Commission's First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability in CC Docket No. 95-116?

****MCI:** Yes. The Commission's LNP Order identified costs associated with providing RCF and established rates and a cost recovery mechanism under which ILECS would charge ALECs for each ALEC number ported from the incumbent LEC via RCF. This approach is inconsistent with the Act and the FCC's Order, which require that ILNP costs be recovered on a competitively neutral basis.**

Section 251(e)(2) of the Act provides that:

(e) NUMBERING ADMINISTRATION

(2) COSTS - The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [Federal Communications] Commission.

To carry out its obligation to make the determinations required under this section of the Act, the FCC issued the FCC Order, which concludes that interim local number portability costs must be recovered on a competitively neutral basis. The FCC noted that "section 252(e)(2) gives us specific authority to prescribe pricing principles that ensure that the costs of number portability are allocated on a 'competitively neutral' basis." (FCC Order, Paragraph 126)

The phrase "on a competitively neutral basis" in Section 251(e)(2) was interpreted in the FCC Order to mean that "the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace." (FCC Order, Paragraph 131) The FCC noted that normally it follows cost causation principles, under which the purchaser of a service would pay for the costs it incurs; however, in this case, new entrants should

not be required to bear all of these costs. Interim local number portability is not a service, but a "network function that is required for a carrier to compete with the carrier that is already serving a customer." (FCC Order, Paragraph 131) A further indication that the routing of calls should not be considered a service but a function is found in Section 251(b)(2) of the Act, which treats this as an obligation between carriers. (Kistner, T 192) Even when the cost causer issue is considered, however, it must be recognized that it is competition in general which is the cost causer. (Kistner, T 191) In the competitive environment, all telecommunications carriers will participate in the provision of local number portability, and all local telecommunications users will benefit from its availability. (Kistner, T 192)

The FCC Order determined that a "competitively neutral" cost recovery under the Act must satisfy two criteria:

(1) ". . . a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber. In other words, the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. (FCC Order, Paragraph 132)

(2) ". . . a 'competitively neutral' cost recovery mechanism. . . should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment." (FCC Order, Paragraph 135)

With this background, it is apparent that the Commission's LNP Order is inconsistent with the later-adopted provisions of

the Act and the resulting FCC Order. The LNP Order requires ALECs to pay the incumbent LECs tariffed monthly and non-recurring rates in order to use interim local number portability. This means ALECs pay *all* of the costs of interim number portability; incumbent LECs bear *none* of the costs. The FCC Order noted that such a mandate would explicitly violate the Act:

. . .requiring the new entrants to bear all of the costs, measured on the basis of incremental costs of currently available number portability methods, would not comply with the statutory requirements of section 251(e)(2). Imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability. . .New entrants may effectively be precluded from entering the local exchange market if they are required to bear all the costs of currently available number portability measures.

(FCC Order, Paragraph 138)

With the exception of GTEFL, every party to this docket agrees that the LNP Order is not consistent with the FCC Order. Neither of GTEFL's reasons as to why it is consistent have merit. The first is that an isolated sentence from the FCC Order stating that "[s]tates are also free, if they so choose, to require that tariffs for the provision of currently available number portability measures be filed by the carriers" (FCC Order, Paragraph 137), means that an approved tariff, no matter what its contents, satisfies the criteria. (Menard, T 157) No reasonable interpretation of the Act or the FCC Order could conclude that the mere filing of a tariff, even if its contents violate the Act and the FCC Order, somehow complies with them. Second, GTEFL

implies that its existing tariffs in Florida are in compliance with the FCC Order, in that they allow incumbent LECs to charge ALECs their tariffed rates, and vice versa. (Menard, T 159) GTEFL claims that this maintains competitive neutrality by allowing each carrier to recover its own costs. (Menard, T 159) This is, however, precisely the type of mechanism that the FCC declared to violate the criteria for a competitively neutral cost recovery. (FCC Order, Paragraphs 133, 138)

Issue 2: What is the appropriate cost recovery mechanism for temporary number portability?

****MCI**: The simplest of the cost recovery mechanisms which meet the FCC criteria is one in which each local carrier pays for its own costs of currently available number portability measures. This method is superior in that it does not require cost studies or special reporting between carriers of revenues, minutes of use, number of customer telephone numbers, etc.**

The simplest, most direct, and most efficient of the FCC-recommended cost recovery mechanisms for compliance with the Act is one in which each local carrier pays for its own costs of currently available interim local number portability methods. This approach is also recommended by several other parties in this docket: AT&T, AT&T Wireless, Time Warner, and FCTA.

Three other cost recovery mechanisms were discussed in the FCC Order as approaches that would satisfy the criteria of competitive neutrality. The first is used by carriers in Rochester, New York, where there is a surcharge based on each carrier's number of ported telephone numbers relative to the total number of active telephone numbers in the local service

area. (FCC Order, Paragraph 136) The second is a mechanism which allocates number portability costs based on a carrier's number of active telephone numbers or lines relative to the total number of active telephone numbers or lines in a service area. (FCC Order, Paragraph 136) A mechanism which assesses a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers is the remaining cost recovery method approved by the FCC as meeting the standards of the Act. (FCC Order, Paragraph 136)

MCI recommends the method whereby each carrier recovers its own costs of ILNP as superior for a number of reasons. It does not require carriers to implement special reporting, such as for revenues; minutes of use, number of customer telephone numbers, etc. (Kistner, T 195) There is no need for cost studies to determine the incremental costs for recovery, so carriers will not have to invest the effort to produce such studies and the PSC will not be encumbered with reviewing them. (Kistner, T 195) Because ILNP measures will soon be replaced by permanent number portability, this is especially important, for it would be wasteful to require such time, effort and expense on the part of carriers and the Commission to create something which would soon be obsolete. (Kistner, T 195)

Indeed, the other approved recovery mechanisms would, to various degrees, require a significant investment of time, effort, and expense for their implementation. Accounting and reporting systems would have to be developed and new systems

created for any form of cost recovery that involves tracking lines, numbers, revenues, etc. When this severe drawback is weighed against the ease of the method requiring each carrier to bear its own costs, and against the fact that each method would have nearly the same effect on carriers, since they all result in an allocation of costs based on the size of the carrier's market share, the sensible approach is to adopt the cost recovery mechanism that involves the least amount of additional effort and expense.

In contrast to the ease offered by the method in which each carrier bears its own costs, GTEFL offered a method it describes as "simple" (Menard, T 162), but which in reality is much more detailed than necessary for ILNP cost recovery. GTEFL's proposed pooling and surcharge mechanism involves the following scenario:

- (1) all carriers must submit cost studies for direct inward dialing ("DID") and remote call forwarding to determine the appropriate incremental cost or, in their stead, ALECs could choose to use the ILECs' cost studies (Menard, T 166);
- (2) IXC, ILEC, ALEC and commercial mobile radio service ("CMRS") provider tracking information must be reviewed in order to estimate the total number of local service and interexchange calls, as well as updating the data on a periodic basis (Menard, T 166);
- (3) the estimated annual cost of ILNP is determined and computed on a per-call basis (Menard, T 166);
- (4) costs are allocated to IXCs, ILECs, ALECs, and CMRS providers and then funds are collected (Menard, T 167);
- (5) ILEC and ALEC cost reports would then be reviewed on a regular basis to determine the amount of RCF and DID usage for reimbursement (Menard, T 167);
- (6) periodic distribution of funds to ILECs and ALECs, including dispute resolution, would follow (Menard, T 167);

(7) the Commission would determine an end user surcharge and oversee customer notification and reaction (Menard, T 167); and

(8) the Commission would determine and manage shortfalls or excesses in the fund and reapportion as needed (Menard, T 167).

This complicated and costly mechanism, involving much work by the parties and detailed Commission oversight and involvement, has no place in the interim local number portability environment. As mentioned previously, deployment of permanent number portability is scheduled to begin no later than October 1997, so interim local number portability and its accompanying cost recovery mechanism will only be in place for a limited period of time. (FCC Order, Paragraph 121) Once permanent number portability is available in an area, it is unlikely that ALECs or their customers will continue to use the inferior interim porting methods.

In addition to its temporary nature, the type of complicated mechanism proposed by GTEFL is inappropriate because it fails to recognize that the ILNP costs are incurred in a different fashion than the costs of permanent number portability. Two of the factors noted by the FCC in this regard are:

First, the capability to provide number portability through currently available methods, such as RCF and DID, already exists in most of today's networks, and no additional network upgrades are necessary. In contrast, long term, or database, number portability methods require significant network upgrades, including installation of number portability-specific switch software, implementation of SS7 and IN or AIN capability, and the construction of multiple number portability databases. Second, the

costs of providing number portability in the immediate term are incurred solely by the carrier providing the forwarding service. Long-term number portability, in contrast, will require all carriers to incur costs associated with the installation of number portability-specific software and the construction of the number portability databases. Those costs will have to be apportioned in some fashion among all carriers.

(FCC Order, Paragraph 64) Furthermore, although GTEFL proposed its pooling and surcharge system in the FCC's long term number portability proceeding, many commenting parties opposed such a mechanism as inefficient and undesirable. (Kistner, T 210)

Because there is no widespread support for GTEFL's proposal, this Commission should consider that if adopted, this system may only be used for Florida, and then only for the limited purpose of recovery of ILNP costs. (Kistner, T 210) Given these factors, GTEFL's proposal has no merit and should be rejected by the Commission as a cost recovery method for interim local number portability.

BellSouth has not offered an alternative cost recovery mechanism, instead recommending that the Commission do nothing about the inconsistency between its LNP Order and the FCC Order. (Varner, T 109, 112) BellSouth mainly argues that the FCC reached the wrong decision in ordering a competitively neutral cost recovery mechanism for ILNP. (Varner, T 103-104, 106-112) Given that there is no stay of the FCC Order, and that this is an area in which Congress gave the FCC clear authority to adopt

governing rules, the regulations the FCC adopted are in effect, no matter that BellSouth dislikes them.

Sprint recommends a cost splitting formula claimed to be "an approximately equal sharing of the cost of interim number portability". (Poag, T 310) While this may sound appealing and fair, in reality, this does not translate to "competitively neutral," since Sprint's share of the market is overwhelmingly greater than that of its competitors. It violates the Act and the FCC Order, which requires costs be allocated on a proportionate basis, in that a split of the ILNP costs means that new entrants bear half of those costs. The FCC Order uses the specific example that a method that divides costs equally among four carriers, including the ILEC and new entrants, would violate its cost recovery principles because the new entrants' portion of the costs could be disproportionate to expected profits. (FCC Order, Paragraph 135) Sprint's proposal is equally violative of these cost recovery principles given the realities of today's local exchange market in Florida. In order for Sprint's plan to meet the competitive neutrality requirements of the Act and the FCC Order, new entrants would have to enjoy a market share of fifty percent of the local market. Moreover, witness Poag acknowledged that Sprint's proposal does not comply with Section 364.16, Florida Statutes. (Poag, T 329)

Thus, the only proposal set forth in this docket which meets the requirements of the Act and the FCC Order is the one in which

each party bears its own costs of implementing interim local number portability.

An additional aspect of the appropriate cost recovery mechanism which should also be addressed by this Commission in this proceeding is the issue that the FCC Order included requirements for the provision of DID as an ILNP method, and addressed the issue of the collection of terminating access charges. The FCC Order required LECs "to offer number portability through RCF, DID, and other comparable methods because they are the only methods that currently are technically feasible." (FCC Order, Paragraph 110) As a result, LECs must provide DID as a number portability option, along with RCF or other available methods, upon request from a competing carrier. The Commission should accordingly make clear in this proceeding that the cost allocation and recovery mechanism it adopts applies to DID as well as RCF. In the event that the Commission adopts a mechanism which requires the calculation of costs for allocation purposes, the Commission must review and approve cost studies for DID as well as for RCF.

In the context of the appropriate treatment of terminating access charges in the interim local number portability context, the FCC concluded that meet-point billing arrangements between neighboring ILECs provide the appropriate model for the proper access arrangements for INLP. (FCC Order, Paragraph 140) ILECs should be directed to adopt meet-point billing arrangements for access charges paid by IXCs terminating calls directed to new

entrants via LEC-provided RCF or DID. (Kistner, T 201) The appropriate split of access charges is:

- (1) the forwarding LEC charges the IXC for transport from the IXC point of presence to the end office where the RCF/DID is provided; and
- (2) the terminating LEC charges the IXC for the terminating LEC's terminating switch function, common line and RIC.

(Kistner, T 210) The competitively neutral mechanism adopted in this proceeding would apply to the recovery of any additional intermediate switching and transport costs incurred by the LEC.

(Kistner, T 201) If for example, MCI is unable to identify the particular IXC carrying a call subject to forwarding, the forwarding LEC should provide MCI with the necessary information to permit MCI to issue a bill to the IXC, which may include a Percentage Interstate/Intrastate Usage data. (Kistner, T 201, 202)

Issue 3: Should there be any retroactive application of the Commission's decision in this proceeding, if so, what should be the effective date?

****MCI:** Yes. The Commission's decision should be retroactively applied to the release date of the FCC Order. ILECs should pay full refunds to ALECs of all amounts collected for RCF between that date and the date of the Commission's order in this proceeding. Depending on the cost recovery method, the cost provided during that period can be reallocated accordingly.

It is appropriate that the Commission's decision in this case be retroactively applied to the release date of the FCC Order - July 2, 1996. (Kistner, T 200) LECs should provide full refunds to ALECs of all amounts collected for interim local number portability between that date and the date of the

Commission's order in this proceeding. (Kistner, T 200) As a practical matter, the amount at issue may be limited, since it appears that to date, not many LECs have actually ordered RCF. (Kistner, T 221) Nonetheless, to the extent that ILECs use ILNP methods before the date the Commission issues its order, retroactivity is warranted and should be expressly addressed in the Commission's order.

RESPECTFULLY SUBMITTED this 6th day of January, 1997.

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I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail this 6th day of January, 1997, to the following:

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