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Florida Cable Telecommunications Association

Steve Wilkerson, President

September 23, 1996

**VIA HAND DELIVERY**

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: DOCKET NO. 950737-TP**

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen copies of Florida Cable Telecommunications Association, Inc.'s ("FCTA") Direct Testimony of Joseph P. Cresse. Copies have been served on the parties of record pursuant to the attached certificate of service.

Please acknowledge receipt and filing of the above by date stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing.

Yours very truly,

CK \_\_\_\_\_  
FA \_\_\_\_\_  
PP \_\_\_\_\_  
AF \_\_\_\_\_  
MU *Kylea* \_\_\_\_\_  
TR \_\_\_\_\_  
cc: Mr. Steven E. Wilkerson  
All Parties of Record

Enclosures  
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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 950737-TP**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Overnight Mail(\*) and/or U.S. Mail on this 23rd day of September, 1996 to the following parties of record:

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By: 

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 950737-TP

DIRECT TESTIMONY

OF

JOSEPH P. CRESSE

DOCUMENT NUMBER - DATE

10103 SEP 23 88

FPSC-RECORDS/REPORTING

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS, AND  
2 OCCUPATION.

3 A. My name is Joseph P. Cresse. My business address  
4 is Post Office Box 1876, Tallahassee, Florida  
5 32302. I am presently employed as a non-lawyer  
6 special consultant at Messer, Caparello, Madsen,  
7 Goldman & Metz, P.A. law firm.

8 Q. PLEASE STATE YOUR BACKGROUND AND QUALIFICATIONS.

9 A. Please see Exhibit JPC-1 attached to my testimony.

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11 A. The purpose is to address the three issues  
12 identified in Order No. PSC-96-1121-PCO-TP issued  
13 September 4, 1996.

14 Q. IS ORDER NO. PSC-95-1604-FOF-TP INCONSISTENT WITH  
15 THE FCC'S FIRST REPORT AND ORDER IN THE MATTER OF  
16 TELEPHONE NUMBER PORTABILITY IN CC DOCKET NO. 95-  
17 116?

18 A. Yes. It is inconsistent as I explain further in my  
19 testimony.

20 Q. WHAT IS THE APPROPRIATE COST RECOVERY MECHANISM FOR  
21 TEMPORARY NUMBER PORTABILITY?

22 A. The appropriate recovery mechanism for temporary

1           number portability is "Bill and Keep" as explained  
2           later in my testimony.

3       **Q.    SHOULD THERE BE A RETROACTIVE APPLICATION OF THE**  
4       **COMMISSION'S DECISION IN THIS DOCKET?**

5       A.   No.  The changes adopted in this proceeding should  
6       be applied prospectively, not retroactively, as  
7       that would in my opinion, be unfair to parties who  
8       have transacted business under Commission approved  
9       prices.  I do not believe that current prices were  
10      approved   subject   to   refund,   therefore   no  
11      retroactive application is appropriate.

12      **Q.    WHAT FACTORS SHOULD THE COMMISSION CONSIDER IN**  
13      **ESTABLISHING    RATES    FOR    TEMPORARY    NUMBER**  
14      **PORTABILITY?**

15      A.   The Commission should consider that Order No. PSC-  
16      95-1604-FOF-TP found that BellSouth's (BST) stated  
17      costs appear to be questionable, and required BST  
18      to do a cost study directing them to "include only  
19      those cost components that are directly related to  
20      providing RCF as a temporary number portability  
21      solution."    The PSC Order directs BST to only  
22      include incremental cost to provide a temporary

1 solution, therefore it may be that incremental  
2 costs for a temporary solution are so low, as to  
3 not warrant the additional cost of billing and  
4 collection.

5 The Commission should also consider that the  
6 charges for temporary number portability should be  
7 competitively neutral, and Bill and Keep is an  
8 appropriate method to comply with the 1996 Act.  
9 Finally the Commission should adopt changes that  
10 they believe would promote competition most  
11 favorably, since effective competition is the best  
12 protection to Florida's consumers and should be  
13 made available as soon as possible.

14 Q. WOULD ANY OTHER METHOD OF RECOVERING TEMPORARY  
15 NUMBER PORTABILITY COSTS BE APPROPRIATE?

16 A. Yes. There are several methods suggested by the  
17 FCC, that would meet the competitively neutral  
18 requirement of the 1996 Act. The Commission could  
19 use any of those methods, however, the best  
20 alternative to Bill and Keep, would be to assess  
21 the incremental cost to all LECs based on their pro  
22 rata share of active telephone numbers. The Bill

1           and Keep method has the advantage of minimizing the  
2           administrative and billing costs. The Commission  
3           should keep in mind that we are talking about a  
4           temporary method not a permanent method.

5           **Q. YOU MENTIONED EARLIER THAT THE EXISTING METHOD OF**  
6           **COST RECOVERY IS INCONSISTENT WITH THE FCC ORDER,**  
7           **PLEASE EXPLAIN.**

8           **A.** As I understand the existing method the entire cost  
9           of Remote Call Forwarding (RCF) is accessed to the  
10          LEC, to whom the call is forwarded, and that does  
11          not meet the "competitively neutral" standard of  
12          the 1996 Act, but even more significantly it is not  
13          the best method to promote competition.

14          **Q. ARE THERE ANY OTHER FACTORS THE COMMISSION SHOULD**  
15          **CONSIDER IN MAKING THIS CHANGE?**

16          **A.** Yes. The Commission should recognize that  
17          terminating access charges will be shared by both  
18          LECs providing facilities to terminate a call  
19          through RCF arrangements, therefore, the LEC will  
20          not lose all revenue if a customer leaves one LEC  
21          and transfers their number to the new LEC.

22          **Q. EARLIER YOU STATED THAT IN YOUR OPINION ORDER NO.**



1 PSC-95-1604-FOF-TP IS INCONSISTENT WITH THE FCC  
2 FIRST REPORT AND ORDER IN CC DOCKET NO. 95-116,  
3 PLEASE EXPLAIN.

4 A. For ease of reference I have attached as Exhibit  
5 JPC-2 the discussion portion of the FCC order in  
6 its entirety as it relates to the cost recovery  
7 principles for temporary number portability. I  
8 have also underlined portions of that section for  
9 emphasis.

10 Q. ARE YOUR RECOMMENDATIONS FOR A "BILL AND KEEP"  
11 METHOD CONSISTENT WITH THE FCC ORDER AND CONSISTENT  
12 WITH THE FLORIDA PUBLIC SERVICE COMMISSION'S POLICY  
13 OF PROMOTING COMPETITION.

14 A. Yes. Page 71 of the FCC Order states "finally we  
15 believe that a mechanism that requires each carrier  
16 to pay for its own costs of currently available  
17 number portability would also be permissible." In  
18 addition, it is the best method to promote  
19 competition, it also imposes the least incremental  
20 cost on both existing LECs and new LECs, and it  
21 provides incentives to implement a permanent  
22 method.

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes.

**JOSEPH P. CRESSE**

Presently employed as a non-lawyer Special Consultant with the law firm of Messer, Caparello, Madsen, Goldman & Metz P.A. in Tallahassee, Florida; former Chairman of the Public Service Commission having served seven years on the Commission; former State Budget Director for State of Florida under Governor Reubin Askew, and former Assistant Secretary for the Department of Administration, State of Florida.

Resides in Tallahassee, Florida, with wife, Beverly; has two children; born in Indiana, and attended public schools in Frostproof, Florida; attended University of Florida - graduated in 1950 B. S. B. A. Major in Accounting; served in the U. S. Army as Staff Sergeant; member of Beta Alpha PSI Fraternity.

Career accomplishments include recipient of Florida Senate and House Resolution of Commendation; Administrator of the year in 1975; recipient of University of Florida Distinguished Alumnus Award; served on the Executive Committee of National Assn. of State Budget Officers, National Assn. of Regulatory Utility Commissioners, and President of the Southeastern Assn. of Regulatory Utility Commissioners; assisted in passage and implementation of the Career Service System, State of Florida; assisted in the implementation the Governmental Reorganization Act; implementation of program budgeting and computerizing substantial budgeting information; assisted in development of Education funding program for the State of Florida; assisted in development of financial plan to reduce appropriations to operate within available funds when revenue of the State was approximately 10% less than anticipated; assisted the Governor and Legislature during Special 1978 Legislative Session in drafting and passing legislation protecting title to state sovereign lands; served as member of the Florida Advisory Council on Intergovernmental Relations; appointed by Governor as member of the Deferred Compensation Advisory Committee and elected chairman; chaired a Task Force which developed financial and organizational plans to dismantle the Inter-American Center Authority with real estate assets of the Authority preserved for public use; appointed by Governor to state team which successfully negotiated a major settlement involving oil, gas and mineral rights on state-owned submerged lands; appointed to task force overseeing litigation, State v. Mobil Oil, Sovereign Lands; member Growth Management Committee; appointed by Governor and co-chaired Telecommunications Task Force. In 1985 received the National Governor's Association award for Distinguished Service to State Government. Retired from State Government December 1985 to assume present position with Messer, law firm. Since 1985 he has been engaged in regulatory consulting work with both utilities and non-utilities. He lectures at Indiana University once a year, and has testified before the Georgia, Florida, South Carolina and Virginia Regulatory Commissions.

measures for free or at deeply discounted rates.<sup>361</sup> Ameritech asserts that section 251(e)(2)'s "competitively neutral" standard for cost recovery does not apply to interim portability at all. It asserts that interim portability is addressed in section 271(c)(2)(B)(xi), and therefore the Commission is not authorized under the BOC checklist to eliminate or discount interim portability rates below levels that state commissions have already judged reasonable.<sup>362</sup> Similarly, BellSouth argues that Congress's endorsement of interim RCF and DID arrangements in the BOC checklist, and the 1996 Act's structure of requiring state-approved carrier negotiations for interconnection agreements, compel the conclusion that RCF and DID cost recovery issues be left to the states.<sup>363</sup>

#### b. Discussion

121. In light of our statutory mandate that local exchange carriers provide number portability through RCF, DID, or other comparable arrangements until a long-term number portability approach is implemented, we must adopt cost recovery principles for currently available number portability that satisfy the 1996 Act. We emphasize that the cost recovery principles set forth below will apply only until a long-term number portability method can be deployed. As we have indicated, deployment of long-term number portability should begin no later than October 1997, so currently available number portability arrangements, and the associated cost recovery mechanism, should be in place for a relatively short period.

122. It is also important to recognize that the costs of currently available number portability are incurred in a substantially different fashion than the costs of long-term number portability arrangements. 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. Finally, we note that, initially, the costs of providing currently available

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<sup>361</sup> See, e.g., Bell Atlantic Further Reply Comments at 7; GTE Further Reply Comments at 6-7; Pacific Bell Further Reply Comments at 8 n.16.

<sup>362</sup> Ameritech Further Reply Comments at 8.

<sup>363</sup> BellSouth Further Reply Comments at 8.

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number portability will be incurred primarily by the incumbent LEC network because most customers will be forwarding numbers from the incumbents to the new entrants.

123. Parties have advanced a wide range of methods for recovering the costs of currently available number portability measures, including arrangements whereby neither carrier charges the other for provision of such measures and incremental, cost-based pricing schemes. In addition, several states have adopted different cost recovery mechanisms. For example, in Florida, carriers have negotiated appropriate rates for currently available measures. The Louisiana PSC has adopted a two-tiered approach to pricing of currently available measures. In the first instance, carriers are permitted to negotiate an appropriate rate. If the parties cannot agree upon a rate, the PSC will determine the appropriate rate that can be charged by the forwarding carrier based on cost studies filed by the carriers. These rates are not required to be set at long-run incremental costs (LRIC) or total service long-run incremental costs (TSLRIC), however.<sup>364</sup>

124. In addition, incumbents and new entrants have voluntarily negotiated a variety of cost recovery methods. Carriers in Rochester, New York, for example, are voluntarily using a formula that allocates the incremental costs of currently available number portability measures, through an annual surcharge assessed by the carrier from which the number is transferred. The charge assessed on each carrier is the product of the total number of forwarded minutes and the incremental per-minute costs of switching and transport, multiplied by the ratio of a particular carrier's forwarded telephone numbers relative to total working numbers in the area. In addition, Rochester Telephone has agreed not to charge competitors for the first \$1 million of the cost of number portability.<sup>365</sup> The New York DPS has adopted this formula for the New York Metropolitan area as well.<sup>366</sup> Ameritech and MFS recently entered into an agreement for Ameritech's five-state region under which MFS will pay Ameritech \$3 per line per month for interim measures. MFS plans to seek regulatory approval to allocate that cost under a formula that would require MFS to pay a portion of the \$3 charge equal to the ratio of MFS's gross telecommunications service revenues, net of its payments to other carriers, to Ameritech's gross telecommunications revenues, net of payments to other carriers.<sup>367</sup>

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<sup>364</sup> Louisiana PSC Regulations for Competition in the Local Telecommunications Market, General Order, Docket No. U-20883, at section 801, Part D (Mar. 15, 1996).

<sup>365</sup> NYNEX Ex Parte Filing, CC Docket No. 95-116, filed Mar. 22, 1996 (NYNEX March 22, 1996 Ex Parte Filing).

<sup>366</sup> NY PSC Order Clarifying March 8, 1995 Number Portability Order, Case No. 94-C-0095, at 3-4 & n.1 (issued and effective Mar. 8, 1995), submitted in NARUC April 17 Ex Parte Filing at vol. 1-A at 32.

<sup>367</sup> Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of May 17, 1996, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc. on behalf of Ameritech Illinois and MFS Intelenet of Illinois, Inc.; MFS White Paper Number

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125. Our cost recovery principles for currently available methods, of course, must comply with the statutory requirements of the 1996 Act. In addition, consistent with the pro-competitive objectives of the 1996 Act, we seek to create incentives for LECs, both incumbents and new entrants, to implement long-term number portability at the earliest possible date, since, as we have noted, long-term number portability is clearly preferable to existing number portability methods. The principles we adopt should also mitigate any anti-competitive effects that may arise if a carrier falsely inflates the cost of currently available number portability.

126. In our interconnection proceeding, we have sought comment on our tentative conclusion that the 1996 Act authorizes us to set pricing principles to ensure that rates for interconnection, unbundled network elements, and collocation are just, reasonable, and nondiscriminatory.<sup>368</sup> We need not, however, reach in this proceeding the issue of whether section 251 generally gives us authority over pricing for interconnection because the statute sets forth the standard for the recovery of number portability costs and grants the Commission the express authority to implement this standard. Specifically, section 251(e)(2) requires that the costs of "number portability be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>369</sup> We therefore conclude that section 251(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.

127. In exercising our authority under section 251(e)(2), we conclude that we should adopt guidelines that the states must follow in mandating cost recovery mechanisms for currently available number portability methods. To date, the state commissions have adopted different cost recovery methods. We seek to articulate general criteria that conform to the statutory requirements, but give the states some flexibility during this interim period to continue using a variety of approaches that are consistent with the statutory mandate. The states 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.

128. In establishing the standard for number portability cost recovery, section 251(e)(2) sets forth three specific elements, which we must interpret. First, we must determine the meaning of number portability "costs;" second, we must interpret the phrase "all telecommunications carriers;" and third, we must construe the meaning of the phrase "competitively neutral."

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Portability Requirements of the Telecommunications Act of 1996, April 30, 1996 (MFS White Paper, 1996).

<sup>368</sup> Interconnection NPRM at ¶ 117.

<sup>369</sup> See 47 U.S.C. § 251(e)(2).

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129. The costs of currently available number portability are the incremental costs incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers using existing RCF, DID, or other comparable measures.

According to the record, the costs of RCF differ depending on where the call originates in a carrier's network. Calls that originate on the switch from which a number has been forwarded (intraoffice calls) result in fewer costs than calls that originate from other switches (interoffice calls). This is because fewer transport and switching costs are incurred in the forwarding of an intraoffice call. The BOCs claim, for example, that there are essentially three costs incurred in the provision of RCF for an intraoffice call: (1) switching costs incurred by the original switch in determining that the number is no longer resident; (2) switching costs incurred in performing the RCF translation, which identifies the address of the receiving switch; and (3) switching costs incurred in redirecting the call from the original switch to the switch to which the number has been forwarded.<sup>370</sup> The BOCs further assert that the additional costs incurred for an interoffice call include: (1) the transport costs incurred in directing the call from the tandem or end office to the office from which the number was transferred and back to the tandem or end office; and (2) remote tandem or end office switching costs.<sup>371</sup> There is conflicting evidence in the record on whether these costs are incurred on a per-minute, per-call, or some fixed basis.<sup>372</sup> State commissions in some states have set cost-based rates for currently available number portability measures. In order to do so, states have used different methods of identifying costs, including LRIC, TSLRIC, and direct embedded cost studies. In California and Illinois, the state commissions set cost-based fixed monthly rates for RCF, while in New York and Maryland, the commissions set cost-based rates for minutes of use.<sup>373</sup> In addition, there is some evidence in the record that carriers incur some non-recurring costs in the provision of currently available methods of number portability.<sup>374</sup> Several states, such as California, Illinois, and Maryland, have

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<sup>370</sup> Ameritech Ex Parte Filing at 2, CC Docket No. 95-116, filed Feb. 20, 1996 (Ameritech February 20, 1996 Ex Parte Filing); Bell Atlantic Ex Parte Filing at 1 & 3, CC Docket No. 95-116, filed June 19, 1996 (Bell Atlantic June 19, 1996 Ex Parte Filing); BellSouth Ex Parte Filing, CC Docket No. 95-116, filed Mar. 21, 1996 (BellSouth March 21, 1996 Ex Parte Filing).

<sup>371</sup> Ameritech February 20, 1996 Ex Parte Filing at 2.

<sup>372</sup> See Ameritech Ex Parte Filing at 2-3, CC Docket No. 95-116, filed Mar. 26, 1996 (Ameritech March 26, 1996 Ex Parte Filing); NYNEX March 22, 1996 Ex Parte Filing.

<sup>373</sup> Bell Atlantic March 22, 1996 Ex Parte Filing at 2; NYNEX March 22, 1996 Ex Parte Filing at 1-2.

<sup>374</sup> See Ameritech March 26, 1996 Ex Parte Filing at 2; BellSouth March 21, 1996 Ex Parte Filing at 2; US West Ex Parte Filing at 6, CC Docket No. 95-116, filed June 19, 1996 (US West June 19, 1996 Ex Parte Filing).

permitted the carrier forwarding a number to recover such non-recurring costs as a one-time, non-recurring charge.<sup>375</sup>

130. Section 251(e)(2) of the Communications Act requires that the costs of providing number portability be borne by "all telecommunications carriers."<sup>376</sup> No party commented on the meaning of the term "all telecommunications carriers." Read literally, the statutory language "all telecommunications carriers" would appear to include any provider of telecommunications services. Section 3 of the Communications Act defines telecommunications services to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used."<sup>377</sup> Under this reading, states may require all telecommunications carriers – including incumbent LECs, new LECs, CMRS providers, and IXCs – to share the costs incurred in the provision of currently available number portability arrangements. As discussed in greater detail below, states may apportion the incremental costs of currently available measures among relevant carriers by using competitively neutral allocators, such as gross telecommunications revenues, number of lines, or number of active telephone numbers.

131. Section 251(e)(2) of the Act states that the costs of number portability are to be "borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." We interpret "on a competitively neutral basis" 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. Congress mandated the use of number portability so that customers could change carriers with as little difficulty as possible. Our interpretation of "borne . . . on a competitively neutral basis" reflects the belief that Congress's intent should not be thwarted by a cost recovery mechanism that makes it economically infeasible for some carriers to utilize number portability when competing for customers served by other carriers. Ordinarily the Commission follows cost causation principles, under which the purchaser of a service would be required to pay at least the incremental cost incurred in providing that service. With respect to number portability, Congress has directed that we depart from cost causation principles if necessary in order to adopt a "competitively neutral" standard, because number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer. Depending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated. We emphasize, however, that this statutory mandate

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<sup>375</sup> AT&T Ex Parte Presentation at 1. CC Docket No. 95-116 filed Mar. 13, 1996 (AT&T March 13, 1996, Ex Parte Filing).

<sup>376</sup> 47 U.S.C. § 251(e)(2).

<sup>377</sup> 47 U.S.C. § 153(44), (46).



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constitutes a rare exception to the general principle, long recognized by the Commission, that the cost-causer should pay for the costs that he or she incurs.

132. Our interpretation suggests that a "competitively neutral" cost recovery mechanism should satisfy the following two criteria. First, 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. The cost of number portability borne by a facilities-based new entrant that wins a customer away from an incumbent LEC is the payment that the new entrant must make to the incumbent LEC. The higher this payment, the higher the price the new entrant must charge to a customer to serve that customer profitably, which will put the new entrant at a competitive disadvantage.<sup>378</sup> We thus interpret our first criterion as meaning that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer.

133. An example illustrates the application of this criteria. When a facilities-based carrier that competes against an incumbent LEC for a customer, the incumbent LEC incurs no cost of number portability if it retains the customer. If the facilities-based carrier wins the customer, an incremental cost of number portability is generated. The share of this incremental cost borne by the new entrant that wins the customer cannot be so high as to put it at an appreciable cost disadvantage relative to the cost the incumbent LEC would incur if it retained the customer. Thus, the incremental payment by the new entrant if it wins a customer would have to be close to zero, to approximate the incremental number portability cost borne by the incumbent LEC if it retains the customer.<sup>379</sup>

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<sup>378</sup> We recognize that the incumbent LEC and new entrant, when competing for a customer, will take into account not only the incremental cost of winning the customer, but also the incremental cost of losing a customer. The cost to an incumbent LEC of losing a customer who ports his or her number to a new entrant is the incremental cost of porting that number to the new entrant, less any payments made by the new entrant to the incumbent LEC. In theory, the higher the incremental costs of losing customers, the greater the incentive an incumbent LEC would have to offer a customer a low price to prevent a customer from porting his or her number, which would allow the incumbent LEC to avoid the number portability cost. For the interim period, however, we expect that the number of customers that will port their number will be small relative to the total number of customers an incumbent LEC serves. Since incumbent LECs offer local service on a tariffed basis to all customers, the incentive for an incumbent LEC to lower its price to all customers in order to avoid the cost of porting a small number of numbers will be small enough to be inconsequential in determining the incumbent LEC's price.

<sup>379</sup> Carriers taking unbundled elements or reselling services do not generate a cost of number portability. Thus, a low incremental payment by a facilities-based carrier is necessary in order not to disadvantage it relative to such resellers.

134. A couple of additional examples may further clarify and illustrate this criterion. On the one hand, a cost recovery mechanism that imposes the entire incremental cost of currently available number portability on a facilities-based new entrant would violate this criterion. This cost recovery mechanism would impose an incremental cost on a facilities-based entrant that neither the incumbent, nor an entrant that merely resold the incumbent's service, would have to bear, because neither the incumbent nor the reseller would have to use currently available number portability measures in order for the prospective customer to keep his or her existing number. On the other hand, a cost recovery mechanism that recovers the cost of currently available number portability through a uniform assessment on the revenues of all telecommunications carriers, less any charges paid to other carriers, would satisfy this criterion.<sup>380</sup> This approach does not disparately affect the incremental cost of winning a specific customer or group of customers, because a LEC with a small share of the market's revenue would pay a percentage of the incremental cost of number portability that will be small enough to have no appreciable affect on the new entrant's ability to compete for that customer.

135. The second criterion for a "competitively neutral" cost recovery mechanism is that it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment. If, for example, the total costs of currently available number portability are to be divided equally among four competing local exchange carriers, including both the incumbent LEC and three new entrants, within a specific service area, the new entrant's share of the cost may be so large, relative to its expected profits, that the entrant would decide not to enter the market. In contrast, recovering the costs of currently available number portability from all carriers based on each local exchange carrier's relative number of active telephone numbers would not violate this criterion, since the amount to be recovered from each carrier would increase with the carrier's size, measured in terms of active telephone numbers or some other measure of carrier size. In addition, allocating currently available number portability costs based on active telephone numbers results in approximately equal per-customer costs to each carrier. We also believe that assessing costs on a per-telephone number basis should give no carrier an advantage, relative to its competitors. An alternative mechanism that would also satisfy our competitive neutrality requirement would be to recover currently available number portability costs from all carriers, including local exchange, interexchange, and CMRS carriers, based on their relative number of presubscribed customers.

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<sup>380</sup> If a state adopts this cost recovery mechanism, we require that a state's calculation of gross revenues for LECs should include only those revenues generated in the state in which the charges are being assessed, on both an interstate and intrastate basis. This ensures that a carrier's bill reflects the level of its activities in a particular state and will prevent a carrier's being charged several times on the same revenues. Cf. Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order, 10 FCC Red 13512, 13558-59 (1995) (adopting gross revenues less carrier charges for recovering regulatory fees).

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136. We conclude that a variety of approaches currently in use today essentially comply with our competitive neutrality criteria. One example is the formula voluntarily being used by carriers in Rochester, NY, and adopted by the NY DPS in the New York metropolitan area.<sup>381</sup> Specifically, this mechanism allocates the incremental costs of currently available number portability measures, through an annual surcharge assessed by the incumbent LEC from which the number is transferred. This surcharge is based on each carrier's number of ported telephone numbers relative to the total number of active telephone numbers in the local service area.<sup>382</sup> Similarly, as noted above, a cost recovery mechanism that 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 would also satisfy the two criteria for competitive neutrality. As noted above, MFS in Illinois plans to seek regulatory approval for a similar formula that would allocate the costs of currently available measures between it and Ameritech based on each carrier's gross telecommunications revenues net of charges to other carriers.<sup>383</sup> A third competitively neutral cost recovery mechanism would be to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers.<sup>384</sup> Finally, we believe that a mechanism that requires each carrier to pay for its own costs of currently available number portability measures would also be permissible.

137. The cost recovery mechanisms described in the preceding paragraphs define payments made by new entrants to incumbent LECs for providing number portability. We recognize that incumbent LECs must make payments to new entrants if the incumbent LEC wins a customer of the new entrant that wants to port its number. To be competitively neutral, the incumbent LEC would have a reciprocal compensation arrangement with each new entrant. That is, the incumbent LEC would pay to the new

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<sup>381</sup> NYNEX March 22, 1996 Ex Parte Filing.

<sup>382</sup> The formula as filed in the NYNEX tariff is:

$$\frac{\text{Total Ported Minutes} * (\text{Switching} + \text{Transport Costs})}{\text{Total Working Telephone Numbers (TNs) Provided by the Telephone Company}} = \text{Charge per Working TN}$$

$$\text{Charge per Working TN} * \text{Number of Ported TNs Used by the CLEC} = \text{Charge per CLEC}$$

NYNEX March 22, 1996 Ex Parte Filing.

<sup>383</sup> The formula proposed by MFS is:

$$\$3 (\text{Incremental Costs of Number Portability in Illinois}) * \text{Market share based on gross telecommunications revenues net of payments to other carriers.}$$

MFS White Paper, 1996 at 6, 12.

<sup>384</sup> Cf. Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order, 10 FCC Rcd 13512, 13558-59 (1995) (adopting gross revenues less carrier charges for recovering regulatory fees).

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entrant a rate for number portability that was equal to the rate that the new entrant pays the incumbent LEC.

138. In contrast, 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. Moreover, as discussed above, incremental cost-based charges would not meet the first criterion for "competitive neutrality" because a new facilities-based carrier would be placed at an appreciable, incremental cost disadvantage relative to another service provider, when competing for the same customer. Rates for interim number portability would also not meet the second criterion if they approximate the retail price of local service. 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.<sup>345</sup> Retail rates for call forwarding, to the extent they are set above incremental costs, would also not meet the principles of competitive neutrality for the same reasons that incremental cost-based rates would not. Finally, placing the full cost burden of number portability on new entrants would also deter customers of incumbent carriers from transferring to a new service provider to the extent that the entrant passes on the cost of currently available number portability, in the form of higher prices for customers. In addition, if incumbent LECs were not required to bear a portion of the incremental costs of currently available number portability measures, they would have an incentive to delay implementation of a long-term number portability method.

139. A carrier has a number of options for seeking relief if it believes that the pricing provisions for number portability offered by a LEC violate the statutory standard in section 251(e)(2), the rules we set forth in this order, or state-mandated cost recovery mechanisms. First, it may bring action against the carrier in federal district court pursuant to section 207 for damages or file a section 208 complaint against another carrier alleging a violation of the Act or the Commission's rules.<sup>346</sup> Alternatively, the carrier may file a request for declaratory ruling with the Commission, seeking our view on whether the statute and our rules have been properly applied.<sup>347</sup> Finally, carriers in many instances will be able to pursue existing avenues before their state commission if a dispute arises regarding recovery of currently available number portability costs.

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<sup>345</sup> See NYNEX March 22, 1996 Ex Parte Filing. NYNEX reports switching and transport costs of interim number portability of \$0.01 per minute, and charges of \$0.106 for a five minute local call during business hours, the period with the highest rates. The charge of \$0.106 results from retail charges of \$0.08 for the first three minutes and \$0.013 per additional minute, as determined from its local tariffs on file with the NY PSC.

<sup>346</sup> See 47 U.S.C. § 252(e)(6).

<sup>347</sup> We will be initiating a proceeding to adopt expedited procedures regarding such complaints.

140. Finally, in response to questions concerning the appropriate treatment of terminating access charges in the interim number portability context, we conclude that the meet-point billing arrangements between neighboring incumbent LECs provide the appropriate model for the proper access billing arrangement for interim number portability. We decline to require that all of the terminating interstate access charges paid by IXCs on calls forwarded as a result of RCF or other comparable number portability measures be paid to the competing local service provider. On the other hand, we believe that to permit incumbent LECs to retain all terminating access charges would be equally inappropriate. Neither the forwarding carrier, nor the terminating carrier, provides all the facilities when a call is ported to the other carrier. Therefore, we direct forwarding carriers and terminating carriers to assess on IXCs charges for terminating access through meet-point billing arrangements. The overarching principle is that the carriers are to share in the access revenues received for a ported call. It is up to the carriers whether they each issue a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved. If the terminating carrier is unable to identify the particular IXC carrying a forwarded call for purposes of assessing access charges, the forwarding carrier shall provide the terminating carrier with the necessary information to permit the terminating carrier to issue a bill. This may include sharing percentage interstate usage (PIU) data and may require the terminating entity to issue a bill based on allocated interstate minutes per IXC as derived from data provided by the forwarding carrier.

## G. Number Portability by CMRS Providers

### 1. Background

141. In our Notice, we sought comment and other information on the competitive significance of service provider portability for the development of competition between CMRS and wireline service providers.<sup>388</sup> We also sought comment on the current, and estimated future, demand of commercial mobile radio service customers for portable wireless telephone numbers when they change their service provider either to another CMRS provider or to a wireline service provider.<sup>389</sup> Finally, we sought comment on whether the burdens of implementing service provider portability (1) between CMRS carriers, and (2) between CMRS and wireline carriers are similar to the burdens of implementing service provider portability between wireline carriers.<sup>390</sup>

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<sup>388</sup> Notice, 10 FCC Red at 12359-60.

<sup>389</sup> Id.

<sup>390</sup> Id. at 12371.