upgrades, and consumer education costs that are strictly necessary to implement dialing parity. These costs must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator established by the state.[229] Although, under section 251(e)(2), number portability costs must be recovered from all telecommunications carriers, section 251(b)(3) only requires that dialing parity be provided to providers of telephone exchange service and telephone toll service. Therefore, we conclude that a competitively-neutral recovery mechanism for dialing parity should only allocate costs to this more limited class. States may use any of the allocators described in the *Number Portability Order*, or any other allocator that meets the criteria we have established. States should apply the principles we adopt today, and the other guidelines for recovering costs of currently available number portability measures, in establishing more specific cost recovery requirements for dialing parity.

G. Unreasonable Dialing Delays

96. For a discussion of the section 251(b)(3) prohibition on unreasonable dialing delays, as that section applies to the provision of local and toll dialing parity, see section III(E) below.

III. NONDISCRIMINATORY ACCESS PROVISIONS

A. Definition of the Term "Nondiscriminatory Access"

1. Background

97. Section 251(b)(3) requires all LECs to permit "nondiscriminatory access" to telephone numbers, operator services, directory assistance, and directory listings to competing providers of telephone exchange service, and to competing providers of telephone toll service.[230] In the *NPRM*, we tentatively concluded that "nondiscriminatory access" requires each LEC to permit the same degree of access that the LEC itself receives for the services specified in section 251(b)(3).[231] The Commission also asked for specific comment on whether the nondiscriminatory access provisions of section 251(b)(3) also impose a duty on LECs to resell operator and directory assistance services to competing providers.[232]

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[229] We recognize that, unlike the case for number portability costs, states would not be able to establish a cost allocator based on numbers of lines because such an allocator could not apportion costs on a competitively neutral basis where dialing parity is provided to a CMRS provider. We expect that states will establish a competitively neutral allocator that can be used to apportion costs among all providers.

[230] 47 U.S.C. § 251(b)(3).

[231] *See NPRM* at para. 214.

[232] *See NPRM* at paras. 216, 217.

2. Comments

98. A number of commenters concur that, as proposed in the *NPRM*, "nondiscriminatory access" should require each LEC to permit the same access to these services that the LEC itself receives.[233] Bell Atlantic argues, however, that access need not be strictly equal, but must "simply be of a type that will permit the other carrier to provide comparable services with no difference in quality perceptible to callers."[234] Bell Atlantic cites the Modification of Final Judgment (MFJ) for the proposition that "equal access" does not require "strict technical equality of services and facilities," but rather it requires that consumers should perceive no qualitative differences.[235] Sprint objects to Bell Atlantic's use of "customer perception" as the nondiscriminatory access standard, arguing that this standard would allow the incumbent LEC to "discriminate against its competitors in ways not visible to the end user."[236]

99. Ameritech requests a clarification that a LEC's duty under section 251(b)(3) is owed only to "providers of telephone exchange and telephone toll service."[237] Ameritech also argues that because Congress did not expressly impose a strict equality standard in section 251(b)(3), as it did in section 251(c)(2)(C) for incumbent LECs, "the only logical interpretation is that LECs are required to provide access . . . that is nondiscriminatory among carriers."[238] The Ohio Consumer's Counsel responds that "Ameritech is claiming that giving all other carriers an equal level of *degraded* access, *i.e.*, inferior to that provided to itself, is 'non-discriminatory.' Surely Congress contemplated nothing of the sort, as is recognized even by other incumbent LECs."[239]

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[233] *See, e.g.*, AT&T reply at iii - iv; ACSI comments at 9; California Commission comments at 5; Excel comments at 8; Florida Commission comments at 5; MCI comments at 2; and Telecommunications Resellers Association comments at 5.

[234] *See* Bell Atlantic comments at n.11.

[235] *Id.* at 6, *citing United States v. Western Electric Co.*, 569 F. Supp. 1057, 1063 (D.D.C. 1983). Bell Atlantic also states that the Commission followed this approach in a 1985 "equal access" order. *Id.* at 11, *citing In the Matter of MTS and WATS Market Structure (Phase III)*, Report and Order, CC Docket No. 78-72, 100 F.C.C. 2d. 860, 877 (1985) (*MTS and WATS Order (III)*).

[236] Sprint reply at 9-10.

[237] Ameritech comments at 11.

[238] *Id.* at 12 - 13. Section 251(c)(2)(C) imposes a duty on incumbent LECs to provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(C).

[239] Ohio Consumers' Counsel reply at 3.

100. As for resale, a number of commenters agree that LECs should make operator and directory assistance services available for resale to competing providers under section 251(b)(3), in order to further nondiscriminatory access to such services.[240] On the other hand, several commenters contend that this provision does not imply any resale requirements.[241] AT&T argues that resale is not required under section 251(b)(3), because "to the extent that a local exchange carrier provides transmission with, or as part of, its operator services, the service must be made available for resale under sections 251(b)(1) and 251(c)(4) of the Act."[242] Bell Atlantic takes a similar approach, arguing that, to the extent that a LEC provides operator and directory assistance services that are "telecommunication services," the service must be made available for resale by LECs under section 251(b)(1), and, if the services are telecommunication services offered to retail customers, incumbent LECs must offer them for resale at wholesale prices under section 251(c)(4).[243]

3. Discussion

101. We conclude that the term "nondiscriminatory access" means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC")[244] must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC.[245] LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers.

102. Section 251(b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers,

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[240] *See, e.g.*, ALTS comments at n.4; MCI reply at 3; MFS reply at 10; and Telecommunications Resellers Association comments at *ii*.

[241] *See, e.g.*, GTE comments at 16; Ameritech comments at n.16; NYNEX comments at 6-7.

[242] AT&T comments at n.13.

[243] Bell Atlantic comments at 8.

[244] We use the term "providing LEC" throughout this section to refer to the LEC that is permitting nondiscriminatory access to its services pursuant to section 251(b)(3). The term "competing provider" refers to a provider of telephone exchange service or a provider of telephone toll service that seeks nondiscriminatory access from a providing LEC.

[245] *See also* corresponding definition of "nondiscriminatory" in the *First Report and Order* at section V for the purposes of section 251(c)(2).

must permit competing providers *nondiscriminatory* access to these services.[246] Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework.

103. We are not persuaded by Bell Atlantic's statement that the standard for nondiscriminatory access should focus *only* upon "customer perceptions" of service quality. Such a standard overlooks the potential for a providing LEC to subject its competitors to discriminatory treatment in ways that are not visible to the customer, such as the imposition of disparate conditions between similarly-situated carriers on the pricing and ordering of services covered by Section 251(b)(3). While invisible to the customer, such conditions can severely diminish a competitor's ability to provide exchange and/or toll service on the same terms as the LEC permitting the access.

104. The *MTS and WATS Order (III)* does not preclude us from requiring LECs to permit access that is at least equal in quality to the access the LEC itself receives.[247] In the *MTS and WATS Order (III)*, the Commission simply held that neither "absolute technical equality" nor an "overly quantitative and microscopic" definition of equal access was desirable.[248] We find that the nondiscrimination standard established in this *Order* is consistent with those previous decisions. We do not set forth in this *Order* an overly technical definition of nondiscriminatory access.

105. We conclude that, to the extent all or part of any operator or directory assistance services, and features that are adjunct to such services, are not "telecommunications services" within the meaning of section 3(44)[249] of the Communications Act of 1934, LECs that provide such services must nonetheless make the services and features available under section 251(b)(3). We recognize that resale of operator services and directory assistance is a primary vehicle through which competing providers, especially new entrants and small business entities, can make operator services or directory assistance available to their customers and that providing LECs are a primary source from which competing providers can obtain these services.[250] Operator and directory assistance services, or the portions of such services, that are "telecommunications services" are already subject to resale requirements under: (1) section 251(c)(4)(A), which requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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[246] *See also First Report and Order* at section V.

[247] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 860. *See also supra* n.234.

[248] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 877.

[249] 47 U.S.C. § 153(44).

[250] *See also infra* para. 118, for discussion of the unbundling of operator services and directory assistance under section 251(c)(3).

telecommunications carriers"; and (2) section 251(b)(1), which imposes a duty on all LECs not to prohibit the resale of their telecommunications services, nor to impose unreasonable or discriminatory conditions on the resale of such services.[251] Operator and directory assistance services, however, generally use various adjunct information features, *e.g.*, rating tables or customer information databases.[252] We recognize that without access to such information features, competing providers cannot make full use of such services. Thus, to ensure that competing providers can obtain nondiscriminatory access to operator services and directory assistance, we require LECs to make such services available to competing providers *in their entirety*.[253]

B. Nondiscriminatory Access to Telephone Numbers

1. Definition

106. Currently, the largest LEC in each area code serves as the Central Office (CO) code administrator for that area. In the *NPRM*, this Commission proposed that the term "nondiscriminatory access to telephone numbers" means that all LECs providing telephone numbers must permit access to telephone numbers to competing providers in the same manner that the LECs themselves receive such access.[254] The few commenters who addressed this issue support the extension of our general definition of nondiscriminatory access to cover access to telephone numbers.[255] We conclude, consistent with the general definition of nondiscriminatory access in para. 101, *supra*, that the term "nondiscriminatory access to telephone numbers" requires a LEC providing telephone numbers to permit competing providers access to these numbers that is identical to the access that the LEC provides to

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[251] 47 U.S.C. § 251(b)(1), (c)(4)(A). Operator services and directory assistance are also unbundled network elements subject to section 251(c)(3). *See First Report and Order* at section V. The 1934 Act, as amended, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). "Information service" is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, via telecommunications . . . ." 47 U.S.C. § 153(20). *See also First Report and Order* at section V.

[252] "Rating tables" are databases that cross-reference area codes, numbers called, and time of day to determine the price to be charged for telephone calls. Directory assistance may use databases that contain customer names, numbers and addresses, and operator services may use databases that contain customer billing information (*e.g.*, whether a customer will accept collect calls or third party billing).

[253] *See infra* paras. 108-151, for further discussion of operator services and directory assistance.

[254] *See NPRM* at para. 215.

[255] *See, e.g.*, Telecommunications Resellers Association reply at 5. *See supra* para. 101, for the general definition of "nondiscriminatory access."

itself. In addition, as discussed in paras. 261-345, *infra*, the delegation of the administration of numbering resources to a neutral administrator will further the statutory objective that all competing providers receive nondiscriminatory access to telephone numbers.

2. Commission Action to Enforce Access to Telephone Numbers

107. In the *NPRM*, we sought comment on what, if any, Commission action is necessary or desirable to implement the requirement under section 251(b)(3) that LECs permit nondiscriminatory access to telephone numbers.[256] Many commenters state that no additional Commission actions, beyond those already required by section 251(e), are necessary.[257] We conclude that issues regarding access to telephone numbers will be addressed by our implementation of section 251(e) herein.[258]

C. Nondiscriminatory Access to Operator Services

1. Definition of "Operator Services"

a. Background and Comments

108. The 1996 Act does not define the term "operator services." In the *NPRM*, the Commission proposed to use the definition of "operator services" in the Telephone Operator Consumer Services Improvement Act (TOCSIA) of 1990.[259] Section 226 (a)(7), which was added to the 1934 Act by TOCSIA, defines operator services as: "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[260]

109. Bell Atlantic, BellSouth and MCI agree with the proposed definition of "operator services."[261] AT&T, however, expresses concern that this definition should not be used by

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[256] *NPRM* at para. 215.

[257] *See, e.g.*, Bell Atlantic comments at 6; CBT comments at 6; and U S WEST comments at 8. *See generally infra* paras. 261-308, for a discussion of previous Commission actions in the area of number administration.

[258] *See generally infra* paras. 261-345.

[259] 47 U.S.C. § 226(a)(7); *see NPRM* at para. 294.

[260] *NPRM* at para. 216.

[261] *See, e.g.*, Bell Atlantic comments at 8; BellSouth comments at n.24; and MCI comments at 8.

incumbent LECs to claim that they are then not obligated to make operator services, including transmission of information, available for resale at wholesale rates, pursuant to section 251(c)(4).[262] AT&T thus suggests that the Commission adopt the definition as proposed in the *NPRM*, but explicitly state that the definition is applicable only in the context of section 251(b)(3).[263] AT&T asserts that the traditional functions of "emergency interrupt," "busy line verification," and "operator assisted directory assistance" are within the meaning of "operator services" in this context.[264]

b. Discussion

110. TOCSIA defines operator services to be "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[265] Based on support in the record and the desirability of having a definition consistent with that in the preexisting statute, we conclude that we should adopt the definition of operator services as used in TOCSIA for purposes of section 251(b)(3), with modifications. For purposes of section 251(b)(3), we do not exempt (1) and (2), above, from the definition of operator services. Accordingly, the term operator services, for purposes of section 251(b)(3), means "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." Although commenters did not focus on this issue, nor suggest that the exemptions be deleted from the TOCSIA definition of "operator services," we conclude that we should adopt a modified definition of operator services for the purpose of implementing section 251(b)(3). When enacted, the TOCSIA definition was intended to address services from an aggregator location, rather than addressing the types of operator services in general that would be essential to competition in telecommunications markets. Operator services are becoming increasingly automated, and thus excluding access to automatic call completion from the obligations imposed by section 251(b)(3) could deny competitors access to a service that is essential to competition in the local exchange market. We conclude that, for the same reason, "completion by an access code by the consumer," a common means of completing calls made from payphones, should also be included in the definition of operator services for section 251(b)(3).

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[262] *See* AT&T comments at 8. 47 U.S.C. § 251(c)(4), *inter alia,* requires incumbent LECs to offer for resale, at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

[263] *Id.*

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

[265] 47 U.S.C. § 226(a)(7).

111. Adopting a national definition of "operator services" based on the TOCSIA definition, as modified above, will allow for consistency and ease of compliance with the statute, specifically with respect to services to which all LECs must permit nondiscriminatory access.[266] We further conclude that we should state explicitly that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. Thus, if a LEC provides these functions, the LEC must offer them on a nondiscriminatory basis to all providers of telephone exchange and/or toll service. To avoid confusion with the TOCSIA definition at section 226, we state here that this definition *only* applies for purposes of section 251. Finally, unlike the definition of operator services in TOCSIA, we point out that our definition of "operator services" under section 251(b)(3) is applicable to both *interstate* and *intrastate* operator services.[267]

2. Definition of "Nondiscriminatory Access to Operator Services"

a. Background

112. In the *NPRM*, we proposed that the phrase "nondiscriminatory access to operator services" should be interpreted to mean that a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing "0," or "0 plus" the desired telephone number.[268]

b. Comments

113. Several commenters agree with the Commission's interpretation of this phrase as proposed in the *NPRM*.[269] PacTel, however, requests that we clarify that the "0" or "0 plus" requirement does not mean "that a customer must be able to access *every* LEC's operator services or directory assistance using the same dialing scheme, but rather only the services of the carrier selected to provide local service."[270] AT&T requests that operator service connection methods continue to include dialing "00" in order to access the pre-selected long distance carrier operator.[271] CBT asks that we find that the nondiscriminatory access

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[266] *See also infra* para. 146.

[267] *See First Report and Order* at section V for discussion of application of section 251 to interstate and intrastate matters.

[268] *See NPRM* at para. 216.

[269] *See, e.g.*, AT&T comments at 9; MCI comments at 8; and Telecommunications Resellers Association comments at 6.

[270] *See* PacTel comments at 16.

[271] *See* AT&T comments at 9.

requirements only apply when a competing local service provider is using either a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[272] GCI states that, in Alaska, LECs currently do not provide "0" or "0 plus" the telephone number; rather, interexchange carriers provide these services. GCI requests that arrangements such as those in Alaska not be precluded.[273] Bell Atlantic, USTA, and PacTel request that we state that, while LECs must offer their operator services to their competitors, there is no duty for a LEC to ensure that the competitors' customers have access to these services.[274] Finally, U S WEST states that "regulatory agencies should not mandate all carriers provide certain adjunct non-essential services, including "0" and "0+" services. Nor should regulatory agencies dictate the manner in which adjunct, non-essential services are accessed."[275]

c. Discussion

114. We adopt the interpretation of "nondiscriminatory access to operator services" that we proposed in the *NPRM*, with the following clarifications. First, LECs are required to permit nondiscriminatory access to operator services by competing providers, and have no duty, apart from factors within their own control, to ensure that a competing provider's customers can in fact access the services. We make this clarification because the statute does not refer to the *customers* of competing providers, and the record does not support such an interpretation of the statutory language. Second, there is no requirement that a LEC must provide call handling methods or different credit card or other alternate billing arrangements different from those it provides to itself or its affiliates. And finally, we find that the duty to permit nondiscriminatory access to operator services applies only to LECs that provide operator services to their own customers.

115. Once a LEC permits a competing provider to have access to operator services, this access may become degraded in the competing provider's network by factors outside the control of the providing LEC.[276] On the other hand, when a LEC unbundles network loop elements, the providing LEC may also retain maintenance and control responsibilities over such elements.[277] We require that, if a dispute arises between a LEC providing access to

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[272] *See* CBT comments at 6, 7.

[273] *See* GCI reply at 3 n.4.

[274] *See* Bell Atlantic comments at 7; USTA comments at *ii*; PacTel comments at 15.

[275] U S WEST comments at 8-9.

[276] For example, the customers of a competing provider may experience dialing delays or call blockage due to inadequate facilities or poor call management in the competing provider's network.

[277] We note that incumbent LECs have an obligation to offer operator services and directory assistance on an unbundled basis under section 251(c)(3). 47 U.S.C. § 251(c)(3). *See First Report and Order* section V.

operator services and a competing provider regarding the delivery of such access, the initial burden is upon the providing LEC to demonstrate with specificity: (1) that it has provided nondiscriminatory access, and (2) that the degradation of access is not caused by factors within the control of the providing LEC. Our use of the term "factors" is not limited to network facilities, but also includes human and non-facilities elements used in the provision of operator services. A providing LEC must also demonstrate with specificity that any degradation in access by competing providers is not caused by, *inter alia,* the providing LEC's inadequate staffing, poor maintenance or cumbersome ordering procedures.

116. We take into account PacTel's comments in concluding that the nondiscriminatory access requirement of section 251(b)(3) does not require that a customer be able to access *every* LEC's operator services, but only the operator services offered by that customer's chosen local service provider.[278] Furthermore, section 251(b)(3) neither specifically addresses nor precludes arrangements wherein operator services are provided by interexchange carriers, as described by GCI. Section 251(b)(3) requires all LECs, but not interexchange carriers or other service providers, to permit nondiscriminatory access to operator services. Thus, to the extent that an OSP is not within the statutory definition of "local exchange carrier," it is not required by section 251(b)(3) to permit nondiscriminatory access to its operator services.

117. The "00" access method currently allows an end user to connect to the operator services of his or her presubscribed long distance carrier. Consistent with our definition of nondiscriminatory access, we require that, if a LEC allows its customers access to operator services of their presubscribed long distance carriers by dialing "00," it must permit competing providers to have access to any features and functions that are necessary to enable the competing provider to allow its customers likewise to obtain access to such operator services by dialing "00." We find that CBT's proposal to limit a LEC's operator services obligations to only those competitors reselling a LEC's services, or using a LEC's unbundled switch ports, is inconsistent with the statute. The nondiscriminatory access provisions of section 251(b)(3) are not confined to situations in which a competing provider resells a LEC's services, or uses unbundled network elements of a LEC. We do not agree with U S WEST's statement that it would be inappropriate to mandate that all LECs who offer operator services must accommodate "0" and "0 plus" dialing. This service is not, as U S WEST states, an "adjunct, non-essential" service.

118. Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers. In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are

[278] The operator services provided by a customer's local service provider, for example, could be that provider's own operator services, resold operator services of a LEC providing nondiscriminatory access, or operator services provided by an independent OSP.

governed by section 252(d)(1) and our rules thereunder.[279] The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251(b)(3) and the rules we adopt herein.[280]

3. Commission Action to Ensure Nondiscriminatory Access to Operator Services

a. Background and Comments

119. In the *NPRM*, the Commission sought comment on what, if any, Commission action is necessary or desirable to ensure nondiscriminatory access to operator services under section 251(b)(3).[281] Bell Atlantic, GTE and PacTel assert that there is no need for the Commission to adopt detailed rules in this area.[282] On the other hand, Sprint is "concerned that leaving access to these services to carrier negotiations will result in unreasonable delays and discriminatory terms and conditions as between the incumbent LEC and CLEC."[283] MFS and WinStar support an "unambiguous national policy" of requiring incumbent LECs to make services available to new entrants.[284] MFS justifies this position by noting "some incumbent LECs say they already provide access, some say they are not obligated to offer such offering for resale, some assert that they are included in various unbundled elements or that they should not be unbundled . . . incumbent LECs should not be allowed to unilaterally decide whether, or to what extent to offer access to operator services, directory assistance and directory listings."[285]

120. The Telecommunications Resellers Association states that "[p]rompt and strong Commission response to complaints alleging failures by LECs to provide nondiscriminatory access to operator services is required to ensure compliance with this requirement."[286] Finally,

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[279] *See First Report and Order* at section V.

[280] *See First Report and Order* at section V.

[281] *See NPRM* at para. 216.

[282] *See* Bell Atlantic comments at 6; GTE reply at 18; and PacTel comments at 14.

[283] Sprint reply at 8.

[284] MFS reply at 10, WinStar reply at 13.

[285] MFS reply at 10.

[286] Telecommunications Resellers Association comments at 7.

the Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[287]

b. Discussion

121. We conclude that detailed Commission rules are not required to implement the requirement under section 251(b)(3) that LECs must permit competing providers nondiscriminatory access to operator services. We recognize the need for flexibility in order for maximum access to operator services when networks interconnect, as there may be a variety of technical interconnection methods through which such nondiscriminatory access to operator services can be achieved. We view the definition of "nondiscriminatory access to operator services" set forth in paras. 114-118, *supra*, as the overarching standard to which LECs must adhere under section 251(b)(3). As noted, in part III (C)(2), once a LEC permits nondiscriminatory access to operator services to its competitors, that LEC has no further duty to ensure that the competitor's customers can access those services. To the extent that a dispute arises regarding a competing provider's access to operator services, however, the burden is on the LEC permitting the access to demonstrate with specificity that it has provided nondiscriminatory access, and that any disparity is not caused by factors within its control.

122. Beyond placing the initial burden of proof on the providing LEC, we find that specific enforcement standards for nondiscriminatory access to operator services are not required at this time. Rather, disputes concerning nondiscriminatory access can be addressed under our general enforcement authority pursuant to Titles II and V of the Act.[288] The 1996 Act also directs the Commission to establish such procedures as are necessary for the review and resolution of complaints against the BOCs within the statutory deadlines.[289] This requirement will be addressed in a separate proceeding.

4. "Branding" Requirements for Operator Services

a. Background

123. Section 226(b)(1)(A) of the Act and Part 64 of the Commission's rules require an operator services provider (OSP) to identify itself audibly and distinctly to the consumer at the beginning of each interstate telephone call, before the consumer incurs any charge for that

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[287] *See* Florida Commission comments at 5.

[288] *See, e.g.*, 47 U.S.C. § 208 [common carrier complaint authority]; *see generally* 47 U.S.C. §§ 501 -510. *See also*, *First Report and Order* at section II [authority to take enforcement action].

[289] *See* 47 U.S.C. § 271(d)(6)(B).

call.[290] This procedure is commonly referred to as "call branding." In a recent *Report and Order*, the Commission amended its rules to require "branding" to the parties on both ends of a collect call.[291]

124. In using the term "branding requirements" in this context, we do not refer to the section 226 requirements obligating OSPs to identify themselves to consumers; rather, we refer to the obligations beyond section 226, if any, of a LEC to a competing provider that is using the LEC's facilities to provide its own operator services, or is reselling the operator services of the LEC. In these situations, the issue is *whose brand* should be used.

125. The *NPRM* did not ask whether branding of operator services should be required under section 251(b)(3). This issue was raised by several parties, however, in the context of nondiscriminatory access to such services. Specifically, parties raised the question of whether competing providers have the right to have resold operator services of a LEC "branded" in the competing provider's name, in order to ensure nondiscriminatory access and consumer perceptions of seamless service.

b. Comments

126. AT&T states that the Commission should reject claims that LECs may refuse to comply with "reasonable requests to brand resold operator services as those of the reseller," and that the "continued use of the incumbent LEC's own brand with services that are resold to CLEC customers would stifle competition and confuse customers."[292] AT&T further recommends that "equal opportunities for branding" be made available, asserting that if a LEC brands its own operator services, it should ensure that other OSPs have the capability to do the same; and if branding is infeasible for the OSP, the LEC should not brand its service at all.[293] Bell Atlantic and SBC object to AT&T's proposal, because one possible outcome would be that branding would not be performed on interstate calls, which would violate current Federal and state statutes and regulations.[294]

127. USTA states that when there are no technical limitations to branding, each LEC should be responsible for branding its own services, and where multiple brands are infeasible,

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[290] *See* 47 U.S.C. § 226(b)(1)(A); *see also* 47 C.F.R. § 64.703(a)(1).

[291] *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators,* CC Docket No. 94-158, Report and Order and Further Notice of Proposed Rulemaking, FCC 96-75 (1996) (*OSP Order).*

[292] AT&T reply at n.20.

[293] *See* AT&T comments at n.12.

[294] *See* Bell Atlantic reply at 5-6; SBC reply at 7.

the branding announcement of the facilities-based carrier should be used by "default."[295] Bell Atlantic and CBT contend that the issue of branding operator services is best left to inter-carrier negotiations, where technical and cost issues can be resolved between the parties.[296] PacTel notes that "in a resale environment, we accommodate the CLEC by not branding our service at all. If a CLEC wants to brand its own operator services, it can establish a facilities-based arrangement and set up its own operator services."[297]

c. Discussion

128. Since these comments are a logical outgrowth of the language in our *NPRM*, we address them herein. We recognize that branding plays a significant role in markets where competing providers are reselling the operator services of the providing LEC. Continued use of the providing LEC's brand with a competing provider's customers clearly advantages the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand operator services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[298] This presumption can be rebutted by the providing LEC if it demonstrates that it lacks the capability to comply with the competing provider's request. We note also that the Illinois Commission recently ordered rebranding of operator services as those of the reseller "[t]o the extent that it is technically feasible," and we do not preempt its intrastate branding requirements, nor any similar requirements that other states may have enacted.[299]

129. Any inter-carrier branding arrangements under which an interstate operator services call made from an aggregator location would not be branded would violate Section 226 of the Act and Part 64 of our rules. We therefore caution interconnecting carriers that, in negotiating branding arrangements for operator services, they must insure that such arrangements are consistent with Federal laws and regulations requiring interstate OSPs to identify themselves.

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[295] *See* USTA reply at 6.

[296] *See* Bell Atlantic reply at 5; CBT reply at 4-5.

[297] PacTel reply at 15.

[298] *See First Report and Order* at section VIII .

[299] *See* AT&T Communications of Illinois, and LDDS Communications, Inc. d/b/a LDDS Metromedia Communications, Petition for a Total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13.505.5 of the Illinois Public Utilities Act, Illinois Commission, Dockets 95-0458 and 95-0531 (consol.), Hearing Examiner's Proposed Order, May 16, 1996, pp. 52-54.

D. Nondiscriminatory Access to Directory Assistance and Directory Listings

1. Definition of "Nondiscriminatory Access to Directory Assistance and Directory Listings"

a. Background

130. In the *NPRM*, the Commission interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" to mean that the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.[300]

b. Comments

131. A number of commenters agree with our definition of "nondiscriminatory access to directory assistance and directory listings" as proposed in the *NPRM*.[301] Many commenters combine their discussions of what constitutes nondiscriminatory access for both operator services and directory assistance.[302] As with operator services, some commenters assert that a LEC is not obligated to ensure that a competing provider's customers have access to directory assistance and directory listings.[303] Bell Atlantic, for example, argues that "[t]he exchange carrier, naturally, can control only its part of the service, not what the other carrier provides."[304] CBT asks that we find that the nondiscriminatory access requirements only apply when a competing local service provider is using a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[305]

132. Finally, certain interexchange carriers ask that we require that competing providers have access to the White Pages, Yellow Pages, and "customer guide" sections of directories, in order to satisfy the requirement of nondiscriminatory access to directory

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[300] *See NPRM* at para. 217.

[301] *See, e.g.*, AT&T comments at 9-10; SBC reply at 4; and Telecommunications Resellers Association comments at 7.

[302] *See, e.g.*, CBT comments at 6. *See, e.g.*, para. 113, *supra*.

[303] *See* Ameritech comments at 10, USTA comments at 6-7. *See also supra* para. 113.

[304] Bell Atlantic comments at 7.

[305] *See* CBT comments at 6, 7.

assistance and directory listings.[306] Sprint contends that "CLECs should be allowed to insert informational pages containing their business and repair numbers in the incumbent LEC's white and yellow pages directories at cost."[307] SBC strongly disagrees that section 251(b)(3) requires access to Yellow Pages, "customer guides," and informational pages, pointing out that the "competitive checklist" (section 271) provisions only require incumbent LECs to provide access to White Pages listings.[308]

c. Discussion

133. We conclude that we should adopt the definition of nondiscriminatory access to directory assistance services proposed in the *NPRM,* with the following modifications. Consistent with our conclusion in para. 101, *supra*, we have modified this definition to reflect that this duty is owed to competing providers of telephone exchange service and/or telephone toll service, and not to "all telecommunications carriers."[309] This duty does not apply if a LEC chooses not to offer directory assistance to its own customers.[310]

134. We agree that once a LEC permits a competitor nondiscriminatory access to directory assistance and directory listings, the LEC permitting the access is not responsible for ensuring that the competitor's customers are able to access these services. As with operator services, when a dispute arises as to the adequacy of the access received by the competitor's customers, the burden is on the LEC permitting access to the service to demonstrate with specificity: (1) that it is permitting nondiscriminatory access to directory assistance and directory listings; and (2) that the disparity in access is not caused by factors within its control. As in paragraph 114, *supra*, we conclude that the term "factors" is not confined to physical facilities, but also includes human and non-facilities elements such as staffing, maintenance and ordering.

135. The requirements for nondiscriminatory access to directory assistance and directory listings are intertwined. Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the

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[306] *See, e.g.*, AT&T comments at n.14.

[307] Sprint comments at 9-10.

[308] *See* SBC reply at 6-7 (citing 47 U.S.C. § 271(c)(2)(B)(vii)).

[309] *See supra* para. 101.

[310] *But see infra* paras. 141-145, wherein we require all LECs, regardless of whether or not they provide directory assistance to their customers, to share subscriber listings, in readily accessible formats, as an element of nondiscriminatory access.

telephone service provider for the customer whose directory listing is requested.[311] We conclude that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted telephone numbers, or other information that a LEC's customer has specifically asked the LEC not to make available.[312] In previous orders, such as those addressing nondiscriminatory access by interexchange carriers to Billing Name and Address (BNA) information, we have taken action to ensure that customer privacy is protected.[313] In this *Order*, we require that in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers, and that the inadvertent release of unlisted names or numbers does not occur.[314]

136. We find, as we did in paragraph 117, *supra,* that CBT's proposal to limit the application of section 251(b)(3) to competing providers of exchange and/or toll service who are providing services on a resale basis, or using an incumbent LEC's unbundled switch ports is unacceptable. We also take into account PacTel's comments in concluding that section 251(b)(3) does not require that a customer be able to access any LEC's directory assistance services, but only those services provided through its chosen service provider. When a customer contacts his or her provider's directory assistance services, the customer's provider can obtain access to the directory listings of other carriers; thus, the customer should be able to obtain any directory listing (other than listings that are protected or not available, such as unlisted numbers). We conclude, however, that a LEC that does not provide directory assistance to its own customers does not have to provide nondiscriminatory access to directory assistance to competing providers.

137. On the basis of the record before us, we conclude that there is no need for this Commission to state that the term "directory assistance and directory listings" includes the White Pages, Yellow Pages, "customer guides," and informational pages. As a minimum

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[311] *See infra* para. 141.

[312] *Cf.* 47 U.S.C. § 222(f)(3) [definition of "subscriber list information"], which is limited to *the listed names* of subscribers of a carrier.

[313] *See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Third Order on Reconsideration, CC Docket No. 91-115, 11 FCC Rcd 6835 (1996); *see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 4478 (1993).

[314] *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, (May 17, 1996).

standard, we find that the term "directory listing" as used in section 251(b)(3) is synonymous with the definition of "subscriber list information" in section 222(f)(3).[315]

2. Commission Action to Implement Nondiscriminatory Access to Directory Assistance and Directory Listings

a. Background and Comments

138. In the *NPRM*, the Commission sought comment on what action, if any, is necessary or desirable to implement the nondiscriminatory access to directory assistance and directory listings requirements of section 251(b)(3).[316] Several parties assert that there is no need for the Commission to adopt detailed rules addressing this issue.[317] In its comments, NYNEX described its current arrangements for making its directory assistance and directory listing services available to facilities-based and non-facilities-based carriers.[318]

139. Sprint and MFS urge the Commission to establish national rules requiring nondiscriminatory access to directory assistance and directory listings for all local service providers.[319] Furthermore, MCI recommends that the Commission establish requirements that ensure that "each provider of local service has access to directory listings of other providers, and that these directory listings are made available in readily usable format," and that these listings be provided "via tape or other electronic means, as is frequently the practice today between incumbent LECs whose service areas join."[320] PacTel and GTE urge the Commission to refrain from mandating access to underlying directory assistance databases.[321] GTE cites "serious technical and security concerns," while PacTel argues that (1) the plain language of section 251(b)(3) does not require access to the underlying databases, and (2) LECs are prohibited from disseminating certain directory listing information without customers'

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[315] The term "subscriber list information" at section 222(f)(3) means any information: (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. 47 U.S.C. § 222(f)(3)(A), (B).

[316] *See NPRM* at para. 217.

[317] *See, e.g.*, Bell Atlantic comments at 6; GTE reply at 18; PacTel comments at 16.

[318] *See* NYNEX comments at 7-8.

[319] *See, e.g.*, MFS reply at 10; Sprint reply at 8.

[320] *See* MCI comments at 3, 9; *see also* MCI reply at 3.

[321] *See* GTE reply at 19; PacTel reply at 15.

permission in California and Nevada.[322] PacTel maintains that the intent of section 251(b)(3) is not to permit "unfettered access to all information on record."[323]

140. The Telecommunications Resellers Association states that "prompt and strong" Commission action is required to ensure compliance with nondiscriminatory access to directory assistance and directory listings.[324] The Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[325]

b. Discussion

141. We conclude that section 251(b)(3) requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems. We agree with MCI that "by requiring the exchange of directory listings, the Commission will foster competition in the directory services market and foster new and enhanced services in the voice and electronic directory services market."[326] Consistent with the definition of "subscriber list information" in section 222(f)(3), we do not require access to unlisted names or numbers.[327] Rather, we require the LEC providing the listing to share listings in a format that is consistent with what that LEC provides in its own directory.

142. We conclude that the fact that many LECs offer directory assistance and listings for purchase or resale to competitors, as NYNEX describes, does not obviate the need for any requirements in this area. Under the general definition of "nondiscriminatory access," competing providers must be able to obtain at least the same quality of access to these services that a LEC itself enjoys. Merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement, if the LEC,

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[322] *See* GTE reply at 19; PacTel reply at 15.

[323] PacTel reply at 15.

[324] *See* Telecommunications Resellers Association comments at 7.

[325] *See* Florida Commission comments at 5.

[326] MCI comments at 9.

[327] *See* 47 U.S.C. § 222(f)(3) for the definition of "subscriber list information."

for example, only permits a "degraded" level of access to directory assistance and directory listings.[328]

143. We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access. Access to such databases will promote seamless access to directory assistance in a competitive local exchange market. We note also that incumbent LECs must provide more robust access to databases as unbundled network elements under section 251(c)(3).[329]

144. We do not agree with PacTel's contention that certain state laws restricting the types of information that LECs can disseminate preclude us from requiring access to directory assistance databases. It is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases. Consistent with our definition of nondiscriminatory access, the providing LEC must offer its competitors access of at least equal quality to that it receives itself. Competitors who access such LEC databases will be held to the same standards as the database owner, in terms of the types of information that they can legally release to directory assistance callers. The LEC that owns the database can take the necessary safeguards to protect the integrity of its database and any proprietary information, or carriers can agree that such databases will be administered by a third party. We note also that our holding does not preclude states from continuing to limit how LECs can use accessed directory information, *e.g.*, prohibiting the sale of customer information to telemarketers.[330] Rather, we conclude only that section 251(b)(3) precludes states from discriminating among LECs by imposing different access restrictions on competing providers, thereby allowing certain LECs to enjoy greater access to information than others.[331]

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[328] *See supra* paras. 101-105.

[329] *See supra* para. 118, for a discussion of the relationship between section 251(b)(3) and the requirements adopted in the *First Report and Order* mandating unbundled access to operator and directory assistance services.

[330] *But see* section 222(d)(3), which permits customer information to be used for telemarketing to the customer "...for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service." 47 U.S.C. § 222(d)(3). *See also* our proceeding to clarify the obligations of carriers with regard to section 222(c) and 222(d). *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*, CC Docket, No. 96-115, FCC 96-221 (May 17, 1996).

[331] *Cf.* 47 U.S.C. § 222(e), which requires telephone exchange service providers to "provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." *See* 47 U.S.C. § 222(f)(3) for the definition of "subscriber list information."

Accordingly, states may not impose rules that would allow a LEC to discriminate against competing providers.[332]

145. We are not adopting specific enforcement standards at this time. Disputes regarding nondiscriminatory access will be addressed under our Title II and Title V enforcement authority.[333]

3. Branding of Directory Assistance

a. Background and Comments

146. To the extent that interstate directory assistance services are within the definition of "operator services" in section 226(a)(7) of the Act,[334] the service provider is required to identify itself to consumers at the beginning of a call.[335] Parties raised the issue of whether the competing provider has the right to have resold directory assistance services of the LEC "branded" in its name, as an element of nondiscriminatory access under section 251(b)(3). Thus this issue is similar to that of branding of operator services in paras. 123-129, *supra*. The *NPRM* did not ask whether the branding of directory assistance should be required under 251(b)(3) but commenters raised this issue.

147. AT&T suggests adding a requirement that if an incumbent LEC brands its own directory services, the incumbent should ensure that other directory assistance service providers can also brand their services.[336] CBT argues that branding is impractical and should be left to intercarrier negotiations, stating that "call branding can be provided, though not without considerable added effort and expense, to facilities-based providers who route traffic from their networks to the incumbent LEC's network by trunk group. Providing branding for resold services at the line number level is extremely difficult within the limits of the public switched network. When dealing with multiple resellers, there is no simple method for the

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[332] *See First Report and Order* at section II for a discussion of the applicability of our section 251 rules to intrastate and interstate services.

[333] *See supra* para. 122. *See also* 47 U.S.C. § 208 [common carrier complaint authority] and 47 U.S.C. §§ 501 -510.

[334] 47 U.S.C. § 226(a)(7).

[335] *See* 47 U.S.C. § 226(a)(7), (b)(1). *See generally supra* paras. 123-129.

[336] *See* AT&T comments at n.12.

incumbent LEC to determine by individual line number which brand should be applied."[337] Bell Atlantic also suggests that this issue be left to carrier negotiations.[338]

b. Discussion

148. The record shows that this issue is a logical outgrowth of the issues related to nondiscriminatory access to directory assistance raised in the *NPRM* and thus should be addressed in this *Order*. As with operator services, we recognize the major role that branding can play in an environment where competing providers are reselling the directory assistance services of the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, therefore, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand directory assistance services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[339] This presumption can be rebutted by the providing LEC demonstrating that it lacks the capability to comply with the request of the competing provider.[340] Finally, as with operator services, we do not preempt any branding requirements that state commissions may have enacted for directory assistance services.

4. Alternative Dialing Arrangements for Directory Assistance

a. Background and Comments

149. In the *NPRM,* the Commission sought comment on whether the customers of competing providers of exchange and/or toll service would be able to access directory assistance by dialing '411' or '555-1212,' which are nationally-recognized numbers for directory assistance, or whether alternative dialing arrangements would be necessary.

150. No commenters recommended that we require different arrangements for dialing directory assistance. AT&T states that while alternative protocols may be permitted, no carrier should be required to use them.[341] Bell Atlantic states that "[n]o dialing arrangements for directory assistance other than 411 and 555-1212 are necessary. A facilities-based provider will be able to use these numbers and route its customers' calls in whatever way it

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[337] CBT reply at 5.

[338] *See* Bell Atlantic reply at 5.

[339] As with operator services, *supra,* we note that carriers must comply with the branding requirements of section 226, to the extent that their services are within the section 226 definitions. *See* 47 U.S.C. § 226.

[340] *See First Report and Order* at section VIII.

[341] *See* AT&T comments at 10.

chooses (to its own directory assistance, to that of the incumbent exchange carrier or to that or any other provider). When a non-facilities-based provider buys exchange service from the incumbent under section 251(c)(4), its customers get exactly what the incumbent's receive, 411 and 555-1212 access to directory assistance."[342]

b. Discussion

151. With respect to the ability of customers to reach directory assistance services through 411 or 555-1212 arrangements, we conclude that no Commission action is required now. No commenter has proposed that we require an alternative dialing arrangement. The record before us indicates that permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible, and there is no evidence in the record that these dialing arrangements will cease.

E. Unreasonable Dialing Delay

1. Definition and Appropriate Measurement Methods

a. Background and Comments

152. Section 251(b)(3) prohibits unreasonable dialing delays.[343] The *NPRM* sought comment on what constitutes an unreasonable dialing delay for purposes of section 251(b)(3) and on appropriate methods for measuring and recording such delay.[344]

153. U S WEST contends that the phrase "unreasonable dialing delay," as it appears in section 251(b)(3), applies only to the provision of nondiscriminatory access to operator and directory assistance services.[345] GCI, on the other hand, asserts that the unreasonable dialing delay provision applies to both the dialing parity and nondiscriminatory access provisions of section 251(b)(3).[346] MFS, NYNEX and Sprint recommend that we define "dialing delay" to cover the period from when a user completes dialing to when the call is "handed off" to a connecting LEC, whenever multiple LECs are involved in call completion.[347] ALTS,

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[342] Bell Atlantic comments at 8-9.

[343] 47 U.S.C. § 251(b)(3).

[344] *See NPRM* at para. 218.

[345] U S WEST comments at 11.

[346] GCI reply at 2.

[347] *See* Sprint comments at 10; MFS reply at 8; NYNEX comments at 9.

however, suggests that we define "dialing delay" to cover the period from when the end user completes dialing to the point where a network response is first received.[348]

154. Several parties contend, however, that we should not adopt a definition of "dialing delay."[349] Bell Atlantic states that there is "no need to try to develop a definition of what constitutes 'unreasonable dialing delays.' To the extent that this ever becomes an issue, it is best handled with a specific factual record."[350]

155. Several parties recommend defining "unreasonable" as any delay that exceeds that of the providing LEC.[351] ACSI suggests that the Commission "declare a delay 'unreasonable' if the average access time for competing providers exceeds the average access time for the LEC itself," and that ". . . the LEC and competing providers should get equal priority in LEC call processing systems, which would result in identical dialing delays, on average, for LECs and competing providers."[352] Other parties argue that LECs should not be held responsible for unreasonable dialing delays that are not caused by their networks or are not within their control.[353]

b. Discussion

156. We conclude that section 251(b)(3) prohibits "unreasonable dialing delays" for local and toll dialing parity, and for nondiscriminatory access to operator services and directory assistance. The reference to "unreasonable dialing delay" is ambiguous because it is in a prepositional phrase at the end of section 251(b)(3), following references both to the duty to provide dialing parity and the duty to permit nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings. In light of this ambiguity, and the absence of legislative history, we look to the purpose of section 251 and to the record to interpret the "unreasonable dialing delay" provision. Examining the statutory language in light of the plainly pro-competitive thrust of these section 251 requirements, we conclude that Congress intended the dialing delay prohibition to apply to both the obligation to provide dialing parity and the obligation to permit nondiscriminatory access to operator

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[348] ALTS comments at 6.

[349] *See, e.g.*, Bell Atlantic comments at 9, U S WEST comments at 11.

[350] Bell Atlantic comments at 9.

[351] *See, e.g.*, Excel comments at 8; Sprint comments at 11.

[352] ACSI comments at 10.

[353] *See, e.g.*, GTE comments at 19; USTA reply at 6-7.

services and directory assistance.[354] Further, commenters did not distinguish between dialing delay in dialing parity and nondiscriminatory access contexts.

157. We conclude that a "comparative" standard for identifying "unreasonable dialing delay" is necessary in order to ensure that, when competing providers obtain dialing parity and nondiscriminatory access to operator services and directory assistance, such access does not come with unreasonable dialing delays. We conclude, therefore, that the dialing delay experienced by the customers of a competing provider should not be greater than that experienced by customers of the LEC providing dialing parity, or nondiscriminatory access, for identical calls or call types. For the reasons stated below, we conclude that this "comparative standard" is more appropriate in this context than a specific technical standard.[355]

158. In our *Number Portability Order*,[356] we indicated that "at a minimum, when a customer switches carriers, that customer must not experience a greater dialing delay or call set up time . . . due to number portability, compared to when the customer was with the original carrier."[357] The standard that we are adopting for "unreasonable dialing delay" under section 251(b)(3) is consistent with the standard we adopted in the *Number Portability Order*.

159. We conclude that the statutory language on unreasonable dialing delays places a duty upon LECs providing dialing parity or nondiscriminatory access to operator services and directory assistance to process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from customers of the providing LEC. In other words, calls from a competing provider must receive treatment in the providing LEC's network that is equal in quality to the treatment the LEC provides to calls from its own customers. We recognize that LECs may have the technical ability to identify whether a call is originating from a competing provider (*e.g.*, by cross-referencing the Automatic Number Identification (ANI), or by identifying the connecting trunk group). Thus there may exist on the part of the providing LEC the ability to discriminate and to degrade service quality for a competing provider's customers by introducing unreasonable dialing delays.

160. For operator services and directory assistance calls, such dialing delay can be measured by identifying the time a call spends in queue until the providing LEC processes the call. We recognize that the time of arrival of a telephone call can be recorded (1) at the originating LEC's switch; (2) upon entering the operator services or directory assistance

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[354] 47 U.S.C. § 251(b)(3).

[355] *See infra* paras. 163-164, for a discussion of specific technical standards for dialing delay.

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

[357] *Id.* at para. 56.