Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Telephone Number Portability	)	CC Docket No. 95-116
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MEMORANDUM OPINION AND ORDER ON RECONSIDERATION AND ORDER ON APPLICATION FOR REVIEW

Adopted: January 23, 2002 **Released:** February 15, 2002

By the Commission: Commissioner Copps approving in part, dissenting in part, and issuing a statement

Paragraph No.

I. INTRODUCTION

1. On May 5, 1998, the Commission adopted the *Third Report and Order*[1] in this docket, implementing section 251(e)(2) of the Communications Act of 1934, as amended (the Act), with regard to the costs of providing local number portability. The *Third Report and Order*, among other things, determined that section 251(e)(2) requires the Commission to ensure that carriers bear the cost of providing long-term number portability on a competitively neutral basis for both interstate and intrastate calls. The *Third Report and Order* also determined that incumbent local exchange carriers (LECs) may recover carrier-specific costs of number portability through federally-tariffed end-user and query service charges.[2]

2. Eighteen parties filed petitions for reconsideration and clarification in response to the *Third Report and Order*. Thirteen parties filed oppositions or comments on the petitions, and

[1] *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, 13 FCC Rcd 11701 (1998) (*Third Report and Order*).

[2] *Id*. at 11707, para. 9.

ten parties filed reply comments.[3] In this *Order*, we resolve the following issues raised in these filings regarding the rules adopted in the *Third Report and Order*. Specifically, we (1) affirm that the Commission has exclusive jurisdiction over the distribution and recovery of costs associated with intrastate and interstate number portability; (2) clarify that the local number portability administrator may assess shared costs on all eligible telecommunications carriers, not just carriers with existing long-term number portability contracts; (3) clarify that incumbent LECs must allocate their shared costs between the query service and end-user charges; (4) affirm the adoption of the end-user revenue allocator; (5) deny petitioners' request that costs associated with a number portability charge to carriers purchasing unbundled switching be calculated based on total element long run incremental cost (TELRIC);[4] (6) deny petitioners' request that costs for number portability be based on avoided costs;[5] (7) clarify that carriers may not recover number portability costs from other carriers through interconnection charges or resale prices; (8) clarify that as long as an incumbent LEC provides number portability functionality, it may assess the number portability end-user charge on resellers and purchasers of switching ports as unbundled network elements; (9) affirm that carriers not subject to rate-of-return regulation or price caps may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act; (10) clarify that commercial mobile radio service (CMRS) providers are co-carriers, not end users, and, therefore, are not subject to an end-user charge; (11) clarify that carriers who offer Feature Group A access lines may assess an end-user surcharge on such lines; (12) affirm that Centrex lines may be assessed one end-user number portability charge per line and a Private Branch Exchange (PBX) trunk may be charged nine end-user number portability charges per PBX trunk; (13) affirm that Plexar may be assessed one number portability charge per line; (14) affirm that incumbent LECs may impose an end-user charge in service areas where the switch is number-portability-capable; (15) clarify that small and rural incumbent LECs that do not yet provide number portability functionality but provide service under Extended Area Service (EAS) arrangements may recover their N minus one (N-1) query and Number Portability Administration costs through end-user charges; (16) clarify that incumbent LECs may not begin billing carriers for N-1 queries until a number has been ported from an NXX; (17) clarify that after the five-year recovery period for implementation costs of number portability through the end-user charge, any remaining costs will be treated as normal network costs; (18) affirm that price cap LECs and rate-of-return LECs should treat the query services charge as a new service within the meaning of section 61.38 of

[3] A list of petitioners and commenting parties appears at Appendix A.

[4] We note that the Eighth Circuit has ruled that, while TELRIC is an acceptable method for determining costs, certain specific rules contained within the Commission's pricing rules are contrary to congressional intent. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 749-53 (8th Cir. 2000), *cert. granted sub nom., Verizon Communications v. FCC*, 531 U.S. 1124 (2001). The Eighth Circuit has stayed the issuance of its mandate, *Iowa Utils Bd. v. FCC*, No. 96-3321, *et al.* (8th Cir. Sept. 25, 2000), pending appeal before the Supreme Court, which has granted certiorari in the case. *Verizon Communications v. FCC*, 531 U.S. 1124 (2001). Accordingly, the Commission's rules continue in effect at this time.

[5] In *Iowa Utilities Bd. v. FCC*, *see* n. 4, *supra*, the Eighth Circuit concluded that section 252(d)(3) of the Communications Act requires costs that are actually avoided, not those costs that could be avoided, be excluded from wholesale rates offered to resellers. *Iowa Utilities Bd. v. FCC*, 219 F.3d at 755.

our rules; and (19) affirm our rules adopted in the *Third Report and Order* concerning levelized charges. We take this action toward the implementation of local number portability at the direction of Congress,[6] and apply the mandate of section 251(e)(2) in the most efficient manner possible.

3. In the *Third Report and Order*, the Commission delegated authority to the Common Carrier Bureau (Bureau) to determine appropriate methods for apportioning joint costs among portability and non-portability services, and to provide guidance to carriers before they filed their federal number portability tariffs.[7] On December 14, 1998, pursuant to delegated authority, the Bureau issued the *Cost Classification Order*.[8] The *Cost Classification Order*, among other things, provided guidance to incumbent LECs concerning: (1) the costs that are eligible for recovery through federal number portability charges established in the *Third Report and Order*; (2) the appropriate methodologies for determining the amount of eligible number portability costs; (3) advancement costs; and (4) allocation of these eligible costs between the end-user, pre-arranged and default query charges.[9]

4. In response to the *Cost Classification Order*, four parties filed petitions for clarification or applications for review. Four parties filed oppositions or comments and four parties filed replies. In this *Order*, we address all issues raised in these petitions. Specifically, we: (1) affirm that carriers may only recover carrier-specific costs directly relating to the provision of number portability; (2) affirm that carriers must distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement number portability; (3) affirm that costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business and represent general network upgrades; (4) affirm the two-part cost recovery test; and (5) affirm that costs which do not meet the two-part recovery test may not be recovered through the number portability cost recovery mechanisms.

II. BACKGROUND

5. In the *Third Report and Order*, we concluded that section 251(e)(2) requires that carriers bear the following costs on a competitively neutral basis: (1) costs the LECs incur to meet the obligations imposed by section 251(b)(2); and (2) costs other telecommunications carriers, such as interexchange carriers (IXCs) and CMRS providers, incur for industry-wide solutions to provide local number portability.[10] We also held that the costs of establishing number

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[6] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2).

[7] *Third Report and Order*, 13 FCC Rcd at 11740, para. 75.

[8] *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998) (*Cost Classification Order*).

[9] *See Cost Classification Order*, 13 FCC Rcd at 24498, para. 5.

[10] *Third Report and Order*, 13 FCC Rcd at 11723-24, para. 36. Section 251(e)(2) requires that the costs of establishing number portability be "borne by all telecommunications carriers on a competitively neutral basis." 47 (continued….)

portability include: (1) costs associated with the creation of the regional databases to support number portability;[11] (2) costs associated with the initial upgrading of the public switched network; and (3) ongoing costs of providing number portability, such as the costs involved in transferring a telephone number to another carrier and routing calls under the N-1 querying protocol.[12] We concluded that section 251(e)(2) applies to the distribution of number portability costs among carriers as well as the recovery of those costs by carriers.[13] We found that carrier-specific costs not directly related to providing number portability are not costs of number portability and, consequently, are not subject to section 251(e)(2) and its competitively neutral mandate.[14]

6. In the *Third Report and Order*, we applied the rules adopted in the *First Report and Order* regarding competitively neutral cost recovery to the rules regarding the recovery of shared and carrier-specific costs.[15] The rules regarding shared costs require that each

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U.S.C. § 251(e)(2). Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2).

[11] Number portability is deployed through a system of multiple regional databases. The regional databases will facilitate the provision of number portability by providing carriers with the number portability routing information that is necessary to route telephone calls between the carriers' networks. Each database serves an area that corresponds to one of the original regional Bell Operating Company service territories. *See Telephone Number Portability,* CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8399-8400, paras. 91-92 (1996) (*First Report and Order*).

[12] *Third Report and Order*, 13 FCC Rcd at 11725, para. 38. Under the N-1 querying protocol, the N-1 carrier is the carrier responsible for the query to the carrier's or a third party's service control point. The query is a call made to determine the address or location routing number (LRN) for the call. "N" is the entity terminating the call to the end-user, or a network provider with whom the entity has contracted to provide tandem access. The N-1 carrier for a local call will usually be the calling customer's LEC and the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier. Carriers may arrange for another carrier or third party to perform query services for them as long as that entity charges the N-1 carrier in accordance with the requirements established in this proceeding. If a call is not queried by the N-1 carrier, the call might be routed by default to the LEC that originally served the telephone number, who will perform the default query for the N-1 carrier. The N-1 protocol was recommended by the North American Numbering Council (NANC), the industry and the state/regional workshops regarding the technical and operational standards for long term number portability and was adopted by the Commission in the *Second Report and Order*. *See Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12281, 12287, para. 8, 12323-24, paras. 73-75 (1997) (*Second Report and Order*).

[13] *Third Report and Order*, 13 FCC Rcd at 11725-26, para. 39.

[14] *Id*. at 11724, para. 37. On December 14, 1998, the Common Carrier Bureau issued an order providing guidance for carriers on: (1) the costs that are eligible for recovery through federal number portability charges; (2) the appropriate methodologies for measuring costs eligible for LNP recovery; and (3) the allocation of eligible costs between end user and query services charges. *Cost Classification Order*, 13 FCC Rcd 24495. The *Third Report and Order* delegated authority to the Common Carrier Bureau for this purpose. *Id*. at 11740, para. 75.

[15] *Id*. at 11731-32, 11754-56, paras. 52-53, 105-107. Our competitive neutrality rules require that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. Under our two-part test to determine whether this requirement is met, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, (continued….)

telecommunications carrier contribute to the costs of each regional database in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues for that region. We determined that after each carrier's portion of the shared costs is distributed on the basis of end-user revenues, the costs are treated as carrier-specific costs directly related to providing number portability.[16] We concluded that it is competitively neutral for carriers to bear their own carrier-specific costs directly related to providing number portability, [17] and we allowed the incumbent LECs to recover these costs through: (1) a monthly number portability end–user charge;[18] and, (2) a number portability query-service charge that applies to carriers on whose behalf the incumbent LEC performs queries.[19] We allowed other telecommunications carriers to recover their carrier-specific costs directly related to providing local number portability in any lawful manner.[20]

7. In the *Cost Classification Order,* the Bureau adopted a two-part test for incumbent LECs to use to identify carrier-specific costs that are directly related to the implementation and provision of number portability.[21] In order to determine that costs are eligible for recovery through the federal cost recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability.[22] The Bureau found that application of this test would avoid over compensation of LECs for their costs, as LECs already recover the cost of general network upgrades through standard cost recovery mechanisms. The Bureau, therefore, concluded that the incumbent LECs should not be allowed to recover these same costs through both federal number portability charges, as well as through price caps or rate-of-return recovery mechanisms.[23]

8. The Bureau concluded that only new costs, but not the costs incurred by incumbent LECs prior to number portability implementation, could be claimed as eligible number portability costs.[24] The Bureau reasoned that to allow recovery of costs other than new costs would lead to

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incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return. *See First Report and Order*, 11 FCC Rcd. at 8419-21, paras. 131-135.

[16] *Third Report and Order*, 13 FCC Rcd at 11738-39, para. 69.

[17] *Id.* at 11773-76, paras. 135-141.

[18] *Id.* at 11776, para. 142. *See* 47 C.F.R. §§ 52.33(a), (a)(1).

[19] *Third Report and Order*, 13 FCC Rcd at 11778, para. 147. *See* 47 C.F.R. §§ 52.33(a), (a)(2).

[20] *Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

[21] *Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

[22] *Id*.

[23] *Id*. at para. 11.

[24] *Id.* at 24503, para. 18.

double recovery of costs already subject to recovery through standard recovery mechanisms.[25] The Bureau directed the LECs to submit tariffs that distinguish clearly costs incurred for the narrowly defined portability functions from costs incurred to adapt other systems to implement number portability, such as repair and maintenance, billing, or order processing systems.[26]

III. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

A. Jurisdiction

1. Federal/State Jurisdiction

a. Background

9. In the *Third Report and Order*, we determined that section 251(e)(2)[27] requires the Commission to ensure that carriers bear the costs of providing local number portability on a competitively neutral basis for both interstate and intrastate calls.[28] In this light, we determined that an exclusively federal recovery mechanism for long-term number portability would enable the Commission to satisfy most directly the competitive neutrality mandate of the 1996 Act and minimize the administrative and enforcement difficulties that might arise if jurisdiction over local number portability was concurrent, i.e., split between federal and state regulatory authorities.[29] Several petitioners seek reconsideration of the Commission's conclusion that it has exclusive jurisdiction to establish a federal cost recovery mechanism for the cost of providing intrastate local number portability. Petitioners argue that section 251(e)(2) provides no express authority for the Commission to establish an end-user collection mechanism for intrastate number portability costs or to develop a centralized approach for the recovery of the ongoing intrastate costs of implementing long-term number portability.[30] Specifically, petitioners argue that the language of section 251(e)(2) does not grant the Commission the unambiguous, straightforward authority required to preempt the states' authority to determine an appropriate recovery mechanism for the intrastate costs of number portability.[31]

b. Discussion

10. We are unpersuaded by petitioners' arguments. We agree with commenters that petitioners have not raised any new or compelling arguments that were not presented to, and

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[25] *Id.*

[26] *See id*. at 24501, para. 12.

[27] *See* 47 U.S.C. § 251(e)(2).

[28] *See Third Report and Order,* 13 FCC Rcd at 11719-20, para. 28.

[29] *See id*. at 11720, para. 29; s*ee also First Report and Order*, 11 FCC Rcd at 8415-24, paras. 121-40.

[30] *See* New York DPS Petition at 2-6; Pennsylvania Office of the Consumer Advocate Petition at 3.

[31] *See* New York DPS Petition at 2-6; Pennsylvania Office of the Consumer Advocate Petition at 3.

considered by, the Commission in the *Third Report and Order*. [32] As we determined in the *Third Report and Order*, section 251(e)(2)'s express and unconditional grant of authority to the Commission requires us to ensure that carriers bear the cost of providing number portability on a competitively neutral basis for both interstate and intrastate calls.[33] Section 251(e)(2) states that carriers shall bear the costs of number portability "as determined by the Commission," and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls. Additionally, the Supreme Court has stated that "[t]he FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252, added by the Telecommunications Act of 1996."[34]

11. Moreover, we are unpersuaded by petitioners' arguments that section 251(e)(2) provides no express authority allowing the Commission to exercise jurisdiction over the carrier-specific cost recovery mechanism for the ongoing intrastate costs of number portability.[35] As we concluded in the *Third Report and Order*, section 251(e)(2) requires the Commission to ensure that number portability costs are distributed among, as well as recovered by, carriers on a competitively neutral basis.[36] Despite our tentative conclusion in the *First Report and Order* [37] that section 251(e)(2) only applied to the distribution of number portability costs, in the *Third Report and Order* we determined that section 251(e)(2) applies to both distribution and recovery of number portability costs.[38] We concluded that this interpretation of section 251(e)(2) best achieves the congressional goal of ensuring that the costs of providing number portability are recovered in a manner that does not discourage the development of local competition that number portability is intended to encourage.[39] We reasoned that if we ensured the competitive neutrality of only distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering some of these costs from other carriers in a manner that is not competitively neutral.[40] We continue to believe that section 251(e)(2) applies to both the distribution and recovery of number portability costs, thereby ensuring achievement of the congressional goal of promoting local competition.

12. We are not persuaded by petitioners' argument that because the 1996 Act does not

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[32] AT&T Opposition at 2; BellSouth Comments at 7-8; MCI's Response at 13; SBC Comments at 4-5.

[33] *Third Report and Order*, 13 FCC Rcd at 11719-20, paras. 28-29.

[34] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999).

[35] *See* New York DPS Petition at 7.

[36] *Third Report and Order*, 13 FCC Rcd at 11725, para 39.

[37] *First Report and Order*, 11 FCC Rcd at 8460, para. 209.

[38] *Third Report and Order*, 13 FCC Rcd at 11725, para 39.

[39] *Id.*

[40] *Id.* The Commission noted, as an example, that an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs.

modify section 152(b),[41] which specifically preserves state jurisdiction over intrastate communications, the Commission lacks jurisdiction over intrastate number portability costs.[42] In *AT&T Corp. v Iowa Utilities Board,*[43] the Supreme Court rejected the argument that because local competition provisions are not identified in section 152(b)'s "except" clause, the 1996 Act does nothing to displace the presumption that the states retain their traditional authority over local phone service.[44] The Court determined that this argument ignores section 201(b), which explicitly gives the Commission jurisdiction to make rules governing matters to which the 1996 Act applies.[45] The Supreme Court concluded that section 201(b) "means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252, added by the Telecommunications Act of 1996."[46] Thus, we affirm our decision in the *Third Report and Order* that we have exclusive jurisdiction over the distribution and recovery of both intrastate and interstate costs of implementing long-term number portability.

13. Finally, we note that some petitioners request clarification that in states where a recovery mechanism has not yet been established for interim number portability, the incumbent LEC may elect to have the costs of interim number portability incorporated into the long-term number portability monthly charge.[47] This issue was decided in our reconsideration of the *First Report and Order*.[48] In the *Fourth Reconsideration Order*, although we reaffirmed our authority over interstate and intrastate number portability cost recovery, we denied requests that we generally preempt state number portability cost recovery decisions for interim number portability.[49] Instead, we affirmed our earlier conclusion in the *First Report and Order* that states may continue to decide on cost recovery mechanisms for interim number portability, as long as they meet our competitively neutral guidelines.[50] Thus, we will not allow incumbent LECs to incorporate the costs of interim number portability into their long-term number portability monthly charge.

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[41] *See* 47 U.S.C. § 152(b).

[42] *See* New York DPS Petition at 2-6.

[43] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366.

[44] *Id.* at 379-80. Title 47 U.S.C. § 152(b) states, in relevant part, that "Except as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction . . . ." 47 U.S.C. § 152(b).

[45] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 380.

[46] *Id.* at 378.

[47] *See* Ameritech Petition at 12; U S WEST Reply at 4.

[48] *See Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, FCC 99-151 (rel. July 16, 1999) (*Fourth Reconsideration Order*).

[49] *Fourth Reconsideration Order* at para. 29.

[50] *Id.*

2. Determining the N-1 Carrier on IntraLATA and Extended Area Service Calling Plans

a. Background

14. In the *Second Report and Order*, we adopted the North American Numbering Council's (NANC's) recommendation that the carrier in the call routing process immediately preceding the terminating carrier be designated the "N-1" carrier.[51] Petitioners request that the Commission, in instances of intraLATA toll calling and EAS calling plans, relinquish jurisdiction over the distribution and recovery of intrastate costs associated with long-term number portability to the states.[52] In the alternative, petitioners request that the Commission direct NANC to develop querying protocol and cost recovery scenarios for intraLATA and EAS-type services.[53] Petitioners contend that due to the complex and varied arrangements for these services, it will be difficult for the Commission to determine the N-1 carrier assignment for intrastate services and appropriate tariff rates for number portability network interconnection and local number portability queries associated with various intraLATA and EAS type services.[54]

b. Discussion

15. We agree with petitioners that these types of intrastate services may create complex issues regarding those costs that may be appropriate for recovery by carriers in the implementation of long-term number portability. However, we do not believe it appropriate to allow the individual states to exercise jurisdiction over the implementation and cost recovery mechanism for local number portability in the context of intraLATA and EAS-type services. As we have stated above, we believe that an exclusively federal cost recovery mechanism for long-term number portability enables the Commission to satisfy most directly the 1996 Act's competitive neutrality mandate and minimize the administrative and enforcement difficulties that might arise if jurisdiction over local number portability were divided.[55] Therefore, we deny petitioners' request that we should relinquish jurisdiction over the intrastate costs of number portability associated with intraLATA and EAS-type service calling plans.

16. Petitioners further request that the Commission clarify its definition of N-1 carrier assignment responsibility for these specific intraLATA and EAS-type services. Petitioners argue that the many and varied types of call routing arrangements for these types of intrastate services will make it difficult for the Commission to determine the N-1 carrier in all instances.[56]

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[51] *See Second Report and Order*, 12 FCC Rcd at 12323, para. 73.

[52] ORTC and TSTCI Joint Petition at 8-9.

[53] *Id.* at 11.

[54] *Id*. at 8-9.

[55] *Third Report and Order*, 13 FCC Rcd at 11720, para. 29; *see also First Report and Order*, 11 FCC Rcd at 8415-24, paras. 121-40.

[56] ORTC and TSTCI Joint Petition at 8-9.

Petitioners argue that NANC's Architecture & Administrative Plan for Local Number Portability[57] failed to provide N-1 querying protocol scenarios for IntraLATA toll calls or EAS-type service.[58] Petitioners request that the Commission direct NANC to develop comprehensive intraLATA and EAS-type service querying protocol scenarios for the various arrangements for these services throughout the country.[59]

17. We deny the request to develop the specific protocol scenarios requested by petitioners because at this time the procedures established under the *Second Report and Order* appear sufficient.[60] We do believe that, in most instances, carriers have not had any significant difficulty determining which carrier is the N-1 carrier. Under the N-1 querying protocol, the N-1 carrier is responsible for the query where "N" is the entity terminating the call to the end-user, or a network provider contracted by the entity to provided tandem access.[61] Thus, the N-1 carrier (*i.e.,* the last carrier before the terminating carrier) for a local call will usually be the calling customer's local service provider; the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier.[62] We believe that until a specific problem arises in determining the N-1 carrier, it is premature to ask NANC to spend the time and resources it would take to develop scenarios for the many different types of intraLATA and EAS-type services throughout the country. We encourage the carriers to bring such specific issues to NANC, pursuant to NANC's oversight of number portability administration, for a recommended resolution to be submitted by NANC to the Common Carrier Bureau as and when such issues arise in the context of the provision of number portability.[63]

B. Costs of the Regional Databases

1. Billing and Collection Issues

a. Background

18. In the *Third Report and Order*, we stated that, as part of its management duties under

[57] *See* North American Numbering Council, Local Number Portability Administration Selection Working Group Report App. D (Architecture & Administrative Plan for Local Number Portability) (Apr. 25, 1997) (NANC Recommendation), *adopted*, *Second Report and Order,* 12 FCC Rcd at 12323, para.73.

[58] ORTC and TSTCI Joint Petition at 9.

[59] *Id.* at 11.

[60] *Second Report and Order,* 12 FCC Rcd at 12323, para. 73.

[61] *Third Report and Order*, 13 FCC Rcd at 11711, para. 15; *see also* NANC Recommendation at 8.

[62] *Third Report and Order*, 13 FCC Rcd at 11711, para.15.

[63] In the *Second Report and Order*, the Commission adopted the NANC's recommendation that it provide general oversight of number portability administration on an ongoing basis. Specifically, the Commission established a procedure whereby parties may bring matters regarding number portability administration to the NANC so that it may recommend a resolution of those matters to the Commission. *Second Report and Order*, 12 FCC Rcd at 12351, para. 128.

section 52.26 of the Commission's rules,[64] the local number portability administrator (LNPA) of each regional database must collect sufficient revenues to fund the operation and management of that database.[65] We required the LNPA to allocate the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[66] We also noted that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated between the regional limited liability corporations (LLCs) and the region's LNPA, despite the fact that all eligible carriers had not yet signed such agreements.[67] We permitted, but did not require, each regional administrator to adjust prospectively through a reasonable true-up mechanism the future bills of those carriers that participated in such agreements.[68] Such true-ups account for the period prior to the effective date of our rules and recognize that agreements might have included reasonable cost recovery mechanisms to recover regional database costs on a temporary basis pending the adoption of the *Third Report and Order*.[69] NeuStar has been selected the LNPA of each region.[70]

19. A number of petitioners raised issues relating to billing and collection of LNPA costs. Specifically, petitioners seek reconsideration or clarification of: (1) the universe of carriers used to calculate cost recovery; (2) potential double recovery of shared database charges; (3) audits of the LNPA's costs; and (4) the scope of work that may be included in the administrators' shared costs.[71] In response to these concerns, NeuStar asserts that these billing and collection issues are premature and should not be addressed at this time.[72] NeuStar asserts that the "consultative process" occurring between it and the LLCs will provide an effective forum for establishing alternate billing and collection implementation approaches to address industry concerns, such as those raised by the commenters.[73]

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[64] 47 C.F.R. § 52.26.

[65] *Third Report and Order*, 13 FCC Rcd at 11761, para. 116.

[66] *Id.*

[67] *Id.* at para. 117.

[68] *Id.*

[69] *Id.*

[70] *See id.* at 11709-10, para. 13. We note that on November 17, 1999 the Commission approved the transfer of Lockheed Martin IMS's NANPA functions to NeuStar. *See Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, 14 FCC Rcd 19792 (1999).

[71] *See, e.g.*, WorldCom Petition at 7; *see also* AT&T Corp. Opposition at 15-16. We note that WorldCom and MCI merged after the filing of the pleadings in this proceeding.

[72] Lockheed Martin IMS Comments at 2.

[73] *Id.* at 3.

b. Discussion

20. WorldCom requests that the Commission clarify that when NeuStar implements its true-up, it does so using all carriers as a basis of its cost recovery plan, not just those carriers that have already signed user agreements with the LNPA.[74] WorldCom believes that it would not be competitively neutral to allow NeuStar to bill the total costs of the regional database to only the small group of carriers that have signed user agreements, with the intention of somehow crediting those carriers if and when other carriers pay their proportionate share.[75] We agree with WorldCom and hereby clarify that LNPAs shall assess shared costs on all eligible carriers, not just carriers with existing long-term number portability contracts with an LLC. As we stated in the *Third Report and Order*, we require all telecommunications carriers to bear LNPA shared costs, and we recognize that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated by the regional LLC.[76] We did not envision that such true-up would exempt carriers that have not yet signed long-term number portability contracts with the LLC, but rather would include such carriers in the cost allocation. We agree with WorldCom that although carriers without LLC contracts did not pay shared number portability costs from the start, they are not exempt from their responsibility to bear costs in a competitively neutral manner.[77] We also agree with AT&T that we did not intend to penalize carriers currently under contract with the LNPA.[78]

21. However, we decline to adopt WorldCom's recommendation that we specify the manner in which NeuStar should implement true-ups, such as prohibiting NeuStar from requiring a few carriers to pay 100 percent of the costs, and crediting funds back as other payments flow in after other carriers are billed at a later date.[79] We do not believe that WorldCom has presented sufficient evidence to support its claim that this true-up method is discriminatory.[80] Also, we acknowledge NeuStar's need to create and maintain the number portability database, despite the fact that all carriers have not signed user agreements with NeuStar. We reiterate our earlier finding in the *Second Report and Order*, in which we held that the LLCs shall "provide immediate oversight and management of the local number portability administrators."[81] We strongly encouraged all parties to attempt to resolve issues regarding number portability

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[74] WorldCom Petition at 7; *see also* AT&T Corp. Opposition at 15-16.

[75] WorldCom Petition at 7.

[76] *Third Report and Order*, 13 FCC Rcd at 11759-61, paras. 113-117.

[77] WorldCom Petition at 6.

[78] AT&T Corp. Opposition at 15-16.

[79] WorldCom Petition at 7.

[80] *See id.*

[81] *Second Report and Order*, 12 FCC Rcd at 12345, para. 114. We note that such oversight is to continue only until the Commission concludes further proceedings to examine the issue of local number portability administrator oversight and management. *Id*. at 12346-47, para. 119; *see also* 47 C.F.R. § 52.26(b)(2).

deployment among themselves and, if necessary, under the auspices of the NANC.[82]

22. Vanguard asserts that WorldCom's request that all carriers must bear their proportionate share of the LNPA's shared costs may lead to double recovery.[83] Vanguard asserts that incumbent LECs performing queries for CMRS carriers are recovering their portion of the shared administrator's charges through query service charges, and any true-up adopted by administrators has to be sensitive to this particular potential for double recovery of costs, which would not be competitively neutral.[84] MCI responds that Vanguard's concern is over-recovery through query service charges, not double recovery, and such concerns should be addressed in the context of specific query service tariffs.[85]

23. We agree with MCI that Vanguard's concern about double recovery is really an issue of potential over-recovery through query service charges.[86] Vanguard believes that CMRS providers will be double-paying their share of number portability costs by paying their regional LNPAs for their respective portion of the shared costs, as well as paying incumbent LECs for query service charges, through which incumbent LECs will pass on their own shared LNPA costs. First, we note that all carriers who contract out their querying services, not just CMRS carriers, will be in the identical position of paying both the regional LNPAs for shared costs, as well as query service charges. Second, we held in the *Third Report and Order* that each carrier's LNPA costs, once distributed, are carrier-specific costs directly related to number portability,[87] and that an incumbent LEC's carrier-specific costs directly related to number portability are to be recovered through tariffed charges.[88] We also held in the *Cost Classification Order* that carriers are to allocate their carrier-specific costs directly related to number portability between end-user charges and query service charges.[89] We clarify that incumbent LECs must allocate their shared administrative fees between the query service charge and the end-user charge.[90] If a carrier believes that an incumbent LEC is recovering its shared costs solely through query service charges rather than allocating such charges between end-user and query service charges, or recovering these costs through inflated query service charges, it should so state in the context of a carrier's tariff review process[91] or through the Commission's normal complaint procedures.[92]

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[82] *Second Report and Order*, 12 FCC Rcd at 12352-53, para. 130.

[83] Vanguard Opposition at 5-7.

[84] *Id.* at 6-7.

[85] MCI Reply at 7-8.

[86] *Id.*

[87] *Third Report and Order*, 13 FCC Rcd at 11745, para. 87.

[88] *Id.* at 11773-74, para. 135.

[89] *See Cost Classification Order*, 13 FCC Rcd at 24511, para. 40.

[90] *See id.*

[91] 47 U.S.C. § 204.

We will investigate a specific carrier's tariff and rates and examine them for over-recovery via the query service charge at that time.

24. WorldCom asks the Commission to clarify that shared LNPA costs include shared database costs, future statement of work modifications, and porting charges.[93] We agree with WorldCom that the LNPAs may include database costs and modifications. We have previously concluded that number portability costs include initial costs as well as costs due to subsequent changes in the number portability database.[94] Like all other shared costs, these costs should be distributed among all carriers.[95] However, the meaning of WorldCom's statement that the LNPA should be allowed to assess "porting charges" is unclear. We note that in the *Third Report and Order*, we stated that acceptable LNPA shared costs that could be distributed to telecommunications carriers include "nonrecurring, recurring, upload, and download costs."[96] If WorldCom is referring to such uploading and downloading costs, and such costs meet the "but for" test for number portability cost recovery,[97] then we agree that such charges should be included in the LNPA's shared costs.

25. WorldCom also asks the Commission to clarify that if number portability implementation causes public safety concerns that must be addressed on a technical or operational level, any LNPA charges related to resolving those public safety concerns also should be billed as shared costs.[98] We held in the *First Report and Order* that, as a general matter, any long-term number portability must not "result in unreasonable degradation in service quality or network reliability when implemented,"[99] and recognized that consumers "rely on the public switched telephone network for their livelihood, health and safety."[100] In the *Third Report and Order,* we adopted the tentative definition of shared costs as "costs incurred by the industry as a whole, such as those incurred by third-party administrator to build, operate, and maintain the databases needed to provide number portability."[101] As we have already established a definition of "shared costs" that commenters to the *Third Report and Order* found to be

(Continued from previous page)

[92] *Id*. at § 208.

[93] WorldCom Petition at 10.

[94] *Third Report and Order*, 13 FCC Rcd at 11725, para. 38.

[95] *Id.* at 11759-61, paras. 113-117.

[96] *Id.* at 11745, para. 87.

[97] *Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

[98] WorldCom Petition at 10.

[99] *First Report and Order*, 11 FCC Rcd at 8378, para. 48.

[100] *Id.* at 8382, para. 55.

[101] *Third Report and Order,* 13 FCC Rcd at 11738-11739, para. 69.

workable, we decline to expand on that definition in the abstract.[102]

26. In the *Third Report and Order*, we reserved the right to audit each LNPA's costs.[103] PCIA asserts that the Commission should clarify which of the regional database administrator's costs are recoverable and should implement a procedural mechanism for affected entities to review and comment on the administrator's annual budget.[104] In opposition, AT&T comments that such procedure would add a new layer of administrative complexity for the Commission, introduce a new source of delays, and increase the costs of both the LNPAs and the carriers.[105] NeuStar asserts that it was awarded the number portability regional contracts through a vigorously competitive selection process designed to ensure the lowest possible prices in the industry, which renders additional Commission oversight of its budget unnecessary.[106] NeuStar also believes that public disclosure of its budget would unfairly harm it in competitive bidding for any future third party contracts.[107] NeuStar states that it has committed to make its fees available for audits pursuant to existing number portability administration contracts.[108] AT&T also notes that the *Second Report and Order* instructed carriers that they could pursue complaints to NANC or the Commission if the LNPAs are not meeting Commission requirements.[109]

27. We agree with AT&T that adding an additional audit requirement would add administrative complexity and cost without a commensurate benefit. As AT&T noted, the Commission stated in the *Second Report and Order* that the LLCs "provide immediate oversight and management of the local number portability administrators."[110] The record does not support PCIA's contention that additional provisions for public comment on NeuStar's annual budget are necessary, especially because the specifics of NeuStar's budget have been agreed upon in the context of contractual negotiations, and because carriers may request an audit of NeuStar's budget pursuant to LNPA contracts. We therefore deny PCIA's request to implement a procedural mechanism to review and comment on the administrator's annual budget.

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[102] *See* WorldCom Petition at 10.

[103] *Third Report and Order*, 13 FCC Rcd at 11763-64, para. 121.

[104] PCIA Petition at 3-5; *see also* UTC Comments at 5.

[105] AT&T Opposition at 14-15.

[106] Lockheed Martin IMS Comments at 4.

[107] *Id.*

[108] *Id.*

[109] AT&T Opposition at 14-15.

[110] *Second Report and Order*, 12 FCC Rcd at 12345, para. 114.

2. Revenues to be Included in the Allocator

a. Background

28. In the *Third Report and Order,* we decided that the number portability regional database administrator would allocate the costs of each number portability regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[111] Our decision to use the end-user revenue allocator was based on our conclusion that it meets the two-prong competitive neutrality test in that: (1) the allocator will not give one service provider an appreciable, incremental cost advantage when competing for a subscriber; and (2) allocating shared costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return.[112]

29. MCI challenges the end-user revenue allocator adopted by the Commission. MCI asserts that the end-user revenue allocator is over-inclusive because it captures services that are completely unrelated to number portability, that neither use numbering resources nor impose any costs on the Number Portability Administration Center (NPAC) system, and receive no benefits from local competition or local number portability.[113] MCI requests that we exclude from the regional database cost allocator revenues from services such as private lines, virtual private networks, toll free, and outbound international services.[114]

b. Discussion

30. We affirm our decision in the *Third Report and Order* that the number portability regional database administrator will allocate the costs of each number portability regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region. We disagree with MCI that the end-user revenue allocator is over-inclusive. Section 251(e)(2) requires that number portability costs "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[115] The statutory language mandates that the costs of number portability be shared by all telecommunications carriers in a competitively neutral manner, and does not limit the application of the shared costs to telecommunications services that use numbering resources. The Commission determined that the end-user revenues allocator is competitively neutral in part because it spreads the costs of number portability among all telecommunications carriers rather than imposing the costs

[111] *Third Report and Order*, 13 FCC Rcd at 11754-55 and 11759, paras. 105 and 113.

[112] *Id.* at 11755-56, paras. 106-07.

[113] MCI Petition at 3.

[114] *Id.* at 1-6.

[115] 47 U.S.C. § 251(e)(2).

disproportionately on any particular class or classes of carriers.[116]

31. In this light, the Commission determined that the end-user revenue allocator would not give one service provider any appreciable, incremental cost advantage when competing for a subscriber.[117] The Commission reasoned that because the allocator would distribute the shared costs of the regional databases to each carrier in proportion to that carrier's end-user revenues, carriers would incur approximately the same increase in shared costs to win a specific customer.[118]

32. Moreover, the Commission concluded that allocating shared costs in proportion to end-user revenues would prevent the shared costs from disparately affecting the ability of carriers to earn a normal return.[119] The Commission reasoned that because allocations of the shared costs would vary directly with end-user revenues, a carrier's share of the regional database costs would increase in proportion to its customer base.[120] Thus, no carrier's portion of the shared costs would be excessive in relation to its expected revenues, and its allocated share would only increase as it increases its revenue stream.[121]

33. MCI argues that administrative efficiency is not a valid reason for adopting an allocator that imposes cost recovery obligations on carriers where there is no relationship between the service -- number portability -- and the services from which the carrier realizes revenues.[122] We disagree. As discussed above, Congress mandated that the Commission establish a competitively neutral mechanism for the recovery of number portability costs.[123] In seeking to establish a revenue allocator, the Commission not only sought one that satisfied this

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[116] *Third Report and Order*, 13 FCC Rcd at 11755-56, paras. 106-107.

[117] *Id.* at 11755, para. 106.

[118] The Commission provided the following example as explanation: if one of two LECs wins a third LEC's subscriber, whichever of the two LECs who wins the subscriber will win the end-user revenue that subscriber generates. This will increase the winning LEC's allocated portion of the shared costs. Because the subscriber is likely to use approximately the same amount of local service regardless of which of the two competing LECs provides service to the subscriber, the incremental shared cost one of the two LECs would experience if it had won the subscriber would be about the same as the incremental shared cost the other would experience if it won the subscriber. This increase would also approximately equal the decrease in the shared costs the third carrier would experience, having lost the subscriber. These amounts may not be exactly the same because each of the three carriers may have different rates and may not collect exactly the same revenue from that subscriber. The Commission reasoned that any difference would not be significant enough to create an appreciable, incremental cost disadvantage. *Id*.

[119] *Id*. at 11755-56, para. 107.

[120] *Id*.

[121] *Id*.

[122] MCI Petition at 4.

[123] 47 U.S.C. § 251(e)(2).

Congressional mandate, but one that would be relatively simple for telecommunications carriers to apply. In this light, the Commission adopted the end-user telecommunications revenue allocator for three reasons. First, because it met the Congressional competitive neutrality mandate.[124] Second, because it would be administratively efficient for telecommunications carriers to apply because they already track their sales to end users for billing purposes.[125] And, third, because telecommunication carriers are familiar with the end-user revenues allocator from its use for universal service support contributions.[126]

34. We agree with Bell Atlantic that if we begin excluding revenues from the allocation process, other carriers will likely seek to exclude revenues from other services, resulting in little change in allocation, but a great deal of extra bookkeeping.[127] We also believe that allowing carriers to exclude revenues associated with particular services would result in unnecessary administrative work for not only the telecommunications carriers, but also for the LNPA. Reducing the bookkeeping and reporting burdens on the telecommunications industry is one of the goals of the Commission's recent *Streamlined Contributor Reporting Requirements Order*.[128] We continue to believe that the application of the end-user revenues allocator fulfills our congressional mandate of ensuring that the costs of number portability are shared on a competitively neutral basis by all telecommunications carriers. Thus, we affirm our end-user revenues allocator and deny MCI's request for reconsideration.

3. National and Multi-Regional Carriers

a. Background

35. In the *Third Report and Order*, we determined that the costs of the number portability regional databases should be allocated among all telecommunications carriers operating in each of the seven number portability regions in proportion to each carrier's end-user revenues as determined by the end-user revenues collected by all telecommunications carriers in that

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[124] *Third Report and Order*, 13 FCC at 11755, para. 106.

[125] *Id.* at 11765, para. 107.

[126] *Id*. Since that time, we have modified our rules for contributions to the Telecommunications Relay Services (TRS) and North American Numbering Plan (NANP) so that the contributions are now based on end-user telecommunications revenues. *See 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16630-35, paras. 59-70 (1999) (*Streamlined Contributor Reporting Requirements Order*).

[127] Bell Atlantic Response at 3-4.

[128] One of the goals of the *Streamlined Contribution Reporting Requirement Order* is to reduce carriers' and service providers' burdens by combining the reporting requirements of the TRS Fund, federal universal support mechanisms, NANP, and local number portability administration into one consolidated form, the Telecommunications Reporting Worksheet. *See Streamlined Contributor Reporting Requirements Order,* 14 FCC Rcd at 16603, para. 1.

region.[129] To facilitate the cost allocation of the regional databases, the local number portability administrator for each regional database may collect end-user revenue information for all telecommunications carriers once each year.[130]

36. Commenters argue that compliance with section 52.32(a)(2) of our rules will require national and multi-regional carriers to change the manner in which they record revenues.[131] WorldCom requests that the Commission allow national and multi-regional carriers to report total end-user revenues, and then divide these figures among the seven regional databases.[132] MCI suggests that the Commission permit carriers to attribute end-user revenues on a pro-rata or other reasonable basis, rather than being required to develop new revenue attribution systems only for number portability.[133] In response, NeuStar notes that it is engaged in discussions with the LLC for each region on the very issues raised by MCI and WorldCom.[134] NeuStar argues that it would be premature for the Commission to address these issues at this time.[135] Moreover, in separately filed petitions for waiver, Williams Communications, Inc. (Williams) and AMSC Subsidiary Corporation (AMSC) request waiver of section 52.32 of our rules on similar grounds.[136]

b. Discussion

37. We recognize the inherent difficulties some national and multi-regional carriers will experience in attempting to determine end-user revenue by regional database area. We agree with WorldCom that the use of an estimate can reduce an otherwise onerous data collection paperwork burden.[137] We also agree with MCI that requiring national and multi-regional carriers

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[129] *Third Report and Order*, 13 FCC Rcd at 11761, para. 116.

[130] *Id. See* 47 C.F.R. § 52.32(a)(2). We note that NeuStar, the database administrator for all seven regions, requested this information from all telecommunications carriers through FCC Form 487, the LNP 1998 Worksheet. FCC Form 499-A replaced FCC Form 487 in July 1999 and is now used to collect this information. *See Streamlined Contributor Reporting Requirements Order*, 14 FCC Rcd 16602.

[131] WorldCom Petition at 8-9; MCI Petition at 8-9; MCI Reply at 2 n.4.

[132] WorldCom Petition at 8.

[133] MCI Petition at 8-9*;* MCI Reply at 2 n.4.

[134] Lockheed Comments at 2-3, 5. NeuStar also notes that each local number portability region has an established limited liability company (LLC), which has existing contracts with the LNPA to provide local number portability database services. *Id*. at 1 n.2.

[135] *Id*. at 2-3.

[136] *See* Williams Communications Petition for Expedited Waiver (filed Mar. 29, 1999) (Williams Petition) and AMSC Subsidiary Corporation Waiver Request (filed Apr. 13, 1999) (AMSC Waiver).

[137] *See* WorldCom Petition at 8.

to develop region-specific attribution systems for all of its end-user services may be costly and administratively burdensome.[138] The use of a proxy based on the percentage of subscribers a carrier serves in a particular region is a reasonable means of reaching an estimate and of reducing the administrative burden on the carriers. Therefore, we will allow national and multi-region carriers to use a proxy to allocate, on a good faith basis, their end-user revenues to the appropriate regional LNP administrator. Those carriers that submit, with their LNP Worksheet, an attestation certifying that they are unable to precisely divide their traffic and resulting end-user revenue among the seven LNPA regions identified in the LNP worksheet will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served in each region. Carriers may use their billing databases to identify subscriber location.[139]

38. We acknowledge that subscriber percentages may not be the only satisfactory proxy for end-user revenue. Accordingly, national and multi-region carriers that cannot make a proxy certification based upon subscriber percentages may request a waiver of section 52.32 of our rules based on other reasonable proxy methods.

39. Neither AMSC nor Williams propose to allocate their revenue based upon number of subscribers served in the regions in which they provide service. AMSC would divide its end-user revenue equally between the LNP regions.[140] Williams proposes to report its revenue derived from services rendered in or between two or more regions, based on a "good-faith estimate" as to which portions of those revenues are derived from each of the seven regions, but it does not explain its proposed methodology.[141] Williams requests a waiver only until such time as the Commission issues rules, guidelines or policies which instruct carriers how to apportion revenue between regions, for long-term number portability cost recovery purposes, which we have now done. AMSC does not limit its waiver request in this fashion, but rather seems to request permission to permanently adopt its alternative allocation system.

40. In evaluating these petitions, we recognize that both AMSC and Williams, in all likelihood,

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[138] *See* MCI Petition at 8-9.

[139] *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7745, 7757, paras. 52, 85 (2000).

[140] *See* AMSC Waiver at 1. AMSC requests waiver of section 52.32 on the ground that it operates a mobile satellite service system that provides two-way mobile voice and data through out the United States using five slightly overlapping beams. AMSC states that when a customer is using one of its mobile terminals, AMSC cannot identify which of the five beams the customer is using. Moreover, as beams cover thousands of square miles, AMSC argues that there is no simple or precise way to divide its traffic and end-user revenue between the regions identified in the LNP worksheet. ANSC requests that the Commission allow it to divide its end-user revenue on FCC Form 499-A equally between the LNP regions.

[141] *See* Williams Petition at 2. Williams seeks waiver of section 52.32 on the grounds that it derives a substantial portion of its revenue from services that are provided to large business customers in two or more regions, and that it is not able to assign revenue from many of its customers to a single region. Williams requests that the Commission allow it to report its revenue derived from services rendered in or between two or more regions, based on a good-faith estimate as to which portions of those revenues are derived from each of the seven regions.

have already begun paying their regional database administrators. Although we find that the particular allocation proxy we permit above is preferable to either of the allocation alternatives set forth in the AMSC or Williams petitions, we are also mindful of the potential administrative costs that may be incurred were we to conclude that the alternatives proposed by petitioners could not be used for those periods for which filings have already been submitted. Therefore, taking into account all these circumstances, we grant both waivers to the limited extent that the alternative revenue allocations have been submitted by AMSC or Williams on or before the release date of this Order. On a going-forward basis, we further conclude that although the proxy we adopt today provides a better allocation method than those in the petitions, we would consider alternative allocation methods that these companies might propose in waiver petitions for prospective periods, based upon their particular circumstances. With respect to future worksheets, therefore, Williams and AMSC may either (1) file an attestation certifying that they are unable to precisely divide their traffic and resulting end-user revenue among the seven LNPA regions identified in the worksheet and accordingly will divide their end-user revenue among these regions based on the percentage of subscribers served in each region, consistent with this Order; or (2) request in a timely manner a waiver to use another appropriate proxy. If petitioners choose the latter alternative, we encourage them to file their waiver requests expeditiously.

C. Recovery of Carrier-Specific Costs Directly Related to Providing Number Portability

1. Independent and Rural Incumbent LECs

a. Background

41. In the *First Reconsideration Order,* the Commission determined that carriers outside the 100 largest Metropolitan Statistical Areas (MSAs) would only be required to provide local number portability within six months of a request from a carrier offering competitive local service.[142] In the *Third Report and Order*, the Commission allowed but did not require incumbent LECs to recover their carrier specific costs directly related to providing number portability through a federally tariffed end-user charge.[143] At that time, the Commission determined that recovery of these costs from end users would not begin until the end users were reasonably able to begin receiving the direct benefits of long-term number portability.[144] The Commission allowed an incumbent LEC to assess the monthly end-user charge only on end users in the 100 largest MSAs, and end users it serves outside the 100 largest metropolitan statistical areas from a number portability-capable switch.[145] Because carriers may make any switch number portability-capable, the Commission determined that this approach would encourage

[142] *See Telephone Number Portability,* CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration*,* 12 FCC Rcd 7236, 7266, 7298, paras. 48, 107 (1997) (*First Reconsideration Order*).

[143] *Third Report and Order*, 13 FCC Rcd at 11773-74, para. 135.

[144] *Id.* at 11776, para. 142.

[145] *Id.* at 11776, para. 143.

carriers to install number portability and ensure that end users were assessed number portability charges only where they were reasonably likely to benefit from number portability.[146] Petitioners contend that carriers that are not required to be number portability-capable at this time, are, nevertheless, incurring costs associated with number portability.[147] Petitioners argue that the *Third Report and Order* fails to provide a mechanism for carriers, in this situation, to recover their costs related to number portability.[148]

42. Specifically, petitioners request that an alternative recovery mechanism be established for incumbent LECs who are not required to be number portability-capable at this time.[149] Petitioners note that once shared costs are allocated to each telecommunications carrier, that carrier's portion of the shared cost is treated as a "carrier-specific cost" directly related to providing number portability. Under the rules set forth in the *Third Report and Order*, however, incumbent LECs who are not number portability-capable cannot recover these costs. Petitioners argue that this places small and independent incumbent LECs at a competitive disadvantage.[150]

43. Petitioners further argue that the *Third Report and Order* fails to provide a recovery mechanism for the costs that will be incurred for query services by those incumbent LECs that have no number portability capability.[151] USTA argues that the Commission should allow incumbent LECs without long-term number portability capability to book and recover these costs though the regular accounting and separations process.[152]

44. NECA and NTCA both note that because of joint local calling agreements between small incumbent LECs and larger incumbent LECs for the provision of number portability database query services, the larger incumbent LECs will assess smaller incumbent LECs a charge for performing query services. NECA and NTCA further point out that because of these agreements, most of their pool participants, as N-1 carriers, will incur query service costs whenever any number in an NXX their customers call, has been ported.[153] NTCA further argues

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[146] *Id*.

[147] *See* NECA Petition at 1-4; NTCA Petition at 3; ORTC and TSTCI Petition at 3-4; *see also* Petition for Expedited Interim Waiver (filed March 19, 1999) (NECA Waiver) (NECA, NRTA, NTCA, OPATSCO, and USTA are parties to the interim waiver request).

[148] *See* NECA Petition at 1-4; NTCA Petition at 3; ORTC and TSTCI Petition at 3-4; *Third Report and Order*, 13 FCC Rcd at 11776, para. 143.

[149] NECA Petition at 5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[150] *See* NECA Petition at 5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[151] USTA Petition at 5; NECA Petition at 4-5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4; NECA Reply at 3, 5.

[152] USTA Petition at 5-6.

[153] NECA Petition at 3-4; NTCA Petition at 5-6.

that since the benefits of number portability accrue to interexchange carriers, the Commission should consider recovery through access charges as long as the mechanism it establishes is competitively neutral.[154]

b. Discussion

45. In the *Third Report and Order*, we required that all shared costs[155] be allocated among all telecommunications carriers based on the requirement of section 251(e)(2) of the Act that the costs of establishing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis."[156] After distribution, each carrier's portion of shared costs is treated as a carrier-specific cost directly related to providing local number portability.[157] To ensure that there would be sufficient revenues to fund the operation and management of the databases, we concluded that it was necessary to allocate the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[158]

46. NTCA argues that if no alternative recovery mechanism is made available to incumbent LECs outside the 100 largest MSAs, they will be forced to either upgrade their systems and assess charges on their end users, or contribute to the costs of the regional databases with no method of cost recovery. They contend that both options create a "significant expense" for these carriers even though they have not received a request for portability.[159]

47. Petitioners further argue that many of the carriers outside the top 100 MSAs face no local competition in the near future, and do not have immediate long-term portability deployment obligations.[160] Petitioners further contend that it would be unfair to begin charging end users when there is no facilities-based local competition and end users receive no direct benefit from number portability.[161] For this reason, petitioners suggest that non-portability

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[154] NTCA Reply at 3.

[155] Shared costs are costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate and maintain the databases needed to provide number portability. *See Third Report and Order,* 13 FCC Rcd at 11738-39, para. 69.

[156] *See Third Report and Order*, 13 FCC Rcd at 11759, para. 113 (quoting 47 U.S.C. § 251(e)(2)).

[157] *Id.* at 11745, para. 87.

[158] *Id.* at 11754, para. 105.

[159] NTCA Petition at 4.

[160] NTCA points out that "[u]nder the current cost-recovery rules, the small and rural LECs are forced to either: (1) upgrade their systems and assess charges on their end-users; or (2) contribute to the costs of the regional database with no method of cost-recovery" and no provisions made for compensating affected carriers. *Id*.

[161] *See, e.g.*, NECA Waiver at 3-4; ORTC and TSTCI Joint Petition at 2-3. NECA suggests that those customers may be faced with substantial local rate increases as a result of other, unrelated Commission decisions in the areas of access reform, separations reform and universal service. NECA Petition at 4 n.10.

capable carriers should be permitted to treat carrier-specific local number portability costs in the same manner that other, similar network costs are currently treated i.e., through normal accounting and separations processes,[162] or allowed to recover the costs through access charges.[163]

48. In opposition, both AT&T and MCI urge the Commission to reject proposals which allow incumbent LECs to shift costs to competitors via access charges.[164] AT&T recognizes that petitioners do not explicitly advocate including local number portability costs in access charges, but argues that incumbent LECs should not be allowed to recover such costs through the regular separations process, as this approach would result in increased access charges to IXCs.[165] MCI states that in principle it has no objections to the creation of an alternative cost recovery mechanism for these small and rural incumbent LECs to recover long-term number portability related costs. However, MCI urges the Commission not to allow recovery of query costs from other carriers through access charges.[166]

49. In the alternative, petitioners suggest that small and rural incumbent LECs be allowed to pool their costs.[167] NECA specifically urges the Commission to allow these carriers to use a pooling method similar to that allowed for data base query charges associated with calls to "800" and "900" numbers."[168] NECA argues that this type of pooling arrangement would allow carriers to recover their local number portability costs before being local number portability-capable because costs are included in central office expense accounts and are then allocated between jurisdictions on the same basis as central office investment.[169]

50. We agree with AT&T that the *Third Report and Order* does not allow recovery of long-term number portability costs through the normal accounting and separations process. We also note that MCI objects to the recovery of query services costs from other carriers, but not to the creation of some viable alternative recovery mechanism.

51. We believe that competitive neutrality is essential to sustain continued deployment of the long-term number portability service. We have mandated that a carrier may only recover long-term number portability shared costs through a federal tariff. Recovery must, therefore, be

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[162] NECA Petition at 5, 9; ORTC and TSTCI Joint Petition at 4; USTA Petition at 5-6.

[163] NECA Waiver at 4.

[164] AT&T Opposition at 13-14; MCI Response at 7-8.

[165] AT&T Opposition at 13 n.31.

[166] MCI Response at 7-8.

[167] *See* NECA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[168] NECA Petition at 5.

[169] *Id.* at n.11.

sought through a federal recovery process. We agree, however, with the petitioners that certain small carriers who do not currently have long-term number portability-capable switches, but are incurring long-term number portability shared costs and additional query costs as a result of their participation in an EAS calling plan would be financially disadvantaged if they were not allowed recovery of these costs. For this reason, we reconsider the issue of whether non-LNP capable carriers serving areas outside the 100 largest MSAs may recover their eligible number portability costs through the federal mechanisms that are available to other carriers.

52. The information provided in support of the expedited petition for interim waiver shows that a significant number of end users are located in areas adjacent to the 100 largest MSAs and areas where number portability is available. These end users also participate in EAS calling plans through their local service providers and make calls to numbers in extended calling areas that are served by number portability-capable switches. The terminating carriers query these calls in order to determine whether the called party has ported a number. The cost of these queries is passed on to the non-LNP capable LECs as query charges. In this instance, the queries are a direct result of the implementation of number portability in the neighboring area located within the EAS area. We find that the costs the non-LNP capable LECs incur for queries to areas within EAS calling plan areas are costs incurred as a result of the implementation of number portability and are also the costs of doing business within the EAS area.

53. We also find that the non-number portability capable LECs' customers, in this situation, receive direct benefits from the implementation of number portability in EAS calling plan areas. These customers' EAS calls are completed by a number portability-capable switch located within the EAS area; even though the non-number portability-capable LECs do not own the number portability-capable switches, the switches are a part of the EAS networks that complete calls from the non-number portability-capable LECs' customers. The query charges paid by the non-number portability-capable LECs recover the cost of performing the query and a portion of the number portability-capable LECs' implementation costs.[170] Moreover, these customers would have difficulty completing their calls within the EAS calling plan area without access to the number portability-capable switch. The benefits of number portability, therefore, extend to customers other than those of the number portability-capable LEC. We conclude, therefore, that a non-LNP capable LEC that participates in an EAS calling plan with any one of the 100 largest MSAs or with an adjacent number portability-capable LEC, may recover its costs for payment of query charges as eligible number portability costs through an end-user charge as set out in the *Third Report and Order* and explained in the *Cost Classification Order*.[171] We will not create a special category of cost recovery for small and rural carriers, and remain consistent with our decision in this regard as stated in the *Third Report and Order*.

54. We also allow these non-number portability-capable LECs to recover their LNPA charges through an end-user charge. Their customers also benefit from the creation and

[170] *Cost Classification Order*, 13 FCC Rcd at 24511, paras. 40, 41 (Allocation of joint costs should be based on the capacity set aside to handle default, prearranged, and database queries).

[171] *Third Report and Order*, 13 FCC Rcd at 11773, para. 135; *Cost Classification Order*, 13 FCC Rcd at 24498-99, para. 6.

maintenance of the number portability administration database. Accurate location routing number (LRN) information promotes call completion for the customers of the non-number portability-capable LECs in EAS calling plan areas. These carriers are also distinct from competing local exchange carriers (CLECs) and the other unregulated telecommunications companies that pay LNPA charges because they lack an alternative method of recovering these costs and cannot include the cost in the price of another service. Although we are clarifying the language of the *Third Report and Order*, we are compelled, however, to affirm our prior decision that number portability costs should not be recovered through access charges.[172] We decline to allow the non-number portability-capable LECs to recover their eligible number portability costs in access charges as requested by the NECA because recovery through access charges would not be competitively neutral as stated in the *Third Report and Order*.[173]

55. Our decision on this issue emphasizes the statement in the *Third Report and Order* that incumbent LECs are to recover carrier-specific number portability costs through end-user charges only when and where the end users are reasonably able to begin receiving the direct benefits of number portability. Those receiving direct benefits of number portability include the customers of small and rural incumbent LECs located within EAS calling plan areas that encompass portions of one of the 100 largest MSAs and/or other areas served by number portability-capable switches.[174] We also elaborate on the statement in the *Third Report and Order* that incumbent LECs may also assess a monthly charge only on end users it serves in the 100 largest MSAs, and end users it serves outside the 100 largest MSAs from a number portability-capable switch, by adding that the small and rural incumbent LECs that provide service through EAS calling plan agreements and are located adjacent to number portability-capable areas may assess a monthly charge on their end users. As parties to the EAS calling plan agreements, these carriers provide service to customers within their study areas in a number portability environment and calls from these customers are completed by number portability-capable switches located in the neighboring LEC's service area of the EAS calling plan area. The customers in the small and rural LECs' study areas, therefore, are connected to the number portability network through the EAS calling plans, and receive the direct benefit of completing their calls using the number portability-capable switches. The small and rural incumbent LECs are, thus, authorized to recover their query and LNPA costs that were incurred after our decision mandating LNP for a period of five-years using the same method that other incumbent LECs use to recover their costs.

56. Our decision also complies with the congressional mandate that number portability cost recovery mechanisms must be competitively neutral. Allowing the small and rural carriers located within EAS calling plan areas to recover their number portability costs prior to becoming number portability-capable does not give these carriers an incremental cost advantage over other

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[172] *Third Report and Order,* 13 FCC Rcd at 11773, para. 135.

[173] *Id*. at 11725-26, 11773, paras. 39, 135. *Cf.* NECA *Ex Parte* Letter from Regina McNeil, NECA Senior Attorney, to Magalie Roman Salas, Secretary, FCC (filed Mar. 24, 2000) at 4; NECA Waiver at 4.

[174] *Third Report and Order* at 11776, paras. 142-143.

carriers when competing for customers.[175] Once the carriers add number portability to their networks, they can recover the costs of establishing number portability, for a five-year period, through the same end-user charge through which they recover the query and LNPA costs. The small and rural carriers' costs will vary directly in proportion to the number of customers each carrier serves and the number of EAS calls their customers make to number portability-capable exchanges of adjoining LECs. In addition, our decision does not in any way affect competing service providers and, therefore, does not disparately affect the ability of the competing service providers to earn a normal return.[176]

57. NECA also suggests that a Fifth Amendment "takings" issue is presented by the *Third Report and Order*.[177] NECA notes that the *Third Report and Order* requires carriers "to contribute to the support of number portability in adjacent regions" while "at the same time specifically forbids carriers from recovering those costs in their rates."[178] We disagree with NECA; this issue was addressed, and rejected, in the *Third Report and Order*.[179]

58. We consider the issue of whether the small and rural LECs should be allowed to recover costs that may be incurred to implement number portability functionality through a second end-user charge after or while these LECs recover the query and LNPA costs through an initial end-user charge. In order to comply with Congress' competitive neutrality requirement, we conclude that these carriers must be allowed an opportunity to recover all eligible LNP costs through the five-year federal cost recovery mechanism established in the *Third Report and Order*. We considered the costs associated with equipping a network with number portability functionality in the context of the tariff investigations and recognized in the *Third Report and Order* that the most significant portion of a carrier's cost will be incurred for this purpose.[180] To limit these companies to recovering only their query and LNPA costs may give other carriers an appreciable cost advantage over them or significantly impact their ability to earn a normal return. Incumbent LECs may recover query and LNPA costs through an end-user charge collected over one five-year period and may recover the costs of equipping their networks with number portability functions through an end-user charge collected over a different five-year period.[181] These five-year periods may run either consecutively or concurrently, in whole or in part, as may be determined by the Commission.

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[175] *Id*. at 11731-32, para. 53.

[176] *Id*. at 11731-32, 11774, paras. 53, 136.

[177] NECA Petition at 4 n. 8.

[178] *Id.*

[179] *Third Report and Order*, 13 FCC Rcd at 11779, para. 149.

[180] *See id*., 13 FCC Rcd at 11774, para. 137.

[181] This depends on when a carrier that participates in an EAS calling arrangement begins to equip its network with number portability functionality.

2. Recovery of Number Portability Costs from Other Carriers

a. Background

59. In the *Third Report and Order* the Commission determined that incumbent LECs may assess a monthly number portability end-user charge on resellers of the incumbent LEC's local service, as well as on purchasers of switching ports as unbundled network elements under section 251 of the Communications Act.[182] We reasoned that allowing the incumbent LECs to assess this charge was competitively neutral "because the reseller and the purchaser of the switch port will incur the [end-user] charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere."[183] We noted that the unregulated reseller and purchaser of the switch port may recover in any lawful manner the charges the incumbent LEC assesses on them.[184]

60. A number of petitioners seek clarification or reconsideration of issues relating to the manner in which incumbent LECs recover their number portability costs from other carriers. MCI seeks clarification that any costs associated with a number portability charge to carriers purchasing unbundled switching be calculated based on Total Element Long Run Incremental Cost (TELRIC), and that costs for number portability charged to resellers be based on avoided costs.[185] MCI claims that, to comport with the costing requirements of the 1996 Act, charges assessed on carriers purchasing unbundled switching or resale must be cost-based, citing section 251(c)(3) and (4).[186] Comcast seeks clarification that incumbent LECs may not recover their number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," and that incumbent LECs may not seek to recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided.[187] PCIA requests that the Commission affirm that paging providers are co-carriers for purposes of cost recovery, not end-users, and, for this reason, should not be assessed end-user fees.[188] PCIA asserts that the Commission has held in past orders that all CMRS providers, including paging providers, are to be treated by LECs as co-carriers.[189]

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[182] *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

[183] *Id*.

[184] *Id*.

[185] MCI Petition at 6-7.

[186] *Id*. at 6.

[187] Comcast Petition at 2-6.

[188] PCIA Petition at 5-7.

[189] PCIA Petition at 6-7.

b. Discussion

61. In our view, MCI's request for clarification addresses prices for unbundled network elements and resale, and not the mechanism established by the Commission in the *Third Report and Order* by which incumbent LECs may recover their costs of implementing long-term number portability.[190] The statutory language relating to number portability costs differs from the sections governing the pricing of unbundled network elements and resale rates. Section 251(e)(2), which the Commission applied in the *Third Report and Order* to create the LNP end user charge, provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." By contrast, the Commission has found that section 251(c)(3) requires incumbent LECs to price unbundled network elements under the TELRIC pricing methodology,[191] and that section 251(c)(4) requires that resale rates be set at the retail rate minus any avoided costs.[192] Although the Commission decided in the *Third Report and Order* to permit carriers to impose end user surcharges on purchasers of unbundled switching ports and resellers, it did not find that these surcharges thereby became an element of the UNE or resale rates.[193] Our decision to permit the imposition of end user surcharges on purchasers of unbundled switching ports and resellers was, instead, based upon the conclusion that, although incumbent LECs will provide the underlying number portability functionality in such situations, they will no longer have a direct relationship with the end users.[194] Instead, the purchaser of the unbundled switch port and the reseller receive all their number portability functionality from the incumbent through these arrangements.[195]

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[190] *See generally Third Report and Order*, 13 FCC Rcd at 11731-32, 11738-41, 11773-79, paras. 53, 68-77, 135-47.

[191] *See* 47 C.F.R. §§ 51.501-09. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996, *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997), the Supreme Court restored the Commission's pricing authority and remanded to the Eighth Circuit for consideration of the challenged rules. *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999). On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific rules contained within the Commission's pricing rules were contrary to congressional intent. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom., Verizon Communications v. FCC*, 531 U.S. 1124 (2001). The Eighth Circuit has stayed the issuance of its mandate, *Iowa Utils Bd. v. FCC*, No. 96-3321, *et al.* (8th Cir. Sept. 25, 2000), pending appeal before the Supreme Court, which has granted certiorari in the case. *Verizon Communications v. FCC*, 531 U.S. 1124 (2001). Accordingly, the Commission's rules continue in effect at this time.

[192] In *Iowa Utilities Bd. v. FCC*, *see* n.191, *supra*, the Eighth Circuit concluded that section 252(d)(3) of the Communications Act requires costs that are actually avoided, not those costs that could be avoided, be excluded from wholesale rates offered to resellers. *Iowa Utilities Bd. v. FCC*, 219 F.3d at 755.

[193] *Id.*, 13 FCC Rcd at 11778, para. 146.

[194] *Id*. at 11778, para. 146.

[195] *Id.* The unregulated reseller and purchaser of the unbundled switch port can, in turn, recover in any lawful manner the charges the incumbent assesses on them.

Moreover, we believe that application of the TELRIC standard would be inappropriate because the LNP end-user charge is intended to recover the short-term costs of number portability,[196] whereas TELRIC is designed to recover long-run costs. Accordingly, we conclude that the LNP end-user charges for number portability associated with unbundled switching ports and resellers are not part of the rate elements for these services. We therefore deny MCI's request that the LNP costs associated with unbundled switch ports and resale be based on the statutory standards set forth in sections 251(c)(3) and 251(c)(4), respectively, and reaffirm that they are governed by the competitively neutral standard set forth in section 251(e)(2).

62. We agree with Comcast that incumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," nor may they recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided.[197] To the extent necessary, we clarify our decision accordingly. The *Third Report and Order* allows incumbent LECs to assess number portability charges in limited circumstances and only where the incumbent LEC provides number portability functionality: (1) on resellers of the incumbent LEC's local service; (2) on purchasers of switching ports as unbundled network elements under section 251; and, (3) on other carriers for whom the LEC provides query services.[198] Allowing the incumbent LECs to assess an end-user charge on resellers and on purchasers of switching ports as unbundled network elements is competitively neutral because the reseller and the purchaser of the switch port will incur the charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere.[199]

63. In considering the issue of recovery of costs through charges on other carriers, Comcast asks that we recognize that we have not fully addressed how wireless providers and other non-incumbent LECs will recover their carrier-specific costs.[200] Comcast argues that, for technical reasons, wireless providers cannot perform queries for themselves or for other carriers and, accordingly, must recover their carrier-specific costs through end-user charges. Comcast further asserts that the inability of wireless providers to recover any of their costs from other telecommunications providers means that the current cost recovery scheme creates a cost advantage for incumbent LECs, who can recover their costs both through query charges and end-

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[196] *See Third Report and Order*, 13 FCC Rcd at 11777, para. 144. This cost recovery method limits the ability of carriers to impose costs on other carriers. Indeed, a cost structure for LNP may not be competitively neutral if it permits a carrier to shift a disproportionate share of costs onto another carrier. *See* para. 11, *supra*.

[197] Comcast Petition at 3.

[198] *Third Report and Order*, 13 FCC Rcd at 11778-79, paras. 146-147; *see also* Bell Atlantic Response at 3 (pointing out that the *Third Report and Order* allows incumbent LECs to 1) pass the end user charge to resellers and unbundled network element purchasers, and 2) charge other carriers for number portability query service).

[199] *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

[200] Comcast Reply at 3.

user charges.[201]

64. We disagree. First, we note that the Commission has fully addressed the issue of how other carriers, including non-incumbent LECs and wireless carriers, may recover their costs of number portability. Specifically, we held that carriers not subject to rate regulation -- such as competitive LECs, CMRS providers and non-dominant IXCs -- may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act.[202] Second, we disagree that CMRS carriers are at a competitive disadvantage because they cannot perform, and charge other carriers for, query services. In filing number portability tariffs, incumbent LECs must allocate their carrier-specific costs incurred only to provide portability functions for end-users to that service and costs incurred specifically to provide only one particular type of query service to that service.[203] Remaining eligible costs should be allocated on the basis of the capacity requirements for each type of service.[204] Requiring carriers to allocate their costs in this manner ensures that incumbent LECs will not use their query service charges to other carriers for the recovery of the costs of providing number portability service to end-users, thereby achieving a lower end-user charge.[205] Moreover, although we recognized in the *Third Report and Order* that some small LECs and CMRS providers may find that their smaller customer bases might make adding number portability capability in their own networks uneconomical, we also recognized that such carriers have other options for achieving economies of scale similar to those of the larger incumbent LECs. For example, such carriers could arrange for another carrier to perform queries for them, enter into cooperative agreements with other small carriers, or install number portability in their own networks and use excess number portability capacity to provide query services to other carriers.[206] Thus, we affirm our conclusion that our competitive neutrality

[201] *Id*. at 3-4.

[202] *Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

[203] *Id.*, 13 FCC Rcd at 11778-79, para. 147; *Cost Classification Order*, 13 FCC Rcd at 24511, para. 40.

[204] *Cost Classification Order*, 13 FCC Rcd at 24511, para. 41.

[205] We distinguish, however, the situation where an incumbent LEC incurs costs for query services that other carriers or third parties provide. As with other carrier-specific costs directly related to providing number portability to end users, incumbent LECs may recover such costs with a five-year monthly charge on the end-users it serves from a number portability capable switch. *See Third Report and Order*, 13 FCC Rcd at 11776-77, para. 143. If an incumbent LEC in such a situation does not have a number portability-capable switch, it should keep track of the query costs it incurs from other carriers or third parties. The incumbent LEC may begin recovering those costs from its end users when it begins to serve them from a number portability-capable switch. In the case of incumbent LECs serving carriers in EAS, these carriers may recover their query costs and LNP administration charges through an end-user charge as discussed in Section III.C.1 of this of this order for a limited period of five years from the date of the first end-user charge. Any costs the incumbent LEC incurs subsequently for implementation of a number portability network may also be recovered for a limited five-year period in accordance with section. These five-year periods may run consecutively or concurrently. Incumbent LECs may recover for each type of LNP cost during only one five-year period.

[206] *Id.* at 11775, para. 138.

standard is met if we leave unregulated those carriers not subject to rate regulation.[207] We, therefore, decline to establish a federal recovery mechanism for these carriers.

65. Moreover, we clarify that CMRS providers and paging providers are co-carriers with incumbent LECs for the purpose of number portability cost recovery, and should not be assessed end-user charges.[208] In the recent investigation of the number portability tariff filings of Ameritech, GTE, and SBC, the Commission found unlawful Ameritech's imposition of number portability surcharges on CMRS providers' Type 1 DID/DOD Trunks.[209] In making that decision, the Commission reasoned that, as in the context of access charges, CMRS providers and paging providers are carriers, not end users, for purposes of number portability.[210] Our number portability rules specify that monthly number portability surcharges may be assessed only on end users, not carriers.[211] We also agree with Arch's assertion that incumbent LECs may not impose a monthly end-user charge on all Type 1 interconnections by analogizing such connections to a PBX-type service, on which LECs may impose monthly surcharges.[212] As we stated in *Bell Atlantic Cellular*, "it is clear that PBX service is quite different than that of [radio common carrier] interconnections."[213] The most notable difference is that a PBX trunk connects an end-user premise and a LEC switch, while a Type 1 connection links the LEC to the Mobile Telephone Switching Office (MTSO), which is not an end-user premise.[214] We thus agree with PCIA and Arch that, because CMRS providers and paging companies are co-carriers and not end-users, they should not be assessed an end-user charge by LECs. Moreover, we conclude that an interpretation that our orders and rules governing local number portability permit incumbent LECs to impose an end-user charge on all Type 1 interconnections is unreasonable. We find that

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[207] *Id*. at 11774, para. 136.

[208] Pursuant to our rules, incumbent LECs may "assess each end user it serves . . . one monthly number-portability charge per line . . . ." 47 C.F.R. § 52.33(a)(1)(i).

[209] *See Long-Term Number Portability Tariff Filings of Ameritech, et al.,* CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11883, 11933, para. 109 (1999) (*LNP Investigation Order*). In addition to discussing this issue in their Comments in that proceeding, Arch and PCIA filed a Petition for Reconsideration of the *LNP Designation Order* requesting clarification that CMRS carriers are co-carriers, not end users, and may not be assessed monthly surcharges. Arch asserted that its local exchange provider, Ameritech, was billing Arch a "Service Provider Number Portability Monthly Charge" on all of Arch's Type I Wireless Interconnection trunks. *See* Petition for Partial Reconsideration of Order Designating Issues for Investigation (filed Mar. 26, 1999) (Arch Petition); *Long-Term Telephone Number Portability Tariff Filings of Ameritech, et al.,* CC Docket No. 99-35, Order Designating Issues for Investigation (*LNP Designation Order*), 14 FCC Rcd 3367 (1999).

[210] *LNP Investigation Order,* 14 FCC Rcd at 11934, paras. 110-111.

[211] 47 C.F.R. § 52.33(a)(1)(i).

[212] Arch Petition at 11.

[213] *Bell Atlantic Telephone Companies*, Transmittal No. 418, Order, 6 FCC Rcd 4794, 4795, para. 10 (1991) (*Bell Atlantic Cellular*).

[214] *Id.*

our orders clearly prohibit carriers from imposing their end-user query costs on other carriers, except in very limited circumstances where the incumbent LEC also provides the number portability functionality.

3. Recovery of Number Portability Costs from Feature Group A Access Lines

a. Background

66. Feature Group A is a local exchange service that is used to provide interstate access service to IXCs and end users.[215] Feature Group A access provides IXCs with dedicated transmission facilities from the IXC's Point of Presence (POP) to a LEC central office.[216] Within Local Access and Transport Areas (LATAs) in which an IXC takes Feature Group A service, a caller reaches the IXC's POP by dialing a Feature Group A ten-digit number, plus an authorization code and the ten digit number the customer wishes to reach.[217] The caller must pay any local toll charges incurred to reach the IXC's POP, in addition to the IXC's toll charges; when the LEC terminates a call through a Feature Group A arrangement, however, the LEC generally will carry the call anywhere within the receiving service area without assessing additional toll charges.[218] Feature Group A service is also used by non-carrier entities as part of an interstate Foreign Exchange (FX) or Off Network Access Line (ONAL) arrangement.[219] In this type of arrangement, the Feature Group A customer obtains from a LEC a combination of local exchange service and dedicated interoffice transport facilities linking the LEC dial tone office to an IXC POP.[220] The IXC POP is linked to the out-of-state Feature Group A customer by an interstate private line, which enables end users in the dial tone office area to reach out-of-state Feature Group A customers without incurring interstate toll charges.[221] The dial tone office processes the call originating in its service area as a local call and delivers it to the dedicated trunked transport and, ultimately, to the IXC's interstate private line for transmission to the Feature Group A customer.[222]

67. Several petitioners request that the Commission revise or clarify the Commission's new

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[215] *See AT&T Communications Tariff F.C.C. Nos. 9 and 11*, CC Docket No. 94-120, Memorandum Opinion and Order, 10 FCC Rcd 4288, 4289-91, paras. 2-6 (1995).

[216] *Id.* at 4289-90, paras. 2-3.

[217] *See id.* at 4290, para. 4.

[218] *Id.*

[219] *Id.* at para. 5.

[220] *Id.*

[221] *Id.*

[222] *Id.*

rule, found at section 52.33(a)(1)(ii), to allow incumbent LECs to assess a surcharge on Feature Group A lines.[223] The petitioners assert that because Feature Group A lines are used as a form of access lines and the telephone numbers associated with them are portable, the Commission should clarify or find upon reconsideration that carriers may charge Feature Group A end users and carriers an LNP monthly end-user surcharge.[224] The petitioners assert that such surcharge should be allowed, notwithstanding that the service is obtained through an access tariff and the Commission specifically prohibits the recovery of number portability costs through access charges.[225] In opposition, parties assert that a surcharge should not be assessed purchasers of Feature Group A access, because number portability costs can be recovered from other carriers only through query charges, not through surcharges.[226] Parties opposed to the request assert that the request is an attempt to circumvent the Commission's decision that carriers should not be required to pay other carriers' LNP costs.[227] Additionally, some commenters assert that carriers are already paying access fees for Feature Group A service and should not also be charged an end-user surcharge.[228]

b. Discussion

68. In the *Third Report and Order*, we determined that incumbent LECs may assess end-user surcharges on resellers as well as purchasers of switching ports as unbundled network elements,[229] based on our conclusion that incumbent LECs will provide the underlying number portability functionality in such situations, although they will no longer have a direct relationship with the end-users.[230] We did not allow incumbent LECs to assess surcharges on carriers that purchase only their local loops as unbundled network elements, however, because the unbundled local loop does not contain the number portability functionality.[231] Accordingly, the purchaser of the unbundled loop still will be responsible for providing such functionality and, thus, incurring elsewhere the corresponding cost.[232]

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[223] Ameritech Petition at 13; Bell Atlantic Petition at 1; SBC Reply at 1-2.

[224] *See* Ameritech Petition at 13.

[225] *Id.*

[226] *See* AT&T Opposition at 12-13; Ameritech Reply at 2.

[227] MCI Response at 8; Vanguard Opposition at 4-5.

[228] *See* MCI Response at 8.

[229] *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

[230] *Id.*

[231] *Id.*

[232] *Id.*

69. We clarify, however, that carriers who offer Feature Group A access lines may assess a monthly surcharge on such lines. We conclude that this clarification is consistent with our decision in the *Third Report and Order* that incumbent LECs may impose a monthly surcharge on resellers as well as on purchasers of switching ports as unbundled network elements. We will amend section 52.33(a)(1)(ii) of our rules to reflect this clarification. We agree with the parties' assertion that the LEC providing the Feature Group A line also provides the underlying number portability functionality, and should be allowed to recover its number portability costs through a surcharge on the Feature Group A line.[233] Our conclusion is based on the determination that the Feature Group A line, whether providing access to the end-user's private network or a connection between an end office and the IXC's POP, connects to the end office switch and uses that switch in the same manner that an end-user line does.[234] Because a Feature Group A line connects to the end office switch, uses the switch in the same manner as an ordinary end-user line, and uses a ten-digit telephone number that is portable,[235] the incumbent LEC is responsible for providing the underlying number portability functionality and may thus recover its permissible incremental costs through a monthly surcharge on the Feature Group A line.

70. We disagree with AT&T's assertion that when Feature Group A lines are used to connect a LEC end office and an IXC's POP, allowing a LEC to assess a number portability surcharge on the IXC would result in double billing.[236] Incumbent LECs may only assess one end-user charge per line.[237] Additionally, as discussed below, incumbent LECs may not recover their number portability costs through increased access charges. Therefore, allowing incumbent LECs to assess one end-user surcharge on Feature Group A lines does not result in double billing.

71. We disagree with Vanguard's assertion that we are "reclassifying" carriers who purchase Feature Group A lines as end users in order to allow incumbent LECs to assess end-user surcharges.[238] We merely find that such carriers are in a situation similar to end users and incumbent LECs may recover their number portability costs in such a situation. As discussed above, we allow such cost recovery because in this situation, the carrier purchasing Feature Group A service is in the same position as an end user. Additionally, in response to AT&T's request that only Feature Group A line end-users, but not carriers who use Feature Group A lines, be assessed a surcharge, we note that SBC asserts that incumbent LECs are incapable of identifying the nature of the customer purchasing the Feature Group A service and cannot differentiate between such customers for purposes of a number portability-related charge.[239] We

[233] Bell Atlantic Reply at 1-2; SBC Reply at 2 n.4.

[234] Bell Atlantic Petition at 1; Ameritech Reply at 2.

[235] *See* Bell Atlantic Petition at 1; Ameritech Reply at 2.

[236] *See* AT&T Opposition at 13.

[237] *See Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

[238] Vanguard Opposition at 4-5.

[239] SBC Reply at 3.

also agree with Bell Atlantic that the label that is on the service should not determine whether the number portability surcharge applies to that service, but rather whether the telephone number associated with the line is capable of being ported to another carrier. Feature Group A lines satisfy this test.[240]

72. We disagree with Vanguard's assertion that allowing LECs to assess this surcharge would require carriers purchasing Feature Group A to purchase portability functionality, regardless of whether that functionality has any utility for the purchasing carrier.[241] We noted in the *Third Report and Order* that it is competitively neutral to allow an incumbent LEC to assess an end-user surcharge because the reseller and unbundled switch port purchaser will receive all their number portability functionality through these arrangements and will incur such costs in lieu of costs they would otherwise incur in obtaining number portability functionality elsewhere.[242] We agree with the numerous commenters who assert that Feature Group A lines have their own ten-digit numbers which are portable, and thus incumbent LECs may recover their number portability costs through an end-user surcharge.

73. We also disagree with Vanguard's assertion that allowing carriers to assess end-user charges on other carriers would permit the incumbent LECs to recover number portability costs through interstate access charges, albeit indirectly.[243] Such incumbent LECs are providing the number portability functionality to the carriers and may recover such costs through the end-user surcharge. Although the Feature Group A service is obtained through an access tariff, incumbent LECs assign Feature Group A lines a ten-digit number that is portable, and a LEC providing such underlying number portability functionality may recover its costs through a monthly end-user surcharge.[244]

4. Recovery of Number Portability Costs from Centrex and PBX Lines

a. Background

74. Business customers with a large number of telephone lines may choose to connect their users with each other and with other telephone lines in one of two ways: Centrex or a PBX.[245] Centrex customers receive service from a LEC's central office switch via line side connections, while in a PBX arrangement, customers are connected to the central office switch via trunk side

[240] Bell Atlantic Reply at 2 (*citing Third Report and Order*, 13 FCC Rcd at 11776, 11778, paras. 142, 146).

[241] Vanguard Opposition at 5.

[242] *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

[243] Vanguard Opposition at 5.

[244] *See* SBC Petition at 2.

[245] *Access Charge Reform*, CC Docket No. 96-262, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, 16615-19, paras. 31-42 (1997) (*Access Charge Reform Order*).

connections.[246] In the *Third Report and Order*, we held that incumbent LECs may assess end-users one monthly number portability charge per line, but applied a line-to-trunk equivalency ratio in the case of PBX trunks.[247] We observed, as we had in the *Access Charge Reform Order*, that one PBX trunk provides, on average, the equivalent service capacity of nine Centrex lines.[248] For this reason, we allowed LECs to assess one monthly end-user charge per Centrex line, and nine monthly number-portability end-user charges per PBX trunk.[249] Our decision was based on our determination that in the absence of this line-to-trunk equivalency ratio, large customers would be encouraged to choose one of these arrangements over the other because of the number portability charge, an outcome that we concluded would violate the competitively neutral requirement of section 251(e)(2).[250]

75. A number of incumbent LECs request reconsideration of this equivalency determination.[251] According to the incumbent LECs, while the Commission sought to create a similar type of "equivalency" between Centrex and PBX trunk subscribers, we erred in establishing the 9:1 equivalency ratio.[252] The petitioners argue that rather than treating the PBX trunk as a single unit, the Commission incorrectly treated the Centrex subscriber as the unit of reference and allowed PBX customers to be charged 9 times the amount charged the Centrex customer.[253] Petitioners argue that we should have used the exact equivalency ratio used in the access charge context, that is, assessing one line charge for PBX and one-ninth of a line charge for Centrex. For number portability, we allowed carriers to assess nine charges for PBX and one charge for Centrex.

b. Discussion

76. We agree with those carriers who assert that a trunk equivalency ratio is needed to account for the service capacity differences between a PBX trunk and a Centrex line. We also agree that the PBX trunk provides, on average, the equivalent service capacity of nine Centrex lines.[254] We disagree, however, that we have deviated from the trunk equivalency ratio adopted

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[246] *Id*. at 16616, para. 32.

[247] *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

[248] *Id.*

[249] *Id.*

[250] *Id.*

[251] *See, e.g.,* Bell Atlantic Petition at 2; BellSouth Petition at 2-5; U S WEST Petition at 3-7.

[252] *See* U S WEST Petition at 4.

[253] *Id.*

[254] *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

in the *Access Charge Reform Order*[255] and affirm our earlier finding that Centrex lines may be assessed one number portability charge and PBX trunks may be charged nine number portability charges.

77. Consistent with our decision in the *Access Charge Reform Order*, we find that a 9:1 ratio is "reasonable and administratively simple."[256] The one-ninth charge urged by the petitioners, on the other hand, is unreasonable and would be administratively difficult to use in computing tariffs. Were we to adopt the petitioners' suggestion and reduce the Centrex line number portability charge, incumbent LECs would be required to assess one-ninth of a charge on all other end-user lines, to avoid a discriminatory rate and one that impermissibly imposes the burden of number portability on residential end-users. We note that the petitioners have failed to address the impact of the proposed change in the equivalency ratio on residential customers.

78. Ameritech[257] and UTC assert that the 9:1 trunk equivalency ratio is a major policy change from our earlier access charge reform ratio that was made without a public policy or cost justification.[258] These carriers state that the Commission did not make any finding that PBX customers should make a disproportionate contribution to the costs of number portability, nor did it find any cost justification for forcing PBX customers to pay multiple number portability monthly charges.[259] Bell Atlantic makes the same argument.[260] We disagree. The equivalency ratio remains the same -- 9:1 -- based on our finding that a PBX trunk provides approximately the same functionality as nine Centrex lines.[261] We also disagree that we are imposing a disproportionate contribution to the costs of number portability on PBX customers. To the contrary, the trunk equivalency ratio compensates for the fact that one PBX trunk provides the functionality of approximately nine Centrex lines and is intended to place PBX and Centrex services on an equal footing with respect to number portability charges so that customers do not choose one service over the other because of the number portability charge.

79. We also are not persuaded that the equivalency ratio established in the *Third Report and Order* should be changed.[262] The 1:1/9 ratio will materially impact billing systems that are already configured for access charges assessed on PBX and Centrex at a nine to one ratio. We recognize, as we did in the *Third Report and Order*, that number portability is a new service that

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[255] Bell Atlantic Petition at 2; BellSouth Petition at 4-5

[256] *Access Charge Reform Order*, 12 FCC Rcd at 16617-18, para. 38.

[257] We note that SBC acquired Ameritech after the filing of the pleadings in this proceeding.

[258] Ameritech Petition for at 9; UTC Comments at 3-4; *see also* U S WEST Petition at 4- 5.

[259] Ameritech Petition at 9; UTC Comments at 4.

[260] Bell Atlantic Petition at 2.

[261] *Third Report and Order*, 13 FCC Rcd at 11777, para. 145.

[262] Ameritech Petition at 10; US WEST Reply at 7.

will require carriers to incur costs to modify their networks to provide number portability.[263] We do not find that changes in billing systems, if any, resulting from the 9:1 ratio, would support the requested change to a 1:1/9 ratio. Moreover, we note that in the *Cost Classification Order*, we stated that carriers may not recover the costs of "billing or order processing systems" unless they can clearly distinguish costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement number portability.[264]

80. SBC asserts that Plexar systems are unique PBX-like arrangements that ascribe separate 7- and 10-digit telephone numbers to each station in the system, with a single local exchange provider providing all the stations in the Plexar system.[265] Accordingly, SBC requests that Plexar systems be assessed one number portability charge, not nine.[266] SBC asserts that a 9:1 ratio relating to the number of Plexar stations to an equivalent number of individual voice paths is an effective means for levying per-line charges under the access charge reform rulemaking.[267] SBC further asserts that a similar ratio was used for Centrex, and thus Plexar and PBX trunks should be assessed one portability charge, rather than one-ninth of the charge per Centrex line.[268] AT&T disagrees, and asserts that because Plexar is like Centrex in that every Plexar telephone line has its own dedicated connection to switching equipment it should be assessed one number portability charge, not nine.[269] In a prior rulemaking, we examined the relationship between Plexar and Centrex, and determined that Plexar offers a nearly identical functionality to Centrex.[270] We agree with AT&T that because each station in the Plexar system has its own dedicated connection to a switch, it is similar to Centrex and should be assessed the same number portability charge, that is, one number portability charge per line.[271]

81. Finally, we disagree with those commenters who assert that a 9:1 line-to-trunk ratio is not competitively neutral. Indeed, the ratio is specifically aimed at ensuring that, by treating

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[263] *Third Report and Order*, 13 FCC Rcd at 11728, para. 46.

[264] *Cost Classification Order,* 13 FCC Rcd at 24501, para. 12.

[265] SBC Petition at 3.

[266] *Id*. at 3-4.

[267] *See id.* at 4.

[268] *Id.*

[269] AT&T Opposition at 11-12.

[270] *See Public Utility Commission of Texas*, Docket No. CCB Pol 96-13, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3559 n.492 (1997) ("[a]lthough SWBT Centrex and Plexar services were different in several respects, they provided virtually the same functionality"); *see also Rules and Policies Regarding Calling Number Identification Service - Caller ID*, CC Docket No. 91-281, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 3867, 3880 n.76 (1997) ("Plexar is a SWBT Centrex service").

[271] AT&T Opposition at 11-12.

end-users in a nondiscriminatory manner, the local number portability cost recovery mechanism fulfills section 251(e)(2)'s competitively neutral mandate. We, therefore, affirm our conclusion that in the absence of establishing a 9:1 equivalency between a PBX trunk and Centrex subscribers, large customers would be encouraged to choose one of these arrangements over the other because of the number portability charge, an outcome that would violate the competitive neutrality requirements of section 251(e)(2).[272]

82. We also disagree with those carriers who assert that allowing one charge for Centrex lines and nine charges for PBX trunks is not competitively neutral, because competitive LECs are not required to assess number portability monthly charges on these services.[273] These carriers assert that competitive LECs are free to recover their costs as they see fit and are thus not required to "overcharge" their PBX customers in order to recover their number portability costs.[274] In response, we note that incumbent LECs are not required to "overcharge" their PBX customers, but rather may, if they wish, assess up to nine portability charges due to the PBX trunk's higher capacity.[275] We also determined in the *Third Report and Order* that carriers not subject to rate regulation, such as competitive LECs, may recover their carrier-specific costs directly related to number portability in any lawful manner consistent with their obligations under the Communications Act.[276] We stated that allowing incumbent LECs to recover their carrier-specific number portability costs from their customers gives the incumbent LECs the option to forego some or all of the charges to compete in the local service market. [277] We also noted in the *Third Report and Order* that regulating the recovery of number portability costs by incumbent LECs but not competitive LECs will not place any carrier at a competitive disadvantage because competitive LECs also have portability costs, and incumbent LECs are unlikely to have a "material disadvantage" in competing for subscribers under our rules.[278] Here, the petitioners allege that they must "overcharge" their customers, and that such charges will cause them to lose customers. The incumbent LECs' allegations alone are insufficient to persuade us that the optional end-user charge does not provide competitive parity with CLECs, which also incur similar costs. At this stage, these carriers can only speculate that CLECs will not assess end-user charges for PBX lines and that incumbent LECs must always assess the end-user charges where they are faced with competition in a specific market. We see no reason, therefore, to abandon the requirements established in the *Third Report and Order* regarding the charges that apply to Centrex and PBX lines.

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[272] *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

[273] Ameritech Petition at 9; *see* SBC Petition at 4.

[274] *See, e.g.*, Ameritech Petition at 9.

[275] *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

[276] *Id.* at 11774, para. 136.

[277] *Id. at* 11775, para. 139.

[278] *Id.*

5. Recovery through the Incumbent LEC End-User Charge

a. Initiation of the end-user charge

(i) Background

83. In the *Third Report and Order*, we allowed incumbent LECs to assess a number portability monthly charge, for a five-year period, only on end users they serve in the 100 largest MSAs and on end users they serve outside the 100 largest MSAs when the switch serving that MSA is number-portability capable.[279] We determined that such an approach will encourage carriers to install number portability and help ensure that end-users are assessed number portability charges only where they are reasonably likely to benefit from number portability.[280] We chose the five-year period for the end-user charge because it enables incumbent LECs to recover their portability costs in a timely fashion, and also helps produce reasonable charges for customers and avoids imposing those charges for an unduly long period.[281] Florida asserts that this rule should be amended to provide that incumbent LECs may impose an end user charge "no sooner than the end users are reasonably able to begin receiving number portability."[282] Bell Atlantic states that Florida's request would be administratively difficult to impose and enforce.[283]

(ii) Discussion

84. We agree with Bell Atlantic and therefore decline to change our rules. We based our determination of when carriers may begin collecting end-user charges on our need to balance carriers' need to recover their costs with our concerns about consumer charges being levied before number portability is available in an area. Here, we agree with Bell Atlantic that allowing the imposition of number portability charges when individual end users are able to receive direct benefits would greatly increase the burden on carriers, due to carriers' need to determine when each residential and business line is number portability-capable, and then to begin billing consumers within that region only. We also agree with Bell Atlantic that changing the time a carrier may begin billing based on the individual availability of number portability would involve the Commission in numerous disputes over when that exact time had arrived. On the other hand, it is relatively simple for carriers and the Commission to make such determination within each MSA. It is also unclear how Florida's proposal would benefit individual consumers above and beyond our current provisions. We authorized carriers to begin assessing end-user charges no sooner than February 1, 1999 based on the implementation schedule and in anticipation that number portability would be available to a large number of customers by the end of 1998. Because number portability has been implemented in the top 100 MSAs since the

[279] *Id.* at 11776-77, paras. 142-144.

[280] *Id.*

[281] *Id.*

[282] Florida PSC Petition at 3-4.

[283] Bell Atlantic Response at 2-3.

end of 1998, as required by the *First Report and Order,* as modified,[284] Florida's request is moot. We therefore deny Florida's request and uphold our earlier determination.

b. Recovery Period of the End-User Charge

(i) Background

85. In the *Third Report and Order*, we decided that incumbent LECs may recover their number portability costs with a federally-tariffed monthly end-user charge.[285] We determined that the end-user charge may begin "no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and … last no longer than five years."[286] We decided further that after the five-year recovery of the implementation costs of number portability with the end-user charge, "[c]arriers can recover any remaining costs through existing mechanisms available for recovery of general costs of providing service."[287]

86. NECA and SBC request clarification regarding how incumbent LECs will recover number portability costs beyond the five-year cost recovery period.[288] SBC asks us to address this issue before we implement our directive on separations.[289] Furthermore, SBC asks for clarification that, until the issue of the distribution of joint costs is decided,[290] incumbent LECs

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[284] *See Third Report and Order*, 13 FCC Rcd at 11712, para. 17.

[285] *Id*. at 11773-74, 11776, paras. 135, 142.

[286] *Id.* at 11776, para. 142; *see also* 47 C.F.R. § 52.33(a)(1).

[287] *Third Report and Order*, 13 FCC Rcd at 11777, para. 144.

[288] NECA Petition at 8; SBC Petition at 8.

[289] SBC Petition at 7-8 (citing *Third Report and Order*, 13 FCC Rcd at 11720, para. 29 (incumbent LECs' number portability costs will not be subject to separations)). Jurisdictional separations is the process of apportioning regulated costs between the intrastate and interstate jurisdictions, pursuant to Part 36 of the Commission's rules. 47 C.F.R. § 36 *et seq*. We note that at the time SBC's Petition was filed, the Commission was reviewing its jurisdictional separations procedures "to ensure that they meet the objectives of the 1996 Act, and to consider changes [that may be needed] in light of changes in the law, technology, and market structure of the telecommunications industry." *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22122, para. 2 (1997). On May 22, 2001, the Commission issued a Report and Order establishing a five-year interim freeze of the Part 36 separations rules, pending comprehensive reform of the separations process. This freeze will be in effect from July 1, 2001 to June 30, 2006, or until comprehensive reform is completed, whichever comes first. *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162 (rel. May 22, 2001).

[290] In the *Third Report and Order*, the Commission delegated authority to the Chief of the Common Carrier Bureau to issue an order to provide guidance for carriers in determining their carrier-specific costs directly related to number portability. The intent was for carriers to have this guidance before they filed their number portability end-user charge tariffs, which were to take effect no earlier than February 1, 1999. *Third Report and Order*, 13 FCC Rcd at 11740, para. 75. The result was the *Cost Classification Order*, 13 FCC Rcd 24495.

are under no obligation to attempt to exclude what they would define as number portability costs from the separations process.[291] USTA urges us to clarify that section 52.33(a)(1) of the *Third Report and Order* specifically provides for a full five-year cost recovery period.[292] USTA asserts that the *Third Report and Order* is not clear as to whether incumbent LECs serving the top 100 MSAs may recover their implementation costs from end users over five years from the date the incumbent LECs begin the charge, or whether they must recover those costs from end users within five years of February 1, 1999.[293]

(ii) Discussion

87. We clarify that after incumbent LECs have recovered their initial implementation costs of number portability through the end-user charge, any remaining number portability costs will be normal network costs recoverable under general rate-of-return and price-cap regulations.[294] We designed the end-user charge to ensure that incumbent LECs would have a reasonable opportunity to recover their initial costs of implementing number portability,[295] which make up the majority of their number portability costs.[296] Thus, we noted in the *Third Report and Order* that "once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis."[297]

88. In addition, we note that carriers' charges for providing query services to other carriers will continue beyond the five-year period of the number portability end-user charge.[298] Because of this fact, the Common Carrier Bureau, in its *Cost Classification Order*, required price cap LECs to treat the query service charge as a new service within the meaning of section 61.49(g) of our rules.[299] This action was consistent with the treatment of such charges in previously filed tariffs.[300] We affirm this requirement. Furthermore, we require rate-of-return LECs that provide

[291] SBC Petition at 7-8.

[292] USTA Petition at 3.

[293] *Id.*

[294] *See* 47 C.F.R. §§ 61.38-61.39, 61.41-61.49.

[295] *Third Report and Order*, 13 FCC Rcd at 11775, 11777, paras. 139, 144.

[296] *Id.* at 11724-25, para. 38.

[297] *Id.* at 11777, para. 144.

[298] *Id.* at 11778-79, para. 147.

[299] *Cost Classification Order*, 13 FCC Rcd at 24513, para. 47.

[300] *Id.*

number portability query service to treat the query service as a new service within the meaning of section 61.49(g) of our rules. We note SBC's request that incumbent LECs be able to utilize the separations process for their number portability costs before the issue of the distribution of joint costs is decided.[301] Although SBC's request was rendered moot by the December 1998 release of the *Cost Classification Order*, we established an exclusively federal cost recovery mechanism for number portability costs in the *Third Report and Order,* which precludes assignment and recovery of number portability costs for intrastate ratemaking purposes, through the jurisdictional separations process.[302]

89. Finally, we clarify that incumbent LECs will have five years to recover their implementation costs of number portability through an end-user charge, regardless of when they initiate the charge. Thus, for example, if an incumbent LEC began its recovery through an end-user charge on June 1, 1999, it would have 60 months from that date to recover its implementation costs of number portability. We will amend section 52.33(a)(1) of our rules to read: "The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after *the incumbent local exchange carrier's monthly number-portability charge takes effect*."[303]

c. Administration of the End-User Charge

(i) Background

90. UTC and Florida assert that the Commission should require that LECs imposing the end-user charge apply a standardized label, such as "Federal Number Portability Charge," because the myriad of new charges appearing on telecommunications bills has confused consumers.[304] UTC states that while it has taken steps to educate its members on the new charges, this task is difficult in the absence of standard labels, and those UTC members that are customers of multiple LECs are faced with even greater complexity, as each LEC bill may contain a different description of the same type of charge.[305] Florida requests the Commission implement public service announcements and require carriers to include bill inserts and explanations of new charges or services before they are introduced.[306] Florida also asserts that the Commission should establish sufficient staffing to educate consumers about the number portability end-user charge.[307]

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[301] SBC Petition at 7-8. *See supra* note 289 and accompanying text.

[302] *Third Report and Order*, 13 FCC Rcd at 11720, para. 29.

[303] *See* Appendix B § 52.33(a)(1) (emphasis added).

[304] Florida PSC Petition at 2; UTC Comments at 5-6.

[305] UTC Comments at 5-6.

[306] *See* Florida PSC Petition at 1-2, 4-5.

[307] *Id*. at 1-2.

(ii) Discussion

91. It appears that the issues raised by UTC and Florida regarding formats for telephone bills are identical to those raised in the *Truth-in-Billing NPRM* and decided on April 15, 1999 in the *Truth-in-Billing Order.*[308] In the *Truth-in-Billing Order,* we adopted broad principles and guidelines to promote truth-in-billing rather than rigid, detailed rules that govern carrier billing practices. We determined that services included on the telephone bill must be accompanied by a brief, clear description of the services rendered.[309] This description must convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged.[310] We observed that the industry and consumer focus groups may be best equipped to develop standard service descriptions that are compatible with the character limitations for text messages and other operational restrictions found in the systems currently used for billing.[311] In the *Truth-in-Billing Order,* we also noted that the failure of carriers to consistently label and accurately describe certain line item charges associated with federal regulatory action, such as the number portability end-user charge, has increased customer confusion about the nature of the charges.[312] To address this problem, we adopted a guideline requiring carriers to use clear standardized labels on telephone bills to refer to line item charges related to federal regulatory action.[313] In addition, we sought comment on whether to mandate specific standard labels for such charges.[314] Although we declined to formulate standardized descriptions for services, such as the "Federal Number Portability Charge" suggested by UTC and Florida, we encouraged carriers and consumer groups to come together to develop uniform terminology and jointly submit proposals to the Commission.[315] Because we are already considering whether to require specific standard labels for number portability service and other line items in another proceeding, we will not resolve that question here. Instead, we will again encourage the industry and consumer groups to develop uniform terminology to describe the number portability end-user charge on customer bills.

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[308] *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*Truth-in-Billing Order*).

[309] *Id.* at 7516, para. 38.

[310] *Id.* at 7517-18, para. 40.

[311] *Id.* at 7519 and 7525-26, paras. 43, 54.

[312] *Id*. at 7524-25, paras. 52-53.

[313] *Id*. at 7525-26, para. 54.

[314] *Id.* at 7526-27, 7537, paras. 55, 71.

[315] *Id.* at 7519, para. 43.

d. Levelization of the End-User Charge

(i) Background

92. We held in the *Third Report and Order* that incumbent LECs must levelize their monthly number portability charge over five years.[316] A levelized rate is one that is calculated to remain constant over a recovery period and is set at the level at which the discounted present value of the stream of payments is equal to the discounted present value of the stream of costs over the period.[317] We require levelization of the monthly charge to protect consumers from varying rates.[318] Incumbent LECs may collect less than the maximum allowable charge, or decline to collect the charge, from some or all of their customers as long as they do so in a reasonable and nondiscriminatory manner.[319] We will not, however, allow incumbent LECs to offset lower charges for some customers by collecting higher charges in areas where no competitive carriers are present. We also stated that after a carrier establishes its levelized end-user charge in the tariff review process, we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set.[320]

93. USTA asserts that incumbent LECs in the top 100 MSAs must be able to adjust their monthly number portability charge up or down to fully recover costs during the five-year recovery period without making the showing required by the Commission.[321] USTA asserts that demand for number portability can change, and customers can be lost, which makes it unlikely that an incumbent LEC's estimate of costs at the beginning of the five year recovery period will be the same as its actual costs throughout that period.[322]

(ii) Discussion

94. We decline at this time to change the rule adopted in the *Third Report and Order* concerning levelized charges.[323] USTA has presented no compelling reason to do so. We continue to recognize consumers' sensitivity to end-user charges, as well as our stated goal of

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[316] *Third Report and Order*, 13 FCC Rcd at 11776-77, para. 143.

[317] *Id.* at n.478.

[318] *Id.*, 13 FCC Rcd at 11776-77, para. 143.

[319] *Id.*

[320] *Id.* at 11777, para. 144.

[321] USTA Petition at 3-4.

[322] *Id*. at 4.

[323] *Third Report and Order*, 13 FCC Rcd at 11776-77, paras. 142-46.

protecting consumers from varying rates.[324] We note that we did not state in the *Third Report and Order* that carriers may never change their monthly end-user rates. Carriers may reduce their rates, provided they do so in a reasonable and nondiscriminatory manner.[325] Also, we did not foreclose carriers from increasing their rates, but held that to do so, carriers must show that their end-user charges were not reasonable based on the information available at the time they were initially set. We continue to believe that requiring such a showing will best protect consumers from rate variances. Based on our goal of protecting consumers from rate shifts, we decline to grant USTA's request.

6. Querying all Calls to an NXX

a. Background

95. In the *First Report and Order*, we concluded that "there is no direct correlation between the number of queries made and the number of telephone numbers that have been forwarded because queries will be performed on all calls to a particular switch *once any single number has been transferred or 'ported'* from that switch."[326] In the *Third Report and Order*, we concluded that "long-term number portability requires N-1 carriers to incur query costs for all interswitch calls to an NXX once number portability is available for that NXX, whether or not the terminating customer has ported a number."[327] We also stated that a carrier must query all interswitch calls to an NXX once number portability is "available" to determine whether the terminating customer has ported the telephone number.[328]

96. In the *Cost Classification Order*, the Bureau directed the incumbent LECs, when filing their long-term number portability tariffs, to demonstrate whether their demand assumptions included performing queries for all calls in NXXs where no number had been ported and to explain why it is necessary to query calls in this situation.[329]

97. USTA seeks clarification of the *Third Report and Order*, requesting that the Commission establish a specific procedure for opening an NXX code for portability.[330] USTA asserts that the procedures followed by carriers in opening NXX codes for portability varies among carriers. The carriers may either begin charging for queries on the Bellcore (now

[324] *Id.* at 11707, 11776-77, paras. 10, 143-44.

[325] *Id.* at 11776-77, paras. 142-44.

[326] *First Report and Order*, 11 FCC Rcd at 8463, para. 219 (emphasis added).

[327] *Third Report and Order*, 13 FCC Rcd at 11729, para. 46.

[328] *Id.*

[329] *Cost Classification Order,* 13 FCC Rcd at 24513, para. 48. We note that the issue of performing queries for calls to NXXs where no number has been ported also was raised in other related number portability proceedings.

[330] USTA Petition at 2, 7; USTA Comments at 2.

Telcordia) Local Exchange Routing Guide (LERG) effective date (which is in advance of an initial port), or begin charging for queries upon notice of the first service port.[331] USTA requests that the Commission establish a cost recovery mechanism for querying functions that provides no financial impact prior to implementation of "true number portability" and allows incumbent LECs with non-number portability capable switches to recover query costs only when legitimate queries are required.[332] USTA further requests that the Commission clarify that an incumbent LEC will not be required to perform query functions unnecessarily and prematurely.[333]

98. In addition to USTA's petition, Time Warner seeks reconsideration of the Bureau's order reconsidering the suspension[334] of Sprint Local Telephone Companies' (Sprint) long-term number portability tariffs on the ground that Sprint's tariffs indicate that Sprint intends to charge for long-term number portability default queries on calls to NXXs where no number has been ported.[335]

b. Discussion

99. We note that the issue of queries for calls to NXXs where no number has been ported has been raised in the context of other number portability proceedings. Comcast Cellular Communications, Inc., in its petition for reconsideration of the Commission's *Query Services Order*,[336] urged the Commission to address the issue of whether assessing default query charges on calls to non-ported NXXs is reasonable in regard to Bell Atlantic's interim query services tariff.[337] In the course of the long-term number portability tariff investigations, the Bureau sought information from the carriers to enable the Bureau to resolve this issue.[338] AT&T

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[331] USTA Petition at 7.

[332] *Id.* at 7-8.

[333] *Id.*

[334] *See Long-Term Telephone Number Portability Tariff Filings of Sprint Local Telephone Companies*, CC Docket No. 99-35, Reconsideration of Decision To Suspend and Investigate Tariff Filings of Sprint Local Telephone Companies, 14 FCC Rcd 3828 (1999) (*Sprint LNP Tariff Reconsideration Order*).

[335] Time Warner Petition for Reconsideration of Sprint LNP Tariff Reconsideration Order (filed Apr. 7, 1999).

[336] *Number Portability Query Services Order*, CC Docket No. 98-14, Order, 13 FCC Rcd 16117 (1998).

[337] Comcast Cellular Communications Petition for Reconsideration (filed Sept. 18, 1998). The Commission denied Comcast's petition in an order released December 17, 1998. *Comcast Cellular Communications, Inc. Petition for Reconsideration of Number Portability Query Services Order*, CC Docket No. 98-14, Memorandum Opinion and Order, 14 FCC Rcd 1664 (1998). The Commission concluded that the issue would be most appropriately handled after the filing of the incumbent LECs' number portability tariffs, when both end-user and query costs would be before the Commission for review.

[338] In the *Cost Classification Order,* the Bureau requested that carriers state whether their demand assumptions include performing queries for all calls even in NXXs where no telephone number has been ported and to explain why it is necessary to query all calls in this situation. *See Cost Classification Order*, 13 FCC Rcd at 24513, para. 48.

Communications and Time Warner filed comments regarding the tariffs filed by the incumbent LECs in response to the Bureau's *Cost Classification Order*, urging the Bureau to reject the tariffs of companies that impose default query charges on calls to NXXs with no ported numbers.[339] In response, SBC argued that the issue of whether an incumbent LEC may query all calls to NXXs where a number has not been ported was resolved in the Commission's *Third Report and Order*, which requires carriers to query all interswitch calls to an NXX once number portability is available for that NXX in order to determine whether the terminating customer has ported a number.[340]

100. In the *LNP Investigation Order*, we affirmed the Bureau's conclusion that querying all calls and charging carriers prior to the date that a number is ported in an NXX is premature and inconsistent with the *Third Report and Order* and *Cost Classification Order* requirement that customers may not be charged for number portability until they are able to receive the benefits of that service.[341] This conclusion is based on the language in the *First Report and Order* wherein we stated that queries will be performed on all calls once any single number has been transferred or ported from that switch.[342] This language contemplates that carriers will not perform queries until a number has been ported from an NXX. We further concluded that querying all calls and charging carriers prior to the date upon which a number is ported in an NXX is premature, unnecessary to prevent potential service disruption, and without value or purpose.[343]

101. We find that Sprint is not authorized to charge for long-term number portability default queries on calls made to NXXs where no number has been ported. In response to the Commission's decision in the *LNP Investigation Order*, however, Sprint amended its number portability tariff to discontinue the practice of charging N-1 carriers for long-term number portability default queries for calls to numbers in an NXX before a number has been ported from that NXX. Time Warner's petition for reconsideration is, therefore, moot and is denied.

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[339] AT&T Petition to Reject or Suspend Tariffs at 8 (filed Jan. 22, 1999); Time Warner Petition to Suspend for One Day and Set for Investigation at 1-2 (filed Jan. 21, 1999); s*ee also LNP Designation Order,* 14 FCC Rcd 3367.

[340] SBC Reply at 4-5 (filed Jan. 27, 1999).

[341] *LNP Investigation Order,* 14 FCC Rcd at 11949, para. 140; s*ee also Number Portability Designation Order,* 14 FCC Rcd at 3383, para. 46; *Third Report and Order*, 13 FCC Rcd at 11729, para. 46; *First Report and Order*, 11 FCC Rcd at 8463, para. 219.

[342] *LNP Investigation Order*, 14 FCC Rcd at 11947, para. 136 (citing *First Report and Order*, 11 FCC Rcd at 8463, para. 219). We also noted that the references in the *Third Report and Order* regarding queries to calls where number portability is "available" refer to paragraph 219 of the *First Report and Order*. *See Third Report and Order*, 13 FCC Rcd at 11711, para. 15 & n.58.

[343] *LNP Investigation Order*, 14 FCC Rcd at 11948-49, para. 139.

IV. ORDER ON APPLICATION FOR REVIEW

A. Operation Support Systems (OSS) Costs

1. Background

102. In the *Third Report and Order*, the Commission delegated authority to the Bureau to determine appropriate methods for apportioning joint costs among portability and non-portability services and to issue an order to provide guidance to carriers before they file their federal tariffs.[344] Consistent with the *Third Report and Order*, the Bureau's *Cost Classification Order* specifically addressed issues related to the determination of costs eligible for cost recovery, the apportionment of costs between portability and non-portability services, and the apportionment between end-user charges and query service charges.[345] In it, the Bureau reiterated the earlier conclusions of the *Third Report and Order* and, consistent with its mandates, adopted a two-part test for identification of carrier-specific costs directly related to number portability.[346] Pursuant to the *Cost Classification Order*, a carrier must demonstrate that the costs that are eligible for cost recovery through the federal recovery mechanism: (1) would not have been incurred by the carriers "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability.[347] The Bureau stated that this two-part test avoids overcompensation of LECs for their costs because LECs are already deemed to be recovering costs of general network upgrades through "standard recovery mechanisms."[348] Consistent with the *Third Report and Order*, the Bureau further held that LECs should not be allowed to recover such costs through both federal number portability charges and under price caps or rate-of-return regulation.[349] The Bureau stated that it required LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement number portability, such as repair and maintenance, billing, or order processing systems.[350]

103. Several carriers filed applications for review or clarification of the *Cost Classification Order*.[351] Petitioners argue that the *Cost Classification Order* is too restrictive and prevents carriers from recovering all costs associated with the implementation of number portability.[352]

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[344] *Third Report and Order*, 13 FCC Rcd at 11740, para. 75.

[345] *See Cost Classification Order,* 13 FCC Rcd at 24495, para. 1.

[346] *Id.* at 24500, para. 10.

[347] *Id.*

[348] *Id.* at 24500, para. 11.

[349] *Id.*

[350] *Id.* at 24501, para. 12.

[351] A list of petitioners and commenting parties appears at Appendix A.

[352] *See* Bell Atlantic Application at 2-3; Cincinnati Bell Application at 4-7; U S WEST Application at 7-13.

Specifically, petitioners argue that the two-part test set out in the *Cost Classification Order* exceeds the Bureau's delegated authority by excluding costs associated with OSS modifications that are the direct result of number portability by incorrectly classifying them as general network upgrades.[353] Petitioners also assert that the *Cost Classification Order* requires incumbent LECs to recover number portability costs through access charges and other cost recovery mechanisms prohibited by the *Third Report and Order*.[354] Petitioners challenge the Bureau's determination that the two-part test excludes recovery of some OSS costs associated with the implementation of long-term number portability.[355]

2. Discussion

104. We disagree with those commenters who assert that the *Cost Classification Order* is overly restrictive and prevents carriers from recovering costs associated with the implementation of number portability.[356] We agree with Ameritech that the Bureau set forth a reasonable methodology for the allocation of joint costs, and that this method is consistent with section 251(e)(2) of the Act and with the *Third Report and Order*.[357] Additionally, we have previously approved the two-part cost classification test, as stated in the *LNP Investigation Order*[358] and the *U S WEST LNP Investigation Order*.[359] We also disagree with the assertion that carriers are not allowed to recover the costs of OSS modifications. As we stated in the *LNP Investigation Order*, "[t]he *Cost Classification Order* does not exclude all costs for modifications to OSS, but instead excludes those costs incurred as 'an incidental consequence of number portability.'"[360] As we stated in the *Third Report and Order*, the costs carriers incur as an incidental consequence of number portability are not costs directly related to providing number portability and are, thus, ordinary costs of doing business in this new environment.[361] These costs may not be recovered through number portability charges. However, they may be recovered through price caps and

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[353] *Id.*

[354] *See* Cincinnati Bell Application at 7; U S WEST Application at 13-17.

[355] *See* Cincinnati Bell Application at 5-6; U S WEST Application at 12.

[356] *See* Bell Atlantic Application at 2-3; Cincinnati Bell Application at 4-7; U S WEST Application at 7-13.

[357] Ameritech Petition for Clarification or Review at 2-3.

[358] *LNP Investigation Order*, 14 FCC Rcd at 11901-02, paras. 40-44.

[359] *See Long-Term Number Portability Tariff Filings of U S WEST Communications, Inc.,* CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11983, 11994, paras. 21- 22 (1999) (*U S WEST LNP Investigation Order*).

[360] *LNP Investigation Order*, 14 FCC Rcd at 11902, para. 43.

[361] *See Third Report and Order*, 13 FCC Rcd at 11740, para. 72.

rate-of-return recovery mechanisms.[362]

105. We disagree with U S WEST's assertion that the Bureau requires incumbent LECs to recover network costs, including any network upgrade or OSS cost, through cost recovery mechanisms that the Commission has expressly forbidden, namely through access charges and through state recovery mechanisms.[363] In the *LNP Investigation Order*, we held that general network upgrades are not eligible number portability costs because they are assumed to be recovered through ordinary price cap and rate-of-return mechanisms.[364] We stated in the *Third Report and Order* that carrier-specific costs directly related to number portability may not be recovered through access charges.[365] In the *Cost Classification Order*, the Bureau correctly interpreted the *Third Report and Order* when it stated that carriers may recover some general network upgrades through price caps and rate-of-return regulation, but could not also recover these costs through the number portability cost recovery mechanism, because this could lead to double recovery.[366] Thus, the Bureau has not required incumbent LECs to recover carrier-specific costs directly related to number portability through forbidden cost recovery mechanisms, but has merely stated that general upgrade costs that are incidental to number portability that are not recovered through the number portability federal charges may be recovered elsewhere, through access charges and state cost recovery mechanisms.

106. We also disagree with those commenters who assert that the two-part cost allocation method constitutes an unconstitutional taking because carriers' costs will not be recovered.[367] U S WEST asserts that due to the Bureau's order, it must absorb approximately $85 million in number portability costs, reflecting expenses for OSS changes, switch hardware and software upgrades, and signaling system expansion.[368] We held in the *Third Report and Order* that incumbent LECs may recover their carrier-specific costs directly related to providing number portability through two federally tariffed charges,[369] including that portion of a carrier's joint costs that is demonstrably an incremental cost incurred in the provision of number portability.[370] We held that costs the carriers incur as an incidental consequence of number portability are not

[362] *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

[363] U S WEST Application at 13-17.

[364] *LNP Investigation Order*, 14 FCC Rcd at 11901-02, para. 42.

[365] *Third Report and Order*, 13 FCC Rcd at 11773, para. 135.

[366] *Cost Classification Order*, 13 FCC Rcd at 24500-01, para. 11.

[367] U S WEST Application at 17-19.

[368] *Id*. at 7.

[369] *Third Report and Order*, 13 FCC Rcd at 11773, 11778-79, paras. 135, 147.

[370] *Id.* at 11740, para. 73.

costs directly related to number portability.[371] The Bureau correctly interpreted the *Third Report and Order* that the costs of general network upgrades are recoverable through "standard recovery mechanisms" under price caps or rate-of-return regulation.[372] We also held in the *Third Report and Order* that carriers not subject to rate regulation may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Act.[373] Because carriers will be allowed to recover their costs through federally tariffed charges, through standard recovery mechanisms, or in any lawful manner, we do not agree that carriers are required to incur costs for which no cost recovery is allowed.

107. Moreover, we disagree with those commenters who assert that the Bureau did not give full consideration to arguments that certain OSS modifications were necessary to ensure that there will be no impairment of "quality, reliability, or convenience."[374] We have previously considered and rejected this argument. In the *U S WEST LNP Investigation Order*, the Commission noted that it previously considered and rejected the argument that all costs allegedly incurred to prevent any degradation of service, however insignificant, are eligible number portability costs.[375] Although the industry, the NANC, and the Commission all considered degradation of the quality of service when selecting the method used to implement number portability,[376] in the *First Report and Order* we expressly stated that the implementation of any long-term cost recovery method should not *unreasonably* degrade existing service quality or network reliability.[377] We affirm our earlier finding that this performance criterion is not authority for the proposition that all costs incidental to achieving that performance level are costs incurred for the provision of number portability.[378] Thus, OSS modification costs are eligible for cost recovery only to the extent that they are directly related to providing number portability.[379]

108. We disagree with Cincinnati Bell's assertion that the Bureau's cost allocation policy contradicts the Commission's previous statements that all number portability costs should be recoverable except to the degree the upgrade enhances other services.[380] We affirm our earlier

[371] *Id*. at para. 72.

[372] *Cost Classification Order*, 13 FCC Rcd at 24500, paras. 10-11.

[373] *See Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

[374] Bell Atlantic Application at 2-3; Cincinnati Bell Application at 3-4.

[375] *U S WEST LNP Investigation Order,* 14 FCC Rcd at 12000-01, para. 36.

[376] *Cost Classification Order*, 13 FCC Rcd at 24501-02, para. 13.

[377] *First Report and Order*, 11 FCC Rcd at 8378, para. 48.

[378] *U S WEST LNP Investigation Order,* 14 FCC Rcd at 12000-01, para. 36; *see also Cost Classification Order*, 13 FCC Rcd at 24501-02, para. 13.

[379] *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

[380] Cincinnati Bell Application at 4.

determination in the *LNP Investigation Order* and the *U S WEST LNP Investigation Order* that costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business in this new environment and represent general network upgrades.[381] Doing otherwise could overcompensate LECs who are already recovering costs of general network upgrades through "standard recovery mechanisms."[382] Such overcompensation would violate the provisions of the *Third Report and Order* that only those costs directly related to providing number portability are recoverable through federal number portability recovery mechanisms.[383] We also affirm the Bureau's requirement that LECs must distinguish the costs of providing number portability itself, which are recoverable through the federal charges provided in the *Third Report and Order*, from general network upgrade costs recoverable through price caps and rate-of-return mechanisms in order to avoid possible double-recovery.[384]

109. We are not persuaded by Ameritech's assertion that because we have imposed access to OSS as a condition of BOC long-distance entry under section 271, OSS is clearly necessary to number portability and all OSS costs must be recoverable.[385] In the *LNP Investigation Order*, we clarified that number portability cost recovery issues were not considered in the context of Ameritech's application to provide interLATA services in Michigan.[386] We further held that statements we made in that context do not establish a standard for the recovery of OSS costs, nor should they be relied upon by the incumbent LECs as guidance in determining the eligible portion of OSS costs to be allocated to number portability tariffs.[387] In the *Third Report and Order,* we noted that section 251(e)(2) "expressly and unconditionally grants the Commission authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis."[388] We concluded that an exclusively federal recovery mechanism would enable us to satisfy most directly our competitive neutrality mandate, and allowed incumbent LECs to recover their costs pursuant to the requirements we set forth.[389] We fail to see how the fourteen-point checklist for BOC long-distance entry under section 271 negates our authority under sections 251 or 271, or how it changes our determination that not all costs of network upgrades

[381] *LNP Investigation Order*, 14 FCC Rcd at 11916-17, para. 73; *U S WEST LNP Investigation Order,* 14 FCC Rcd at 12000-01, paras. 35-37.

[382] *See Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

[383] *Third Report and Order*, 13 FCC Rcd at 11740, para. 72; *see also Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

[384] *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

[385] Ameritech Petition for Clarification or Review at 7-8.

[386] *LNP Investigation Order*, 14 FCC Rcd at 11902, para. 44.

[387] *Id.*

[388] *Third Report and Order*, 13 FCC Rcd at 11719, para. 28.

[389] *Id.* at 11719-20, paras. 28-29.

could be recovered through federal number portability tariffs. We therefore disagree with Ameritech's assertion and deny its request to recover all OSS upgrade costs necessary for number portability through federal number portability end-user or query charges.

110. We also disagree with U S WEST's statement that we should have used an alternative method for calculating eligible OSS costs, rather than the two-part "but for" test adopted by the Bureau.[390] U S WEST asserts that the economically proper way to calculate the direct costs of number portability would have been to take the costs of network upgrades that would not have been deployed absent the number portability mandate, add the extra costs of accelerating the deployment of otherwise-planned upgrades solely to meet the Commission's timetable, and subtract the value of the incidental non-portability network benefits these upgrades cost.[391] We believe that such a formula would be administratively difficult and does not conform to our previously-adopted formula. Specifically, we have not allowed LECs to add the extra costs of accelerating the deployment of otherwise-planned upgrades, because, as we stated in the *Third Report and Order*, upgrades that will enhance LECs' services generally are not costs eligible for recovery through federal number portability tariffs.[392] We also stated in the *LNP Investigation Order* that the two-part cost eligibility test avoids overcompensation of LECs for their costs because LECs are already deemed to be recovering costs of general network upgrades through standard recovery mechanisms.[393] U S WEST has presented no compelling arguments to overturn the two-part formula adopted in the *Cost Classification Order*,[394] and we therefore deny its request.

111. We further disagree with Cincinnati Bell's assertion that the Bureau's statement that number portability costs not directly related to the provision of number portability are to be treated as general network upgrades means that LECs will be competitively disadvantaged, and the cost recovery will not be competitively neutral.[395] We stated in the *Third Report and Order* that costs not directly related to providing number portability are not costs of providing number portability that must be borne by all telecommunications carriers on a competitively neutral basis, as mandated by statute.[396] Thus, costs that do not meet our two-part cost recovery formula are not subject to the competitive neutrality mandate. Additionally, as noted above, carriers cannot claim they are competitively disadvantaged because they are not allowed to recover their number portability costs, because they are allowed to recover such costs either through the

[390] U S West Application at 12-13.

[391] *Id.* at 13.

[392] *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

[393] *LNP Investigation Order*, 14 FCC Rcd at 11901-02, para. 42.

[394] *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

[395] Cincinnati Bell Application at 7.

[396] *See Third Report and Order*, 13 FCC Rcd at 11724, para. 37.

number portability federal mechanism or through "normal" cost recovery mechanisms.

B. 911 Costs

1. Background

112. Several carriers request that we clarify that incremental costs incurred to adapt and upgrade 911 equipment, facilities, databases and software are required for the provision of number portability, and thus all upgrade costs should be recoverable.[397] Bell Atlantic asserts that its system that supports 911 service was modified to permit a carrier to update the 911 database for telephone numbers in NXXs assigned to another carrier and to enable 911 personnel to direct database problems to the correct service provider.[398] Bell Atlantic asserts that this work does not fit within the Bureau's narrow reading of the Commission's rules, but few customers would find porting satisfactory if they could not use 911 or if that service were not reliable.[399]

2. Discussion

113. We recognize the significant public safety concerns involved with 911 services. We, therefore, clarify that carriers will be allowed to treat and recover as number portability costs those costs to modify their 911 and E911 services and databases only to the extent that such OSS modifications to the 911 and E911 database provide updates of customer information or line and number information for ported numbers. In the *LNP Investigation Order,* we determined that the incumbent LECs may recover the costs of modifying E911 systems because of public interest considerations.[400] Because of the public safety concerns involved with 911 and E911 service, we made an exception to the cost recovery standards set out in the *Cost Classification Order* to allow certain types of OSS modifications to these systems.[401] Thus, we allow these carriers to treat and recover as number portability costs those costs necessary to modify their 911 services and databases only to the extent that such costs were incurred to provide number portability.[402] We stated, however, that modifications to OSS systems that relate to the LECs' provision of 911 or E911 service as part of the local service or plain old telephone service the LECs provide their own customers are not eligible number portability costs and may not be recovered through end-user and query service charges. Other costs associated with 911 or E911 modifications to the incumbent LECs' local service to its customers are general network upgrade costs recoverable

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[397] *See* Ameritech Petition for Clarification or Review at 10-11; Bell Atlantic Application at 3-4; Cincinnati Bell Application at 4-6.

[398] Bell Atlantic Application at 4.

[399] *Id.*

[400] *LNP Investigation Order*, 14 FCC Rcd at 11905-06, para. 52.

[401] *Id.*

[402] *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

through price caps and rate-of-return mechanisms.[403]

C. Joint Costs

1. Recovery of Advancement Costs

a. Background

114. In the *Third Report and Order*, we determined that carriers could not recover the entire cost of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade relates to the provision of number portability.[404] We determined that only the portion of a carrier's joint costs that is a demonstrably incremental cost incurred in the provision of long-term number portability is a carrier-specific cost directly related to the provision of long-term number portability.[405] We allowed LECs to recover only the incremental costs of upgrades through the federal number portability recovery mechanism.

115. Advancement costs are primarily those costs arising from the cost of money or the time value of money that have been incurred for the deployment of upgrades or modifications to the network at an accelerated pace or earlier date than provided for in the LECs' original plans.[406] Consistent with the *Third Report and Order*, the Bureau's *Cost Classification Order* stated that LECs may claim only the incremental portion of advancement costs directly related to the provision of number portability.[407] Bell Atlantic seeks review of the *Cost Classification Order* on the grounds that all advancement costs associated with the costs of advancing purchase should be recovered through the federal number portability cost recovery mechanism.[408] Bell Atlantic posits that the entire cost of advancing purchases is a direct cost of number portability, because the advanced cost was incurred specifically to provide number portability and would not have been incurred otherwise.[409]

b. Discussion

116. We disagree with Bell Atlantic's contention that the entire cost of advancing purchases is a direct cost of number portability. We affirm the Bureau's interpretation that only the incremental portion of advancement costs that are directly related to the provision of number

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[403] *Third Report and Order*, 13 FCC Rcd at 11740, paras. 72-73.

[404] *Id.* at 11740, para.73.

[405] *Id.*

[406] *Cost Classification Order*, 13 FCC Rcd at 24507 n.70.

[407] *Id.* at 24507-08, para. 30.

[408] Bell Atlantic Application at 4-5.

[409] *Id*. at 5.

portability are eligible number portability costs.[410] In the *Third Report and Order*, we specifically rejected requests that we classify the entire costs of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade related to the provision of number portability.[411] In recognizing that carriers incur costs for software generics, switch hardware, and OSS, Signaling System 7 (SS7) or Advanced Intelligent Network (AIN) upgrades which provide a wide range of services and features, we stated that only a portion of these joint costs are carrier-specific costs directly related to providing number portability.[412] We determined that all of a carrier's dedicated number portability costs, such as for number portability software and for service control points (SCPs) and signal transfer points (STPs) reserved exclusively for number portability would be subject to the competitive neutrality mandate of section 251(e)(2).[413] We reasoned that apportioning costs in this way would further the goal of section 251(e)(2) by recognizing that providing number portability will cause some carriers, including small and rural LECs, to incur costs that they would not ordinarily have incurred in providing telecommunications services.[414] At the same time, this approach recognizes that some upgrades will enhance carriers' services generally and presumably provide additional revenues to offset those upgrade costs, and that at least some portion of such upgrade costs are not directly related to providing number portability.

117. We agree with the Bureau that these same principles apply to advancement costs.[415] Even though the costs of planned upgrades may have been advanced by number portability requirements and LECs may not have deployed these upgrades early "but for" our portability implementation schedule, the associated upgrades provide general enhancements to the LECs' networks. We believe that allowing the recovery of advancement costs associated with general enhancements to the LECs' networks would violate the competitive neutrality mandate of section 251(e)(2) and may lead to double recovery of these costs. Moreover, we believe that advancement costs associated with upgrades that enhance a carrier's services generally and presumably produce additional revenues are costs incurred as an incidental consequence of number portability and are not costs directly related to providing number portability.[416] Therefore, we affirm the Bureau's conclusion that only the advancement costs equaling the difference between the costs of the upgrade with the number portability function and its costs

[410] *Cost Classification Order*, 13 FCC Rcd at 24507-08, para. 30.

[411] *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

[412] *Id.* at 11740, paras. 72, 73. (Carrier-specific costs directly related to providing number portability are limited to costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another).

[413] *Id.* at 11740, para. 73.

[414] *Id.*

[415] *See Cost Classification Order,* 13 FCC Rcd at 24507-08, para. 30.

[416] *Third Report and Order,* 13 FCC Rcd at 11740, paras. 72-73.

without that function may be claimed as eligible number portability costs.[417]

V. FINAL REGULATORY FLEXIBILTY CERTIFICATION

118. The Regulatory Flexibility Act of 1980, as amended (RFA),[418] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[419] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[420] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[421] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[422]

119. Section 251(b)(2) of the Act seeks to remove one barrier to competition by requiring all local exchange carriers (LECs) "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." On May 5, 1998, the Commission adopted the *Third Report and Order* in this docket, implementing section 251(e)(2) of the Act with regard to the costs of providing local number portability. In the *Third Report and Order*, the Commission concluded that incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability on a competitively neutral basis, through two federal charges: (1) a monthly number-portability charge applicable to end users; and (2) a number portability query-service charge, applicable to carriers on whose behalf the LEC performs queries. On December 14, 1998, pursuant to authority delegated to it in the *Third Report and Order*, the Bureau issued the *Cost Classification Order*, which specifically addressed issues related to the determination of costs eligible for cost recovery, the apportionment of costs between portability and non-portability services, and apportionment between end-user charges and query service charges.

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[417] *Cost Classification Order*, 13 FCC Rcd at 24507-08, para. 30.

[418] The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[419] 5 U.S.C. § 605(b).

[420] 5 U.S.C. § 601(6).

[421] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[422] 15 U.S.C. § 632.

120. This *Order* responds to three types of issues raised in petitions for reconsideration and clarification and applications for review. First, it clarifies numerous points made in the *Third Report and Order*.[423] Second, it affirms several issues decided in the *Third Report and Order* and the *Cost Classification Order*.[424] And third, it denies certain requests concerning cost recovery.[425] No party filed comments or applications for reconsideration on the regulatory flexibility analysis contained in the *Third Report and Order*. In this *Order*, we have considered and addressed the comments of parties concerning recovery by non-LNP capable small and rural incumbent LECs of the costs of number portability query service and Local Number Portability Administration.

121. All clarifications contained in this item are of a minor, procedural nature except one clarification that will result in a positive net impact on small entities. Small and rural incumbent LECs that do not yet provide number portability functionality but do provide service under Extended Area Service arrangements may recover their N minus one query and Local Number Portability Administration costs through end-user charges. Because this will allow small and rural incumbent LECs to recover their costs, it will have a *de minimus* impact on the affected

[423] Specifically, it clarifies that: (1) the local number portability administrator may assess shared costs on all eligible telecommunications carriers, not just carriers with existing long-term number portability contracts; (2) incumbent LECs must allocate their shared costs between the query service and end-user charges; (3) carriers may not recover number portability costs from other carriers through interconnection charges or resale prices; (4) an incumbent LEC may assess the number portability end-user charge on resellers and purchasers of switching ports as unbundled network elements as long as it provides number portability functionality; (5) CMRS providers are co-carriers, not end users, and, therefore, are not subject to an end-user charge; (6) carriers who offer Feature Group A access lines may assess an end-user surcharge on such lines; (7) small and rural incumbent LECs that do not yet provide number portability functionality but provide EAS service may recover their N-1 query and Number Portability Administration costs through end-user charges; (8) incumbent LECs may not begin billing carriers for N-1 queries until a number has been ported from an NXX; and, (9) after the five-year recovery period for implementation costs of number portability through the end-user charge, any remaining costs will be treated as normal network costs.

[424] Specifically, it affirms that: (1) the Commission has exclusive jurisdiction over the distribution and recovery of costs associated with intrastate and interstate number portability; (2) carriers not subject to rate-of-return regulation or price caps may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act; (3) Centrex lines may be assessed one end-user number portability charge per line and a PBX trunk may be charged nine end-user number portability charges per PBX trunk; (4) Plexar may be assessed one number portability charge per line; (5) incumbent LECs may impose an end-user charge in service areas where the switch is number-portability-capable; (6) price cap LECs and rate-of-return LECs should treat the query services charge as a new service within the meaning of section 61.38 of our rules; (7) carriers may only recover carrier-specific costs directly related to the provision of number portability; (8) carriers must distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement number portability; (9) costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business and represent general network upgrades; and (10) costs that do not meet the two-part cost recovery test may not be recovered through number portability cost recovery mechanisms. It also affirms (11) the adoption of the end-user revenue allocator; (12) the rules adopted in the *Third Report and Order* concerning levelized charges; and (13) the two-part cost recovery test.

[425] Specifically, it denies requests that certain costs associated with number portability be calculated based on avoided costs and TELRIC.

small entities.

122. Therefore, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of small entities.

123. The Commission will send a copy of the *Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[426] In addition, the *Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[427]

VI. PAPERWORK REDUCTION ANALYSIS

124. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement of OMB approval in the Federal Register.

VII. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, this Memorandum Opinion and Order on Reconsideration and Order on Application for Review ("Order") and the revisions to Part 52 of the Commission's rules, 47 C.F.R. Part 52, are hereby ADOPTED. The requirements in this Order shall become effective 30 days after a publication of this Order or summary thereof in the Federal Register.

126. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, the Petitions for Reconsideration and/or Clarification and the Applications for Review ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

127. IT IS FURTHER ORDERED that Williams' Petition for Expedited Waiver and AMSC's Waiver Request are GRANTED, as discussed herein.

128. IT IS FURTHER ORDERED that NECA's Expedited Petition for Waiver is DENIED as discussed herein.

129. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final

[426] *See* 5 U.S.C. § 801(a)(1)(A).

[427] *See* 5 U.S.C. § 605(b).

Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

130. IT IS FURTHER ORDERED that the collection of information contained within this Order is contingent upon approval by the OMB. The Commission will publish a document at a later date announcing OMB approval.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A: PARTIES TO THE PROCEEDING

Petitions for Reconsideration and Clarification

Ameritech
Bell Atlantic
BellSouth Corporation
Comcast Cellular Communications, Inc.
Florida Public Service Commission
MCI Telecommunications Corporation
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
New York Department of Public Service
Oklahoma Rural Telephone Coalition
Pennsylvania Office of the Consumer Advocate
Personal Communications Industry Association
SBC Communications Inc.
Sprint Local Telephone Companies
Texas Statewide Telephone Cooperative, Inc.
U S WEST, Inc.
United States Telephone Association
WorldCom, Inc.

Responses to and Comments on Petitions for Reconsideration and Clarification

AT&T Corp.
Bell Atlantic
BellSouth Corporation
Cincinnati Bell Telephone Company
Lockheed Martin IMS
Maine Public Utilities Commission
MCI Telecommunications Corporation
Organization for the Promotion and Advancement of Small Telecommunications Companies
SBC Communications Inc.
Telephone Resellers Association
United States Telephone Association
UTC, the Telecommunications Association
Vanguard Cellular Systems, Inc.

Reply Comments

Ameritech
Bell Atlantic
BellSouth Corporation
Comcast Cellular Communications, Inc.
MCI Telecommunications Corporation
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
SBC Communications Inc.
Sprint Local Telephone Companies
US WEST Communications, Inc.

Applications for Review and Petition for Clarification or Review of Joint Cost Order

Ameritech
Bell Atlantic
Cincinnati Bell Telephone Company
U S WEST Communications, Inc.

Oppositions to Comments on Applications for Review and Petition for Clarification or Review of Joint Cost Order

AT&T Corp.
BellSouth Corporation
Independent Telephone & Telecommunications Alliance
United States Telephone Association

Replies and Responses

Bell Atlantic
Cincinnati Bell Telephone Company
SBC Communications Inc.
U S WEST Communications, Inc.

APPENDIX B—FINAL RULES

PART 52 - NUMBERING

1. The authority for Part 52 continues to read as follows:

AUTHORITY: Secs 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Part 52, subpart C, section 52.33(a) of Title 47 of the Code of Federal Regulations is amended to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability

(a) Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1), a number portability query-service charge, as specified in paragraph (a)(2), and a monthly number-portability query/administration charge, as specified in paragraph (a)(3).

(1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after the incumbent local exchange carrier's monthly number-portability charge takes effect.

(i) * * *

(ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and/or Feature Group A access lines, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(i) of this section, as if the incumbent local exchange carrier were serving those carriers' end users.

(iii) * * *

(iv) * * *

(2) * * *

(3) An incumbent local exchange carrier serving an area outside the 100 largest metropolitan statistical areas that is not number-portability capable but that participates in an extended area service calling plan with any one of the 100 largest metropolitan statistical areas or with an adjacent number portability-capable local exchange carrier may assess each end user it serves

one monthly number-portability query/administration charge per line to recover the costs of queries, as specified in paragraph (a)(2), and carrier-specific costs directly related to the carrier's allocated share of the regional local number portability administrator's costs, except that per-line monthly number-portability query/administration charges shall be assigned as specified in paragraph (a)(1) with respect to monthly number-portability charges.

(i) Such incumbent local exchange carriers may assess a separate monthly number-portability charge as specified in paragraph (a)(1) but such charge may recover only the costs incurred to implement number portability functionality and shall not include costs recovered through the monthly number-portability query/administration charge.

(ii) The monthly number-portability query/administration charge may end no later than five years after the incumbent local exchange carrier's monthly number-portability query/administration charge takes effect. The monthly number-portability query/administration charge may be collected over a different five-year period than the monthly number-portability charge. These five-year periods may run either consecutively or concurrently, in whole or in part.

* * * *

SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART

Re: Telephone Number Portability (CC Docket No. 95-116)

I dissent from the part of this Order that authorizes a new monthly number portability charge on certain customers' bills for a service those customers are not even able to obtain. In the Telecommunications Act of 1996, Congress recognized that the inability of customers to retain their telephone number when they switch service providers would impede the development of competition. Congress therefore imposed a number portability obligation on local exchange carriers.

To implement this directive of the 1996 Act, the Commission in previous orders required carriers that received a request from another carrier to upgrade their networks to provide number portability. For those carriers that receive such a request, the Commission allowed, but did not require, carriers to recover from their customers the costs of upgrading their networks. Importantly, however, the Commission prohibited carriers from charging customers until local number portability was actually available to those customers. As a result, carriers could only assess a monthly charge on customers that receive the direct benefits of number portability. Moreover, the Commission determined that carriers could only assess the charge for five years, and that any ongoing costs would have to be recovered from other existing mechanisms.

In today's Order, the Commission foregoes that approach, and allows carriers that have not upgraded their networks to assess a monthly charge for ongoing costs. Customers of these carriers may therefore have to pay a monthly fee, but will not be able to retain their phone number if they switch providers. Even more of a problem, this fee will have a disproportionate impact on consumers served by smaller, more rural carriers, and could result in charges estimated as high as $1.00 per month for some customers.

Certainly carriers are entitled to recover the legitimate costs of implementing number portability. But customers should be receiving the real and direct benefits of number portability before they are forced to pay a monthly fee. I do not believe that today's Order appropriately balances these concerns. I would have followed the previous Commission's decision and not allowed carriers to impose a new line-item until their customers receive the benefits of the service. Indeed, just last month, this Commission determined that the costs of implementing number conservation measures should be recovered from other existing mechanisms, and not from a new line-item on customers' bills. I see no reason to adopt a different approach here. Consumers should be rightly dissatisfied when they are asked to pay for services that are not available to them.