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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Comments of the United States Telephone Association on
Further Notice of Proposed Rulemaking

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SUMMARY

As the Commission properly recognized, even before the Telecommunications Act of 1996 was passed, number portability offers "substantial public interest benefits because it provides consumers . . . flexibility in the way they use their telecommunications services, and because it fosters competition among service providers."

At the same time, the Commission was presented with record evidence demonstrating that the costs of local number portability would be quite substantial, including the costs of designing, building and operating a database system; designing and deploying a network architecture, installing number portability software as well as generic software upgrades and advanced features in older switches, and modifying existing support systems and billing systems. The Commission's performance requirements and deployment schedule for local number portability have also increased the costs of local number portability. Consequently, the cost recovery methods adopted in this proceeding are crucial to attainment of the public interest benefits.

The Telecommunications Act mandates the deployment of local number portability by local exchange carriers, 47 U.S.C. § 251(b)(2) and provides that the costs of number portability are to be borne by "all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2)(emphasis added). Thus, it is appropriate to design a cost recovery mechanism which requires all telecommunications carriers to bear the costs, even telecommunications carriers who are not LECs (or CMRS providers to the extent they also deploy number portability as ordered by the Commission).

USTA describes in its comments a comprehensive plan for competitively neutral cost recovery for local number portability. This plan is similar in concept and execution to the method by which regulatory fees and the costs of the Telecommunications Relay Service are recovered. Under this plan, USTA explicitly follows the three-part division of costs described in the Notice. Additionally, USTA notes that the cost recovery plan must effectively deal with the costs of local number portability incurred by small and rural LECs who have no independent business justification for individual network upgrades required to process ported calls. The cost recovery plan must also address costs incurred by carriers outside the number portability area who originate calls terminating on ported numbers.

In USTA's plan, a neutral, third-party administrator will assess and collect a specific charge from all telecommunications carriers, the amount of the charge to be based on gross telecommunications revenues. These revenues would be collected and then distributed out to carriers who deploy local number portability, based on their submitted costs. Submitted costs would include only non-traffic sensitive, carrier-specific network modifications. Certain traffic-sensitive costs, e.g., costs for SCPs (including downloads from the Service Management Systems "SMS"), STPs, SS7 transport, and database queries would be excluded. This plan would be national in scope. Type 1 costs, including the costs of constructing and operating a regional or state SMS system, would be allocated among all carriers within the region or state served by that SMS, using a similar mechanism.

Carriers would report their individual local number portability costs to this administrator, based on Commission guidelines as to what costs are to be included and on cost estimates for various network components obtained from vendors. All non-recurring costs would be amortized over a five-year period in order to minimize their impact. Procedures for audits of the national administrator would be established.

USTA believes this proposal is superior to one in which no allocation mechanism is used, and all carriers recover all costs through system of inter-carrier charges or increases in local rates or access rates. Such a system may not meet the requirement of the act that the costs be borne by all telecommunications carriers on a competitively neutral basis. Such a system would be excessively complex, could lead to needless additional disputes, and create competitive disparities. This is particularly so where the costs of local number portability incurred by incumbent LECs would be reflected in local rates (requiring a separations process), access charges (which are in need of reform), and/or the negotiated rates for interconnection and unbundled elements provided to competitors. Moreover, the Telecommunications Act suggests a general policy in favor of explicitly identifying the costs of various public interest initiatives, and creating explicit mechanisms to fund them, rather than distorting rates through implicit subsidies.

USTA's proposal is relatively simple from a regulatory standpoint. It would require no tariffs. It would eliminate the need for referral to a Federal-State Joint Board to determine the appropriate amount of number portability costs to be reflected in interstate rates. It would eliminate the need for exogenous adjustments to the price cap indexes used to set rates for regulated services. Rather, this proposal is premised upon the Commission's jurisdictional authority in Section 251(e) to create or designate impartial entities to administer numbering, and to establish a competitively neutral basis for recovering the costs of local number portability.

The Commission is correct to note that the Act merely requires that the costs be borne by "all telecommunications carriers," and does not address end user charges. Consequently, USTA focuses on the method of allocating costs, collecting payments, and distributing receipts among carriers. But there is nothing in the Act which precludes carriers from utilizing a specific charge to their end users to recover their costs of local number portability. Because end user customers obtain the benefit of lower prices and more advanced services from the competition facilitated by local number portability, number portability charges to end users should be explicitly permitted by the Commission's conclusions in this proceeding.

Moreover, the cost recovery mechanism, under the two principles for competitive neutrality described in the Notice, may not have the effect of incenting end users to switch carriers because one class of carriers must pass on a greater share of number portability costs to their end users. Consequently, USTA believes that an explicit charge, identified as a local number portability charge, assessed by all carriers, is the preferable mechanism and is most likely to be competitively neutral - competition would be focused on price and quality of service. Such a charge could be calculated either as a fixed amount, as in the Subscriber Line Charge, or as a fixed percentage of the amount of a monthly service bill.

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Comments of the United States Telephone Association on Further Notice of Proposed Rulemaking

INTRODUCTION

The United States Telephone Association (USTA) respectfully submits its comments on local number portability cost recovery in the above-referenced proceeding.[1] USTA is the principal trade association of the Local Exchange Carrier (LEC) industry, and has been an active participant in all phases of implementing local number portability. USTA members will be both providers and beneficiaries of local number portability.

DISCUSSION

I. The Further Notice's Division of Local Number Portability Costs Is A Useful Framework for Addressing Cost Recovery Issues

A. The Commission Should Recognize Two Additional Types of Costs Involved In Providing Long-Term Service Provider Portability

The Further Notice tentatively concludes that three types of costs are involved in providing long-term service provider probability, Type 1 costs incurred by all carriers using shared regional SMS databases; Type 2 carrier-specific costs directly related to providing number portability, and Type 3 carrier-specific costs not directly related to number portability.

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[1]In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket No. 95-116 (July 2, 1996)("Further Notice").

Further Notice, para. 208. This general framework is a useful starting point for analysis of cost recovery issues, and USTA's comprehensive cost recovery plan utilizes these terms.

USTA proposes two additional classifications which may also be useful: Type 2a costs - carrier-specific costs directly related to number portability in that no business case can be made for that particular company or fcr a particular switch, and which are incurred solely because of the Commission's regulatory mandate, and Type 4 costs, costs of investment required as a direct result of implementation of local number portability incurred by LECs with operations outside the area in which local number portability is provided.

1. The Commission Must Address Costs Incurred by Carriers Who Would Not Deploy Software Upgrades for Competitive Reasons, But Who Must Incur Such Costs To Provide Local Number Portability

The Further Notice concludes that carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades. Further Notice, para. 226. Yet many smaller LECs cannot afford the network upgrades necessary to implement a database method of local number portability, e.g., network upgrades to provide SS7 or AIN technologies, and have no independent reason to make such investments. USTA believes that, because there is no independent justification for such investments, these costs can be considered as "directly-related to local number portability," and should be treated as such.

Consequently, USTA recommends that the Commission recognize a new category of cots, Type 2a costs, defined as costs incurred by carriers with universal service obligations, with less than 2% of the nation's access lines, who incur certain costs solely to comply with the mandate to provide local number portability. USTA recommends that these carriers be permitted to include the costs of upgrading SS7 capabilities, adding intelligent network capabilities, and other hardware and software modifications, required to permit these carriers to continue to process calls, in the national funding mechanism described infra. Again, recovery of Type 2a costs through the national funding mechanism would be limited to those LECs which meet the requirements of Section 251(f)(2) of the 1996 Act, e.g., have fewer than 2 percent of the Nation's subscriber lines installed, in the aggregate nationwide. 47 U.S.C. § 251(f)(2), and who have been designated as eligible carriers under Section 214(e). See 47 U.S.C. § 214(e).

The Commission notes that its deployment plan limits the deployment of long-term portability to areas where carriers are already offering, or are likely to offer, competing telephone services, expenditures are limited to areas where incumbent carriers would, solely for competitive reasons, likely upgrade their networks. Further Notice, para. 228. Nonetheless, the Commission has not entirely limited expenditures to such areas. There are many small and rural LECs within the top 100 MSAs. These incumbent LECs would not upgrade their networks to AIN, and do not have sufficient customer demand to justify the provision of these features. A list of these companies and the MSAs involved is provided as Appendix A.

Where customer demand does justify provision of such services, Congress intended that these LECs would not be required to bear the cost of such investments, but could share in the economies of scale and scope of larger incumbent LECs. 47 U.S.C. § 259. However, as explained infra, local number portability cannot be provided solely by using the facilities of a larger incumbent LEC, e.g., routing all telephone calls to a neighboring tandem switch. Additionally, although a state commission may grant such LECs a suspension of the Section 251(b)(2) requirement under Section 251(f)(2), a suspension of the legal requirement cannot suspend the technical requirement to make significant investments in the network in order to continue to process calls. Consequently, merely exempting such LECs from this obligation does not address the issue.

Thus, these companies are legally obligated to provide local number portability, and will incur the costs of such upgrades, many of them in the near future, as they provide service within one of the top 100 MSAs.[2] USTA believes these costs can be considered within the plain language of the statute as "costs of establishing number portability," but for the obligation to provide number portability these costs would not have been incurred. Consequently, costs which meet this criteria should be included in a cost recovery plan.[3]

The Commission stated that it believed that provision of the services made possible by such SS7 and AIN upgrades will help LECs compete. Further Notice, para. 227. The Further Notice states that requiring such costs to be borne by the individual carriers will provide an incentive to minimize the extent of necessary modifications, and that new entrants will incur similar costs to build networks with at least the same capabilities. Deployment of SS7 or AIN technology is, for many LECs, not a routine network upgrade. Where costs demonstrably would not have been borne absent the regulatory mandate of Section 251(b) to provide local number portability, and of Section 214(e) to provide local service, there is no need for an incentive to minimize costs. Additionally, the decision to make significant investments which facilitate competition should be made in response to competition, not pursuant to regulatory mandate. In some cases, it is unclear whether and when competition will require such investment.

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[2]In a fully competitive, unregulated market, a normal response by a firm faced with this situation would be to exit the market - there would simply be insufficient economies of scale to justify continued operation at the level of network sophistication required. However, where the LEC has been designated by a state as the carrier of last resort, these carriers have a statutory obligation to provide service, see 47 U.S.C. § 214(e). Consequently, the only option is a mechanism to support the costs of deployment. An additional measure would be number portability deployment pursuant to a bona fide request, even within one of the top 100 MSAs.

[3]This effectively gives the Commission the ability to give customers access to the competitive benefits of number portability more quickly if it creates a cost recovery mechanism which assists these carriers in providing number portability.

USTA is most concerned about companies who have operations within the top 100 MSAs, but may not receive any request from competitors to actually port numbers in the near future. This may likely be the case for many smaller LECs. Also, USTA's recognizes that it is appropriate to offset any Type 2a costs submitted to the national administrator with any revenues obtained through use of these network upgrades. USTA is also exploring with vendors ways in which these costs can be minimized. For example, USTA is presently contacting vendors to encourage them to offer AIN software in a manner which would permit LECs to load an entire software but purchase the license only for those triggers utilized for number portability. If vendors permit network upgrades in this way, costs directly attributable to number portability could be isolated and included as Type 2 costs. If a LEC then desires to use other AIN features, it would have to purchase an additional license for this functionality.

Recovery of Type 2a costs through the national funding mechanism would be limited to those LECs which meet the requirements of Section 251(f)(2) of the 1996 Act, e.g., have fewer than 2 percent of the Nation's subscriber lines installed, in the aggregate nationwide. 47 U.S.C. § 251(f)(2), and who have been designated as eligible carriers under Section 214(e). See 47 U.S.C. § 214(e).

2. The Commission Must Address Costs Incurred By Carriers for Network Upgrades Outside the Area Where Number Portability Is Available

The Order accompanying the Further Notice provides that any long-term method of providing local number portability may not have a significant adverse impact on carriers operating outside the area of number portability. The Commission states that it is fundamentally unfair to impose new or different obligations on carriers or customers that do not benefit from service provider portability. Order at 59; see also USTA Comments, September 12, 1995, at 15

(Stating that the Commission should avoid requiring carriers in states or geographic areas where portability has not been introduced to incur costs).

But where carriers provide service near one of the top 100 MSAs or near the service territory of a carrier that has deployed number portability pursuant to a bona fide request, those carriers will incur costs to modify their networks in order to continue providing services in the manner in which their subscribers are accustomed, e.g., where a carrier offers Extended Area Service (EAS) into a metropolitan area and/or has direct trunking arrangements from a rural area outside of town. Such costs will also likely be incurred by CMRS providers. See Further Notice, para. 1655, n.484 citing CTIA ex parte April 18, 1996, at 20-21 (CTIA asserts that even if number portability is limited to the wireline network, CMRS providers must still modify their method of routing calls from their CMRS customers to wireline customers who have ported their numbers). USTA suggests that these costs be included in the national funding mechanism, and categorized as Type 4 costs.

Also, the Commission correctly declined to specify which carrier must make the database query. See Further Notice, para. 46. Under some local number portability plans being considered in state workshops and in other fora, the carrier immediately preceding the carrier to whom the number is ported must query the database in order to route the call. Consequently, these carriers will incur costs directly related to number portability, and such costs should be included in a cost recovery plan. By including such costs in a cost recovery plan, the Commission will help ensure compliance with the requirement that the long-term method not have a "significant adverse" impact - where costs are addressed, the impact is not likely to be significantly adverse.

B. The Commission Should Recognize the Following Types of Costs for Each Category

The Commission's Further Notice describes the types of costs associated with each category only generally. In the interest of a complete record, USTA submits the following non-exclusive list of specific costs which could be included in each category.[4] USTA provides further description of the local number portability architecture through the narrative description in Appendix B, and the diagram attached as Appendix C.

Under USTA's proposal, the shared funding mechanism for Type 2, Type 2a, and Type 4 costs should exclude some SS7, database, and database activities related cost, e.g., the signaling network between the switch SSP functionality and the SCP, queries to the SCP, the cost of the STPs and SCPs, and the download link between the SCP and SMS, all of which are incurred on a different basis than switch software upgrades and other network modifications. With respect to these types of costs, a make/buy decision is permitted - low-demand companies[5] are not technically or legally required to deploy their own STP or SCP pairs to obtain LRN routing instructions. In fact, many large LECs and other firms, e.g. Illuminet's USTN, make a separate business from selling these services. Additionally, these types of costs are traffic sensitive, whereas the costs of switch modifications are not.

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[4]Of course, for purposes of assessing the dollar value of these costs, the Commission should include consideration of the cost of capital needed to make these investments. Cf. First Report and Order, CC Docket 96-98, para. 691.

[5]USTA uses the term "low-demand" companies to make clear that the relevant economic issue is not the absolute size of their operations, but the level of demand over which the costs of investment can be shared. For example, rural telephone companies and competitive LECs may serve similar numbers of customers, but rural telephone companies may carry less traffic and incur greater costs to carry that traffic.

At the same time, the possibility of using this national administrator to allocate the cost of database dips should be kept open, as the amount of these costs could become quite significant. In the Further Notice, the Commission notes that the technical requirements it adopts "effectively preclude carriers from implementing QoR." Further Notice., para. 54, noting that "there is little evidence in the record to support the claim that allowing carriers would result in significant cost savings." Id. But as a practical matter, the difference between the QoR version of LRN and that version advocated by AT&T and others is that in one case, originating carriers must perform (and are charged for) a database query on every interoffice call, regardless of whether a LRN was obtained (the number was ported), or not (the number was not ported but was in an NPA/NXX that had ported numbers) See AT&T Policy on Cost Recovery of Database Solutions, May 17, 1996 (New York State Number Portability Cost Recovery Committee), at 3.

On the other hand, where QoR is implemented, these unnecessary queries are eliminated, resulting in significant cost savings. Depending on the resolution of this issue, carriers may incur significant costs associated with "database dips." As a matter of policy, if the Commission elects to require technical configurations which require carriers to incur additional costs and inefficiencies, the cost recovery mechanism should take this into account.[6]

In contrast, there is no make/buy decision with respect to LNP capable software. This software upgrade must be purchased and loaded into a LEC switch, and the switch if it is to participate in local number portability. In the case of smaller LECs, there are less customers over

[6]The Further Notice also notes that it is adopting a phased approach to implementation to avoid imposing new or different obligations on carriers and customers that do not benefit from service provider portability. Further Notice, para. 59. But absent QoR, where companies serve an NPA-NXX which has ported numbers, they will be forced to incur the costs of a database query on every call, even though none of their subscribers has a ported number. This inequity is even more acute where no competitive carrier is available to those subscribers.

which to spread the costs of this software upgrade, which can be quite significant. USTA is in the process of gathering estimates regarding the costs of these upgrades, and will provide further information in its replies and as it becomes available.

Preliminary figures indicate that the cost of implementing this capability for Independent switches will be around $500,000, and can be as much as $1 million dollars per switch, depending on the hardware/software configuration level of the switch. While the LRN trigger software itself may be less than $100,000, even a central office switch that is modern and is at the most recent configuration level could require significant new investment in order to accept the upgrade to LNP. Our initial estimates show that very few independents have been able to make a business case for deployment of AIN, one of the basic requirements for LNP. Additionally, some switches may require additional processing and memory capability before the software can be utilized. This cost estimate also does not include any upgrades to other systems such as billing and call measurement systems.

It is not possible for LECs to implement this aspect of local number portability by leasing upgraded facilities from others. See also 47 U.S.C. § 259 (infrastructure sharing). In order to port and receive ported numbers, the LEC switch must have the LNP capability itself. Routing calls originating from a small company to a separate provider, e.g., to a BOC tandem, may not be an option. This arrangement could overload the tandem switch. It would also eliminate many of the efficiencies gained by direct routing of calls. Unless each office can identify which NPA/NXX codes have not been ported, the ability to direct route to offices that have not been ported would be eliminated. This would "strand" the investment in direct routes and eliminate the efficiencies obtained by diversity in linking and switching. This, in turn, would artificially and prematurely increase the cost of implementing LNP.[7]

Accordingly, USTA believes that it will be necessary for all LECs participating in LNP to purchase LNP-capable software, and make other upgrades in order to continue to be able to process ported calls. The costs of these software upgrades are not traffic-sensitive, and in fact are disproportionately burdensome for smaller companies who on the average serve fewer customers with a given switch than larger companies. These costs should be included in the funding mechanism as Type 2 costs.[8]

A full breakdown of the costs to be included in each category is provided below:

Type 1 Costs	Start Up and Ongoing Costs for: Data Base Administration Regional (or State) Service Management System (SMS) Initial Loading of Database Uploads/Updates

[7]The costs for the downloading of this information should be another element established by the SMS owner/operator.

[8] For offices that do not participate in the porting in/porting out of numbers, these costs should be included in the proposed Type 4 cost category.

Type 2 Costs * - Excluded from National LNP Funding Mechanism	Start Up and Ongoing Costs for LNP-Direct Modifications to: *Signaling Control Points (SCPs)(includes downloads from SMS) *SS7 Links *Signaling Transfer Points (STPs) *Signaling Transfer Points - Ports Signaling Switching Points (SSPs) - Hardware LIDB Modifications LRN Software Local SMS Operator Switches Operations Support Systems (OSS) Upgrades Trunk Additions/Rearrangements Engineering, Testing, New Data Translation Needs Employee Training, Customer Service, Repairs
Type 2a Costs - Network Upgrades Incurred Solely for Purposes of Providing Number Portability by 214(e) Eligible Carriers With Less than 2% of the Nation's Access Lines	SS7 Implementation Advanced Intelligent Network (AIN) Network Switch Upgrades Software/Hardware Upgrades
Type 3 Costs -	SS7 Implementation Advanced Intelligent Network (AIN) Network Switch Upgrades Software/Hardware Upgrades
Type 4 Costs - Costs Incurred by Carriers for Network Upgrades Outside the Area Where Number Portability is Deployed (Including CMRS providers who are "outside" the wireline network)	SS7 Implementation and/or Upgrades or Increased Charges Provided to Subtending SS7 Provider Database Query charges OSS and operator services modifications

II. Cost Recovery for Long-Term Local Number Portability Should Be Accomplished Through an Independent, Neutral Third-Party Administrator

The Further Notice notes that the shared costs related to SMS systems used by all carriers should be recovered through monthly charges assessed on carriers using the databases, allocated in proportion to each carrier's gross telecommunications revenues. See Further Notice, para. 219. USTA agrees with this proposed treatment of shared costs associated with regional or state SMS databases. Moreover, USTA believes that this arrangement is also a useful way to allocate other costs of local number portability to ensure that they are fairly borne by "all telecommunications carriers."

Specifically, USTA recommends that all Type 2, Type 2a and Type 4 costs be submitted to a national administrator, who would then assess a charge on all telecommunications carriers, allocated by each carriers' gross telecommunications revenues. This procedure would meet the requirements of the statute by including all telecommunications carriers, and result in a competitively neutral allocation of costs. It would also be administratively simple, and deliver the benefits of number portability more quickly than more complex methods where no allocation mechanism is used.

A. The Commission Should Appoint a Neutral Third-Party Administrator To Allocate Costs Based On A Simple Reporting Process

Under Section 251(e)(2), the Commission has jurisdiction to designate one or more impartial entities to administer cost recovery for local number portability on a national basis. 47 U.S.C. § 251(e)(2); see also Further Notice, para. 220 (Commission also has authority to establish rules by which carriers must bear the costs of number portability; Further Notice, para. 222 (seeking comment on whether the FCC should mandate a mechanism and asking that parties identify the jurisdictional basis for such authority).

All local exchange carriers (and CMRS providers who are incurring number portability costs) would report their number portability costs to the administrator on a periodic basis. This administrator would then determine a local number portability charge appropriate to all telecommunications carriers,[9] assess these charges and remit receipts equal to their submitted costs, less an appropriate share of administrative overhead,[10] directly to the carriers providing number portability. Thus all telecommunications carriers bear the costs of number portability.

This method is conceptually consistent with the Commission's proposal to recover the costs of number administration. The Commission notes that it intends to include the additional costs incurred by the Commission related to NANC and regulating number portability in the fiscal 1997 adjustment of the schedule of regulatory fees. Further Notice, para. 102; see 47 U.S.C. § 159(b). Regulatory fees are assessed on all telecommunications carriers, regardless of whether they directly and/or individually cause the Commission to incur the costs of regulation, in part because all carriers benefit from the regulatory services provided by the Commission, and in part because it would be administratively unwieldy to determine the precise cost of the services provided to a particular regulated entity. See Report and Order, MD Docket 95-3, 10 FCC Rcd 13512, 13521, citing Skinner v. Mid-American Pipe Line Co., 490 U.S. 212, 224 (1989).

[9]Where each carrier's share is allocated based on gross telecommunications revenues, this would be administratively simple and efficient since many carriers already report such revenues for other purposes. See, e.g., Telecommunications Industry Revenue: TRS Fund Worksheet Data, Jim Lande - Industry Analysis Division, Common Carrier Bureau, 1996 FCC LEXIS 544 (February 5, 1996). Also, the Commission determined to adopt a gross revenue methodology for assessing common carrier regulatory fees. See Further Notice, para. 213, n. 610. With regard to regulatory fees, the Commission found that assessing fees by gross revenues is reasonably related to the benefits received, and is administratively simple. 10 FCC Rcd at 13558; see also Telecommunications Relay Services, 8 FCC Rcd 5300 (1993).

[10]The national administrator role could be put out for competitive bidding - this would help minimize the administrative costs associated with local number portability.

B. Allocating Costs Through a Neutral Third-Party Administrator Best Assures That Cost Recovery Methods Are "Competitively Neutral"

1. The Commission Has For the Most Part, Correctly Defined the "Competitively Neutral" Standard of the Communications Act

The Communications Act provides that the costs of number portability are to be borne by "all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2). In contrast, the obligation to provide local number portability applies to all "local exchange carriers." 47 U.S.C. § 251(b)(2). Of course, not all telecommunications carriers are "local exchange carriers." See 47 U.S.C. §§ 3(44); 3(26). Accordingly, under the Act, there are some carriers who must bear the cost of number portability, although they themselves do not incur direct costs of deployment.

The "competitively neutral" requirement is intended to deter carriers from abusing the regulatory process in order to gain a competitive advantage by imposing costs on their rivals. Thereby, Section 251(e)(2) helps ensure that competition is focused on the price and quality of telecommunications services, not regulatory manipulation. The Commission establishes nearly the correct test when it interprets this to mean, inter alia, that no service provider have an appreciable incremental cost advantage over another when competing for a specific customer. Further Notice, para. 210. This is correct if it includes the total costs of establishing long-term number portability, and does not simply refer to the incremental costs of providing portability to a single subscriber who elects to port a number.

Calculations that establish a carrier's costs of number portability by the number of its local customers which have ported numbers fail to take into account the relative burden of local number portability costs. LECs will incur millions of dollars of local number portability costs even if no customer actually changes carriers and ports a number. Additional and different costs may be associated with operating the network after numbers have been ported. Both types should be considered costs of local number portability, not just the latter. Consequently, the Commission should not apply the "competitively neutral" standard solely from an incremental cost perspective.[11]

2. Allocation of Costs Through A National Administrator Is More Likely to Ensure Compliance With the Competitively Neutral Standard Than No Allocation Mechanism At All.

The Further Notice suggests that an alternative method would be to require individual carriers to bear their own costs of deploying number portability - essentially allocating costs to the local exchange carriers and CMRS providers. Further Notice, para. 221. In those circumstances, in order to have the costs "borne by all telecommunications providers," other non-LEC (or non-CMRS) providers would presumably bear some portion of the costs, either in the form of a specific charge from those providers, or in the form of increased rates.

Additionally, in order to be "competitively neutral," and not give one service provider an appreciable advantage over another, facilities-based carriers and those who provide service through resale should bear an appropriate share of the costs of the upgrades of the network. If costs are allocated to facilities-based carriers only, the recovery of those costs must then incorporate either a specific charge or increased rates for resale. USTA believes a simpler solution is to begin with a competitively neutral allocation of costs among all

[11] The Further Notice states that the statutory mandate constitutes a "rare exception to the general principle, long recognized by the Commission, that the cost-causer should pay for the costs that he or she incurs." Further Notice, para. 131. But this remark presumes that new entrants to which numbers are ported are the "cost-causer." In fact, much of the cost of local number portability are associated with the hardware and software modifications to permit processing calls to ported numbers. In the case of these costs, it is Congress and the Commission who are essentially the "cost-causer[s]," not new entrants.

telecommunications carriers, rather than attempting to achieve competitive neutrality through a complex recovery process.[12]

III. End User Charges Are Not Prohibited by the Act, Must be "Competitively Neutral" and Are Preferable to Recovery Through Existing Service Rates.

Whether costs are allocated through a simple mechanism utilizing a national administrator, or initially borne by facilities based LECs, these costs must be recovered in some manner, either from end user customers or other carriers. See Further Notice, paras. 222-225. The Further Notice tentatively concludes that the "competitively neutral" standard does not address recovery of local number portability costs from consumers, but only the allocation of such costs among carriers. Further Notice, para. 209. This statement is true only insofar as the Act is silent on the issue of charges to end users.

But the cost recovery mechanism, under the two principles for competitive neutrality described in the Further Notice may not have the effect of incenting end users or other carriers to change service providers because one class of carriers must pass on a greater share of number portability costs to their customers. No carrier should be able to claim that local number portability charges are a disadvantage of taking service from another carrier. To this extent,

[12] Of course, any recovery process should also be competitively neutral. MFS maintains that the competitive neutrality requirement only requires an "analysis of charges assessed to other competing telecommunications carriers." See Further Notice, para. 206. But MFS raises a different question than the allocation of costs among carriers. This formulation of the standard fails to explain how Section 251(e)(2) applies where each carrier bears its own costs, and was required to recover their own costs from their own end users - no charges are assessed directly to other carriers. It makes more sense to apply the competitive neutrality requirement tp both the allocation of costs among carriers, e.g., how the costs are "borne," as well as how costs are recovered, e.g., charges to competing carriers, end users, or some combination. In other words, it would be inconsistent with the Act to mandate a system of end user charges which is not competitively neutral.

USTA agrees with Teleport that unequal number portability surcharges would be inappropriate. See Further Notice, para. 206, citing Further Comments of Teleport at 5.

A. Recovery of Costs Through Charges to Other Carriers Or Through Existing Service Rates Would Be Unwieldy, Complex, and Create Competitive Distortions

First, the Further Notice raises a number of issues related to cost recovery which address the recovery of the costs of number portability incurred by each carrier through charges assessed on other carriers. See Further Notice, para. 225 (Commission seeks comment on whether carriers should be permitted to recover carrier-specific number portability costs from other carriers). A system whereby incumbent LECs directly charge other carriers for their own number portability costs is likely to become administratively unwieldy and subject to numerous disputes regarding each carrier's share of the costs, the appropriate level of any charge, and the method by which such charges are assessed. Such methods of cost recovery are likely to have an impact on the marketplace and raise questions of compliance with the "competitively neutral" requirement of the Act. See 47 U.S.C. § 251(e)(2). Moreover, where the simple mechanism of a neutral, third-party administrator is used to assess charges on all telecommunications carriers, a system of recovery through inter-carrier charges is unnecessary, and would raise concerns of double recovery.

In no case should recovery from other carriers be accomplished through existing service rates. USTA has noted before that, where number portability costs are recovered through LEC service rates, local number portability costs would necessarily be subject to a jurisdictional separations process in order to determine the appropriate share of costs to be recovered from state and interstate rates. See Further Notice, para. 201, n.579 citing Comments of USTA, September 12, 1995, at 13. This is particularly true where a carrier uses local number portability to provide only local exchange services, which would suggest that all of the costs should be assigned to the intrastate jurisdiction.

B. An Explicit Local Number Portability Charge Assessed On End Users Is the Most Preferable Cost Recovery Mechanism

However, in the case of an explicit end user local number portability charge, jurisdictional separations procedures would not be required. In that case, the Commission would not be exercising jurisdiction over local service rates. Rather, the Commission would simply be determining the method for recovery of the costs of local number portability, for which Congress has expressly provided jurisdictional authority. See 47 U.S.C. § 251(e)(2).[13]

An explicit local number portability charge assessed on end users would avoid entangling the Commission in disputes regarding neutrality, avoid the need for any special proceedings, e.g., calculating an appropriate exogenous adjustment to the price cap indexes, and avoid entanglement in the even more complex questions related to the Telecommunications Act's directives requiring re-examination of local rates, access charges, and inter-carrier

[13]In order to read the Act as a coherent whole, states must retain some independent authority over local exchange service rates under Section 2(b) of the Act, coexistent with the Commission's express jurisdiction over number portability. See 47 U.S.C. § 152(b) Thus, although the Commission has exclusive authority to determine a number portability cost recovery method, to the extent it seeks to exercise that authority in a manner which would require direct increases in rates, it must at a minimum determine which part of the local number portability costs are to be considered as used in interstate service. See 47 U.S.C. § 221(c). On the contrary, where the Commission authorizes a third-party administrator to assess charges on all telecommunications carriers to recover the costs of investment in local number portability, it is not exercising authority over intrastate charges, classifications, practices, etc., and may authorize such assessments solely under Section 251(e)(2). See 47 U.S.C. § 251(3)(2); see also 47 U.S.C. §§ 152(b) (limiting FCC authority over intrastate communications); 221(b)(limiting FCC authority over telephone exchange service).

compensation arrangements.[14]

As noted before, the Communications Act only provides that the costs of number portability shall be recovered from "all telecommunications carriers." But nothing in the Act requires that carriers be prohibited from in turn recovering these costs from their customers. The Commission should therefore permit carriers to recover their costs through explicit charges, identified as local number portability charges, passed on to their customers.

In order for number portability surcharges to not affect customers' choice of telecommunications carrier, all carriers must be required to identify any charges for local number portability separately from other charges, and as a local number portability charge imposed due to regulatory requirements. Additionally, as argued by Teleport and others, see Further Notice, para. 204-206, unequal number portability surcharges would be inappropriate. Where one carrier must reflect a local number portability surcharge that its competitor does not, competitive distortions could occur, regardless of whether the carrier reflecting the charge is a new entrant or an incumbent. A competitively neutral local number portability charge could be calculated in one of two ways: a fixed dollar amount, similar to the $3.50 Subscriber Line Charge, or a fixed percentage of each retail service bill issued by a telecommunications carrier.

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[14]In just a short period, the Commission has implemented portions of the 1996 Act which effectively require significant revisions in the rates for interconnection and for inter-carrier mutual compensation through negotiated arrangements, See Order, CC Docket 96-98, August 8, 1996, re-examination of implicit subsidies in local rates and access charges, See Notice, CC Docket 96-45, and has indicated that it will undertake significant reform of the access charge regime in the near future. Additionally, the Commission is examining a long-term price cap plan applicable to larger incumbent LECs, See, e.g., Fourth Further Notice, CC Docket 94-1. Given all of the regulatory decisions to be made with respect to local exchange and exchange access service rates and the unknown effect of new competition on these rates, this is not the time to be including the significant costs of local number portability in these rates.