BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 961150-TP

NOVEMBER 1, 1996

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. (HEREINAFTER REFERRED TO AS "BELLSOUTH" OR "THE COMPANY").

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for Regulatory Policy and Planning for the nine state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia, 30375.

Q. ARE YOU THE SAME ALPHONSO J. VARNER WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON OCTOBER 15, 1996?

A. Yes.

Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE FILING TODAY?

A. My testimony addresses the testimony filed by the two Sprint witnesses on October 3, 1996. I will only address issues that I did not specifically

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address in my direct testimony. I also address the effects of the Eighth Circuit Court of Appeals' stay of portions of the Federal Communications Commission's (hereinafter referred to as the "FCC") First Report and Order in Docket No. 96-98 (hereinafter referred to as the "FCC's Order").

DISCUSSION OF THE EIGHTH CIRCUIT COURT'S STAY

Q. YOU MENTION THAT THE FCC'S ORDER HAS BEEN PARTIALLY STAYED. WHAT IS THE IMPACT OF THE STAY ON THE ISSUES IN THIS DOCKET?

A. On October 15, 1996, the Eighth Circuit Court of Appeals issued a partial stay of the FCC's Order. I understand that the pricing rules and the "pick and choose", or Most Favored Nation, rules issued by the FCC have been stayed. The FCC has requested the U.S. Supreme Court to overturn the stay. BellSouth believes, however, the partial stay indicates that the 8th Circuit believes that those parties who have objected to the FCC's Order have a better than even chance of proving that the FCC's pricing rules conflict with the plain meaning of the Act. Specifically, the stay halts the enactment of Sections 51.505-51.515 (inclusive), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive), 51.809, and the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996. These sections address primarily the pricing rules, including the requirements related to Total Element Long Run Incremental

Cost ("TELRIC") studies, default proxy prices established by the FCC, and the wholesale pricing standard for services available for resale. The positions that BellSouth has taken regarding the meaning of the Act relative to these FCC Rules has been entirely consistent.

In addition, that portion of the FCC's Order addressing rate deaveraging has also been stayed. BellSouth has contended, and urges the Commission to order, that rate deaveraging should not be implemented until such time as the full consequences of such deaveraging can also be addressed.

Q. DOES SPRINT'S PETITION OR THE TESTIMONY OF ITS WITNESSES APPEAR TO RECOGNIZE THE PARTIAL STAY ISSUED ON THE FCC'S ORDER?

A. No. Sprint's petition and testimony appear to rely solely on the pricing standards set forth in the sections of the FCC's Order and Rules that have been stayed.

Q. IN LIGHT OF THE STAY ISSUED ON THE FCC'S ORDER, GENERALLY, HOW SHOULD THE FLORIDA PUBLIC SERVICE COMMISSION (HEREINAFTER REFERRED TO AS THE "COMMISSION" OR THE "FPSC") ESTABLISH PRICES FOR UNBUNDLED ELEMENTS?

A. We are in a period of considerable uncertainty regarding the basis for establishing prices. The pricing provisions and cost standards of the FCC's Order have been stayed, but not overturned. The Act clearly mandates that both unbundled elements and interconnection prices of arbitrated agreements must recover cost. Even though the manner in which these issues will be resolved is unclear, there are new entrants who want to enter the local business. BellSouth does not want to delay that entry while these matters are being resolved.

In view of this uncertainty, we recommend that this Commission establish rates for unbundled elements based on existing tariffed rates for similar services. Tariff rates are clearly cost based and meet the standard set forth in the Act. BellSouth's specific prices and pricing proposals are presented in the testimony of Mr. Scheye.

Q. IN THE EVENT THAT TARIFF PRICES AS DISCUSSED ABOVE ARE NOT AVAILABLE, WHAT DO YOU SUGGEST THAT THE COMMISSION DO?

A. The price for an unbundled element should be set to recover its costs, provide contribution to shared and common costs and provide a reasonable profit. Although BellSouth believes it will need to develop new cost studies, the methodology and cost standards for these cost studies will evolve from impending court decisions and the regulatory process. If

indeed studies are necessary, they will be submitted to this Commission upon completion.

In the meantime, BellSouth recommends that the Commission adopt rates with a true-up mechanism. It is important to realize that the rates BellSouth is proposing are not interim rates as one would normally characterize them. They are rates that will be subject to a true-up process within the next six months, with the relevant regulatory bodies resolving any further differences the parties might have determining what the final prices for the elements involved would be. The prices must be set on a reasonable basis (which does not mean use of the proxy rates established by the FCC in those portions of its Order which are now stayed). Importantly, there must be a true-up provision that requires the resolution of final prices for these elements. It would clearly be reasonable to expect these rates to reflect costs including a contribution. Doing this would give everyone the breathing room to let the matter progress in the courts so that we can deal with the permanent rules that will govern our relationship in the future. This proposal also assures that no party will be disadvantaged, and those parties that are interested in getting into the local business will have the ability to do so, and consumers can begin immediately receiving some of the benefits that competition will bring. We should note that BellSouth has, in fact, entered into an agreement of this type with American Communications Services, Inc. (ACSI).

Q. WHAT IF THE MATTERS YOU DISCUSS ARE NOT RESOLVED IN THE NEXT SIX MONTHS?

A. The agreement would need to provide that the parties can extend the six month period by mutual agreement. This should be sufficient to address any problems, such as unanticipated delays in either the Court decisions, or to permit additional time if the parties are close to resolution.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE TRUE-UP MECHANISM WOULD WORK?

A. Yes. For example, on Monday, October 28, 1996 Sprint requests an unbundled widget from BellSouth in order to serve a new customer. BellSouth provides that widget at the price of $12.00 a month, beginning on November 1, 1996. In April of next year, this Commission finds that the cost plus contribution to shared and common costs and a reasonable profit is equal to $11.50 per month. In April, BellSouth would begin charging Sprint $11.50 per month and true-up Sprint's rate for the previous six months. For the true-up, Sprint would receive a credit of $3.00 (6 months @ [$12.00-$11.50]). Likewise, if the ultimate rate was higher than $12.00 per month, Sprint would be billed the difference between $12.00 and the rate for the six month period.

Q. HAS BELLSOUTH PROVIDED ANY COST SUPPORT IN THIS PROCEEDING?

A. Yes. BellSouth filed cost studies, based on the FCC's methodology, with the direct testimony of Ms. Daonne Caldwell. BellSouth contends, however, that the appropriate use of these studies is as a test for the reasonableness of the proposed rates for the element being studied. As stated previously, the section of the FCC Rules requiring these studies has been stayed.

Q. WHAT ROLE SHOULD COSTS PLAY IN ESTABLISHING PRICES?

A. BellSouth has stated and continues to believe that prices must recover full historical or booked costs of the Company. These are the costs that the Company has incurred and the only source for that recovery is through the prices that the Company charges.

These historical costs include incremental costs, joint or shared costs, common costs and any differences between embedded and incremental costs. As a general rule, prices charged for services should recover a reasonable share of all of these costs. Of course, there are exceptions, such as basic residential service where public policy has dictated that a subsidy exists. This subsidy merely adds to the cost burden that other services must bear. We see no reason why rates charged for services provided to new entrants should vary from the general principle. These new entrants should pay rates which cover the incremental costs plus a

reasonable allocation of shared, common and other cost burdens that other customers are bearing in their rates.

The price of unbundled network elements according to the Act must be based on cost and may include a reasonable profit. The Act does not identify the type of "cost" to which it is referring. The FCC assumed that costs in the Act meant incremental, forward-looking costs. It also assumed that prices should be set at that level. If prices for all of BellSouth's services were set at that level, those prices would not cover costs in the aggregate. In the long run, if the prices of all services in the aggregate do not cover BellSouth's costs, the Company will go bankrupt.

If new entrants are allowed to pay too little, someone else, i.e., other customers, will have to pay the difference. Therefore, the cost standard that should be used is one that requires new entrants to pay a price that covers not only incremental costs, but a reasonable allocation of joint and common costs.

Q. WHY IS IT IMPORTANT THAT NEWLY ESTABLISHED RATES FOR UNBUNDLED ELEMENTS COVER INCREMENTAL COST?

A. This is important for several reasons. First of all, BellSouth's Price Regulation Plan as ordered by this Commission, requires that all prices be above incremental cost, unless it is exempted by the Commission. Second, the Act requires that the prices for interconnection and

unbundled network elements be based on cost, so the Commission can have the confidence that even though these prices will be trued-up later, they are nevertheless consistent with the Act. Third, although all parties hope that these prices will be in effect for a short period, it is still true that these prices will be the only economic signals present in this emerging market. With this in mind, the Commission should ensure that the prices at least cover cost. Fourth, BellSouth will at some point in the near future file to true-up these rates based on appropriate costs. If this viewpoint were to be adopted by this Commission, the transition to permanent rates would be easier if the rates set now are at least above their incremental cost. If rates are set below incremental costs, the Commission knows that rates will have to be increased at least to that level. It will be less disruptive in the marketplace if this potential source of rate increase does not exist.

Q. WHAT PRICES IS BELLSOUTH PROPOSING IN THIS PROCEEDING?

A. BellSouth is recommending to the Commission that it adopt either tariff prices or prices subject to a true-up where tariff prices are not available. We believe this will be fair to the parties involved and to the public and will advance Congress' and the Florida Legislature's goal of promoting local competition. We must stress, however, as I stated above, that these provisional rates must be subject to a true-up when permanent rates are finally set. The true-up must extend back to the time when the provisional rates were instituted. Moreover, the parties must be instructed to keep

adequate records so that the true-up can be as accurate as possible. From BellSouth's point of view, the true-up is an essential part of the Commission's responsibility to ensure that the parties are treated equitably, that BellSouth has a reasonable opportunity to recover its costs, and that the prices adopted in this proceeding comply with both this Commission's price regulation rules and the Act.

Included in the testimony of Mr. Scheye is an exhibit that presents the prices that BellSouth is asking this Commission to adopt in this proceeding. In most cases, these rates are tariffed rates from the BellSouth approved tariffs. Where tariffed rates were not available, the proposed rates are based on derivatives of existing tariffed rates or are based on TELRIC studies. We believe this schedule constitutes a fair and reasonable set of provisional rates that will help the parties and this Commission work through this transitional period.

RESPONSE TO SPRINT TESTIMONY

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. In this section of my testimony, I will respond specifically to the testimony of the Sprint witnesses with regard to Issues 13, 16, 20, 22, and 24 as issued in FPSC Order No. PSC-96-1327-PCO-TP dated October 31, 1996.

ISSUE 13: SHOULD BELLSOUTH PROVIDE SPRINT ACCESS TO BELLSOUTH'S DIRECTORY ASSISTANCE AND 911/E911 DATABASES?

Q. On page 7 of Mr. Key's testimony, he states that "Congress specifically required LECs to disclose customer proprietary network information ("CPNI") to competitors for purposes of facilitating the initiation of service. CPNI at the time an order is being placed and at the time of order confirmation is essential for a ALEC to recognize and then switch all of a customer's services "as is" to Sprint". Does BellSouth agree with this interpretation of the Telecommunications Act of 1996?

A. Although I am not a lawyer, Sprint's interpretation of Section 222 of the Act is a clear misstatement of its express language and its purpose. The only circumstance in which the Act requires disclosure of CPNI to a third party is upon the affirmative written request by the customer. 47 U.S.C. § 222(c)(2). Beyond that, the Act permits, but does not require, a telecommunications carrier to disclose CPNI to initiate telecommunications services. 47 U.S.C. § 222(d). Moreover, the initiation of service and the associated permissive disclosure of CPNI to which this section refers is the carrier's initiation of service to the customer to whom the CPNI relates and the disclosure of relevant CPNI to third parties for purposes of such service initiation, such as when a carrier and a CPE vendor must coordinate installation and calibration of equipment and service. Thus, this section does not address disclosure of CPNI to

competitors for a competitor's initiation of service -- it refers only to a carrier's disclosure of CPNI for the carrier's own initiation of service to the customer -- and, it certainly does not require disclosure to a competitor. Of course, at the time a customer is "switched as is" to an ALEC (but not before), the ALEC becomes the customer of record for CPNI purposes and thus may obtain current service records for that account.

ISSUE 16: ARE THE FOLLOWING ITEMS CONSIDERED TO BE NETWORK ELEMENTS, CAPABILITIES, OR FUNCTION? IF SO, IS IT TECHNICALLY FEASIBLE FOR BELLSOUTH TO PROVIDE SPRING WITH THESE ELEMENTS? LOCAL LOOP, NETWORK INTERFACE DEVICE, LOCAL SWITCHING, OPERATOR SYSTEMS, INTEROFFICE TRANSMISSION FACILITIES, TANDEM SWITCHING, SIGNALING AND CALL RELATED DATABASES

Q. MR. KEY'S TESTIMONY REFERS TO NINE SPECIFIC UNBUNDLED ELEMENTS THAT THE FCC'S ORDER REQUIRES TO BE UNBUNDLED. DO YOU AGREE WITH THE ELEMENTS THAT HE SPECIFIES?

A. A. Yes. Subpart D of the FCC's Rules includes a discussion of the unbundling of network elements. It specifies that where technically feasible, access to unbundled network elements must be provided at just, reasonable and nondiscriminatory terms. (emphasis added) Paragraph 51.319 provides a list of specific network elements that are to be offered

on an unbundled basis. Those items are: 1) local loop; 2) network interface device; 3) switching capability; 4) interoffice transmission facilities; 5) signaling networks (access to service control points through the unbundled STP) and call-related databases; 6) operation support systems functions; and 7) operator services and directory assistance. Mr. Key's list is just broken down differently than the Rules.

BellSouth's assessment of the Act, the FCC's Order, and Sprint's request concludes that, where technically feasible, elements in these categories must, and will be provided on an unbundled basis. The testimony of Mr. Keith Milner and Mr. Robert Scheye address the technical feasibility and other specific issues raised by Sprint in more detail.

ISSUE 20: WHAT ARE THE APPROPRIATE WHOLESALE RATES FOR BELLSOUTH TO CHARGE WHEN SPRINT PURCHASES BELLSOUTH'S RETAIL SERVICES FOR RESALE?

Q. MR. STAHLY DISCUSSES WHOLESALE PRICING PROCEDURES IN HIS TESTIMONY. DO YOU AGREE WITH HIS DISCUSSION?

A. No. Wholesale pricing was addressed in Sections 51.605 through 51.611 of the FCC's Rules. These sections of the Rules have been stayed.

As I stated in my direct testimony, the "avoidable cost" methodology set forth in the Rules, and previously adopted by this Commission, is different

than the methodology supported by BellSouth. The Act requires that rates for resold services shall be based on retail rates minus the costs that will be avoided due to resale. This is the only fair and logical approach, in light of the fact that BellSouth's rates are not necessarily cost-based and reflect social pricing considerations and a different competitive environment. Sprint's proposal of using avoidable costs, as I discussed earlier, is clearly inconsistent with the Act.

BellSouth submitted to this Commission, in the testimony of Mr. Walter Reid, its "avoided cost" study. This study does not follow the guidelines set forth in the FCC's Rules that have been stayed by the Court. It is, however, in compliance with the Federal Act , while studies utilizing avoidable costs are not. BellSouth asks this Commission to approve the rates as put forth in the study submitted in Mr. Reid's testimony.

The study presented by Mr. Reid in his testimony that calculated the discount costs using the guidelines and including the rebuttable presumptions set forth in the FCC Rules, that have since been stayed was submitted for information purposes only. BellSouth does not propose to set wholesale discounts in accordance with this study.

ISSUE 22: WHAT SHOULD BE THE COMPENSATION MECHANISM FOR THE EXCHANGE OF LOCAL TRAFFIC BETWEEN SPRINT AND BELLSOUTH?

Q. ON PAGE 30 OF HIS TESTIMONY, MR. STAHLY BEGINS A DISCUSSION OF RECIPROCAL COMPENSATION ARRANGEMENTS FOR THE EXCHANGE OF LOCAL TRAFFIC. DO YOU AGREE WITH HIS CONCLUSIONS?

A. No. Sprint, although referring extensively to the Act, depends on sections of the FCC's Rules that have been stayed as the basis of its discussion on reciprocal compensation.

A. BellSouth submits that the rate for the transport and termination of traffic should be set with recognition of the intrastate switched access rate. BellSouth has proposed interconnection rates based on these charges, exclusive of the residual interconnection charge (RIC) and carrier common line (CCL) charge, which the Company urges this Commission to adopt. Mr. Scheye discusses BellSouth's specific proposal for transport and termination in his testimony.

It should be noted here that BellSouth's position arises from a belief that fairness demands that interconnectors should help pay for the costs that the firm has incurred in fulfilling its role as the carrier of last resort. To do otherwise would amount to asking only the end users to bear this responsibility.

Q. IS BILL-AND-KEEP AN APPROPRIATE INTERIM COMPENSATION ARRANGEMENT AS SUGGESTED BY MR. STAHLY?

A. No. BellSouth submits that the Act does not authorize a commission to mandate that a party accept bill-and-keep, as proposed by Sprint, as the method, for even an interim period of interconnection, eliminating the right of either party to recover its costs. BellSouth submits that its position is consistent with the Act, permitted based on the Court's stay, and should be adopted this Commission.

Although the FCC Rules did give the Commission the option of ordering a bill-and-keep arrangement with regard to transport and termination, as I state above, that section of the Rules has also been stayed. As BellSouth has repeatedly stated and demonstrates in the testimony of Mr. Scheye, however, bill-and-keep is not an appropriate cost recovery arrangement. BellSouth does not believe that the Act permits bill-and-keep to be mandated. Certainly if mandating bill-and-keep is not authorized by the Act, it is not appropriate for the state commission to mandate such arrangements. This Commission is urged not to adopt a bill and keep arrangement for cost recovery in this proceeding. This Commission should approve BellSouth's proposed rates for transport and termination.

ISSUE 24: SHOULD BELLSOUTH MAKE AVAILABLE ANY INTERCONNECTION, SERVICE OR NETWORK ELEMENT PROVIDED UNDER AN AGREEMENT APPROVED UNDER 47 U.S.C. SECTION 252, TO WHICH IT IS A PARTY, TO SPRINT UNDER THE SAME TERMS AND CONDITIONS PROVIDED IN THE AGREEMENT?

Q. MR. KEY, ON PAGE 30 OF HIS TESTIMONY, BEGINS A LENGTHY DISCUSSION OF THE MOST FAVORED NATION CONCEPT. DOES BELLSOUTH AGREE WITH THE CONCEPT AS PUT FORTH IN MR. KEY'S TESTIMONY?

A. As I explained in my direct testimony, BellSouth absolutely disagrees with Sprint on this issue. This specific concept is included in the Court's stay of the FCC's Order and Rules.

BellSouth submits, and now appears to be supported by the Court's decision, that a requesting carrier is not allowed to "pick and choose" individual rates, terms, and conditions for a given service or from a given agreement. BellSouth urges this Commission not to accept Sprint's position on this issue.

OTHER

Q. MR. STAHLY DISCUSSES INTERIM NUMBER PORTABILITY ON PAGES 55 AND 56 OF HIS TESTIMONY. WOULD YOU PLEASE COMMENT ON HIS DISCUSSION?

A. Certainly. BellSouth submits that this issue, although included in Section 251 of the Act as one of duties that a local exchange carrier has the duty to negotiate on, is being addressed in Docket No. 950737-TP being

considered by this Commission and should not be addressed separately in this proceeding. If this Commission should decide to address the issue raised in Mr. Stahly's testimony, attached to my testimony as Exhibit AJV-1 is BellSouth's direct testimony filed in Docket No. 950737-TP.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BELLSOUTH TELECOMMUNICATIONS, INC.
FPSC DOCKET 961150-TP
EXHIBIT NO. AJV-1 _____

TESTIMONY OF A. J. VARNER IN DOCKET 950737-TP

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 950737-TP

SEPTEMBER 23, 1996

Q. Please state your name, address and position with BellSouth Telecommunications, Inc. ("BellSouth" or "The Company").

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for Regulatory Policy and Planning for the nine state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia, 30375.

Q. Please give a brief description of your background and experience.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science Degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements. Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including preparation of tariff filings. In January 1994, I was appointed Senior Director

of Pricing for the nine state region. I assumed my current responsibilities in August 1994.

Q. Have you testified before the Florida Public Service Commission on previous occasions?

A. Yes. I have testified before the Florida Commission on several occasions.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide BellSouth's current assessment of the Federal Communications Commission's (FCC) First Report and Order and Further Notice of Proposed Rulemaking in FCC Docket No. 95-116 ("Order") on the issue of cost recovery for interim number portability. My testimony explains BellSouth's position on each of the issues in Attachment A of the September 4, 1996 Notice by the Florida Public Service Commission (FPSC), and will specifically address the following:

- I describe briefly the action taken by the Federal Communications Commission in its First Report & Order on number portability, in particular, as it relates to interim number portability.

- I describe why BellSouth included the issue of cost recovery of interim number portability in its Petition for Reconsideration of the FCC Order.

- I explain why the FPSC should take no action to modify its existing order or the associated current tariffs on interim number portability (Order No. PSC-95-1604-FOF-TP).

General Discussion

Q. **Please provide a brief background of some of the significant events leading up to this proceeding.**

A. On July 1, 1995, the revised Section 364.16(4), Florida Statutes, became effective. This Statute requires the Florida Public Service Commission to ensure the implementation of a temporary number portability solution prior to the introduction of competition in the local exchange market. In part, this Section states:

> In order to assure that consumers have access to different local exchange service providers without being disadvantaged, deterred, or inconvenienced by having to give up the consumer's existing local telephone number, all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines.

Although both temporary and permanent number portability are addressed in Section 364.16(4), on June 29, 1995, the Commission originally opened this

proceeding (Docket No. 950737-TP) to investigate the appropriate temporary local number portability solution as contemplated by the Statute.

After a workshop and several meetings among the parties and the FPSC Staff, the parties submitted a proposed Stipulation and Agreement on August 31, 1995, which addressed some, but not all, of the issues identified in this docket. The proposed Stipulation and Agreement was approved by the Florida Commission on October 3, 1995, and evidentiary hearings were held on October 20, 1995 to examine the remaining issues not covered in the Stipulation. During the course of these proceedings, BellSouth submitted a cost study to support its cost of providing interim number portability. On December 28, 1995, the Commission issued its decision in Order No. PSC-95-1604-FOF-TP.

Q. Please briefly describe the outcome of this Order.

A. Among other findings, the Commission incorporated by reference, the Stipulation and Agreement which provided that the local exchange companies (LECs) agreed to offer Remote Call Forwarding (RCF) to certificated alternative local exchange companies (ALECs) as a temporary number portability mechanism, effective January 1, 1996. Similarly, ALECs agreed to offer RCF to LECs as a temporary number portability mechanism, effective on the date they began to provide local exchange telephone service.

Furthermore, the recurring price for RCF was established to be on a per-line, per-month basis, and to be uniform throughout an individual LEC's existing service territory. The price charged for RCF offered by an ALEC would be equivalent to the price charged by the LEC. In addition, the parties were allowed to continue to negotiate on other mechanisms, such as flexible direct inward dialing (DID), if so desired.

The Florida Commission's Order, unlike the FCC's July 2, 1996 Order, was based on an evidentiary proceeding in which the parties were allowed to submit evidence as to the cost of providing interim number portability. Additionally, the Florida Statutes require that the price for interim number portability "shall not be below cost". (Section 364.16(4), Florida Statutes.)

Q. On February 8, 1996, the Telecommunications Act was enacted. What does the Act state about cost recovery for number portability?

A. The Telecommunications Act of 1996 (the "Act") states that: "the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications companies on a competitively neutral basis as determined by the Commission." (Section 251(e)(2) of the Act.) The Act distinguishes between *number portability* and *interim number portability* methods, such as DID and RCF. The FCC Order uses the phrase "currently available number portability" to mean remote call forwarding (RCF) and flexible direct inward dialing (DID). The FCC Order uses the phrase *long term number portability* to mean "number portability" as

used in the Act. For convenience, I refer to "currently available number portability" as interim number portability and I refer to long term number portability as number portability. BellSouth believes that the Act gives authority to the FCC only for cost recovery of *long term* number portability.

Q. What action has the FCC taken on cost recovery of interim number portability and permanent number portability?

A. On July 2, 1996, the FCC released its First Report and Order and Further Notice of Proposed Rulemaking in FCC Docket No. 95-116 which included rules for the implementation of long term number portability and adopted a Further Notice of Proposed Rulemaking seeking comment on the appropriate methods of cost recovery for *long term* number portability. The Order also included the FCC's guidelines for cost recovery of *interim* number portability. Thus, in the First Report & Order, the FCC addresses interim number portability and in the Further Notice of Proposed Rulemaking, the FCC addresses cost recovery of long term number portability.

Q. What is BellSouth's general assessment of the FCC Order?

A. BellSouth does not agree with several points in the FCC Order and on August 26, 1996, filed a Petition for Reconsideration or Clarification of the Order. Among the points that BellSouth takes issue with are:

- The FCC's cost recovery guidelines for RCF and DID do not permit LECs to fully recover their costs of providing intrastate services. In spite of the fact that rate setting for such intrastate functionalities has been historically outside federal jurisdiction, the FCC established "guidelines" that effectively preempt state intrastate ratemaking authority. Furthermore, by expressly prohibiting the payment by an ALEC cost-causer for payment of an amount that is not "close to zero", the FCC has in effect directed states to require incumbent LECs such as BellSouth to provide intrastate services below cost and at confiscatory levels.

- The FCC's attempt to direct the states to disregard cost-causative principles when pricing intrastate services operates to illegally preempt state authority as well as to abrogate and impair LEC contracts. Although rates for interim number portability solutions that are "not close to zero" have been negotiated by BellSouth with other companies, have been examined, deemed appropriate, and have been approved by the Florida Public Service Commission, the FCC nonetheless, seeks to undo the work done by the state commissions and furthermore, to disrupt and threaten the ability of companies to establish mutually negotiated contracts with other companies.

A copy of BellSouth's Petition for Reconsideration is furnished as Exhibit No. AJV-1 attached to my testimony.

Q. What guidelines does the FCC Order give on cost recovery of interim number portability?

A. The FCC has set guidelines for cost recovery for interim number portability that depart from the FCC's own "cost causer" principles. The FCC Order reasons 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 company that could serve that customer. In fact, paragraph 134 of the FCC Order expressly states that a cost recovery mechanism that imposes the entire incremental cost of currently available number portability on a new entrant would not be permissible. Absent an appropriate cost recovery mechanism, and given the reasoning by the FCC stated above, the ILEC will be forced to bear most of the incremental cost of interim number portability.

This additional cost support, to be funded by the ILECs for new entrants, will almost certainly drive the ILEC's costs for interim number portability (i.e., RCF and/or DID) above the ILEC's prices for these services. Not only is this detrimental for the ILEC's business and for competition in general, but it constitutes an unlawful confiscation of property. This is also clearly contrary to the express wording of Section 364.16(4), Florida Statutes, which states:

> In the event the parties are unable to satisfactorily negotiate the prices, terms, and conditions, either party may petition the commission and the commission shall, after opportunity

for a hearing, set the rates, terms, and conditions. *The prices and rates shall not be below cost.* (emphasis added)

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

Q. Is the pricing structure set forth in Order No. PSC-95-1604-FOF-TP ("FPSC Order") inconsistent with the FCC's guidelines?

A. Yes, the pricing structure appears to be inconsistent with the FCC's guidelines. However, as previously mentioned, BellSouth disagrees with the FCC's Order pertaining to cost recovery for interim number portability. BellSouth believes that the FCC's cost recovery provisions for interim number portability are unlawful and confiscatory.

Q. Please explain why BellSouth believes that the FCC's cost recovery provisions for interim number portability are unlawful.

A. As noted earlier, the Act distinguishes between [permanent] number portability and interim number portability. Although I am not a lawyer, it seems clear that in section 251(b)(2) of the Act, Congress imposes the duty on all LECs to provide number portability, and then in section 251(e)(2) of the Act, the FCC is granted the authority to prescribe cost recovery principles to ensure that the

costs of number portability are borne by *all companies on a competitively neutral basis.*

However, the Act does not refer to interim number portability until Section 271. Section 271(c)(2)(B)(xi) allows the use of interim number portability methods, such as DID and RCF, until the FCC issues rules pursuant to section 251 of the Act. Thus, Congress clearly differentiates between number portability ("permanent number portability") and interim number portability, and intended for the FCC to address cost recovery of only long term number portability.

Indeed, the FCC itself, makes the distinction between number portability and interim number portability when it states in its Order that *interim* methods, such as DID and RCF, do not meet its performance criteria for number portability. It is BellSouth's belief that the FCC's authority to address cost recovery only applies to permanent number portability as defined in section 251(e)(2) of the Act, and not to interim number portability. Thus, any attempt by the FCC to address cost recovery for interim number portability is unlawful.

Q. Please explain why BellSouth believes that the FCC's cost recovery guidelines for interim number portability are also confiscatory.

A. The FCC reasons in its First Report and Order 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. The FCC then concludes that the incremental payment made by a new entrant for winning 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. Essentially, the FCC is ordering the incumbent LEC to subsidize new entrants by stating that the cost to the new entrant for interim number portability will have to be close to zero. Thus, the FCC has directed states to require LECs to provide intrastate services at a price "close to zero", apparently without regard to the actual costs incurred by the incumbent LEC, and at confiscatory levels in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Q. Are there costs associated with providing interim number portability ?

A. Absolutely. There are very definite costs associated with proving interim number portability. Indeed, after full evidentiary hearings and cost studies submitted by various parties, the Florida Public Service Commission recognized that there are costs associated with providing interim number portability. The FPSC Order approved the Stipulation and Agreement among the LECs and ALECs that the price charged for interim number portability (i.e., Remote Call Forwarding) offered by an ALEC would mirror the price charged by the incumbent LEC. The FCC's Report and Order would drive the LEC's price for interim number portability to an ALEC well below cost, which would not only violate Florida law but also appear to contradict one of the FCC's own guidelines.

Q. How does it contradict the FCC's guidelines ?

A. As stated earlier, the FCC concludes that the incremental payment made by a new entrant for winning a customer would have to be close to zero. The FCC also states that an interim cost recovery mechanism must not have a disparate effect on the ability of service providers to earn a normal return on their investment. This is unclear and contradictory. The FCC never defines "normal return", but, by ordering BellSouth to provide interim number portability well below cost, it is unclear to BellSouth how it can earn a "normal return" on its investment.

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

Q. What does BellSouth believe is an appropriate cost recovery mechanism for interim number portability?

A. BellSouth, along with other ILECs, ALECs, and the Florida Public Service Commission (FPSC) have participated in proceedings that have established a pricing structure for interim number portability in Florida. This structure is based on the premise that the cost of interim number portability should be recovered from the companies who make use of these arrangements. BellSouth believes that the price of such services should be based on the cost of providing the network elements and include a reasonable profit. The Florida Order should simply be maintained until such time as the solution for

permanent number portability can be implemented. This is consistent with the Florida Statutes.

Q. Do the FCC's interim number portability guidelines mandated in its July 2, 1996 Order in Docket No. 96-116 provide cost recovery for ILECs that is consistent with that directed in the FCC's August 8, 1996 First Report and Order in CC Docket No. 96-98?

A. No. In its First Report and Order in CC Docket 96-98 ("96-98 Order"), the FCC proposed that a Total Element Long Run Incremental Cost (TELRIC) methodology be used as the basis for pricing interconnection and unbundled elements. The 96-98 Order further directs (para. 693) that states may conduct studies in a rulemaking and apply the results in various arbitrations involving ILECs. Based on BellSouth's initial review of the TELRIC methodology, BellSouth expects that if this methodology were to be applied to interim number portability, ironically, the resulting rates would be *higher* than the rates currently approved in the Florida Order for interim number portability. In fact, new entrants would be paying higher interim number portability rates, certainly not rates "closer to zero".

It is BellSouth's position that the FCC was wrong to depart from its long recognized general principle that "the cost-causer should pay for the costs that he or she incurs" for determining the cost recovery mechanism for interim number portability.

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

Q. Is it necessary for the FPSC to implement any retroactive application of the FCC's decision in this proceeding?

A. Absolutely not. In fact, I understand that if such actions were taken by the FPSC, they could be in violation of the retroactive ratemaking principles covered in the Florida Statutes. (Section 366.06(2), Florida Statutes.)

Thus, it seems clear that if the FPSC were to find that it must reconsider the interim number portability rates established in its December 28, 1995 decision (Order No. PSC-95-1604-FOF-TP), then any resulting rate adjustments would need to be implemented on a going forward (or "thereafter") basis. No retroactive adjustments should be considered.

Q. How should previously agreed upon arrangements be viewed?

A. Before the passage of the Act, Order No. PSC-95-1604-FOF-TP, issued December 28, 1995, established Remote Call Forwarding (RCF) as the temporary number portability mechanism to be provided in Florida. BellSouth has negotiated and entered into a number of local interconnection agreements that established interim number portability rates prior to the FPSC Order and prior to the Telecommunications Act. These agreements were negotiated by the parties in good faith and many were made before the FCC's July 2nd, 1996

Order on number portability. Nothing in the Act alters the exclusive jurisdiction of the states on this matter and, thus, BellSouth does not believe that there should be any retroactive application of the FCC's decision.

Q. In light of the fact that BellSouth believes that the FPSC Order on interim number portability is inconsistent with the FCC's First Report and Order, and that no retroactive adjustments should be taken by the FPSC, what action would BellSouth suggest for the Florida Public Service Commission?

A. One possibility would be for the FPSC to adopt a "wait and see" position pending the resolution of BellSouth's August 26, 1996 Petition for Reconsideration or Clarification and the other appeals and petitions taken by various parties on the FCC's Report and Order in Docket No. 95-116.

Q. Would you please summarize your testimony?

A. Yes. Fundamentally, BellSouth believes that the FCC exceeded its authority when setting guidelines for cost recovery of interim number portability. BellSouth further believes that the costs of interim number portability solutions should be recovered from the companies who make use of these arrangements.

Furthermore, BellSouth believes that the FCC's guidelines for interim number portability as set forth in its 95-116 Report and Order are inconsistent with the FCC's own cost recovery directives included in its 96-98 Order. Based on BellSouth's experience with the TELRIC methodology, BellSouth believes

that the results of these studies would clearly justify a higher rate than that currently ordered by the FPSC. Moreover, BellSouth believes that the interim number portability guidelines in the 95-116 Report and Order are unlawful and confiscatory.

In any case, BellSouth believes that no retroactive application of the FCC's Order should be taken since it would in effect constitute unlawful retroactive ratemaking. Before the passage of the Act, by Order No. PSC-95-1604-FOF-TP, issued December 28, 1995, the FPSC established RCF as the temporary number portability mechanism to be provided in Florida. The Florida order established the price to be charged and the cost recovery mechanism to be used for RCF. Many of the agreements reached between BellSouth and ALECs were made before the FCC's July 2nd, 1996 Report and Order on number portability and were negotiated in good faith. It would be wrong to now try and undo these negotiated rates. BellSouth does not believe that there should be any retroactive application of the FCC's decision on any agreement made prior to issuance of the FCC's Order.

Q. Does this conclude your testimony?

A. Yes.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	

PETITION FOR RECONSIDERATION OR CLARIFICATION

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

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DATE: August 26, 1996

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SUMMARY

The Commission established a rule requiring local exchange carriers ("LECs") to provide Remote Call Forwarding, Flexible Direct Inward Dialing and comparable services ("RCF" and "DID") that are intrastate functions to other carriers without also establishing a corresponding cost recovery mechanism. The Commission instead established cost recovery guidelines for these services that prohibit pricing of these services at any amount that is not "close to zero." Application of the federal guidelines preempts state retaking authority and effectively requires LECs to provide intrastate services below cost at confiscatory levels. Application of the guidelines further unlawfully abrogates carrier agreements.

The Commission was without jurisdiction to depart from traditional cost-causation principles with respect to pricing for RCF and DID. These are intrastate services subject to state jurisdiction under the Communications Act of 1934. To the extent the Commission's jurisdiction to compel these services arises out of the 1934 Act, there is no corresponding authority within that statute to abandon traditional cost-causation pricing principles. To the extent the Commission purports to find authority in the Telecommunications Act of 1996 to depart from cost causation in order to allocate costs in a competitively neutral manner, such allocation only applies to long-term database number portability (LNP), not to RCF and DID.

In any event, there is no basis in the law or in the record in this proceeding to support the Commission's determination that "cost causation" and "competitive neutrality" are *prima facie* mutually exclusive. Neither is there sufficient evidence in the record to support a finding that an "each bears his own cost" approach to RCF and DID provision is competitively neutral. Finally, the cost recovery guidelines adopted by the Commission are vague and ambiguous.

The Commission based its aggressive LNP implementation schedule on the representation of four switch vendors. In doing so, the Commission did not consider a number of critical LNP pre-deployment, deployment and post-deployment processes and contingencies. In light of this, the Commission should increase the implementation interval for Phase I and Phase II LNP implementation from 90 to 180 days to ensure the integrity of the public switched network. The Commission should also clarify that LNP implementation within a desirable subset of switches within any metropolitan statistical area satisfies its LNP implementation requirements.

Because of the ongoing delay in selecting membership to the North American Numbering Council ("NANC"), and the rapid progress being made in the states toward establishing regional service management ("SMS") databases to support LNP, the Commission should direct NANC to automatically approve any SMS regional database administrator selected by carriers prior to NANC selection of such an administrator. The Commission should also clarify that the NANC has authority over SMS database administration alone, and allow carriers to make their own arrangements with regard to service control points.

The Commission's fourth LNP performance criterion is unrealistic and has the effect of eliminating potentially innovative and efficient LNP technologies. Accordingly, it should be eliminated. No LNP technology, specifically including, but not limited to Query On Release, should be eliminated absent demonstrated proof that its implementation would violate the Commission's technical performance criteria. Finally, the Commission should clarify that all interexchange carriers must participate in 500/900 portability efforts prior to referring that issue to the Industry Numbering Committee for resolution.

Before the
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PETITION FOR RECONSIDERATION OR CLARIFICATION

BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel and pursuant to Part 1, Subpart C of the Commission's Rules, 47 C.F. R. § 1.429, petition the Commission for reconsideration of the final action in this proceeding.[1]

I. THE COMMISSION'S COST RECOVERY GUIDELINES FOR REMOTE CALL FORWARDING AND DIRECT INWARD DIALING DO NOT PERMIT LOCAL EXCHANGE CARRIERS TO FULLY RECOVER THEIR COSTS OF PROVIDING INTRASTATE SERVICES.

The Commission's "Transitional Measure" rule compels local exchange carriers ("LECs") to provide intrastate functionalities to other carriers on request. *Number Portability Order*, B-7, to be codified at 47 C.F.R. § 52.7(a).[2] Rate setting for these intrastate functionalities have historically been outside federal jurisdiction. 47 U.S.C. § 152(b). In practice, rates for these

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[1] *Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116 (July 2, 1996) (*Number Portability Order*)

[2] This rule requires all LECs to provide Remote Call Forwarding ("RCF"), Flexible Direct Inward Dialing ("DID"), or any other "comparable and technically feasible method" of number portability ("transitional measures") upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability ("LNP").

functionalities have been set by state commissions and have enabled LECs to receive reasonable compensation for the provision of these functions. In this proceeding, however, the Commission failed to establish a cost recovery mechanism for its Transitional Measure rule and instead promulgated "guidelines" which it has interpreted in such a way that their application would preempt state intrastate ratemaking authority. *Number Portability Order*, B-7 - B-8, to be codified at 47 C.F.R. § 52.9, ¶ 133.[3] By expressly prohibiting the payment by a carrier cost-causer or any Transitional Measure beneficiary of an amount that is not "close to zero," the Commission has effectively abrogated carrier to carrier and has directed states to require LECs such as BellSouth to provide intrastate services below cost at confiscatory levels in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

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[3] The Commission states:

> . . .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 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 be close to zero, to approximate the incremental number portability cost borne by the incumbent LEC if it retains the customer. *Id.* at ¶ 133.

Nevertheless, the Commission determined that the costs of transitional measures are incurred solely by the LEC providing the service. *Id.* at 122.

A. The Commission's Attempt To Direct The States To Disregard Cost-Causative Principles When Pricing Intrastate Service Operates to Illegally Preempt State Authority As Well As To Abrogate And Impair LEC Contracts.

As the Commission notes, several states have previously adopted cost recovery mechanisms for Transitional Measures, including two in states in which BellSouth provides telephone exchange and exchange access service:

> [I]n Florida, carriers have negotiated appropriate rates for currently available measures. The Louisiana PSC has adopted a two-tiered approach 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. . . . *Id.* at ¶ 123.

These rates, although negotiated by BellSouth with other carriers as "appropriate" (to a point well below retail prices), *Id.*, and approved by the state commission, are not "close to zero." *Id.* at 133. As demonstrated below, nothing in the Telecommunications Act of 1996[4] alters the grant of exclusive jurisdiction to the states with respect to setting prices for intrastate functionalities in the Communications Act of 1934.[5] To the extent the Commission seeks to undo the work done by state commissions, it is engaging in unnecessary and unlawful federal preemption. To the extent the Commission's guidelines result in reopening and disrupting of BellSouth's mutually negotiated agreements, they constitute an immediate and ongoing threat to, and an abrogation and impairment of, BellSouth's mutually negotiated contracts with other carriers[6] in violation of the Fifth and Fourteenth Amendments.

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[4] Pub. L. 104-104, 110 Stat. 56, enacted Feb. 8, 1996 ("1996 Act" or "Act").

[5] 47 U.S.C. §§ 151, 2(b).

[6] Even assuming, for the sake of argument, that the Commission had jurisdiction, the Commission can only abrogate carrier contracts after a finding that the specific contract was contrary to the (Continued...)

B. The Commission Lacked Jurisdiction To Promulgate Cost Recovery Guidelines for Transitional Measures.

The Commission bases its jurisdiction to compel LEC provision of Transitional Measures on a three legged stool: section 251(b)(2) of the 1996 Act, *Number Portability Order* at ¶ 110; section 271(c)(2)B)(xi) of the 1996 Act, *Id.* at ¶ 111; and sections 1 and 202 of the 1934 Act, independent of the 1996 Act. *Id.* at ¶ 112. The Commission bases its jurisdiction to direct states to deviate from cost causative rate setting for transitional measures on section 251(e)(2) of the 1996 Act alone. Thus, by the Commission's own findings, even if it had jurisdiction to compel LEC provision of transitional measures had the 1996 Act not been enacted, it would not have had any authority to depart from cost-causative pricing principles for Transitional Measures.[7] *Id.* at ¶ 131. As shown below, however, neither section 251 nor section 271 constitute such a mandate with respect to Transitional Measures.

Congress, in section 251(b)(2) of the Act, imposed the duty on all LECs to provide Number Portability, not Transitional Measures. Congress only required that the costs of Number Portability, not the cost of Transitional Measures, be borne by all telecommunications carriers on a competitively neutral basis. 1996 Act, § 251(e)(2). The separate regulatory categories, and

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public interest. No record exists to support such a finding nor was there any notice that the Commission was intending to abrogate these agreements. Western Union Telegraph Co. v. FCC, 815 F.2d 1495, 1501 (D.C. Cir. 1987)

[7] To the extent the Commission bases its jurisdiction to require LECs to provide transitional measures on request on sections 1 and 202 of the Communications Act of 1934, it simply has no corresponding license under that statute to suspend its obligation to provide a concurrent and fully compensatory cost recovery mechanism for such service provisioning.

their separate definitions, for Transitional Measures and Long-Term Database Method make clear that Transitional Measures cannot have the same legal meaning as Number Portability or LNP.

As an initial matter, the Commission determined that Transitional Measures are unacceptable as an LNP solution because they fail to meet the performance criteria established by the Commission in order to ensure that LNP complies with the Act's definition of Number Portability set forth at section 153(30).[8] *Number Portability Order* at ¶¶ 56, 115. The Commission adopted a separate rule in this proceeding which defines Transitional Measure as a method that allows one LEC to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria adopted by the Commission for LNP. *Id.* at B-4, to be codified at 47 C.F.R. § 52.1(t).[9] In sum, long-term database method LNP is Number Portability as defined by the 1996 Act, Transitional Measure methods are not.

The Commission's reliance on section 271(c)(2)(B)(xi) of the 1996 Act[10] as a statutory mandate to compel LEC provision of transitional measures is illogical and manifests a blatant

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[8] That definition, adopted by the Commission at 47 C.F.R. § 52.1(k), prohibits the "impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." The Commission guts this requirement by grafting section 251(b)(2)'s technical feasibility language onto the definition and dropping the non-impairment criterion from Congress's definition. *Number Portability Order* at ¶ 110. Congress meant what it said -- number portability is a method whereby service users are able to switch providers *without* impairment. If Congress had meant that definition to be elastic, it would have inserted the "technically feasible" language directly into section 153(30) rather than put it into section 251.

[9] It is disingenuous, and an obvious jurisdictional grab, for the Commission to prohibit RCF and DID as a permanent solution but to also characterize them as meeting Congress's definition of Number Portability.

[10] "Until the date by which the Commission issues regulations pursuant to Section 251 to require number portability, interim telecommunication number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of (Continued...)

distortion of congressional intent to further an independent administrative agenda. The Commission observed that:

> . . .There will necessarily be a significant time period between the adoption date of these rules and the availability of long-term number portability measures. Therefore, were the Commission to promulgate rules providing only for the provision of long-term number portability, during this time period the BOCs could satisfy the competitive checklist without providing *any form of number portability. This could be true even if they had been providing interim number portability pursuant to the checklist prior to the effective date of the Commission's regulations.* We do not believe Congress could have intended this result. *Number Portability Order* at ¶ 111 (emphasis added).

The same "significant time period" (17 months) which compels the Commission to mandate LEC provision of Transitional Measures is elsewhere described by the Commission as a "relatively short period" when it attempts to rationalize application of number portability cost allocation principles to Transitional Measures. Id. at ¶ 121. In any event, it defies logic to believe that a Bell operating company that desires to provide in-region, interLATA service would not read section 271 as requiring BOC provision of interim number portability through RCF and DID until the Commission mandated deployment of LNP beginning in October 1997. BellSouth agrees with the Commission that Congress could not have intended that the 11th point on the 14 point checklist should appear, disappear, then reappear 17 months later.[11] BellSouth disagrees that this

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functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations."

[11] This absurd result is obtained by construing Congress's "[u]ntil the date by which the Commission issues regulations pursuant to Section 251 to require number portability" language in section 271(c)(2)(B)(xi) as meaning that the obligation to provide interim portability ceases on July 2, 1996, the date the Commission issued its order, rather than October 1, 1997, the date the Commission's regulations require LNP to be provided. If the Commission were seriously concerned that BOCs would read section 271(c)(2)(B)(xi) as a statutory loophole, and in response required mandatory LEC provision of transitional measures to close this BOC loophole, (Continued...)

interpretation grants the Commission the authority to graft section 271(c)(2)(B)(xi), applicable to BOCs who desire to get into the long distance business, onto sections 251(b)(2) and 153(30), which apply to all LECs. Rather, the Commission should interpret 271(c)(2)(B)(xi) as common sense dictates: a continuing requirement that certain BOCs are to provide interim telecommunications number portability under Section 271 until they, together with all other LECs, are required to deploy section 251(b)(2) LNP in October 1997.

Assuming *arguendo* that the Commission has authority to apply section 251(e)(2)'s cost allocation provisions to transitional measures, its findings are arbitrary and capricious and unsupported in the record. The Commission jettisons cost causation out of hand without any meaningful explanation, and attributes its decision to a Congressional directive that appears nowhere in the Act or its legislative history. *Number Portability Order* at ¶ 131 ("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.") There is no express or implied Congressional finding, in the Act or in its legislative history, that "number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer." The Commission itself stopped short of making any such determination on the record. *Id.* at ¶ 31. Indeed, the issue of competitive neutrality is addressed *en toto* (without any reference to the Commission) in the legislative history as follows:

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why, then, when it adopted its definition of "Transitional Measure," did it not include section 271(c)(2)(B)(xi)'s "minimal impairment" requirement in the definition of Transitional Measure?

> [T]he costs for [sic] numbering administration and number portability shall be borne by all providers [sic] on a competitively neutral basis. Telecommunications Act of 1996, Law & Legislative History at CR-122 (Pike & Fisher 1996).

The "reasons" the Commission cites for its determining that "cost causation" and "competitively neutral" are *prima facie* mutually exclusive have no basis in the law or in the record

In its "examples to clarify and illustrate" its cost recovery criteria, the Commission purports to guarantee that no new entrant in local exchange markets will (1) have to pay an amount higher than close to zero when it requests Transitional Measures for which incumbent LECs will incur all the costs (¶ 133); and (2) even if all costs are borne equally by all carriers, no new entrant will have to pay its share of costs if "the new entrant's share of the cost [is] so large, relative to its expected profits, that the entrant would decide not to enter the market." *Id.* at ¶ 135. The Commission has not explained why, having itself determined that the costs of transitional measures will primarily be born by all incumbent LECs, the allocation schemes required to ensure the Commission's guarantees of profitability to new entrants over the next 17 months will not operate to the competitive disadvantage of incumbent LECs. Nor has the Commission explained how such allocation mechanisms, which will essentially require incumbent LECs to pay for their competitors'' legitimate business costs of entry, can possibly comport with any rational notion of "competitive neutrality."

There is simply no express or implied Congressional directive to the Commission, in the Act or in its legislative history, to "depart from cost causation principles, if necessary." In fact, an element of cost causation is implicit in the concept of long-term database portability, insofar as all carriers are expected to incur shared costs in the creation of databases and their administration.

Id. at ¶¶ 212-220. Yet the Commission purports to find a "statutory mandate" not "to price number portability on a cost causative basis." *Id.* at ¶ 131. This is clear error.

Moreover, it was arbitrary, capricious and clear error for the Commission to adopt its competitively neutral cost recovery principles for transitional measures in order to "create incentives for LECs, both incumbents and new entrants, to implement long-term portability at the earliest possible date. . ." *Number Portability Order* at ¶ 125. The Commission established a long-term portability phased deployment implementation schedule that it believes "is in the public interest and supported by the record." *Id.* at ¶¶ 77-82 (quote at ¶ 82). Having established a regulation that requires implementation of long term portability beginning in October 1997, and finding that schedule to be in the public interest and supported by the record, it is wholly arbitrary and capricious for the Commission to attempt to force an earlier implementation schedule through imposition of a punitive cost recovery mechanism that does not allow for complete cost recovery.

Likewise, having determined that the costs of providing Transitional Measures will be incurred solely by the incumbent LEC network, *Id.* at ¶ 122, it was arbitrary, capricious, and clear error for the Commission to determine that a mechanism that requires each carrier to pay for its own costs of currently available number portability measures would be competitively neutral. *Id.* at ¶ 136. The result of such a mechanism would be to preclude LECs from recovering any of their legitimate costs in providing transitional measures.

Finally the Transitional Measure cost recovery guidelines are vague and ambiguous. These guidelines provide that:

> Any cost recovery mechanism for the provision of number portability pursuant to section 52.7(a) of this chapter, 47 C.F.R. § 52.7(a), that is *adopted by a state commission* must not:
>
> (1) give one telecommunications carrier an appreciable, incremental cost advantage over another telecommunications carrier, when competing for a specific

subscriber (i.e., the recovery mechanism, may not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer); or (2) have a disparate effect on the ability of competing telecommunications carriers to earn a normal return on their investment.

Both principles are "suggested" (¶ 132) by an agency "interpretation" (¶ 132) which "reflects the belief" in an "intent" ascribed to Congress (¶ 131). From this ephemeral etiology spring forth two full-fledged cost recovery "criteria" unfettered by any basis in law, free market economics or logic (although the Commission, having first derived the principles from thin air, takes pains to illustrate to states how they are to price such services in a way that will result in LEC subsidization of a new entrant's legitimate costs of entry. This is far from competitive neutrality). Important terms are left undefined: what is an "appreciable cost advantage?" (something little more than zero?) What is a "normal return"? Although the Commission adopted 20 definitional terms in its new number portability regulations; none of them define operative terms in its Transitional Measure cost recovery guidelines.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO REQUIRE THAT AREAS WITH POPULATIONS GREATER THAN ONE MILLION BE IMPLEMENTED IN ONLY 90 DAYS, AND CLARIFY THE SCOPE OF LNP IMPLEMENTATION WITH RESPECT TO THE NUMBER OF SWITCHES.

The Commission adopted a rule requiring all LECs to implement LNP by December 31, 1998, in the 100 largest Metropolitan Statistical Areas ("MSAs") in a five part phased deployment that allows only 90 days to implement each MSA. *Number Portability Order*, B-5, B-10 -11, to be codified at 47 C.F.R. §§ 52.3(b), App. A to Part 52. According to this schedule, BellSouth must implement the largest MSA in its region, Atlanta (approximate population 3.3 million), in 90 days during Phase I (10/97-12/97); and the next three largest MSAs, all in Florida (combined

approximate population 4.8 million), in 90 days during Phase II (1/98-3/98).[12] For the reasons discussed below, the Commission should extend the LNP implementation interval for Phase I and Phase II from 90 to 180 days. BellSouth further urges the Commission to clarify that its implementation schedule will be satisfied even if LNP is not deployed across every switch within and MSA.

The Commission has established an implementation schedule without full consideration of all the factors necessary to do so. Specifically, the Commission only considered vendor projections of availability of LRN software.[13] It expressly assumed that there will be no significant problems in software development that will affect such vendor projections. *Id.* at ¶ 78. In failing to consider other LEC implementation factors it implicitly assumed that all LEC switches will have installed the appropriate generic switch software to support the LRN releases. Equally implicit is the apparent belief that all LECs have the same resources to implement individual MSAs completely in three month intervals. The Commission appears to believe that providing LNP is simply a matter of loading LRN software into LEC switches. There is no basis in the record to support these assumptions, or a uniform three month per MSA implementation across all deployment phases.

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[12] The next four largest MSAs, spread across four separate states (combined approximate population 4.7 million), in 90 days during Phase III (3/98-6/98); the next five largest MSAs, spread across four states (approximate combined population 4.9 million), in 90 days during Phase IV (6/98-9/98); and the next seven largest MSAs, spread across five states (combined approximate population 4 million), in 90 days during Phase V (9/98-12/98). *Id.*, *see also* D-1 -2, App. D to Part 52.

[13] The Commission expressly acknowledged that its schedule is consistent with the proposed schedule of one new entrant, AT&T and the estimates of four switch vendors, Lucent, Nortel, Siemens Stromberg-Carlson and Ericsson. *Id.* at ¶¶ 77, 78.

Each RBOC region is populated with a variety of switches, including multiple models from multiple manufactures, within MSAs. Each different switch type has its own operating software ("generic"). As illustration, BellSouth has deployed a number of AT&T (Lucent) 5ESS switches in its region. All of these switches are loaded with generic 5E-9.1 or generic 5E-10. Neither generic will support LRN software. Instead, these switches will have to be upgraded to a generic 5E-11 which is not yet available from the vendor.

In order to protect the integrity, quality and reliability of the public switched telephone network ("PSTN"), BellSouth conducts preinstallation lab testing of new generics in order to find any defects in the software prior to field installation. Defects found during this process can cause deployment delays.[14] BellSouth next conducts soak tests for the new software in a live switch. In this process, a new generic is loaded in a single small (in terms of access lines) switch and soaked for up to 30 days. BellSouth then proceeds with a gradual ramp up, starting with small switches and working up to a large FCC reportable switch. After this process is completed, the generic is available for general deployment in BellSouth. Live switch soak tests are used to identify defects previously undetected during lab testing. Defects found during this process can also cause deployment delays.

Once a generic is generally accepted in BellSouth, every switch generic upgrade undergoes a stabilizing period subsequent to load complete. This period, which applies before new capabilities (such as LRN) available on a given generic can be activate, can range from one week or longer depending upon software complexity. By failing to account for these processes,

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[14] The vendor then develops "patches" to be loaded into BellSouth's lab switch. At general availability the vendor incorporates these patches into the production version of the software.

which apply to the varied switch and generic software topography across LECs, as well as to the anticipated LRN releases,[15] the Commission has established an implementation schedule that is inconsistent with protecting the integrity of the PSTN, and with the Commission's own non-degradation performance criteria.

In addition to necessary switch upgrades, the Commission failed to take into account that deployment of workable LNP must be scheduled and coordinated with other fundamental and essential LNP efforts. The Commission cites Georgia's implementation schedule for number portability in support of the implementation schedule it established in this proceeding. *Id.* at ¶¶ 22, 67. Yet the *Selection Committee Report to the Georgia Public Service Commission* identifies four major work efforts that must be scheduled and coordinated for the successful completion of a database number portability solution: the availability of switch vendor functionality; the availability of a neutral third party service management system ("SMS"); the availability of participating telecommunications service provider service control point ("SCP") and SMS functionality; and the availability of participating telecommunications service provider internal operational support systems ("OSS"), billing systems and associated methods and procedures. The Commission failed to recognize and account for these crucial elements of an LNP solution when it established its implementation schedule for number portability. The Selection Committee Report from the Georgia Workshop, on the other hand, has determined that in order to meet the

[15] In addition to software upgrades, the Commission has not considered the effect of necessary hardware upgrades required to support long-term database methods of number portability. For example, BellSouth estimates that approximately 85% of its Nortel DMS family of switches will require switch processor upgrades in order to support LRN.

LRN deployment schedule, all internal OSS, billing systems and operational planning needs to be completed by May, 1997.[16]

A. LNP Deployment In Compliance With The Commission's Implementation Schedule Does Not Mandate That Every Switch Within An MSA Be Activated Within The Relevant Implementation Phase.

In establishing its implementation schedule requiring that the top MSAs be completely implemented in three month intervals, the Commission overlooked the proposal put forth by AT&T in its comments, and agreed to by participants in the Georgia Number Portability Workshop, that LRN be deployed in a desirable subset of total switches within an MSA. Such deployment is necessary in order to conduct systematic testing that will ensure that the quality, reliability and convenience of the PTSN is not unreasonably impaired. In March of this year, AT&T proposed that LRN be deployed "in 20 to 25 switches in each market (20 for the incumbent and at least 1 for each alternative carrier)." AT&T, *ex parte*, CC Docket 95-116 at 8 (Mar. 29, 1996). Similarly, carriers participating in the Georgia Number Portability Workshops agreed to deploy LRN in the 21 most desirable (as determined by the competing service providers) switches within the Atlanta MSA. The actual number of switches should be determined by the carriers, under the supervision of the SMS administrator.

Such limited deployment is consistent with sound network engineering principles, as well as the Commission's efforts to target deployment in those areas where competing service providers are likely to offer alternative services. *Number Portability Order* at ¶ 82. It is consistent, as well, with the 1996 Act's qualification to LEC provision of LNP "to the extent

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[16] Testing for these processes has been mandated a part of the Illinois Number Portability field test. However, results will not be available until well after the May 1997 ready date. *Infra*, n.17.

technically feasible." 1996 Act, § 251(b)(2). Just as it is inappropriate to flashcut LNP nationally, it would be inappropriate to require simultaneous deployment in all switches within the largest MSAs. *Cf. Number Portability Order* at ¶¶ 70, 81. Large MSAs, such as Atlanta, encompass thinly populated suburban and rural areas in which competing service providers are not as likely to offer alternative services as in more concentrated urban and suburban areas. A simultaneous, MSA-wide switch deployment in MSAs would not allow BellSouth the opportunity to conduct necessary testing to ensure network integrity, is unnecessary, and is a recipe for disaster.

The Commission should therefore reconsider its requirement that carriers complete implementation of LNP during Phase I and Phase II in only 90 days.[17] Deployment of such a potentially convulsive change to the PTSN in the largest MSAs should be done expeditiously, but cautiously. An additional 90 days will allow for appropriate preparation and testing, and enable LECs to more efficiently complete later deployments. The Commission should also clarify that initial deployment of a desirable subset of the MSAs total switches comports with the Commission's implementation schedule. LECs must still have the opportunity to seek a waiver from the modified implementation schedule pursuant to the rules established by the Commission. *Id.* at ¶ B-5, § 52.3(e).

III. THE COMMISSION SHOULD NOT ALLOW THE CONTINUING DELAYS IN ESTABLISHING NORTH AMERICAN NUMBERING COUNCIL

[17] The Commission should also clarify that Phase I implementation may actually begin at any time during the Phase I installation period. This is necessary if a LEC is to make any meaningful use of the field test results of the Illinois Local Number Portability Workshop, which are to be filed with the Commission on the last day of third quarter of 1997. *Id.* at B-6, to be codified 47 C.F.R. § 52.3(g).

MEMBERSHIP TO DELAY DEVELOPMENT OF REGIONAL SMS DATABASES.

The Commission adopted rules that enable the North American Numbering Council ("NANC") to direct establishment of a system of regional SMS databases. *Number Portability Order*, B-6, to be codified at 47 C.F.R. § 52.5(a). These regional databases are to be administered by entities selected by NANC within seven months of NANC's initial meeting. *Id.* at § 52.5(c). The difficulty with this plan is that NANC membership has yet to be selected, NANC's first meeting has yet to be scheduled, and LECs must deploy LNP in the largest MSA in each BOC region in only 17 months. Even if NANC members were appointed and the first meeting convened before the pleading cycle in the Commission's pending number portability docket closed, it is conceivable that NANC-appointed SMS administrators would have less than a few months to discharge their prescribed obligations.[18]

In the meantime, participants in the Georgia Local Number Portability Steering Committee have already formed a limited liability company ("GA NAPC"), and the GA NAPC's Operating Agreement is being circulated among prospective members for signature. The Georgia Steering Committee is also currently in the process of finalizing, and plans to soon release, a request for proposal for an SMS administrator. Further, the Florida Public Service Commission's Florida Number Portability Task Force, concerned about the timely development of the NANC LNP SMS databases, has contacted the Georgia Public Service Commission about working together to

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[18] The NANC-appointed local LNP administrator(s) ("LNPA(s)") are to determine, *inter alia*, technical interoperability and operational standards, the user interface between telecommunications carriers and the LNPA(s), the network interface between the SMS and the downstream databases, and the technical specifications for the regional databases. *Id.* at § 52.5(d).

develop a regional database, and then presenting this work effort to the NANC for acceptance as the database for the southeast region.

The *Number Portability Order*, while allowing individual state opt-outs based on the selection of a state SMS administrator prior to July 2, 1996, does not appear to address the fact that carriers may proceed to implement regional database LNP solutions prior to NANC selection of the LNPA. In order for BellSouth to have any realistic chance to implement LNP on schedule, efforts must proceed apace with respect to the creation of a region-wide SMS database based on the work performed to date by GA NAPC. These efforts cannot be stalled because of the continuing delay with respect to the selection of NANC membership. The Commission should therefore clarify that NANC will automatically approve any regional SMS database administrator selected through a competitive bidding process by industry participants prior to the selection of a NANC-appointed LNPA, subject to the administrator's continuing adherence and compliance with NANC SMS database administration specifications. In the alternative, the Commission should clarify that any regional SMS administrator selected through a competitive bidding process by industry participants prior to the selection of a NANC-appointed LNPA may be granted a waiver from any LNPA application or certification process developed by NANC, subject to the administrator's continuing adherence and compliance with NANC database administration specifications.

The Commission should further clarify that the NANC should address SMS functionality only. In order to comply with the LNP implementation schedule, carriers must begin the process of selection an SCP vendor, or make arrangements to otherwise obtain SCP functionality, immediately. Individual carriers will have unique SCP requirements. Each carrier must have the

exclusive authority to select the SCP component of its own call processing network. BellSouth is concerned that, in light of the broad duties granted NANC-appointed LNPAs, *supra* n.4, and the definition of *regional database* in the Commission's rules to include "an SMS/SCP pair," *Id.* at B-3, §52.1(l), a NANC-appointed LNPA may attempt to select and contract with an SCP vendor that would have no accountability to a carrier, and particularly to LECs, for any problems in call processing. The Commission should therefore clarify that NANC should only address SMS, and not SCP, functionality. This is similar to the current situation with respect to 800/888 service, in which there is a single central SMS database but each service provider selects its own SCP to be used for live call processing.

Finally, the Commission should reconsider its authorization that the NANC determine the requirements for the interfaces between the SMS and down stream databases. *Number Portability Order*, B-6, to be codified at 47 C.F.R. § 52.5(d). As the Commission states elsewhere in its Order, the fundamental purpose of the NANC is to act as an oversight committee with the technical and operational expertise to advise the Commission on numbering issues. *Id.* at ¶ 93. Industry participants, and specifically the carriers sharing in the costs of developing, establishing and maintaining the regional databases, are the appropriate parties to determine such technical interface requirements, subject to NANC oversight and management.

IV. THE COMMISSION SHOULD RECONSIDER AND ELIMINATE ITS FOURTH LNP PERFORMANCE CRITERION OR, IN THE ALTERNATIVE, RECONSIDER ITS DECISION TO BAN ANY LNP TECHNOLOGY.

Rather than choosing a particular LNP technology or a specific LNP architecture, the Commission, "in order to better serve the public interest," adopted a rule establishing nine

performance criteria for LNP deployment. *Number Portability Order*, ¶ 46; B-4 -5 (to be codified at 47 C.F.R. § 47.52.3). The fourth criterion provides that LECs must provide LNP that:

> (4) does not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point;

Number Portability Order, B-4, to be codified at 47 C.F.R. §§ 52.3(a)(4). This criterion is unrealistic, is not a true performance criterion, and violates the Commission's proscription against technology foreclosure.[19] It should therefore be eliminated.

Perhaps, in the best of all worlds, carriers should not be required to rely on the databases, network facilities and services of other carriers in order to route calls to the proper termination point. BellSouth rather suspects that such a world would be characterized by redundancy and inefficiency. In any event, the Commission's fourth criterion is unrealistic in the immediate, multiple carrier competitive environment. In such an environment there will always be calls which, in order to be completed, must traverse other carriers' networks. The fourth criterion will always be impossible to achieve because carriers receiving ported numbers will always be dependent upon other carriers' databases, services and network facilities. Specifically, just as in today's non-LNP environment, some carriers will always be dependent upon other carriers' ability to take proper measures to determine routing information as well as to physically route calls to the interconnection point. A criterion that is impossible to meet should be eliminated.

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[19] The Commission determined that none of the current carrier-supported LNP methods, including LRN, has been tested or described in sufficient detail to permit the selection of a particular LNP architecture without further delay. *Id* at ¶ 46. Dictating implementation of a particular LNP method, observed the Commission, "could foreclose the ability of carriers to improve on those methods already being deployed or to implement hybrid (but compatible) methods." *Id.*

Each of the Commission's other criteria (with the exception of the seventh, which prohibits proprietary interests) address technical performance issues: supporting network services, features and capabilities; efficient use of numbers; preventing number changes; service quality and network reliability; engineering for other types of portability; and consideration of potential impacts on networks outside the area of LNP deployment. Criteria four and seven are better characterized as "competitive criteria." The fourth criterion purports to eliminate a "differential in efficiency" which the Commission assumes will result because queries will be performed only when calls are to be ported.[20] *Id.* at ¶ 53. Having already determined that none of the current LNP methods has been tested or described in sufficient detail to permit the selection of a particular architecture, however, *Id.* at ¶ 46, the Commission could not have had before it the facts necessary to determine that such a "differential in efficiency" will actually and inevitably occur, much less result in any illegitimate competitive disadvantage, whenever one carrier's databases, facilities or services are used to route another carrier's calls.

By focusing on hypothetical competitive consequences rather than actual performance issues, the Commission's fourth criteria actually violates the Commission's own basis for promulgating LNP performance criteria in the first place: to avoid "dictating implementation of a particular method," *Id.*, and to maintain "flexibility to accommodate innovation and improvement," *Id.* at ¶ 47, in light of the insufficient state of LNP testing and description. *Id.* at ¶ 46. By the Commission's own acknowledgment, however, the fourth criterion precludes LEC

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[20] The Commission states that "dependence on the original service provider's network to provide services to a customer that has switched carriers contravenes the choice made by that customer to change service providers." *Id.* This is mere speculation, has no basis in the record, makes no sense when applied to non-facilities based resellers, and begs common sense in any event.

implementation of a particular method of technology: the Query on Release ("QOR") call processing solution.[21] As preclusion of QOR (and, perhaps, any other as yet undiscovered or undeveloped technologies which may, to some extent, rely on other carriers' networks, facilities or services) hampers the efficient LEC deployment of LNP, and thus eliminates a possible source of innovation and improvement, the Commission should reconsider and eliminate its fourth criterion.[22]

For the foregoing reasons, the Commission should eliminate its fourth criterion. This would permit LECs to experiment with QOR and other potential technologies, and not call into question the use of LRN, which itself requires some reliance on other carriers networks. In the alternative, the Commission could clarify that QOR or any other LNP technology may be implemented until it can be demonstrated that such implementation actually produces an anticompetitive result or violates any of the Commission's performance criteria. Specifically, the Commission should clarify that QOR may be implemented, subject to these conditions, within a

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[21] QOR is an enhancement or adjunct to LRN that increases LRN's efficiency and makes it more economical, especially when the percentage of ported numbers in any given NXX is relatively low. In a QOR scenario, once a call is placed to a number in a portable NXX, the originating switch attempts to route the call to the donor switch by sending a call setup message across the SS7 signaling network. A voice path is not established unless the number is actually resident on the donor switch. If the number has ported, the donor switch sends a release message back to the originating switch indicating that it must initiate a query to determine the LRN in order to route the call.

[22] To the extent that his criterion was adopted to facilitate deployment of LRN, and to prevent the permanent adoption of current local exchange carrier ("LEC") services such as RCF and DID, its repeal will not result in an argument that transitional Measures can serve as LNP. RCF and DID have been disqualified as failing to meet two performance criteria: criterion two (efficient use of numbers) and criterion five (non-degradation). LECs should be allowed to experiment with various triggering mechanisms, and QOR should be precluded only if it demonstrated to violate a genuine performance criteria.

carrier's own network, as well as between carrier networks by mutual agreement between two carriers.[23]

QOR will not result in "differentials in efficiency" causing competitive disadvantage in violation of the fourth criterion. There is no basis for any kind of determination that QOR facilitates call blocking. QOR specifications take into account situations when congestion in the network might block the attempt to route the call to the donor switch. As soon as blockage is encountered, the call is released back to the originating office for a database query. Nor will QOR provide a LEC access to any more information about new entrants or their customers than will already be obtained through implementation of LRN.

As noted above, if a number has been ported, the donor switch in a QOR environment sends a release message back to the originating switch indicating that it must initiate a query to determine the LRN in order to route the call.[24] In this way QOR does treat ported numbers differently than non-ported numbers, but this difference results in an insignificant additional post dial delay such that it would not be apparent to the calling party.[25] But even LRN treats ported

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[23] According to specifications provided by Nortel and by Bellcore, QOR and LRN routing do coexist; that is, one carrier's use of QOR does not force a connecting carrier to implement QOR in order to have the ability to recognize and respond to the originating carrier's QOR message.

[24] QOR, on the other hand, does not route a call to a ported number through the original carrier's network as implied in the Commission order. After an attempt is made to establish the call to the original carrier's ("donor") switch, the call is routed based on the results of a database query at the originating office just as it would have been if the QOR attempt had not been made. This distinguishes QOR from, RCF which routes calls first through the original service provider's network and then to the new provider's network in a relatively inefficient and cumbersome trunking arrangement.

[25] MCI describes this delay as "imperceptible." *Id.* at n. 156. Moreover, it is critical to bear in mind that post dial delay is not uniform today for all call types and call scenarios. Cellular calls, POTS calls, 800 calls, long distance calls over different carrier facilities, calls to independent LECs, calls using different types of signaling, etc., all result in varied post dial delays. It is (Continued...)

and nonported customers differently, in the case of intraoffice calls, and would presumably fail the Commission's equal call treatment analysis. There can thus be no anticompetitive effect of implementing QOR.

Yet, the Commission summarily disposes of QOR as a potential "innovation and improvement" with a curious determination supported nowhere in the record: the hypothetical, potential and unquantified "competitive benefits of ensuring that calls are not routed through the original carrier's network outweigh *any* cost savings that QOR may bring in the immediate future." *Id.* ¶ 54 (emphasis added). The record evidence consists of cost data indicating that LECs can save tens of millions of dollars, costs that need not be allocated to all telecommunications carriers. *Id.* at ¶ 54. BellSouth studies indicate savings of approximately $50 million over the initial 5 years of LNP implementation. Notwithstanding the Commission's cavalier dismissal of the significance of such sums by an inappropriate comparison to total operating revenue, these totals are significant indeed, especially when combined with the savings of other incumbent independent and RBOC LECs.

Implementation of QOR will not result in the violation of the Commission's technical performance criteria. Customers will not experience poorer transmission quality or loss of services because of QOR. QOR will actually increase network reliability. The Commission's implementation schedule requires aggressive implementation of a network architecture that does not currently exist. As with any new technology, there is much concern about the reliability of the initial LNP design parameters. The 100 MSAs that are to initially be equipped for LNP represent

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reasonable and normal to expect variations within an LNP environment; as a practical matter, these variations will, as MCI states, be imperceptible. *Id.*

the areas of highest access line density and, therefore, the most sensitive portions of the PSTN. If full originating LRN queries are required, the new database equipment and the enormous load on the SS7 network could result in significant network outages. The normal strategy that BellSouth would use with a new architecture would be to implement in a less sensitive area first, then move to the sensitive areas as experience is gained. The load on the databases and the SS7 network would be increased gradually to insure integrity.

In the early stages of LNP the majority of the numbers in a portable central office code ("NXX") will not be ported. If all calls to numbers in portable NXXs initiate queries, most will return normal routing indications. In such a circumstance, millions of unnecessary queries will be made for calls to nonported numbers resulting inefficient, expensive, and potentially harmful abuse of the SS7 network. QOR will reduce the quantity of queries resulting in inefficient, expensive, and potentially harmful abuse of the SS7 network. QOR will reduce the quantity of queries to those that are required for numbers that have actually ported. This will reduce the number of database systems required, the number of signaling links required and will extend switch processor life. This equates to large savings in the PTSN.

V. THE COMMISSION SHOULD CLARIFY THAT INTEREXCHANGE CARRIERS ARE OBLIGATED TO MAKE 500 AND 900 NUMBERS PORTABLE.

As the Commission notes, the vast majority of 900 numbers, as well as all 500 numbers are presently assigned to interexchange carriers ("IXCs"). Most users of these services obtain their numbers from IXCs, not LECs. *Id.* at ¶ 196. As a practical matter, portability of these numbers can only occur when they are released by IXCs. The 1996 Act, however, is silent as to the issue of 500/900 number portability, and does not address portability by IXCs. Nevertheless,

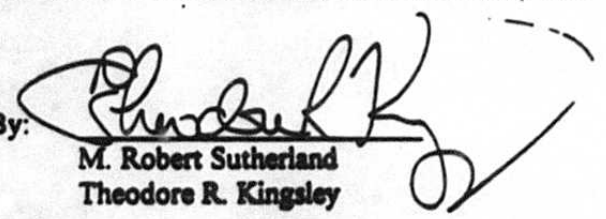
LECs and others will be disadvantaged if IXC customers are not able to change service providers without changing their 500/900 number. Therefore, before proceeding with referral of the 500/900 technical feasibility issue to the Industry Numbering Council, the Commission should clarify that all carriers, including IXCs, must provide 500/900 portability.

CONCLUSION

For the foregoing reasons, the Commission should withdraw its Transitional Measure cost recovery guidelines, lengthen the LNP deployment implementation interval for Phases I and II as indicated, eliminate its fourth LNP criterion and clarify its *Number Portability Order*, as set forth above.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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DATE: August 26, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	RM 8535
	)	

REPLY COMMENTS

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SUMMARY

The Commission should adopt separate LNP cost recovery principles to ensure that the costs of LNP are borne by all carriers on a competitively neutral basis. These principles should affirm that the LNP cost recovery mechanism (1) does not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) does not so distort telecommunications service prices so as to influence customer choice among alternative carriers; and (3) is characterized by administrative simplicity.

Having adopted the foregoing LNP cost recovery principles, the Commission should determine that all costs essential to making LNP work that are incurred by all carriers because of the LNP federal mandate, whether they are shared or carrier specific, represent the costs of implementing the federal LNP mandate as a whole and as such are to be borne by all carriers on a competitively neutral basis. The Commission should further determine that national pooling of the industry-wide Type 1 and Type 2 costs is the best way to ensure that the costs of LNP are borne by all carriers, and that all carriers share in the burden of recovering these costs from end users of telecommunications services through mandatory, but temporary, uniform, averaged and explicit end-user charges. In this way, the Commission will provide a cost recovery mechanism for federally mandated LNP that is characterized by administrative simplicity and which will minimize anticompetitive distortion of the terms on which rival firms compete in the telecommunications services market.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	RM 8535
	)	

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel, reply to the comments filed in response to the Further Notice of Proposed Rulemaking released in this proceeding on July 2, 1996.[1]

INTRODUCTION

Congress and this Commission have directed that the public switched telephone network ("PSTN") be modified so as to accommodate long term database number portability ("LNP") in order that users of telecommunications services may be able to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another. 47 U.S.C. §§ 153(30), 251(b)(2); Further Notice *passim*. The term LNP, therefore, describes more than just a telecommunications service that ports numbers; rather it describes a government mandated, industry-wide effort that requires fundamental changes to the PSTN through the participation of the telecommunications industry as a whole in order for the technology to work.

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[1] *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (July 2, 1996)("Further Notice").

LNP in an economic sense constitutes an intervention in the telecommunications services market that threatens to distort the terms on which rival firms compete with each other. Recognizing the potential for distortion, Congress has required that the costs of LNP are to be borne by all carriers on a competitively neutral basis as determined by the Commission. 47 U.S.C. § 251(e)(2). Any LNP cost recovery mechanism is a concomitant burden of LNP intervention and should itself be administered in a way that does not distort the terms on which rival firms compete. In these reply comments, BellSouth demonstrates that the cost-recovery mechanism must be based on the fundamental principle that the industry-wide costs of LNP are borne, shared and recovered by the industry as a whole with a minimum of market distortion.

I. LONG TERM DATABASE NUMBER PORTABILITY REQUIRES DIFFERENT COST RECOVERY PRINCIPLES THAN THOSE ADOPTED BY THE COMMISSION FOR CURRENTLY AVAILABLE NUMBER PORTABILITY

The Commission's cost recovery principles for mandatory local exchange carrier ("LEC") provisioning of remote call forwarding ("RCF") and ("DID") are, as written, inappropriate for LNP. In order to comport with Congress's mandate of competitive neutrality, an LNP cost recovery mechanism (1) must not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) must not so distort service prices so as to influence customer choice among alternative carriers; and (3) must be characterized by administrative simplicity.

The "currently available" number portability (RCF and DID) cost recovery principles are incompatible in the context of permanent LNP. RCF and DID, as the Commission recognized, are fundamentally different and have substantially different costs than LNP. The cost recovery principles set forth in the Further Notice were designed, in part, to incent LECs to implement

LNP, which is now mandatory. As applied by the Commission, the principles established for RCF and DID do not comport with the legislative mandate of competitive neutrality for LNP costs. Instead, they confer a competitive advantage on new entrants, result in confiscatory rate setting for intrastate services, and potentially abrogate carrier to carrier contracts.[2] As such, the principles developed for RCF and DID should not be applied to LNP.

The Florida Public Service Commission notes with respect to the second principle (competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal rate of return):

> In a competitive environment, there is a fundamental premise that marginal service providers may not earn a normal return and may not be able to survive in the long run.[3]

Applied to LNP, this principle could result in requiring more efficient carriers to subsidize marginal service providers in order to guarantee a "normal return."

Neither of the currently available number portability cost recovery principles ensure that telecommunications service prices will not be distorted in a way that will influence customer choices among alternative carriers. LNP implementation costs must be distributed in a way which neither deters, nor encourages, telecommunications customers to change providers, because customers would not be able to avoid paying for, or would not pay a lower portion of the cost of

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[2] Further Notice, Bell Atlantic Petition for Clarification and Partial Reconsideration (Aug. 26, 1996), pp. 11-14; BellSouth Petition for Reconsideration or Clarification (Aug. 26, 1996), pp. 1-10; Cincinnati Bell Petition for Reconsideration (Aug. 26, 1996) *passim*; GTE Petition for Clarification or Reconsideration (Aug. 26, 1996), pp. 11-12; SBC Petition for Reconsideration (Aug. 26, 1996) pp. 3-6).

[3] Fla. PSC Comments at 2.

LNP implementation by changing providers.[4] Finally, the Commission has determined that an "each carrier bears its own costs" approach comports with its RCF and DID competitive neutrality principles. As demonstrated in Section II below, such an approach is not competitively neutral when applied to LNP.

The Commission should therefore adopt separate cost recovery principles for LNP such that (1) the burden of all (industry-wide, both shared [Type 1] and carrier specific [Type 2]) LNP costs incurred because of the federal mandate are equitably distributed among all carriers and that the LNP cost recovery mechanism used to recover those costs does not impose a disproportionately greater burden on any one telecommunications carrier relative to another;[5] (2) ensures that the cost recovery mechanism does not distort service prices so as to influence customer choice among alternative carriers;[6] and (3) ensures that the LNP cost recovery mechanism is characterized by administrative simplicity.[7]

II. DIRECT CARRIER SPECIFIC COSTS ASSOCIATED WITH LONG TERM DATABASE NUMBER PORTABILITY MUST BE BORNE BY ALL CARRIERS ON A COMPETITIVELY NEUTRAL BASIS.

The comments overwhelmingly support the Commission's initial categorization of LNP costs into three categories: shared, direct carrier specific and indirect carrier specific. Likewise, the comments unanimously support the Commission's tentative conclusion that each carrier should bear its own costs that are not directly attributable to LNP. With shared costs, the

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[4] Cal. Dep. Consumer Affairs ("DCA") Comments at 11-12; USTA Comments at 16.

[5] Cincinnati Bell Comments at 6 (carriers must be able to recover all cost they incur to implement LNP); SBC Comments at 10.

[6] Ameritech Comments at 7; Cincinnati Bell Comments at 6.

[7] Bell Atlantic Comments at 3-4; GTE Comments at 14.

principle difference concerns whether all carriers, or a subset of all carriers based on LNP participation, should bear this portion of the LNP burden.[8] With direct carrier specific costs, the principle difference concerns whether each carrier should bear its own cost or whether carrier specific costs directly caused by LNP are among the costs that Congress has directed are to be borne by all carriers.[9]

The Commission should conclude that "competitive neutrality" requires that all carriers nationwide should bear the total LNP shared and direct costs. The law is explicit that these costs are to be borne by all carriers, and has not excluded any carrier from this mandate.[10] Teleport correctly explains:

> Number portability has now become a requirement of doing business for all providers. It stands to reason, therefore that all carriers should equitably share the burden of the costs for providing number portability. The Telecommunications Act of 1996 requires no less . . .

BellSouth parts company with Teleport and others who argue unconvincingly that the burdens to be borne by all carriers are only the shared costs (why would Congress mandate that shared costs be shared?) and not the millions that will have to be spent by incumbent LECs in order to ensure that LNP will even work.[11] It is not relevant to distinguish between the common

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[8] *Cf.* Teleport Communications Group Comments at 4 (all carriers should bear costs) *with* Telecommunications Resellers Association Comments at 5-7 (only LECs should fund LNP costs).

[9] *Cf.* Winstar Communications Comments at 6 (individual carrier costs should not be included) *with* General Services Administration ("GSA") Comments at 5 (all costs directly incurred by any party to implement and operate the LNP solution should be pooled and spread across all carriers according to an allocator); Fla. PSC Comments at 1-2.

[10] 47 U.S.C. § 251(e)(2); Teleport Comments at 4.

[11] BellSouth estimates that its direct costs will approximate $470 million. *See also* Sprint Comments at 3 ($100 million in top 100 MSAs); U S West Comments at 3 (approximately $400 million); NYNEX Comments at 2 ($400 million) and GTE Comments at 1 ($1.136 billion).

database costs and those associated with individual LECs' deployment of the capability to provide LNP because all of these costs "are necessary to achieve a common goal, which is to implement a competitively neutral long-term solution to the number portability problem."[12]

LNP cannot work without the full participation of incumbent LECs.[13] Incumbent LECs cannot choose "not to play," and, as a practical matter, they cannot exit the market. If they could choose either option, LNP would not be technically achievable. Unfortunately, one consequence of the Commission's subdividing the cost of providing LNP into "shared" and "carrier-specific" cost categories is a tendency in the comments to overlook the fact that the carrier specific direct costs of any one carrier constitute just one part of the incremental costs of the federally mandated LNP arrangement as a whole. Indeed some comments refer to only shared costs as "industry-wide" when, in fact, all costs caused by the federal LNP mandate are "industry wide." It is fallacious and disingenuous to categorize carrier specific direct costs incurred solely as a result of the federal mandate, as MCI's lobbyists do, as "technical upgrades they'll [incumbent LECs] have to make anyway."[14] The costs identified by the Commission and others in this proceeding as directly attributable to LNP would not be incurred in the absence of an LNP mandate.[15] For these

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[12] GSA Comments at 5.

[13] For this reason, MFS's "airbag" hypothetical makes no sense in the context of a transitional regulated telecommunications market. MFS Comments at 4. MFS argues that Ford does not subsidize Toyota's costs of installing airbags in response to government safety regulations. This is true in an industry that, although individual manufacturers are subject to health, safety and environmental regulations, is not subject to the ubiquitous regulation of telecommunications common carriers and has no analog to LNP. If Ford chooses not to install airbags in is cars, it may be violating a federal regulation, but it does not mean that the Toyota airbag will not work.

[14] *Phone Companies Call for Customer Surcharge*, Wall Street J., B6, Col. 3 (Sep. 13, 1996).

[15] A number of comments demonstrate that the appropriate test for determining whether a cost is directly related to LNP is a "but for" test. GTE Comments at 5; GSA Comments at 2. *See also* Ameritech Comments at 3 (upgrades made for sole purpose of providing LNP);
(Continued...)

reasons, a determination that the costs of number portability that are to be borne by all carriers do not include an incumbent LEC's direct costs to prepare the public switched telephone network for LNP cannot be competitively neutral or socially desirable. Such a determination will disadvantage incumbent LECs, and, although an incorrect measure as a matter of law, would not even comport with the Commission's cost recovery principles for "currently available" number portability.

III. USE OF A NATIONAL POOL IN ALLOCATING LONG TERM DATABASE NUMBER PORTABILITY COSTS IS CONSISTENT WITH CONGRESS'S MANDATE, AND A TEMPORARY, MANDATORY END USER CHARGE BASED ON A MEASURE OF CUSTOMER PERCEIVED USES OF TELECOMMUNICATIONS ACCESS LINES (THE "SBC PROPOSAL") IS THE MOST COMPETITIVELY NEUTRAL COST RECOVERY MECHANISM.

A. The Commission Should Adopt A Mechanism Of Cost Allocation by Customer Usage.

BellSouth agrees, conceptually, with SBC Communications Inc.'s proposal to allocate LNP costs based upon an accounting of telecommunications sub-markets and customer-perceived uses of the local exchange access line and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge.[16] Accordingly, BellSouth endorses SBC's approach as the most competitively neutral proposal advanced in any of the comments. Of course, the allocation method is necessarily arbitrary, as evidenced by SBC's subdivision of markets into neat "thirds" (local exchange service, intra LATA toll service and interLATA toll service), and the

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NCTA/OPASTCO at 8; NYNEX Comments at 3 (test should be whether costs are caused by LNP). Applying this test, a number of direct carrier specific costs have been identified as being caused by the federal mandate and should therefore be added to the Commission's initial list of direct carrier specific costs. *See* Pacific Telesis Group Comments at 8-9 (LNP base feature enhancements, service control points, signaling system enhancements, trunking augmentation and rearrangement and switch capacity, upgrades to operational support systems and advancement costs); U S West Comments at 10-11 (unplanned upgrades, advancement costs).

[16] SBC Comments at 7-16.

nomenclature adopted by SBC is fictional, but the concept is the least market distorting of all of the proposals put forth in this proceeding. Total nationwide access lines are a credible measure of the magnitude of the costs, while subdividing this measure into customer perceived uses of telecommunications services will result in an equitable distribution of costs across all carriers. Indeed, the essence of SBC's proposal is a recognition that end users perceive that they receive different types of services from different types of carriers. All these carriers, by federal mandate, should bear the cost burdens associated with LNP, including the burdens associated with cost recovery.

Revenue-based allocation mechanisms are clearly more susceptible to market distortion and manipulation than allocation mechanisms based on access lines. For this reason, and the fact that incumbent LECs by this measure will necessarily bear a disproportionate share of the costs of LNP in contravention of the Act, BellSouth agrees with those comments that demonstrate that the commission's gross revenues minus payments to other carriers measure is not competitively neutral.[17] Proposals that advocate total telecommunications service revenues[18] or gross revenues minus revenues paid to *and received from* other carriers[19] are preferable to the Commission's proposal. Because usage services are relatively more price-elastic than subscriber access services, they are more susceptible to distortion, and the Commission should adopt an access line based allocation measure.[20] In the alternative, should the Commission determine that a revenue measure

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[17] *See, e.g.*, Bell Atlantic Comments at 4-5.

[18] Bell Atlantic Comments at 5; NYNEX Comments at 8-9.

[19] Pacific Telesis Comments at 11.

[20] SBC Comments at 7-9; Sprint Comments at 7-8.

is appropriate, it should adopt either the retail service revenue measure or the revenue less payments made and revenues received measure.

B. A National Pool Comports With Competitive Neutrality.

In its initial comments, BellSouth advocated regional industry pools as the basis for a competitively neutral cost allocation and recovery mechanism for shared carrier costs associated with the installation and administration of the NPAC as well as for all direct carrier specific costs. Having considered the comments submitted in this proceeding, BellSouth continues to favor a pool as the basis of a competitively neutral cost recovery mechanism, but is persuaded by those commenters who advocate a national pool as opposed to a regional pool.[21] A regional pool, though logically suggested by the Commission's adoption of a system of regional SMS databases to achieve LNP, would present unnecessary complications in the form of jurisdictional separations, territorial allocations, and enforcement oversight. A national pool, however, assures uniformity of treatment as well as administrative simplicity. The national pool should be administered by the number portability administrator (LNPA) designated by the North American Numbering Council ("NANC") and would remain in operation only for as long as all carriers have recovered their eligible costs, for three to five years.

The Commission should not be persuaded by arguments that pools are inconsistent with competitively neutral cost allocation as required by the Act. Such arguments ignore the fact that mandatory LNP is not something that arises out of a competitive market place, but is a regulatory intervention in the telecommunications services market designed to facilitate competition.

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[21] *See* GTE Comments at 12; CTIA Comments at 3 (advocating a nationwide cost recovery network).

Although it may be sound economic theory that "[s]ubsidies among competitors are incompatible with the competitive process and seriously impair incentives to minimize costs," it is important to distinguish the theoretical constructs which ought to apply to a deregulated, free market, and the practical results of applying such theory to a transitional regulated market that is, in fact, subject to intensive reregulation.[22] As the Florida Public Service Commission notes:

> [Pooling] appears preferable to the first option which requires individuals carriers to bear their own costs . . .While pooling approaches can act to deter efficiency, we believe the risk is slight in this case. Whether the pooled costs are allocated based on some measure of revenues or subscriber lines, the incumbents will still pay a large percentage of these costs, and therefore, have an incentive to implement number portability in the most efficient manner.[23]

In contrast to academic arguments and special interest advocacy, a number of comments offer cogent and pragmatic explanations, from a public interest perspective, as to why having each carrier bear its LNP costs does not comport with the Act's requirement of competitive neutrality. The size of incumbent LECs' wireline network is appreciably larger than any alternative LEC's network.[24] The costs to be incurred by the incumbent LECs far exceed the costs to be incurred by anybody else.[25] As California DCA notes:

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[22] *See, generally,* Pacific Telesis Comments *passim*. On the one hand, Pacific Telesis suggests that pooling could provide incumbent LECs with a "cost advantage that could impede effective competition." But in the same paragraph Pacific Telesis also states that pooling will relieve *new entrants* of their LNP burden, thus subsidizing *new entrants* at the expense of established carriers. Pacific Telesis Comments at 9, ¶ 14 (emphasis added). Pooling would therefore appear to provide advantages to both incumbent LEC and new entrant alike. This would seem to be competitively neutral.

[23] Fla. PSC Comments at 4-5.

[24] California DCA Comments at 10.

[25] *Infra*, n.3.

> What is most significant is how that result affects consumers if ILECs[26] must absorb the full cost of establishing LNP in their networks, and if they lose customers to CLECs,[27] then the ILECs' remaining customers will be forced to bear a disproportionately large share of the cost of LNP, while those customers who change to a CLEC will bear a disproportionately smaller share of LNP costs because they will not have to pay for LNP implementation in the ILECs' large network.
>
> Viewed in this way, it is difficult to conclude that a cost recovery approach in which the ILECs absorb the full costs of implementing LNP in their networks comports with the federal Act's "competitively neutral" requirement . . . There seems to be some justification for requiring the CLECs to bear not only their own costs to implement and provide LNP, but also for requiring the CLECs and their customers to bear some proportionate share of the ILECs' cost of implementing LNP.[28]

Similarly, the Florida Public Service Commission recognizes that in the early stages of local competition, the incumbent local exchange carrier will incur a disproportionate amount of the cost, while the entrants will receive a disproportionate amount of the benefit.[29] Competitive neutrality must be measured by Congress's mandate that the costs of number portability be borne by all carriers in a regulated market undergoing transition, and not by an interpretation that assumes a market acting without governmental direction.

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[26] Incumbent LECs.

[27] Competitive LECs.

[28] Cal. DCA Comments at 19-21.

[29] Fla. PSC Comments at 5.

C. Cost Recovery Should Be Accomplished Through a Temporary, Mandatory and Averaged Uniform End User Surcharge.

The comments make clear that the costs of provisioning LNP will be passed on in some way by carriers to their customers.[30] BellSouth has attempted to find a solution to LNP cost recovery that avoids the imposition of an end user charge. However, the comments in this proceeding demonstrate that incumbent LECs are limited by various regulatory plans, at the federal and state level, from raising prices for services.[31] Nobody questions that incumbent LECs will be forced to spend substantially more than other carriers to reconfigure the PSTN to accommodate LNP.[32] BellSouth is now persuaded that the fairest way to ensure that all carriers bear the burdens caused by LNP is for the FCC to adopt LNP cost recovery principles that recognize a mandatory, but temporary, uniform and averaged end user surcharge as being consistent with Congress's goal of competitive neutrality.[33] Once the costs for implementing LNP are recovered, this charge would disappear. Once the charge disappears, each carrier would be responsible for bearing its ongoing costs of providing LNP through whatever manner that carrier deems to be efficient.[34]

BellSouth appreciates the political inexpediency of advocating any sort of end user surcharge. Those who would turn Congress's mandate of competitive neutrality on its head have already exploited this inevitable approach to cost recovery in the court of public opinion.[35] Rival

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[30] *E.g.*, AT&T Comments at 13-14, Time Warner Comments at n.12. Time Warner is wrong to state that the statute prohibits recovery from end user customers because "only carriers are obligated to bear the cost" of LNP. Time Warner Comments at 5-6.

[31] GTE Comments at 8; U S West Comments at 15.

[32] *Infra* nn. 3, 28.

[33] Bell Atlantic Comments at 9; GTE Comments at 4; NYNEX Comments at 12.

[34] Cal. DCA Comments at 14-15.

[35] *Phone Companies Call for Customer Surcharge*, Wall Street J., B1 (Sep. 13, 1996).

firms will continue to fan the fires of public opinion in order to achieve a politically popular decision in the context of this proceeding that would nevertheless be inconsistent with the Act, with fairness and with competitive neutrality. But the incumbent LECs, assuming they have the regulatory flexibility to do so, cannot be the only ones who have to bear the bad news to customers in a competitively neutral system.

All elements of an LNP cost recovery mechanism, including end user billing, are burdens of federal LNP intervention in the telecommunications services market, and should not be disproportionately distributed among rival and competing firms. Requiring all carriers to participate in the cost recovery process through a rational allocation of both Type 1 and Type 2 costs, and through a concomitant end user charge based on the same allocator, is the most competitively neutral strategy. As several comments have suggested, the bill should be identified as a surcharge required by federal law in order to provide LNP. In this way, the "unpleasantness" of the notification in the customer's bill,[36] is not associated, in the public's mind, with any particular class of carriers.

CONCLUSION

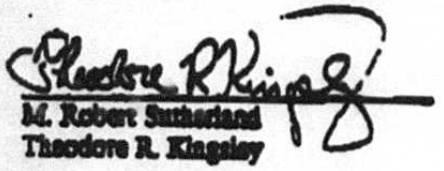
The Commission should adopt separate LNP cost recovery principles to ensure that the costs of LNP are borne by all carriers on a competitively neutral basis. These principles should affirm that the LNP cost recovery mechanism (1) does not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) does not so distort telecommunications service prices so as to influence customer choice among alternative carriers; and (3) is characterized by administrative simplicity. National pooling of Type 1 and Type 2

[36] *Id.* at B6, Col. 3.

costs, and recovery through a mandatory, but temporary uniform and averaged end user LNP charge best comports with the foregoing LNP cost recovery principles. BellSouth endorses SBC Communications Inc.'s specific LNP cost recovery proposal.

Respectfully submitted,

BELLSOUTH CORPORATION and
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 
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November 1, 1996

Mrs. Blanca S. Bayo
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RE: Docket No. 961150-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Gloria Calhoun, Richard D. Emmerson, W. Keith Milner, Robert C. Scheye, and Alphonso J. Varner. Please file these documents in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (AW)

Nancy B. White

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

ack -
Legal - 3
CMU - all
Linda - three + org
Security - 1

CERTIFICATE OF SERVICE
DOCKET NO. 961150-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 1st day of November, 1996 to the following:

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